IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,

Petitioner,

v.

SUPERIOR COURT OF RIVERSIDE COUNTY,

Respondent,

PABLO ULLISSES LARA, JR.,

Real Party in Interest.

S241231

Court of Appeal Case No. E067296
Riverside County Superior Court Case Nos. RIF1601012 and RIJ1400019
The Honorable Richard T. Fields, Judge (case no. RIF1601012)
The Honorable Mark E. Peterson, Judge (case no. RIJ1400019)

REPLY BRIEF ON THE MERITS

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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA, Petitioner, v. SUPERIOR COURT OF RIVERSIDE COUNTY, Respondent, PABLO ULLISSES LARA, JR., Real Party in Interest.	S241231

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

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INTRODUCTION

The electorate, with its passage of Proposition 57, enacted various conditions precedent that must take place in juvenile court before a case may be transferred to a court of criminal jurisdiction. Prior to Proposition 57, prosecution of an individual who was under 18 years of age on the date of the alleged offense could only be properly pending in adult court under three circumstances: (1) a statute required the case be directly filed in adult

court (mandatory direct filing); (2) a statute permitted a prosecutor to decide whether to directly file the case in adult court (discretionary direct filing); or (3) a statute permitted a juvenile court to deem a minor unfit for juvenile court, based on various presumptions of fitness and unfitness. Following the passage of Proposition 57, however, the only manner in which such a prosecution can move into adult court is when a juvenile court decides, absent any presumptions of fitness or unfitness, that the case should be transferred to adult court. Indeed, the voters who passed Proposition 57 were expressly told by the legislative analyst that the new law was intended to "change[] state law to require that, *before* youths can be transferred to adult court, they must have a hearing in juvenile court to determine whether they should be transferred." (Ballot Pamp., Gen. Elec. (Nov. 8, 2016) analysis by the legislative analyst, p. 56, emphasis added.)

The issue in the present case concerns whether the pretransfer requirements enacted by Proposition 57 can be applied *after* a case is already lawfully pending in adult court. Real party accepts that Proposition 57 is not entitled to retroactive application, arguing instead that it can be properly applied prospectively where, as here, a case was already pending in adult court prior to the new law's effective date. The problem with real party's argument is that it necessitates an impermissible retroactive application of the new law. Indeed, applying Proposition 57 in the manner real party urges would require invalidation of a previous decision, proper and lawful at the time it was made, to move a case to adult court. And whether that previous decision was made by a prosecutor—as permitted or required at the time—or by a juvenile court judge—under the former standard that included presumptions of unfitness—it remains that real party's position requires us to look back to that previous decision, render it meaningless, and supplant it with the new requirements subsequently

enacted by Proposition 57. This is by its very nature a retroactive application of the new law.

Proposition 57 has undoubtedly effected a dramatic change in the landscape of prosecutions against minor offenders in California. And as stated previously, regardless whether a prosecutor agrees or disagrees with those changes, they are the current and future state of the law. At issue in the present case is not the validity of those changes, or the widespread impact of those changes, but whether those changes can properly invalidate lawful procedural actions that took place before the new law became effective. Because such an approach would necessitate an impermissible retroactive application of the new law, they cannot.

Accordingly, petitioner respectfully requests this Court establish a bright-line rule regarding the applicability of Proposition 57: For any criminal prosecution initiated on or after November 9, 2016, or any fitness or transfer hearing conducted on or after November 9, 2016, the juvenile-law amendments enacted by Proposition 57 are fully applicable in a properly prospective manner. Those amendments cannot be retroactively applied, however, to cases that were lawfully pending in a court of criminal jurisdiction prior to November 9, 2016.

