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March 28, 2013

Molly C. Dwyer
United States Court of Appeals
James R. Browning Courthouse
95 Seventh Street
San Francisco, CA 94103-1526

Re: Federal Rule of Appellate Procedure 28(j) Letter
United States v. Edgar J. Steele, USCA No. 12-30005

Dear Ms. Dwyer:

Briefing is complete in the above-referenced appeal, but no oral argument schedule has yet been announced. The following decision was issued after the briefing was complete: *United States v. Raymond Ruiz, Jr.*, 2013 WL 1197945 (9th Cir. Mar. 26, 2013). It relates to Defendant Steele's second argument in this appeal. *See Blue Br.* at 44-60.

In *Ruiz*, the Ninth Circuit held that the district court did not err by failing to provide a specific unanimity instruction. *Ruiz*, 2013 WL 1197945 at *1-3. The defendant had argued that, because several different overt acts supported the charged offense, an instruction was required to cure a duplicitous indictment and avoid jury confusion. *Id.* at *2. The Court rejected this argument. *Id.*

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Defendant Steele makes a similar argument in this appeal. *See Blue Br.* at 44-60 (asserting that the district court plainly erred by failing to offer a specific unanimity instruction, that the indictment was duplicitous, and that jury confusion was likely to result from the evidence introduced); *see also Red Br.* at 22-28.

Sincerely,

WENDY J. OLSON
United States Attorney
By

/s Syrena C. Hargrove

SYRENA C. HARGROVE
Assistant United States Attorney

SCH/an

cc: Dennis P. Riordan and
Donald M. Horgan, via CM/ECF Notice