IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In re Ricardo P.	
A minor.	**No. S230923**
PEOPLE OF THE STATE OF CALIFORNIA, **Plaintiff and Respondent,** **v.** **Ricardo P.,** **Defendant and Appellant.**	

SUPREME COURT
FILED

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First Appellate District No. A144149
Alameda County Superior Court No. SJ14023676
Hon. Leopoldo E. Dorado, Judge

APPELLANT'S REPLY BRIEF ON THE MERITS

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ARGUMENT

THE COURT OF APPEAL ERRED IN FINDING THE ELECTRONICS SEARCH CONDITION VALID UNDER *PEOPLE V. LENT.*

The electronics search condition at issue here would allow the probation department to access a digital record of nearly every aspect of Ricardo's life, including his movements, associations, communications, and even thoughts. Imposition of such a highly intrusive probation condition, where the only justification for the condition is to facilitate supervision of the probationer, is unprecedented and is an unwarranted intrusion into Ricardo's privacy. However, the Court of Appeal's holding that any

probation condition that enhances or facilitates supervision of the probationer is valid under *People v. Lent* (1975) 15 Cal.3d 481, as reasonably related to future criminality has implications beyond the electronics search condition in this case. If the Court of Appeal's decision stands, not only would routine imposition of electronic search conditions be permitted in criminal and juvenile cases, but *any* probation condition that could be said to increase surveillance of the probationer, no matter how disconnected from the probationer's offense or background, would be considered reasonable under *Lent*.

In his opening brief on the merits, Ricardo argued that the Court of Appeal erred in finding the electronics search condition valid under the *Dominguez/Lent* test adopted by this Court in *People v. Lent*, *supra,* 15 Cal.3d 481.[1] The electronics search condition is not reasonably related to future criminality (*Lent*'s third prong) because no nexus exists between the probation condition and Ricardo's underlying offense or prior offenses. The Court of Appeal erred by expanding the narrow holding in *People v. Olguin* (2008) 45 Cal.4th 375, to find that any probation condition that can

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[1] The question posed by this Court on granting review is whether the trial court erred by imposing an electronics search condition on Ricardo as a condition of his probation when that condition had no relationship to the crime he committed but was justified on appeal as reasonably related to future criminality under *People v. Olguin* (2008) 45 Cal.4th 375, because it would facilitate Ricardo's supervision. Respondent misstated the question presented in its Answer Brief on the Merits and omitted any reference to *People v. Olguin*. (RBM at p. 1.)

be said to facilitate supervision of the probationer is reasonably related to future criminality and thus valid under *Lent*. Such reasoning eviscerates the *Dominguez/Lent* test by broadening the third prong so as to allow any probation condition that increases surveillance of a probationer, no matter how disconnected from the probationer's offense or background. The Court of Appeal also erred by failing to consider the degree to which the condition impinged on Ricardo's privacy rights in its analysis of the reasonableness of the condition under *Lent*. The court below disregarded the United States Supreme Court's decision in *Riley v. California* (2014) 134 S.Ct. 2473, which articulated the heightened privacy concerns involved in searches of electronic devices and digital data and the corresponding constitutional rights implications of such searches.

Respondent disagrees with Ricardo's arguments and contends that the Court of Appeal correctly concluded that the electronics search condition was reasonably related to Ricardo's future criminality and thus valid under *Lent*. Respondent reasons that, under *Lent* and *Olguin*, no nexus between the probation condition and probationer's prior or current offenses is required. Respondent argues that any probation condition that facilitates supervision of the probationer to ensure compliance with other probation conditions is valid under *Lent* as reasonably related to future criminality. Respondent also contends that *Riley* does not apply to this case

and that Ricardo's arguments referencing *Riley* constitute a separate Fourth Amendment claim that should not be considered by this Court.