ARGUMENT

APPLICATION OF THE PRE-TRANSFER REQUIREMENTS ENACTED BY PROPOSITION 57 TO CASES THAT WERE LAWFULLY PENDING IN COURTS OF CRIMINAL JURISDICTION PRIOR TO THE LAW'S EFFECTIVE DATE WOULD NECESSITATE AN IMPERMISSIBLE RETROACTIVE APPLICATION OF THE LAW

The present case raises two related issues: (1) are the conditions precedent enacted by Proposition 57 retroactively applicable to cases that were lawfully pending in a court of criminal jurisdiction prior to the law's effective date?; and (2) if not, can those conditions precedent properly be applied in a prospective manner once a case is already lawfully pending in a court of criminal jurisdiction? As set forth previously, and discussed in additional detail below, both questions must be answered in the negative.

Real party correctly accepts that Proposition 57 is not entitled to retroactive application. (See ABOM 3-4.) Indeed, it is well established that a new law must not be applied retroactively where, as here, the electorate has not expressed a clear intent for the law to apply retroactively, and the new law does not lessen punishment for a specific criminal offense. (E.g., *People v. Brown* (2012) 54 Cal.4th 314, 319, 324; *Evangelatos v. Superior Court* (1988) 44 Cal.3d 1188, 1208-1209; *In re Estrada* (1965) 63 Cal.2d 740, 745.)

From this, real party reasons that, although the conditions precedent enacted by Proposition 57 may not be applied retroactively, they can be applied prospectively in situations where, as here, a case was lawfully pending in adult court prior to the new law's effective date. (ABOM 3-8, 17-25.) As set forth previously, and in additional detail below, real party's reasoning in this regard is flawed.

Initially, real party misconstrues petitioner's position as hinging solely upon whether a case was *filed* prior to the enactment of Proposition 57. (ABOM 4 ["Petitioner contends that the last act or event necessary to trigger application of the juvenile law amendments of Proposition 57 is the filing of a case . . . "].) Rather, the applicability of Proposition 57 hinges upon whether a case was or was not *lawfully pending* in adult court at the time the new law became effective. Indeed, all of the juvenile-law amendments enacted by Proposition 57 relate to actions that must take place before a case is pending in adult court. Once a case is already pending in adult court, any action dictated or altered by Proposition 57 is an action that would have necessarily occurred in the past.

And while the placement of a case in adult court could have been the result of mandatory or discretionary direct filing—as it was in the present case—it could also have been the result of a judicial determination that a minor was unfit for juvenile court, based on previously valid presumptions of fitness or unfitness.[1] In any event, regardless whether that previous decision was made by a prosecutor or a juvenile court judge, it remains that real party's position requires looking back to that previous decision and rendering it invalid based on authority that was not in existence at the time

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[1] In fact, a case may very well have been *filed* before the enactment of Proposition 57 with a request for a fitness hearing, but if that hearing had yet to occur, and therefore the case was not lawfully pending in adult court upon the effective date of the new law, the amendments enacted by Proposition 57 would be fully applicable in a prospective manner. (See *Tapia v. Superior Court* (1991) 53 Cal.3d 282, 299-300 (*Tapia*); *People v. Ledesma* (2006) 39 Cal.4th 641, 663-664.) Petitioner acknowledges that for any such fitness/transfer hearing conducted on or after November 9, 2016, the burden will be on the prosecution to establish that a minor offender should be transferred to adult court. (See *Ramona R. v. Superior Court* (1985) 37 Cal.3d 802, 804-805 [absent a presumption, the burden of proving that a minor accused of committing a crime is unfit to be tried in juvenile court is on the prosecution].)

the decision was made. Such an approach would constitute an impermissible retroactive application of the new law.

Furthermore, real party follows the Court of Appeal's erroneous belief that *Tapia* permits Proposition 57's application to the present case. (ABOM 20-22.) Initially, real party incorrectly suggests that *Tapia* was limited to determining the applicability of the changes in voir dire enacted by Proposition 115. (ABOM 20 ["At issue in *Tapia* was whether a provision of Proposition 115 which changed the manner in which voir dire was conducted in criminal trials applied to a pending case . . ."].) While that was one of the then-recent changes at issue in *Tapia*, it was far from the only one.

