

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE,)	Crim. No. S255371
)	
Plaintiff and Respondent,)	2 nd Crim. No. B290589
)	
vs.)	
)	
MISAEL VENCES MAYA,)	
)	
Defendant and Appellant.)	
_____)	

SUPREME COURT
FILED

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Jorge Navarrete Clerk

Deputy

APPEAL FROM THE SUPERIOR COURT OF VENTURA COUNTY
HON. BRUCE A. YOUNG, JUDGE PRESIDING
SUPERIOR COURT NO. 2010031209

APPELLANT'S OPENING BRIEF ON THE MERITS

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INTRODUCTION

This Court has a granted review on the following question: “Does Penal Code section 1203.4a, subdivision (a), which sets forth a procedure to obtain the setting aside of a guilty verdict, authorize a court to consider an individual’s time spent in immigration custody, after judgment of conviction, as part of the determination whether that individual has lived an ‘honest and upright life.’” (See Cal. Rules of Court, rule 8.520(b)(2)(A).)¹

¹ Hereinafter, all statutory references are to the Penal Code unless otherwise indicated.

STATEMENT OF THE CASE

In an amended information filed on June 30, 2011, appellant was charged in count five with violating Health and Safety Code section 11377, subdivision (a) [possession of methamphetamine], a felony, on or about May 3, 2010. (RT 13, CT 30.) He was also charged with two prison priors pursuant to section 667.5, subdivision (b). (CT 31.) On June 30, 2011, appellant entered a guilty plea in count five and admitted the prison prior allegations. (RT 17-18, CT 30-31.) He also pled guilty to count one of the amended information which charged him with felony driving under the influence and enhancements. (RT 17-18, CT 30-31.)

On July 7, 2011, appellant was sentenced to four years and eight months imprisonment in case number 2010031209. (RT 29, CT 35.) The prison sentence included a consecutive eight-month term in count five. (RT 29, CT 35.)

Following the passage of Proposition 47, the conviction in count five was reclassified as a misdemeanor on October 1, 2015. (RT 51, CT 39.)

On April 11, 2018, appellant moved to expunge the conviction in count five pursuant to section 1203.4a. (RT 36-41, CT 43.) The motion was denied. (RT 41, CT 43.) On May 21, 2018, the court denied appellant's motion to reconsider. (RT 53, CT 60.) A timely notice of appeal was filed on June 7, 2018. (CT 61.)

In a published decision in case number B290589, the Court of Appeal, Second Appellate District, Division Six (per Gilbert, P.J.) affirmed the court's denial of appellant's expungement motion on March 21, 2019. Justice Tangeman filed a dissenting opinion. (*People v. Maya* (2019) 33 Cal.App.5th 266.) A petition for rehearing was not filed.

Appellant filed a timely petition for review which was granted by this Court on July 10, 2019. On August 8, 2019, this Court appointed the undersigned to represent appellant.

STATEMENT OF FACTS

The instant appeal does not raise any issues concerning the facts of the underlying offenses. Therefore, a statement of facts is omitted. (*People v. White* (1997) 55 Cal.App.4th 914, 916.)

ARGUMENT

I. COURT MAY CONSIDER DEFENDANT’S GOOD BEHAVIOR DURING PERIOD OF IMMIGRATION DETENTION IN DETERMINING WHETHER HE HAS LED AN HONEST AND UPRIGHT LIFE UNDER SECTION 1203.4a.

A. Introduction.

In *People v. Maya*, the Court of Appeal recently held that good behavior in an institutional setting does not qualify as honest and upright living for purposes of granting expungement relief under section 1203.4a. (*People v. Maya, supra*, 33 Cal.App.5th at p. 270.) As set forth below, the dissenting opinion in *Maya* conforms to the legislative intent and serves public policy interests.

“The majority opinion concludes that ‘compliance with prison regulations in an institutional setting does not satisfy the requirement of an honest and upright life.’ [Citation omitted.] No authority is cited for this conclusion because none exists.” (*People v. Maya, supra*, 33 Cal.App.5th at p. 272 [Tangeman, J., dissenting].)

