In the Supreme Court of the State of California

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent, **v.** **MARIO SALVADOR PADILLA,** Defendant and Appellant.	Case No. S263375

Second Appellate District, Division Four, Case No. B297213
Los Angeles County Superior Court, Case No. TA051184
The Honorable Ricardo R. Ocampo, Judge

OPENING BRIEF ON THE MERIT

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TABLE OF CONTENTS

Page

TABLE OF CONTENTS
(continued)

Page

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES
(continued)

Page

TABLE OF AUTHORITIES
(continued)

Page

TABLE OF AUTHORITIES
(continued)

Page

TABLE OF AUTHORITIES
(continued)

Page

STATUTES

TABLE OF AUTHORITIES
(continued)

Page

CONSTITUTIONAL PROVISIONS

COURT RULES

OTHER AUTHORITIES

ISSUE PRESENTED

When a judgment becomes final, but is later vacated, altered, or amended and a new sentence imposed, is the case no longer final for the purpose of applying an intervening ameliorative change in the law?

INTRODUCTION

Penal Code section 3 states that no part of the Penal Code is retroactive unless it is expressly so declared. Recognizing a qualification to this rule for amendments that reduce the punishment for a particular crime, this Court in *In re Estrada* (1965) 63 Cal.2d 740 established a presumption that the Legislature intends a new ameliorative law to apply to all nonfinal criminal judgments. The Court has long applied the *Estrada* presumption in the context of judgments that were not yet final on direct review. The Court of Appeal below, however, interpreted the presumption to apply to a judgment that had already become final upon completion of direct review but was later "reopened" for resentencing on habeas corpus.

Appellant Mario Padilla was 16 years old when he murdered his mother and conspired to murder his stepfather in 1998. Following appellant's fourth appeal, on remand from the Court of Appeal, the trial court held a resentencing hearing and again sentenced appellant to life without the possibility of parole (LWOP). Appellant argues in this appeal—his fifth—that he is entitled to a Proposition 57 transfer hearing because his current appeal was not final at the time Proposition 57 went into effect in 2016. The court below agreed, finding that appellant's judgment

had been "reopened" in the course of his habeas corpus litigation. It therefore remanded the matter for a retroactive transfer hearing under Proposition 57.

The *Estrada* presumption should not be extended to reopened judgments. Rather, the purpose and rationale of the presumption are best served by limiting its application to matters that are not final on first direct appeal at the time the ameliorative law is enacted. This best approximates the Legislature's probable and reasonable understanding of retroactive application and avoids arbitrary application of new laws. Moreover, it is more prudent to limit the presumption to initially nonfinal judgments, since the Legislature or the electorate is always free to state whether and how a particular law may apply retroactively.

LEGAL BACKGROUND

A. The *Estrada* presumption

In California, new criminal legislation is subject to a default rule of prospective application only, but the Legislature or the electorate may specify whether and how the legislation is to apply retroactively. Penal Code section 3 sets out this default rule, providing that no statutory enactment is "retroactive, unless expressly so declared." (See also *People v. Brown* (2012) 54 Cal.4th 314, 324 ["a statute that is ambiguous with respect to retroactive application is construed . . . to be unambiguously prospective"], internal quotations omitted; *Tapia v. Superior Court* (1991) 53 Cal.3d 282, 287 ["It is well settled that a new statute is presumed to operate prospectively absent an express

declaration of retrospectivity or a clear indication that the electorate, or the Legislature, intended otherwise"].)

In *Estrada*, this Court recognized a "contextually specific qualification" to the ordinary presumption that statutes operate prospectively. (*Brown, supra*, 54 Cal.4th at p. 323.) *Estrada* held that "[w]hen the Legislature amends a statute so as to lessen the punishment," the "amendatory act imposing the lighter punishment can be applied constitutionally to acts committed before its passage provided the judgment convicting the defendant of the act is not final." (*Estrada, supra*, 63 Cal.2d at p. 745.) The Court observed that a presumed legislative intent to apply such laws to nonfinal judgments was "obvious, because to hold otherwise would be to conclude that the Legislature was motivated by a desire for vengeance." (*Ibid.*) It reasoned that "mitigation of the penalty for a particular crime represents a legislative judgment that the lesser penalty or the different treatment is sufficient to meet the legitimate ends of the criminal law." (*Ibid.*) Accordingly, restricting application of new ameliorative laws solely to future cases would be "a product simply of vengeance or retribution." (*Ibid.*)

"The *Estrada* rule rests on the presumption that, in the absence of a savings clause providing only prospective relief or other clear intention concerning any retroactive effect, 'a legislative body ordinarily intends for ameliorative changes to the criminal law to extend as broadly as possible, distinguishing only as necessary between sentences that are final and sentences that are not.'" (*People v. Buycks* (2018) 5 Cal.5th 857, 881, quoting

People v. Conley (2016) 63 Cal.4th 646, 657.) Thus, when the Legislature has amended a statute to reduce the punishment for a particular criminal offense, courts assume, "absent evidence to the contrary, that the Legislature intended the amended statute to apply to all defendants whose judgments are not yet final on the statute's operative date." (*Brown*, *supra*, 54 Cal.4th at p. 323.) The same intent should logically be presumed from ameliorative changes in the criminal law enacted by the electorate. (See *Tapia*, *supra*, 53 Cal.3d at p. 287.)

