IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA, Petitioner, v. THE SUPERIOR COURT OF RIVERSIDE COUNTY Respondent. PABLO ULLISSES LARA, Jr., Real Party in Interest.	No. S241231

Fourth Appellate District, Division Two, 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)

APPLICATION OF THE SAN DIEGO COUNTY DISTRICT ATTORNEY FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF PETITIONER

SUMMER STEPHAN
District Attorney
MARK A. AMADOR
Deputy District Attorney
Chief, Appellate & Training Division
LINH LAM
Deputy District Attorney
Asst. Chief, Appellate & Training Division
PETER J. CROSS, SBN 112927
Deputy District Attorney
330 West Broadway, Suite 860
San Diego, CA 92101
Tel: (858) 775-3573
Fax: (619) 515-8632
Email: peter.cross@sdcda.org

Attorneys for Amicus Curiae
San Diego County District Attorney

APPLICATION FOR PERMISSION TO FILE AMICUS CURIAE BRIEF

TO THE HONORABLE CHIEF JUSTICE TANI G. CANTIL-SAKAUYE, AND THE HONORABLE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE STATE OF CALIFORNIA:

The San Diego County District Attorney respectfully asks permission to file the attached amicus curiae brief in support of Petitioner, the People of the State of California, pursuant to rule 8.520, subdivision (f), of the California Rules of Court. No party nor counsel for a party in this appeal authored in whole or in part the proposed amicus curiae brief, nor made any monetary contribution to fund the preparation or submission of the proposed amicus curiae brief. Furthermore, no person or entity, other than amicus and her counsel, has contributed – monetarily or otherwise – to the preparation or submission of the attached amicus curiae brief.

IDENTITY OF AMICUS CURIAE AND STATEMENT OF INTEREST

The San Diego County District Attorney represents the People of the State of California residing within the County of San Diego. The District Attorney is very familiar with the issue presently before the court, which asks whether Welfare and Institutions Code[1] sections 602 and 707, as amended by Proposition 57, are entitled to be applied to cases that were lawfully and directly filed in a court of criminal jurisdiction prior to enactment of Proposition 57.

Counsel for amicus has reviewed the opening brief and the answer brief on the merits as submitted by the parties in this case, and asks leave of the court to file this amicus curiae brief for two limited purposes: (1) to focus a discussion exclusively on the decision of the Court of Appeal in the

[1] All further statutory references are to the Welfare and Institutions Code unless stated otherwise.

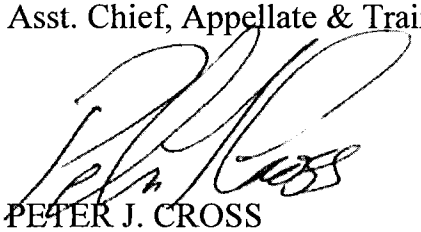
case at bar because doing so provides its own complete, separate and singular way to demonstrate the People's argument that new section 707 is not entitled to be applied *prospectively* in any case that was directly and lawfully filed in a court of criminal jurisdiction. Distilling the argument in this manner provides a ready and additional means to assist this court in any ultimate review and assessment of the underlying question; and (2) while both parties have addressed Penal Code section 1170.17 (sentencing in direct-file cases) and how it may apply after Proposition 57, neither party has addressed this question in the context most relevant here. If this court decides that Proposition 57 does not authorize direct-file cases to be returned to the juvenile court for a 707 hearing (as the People and amicus assert) then those direct-file cases that remain *pretrial* will necessarily proceed, and the sentencing provisions of Penal Code section 1170.17 will again apply to any subsequent conviction arising from those cases. But as we explain in the attached amicus brief, the outcome under Penal Code section 1170.17 will now be very different. A direct-file conviction *arising after the effective date of Proposition 57* will now require a juvenile disposition under Penal Code section 1170.17 *unless* the People prove, in a proceeding that mirrors a 707 hearing, that defendant is not a fit subject for juvenile handling. Our position in that regard is set forth in Argument III of the attached brief.

For the foregoing reasons, the District Attorney of San Diego County respectfully requests the court accept the accompanying brief for filing in this case.

Dated: August 11, 2017

Respectfully Submitted,

SUMMER STEPHAN
District Attorney
MARK A. AMADOR
Deputy District Attorney
Chief, Appellate & Training Division
LINH LAM
Asst. Chief, Appellate & Training Division



PETER J. CROSS
Deputy District Attorney

Attorneys for Amicus Curiae
San Diego County District Attorney

In Support of Petitioner

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA, Petitioner, v. THE SUPERIOR COURT OF RIVERSIDE COUNTY, Respondent.	No. S241231
PABLO ULLISSES LARA, Jr., Real Party in Interest.	