“The plain language of section 1203.4a compels the opposite result. The statute requires only that the misdemeanant comply with the law for one year following conviction [citation omitted]. This includes time spent in custody, for the language plainly applies to misdemeanants denied probation and sentenced outright, commencing ‘from the date of pronouncement of judgment,’ not the date of release from custody.” (*Maya*,

supra, at p. 272 [Tangeman, J., dissenting]; §1203.4a, subd. (a).)

Due to the broad relief afforded by Proposition 47, previous felony convictions resulting in prison sentences can now be recalled or redesignated, and, thereby, reclassified as misdemeanors. (§1170.18.) After reclassification, the conviction is a misdemeanor for all purposes allowing a defendant to seek relief under section 1203.4a despite having served a prison term. (*People v. Khamvongsa* (2017) 8 Cal.App.5th 1239.)

However, despite reclassification of a felony drug possession offense to a misdemeanor, the conviction can still subject the immigrant defendant to federal detention following his release from state prison due to federal immigration statutes addressing controlled substance offenses. (*Maya*, at pp. 268-269; *Padilla v. Kentucky* (2010) 559 U.S. 356, 368 [130 S.Ct. 1473, 176 L.Ed2d 284].) Under section 1203.4a, subdivision (a), the defendant is required to have “lived an honest and upright life” since the pronouncement of judgment. (§1203.4a, subd. (a).) Due to the prospect of immigration detention after the sentence has been served, this period of honest and upright living may necessarily include time that the defendant has spent or is spending in immigration custody.

In denying the expungement motion, the superior court in the instant case ruled that it would not consider appellant’s good behavior while he was in immigration detention in assessing whether appellant lived an honest

and upright life since the pronouncement of judgment. (RT 41, 53.) When the court denied the expungement motion, appellant had been subject to immigration detention since late 2012 when he was released from state prison. (RT 53, CT 51-52, 66.) As the defendant had no control over being placed in immigration detention, any good behavior while subject to immigration detention should have qualified as an honest and upright life for purposes of section 1203.4a.

The superior court also found that appellant had not established an honest and upright life because he had not been subject to parole or post-release supervision after his release from prison. (RT 39, 49-50.) This should not have been a disqualifying factor because he was immediately placed in immigration detention after being released from state prison. Thus, he had no opportunity to prove himself on parole or supervision.

The majority of the Court of Appeal in *People v. Maya, supra*, 33 Cal.App.5th 266, held that the court “did not abuse its discretion by concluding that [appellant] has not established that he has led an honest and upright life during his state and federal custody. Compliance with prison regulations in an institutional setting does not satisfy the requirement of an honest and upright life. A custodial setting necessarily restricts an inmate’s exercise of free will; an honest and upright life demands more than mere compliance with prison regulations or participation in prison classes and

activities. Prison confinement necessarily precludes evidence of inmate behavior in the face of outside temptation.” (*Maya, supra*, 33 Cal.App.5th at p. 270.)

The majority opinion, however, did not consider the criminal activity that permeates our current prison system and, the numerous penal statutes enacted to prevent it, in assessing whether good conduct in custody qualifies as honest and upright living. (See *Maya*, at p. 272 [Tangeman, J., dissenting].)

While an inmate’s compliance with the rules and regulations of Alcatraz in 1960 might not evince honest and upright living due to the iron-fisted control of prison authorities in a bygone era, today’s prison system is quite different and the need for regulation is great. (See *In re Johnson* (2009) 176 Cal.App.4th 290, 296.) Today, there is plenty of “outside temptation” from various forces both in and out of the prison system. As a matter of reasonable statutory construction and basic fairness, a defendant seeking expungement relief should have his good behavior in a custodial setting considered under the expungement statute.