B. Proposition 57 and This Court's Decision in *Lara*

Prior to 1999, "a child could be tried in criminal court only after a judicial determination . . . that he or she was unfit to be dealt with under juvenile court law." (*People v. Superior Court (Lara)* (2018) 4 Cal.5th 299, 305, internal quotation marks omitted.) Absent such an unfitness determination, "any individual less than 18 years of age who violate[d] the criminal law [came] within the jurisdiction of the juvenile court." (*Ibid.*) Amendments made to former Welfare and Institutions Code sections 602 and 707 in 1999 and 2000, however, "changed this historical rule." (*Ibid.*) "Under the changes, in specified circumstances, prosecutors were permitted, and sometimes required, to file charges against a juvenile directly in criminal court, where the juvenile would be treated as an adult." (*Ibid.*)

The electorate passed Proposition 57, the Public Safety and Rehabilitation Act of 2016, in November 2016. (*Lara*, *supra*, 4 Cal.5th at p. 303.) The new law made various changes to the Welfare and Institutions Code, such as eliminating mandatory

and discretionary direct filing of juvenile cases in adult court, and eliminating various presumptions that a juvenile is not fit to be prosecuted in juvenile court under certain circumstances. (Welf. & Inst. Code, § 707, subd. (a)(1).) Proposition 57 requires that an allegation of criminal conduct against any person under 18 years of age must be commenced in juvenile court. To prosecute the minor under general criminal law, the prosecution must file a motion to transfer the case from juvenile court to adult court, and a juvenile court judge must conduct "a transfer hearing to consider various factors such as the minor's maturity, degree of criminal sophistication, prior delinquent history, and whether the minor can be rehabilitated." (Welf. & Inst. Code, § 707, subd. (a)(1); *Lara*, *supra*, at p. 305.)

In *Lara*, this Court considered whether Proposition 57's "requirement of a transfer hearing before a juvenile can be tried as an adult applie[d] to [the] defendant even though he had already been charged in adult court before Proposition 57 took effect." (*Lara*, *supra*, 4 Cal.5th at p. 306.) Finding the evidence of electoral intent as to retroactivity "inconclusive" (*id.* at p. 309), the Court turned to the rule of *Estrada*. The central question in *Lara* was whether the new law qualified as the sort of ameliorative change that the *Estrada* presumption governs. The Court observed that, unlike other laws to which *Estrada* had been held to apply, "Proposition 57 did not ameliorate the punishment, or possible punishment, for a particular crime; rather, it ameliorated the possible punishment for a class of persons, namely juveniles." (*Lara*, *supra*, 4 Cal.5th at p. 308.)

But the Court held that Proposition 57's "ameliorative benefits," including, ultimately, the possibility of limited custody time under juvenile law, was sufficient to trigger *Estrada*'s presumption of retroactivity. (*Id.* at pp. 308-309.) Thus, Proposition 57's juvenile transfer hearing reforms apply "to all juveniles charged directly in adult court whose *judgment was not final at the time it was enacted*." (*Id.* at p. 304, italics added.)

The decision in *Lara* arose from pre-trial writ proceedings, and the Court therefore had no occasion to address in any detail the question of finality for *Estrada* purposes.

STATEMENT OF THE CASE

In 1999, following a hearing at which he was determined not fit to be dealt with under juvenile law, appellant was prosecuted in adult court and convicted by a jury of the murder of his mother (Pen. Code, § 187, subd. (a)) and of conspiracy to murder his stepfather (Pen. Code, § 182, subd. (a)(1)). Appellant was 16 years old at the time he committed the crimes. The jury found true the special circumstances that the murder was committed during the course of a robbery and while lying in wait. (Pen. Code, § 190.2, subds. (a)(15) & (a)(17).) Appellant was sentenced to life in prison without the possibility of parole. (See *People v. Padilla* (June 1, 2001, B135651) [nonpub. opn.], at pp. 12-13.)

On direct appeal, the Court of Appeal reversed the lying-in-wait special circumstance finding for insufficient evidence but otherwise affirmed the judgment. (*People v. Padilla* (June 1, 2001, B135651) [nonpub. opn.], at pp. 12-13.) This Court denied review (case number S098893) and, on December 18, 2001, the

time within which appellant could seek a writ of certiorari in the United States Supreme Court expired. (*People v. Padilla* (2020) 50 Cal.App.5th 244, 248; see *People v. Ketchel* (1966) 63 Cal.2d 859, 864.)

Beginning about 10 years later, the United States Supreme Court issued a series of decisions recognizing constitutional limits on lengthy sentences for juvenile offenders. (See *Graham v. Florida* (2010) 560 U.S. 48; *Miller v. Alabama* (2012) 567 U.S. 460; *Montgomery v. Louisiana* (2016) 136 S.Ct. 718.) And, "inspired by concerns regarding sentences of life without parole for juvenile offenders," our Legislature in 2011 enacted a statutory procedure, codified in section 1170, subdivision (d)(2), that "provides an avenue for juvenile offenders serving terms of life without parole to seek recall of their sentences and resentencing to a term that includes an opportunity for parole." (*In re Kirchner* (2017) 2 Cal.5th 1040, 1049-1050.) That statutory procedure, however, is separate from, and not designed to address, federal constitutional issues regarding juvenile sentencing, for which habeas corpus may lie. (*Id.* at p. 1054.)