Fourth Appellate District, Division Two, 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)

AMICUS CURIAE BRIEF IN SUPPORT OF PETITIONER

SUMMER STEPHAN
District Attorney
MARK A. AMADOR
Deputy District Attorney
Chief, Appellate & Training Division
LINH LAM
Deputy District Attorney
Asst. Chief, Appellate & Training Division
PETER J. CROSS, SBN 112927
Deputy District Attorney
330 West Broadway, Suite 860
San Diego, CA 92101
Tel: (858) 775-3573
Fax: (619) 515-8632
Email: peter.cross@sdcda.org

Attorneys for Amicus Curiae
San Diego County District Attorney

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page**

Statutes

Penal Code

Welfare and Institution Code

Other Authorities

California Constitution

Propositions

ISSUE PRESENTED

The court is presented with the following question: Do the changes to Welfare and Institution Code[1] sections 602 and 707, as enacted under Proposition 57, require cases previously filed directly in a court of criminal jurisdiction (hereafter "direct-file cases") to now be returned to the juvenile division of the superior court for a 707 hearing?

INTRODUCTION

To date, six appellate courts have addressed this issue in published opinions and all of those decisions are currently under review by this court. (*People v. Superior Court* (*Lara*) (2017) 9 Cal.App.5th 753, review granted May 17, 2017, S241231) [the case at bar]; *People v. Cervantes* (2017) 9 Cal.App.5th 569, review granted May 17, 2017, S241323; *People v. Mendoza* (2017) 10 Cal.App.5th 327, review granted July 12, 2017, S241647; *People v. Vela* (2017) 11 Cal.App.5th 68, review granted July 12, 2017, S242298; *People v. Marquez* (2017) 11 Cal.App.5th 816, review granted July 26, 2017, S242660; and *People v. Superior Court* (*Walker*) (2017) 12 Cal.App.5th 687 (petn. for review pending, petn. filed July 11, 2017, S243072.)

In light of the extensive discussion of these cases in the People's opening brief, with which we fully concur, we sought permission to file this amicus curiae brief for two limited purposes: (1) to focus a discussion exclusively on the decision of the Court of Appeal in the case at bar because doing so provides its own complete, separate and singular way to demonstrate the People's position that amended section 707 is not entitled to *prospective* application in any direct-file case; and (2), to observe that while both parties have addressed Penal Code section 1170.17 (sentencing

---

[1] All further statutory references are to the Welfare and Institutions Code unless stated otherwise.

in direct-file cases) in light of the passage of Proposition 57,[2] neither party has addressed what we believe is most relevant here. If this court decides that Proposition 57 does not authorize direct-file cases to be returned to the juvenile court for a 707 hearing (as the People and amicus assert) then those direct-file cases that remain *pretrial* will again proceed in adult court, and the sentencing provisions established in Penal Code section 1170.17 will continue to apply to any subsequent conviction arising from those cases. But as we explain in Argument III, unlike before the passage of Proposition 57, a direct-file conviction *arising after the effective date of Proposition 57*, will now require a juvenile disposition under Penal Code section 1170.17 *unless* the People prove, in a proceeding that mirrors a 707 hearing, that defendant is not a fit subject for juvenile handling.

ARGUMENT

I.

CONTRARY TO THE *LARA* COURT'S FINDINGS, APPLYING NEW SECTION 707 TO CASES ORIGINALLY AND LAWFULLY FILED IN A COURT OF CRIMINAL JURISDICTION IS NOT A VALID *PROSPECTIVE* APPLICATION OF THE NEW LAW

The *Lara* court held that direct-file cases which have not yet gone to trial could be returned to the juvenile court for a hearing under new section 707 because that would be a valid *prospective* application of the law. (*Lara, supra*, 9 Cal.App.5th at p. 774.) We respectfully disagree.

When a new law is being applied to a pretrial case that arose *before* the law's effective date, the new law will be deemed *prospective* in nature and applicable to that case if the new law pertains to matters that involve the conduct of trials and it is being applied to circumstances that remain pending in the underlying matter after the new law's effective date. (*Tapia v. Superior Court* (1991) 53 Cal.3d 282, 288-291 (*Tapia*).)

---

[2] People's Opening Brief on the Merits, pp. 48-51 (hereafter OBM); Real Party's Answer Brief on the Merits, pp. 28-30 (hereafter ABM).