As explained below, Respondent's argument that *Olguin* and other cases interpreting the *Lent* test permit the imposition of any probation condition that enhances supervision of the probationer lacks merit and would render the *Lent* test meaningless if adopted. Respondent also misreads Ricardo's argument about the constitutional implications of the electronics search condition. In his opening brief on the merits, Ricardo did not present a separate Fourth Amendment claim, but instead argued that the Court of Appeal incorrectly invoked *Olguin*, which involved a minimally burdensome probation condition that did not implicate constitutional rights, to validate the electronics search condition, which substantially impinges on Ricardo's privacy rights. Respondent is also mistaken as to the applicability of *Riley*'s findings concerning the highly intrusive nature of searches of electronic devices, as *Riley* serves as important indicator of what society considers a reasonable intrusion on individual privacy.

A. The *Dominguez/Lent* Test Requires a Nexus Between the Probation Condition and the Underlying Offense or Probationer's Prior Offenses.

In his opening brief on the merits, Ricardo argued that the third prong of the *Lent* test (that the probation condition be reasonably related to future criminality) requires a nexus between the probation condition and the

probationer's underlying or prior offenses for the condition to be valid under *Lent*. (AOBM at pp. 14-20; see also *People v. Bushman* (1970) 1 Cal.3d 767; *People v. Mason* (1971) 5 Cal.3d 759; *People v. Carbajal* (1995) 10 Cal.4th 1114, 1124.) Ricardo argued that the electronics search condition was not reasonably related to Ricardo's future criminality because no nexus existed between the condition and his underlying or prior offenses.[2] (AOBM at pp. 14-23.)

Respondent disagrees with Ricardo's reading of *Lent* and subsequent cases applying the *Lent* test and contends that *Lent*'s third prong is only "triggered where the condition's *mode* of regulating otherwise lawful conduct does not reasonably relate to future criminality." (RBM at p. 6.) Respondent argues that no connection to the probationer's current or prior offenses is required to justify a probation condition as reasonably related to future criminality, and that *any* condition that enhances supervision of the probationer meets the requirements of *Lent*'s third prong. (RBM at pp. 10-17.) Respondent's argument is not supported by *Lent* itself or subsequent decisions that have interpreted and applied the *Dominguez/Lent* test.

Respondent mistakenly contends that the "court in *Lent* plainly did not consider a connection between past and future misconduct as a

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[2] The record contains no evidence of prior offenses on Ricardo's part.

requirement for the reasonableness of a condition of probation." (RBM at p. 10.) Respondent's contention is unsupported by the *Lent* decision itself, as the condition at issue in *Lent* was in fact related to the underlying offense. *Lent* involved a challenge to a restitution order that included the total amount of money the defendant obtained from the victim on two occasions, even though the defendant was acquitted of one of the two theft charges. (*Lent, supra,* 15 Cal.3d at p. 486.) It was undisputed that the defendant obtained money from the victim on two occasions and failed to return it or to pay the bills for which the money was intended. (*Ibid.*) The court noted that "there is no question as to the relationship of the total sum of restitution ordered to the crime of which defendant was convicted." (*Ibid.*) The court in *Lent* did not have occasion to consider a probation condition that, like the electronics search condition, was unconnected to the defendant's underlying offense and served only to enhance supervision of the probationer.

Respondent cites other decisions that it claims allow imposition of an electronics search condition, the only purpose of which is to monitor compliance with other probation conditions. (RBM at p. 13.) The authority cited does not support Respondent's argument. Respondent cites *People v. Ebertowski* (2014) 228 Cal.App.4th 1170, which involved a clear nexus between the use of electronic devices and the probationer's criminal history, as the defendant had used social media websites to promote a

criminal street gang. Respondent also cites *United States v. Bare* (9th Cir. 2015) 806 F.3d 1011, which involved a condition that allowed for searches of the probationer's computers in order to find records related to the probationer's illegal firearm pawn business. (*Bare, supra,* 806 F.3d at p. 1016.) The court in *Bare* found "a demonstrable nexus between [the probation condition and] both his offense and the need for adequate deterrence." (*Bare, supra,* 806 F.3d at p. 1019.) Apart from the Court of Appeal decisions concerning the same condition on review in this case, Respondent can point to no precedent for imposing an electronics search condition where the only purpose for the condition is to enhance supervision of the probationer.