In 2013, appellant filed a petition for recall and resentencing in the trial court pursuant to section 1170, subdivision (d)(2). The trial court denied the petition, finding that appellant was ineligible for resentencing because his offense involved torture. Appellant appealed. (*People v. Padilla* (November 20, 2015, B257408) [nonpub. opn.], at p. 5.) The Court of Appeal concluded that the record of conviction contained insufficient evidence to support the determination that the murder involved torture, and

reversed the denial of the resentencing petition. (*Id.* at pp. 5-6, 23-32.) Following a further hearing in the trial court, appellant's resentencing petition was again denied. (See *People v. Padilla* (December 21, 2017, B277715) [nonpub. opn.].) The Court of Appeal affirmed. (*Id.* at pp. 25-29.)

Meanwhile, appellant had also filed a petition for writ of habeas corpus in the trial court seeking resentencing under United States Supreme Court authority. (See *Kirchner*, *supra*, 2 Cal.5th at p. 1054.) After another resentencing hearing in July 2015, the trial court reimposed the life-without-parole term. Appellant appealed. (*People v. Padilla* (2016) 4 Cal.App.5th 656, 661.) The Court of Appeal reversed and remanded for the trial court to exercise its discretion in resentencing appellant in light of guidance provided by the United States Supreme Court's then-recent decision in *Montgomery v. Louisiana*. (*Id.* at pp. 661, 674.) This Court granted review to address the constitutional question but later dismissed review in light of intervening legislation that mooted the question. (*People v. Padilla*, No. S239454.) On remand in 2019, the trial court once again sentenced appellant to life without parole. (*Padilla*, *supra*, 50 Cal.App.5th at p. 248; 1CT 169-170.) The present appeal from the resentencing ensued.

Appellant contends in this appeal that he is entitled to a Proposition 57 transfer hearing under *Estrada* because the new law became effective before his resentencing on habeas corpus was final on appeal. The Court of Appeal below agreed. It held that Proposition 57 applies to appellant's case, under *Estrada*, because "his sentence was vacated and his sentence is no longer

final." (*Padilla, supra*, 50 Cal.App.5th at p. 247.) It acknowledged that finality for *Estrada* purposes is "easy to apply in a typical case" but that "questions have arisen as to how this rule applies in different procedural settings." (*Id.* at p. 252.) Invoking this Court's decision in *People v. Jackson* (1967) 67 Cal.2d 96, the court concluded that "a collateral proceeding may reopen the finality of a sentence for retroactivity purposes, even while the conviction remains final." (*Padilla, supra*, 50 Cal.App.5th at p. 253.) Because the finality of appellant's sentence had been "reopened" in the course of his habeas corpus litigation, the Court of Appeal remanded for a retroactive transfer hearing under Proposition 57. (*Id.* at pp. 253-256.)

ARGUMENT

THE *ESTRADA* PRESUMPTION SHOULD NOT APPLY TO "REOPENED" JUDGMENTS

This Court's decision in *In re Estrada* (1965) 63 Cal.2d 740 established a presumption that the Legislature or the electorate intends a new ameliorative law to apply to all nonfinal criminal judgments. In light of the rule's purpose and rationale, and for strong prudential reasons, it is best limited to judgments that are not yet final on initial review. So understood, Proposition 57 does not apply to appellant's case, which was final before the enactment of that law and was only "reopened" for an unrelated resentencing many years later.

A. This Court has not historically applied *Estrada* to judgments other than those that were not yet final on initial review

In reaffirming *Estrada*'s exception to Penal Code section 3 in the years since that decision, this Court has consistently articulated that the presumption applies in cases not "reduced to final judgment." (*Estrada*, *supra*, 63 Cal.2d at pp. 746-747.)[1] A criminal judgment becomes final when "the courts can no longer provide a remedy to a defendant on direct review." (*In re Spencer* (1965) 63 Cal.2d 400, 405; see also *Gonzalez v. Thaler* (2012) 565 U.S. 134, 149 ["We held that the federal judgment becomes final 'when this Court affirms a conviction on the merits on direct review or denies a petition for a writ of certiorari,' or, if a

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[1] See *People v. Stamps* (2020) 9 Cal.5th 685, 699 [granting defendant *Estrada* relief "because his judgment is not yet final"]; *People v. Frahs* (2020) 9 Cal.5th 618, 624 [*Estrada* applies to "all persons whose judgments were not yet final at the time the statute took effect"]; *People v. McKenzie* (2020) 9 Cal.5th 40, 46 [*Estrada* applies in any criminal proceeding that has not yet reached final disposition in the highest court authorized to review it]; *Lara*, *supra*, 4 Cal.5th at p. 303 [*Estrada* applies "to any case in which the judgment was not final before the statute took effect"]; *Conley*, *supra*, 63 Cal.4th at p. 657 [*Estrada* rule distinguishes "between sentences that are final and sentences that are not"]; *People v. Floyd* (2003) 31 Cal.4th 179, 186-187 ["it is 'the universal common-law rule' . . . and perhaps a constitutional limitation … that ameliorative statutes not be applied to judgments that are already final"]; *People v. Rossi* (1976) 18 Cal.3d 295, 304 [amendatory statute applies in "any [criminal] proceeding [that], at the time of the supervening legislation, has not yet reached final disposition in the highest court authorized to review it"]; *People v. Francis* (1969) 71 Cal.2d 66, 76 [*Estrada* applies "to cases not final before the effective date of the amendment"].)

petitioner does not seek certiorari, 'when the time for filing a certiorari petition expires.'"].) Ordinarily, this occurs "when the availability of an appeal and the time for filing a petition for certiorari with the United States Supreme Court have expired." (*Buycks*, *supra*, 5 Cal.5th at p. 876; *Clay v. U.S.* (2003) 537 U.S. 522, 527 [for purposes of postconviction relief, "[f]inality attaches when this Court affirms a conviction on the merits on direct review or denies a petition for a writ of certiorari, or when the time for filing a certiorari petition expires"]; see also *People v. Vieira* (2005) 35 Cal.4th 264, 305; *People v. Nasalga* (1996) 12 Cal.4th 784, 789, fn. 5.)