Appellant’s situation also implicates the concerns of immigration detainees. Denying expungement relief to immigrants because they are subject to immigration detention is unfair because they may have no other way to establish that they have lived an honest and upright life since the

pronouncement of judgment. Thus, the instant case implicates the policy considerations discussed in cases such as *People v. Cervantes* (2009) 175 Cal.App.4th 291 and *People v. Galvan* (2007) 155 Cal.App.4th 978, where immigrant probationers were subject to probation violations for reasons beyond their control.

As such, the order denying expungement should be reversed. The matter should be remanded so that court can consider whether appellant lived an honest life while subject to immigration detention after being released from state prison.

B. Proceedings Below.

At the initial expungement hearing on April 11, 2018, defense counsel argued that appellant had led an honest and upright life while in custody. (RT 37.) The prosecution countered that appellant was placed directly into federal immigration custody after his release from state prison, and, therefore, did not establish that he led an honest and upright life. (RT 39.) The prosecution stated as follows:

I don't think it's appropriate given the circumstance. And I'm [sic] also want to point out that since his release in custody, he was not being supervised. He's never been supervised on PROS or PCRS because he went directly into federal custody. So there has been no period where he successfully or satisfactorily completed probation or even the post custody release because he was directly into federal custody. So there's been no period even to evaluate. And that's given his

own situation. He put himself in the situation by getting eight DUIs in a matter of three years and doing a four-year prison commitment on the last DUI. (RT 39.)

Defense counsel responded that appellant's good behavior while in custody should qualify under section 1203.4a, subdivision (a) noting that people in custody frequently engage in criminal behavior. (RT 39.) In particular, defense counsel argued that appellant had been in some form of custody for eight years and had "lived an honest and upright life." (RT 40.) Defense counsel requested expungement relief in count five on both statutory and discretionary grounds. (RT 40.)²

The court denied relief on statutory grounds and refused to exercise its discretion to grant relief. The court stated as follows:

I've heard the argument of counsel. You made your record. I disagree. I think the logic is flawed. Being in custody for substantial periods of time is calling that an honest and upright life. I disagree. You've made your record. I'm denying your request for expungement on all grounds. (RT 41.)

On May 21, 2018, appellant requested reconsideration of the court's denial of the expungement motion. (RT 43.) The record reflects that appellant was still subject to immigration detention at that point. (RT 43.) Defense counsel argued that expungement must be ordered if all of the

² See section 1203.4a, subdivision (b) regarding a court's discretion to grant expungement relief.

conditions of section 1203.4a, subdivision (a) are met claiming that appellant had no arrests and had completed all custody conditions. (RT 45.)

In denying the motion for reconsideration, the court ruled that although appellant had been placed in immigration custody after serving his prison term, his behavior in immigration custody could not qualify as an honest and upright life. The court stated as follows:

And as we know and commented about, [appellant] has never been released from custody as reflected on page 2 of the probation report. An argument might have been able to be made if he was on Post Release Community Supervision but apparently that lasted for a matter of days before ICE picked him up and where he is in San Diego at this time in a federal detention facility. There's been no opportunity by the Court or probation or by parole officers to determine whether he leads a law abiding life when out of custody and I think that's what probation and parole and Post Release Supervision is all about. So I think your arguments are misplaced and your motion for reconsideration is denied. (RT 53.)

C. Expungement Statute Allows Court to Consider Defendant's Custodial Time As Part of Honest and Upright Life.

Section 1203.4a was adopted in 1963, approximately 28 years after section 1203.4. (*People v. Bradley* (1967) 248 Cal.App.2d 887, 889.) It is available as a remedy for defendants who were convicted of a misdemeanor but not granted probation. (*Id.*) Under section 1203.4a, a court must grant expungement as follows:

Every defendant convicted of a misdemeanor and not granted probation, . . . at any time after the lapse of one year from the

date of pronouncement of judgment, if he or she has fully complied with and performed the sentence of the court, is not then serving a sentence for any offense and is not under charge of commission of any crime, and has, since the pronouncement of judgment, lived an honest and upright life and has conformed to and obeyed the laws of the land, be permitted by the court to withdraw his or her guilty plea . . . and enter a plea of not guilty . . . the court shall thereupon dismiss the accusatory pleading against the defendant, who shall thereafter be released from all penalties and disabilities resulting from the offense of which he or she has been convicted . . .” (§1203.4a, subd. (a).)