As stated previously, at issue in *Tapia* was whether a host of different criminal-law amendments enacted by Proposition 115 applied to prosecutions for crimes committed before the measure's effective date. (*Tapia, supra,* 53 Cal.3d at p. 297.) This Court drew a distinction between new provisions that changed the legal consequences of criminal behavior to the detriment of defendants, and new provisions that addressed the "conduct of trials." (*Tapia, supra,* 53 Cal.3d at pp. 297-300.) Whereas the former cannot be applied to conduct that occurred before the measure's effective date, the latter can be properly applied prospectively to procedural aspects of a criminal prosecution that had not yet taken place when the new law became effective. (*Ibid.*) Real party latches onto *Tapia*'s conclusion that the changes in voir dire enacted by Proposition 115 could be properly applied in that case. (ABOM 20-22.) What real party fails to acknowledge, however, is that unlike in the present case, where the procedural aspects altered by the new law had already taken place before the law's effective date, in *Tapia*, voir dire was an aspect of the proceedings that had yet to take place. (*Id.* at pp. 299-300.)

Similarly, real party fails to address the additional "conduct of trial" changes at issue in *Tapia* that this Court concluded could not be properly applied because, like in the present case, those changes involved procedural acts that had already taken place. For example, and as discussed in previous briefing, particularly instructive here is *Tapia*'s analysis regarding the pretrial reciprocal discovery requirement enacted by Proposition 115. As this Court stated: "Application of the [pretrial reciprocal] discovery provisions to compel production of evidence obtained . . . before Proposition 115's effective date would be retroactive under the principles we have already discussed." (*Tapia, supra,* 53 Cal.3d at p. 300.) The same can be said of applying Proposition 57's procedural requirements to alter procedural acts that took place before the law's effective date. As *Tapia* reasoned: To the extent a newly enacted statute alters a procedural aspect that has not yet occurred, it must be applied; however, it is inapplicable to procedural aspects that have already taken place. (See *id.* at pp. 291-300.)

In any event, and as stated previously, there is simply nothing within the text of Proposition 57, or in the related ballot materials, that indicates a clear intent by the electorate to apply the new law to cases that were already lawfully pending in adult court prior to the law's effective date. To adopt real party's position, however, would require assuming the voters had just such an intent. Such an approach would create a precarious situation within California's initiative process, a process supported in large part by the presumption that the electorate is aware of existing laws (e.g., *People v. Weidert* (1985) 39 Cal.3d 836, 844), and upon the well-established rule that the electorate must "'"'get what they enacted, not more and not less.'"'" (*People v. Valencia* (2017) 3 Cal.5th 347, 375, quoting *Robert L. v. Superior Court* (2003) 30 Cal.4th 894, 909, and *Hodges v. Superior Court* (1999) 21 Cal.4th 109, 114.)

Those basic principles—principles that have well served the state for many years—protect the viability of the most fundamental aspect of the democracy of the initiative process: Allowing California voters to come together and change state law in nearly any *intended* manner. What real party proposes would hamstring that democratic process by allowing a law to change in a manner *unintended* by the voters. Indeed, a voter, presumed aware of existing laws, who was considering Proposition 57, could rightly have assumed the initiative's silence regarding retroactivity would equate with a prospective application. And while that individual's vote may not have been altered had Proposition 57 contained language indicating a retroactive intent, it just as likely may have. Absent clear evidence of intent in this regard, any conclusion one way or the other would be pure speculation. As a dissenting justice from the Court of Appeal recently explained:

> Perhaps voters would have been amenable to retroactive application of Proposition 57. 'But voters can make that choice only if the question is presented in the initiative on which they have been asked to vote. The question was not presented' in Proposition 57, 'and so it is not a choice we can say the voters have already made.'