This Court has applied the *Estrada* presumption to a variety of new ameliorative laws in cases that were not yet final on direct review, including in a series of recent decisions. (See *Lara*, *supra*, 4 Cal.5th at pp. 304-305, 309 [Proposition 57 applies retroactively to nonfinal judgments in context of a case still pending in adult trial court]; *McKenzie*, *supra*, 9 Cal.5th at p. 45 [a judgment was not final for *Estrada* purposes where probationer's time to appeal underlying conviction had expired but his case was on appeal following probation revocation and sentencing]; *Frahs*, *supra*, 9 Cal.5th at p. 624 [*Estrada*'s inference of retroactivity applies to section 1001.36 diversion in cases where judgments are not yet final]; *Stamps*, *supra*, 9 Cal.5th at p. 699 [Senate Bill 1393 applies retroactively under *Estrada* where judgment was not yet final].) One of these decisions, *People v. McKenzie*, directly involved a question about the finality of the judgment.

In *McKenzie*, the defendant was placed on probation, and the trial court suspended imposition of sentence. The time to appeal the conviction thereafter lapsed, and the defendant later violated probation. The trial court revoked probation and imposed a sentence that included enhancements for prior drug convictions. (*McKenzie*, *supra*, 9 Cal.5th at p. 43.) But while the defendant's direct appeal from the sentencing was pending, the Governor signed legislation that invalidated the prior-drug-conviction enhancements. On review, this Court held that the judgment was not final for *Estrada* purposes when the time to appeal the conviction lapsed. The Court explained that "[i]n criminal actions, the terms judgment and sentence are generally considered synonymous, and there is no judgment of conviction without a sentence." (*Id.* at p. 46, internal quotations omitted, citing *Spencer*, *supra*, 71 Cal.2d at p. 935, fn. 1, and *In re Phillips* (1941) 17 Cal.2d 55, 58.) Thus, because the defendant's sentence was not yet final on initial review at the time of the new enactment, the case had not yet been "reduced to final judgment." (*McKenzie*, *supra*, at pp. 45-46.)

Even when a case is reduced to final judgment, however, that does not make it inalterable. A defendant may obtain postconviction resentencing or other relief for a variety of reasons, resulting in, as the court below put it, the "reopening" of a judgment. (*Padilla*, *supra*, 50 Cal.App.5th at p. 253.) This Court's *Estrada* jurisprudence has referred to "finality" only in its basic sense: the completion of initial direct review of a conviction and sentence. Neither *McKenzie* nor any if this Court's other

decisions addresses whether the *Estrada* presumption should extend to "reopened" judgments.

B. In light of its purpose and rationale, and for prudential reasons, the *Estrada* presumption is best effectuated by limiting it to those judgments not yet final on initial direct review

Application of new laws to judgments that have already become final on initial review presents distinct questions from the ordinary implementation of the *Estrada* presumption in cases that are not yet initially final. The Legislature or the electorate may wish to direct, as they often do, that a new law be implemented retroactively in a particular way, subject to certain limitations or operative in only in a class of cases. Or they may determine that a law is more appropriately applied retroactively in a blanket manner—or perhaps not at all. These considerations depend largely on the nature of the new law, and selection of the most appropriate path is better suited to the decisionmaking process of lawmakers than to a judicial presumption.

Because a decision about retroactivity is always in the hands of the framers of a new law, there is little need to extend the *Estrada* presumption to reopened judgments. Indeed, to do so would likely be inconsistent with legislative and electoral intent, would lead to clumsy and uneven application of new ameliorative laws, and would create at least some tension with existing principles regarding reopened judgments. In short, there is nothing necessarily vengeful or retributive about a choice to limit the application of a new ameliorative law to cases not yet final on initial review. (See *Estrada, supra*, 63 Cal.2d at p. 745.) The

Estrada presumption about legislative intent therefore need not be extended to reopened judgments. Instead, nuanced questions about the applicability of new laws to cases that have already become final on initial direct review are best left to the Legislature and the electorate.

1. Limiting the *Estrada* presumption to judgments that are not yet final on initial review most accurately reflects probable legislative and electoral intent

This Court has emphasized the narrowness of the *Estrada* presumption, describing it as playing a "limited role" in our jurisprudence. (*Brown, supra*, 54 Cal.4th at p. 324; see also *People v. Hajek and Vo* (2014) 58 Cal.4th 1144, 1196, overruled on other grounds in *People v. Rangel* (2016) 62 Cal.4th 1192, 1216.) "*Estrada* is . . . properly understood, not as weakening or modifying the default rule of prospective operation codified in section 3, but rather as informing the rule's application in a specific context by articulating the reasonable presumption that a legislative act mitigating the punishment for a particular criminal offense is intended to apply to all nonfinal judgments." (*Brown, supra*, 54 Cal.4th at p. 324.) "Applied broadly and literally, *Estrada's* remarks about section 3 would thus endanger the default rule of prospective operation." (*Ibid.*) It is, in other words, a "reasonable" presumption that is applicable "in a specific context" only when it is otherwise impossible to determine the Legislature's intent. (*Brown, supra*, at p. 324.)