In a recent decision, the Court of Appeal held that a defendant is eligible for relief under section 1203.4a, subdivision (a) despite having served prison time for a felony when the offense is subsequently reclassified as a misdemeanor under section 1170.18, subdivision (g). (*People v. Khamvongsa, supra*, 8 Cal.App.5th at p. 1242.) “There is no dispute in this case that [defendant] successfully petitioned for the reclassification of her prior felony conviction to a misdemeanor under section 1170.18, subdivision (g). Based on the unambiguous language of section 1170.18, subdivision (k), the court must treat [defendant’s] prior conviction as a misdemeanor for all purposes, including when determining whether she qualifies for relief under section 1203.4a.” (*Khamvongsa, supra*, 8 Cal.App.5th at pp. 1244-1245.)

“In order to qualify for relief under section 1203.4a, subdivision (a), a defendant must have suffered a misdemeanor conviction, not be charged

with or convicted of a subsequent crime, and have, since the date of that judgment, lived “an honest and upright life.”” (*Khamvongsa*, at p. 1243; *People v. Hamdon* (2014) 225 Cal.App.4th 1065, 1069.)

Expungement has long been considered “a reward for good conduct.” (*Meyer v. Superior Court* (1966) 247 Cal.App.2d 133, 140; see also *People v. Bradus* (2007) 149 Cal.App.4th 636, 641.) However, the expungement statutes have never required a showing of “complete reformation.” (*People v. Bradley, supra*, 248 Cal.App.2d at p. 889.)

Typically, a grant of expungement applies in the situation of a probationer convicted of a felony or misdemeanor. “The granting of probation is not only an act of clemency, but also a bargain made with the probationer. ‘The purpose and hope are, of course, that through this act of clemency, the probationer may become reinstated as a law-abiding member of society. Removal of the blemish of a criminal record is the reward held out through the provisions of Penal Code, section 1203.4, as an additional inducement. The obvious purpose is to secure law compliance through an attempt at helpful cooperation rather than by coercion or punishment.’” (*People v. Arata* (2007) 151 Cal.App.4th 778, 783; *People v. Johnson* (1955) 134 Cal.App.2d 140, 143.) Expungement relief is also considered a step toward a certificate of rehabilitation and can allow a defendant to lawfully represent to prospective employers that he has no prior conviction.

(People v. Arata, supra, 151 Cal.App.4th at p. 788.)

The court in the instant case found that custodial time did not qualify as honest and upright living for expungement purposes. (RT 41, 53.)

However, nothing in section 1203.4a, subdivision (a) dictates where a defendant's honest and upright life must be lived. (§1203.4a, subd. (a).) The purpose of the expungement provisions is to reward law abiding or exemplary conduct. It is the conduct that matters and not the location of said conduct. Otherwise, section 1203.4a, subdivision (a) would have required a period of honest and upright living for one year after release from custody rather than one year from the judgment of conviction.

(§1203.4a, subd. (a).)

In theory, a defendant could live as a recluse in a cabin in a California mountain for several years after his release, and then seek expungement under section 1203.4a, subdivision (a) on the grounds that he had lived an honest and upright life since the pronouncement of judgment. While such a reclusive defendant should obtain relief, his good behavior as a mountain man recluse is in many ways less praiseworthy than another defendant's good behavior while in custody. As a hermit, the mountain man had little opportunity for misbehavior considering the relative lack of "outside temptation." (*Maya, supra, 33 Cal.App.5th at p. 270.*)

In contrast, time spent in custody affords endless opportunity for

malffeasance. Inmates engage in drug trafficking, sexual assault, organizing criminal enterprises, escape attempts, sale of contraband, extortion, gang activity, manufacturing weapons, gambling, violence against inmates and custodial officers, and witness intimidation. The dissenting opinion, citing penal statutes enacted to curb criminal activity, recognizes this feature of modern institutional settings. (*Maya, supra*, at p. 272.) If anything, good behavior in such an environment could be considered a testament to one's good character.