In other words, the new law is not being applied in a manner that would affect " 'rights, obligations, acts, transactions and conditions which [we]re performed or exist[ed] prior to the adoption of the statute[,]' " (*Tapia*, *supra*, 53 Cal.3d at p. 291), but rather is being applied "to the procedure to be followed in the future." (*Id.* at p. 288.)

The *Lara* court, however, appears to conclude that whenever a new law governing the conduct of trials is being applied to a case in which the trial itself has not yet occurred, application of the new law will always be *prospective* in nature, even if it conflicts with matters that have already been completed under the prior law and which are no longer pending in the underlying case. (*Lara*, *supra*, 9 Cal.App.5th at p. 775 [Proposition 57 can be applied to aspects of a case that have already taken place, such as a previous direct-filing].) In reaching its conclusion, the *Lara* court appears to rely heavily on a quote from this court's decision in *Tapia*, *supra*, 53 Cal.3d at p. 289, namely, " 'a law governing the conduct of trials is being applied "prospectively" when it is applied to a trial occurring after the laws effective date, regardless of when the underlying crime was committed.' " (*Lara*, *supra*, 9 Cal.App.5th at p. 774.) While this is certainly an accurate statement of the law, *Lara's* use of this quote to support *prospective* application of new section 707 misinterprets this court's intent.

We believe this court's intended position in *Tapia*, and all related cases, is as follows:

> if a new law governing the conduct of trials is being applied to matters that *remain pending* in an underlying case *after* the new law goes into effect, such that the new law does not affect " 'rights, obligations, acts, transactions and conditions which [we]re performed or exist[ed] prior to the adoption of the statute[,]' " (*Tapia*, *supra*, 53 Cal.3d at p. 291), then applying the new law to such *future events* is a valid *prospective* application of the law, even if the offense or cause of action itself arose before the new law went into effect.

For example, the new discovery rules enacted under Proposition 115 ("Crime Victims Justice Reform Act"), and considered in *Tapia*, describe those materials a defendant must provide to the prosecution in a criminal case. In considering this issue, *Tapia* specifically held the defendant was only required to produce discoverable materials that were obtained after the new law went into effect, holding any requirement that defendant produce similar items obtained *prior* to the new law's enactment would inappropriately impact preexisting rights and would thus be an improper *retroactive* application of the law. (*Tapia*, *supra*, 53 Cal.3d at pp. 299-300.)

But if the *Lara* court's position is correct, and a new law governing the conduct of trials is properly applied in a *prospective* manner to any case where a trial has not yet occurred, then once Proposition 115's new discovery statute went into effect (and trial in an already existing case was still pending), the People would have been entitled to all the discoverable material in that defendant's possession, no matter when it was obtained, because the discovery statute merely describes what the defendant must produce, and if such a law is always *prospective* if it is being applied prior to trial, then the terms of the statute would have to be satisfied and defendant would have been obligated to produce all the discoverable material in his possession. But *Tapia* specifically held to the contrary, finding discoverable items held prior to the effective date of the new law need not be produced as that would be an improper *retroactive* application.

And that is exactly what would occur here if new section 707 was applied to the case at bar. The People are a party to this case and the People are equally entitled to due process of law. (Cal. Const., art. I, § 29.) The People's *right* to proceed in adult court (without the need of a 707 hearing) was both proper and lawful when this case was filed and any attempt to apply new section 707 to this direct-file case would clearly affect that *right* by imposing additional legal obligations that did not exist or apply to the

right when the case was filed. Indeed, the law that determines whether the juvenile court or the adult court will handle a particular case is the law in effect when the case is filed. That filing is but a single act. And once the adult court has been lawfully selected and the case filed, that decision is complete. As such, the filing of this case in adult court was neither pending nor unresolved on the effective date of Proposition 57. Since the People's right to direct-file this case was lawful and proper at the time it occurred, any attempt to apply new section 707 here would detrimentally affect that right by imposing new and additional legal obligations that did not exist or apply to the right when the case was filed. Indeed, the only way new section 707 could ever apply to this case would be if it was entitled to *retroactive* application. And the only way new section 707 can be given lawful *retroactive* effect is by showing a clear-cut intent on the part of the voters to bring about that result. (*People v. Brown* (2012) 54 Cal.4th 314, 320; *People v. Alford* (2007) 42 Cal.4th 749, 754; *Evangelatos v. Superior Court* (1988) 44 Cal.3d 1188, 1209.) As fully discussed in the People's Opening Brief, there is no such showing under Proposition 57.[3]