There is little reason to suppose that the Legislature or the electorate, in enacting a new ameliorative law, assumes that

Estrada's "limited" exception to Penal Code section 3 would operate to implement the new law in "reopened" cases. Along with *Estrada*'s seminal articulation of the rule which cuts against such an interpretation, there is a decades-long *Estrada* jurisprudence that has never applied the presumption in that way; rather, the Court has consistently applied new ameliorative laws to cases not yet initially final. (See, e.g., *Stamps*, *supra*, 9 Cal.5th at p. 699 [Senate Bill 1393 applies to non-final judgments on appeal]; *Frahs*, *supra*, 9 Cal.5th at p. 640 [direct appeal following jury trial and sentence]; *Lara*, *supra*, 4 Cal.5th at p. 304 [pretrial writ]; *People v. Wright* (2006) 40 Cal.4th 81, 85 [direct appeal following trial and conviction]; *Nasalga*, *supra*, 12 Cal.4th at p. 787 [direct appeal following guilty plea and sentence]; *People v. Babylon* (1985) 39 Cal.3d 719, 721 [direct appeal following bench trial]; *People v. Collins* (1978) 21 Cal.3d 208, 211 [direct appeal following guilty plea, mental health commitment, and sentencing]; *People v. Chapman* (1978) 21 Cal.3d 124, 126 [direct appeal following guilty plea and sentence of probation]; *In re Boyle* (1974) 11 Cal.3d 165, 166 [pretrial writ]; *People v. Rossi* (1976) 18 Cal.3d 295, 298 [direct appeal following bench trial and sentence of probation]; *Francis*, *supra*, 71 Cal.2d at p. 70 [direct appeal following bench trial and sentence].) In light of this history, it is reasonable to assume that the Legislature and the electorate do not view the *Estrada* presumption as applying to reopened judgments.

And there is at least some affirmative evidence that this is so. For example, in recently reforming sentencing for firearm

enhancements in Senate Bill 620 (Stats. 2017, ch. 682, § 1), the Legislature provided that the newly granted discretion to dismiss an enhancement "applies to any resentencing that may occur pursuant to any other law." (*People v. Zamora* (2019) 35 Cal.App.5th 200, 207 [quoting newly revised sections 12022.5, subd. (c), and 12022.53, subd. (h)].) Had the Legislature thought that the *Estrada* presumption would ensure that the law applied to matters that are "reopened" because of unrelated resentencing, there would have been no need to include that particular language.

That the Legislature can and does indicate when a law should apply retroactively to reopened judgments tends to cut against *Estrada*'s presumption of intent in such cases. The application of a new ameliorative law to judgments that have already become final on initial review may often present questions of judgment that are better addressed by the Legislature or the electorate. (See, e.g., Arg. I. B.2., *post*.) The central rationale of the *Estrada* presumption is to effectuate the Legislature's or the electorate's probable intent. (*Estrada, supra*, 63 Cal.2d at p. 745.) The Court in *Estrada* determined that, in essence, there could be no legitimate reason for the Legislature to withhold the benefit of a new ameliorative law from those whose judgments were not yet final. (*Ibid.*) But the same is not necessarily true for cases that have become final on initial review; the inference that may be drawn about legislative or

electoral intent in that circumstance is much less strong and therefore much less supportive of a blanket presumption.[2]

2. Limiting the *Estrada* presumption to initially nonfinal judgments promotes uniform application of new laws and respect for important principles of finality

Considerations of uniformity and finality also counsel against extending *Estrada* to reopened judgments. The principle that victims are entitled to finality in criminal cases is rooted in the California Constitution. (Cal. Const., art. I, § 28, subd. (a)(6).) "[T]he ongoing threat that the sentences of criminal wrongdoers will be reduced, prolong[s] the suffering of crime victims for many years after the crimes themselves have been perpetrated." (*Ibid.*) Consistent with our constitution, California case law has repeatedly emphasized "society's legitimate interest in the finality of its criminal judgments." (*In re Reno* (2012) 55 Cal.4th 428, 451; *People v. Kim* (2009) 45 Cal.4th 1078, 1107.) This Court has described finality as so important that "'endless litigation, in which nothing was ever finally determined, would be

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[2] For example, appellant's prosecution in adult court even predated the 1999 reforms regarding direct filing of charges against a juvenile in adult court. (See former Welf. & Inst. Code, §§ 602, subd. (b) (mandatory direct filing), 707, subd. (d) (discretionary direct filing).) Thus, prior to appellant's convictions in adult court in 1999, he had a fitness hearing in which a judicial determination was made that he was unfit for juvenile court. (*Padilla, supra*, 50 Cal.App.5th at p. 248.) It would be questionable to presume that the electorate necessarily envisioned a renewed fitness hearing under Proposition 57 for those in appellant's position.

worse than occasional miscarriages of justice.'" (*Kim*, *supra*, at p. 1107.) In fact, "[o]ne of the law's very objects is the finality of its judgments." (*Reno*, *supra*, at p. 451, internal quotation marks omitted.) "Neither innocence nor just punishment can be vindicated until the final judgment is known" and "'[w]ithout finality, the criminal law is deprived of much of its deterrent effect.'" (*Ibid.*) A prudent interpretation of the *Estrada* presumption, limited to judgments not yet final on initial review, advances respect for these principles.