In addition, one objective in sentencing is to encourage "the defendant to lead a law abiding life in the future and deterring him or her from future offenses." (Cal. Rules of Court, rule 4.410, subd. (a)(3).) If defendants engage in good conduct while in custody, then they are on the road to achieving a future law abiding life. "It is not absurd to encourage their compliance with the law and institutional rules pending their release." (*Maya, supra*, at p. 273 [Tangeman, J., dissenting].)

Furthermore, under the plain language of section 1203.4a, subdivision (a), a court has the authority to consider a defendant's good behavior while in custody in granting an expungement motion. (*People v. Birkett* (1999) 21 Cal.4th 226, 231 [court should apply plain and ordinary meaning of statutory language].)

Under the plain language of the statute, a defendant can seek relief

one year after the pronouncement of judgment even if six months of that period was spent in jail serving the underlying misdemeanor sentence.

Thus, if a defendant is ordered to serve 365 days for a misdemeanor conviction with no probation, then he can seek expungement one year after sentence is pronounced. (*People v. Chandlee* (1979) 90 Cal.App.3d Supp. 13, 19-20 [defendant was eligible for relief one year after conviction].) The statute does not require a defendant to wait one year after being released from jail. (*Id.*)

As such, a defendant need only live an honest and upright life one year since the pronouncement of judgment. This specific passage of time “is the date upon which eligibility for section 1203.4a relief attaches.” (*Chandlee*, at p. 20.) This specific feature of the statute was recognized by Justice Tangeman in his dissenting opinion. (*Maya*, at p. 272.)

A defendant who is sentenced to 365 days in jail would typically serve probably half of that sentence. (§4019.) Thus, he would be technically eligible for expungement approximately six months after his release. (§1203.4a, subd. (a).) Logic would dictate that the defendant’s good behavior while serving the misdemeanor sentence should be factored into whether he lived an honest and upright life for the one-year period since the pronouncement of judgment. Justice Tangeman noted that “this includes time spent in custody, for the language plainly applies to misdemeanants

denied probation and sentenced outright, commencing 'from the date of pronouncement of judgment,' not the date of release from custody." (*Maya*, at p. 272; §1203.4a, subd. (a).)

As a matter of public policy, such custodial time might serve as the stepping stone for reform, and it would be an incentive for inmates serving a misdemeanor sentence to behave in jail knowing the period would count for expungement purposes. Such an outcome can result from applying the the plain meaning of the statute. (*Maya*, at p. 273 [Tangeman, J., dissenting].)

Furthermore, a judge entertaining an expungement motion brought a year after the pronouncement of judgment in the misdemeanor case might not consider six months of honest living after release a sufficient enough period of time for expungement purposes especially if the judge does not know how the defendant behaved while in custody. It appears the Legislature contemplated allowing the court to consider good behavior in custody as counting toward an honest and upright life. This is reasonable because the defendant may have participated in education and rehabilitation programs offered by the jail, completed his work assignments, or even performed a heroic act while in custody. (See §2935.) Thus, it is an unreasonable constraint on the court to prohibit it from considering good behavior while in custody.

Expungement relief set forth in section 1203.4a, subdivision (a) might also be vital to a newly released defendant seeking employment. (See Cal. Code Regs., tit. 2, §7287.4, subd. (d)(1)(B).) If the custody period cannot be considered for expungement purposes, then the defendant might encounter additional delay in obtaining employment after release. It is reasonable that the Legislature intended for such defendants to be able to obtain expungement relief as soon as possible considering that employment might prevent recidivism.

For the above reasons, good behavior in prison or county jail should qualify as honest and upright living for purposes of the expungement statute. The same considerations should apply to a defendant who was placed in immigration detention and exhibited good behavior while in custody.

D. As Appellant's Placement in Federal Immigration Detention Was Involuntary, Matter Should Be Remanded So Court Can Assess Behavior While Subject to Detention.