Moreover, Respondent's proposed interpretation of *Lent*'s third prong eviscerates *Lent* and renders the *Dominguez/Lent* test meaningless by essentially broadening the third prong to validate any probation condition that can be said to enhance supervision of the probationer. Respondent claims that requiring a nexus between the condition and the probationer's underlying or prior offenses results in two-part test by subsuming the third prong (reasonably related to future criminality) into the first prong (relationship to the offense). (RBM at p. 5.) However, Respondent's contention that a condition that is related only to enhancing supervision of the probationer is necessarily reasonably related to future criminality would render the *Lent* test meaningless. Such an interpretation would validate

many potential probation conditions that are highly intrusive and bear only an attenuated relationship to future criminality.

In his opening brief, Ricardo provided examples of highly intrusive and unconstitutional probation conditions that would pass *Lent* muster according to the Court of Appeal's reasoning that a probation condition is necessarily reasonably related to future criminality and thus valid under *Lent* if it enhances supervision of the probationer. (AOBM at pp. 26-27.) For example, regular review of a probationer's private health records, a body-mounted camera with a recording device, or a wiretap of a probationer's landline phone could all be justified on the basis that they would provide information about the probationer's compliance with other probation conditions and would deter illegal activities. (See AOBM at p. 27; *In re Mark C.* (2016) 244 Cal.App.4th 520, 533, review granted April 13, 2016.) Respondent dismisses Ricardo's examples as a "parade of horribles" that would not occur due to other limitations on courts' discretion to impose probation conditions (RBM at p. 21), but Respondent ignores the logical implications of its contention that a condition that can be said to facilitate supervision of the probationer is necessarily reasonably related to future criminality. If a condition satisfies *Lent*'s third prong by enhancing supervision of the probationer, even if the condition is unconnected to the probationer's current or prior offenses, then any condition that increases surveillance of the probationer would be valid

under *Lent*. Such a reading of *Lent* would render its three-prong test meaningless and would remove an essential safeguard against undue intrusion into probationers' privacy.

Respondent's argument is also circular. Respondent contends that the requirement of Welfare and Institutions Code 730, subsection (b), that probation conditions must be "reasonable" and the juvenile courts' consideration of the minor's individual background and history sufficiently protects the privacy rights of juveniles. (RBM at pp. 6, 21.) The problem with Respondent's argument is that the *Dominguez/Lent* test provides guidance to courts on what probation conditions are considered "reasonable" and sufficiently connected to the individual's need for rehabilitation and likelihood of future criminality under section 730(b).[3] If Respondent's reasoning, that any probation condition that facilitates supervision of the probation meets *Lent*'s third prong as reasonably related to future criminality, prevails, then *Lent* no longer serves to guide and limit the discretion of the trial courts. Any probation condition that increases surveillance of the probationer would be considered reasonable and valid under *Lent* and would thus be valid under 730(b) or, for adults, Penal Code section 1203.1, subdivision (j). Respondent's contention that constitutional prohibitions against overbreadth and vagueness would sufficiently protect

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[3] In the context of adult probationers, a probation condition that passes *Lent* muster is "reasonable" and serves the statutory purposes of probation set forth in Penal Code § 1203.1, subd. (j).

probationer's privacy rights is similarly unavailing. (RBM at p. 21.) If clearly unconstitutional conditions pass *Lent* muster, the *Lent* test no longer serves as a meaningful limitation on courts' authority and fails to provide adequate guidance to courts in imposing probation conditions. (See AOBM at pp. 26-28, 34.)