Relatedly, and just as important, limiting the *Estrada* presumption to initially nonfinal judgments mitigates arbitrary, and sometimes awkward, application of new ameliorative laws. Applying *Estrada* after initial finality, as the court below did, would necessarily depend on whether the judgment were reopened for some unrelated reason. Thus, two similarly situated defendants convicted of identical crimes can be imagined, one with a minor sentencing error discovered long after the fact and one without such an error. Having uncovered the error, the former would be entitled to the benefit of any new ameliorative law, while the latter would not—and for reasons entirely unrelated to the purpose of the new law. It is far from clear that this is a result that the Legislature or the electorate can be *presumed* to envision when it enacts an ameliorative law. And uneven application of a new law on the basis of such a

presumption would tend to undermine principles of finality and essential fairness.[3]

Extending *Estrada* to reopened judgments would, in addition, lead to awkward results. Some ameliorative laws are ill suited for retroactive application long after a judgment was initially final. This case provides a good example of why a presumption of retroactivity after initial finality may be unsound. Proposition 57 was enacted some 17 years after appellant's prosecution in adult court. A retroactive hearing about whether appellant was at that time fit to be dealt with under the juvenile law—to the extent it differed from the one appellant already had—would undoubtedly present challenges given the passage of time. Welfare and Institutions Code section 707, subdivision (a)(1), sets out criteria for evaluation of whether a minor defendant is fit for juvenile court. Some criteria, such as the degree of sophistication exhibited by the minor and the minor's prior delinquent history, may be readily determined by review of the record. But evaluating whether the minor can be rehabilitated prior to the expiration of the juvenile court's

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[3] That approach could even invite mischief by providing an incentive for defendants to ignore minor errors as an initial matter, hoping to invoke them later in the event of a new ameliorative law that might provide a greater benefit. It could, at the least, lead to increased litigation by motivating defendants with final judgments to uncover otherwise inconsequential errors in an effort to benefit from a new ameliorative law. (Cf. *Gonzalez v. Sherman* (9th Cir. 2017) 873 F.3d 763, 769 [recalculation of custody credits, even without practical effect on the sentence, amounts to new judgment under California law, entitling federal habeas petitioner to renewed litigation about unrelated claims].)

jurisdiction is rendered moot by application of Proposition 57 to a defendant, such as appellant, who is now well past the age of juvenile court jurisdiction. Indeed, given that rehabilitation of minors is a primary focus of Proposition 57, forcing a procedural construction that eliminates this very question would seem to not advance the objectives of that Proposition. And even if the court were tasked with determining whether, at the time appellant was charged, he would have benefitted from rehabilitation, the record would not likely contain information relevant to that determination.

In *Lara*, this Court recognized that applying Proposition 57 retroactively "can be somewhat complex," but it concluded that the "potential complexity in providing juveniles charged directly in adult court with a transfer hearing is no reason to deny the hearing." (*Lara*, *supra*, 4 Cal.5th at p. 313.) Those complexities are only compounded in a case like this one, where the juvenile is well into adulthood at the time the new law is enacted and reconstructing relevant information would prove difficult.

Moreover, even the decision in *Lara*—which involved a case that had not yet proceeded to trial— acknowledged that the electorate is unlikely to have intended retroactive fitness hearings long after the fact. One amicus in *Lara* argued that Penal Code section 1170.17, which was left unaffected by Proposition 57, provided a remedy sufficient to dispel any presumption of retroactivity. (*Lara*, *supra*, 4 Cal.5th at p. 313.) Section 1170.17 provides a type of retroactive transfer hearing for juveniles who were directly prosecuted as adults but ultimately

convicted of a lesser charge that would not permit direct adult prosecution. (*Ibid.*) Among other reasons for rejecting that argument, the court noted that, "as a practical matter, postponing juvenile court proceedings until after the juvenile has been convicted in adult court, as occurs under Penal Code section 1170.17, would entail conducting jury trials that will, in some cases, then be obviated by proceedings in the juvenile court. That the voters intended to create such a wasteful system is unlikely." (*Id.* at p. 314.) Similarly, it is unlikely that the electorate in enacting Proposition 57 would have envisioned retroactive transfer hearings years—or, as in this case, more than a decade—after a conviction became final.

At bottom, the *Estrada* presumption may be thought of as a rule of convenience, relieving lawmakers of the burden of expressly countering Penal Code section 3 in the case of every new ameliorative statute. But that useful expedient loses its force when it comes to reopened judgments, which may present different and more complicated concerns. In fact, the Legislature and the electorate are capable of directing when and how a statute may operate retroactively to judgments that have become final on initial review, and they frequently do so—sometimes in a particular and nuanced way. For example, when voters passed Proposition 36 in 2012, they expressly enacted a system whereby defendants with final cases who meet particular criteria could receive relief. (*Conley*, *supra*, 63 Cal.4th at p. 657 [explaining how Proposition 36 created "a special mechanism that . . . draws no distinction between persons serving final sentences and those

serving nonfinal sentences"].) Likewise, in 2014 the voters passed Proposition 47 which also allows certain defendants with final cases to petition for relief. (*People v. DeHoyos* (2018) 4 Cal.5th 594, 603 [describing how Proposition 47 "draws no express distinction between persons serving final sentences and those serving nonfinal sentences, instead entitling both categories of prisoners to petition courts for recall of sentence"].) And as noted, the Legislature included specific language in Senate Bill 620 to extend application of this statute "to any resentencing that may occur pursuant to any other law." (*People v. Rodriguez* (2018) 4 Cal.5th 1123, 1132, citing § 12022.53, subd. (h).)