As the court acknowledged, appellant was in federal custody at the time of the hearing. (RT 53.) The record shows that he was detained by immigration authorities in late December 2012 after being released from state prison. (CT 51-52, 66.)

The instant case implicates the policy concerns set forth in *People v. Cervantes*, *supra*, 175 Cal.App.4th 291, because appellant was unable to

satisfy a requirement of the lower court due to immigration detention.

In *Cervantes*, the trial court was aware that the defendant was an undocumented alien but agreed to place him on probation as part of a plea bargain in a domestic violence case. After defendant was placed on probation, he served an initial jail sentence but then failed to appear for a 30-day review hearing because immigration authorities took him into custody. As a result, the court revoked probation and sentenced him to a term of imprisonment. (*Id.*, at p. 293.)

The Court of Appeal held that defendant was not in violation of probation and reversed the revocation order. (*Id.*) It also found that immigration detention made compliance with the court's order impossible. After the defendant served an initial jail term, "the sheriff transferred [defendant] to the custody of the federal Immigration and Customs Enforcement agency (ICE). This created an insurmountable obstacle to defendant attending his [30-day] review hearing." (*Cervantes*, at p. 293.) Although the court found that the defendant did nothing to warrant a violation of probation, it found him unsuitable for probation due to his immigration status. (*Id.*, at p. 294.) "A court may not revoke probation unless the evidence supports 'a conclusion that the probationer's conduct constituted a willful violation of the terms and conditions of probation.'" (*Cervantes*, at p. 295; *People v. Galvan, supra*, 155 Cal.App.4th at p. 982.)

“Where a probationer is unable to comply with a probation condition because of circumstances beyond his or her control and defendant’s conduct was not contumacious, revoking probation and imposing a prison term are reversible error.” (*Cervantes*, at p. 295; *People v. Zaring* (1992) 8 Cal.App.4th 362, 379.)

In addition, the defendant’s situation in *Cervantes* was complicated by the immigration process itself. Despite a removal order from an immigration judge, the defendant remained in the United States. “There is no evidence that during the six-month period between the December 19 and June 19 hearings the federal immigration authorities had taken steps to remove Cervantes from the United States. That is not unusual. The immigration review process may involve several stages, from the administrative law judge (ALJ) decision, to the BIA, and ultimately to the Ninth Circuit Court of Appeals. This process may not equal the bureaucratic nightmare faced by Josef K. in Franz Kafka’s *The Trial*, but unfortunately it is often unpredictable and slow. ‘An alien whose removal order is administratively final is not necessarily immediately deported.’ (*Prieto-Romero v. Clark* (9th Cir. 2008) 534 F.3d 1053, 1058.) Thus, even after an ALJ and the BIA rule that an alien is deportable, he or she may remain in the United States for years after a federal court grants a stay pending review” (*People v. Cervantes, supra*, 175 Cal.App.4th at p. 296.)

In reversing, the *Cervantes* court relied in part upon *People v. Galvan*. “In *Galvan*, the trial court revoked [defendant’s] probation and sentenced him to prison after he had been deported to Mexico and had returned to the United States. The Court of Appeal reversed. It concluded that, notwithstanding [defendant’s] detention and deportation, his probation could not be revoked without proof that he had willfully violated his probation reporting conditions. [Defendant] could not be penalized because of matters beyond his control, such as the actions of the immigration authorities, or because of his undocumented status.” (*Cervantes*, at p. 297; *People v. Galvan*, *supra*, 155 Cal.App.4th at p. 981-984.)

As there was no willful violation of probation in *Cervantes* or *Galvan* the orders revoking probation were in error. (*Cervantes*, at p. 297.)

Appellant’s case is similar to *Cervantes* and *Galvan*. Due to the slow immigration process, a defendant seeking expungement may have no alternative but to argue that he led an honest and upright life while in immigration custody. Thus, at the expungement hearing, appellant was in a situation similar to the defendants in *Cervantes* and *Galvan*. He should not have been precluded from showing that he lived an honest and upright life since the pronouncement of judgment because he was placed in immigration detention. As the *Cervantes* court noted, “the unpredictability of immigration appeals and the uncertainty about the speed of that process”

are factors beyond an immigrant's control. (*Cervantes*, at p. 298.)