In his opening brief, Ricardo argued that the electronics search condition was not reasonably related to future criminality because the condition was not reasonably related to his specific risk of re-offending. (AOBM at pp. 19-20.) Ricardo argued that the juvenile court's speculation that the condition could be related to criminality provided insufficient connection to his individual risk of future criminality to pass *Lent* muster and to satisfy the separate requirement that juvenile probation conditions be tailored to the specific needs of the juvenile. (AOBM at pp. 20; *In re Tyrell J.* (1994) 8 Cal.4th 68, 82.) Respondent's contention that the electronics search condition was a reasonable method of monitoring Ricardo's compliance with other probation conditions, including a condition prohibiting the use of illegal drugs and a condition prohibiting contact with his two adult co-defendants, runs contrary to existing law providing that a "remote" connection to "future criminal conduct" does not satisfy *Lent*.[4]

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[4] Respondent also invokes the doctrine of *parens patriae* to justify the condition, but *parens patriae* does not render reasonable an unreasonable probation condition. As the court noted in *In re Jaime P.* (2006) 40 Cal.4th 128, 138, *parens patriae* may not be used to excuse

(RBM at pp. 18-20; *People v. Brandão* (2012) 210 Cal.App.4th 658, 574; see also *In re D.G.* (2010) 187 Cal.App.4th 47, 53; *In re Erica R.* (2015) 240 Cal.App.4th 907, 913.) Here, the condition was imposed based on the juvenile court's speculation that some teens use the internet to boast about using marijuana; the juvenile court pointed to no connection between electronic devices and Ricardo's underlying offense of burglary, his prior use of marijuana, or any other illegal activity. (Opin., at p. 10.) Because no nexus exists between the condition and underlying or prior offenses, the condition does not pass *Lent* muster.

B. This Court's Holding in *People v. Olguin* Does Not Permit the Imposition of Probation Conditions That Serve Only to Facilitate Supervision of the Probationer.

In his opening brief, Ricardo argued that the Court of Appeal erred in expanding the narrow holding of *People v. Olguin, supra,* 45 Cal.4th 375, which found valid a condition that the probationer notify his probation officer of all pets in the home, to find that any probation condition that can be said to facilitate supervision of the probationer is reasonably related to future criminality and thus valid under the *Dominguez/Lent* test. (AOBM at pp. 24-27.) The Court in *Olguin* found the pet-notification condition valid

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police misconduct. And, as discussed in *In re Erica R.* (2015) 240 Cal.App.4th 907, 914, the requirement that probation conditions be tailored to the individual probationer is all the more important because juveniles cannot refuse probation.

because it protected officer safety and allowed probation officers to conduct valid property searches without distraction. (*Olguin, supra,* 45 Cal.4th 375, 380-381.) *Olguin*'s holding rests on the commonsense notion that probation officers must be able to safely and without distraction carry out their duties and fulfill their responsibilities pursuant to valid probation conditions. The Court of Appeal erred in expanding the holding in *Olguin*, which concerned only the need to accommodate probation supervision, to validate a significant expansion of the probation department's supervisory authority and an unwarranted intrusion into Ricardo's privacy. (AOBM at 24-26.)

Respondent, to the contrary, asserts that *Olguin* "unmistakenly stands for the principle that conditions reasonably related to enhancing the effective supervision of probations are valid under *Lent*." (RBM at p. 14.) In so arguing, Respondent invokes language from *Olguin* noting that the pet-notification condition was "facilitative of the search condition" and "enable[d] a probation officer to supervise his or her charges effectively" in order to justify its position that any condition that is facilitative of a valid probation condition passes *Lent* muster. (RBM at p. 15; *Olguin, supra,* 45 Cal.4th at pp. 380-381.) Respondent's reading of *Olguin* as approving any probation condition that is "reasonably related to enhancing the effective supervision of probationers" is unduly expansive and broadens the holding in *Olguin* far beyond what was contemplated by that Court. (RBM at p. 14;

see *In re Mark C., supra,* 244 Cal.App.4th at p. 533 ("Such a reading would effectively eliminate the reasonableness requirement that the court in *Olguin* discusses at some length").) Furthermore, Respondent points to no authority that has cited *Olguin* for this sweeping proposition.