As those examples demonstrate, whether and how to apply a new ameliorative law to judgments that are already final on direct review is a question better left to the Legislature or the electorate to implement on a case-by-case, contextually appropriate basis. In contrast to *Estrada*'s less nuanced presumption, lawmakers are better equipped to balance concerns about both the scope and the uniformity of application of a new law to already-final judgments. In addition, a rule that extends the *Estrada* presumption beyond initial finality might also pose complexities for reviewing courts in determining what qualifies as a "reopened" judgment for these purposes. Conversely, a rule recognizing the completion of initial review as the point of finality for *Estrada* purposes is comparatively more clear and therefore easier for courts to administer.

3. Limiting the *Estrada* presumption to initially nonfinal judgments harmonizes with existing law regarding the limited scope of remands and resentencings

Typically, when a court remands for a limited purpose, such as resentencing, the scope of future litigation is narrowed to the subject matter of the remand. (See *People v. Murphy* (2001) 88 Cal.App.4th 392, 396-397 ["In an appeal following a limited remand, the scope of the issues before the court is determined by the remand order"].) For example, a defendant may not assert claims attacking his conviction on an appeal from a resentencing. (See *People v. Webb* (1986) 186 Cal.App.3d 401, 410 ["we specifically affirmed the judgment of conviction in the prior appeal and remanded only for resentencing. Defendant cannot now be permitted to make a direct attack upon his convictions"]; *People v. Smyers* (1969) 2 Cal.App.3d 666, 667-668 [after a limited remand, court may not "consider defendant's arguments regarding alleged trial errors"].) In other words, these cases become final for the purpose of any other, unrelated claim of error or modification.

The same is true under the "full sentencing rule." "[W]hen part of a sentence is stricken on review, on remand for resentencing 'a full resentencing as to all counts is appropriate, so the trial court can exercise its sentencing discretion in light of the changed circumstances.'" (*Buycks*, *supra*, 5 Cal.5th at p. 893, quoting *People v. Navarro* (2007) 40 Cal.4th 668, 681.) The resentencing court "has jurisdiction to modify every aspect of the *sentence*, and not just the portion subjected to recall." (*Buycks*,

supra, at p. 893, italics added.) But the full resentencing rule does not allow a resentencing court to consider new claims or affect any part of the judgment other than the sentence. (See *People v. Valenzuela* (2019) 7 Cal.5th 415, 425 [examples of application of full resentencing rule include selecting another conviction as the new principal term after the felony conviction supplying the initial principal sentencing term is reversed on appeal, and revisiting sentencing choices such as a decision to stay a sentence, to impose an upper term, or to impose a consecutive term].)

The same is also true of a resentencing proceeding under section 1170, subdivision (d)(1). That provision is an exception to the rule that a trial court loses jurisdiction to modify the judgment once the court has relinquished control of the defendant and the execution of his sentence has begun. (See *People v. Karaman* (1992) 4 Cal.4th 335, 351-352; *Dix v. Superior Court* (1991) 53 Cal.3d 442, 455; *Holder v. Superior Court* (1970) 1 Cal.3d 779, 783.) And when a court regains jurisdiction to resentence under section 1170, subdivision (d)(1), its power is limited; it does not also regain jurisdiction to modify any other portion of the judgment. (See, e.g., *People v. Espinosa* (2014) 229 Cal.App.4th 1487, 1497-1498 [recall pursuant to section 1170, subdivision (d)(1), does not permit the court to modify the jury's verdict "by reducing the offense to second degree murder"]; *People v. Blount* (2009) 175 Cal.App.4th 992, 998 [recall pursuant to section 1170, subdivision (d)(1), did not give the trial court authority to override the terms of the plea bargain].) These

limitations are not diminished even though, similar to the full resentencing rule, section 1170, subdivision (d)(1), allows a court to reconsider all of its sentencing choices and also expressly allows consideration of post-conviction conduct and the promotion of uniformity when resentencing a defendant.[4]

Limitation of the *Estrada* presumption to cases that have not yet become final on initial review harmonizes with these principles that generally limit the scope of subsequent modification of a judgment after initial finality. Especially because the Legislature or the electorate may direct retroactive application of a new law when and how it sees fit, there is little need for a blanket judicial presumption that would create tension with existing parallel rules.

People v. Jackson (1967) 67 Cal.2d 96, 98, upon which the court below relied (*Padilla*, *supra*, 50 Cal.App.5th at pp. 252-253), is not to the contrary. In *Jackson*, a capital defendant's judgment of death became final when he failed to seek certiorari. In a subsequent habeas corpus proceeding, this Court reversed his death sentence and remanded for a penalty retrial. (*Jackson*,

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[4] In *People v. Federico* (2020) 50 Cal.App.5th 318 [rev. granted Aug. 26, 2020], a case in which this Court granted review on the same day as the instant case, the Fourth District Court of Appeal declined to apply Proposition 57 in a section 1170, subdivision (d)(1) resentencing proceeding. It held that a resentencing under that section does not render a judgment nonfinal for purposes of applying the *Estrada* presumption. (*Id.* at p. 326.) Rather, the provision "simply allows the court to reconsider its sentencing choices in the original sentence and resentence the defendant." (*Id.* at p. 327.)

supra, 67 Cal.2d at p. 97.) The defendant was again sentenced to death, and in the automatic appeal, sought to raise both guilt-phase and penalty-phase claims based on *Escobedo v. Illinois* (1964) 378 U.S. 478, which was decided after his original judgment became final but before his penalty retrial. (*Jackson*, *supra*, 67 Cal.2d at pp. 98-99.)