(*People v. Pineda* (Aug. 14, 2017, B267885) ___ Cal.App.5th ___ [2017 Cal.App. Lexis 706, *26] (dis. opn. of Kriegler, J.) (*Pineda*), quoting *People v. Valencia, supra,* 3 Cal.5th at p. 386 (conc. opn. of Kruger, J.).)[2]

Real party attacks petitioner's position as being "narrow" and contends it would "frustrate the initiative's purpose." (ABOM 2.) As mentioned previously, however, petitioner is not hostile to the changes enacted by Proposition 57, and fully accepts the broad and widespread impact of those changes in all cases moving forward. In fact, at issue here is a small subset of cases—only those that were lawfully pending in adult court prior to November 9, 2016—that will eventually shrink to none. That small subset of cases pales in comparison to the impact Proposition 57 will have in *every* case initiated on or after November 9, 2016. Petitioner's position is not an effort to "save" a small subset of cases from the changes enacted by Proposition 57. Rather, it is an effort to avoid the many negative unintended consequences inherent in attempting to apply the new law in a patently retroactive manner, and an effort to respect the long history of jurisprudence regarding the retroactivity of new laws.

There is no doubting the electorate's intent to broadly overhaul the manner in which prosecution of a minor offender may move into a court of criminal jurisdiction. That intent is manifest in the sweeping language of Proposition 57 itself, in addition to the stated intent for the new law to be "liberally construed to effectuate its purposes." (Ballot Pamp., Gen. Elec. (Nov. 8, 2016) text of Prop. 57, § 9, p. 146.) But that broad, sweeping

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[2] The majority in *Pineda* disagreed with both parties in the present case and concluded that Proposition 57 is entitled to retroactive application under *Estrada*. (*People v. Pineda, supra,* 2017 Cal.App. Lexis 706, *24-25.) With the exception of *People v. Vela* (2017) 11 Cal.App.5th 68, review granted July 12, 2017, S242298, *Pineda* is the only Court of Appeal decision to stretch *Estrada* to such lengths, and for the reasons previously discussed, it was wrongly decided and should be overruled.

intent speaks to the law generally, and does not equate with a stated intent for retroactive application of the new provisions. As this Court has similarly reasoned: "The statement in the Education Code that its provisions are to be liberally construed with the view to effect its objects and promote justice (§ 2) cannot be interpreted as a declaration that any of its sections is to be given retroactive effect." (*DiGenova v. State Board of Education* (1962) 57 Cal.2d 167, 173.)

For these reasons, in addition to the reasons set forth more fully in the Opening Brief on the Merits, petitioner respectfully requests this Court establish a bright-line rule regarding the applicability of Proposition 57: For any criminal prosecution initiated on or after November 9, 2016, or any fitness or transfer hearing conducted on or after November 9, 2016, the juvenile-law amendments enacted by Proposition 57 are fully applicable in a properly prospective manner. Those amendments cannot be retroactively applied, however, to cases that were lawfully pending in a court of criminal jurisdiction prior to November 9, 2016.

CONCLUSION

Petitioner respectfully requests this Court vacate the actions of the lower courts and order the matter reinstated in adult court in the same procedural posture as when the proceedings were previously suspended.

Dated: August 18, 2017

Respectfully submitted,

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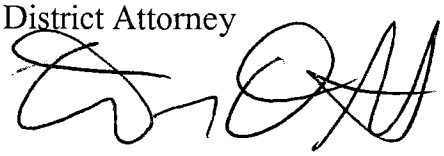

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CERTIFICATE OF WORD COUNT

Case No. S241231

The text of the **REPLY BRIEF ON THE MERITS** in the instant case consists of 2,899 words as counted by the Microsoft Word program used to generate the said **REPLY BRIEF ON THE MERITS.**

Executed on August 18, 2017.

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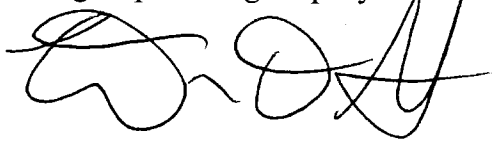

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DECLARATION OF SERVICE
Case No. S41231

I, the undersigned, declare:

I am a resident of or employed in the County of Riverside; I am over the age of 18 years and not a party to the within action.

My business address is 3960 Orange Street, Riverside, California.

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That on August 18, 2017, I served a copy of the within, **REPLY BRIEF ON THE MERITS**, by electronically serving the following parties:

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I declare the foregoing to be true and correct under penalty of perjury.

Executed on August 18, 2017, at Riverside, California.

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