Respondent correctly observes that the court in *Olguin* found the pet-notification condition valid because it enabled the probation officer to carry out the property search condition. But Respondent then erroneously concludes that *any* condition that enhances supervision of the probationer is valid under *Lent*. (RBM at pp. 14-15.) However, the court in *Olguin* did not approve the notification condition simply because it enhanced supervision of the probationer, but because it would protect the *safety* of the officer in the event that he or she conducted an unannounced physical property search. (*Olguin, supra,* 45 Cal.4th at pp. 380-381.) The *Olguin* court articulated a direct link between protection of the probation officer during the performance of his or her duties and the reasonableness of the condition:

> The condition requiring notification of the presence of pets is reasonably related to future criminality because it serves to inform and protect a probation officer charged with supervising a probationer's compliance with specific conditions of probation . . .The protection of the probation officer while performing supervisory duties is reasonably related to the rehabilitation of a probationer for the purpose of deterring future criminality.

(*Olguin, supra,* 45 Cal.4th at p. 381.) Similar to a requirement that the probationer inform his probation officer of his address and/or location of his automobile in order for the officer to conduct a valid property search, the pet-notification condition concerned only the need to accommodate an existing, and unchallenged, condition of probation.[5] Respondent does not claim that the electronics search condition ensures officer safety or assists the officer in carrying out his existing duties. Rather, Respondent seeks to expand the holding in *Olguin* to redefine *Lent*'s third prong so completely that the *Lent* test would be rendered meaningless.

Olguin did not contemplate or discuss a condition, like the electronics search condition, that created a separate avenue for law enforcement to access intensely private information about the probationer. There is no comparison between a requirement that a probationer notify his probation officer of pets at his house and a probation condition that allows law enforcement unfettered access to all of the probationer's electronic devices, the data stored on such devices, and data accessed through the use of such devices. (See Section C., *post.*) *Olguin* should be read to affirm the need to accommodate the probation department's existing supervisory responsibilities and not to precipitate unlimited invasions of the probationer's privacy in the name of such supervision. *Olguin* concerned

[5] Respondent misleadingly states that the court in *Olguin* "approved" the property search condition. (RBM at p. 15.) The search condition was not challenged and so was neither approved nor disapproved.

only officer safety and the provision of essential information to the probation officer, and does not validate any probation condition that could be said to facilitate supervision of the probationer, no matter how intrusive or disconnected from the probationer's criminal history.

C. Because the Probation Condition Impinges on Constitutional Rights to an Unprecedented Degree, the Court of Appeal Erred in Finding it Valid Under the Narrow Holding of *People v. Olguin*.

In his opening brief on the merits, Ricardo argued that the Court of Appeal erred when it invoked *Olguin*, which involved a probation condition that did not implicate constitutional rights, to validate the electronics search condition, which does substantially impinge on Ricardo's constitutional rights. (AOBM at pp. 28-34.) In support of his claim, Ricardo cited *Riley v. California, supra,* 134 S.Ct. 2473, in which the United States Supreme Court made clear the heightened privacy concerns involved in searches of electronic devices and the corresponding constitutional rights implications of law enforcement searches of such devices. (AOBM at pp. 29-31.)

Respondent misunderstands Ricardo's argument as a separate Fourth Amendment claim. (RBM at pp. 23-25.) In his opening brief on the merits, Ricardo did not present a separate overbreadth or Fourth Amendment claim; instead, he argued that a court must consider the extent to which a probation condition impinges on the probationer's constitutional rights in

determining whether a condition is reasonable under *Lent.* (AOBM at p. 29.) Because the electronics search condition unduly impinges on Ricardo's constitutional rights "it is not reasonably related to the compelling state interest in reformation and rehabilitation," and is thus not valid under *Lent* as reasonably related to future criminality. (*In re White* (1979) 97 Cal.App.3d 141, 146, quoting *People v. Mason, supra,* 5 Cal.3d at p. 768; AOBM at pp. 28-29.)