Because *Escobedo* applied retroactively only to judgments not yet final at the time new legislation was enacted, this Court rejected the defendant's attempt to challenge his convictions based on that decision, noting that it had reversed only the defendant's death sentence: "The scope of this retrial is a matter of state procedure under which the original judgment on the issue of guilt remains final during the retrial of the penalty issue and during all appellate proceedings reviewing the trial court's decision on that issue." (*Jackson*, *supra*, 67 Cal.2d at p. 99.) But this Court also held that the defendant could rely on *Escobedo* to challenge his new sentence, notwithstanding that his "conviction was final" before that case was decided. (*Id.* at p. 100; see also *People v. Kemp* (1974) 10 Cal.3d 611, 613 [reaching similar holding in reliance on *Jackson*].)

Jackson did not involve a reopened judgment. Rather, in the context of the unique bifurcated nature of capital proceedings, it acknowledged that retroactivity may be separately analyzed for each phase of the trial. In that case, the penalty phase was retried. New law that was in effect at the time of that retrial necessarily governed the retried penalty phase proceedings, though not the initial, and already final, guilt phase proceedings.

Those circumstances are quite different from a reopened judgment that does not result in a retrial, as in this case. The *Jackson* decision did not analyze or even mention the *Estrada* presumption, and it sheds no light on the question whether that presumption should be extended in the way the court below held.

C. Proposition 57 does not apply to this case under Estrada

Because appellant's judgment was final nearly 15 years before Proposition 57 was enacted in 2016, he is not entitled to retroactive application of *Lara* or a transfer hearing in juvenile court.

Appellant was convicted of murder and conspiracy to commit murder on July 1, 1999. On June 1, 2001, the Court of Appeal reversed the lying-in-wait special circumstance finding for insufficient evidence but otherwise affirmed the judgment. (See *People v. Padilla* (June 1, 2001, B135651), *supra*, at pp. 12-13.) This Court denied review, and, on September 21, 2001, the remittitur was issued. Appellant did not file a petition for writ of certiorari in the United States Supreme Court. On December 18, 2001, 90 days after this Court denied review, the time appellant had to seek writ of certiorari in the United States Supreme Court expired. (See 28 U.S.C. § 2101(d); rule 13, Rules of the United States Supreme Court; *Ketchel*, *supra*, 63 Cal.2d at p. 864.) Thus, he could no longer receive relief on direct appeal, and his judgment of conviction was final. (*Spencer*, *supra*, 63 Cal.2d at p. 405; see *Gonzalez*, *supra*, 565 U.S. at p. 149; *Vieira*, *supra*, 35 Cal.4th at p. 305; *Rossi*, *supra*, 18 Cal.3d at p. 304.) For the

reasons discussed above, Proposition 57 therefore does not apply in appellant's case.[5]

CONCLUSION

The Court of Appeal's order remanding this case to the trial court for a Proposition 57 transfer hearing should be reversed.

Dated: November 25, 2020 Respectfully submitted,

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[5] In *People v. Garcia* (2018) 30 Cal.App.5th 316, the court held, consistent with an initial concession by the People, that Proposition 57 applied retroactively to a reopened judgment. (*Id.* at p. 322.) The People subsequently asked for reconsideration of that holding, but the Court of Appeal declined to reconsider the issue based on arguments raised for the first time on rehearing. (*Id.* at p. 322, fn. 3.) For the reasons stated here, and notwithstanding the People's initial concession, *Garcia*'s holding is not supported by either *Estrada* or *Lara*.

CERTIFICATE OF COMPLIANCE

I certify that the attached **OPENING BRIEF ON THE MERIT** uses a 13-point Century Schoolbook font and contains **7,143** words.

Dated: November 25, 2020

XAVIER BECERRA
Attorney Generalof California

DAVID E. MADEO
Deputy Attorney General
Attorneys for Plaintiff and Respondent

DECLARATION OF ELECTRONIC SERVICE AND SERVICE BY U.S. MAIL

Case Name: **People v. Mario Salvador Padilla** No.: **S263375**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business. Correspondence that is submitted electronically is transmitted using the TrueFiling electronic filing system. Participants who are registered with TrueFiling will be served electronically. Participants in this case who are not registered with TrueFiling will receive hard copies of said correspondence through the mail via the United States Postal Service or a commercial carrier.

On **November 25, 2020,** I served the attached **OPENING BRIEF ON THE MERITS** by placing a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 300 South Spring Street, Suite 1702, Los Angeles, CA 90013, addressed as follows:

The Honorable Ricardo R. Ocampo
Los Angeles County Superior Court
South Central District
Compton Courthouse
200 West Compton Boulevard
Department J
Compton, CA 90220

On **November 25, 2020,** I served the attached **OPENING BRIEF ON THE MERITS** by transmitting a true copy via electronic mail to:

Jonathan E. Demson, Esq
Attorney for Appellant
Served Via TrueFiling

LA-CAP
California Appellate Project
Served Via TrueFiling

Beatriz Dieringer
Deputy District Attorneys
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Served Via Email

I declare under penalty of perjury under the laws of the State of California, the foregoing is true and correct and that this declaration was executed on **November 25, 2020,** at Los Angeles, California.

/s/ Shoshana R. Hubbard	*/s/ Shoshana R. Hubbard*
Declarant	Signature

LA2020601422 /63787463.docx

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Supreme Court of California

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Madeo, David (180106)
Last Name, First Name (PNum)

CA Attorney General's Office - Los Angeles
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