Based on *Cervantes* and *Galvan*, the matter should be remanded so that the court can assess appellant's behavior while subject to immigration detention after his release from state prison. In this process, appellant should be allowed to present any reliable evidence he can muster to establish good behavior while subject to immigration detention. The court on remand can then determine whether the requirements of section 1203.4a, subdivision (a) have been satisfied. If so, relief must be granted. (§1203.4a, subd. (a).)

Due to the large immigrant population in California, it is reasonable to infer that the Legislature contemplated granting expungement relief to immigrants under such circumstances. There is no requirement in the expungement statute that a defendant be free from all possible forms of detention prior to seeking relief. (§1203.4a, subd. (a).) The applicable provision only requires that the defendant is not "serving a sentence for any offense and is not under charge of commission of any crime." (§1203.4a, subd. (a).) There is also no requirement about where a defendant must lead an honest and upright life. (*Id.*) As stated previously, an honest and upright life in immigration custody may have more meaning than isolation in a mountain retreat. In addition, allowing relief to an immigrant under such circumstances can only promote good behavior while in detention, and

allows a newly released defendant a better opportunity to seek employment.

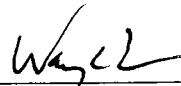
“On the other hand, withholding relief from such persons who conform their behavior to the law solely because they are being detained by immigration authorities is inconsistent with the recognized objective of encouraging them ‘to stay out of trouble with the law for one year after’ their conviction.” (*People v. Maya*, at p. 273 (Tangeman, J., dissenting).)

II. CONCLUSION.

For the above reasons, the order denying expungement should be reversed.

DATED: October 7, 2019

Respectfully Submitted,



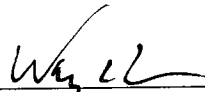
Wayne C. Tobin

WORD COUNT

I, Wayne C. Tobin, declare as follows:

I am duly licensed to practice law in the State of California, and I am the attorney of record for appellant in case number S255371. I have examined the word count for the appellant's opening brief on the merits . The word count is 4,629 words.

I declare under penalty of perjury under the laws of the State of California that the above information concerning the word count is true and correct and that I executed this declaration at Newbury Park, California on October 7, 2019.



Wayne C. Tobin

PROOF OF SERVICE BY MAIL

I, Wayne C. Tobin, declare as follows:

I am over eighteen years of age and not a party to the within action.

My business address is 1560-1 Newbury Road #346, Newbury Park, CA

91320. On October 7, 2019, I served the within

APPELLANT'S OPENING BRIEF ON THE MERITS

on each of the following, by placing a true copy thereof in a sealed envelope with postage fully prepaid, in the United States mail at Newbury Park, California, addressed as follows:

Office of the State Attorney General	Misael Vences Maya
5 th Floor North Tower	511 Santa Ana Boulevard
300 South Spring Street	Oakview, CA 93022
Los Angeles, CA 90013	

Note: The Office of the State Attorney General was served this day via e-mail at the following address: docketingLAawt@doj.ca.gov

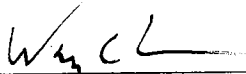
Ventura County District Attorney	Ventura County Superior Court
800 S. Victoria Ave	800 S. Victoria Ave
Ventura, CA 93009	POB 6489
	Ventura, CA 93009

California Appellate Project	For delivery to the
520 South Grand Ave. 4 th Floor	Hon. Bruce Young
Los Angeles, CA 90071	

Note: The California Appellate Project was served this day with a copy of this document via: capdocs@lacap.com

The Court of Appeal was served electronically at 2d6.clerk6@jud.ca.gov

I declare under penalty of perjury that the foregoing is true and correct and that I signed this declaration on October 7, 2019 at Newbury Park, California.



Wayne C. Tobin