Respondent enumerates several factual differences between the electronics search condition and the cell phone search at issue in *Riley* and argues that *Riley* does not apply to this case. (RBM at pp. 26-29.) However, Respondent again misunderstands Ricardo's argument. Ricardo did not claim that *Riley's* holding that a cell phone may not automatically be searched incident to arrest directly applies to invalidate the electronics search condition. Rather, *Riley* serves as an important indicator of what society considers a reasonable intrusion on individual privacy. The Court in *Riley* engaged in an extensive discussion of the immense capacity for cell phones to store intensely private information about users' lives and the substantial privacy concerns implicated by law enforcement searches of such devices. (*Riley, supra,* 134 S.Ct. at pp. 2488-2890.) The Court recognized that the widespread use of cell phones and the ways in which adults and teens use these devices results in a device that contains an unprecedented amount of information about the user's life, movements,

associations, and even thoughts, and that law enforcement access to such private information must be limited. (*Riley, supra,* 134 S.Ct. at 2488-2490, 2493; AOBM at pp. 29-31.)

Similarly, the California Legislature recently enacted the California Electronic Communications Privacy Act (CalECPA) to establish privacy protections for users of electronic devices.[6] CalECPA not only sets forth specific warrant requirements for this type of search (Pen. Code, § 1546.1, subd. (d)(1)), but also provides for notice to the individual (Pen. Code § 1546.2), limits the use of information obtained from this type of search, and provides for the sealing and destruction of the information. (Pen. Code, § 1546.1, subd. (d)(2).) The United States Supreme Court and the California legislature have both recognized that the widespread use and immense capacity of electronic devices require robust privacy protections for electronic devices and their digital data.

Here, the Court of Appeal erred by failing to adequately consider the privacy implications of the electronics search condition. The Court of Appeal instead essentially treated the condition as equivalent to the pet-notification condition in *Olguin* when it concluded that *Olguin* mandated validation of the condition if it was reasonably related to enhancing the effective supervision of a probationer. (Opin., at pp. 9-11.)

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[6] CalECPA became effective on January 1, 2016, and added Chapter 3.6, sections 1546, 1546.1, 1546.2, and 1546.4 to the Penal Code. (Stats 2015, ch. 651 § 1 (SB 178).)

The court did not adequately consider the intrusiveness of the condition in evaluating its reasonableness under *Lent.* (AOBM at p. 32.) Though both conditions may "enhance" supervision of the probationer by providing the probation officer more information about the probationer, the two conditions differ substantially in terms of the potential for law enforcement intrusion into the probationer's private life. The Court of Appeal erred in failing to consider the degree to which the search condition impinged on Ricardo's constitutional rights when it found the condition reasonable under *Lent.*

The Court of Appeal also erred when it equated property searches with searches of electronic devices and digital data, contrary to the holding in *Riley v. California, supra,* 134 S.Ct. 2473, which rejected an argument that the searches of digital data were "materially indistinguishable" from searches of physical property. (AOBM at pp. 33-34; *Riley, supra,* 134 S.Ct. at pp. 2488-2489.) The Court in *Riley* detailed the numerous differences between searches of physical property and digital data and articulated that the data and information accessed in searches of electronic devices is significantly more private and far-reaching in scope than any personal information accessed during searches of physical property. (*Riley, supra,* 134 S.Ct. at pp. 2488-2490.)

Respondent's suggestion that residential searches are more invasive than searches of electronic devices and digital data (RBM at p. 27) is

simply incorrect and ignores the realities of Americans' use of smart phones, computers, and other electronic devices. As discussed at length in *Riley*, cell phones contain a "digital record of nearly every aspect" of the users' lives, including records "never found in a home in any form." (*Riley, supra,* 134 S.Ct. 2473 at pp. 2490, 2491.) Smartphones are used for communicating via phone, text message, and email, managing private, detailed information, browsing the internet, and a variety of other activities that reveal intensely private aspects of the user's life.[7] (*Riley, supra,* 134 S.Ct. 2473 at p. 2490.) For example, data stored on electronic devices may include confidential medical information, financial and consumer transactions, private communications with friends and family, and reading and viewing preferences. (*Ibid.*) Cell phone data reveals the user's location and internet browsing history and may span several years. (*Ibid.*) Respondent does not explain how an electronics search condition, by which law enforcement may essentially obtain an account of Ricardo's entire private life, including his movements, private communications with friends and family, associations, and thoughts, is less invasive than a property search.

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[7] As the Court in *Riley* pointed out, "[t]he term 'cell phone' is itself misleading shorthand; many of these devices are in fact minicomputers that also happen to have the capacity to be used as a telephone. They could just as easily be called cameras, video players, rolodexes, calendars, tape recorders, libraries, diaries, albums, televisions, maps, or newspapers." (*Riley, supra,* 134 S.Ct. at 2489.)

Riley makes clear that searches of electronic devices and digital data are substantially different than property searches, and thus the Court of Appeal's characterization of an electronics search condition as merely an extension of a property search condition is error. (*See Riley, supra,* 134 S.Ct. at pp. 2488-2490; AOBM at 32-33; see also *United States v. Lara* (9th Cir. 2016) 815 F.3d 605, 609.) And, given the intrusiveness inherent in a search of Ricardo's electronic devices, the Court of Appeal's invocation of *Olguin*, which involved merely a requirement the probationer notify his probation officer of any pets in the home, contradicts the Supreme Court's extensive discussion in *Riley* concerning the intrusiveness of such searches and need for correspondingly heightened protections for users of electronic devices.

The electronics search condition at issue in this case would allow probation officers to pry into a probationer's private communications, health and financial records, reading and viewing habits, consumer purchases, moment-to-moment activities, and whereabouts. Validating such a condition merely because it could facilitate supervision of a probationer would lead to unwarranted intrusions into the privacy of both juveniles and adults in future cases. The Court of Appeal's decision, if allowed to stand, would open the door to the imposition of similar probation conditions in every criminal and juvenile case.

CONCLUSION

For these reasons, the electronics search condition must be stricken.

Dated: September 26, 2016

/s/Megan Hailey-Dunsheath
Megan Hailey-Dunsheath
Attorney for Ricardo P.

CERTIFICATION OF WORD COUNT

I, Megan Hailey-Dunsheath, in accordance with California Rules of Court, Rule 8.204(c)(1) and Rule 8.360(b), certify that the attached APPELLANT'S REPLY BRIEF ON THE MERITS contains 4548 words, excluding cover page and case caption. I certify that I prepared this brief in Microsoft Word and this is the word count generated by that word-processing program.

Executed under penalty of perjury at Berkeley, California, on September 26, 2016.

/s/Megan Hailey-Dunsheath
Megan Hailey-Dunsheath

PROOF OF SERVICE BY MAIL

Re: Ricardo P., Court Of Appeal Case: A144149, Superior Court Case: SJ14023676

I the undersigned, declare that I am employed in the County of Sonoma, California. I am over the age of eighteen years and not a party to the within entitled cause. My business address is 4968 Snark Ave, Santa Rosa CA. On September 27, 2016, I served a copy of the attached Reply Brief on the Merits (CA Supreme Court) on each of the parties in said cause by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid in United States mail at Sonoma, California, addressed as follows:

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Alameda County District Attorney

1225 Fallon Street, Suite 900
Oakland, CA 94612

Ricardo P.
(Address on File)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on this 27th day of September, 2016.

Phil Lane
(Name of Declarant)

(Signature of Declarant)

PROOF OF SERVICE BY ELECTRONIC SERVICE

Re: Ricardo P., Court Of Appeal Case: A144149, Superior Court Case: SJ14023676

I the undersigned, am over the age of eighteen years and not a party to the within entitled cause. My business address is 4968 Snark Ave, Santa Rosa CA. On September 27, 2016 a PDF version of the Reply Brief on the Merits (CA Supreme Court) described herein was transmitted to each of the following using the email address indicated and/or direct upload. The email address from which the intended recipients were notified is Service@GreenPathSoftware.com.

State of California Supreme Court
Supreme Court
San Francisco, CA 94102-4797

Office of the Attorney General SF
San Francisco AG
San Francisco, CA 94102-7004
SFAG.Docketing@doj.ca.gov

First District Appellate Project
FDAP
Oakland, CA 94612
eservice@fdap.org

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on this 27th day of September, 2016 at 09:08 Pacific Time hour.

Phil Lane
(Name of Declarant)

(Signature of Declarant)