---

[3] Moreover, all the cases on which real party relies to support *prospective* application of new sections 602 and 707 in actuality support the People's position, not that of real party. In each of these cases, the last act or event necessary to trigger application of the new statute arose after (rather than before) the statute's effective date. These cases include *John L. v. Superior Court* (2004) 33 Cal.4th 158 [a new law changing procedures applicable to probation revocation hearings applied to petitioners because their hearings arose after the new law took effect]; *In re Chong K.* (2006) 145 Cal.App.4th 13 [new sealing law applied to appellant because it went into effect four years before appellant was even eligible to request sealing]; *Bourquez v. Superior Court* (2007) 156 Cal.App.4th 1275 [a new law changing the civil commitment time for sexually violent predators from two year terms to indeterminate terms applied to appellants because the new law went into effect before their hearings arose]; *Strauch v. Superior Court* (1980) 107 Cal.App.3d 45 [plaintiff filed a medical malpractice case but failed to attach a certificate of merit as then required. Defendant objected but the trial court allowed late filing. Defendant filed a writ petition

II.

THE *LARA* COURT'S SUGGESTION THAT NEW SECTION 707 WHEN APPLIED TO EXISTING DIRECT-FILE CASES HAS NO *RETROACTIVE* CONSEQUENCES, APPEARS CLEARLY IN ERROR BECAUSE DOING SO WOULD UNQUESTIONABLY ATTACH NEW LEGAL CONSEQUENCES TO PAST EVENTS COMPLETED BEFORE THE LAW'S EFFECTIVE DATE

In *Lara*, the court rejected the People's argument that new section 707 can only be applied to *future* criminal filings (because to do otherwise would create an improper retroactive application of new section 707), and found the People's argument under *People v. Grant* (1999) 20 Cal.4th 150 (*Grant*) unpersuasive. The *Lara* court commented:

> [T]he People's position fails because they have not identified how asking them to get the juvenile court's permission before proceeding to a final adjudication in adult court "attaches new legal consequences to, or increases a party's liability for, an event, transaction, or conduct that was *completed* before the laws effective date."

(*Lara*, *supra*, 9 Cal.App.5th at p. 775, quoting *Grant*, *supra*, 20 Cal.4th at p. 157, italics in the original.)

However, that is exactly what would occur if new section 707 is applied to any direct-file case.

Indeed, when deciding whether a statute is being applied in a retroactive manner, "the critical question . . . is whether the last act or event necessary to trigger application of the statute occurred before or after the statute's effective date." (*Grant*, *supra*, 20 Cal.4th at p. 157.) The last act or event necessary to trigger application of new section 707 occurs when, in a pending juvenile case, the People pursue a 707 petition *after* the effective

---

challenging the trial court's ruling. While the petition was pending, a new law was enacted that supported the trial court's decision. Because the writ proceedings were still pending when the new law took effect, the new law was properly applied to the case]; *Estate of Patterson* (1909) 155 Cal. 626 [a new law changing the requirements for proving a lost or destroyed will and enacted before trial on the issue, properly applies to the trial].

date of the new statute. Stated differently, and more appropriate in this context, a section 707 hearing is not a *future or pending event* in any case that was directly filed in a court of criminal jurisdiction *before* the passage of new section 707. To require the People to now go back to the juvenile court, pretend no case exists in adult court, and conduct a 707 hearing, would clearly be applying the new law retroactively to events that occurred *before*, rather than *after* the new law went into effect.

Indeed, as previously noted, the People are a party to the underlying criminal case, and the People are equally entitled to due process of law. (Cal. Const., art. I, § 29.) Where a minor's case was officially and directly filed in the criminal division of the Superior Court under the laws in effect at the time, that filing necessarily recorded and identified the court in which the case would proceed and, once completed, neither filing nor criminal prosecution remained a pending issue in the case. Any attempt to use Proposition 57 to deny the People the right to continue its case as legally filed and to, instead, require them to return to the juvenile court and prevail in a 707 hearing before they can pursue a criminal prosecution, directly attaches new legal consequences to the underlying lawful criminal filing. Indeed, contrary to the position of the *Lara* court, to require the People to return to juvenile court for a 707 hearing before pursuing the case in adult court violates *Grant*, because it directly "attaches new legal consequences to . . . an event . . . that was *completed* before the law's effective date." (*Grant*, *supra*, 20 Cal.4th at p. 157.) To say otherwise is to defy logic and reason.

As the Fourth District Court of Appeal recently noted:

> [B]ecause the amendments to sections 602 and 707 brought about by Proposition 57 pertain to the *filing* of criminal charges . . . they do not ' "relate to the procedure to be followed *in the future*" ' [Citation] and do not 'appl[y] to proceedings that [will] take place *after* its enactment.' [Citation.].

(*Walker*, *supra*, 12 Cal.App.5th at p. 710, italics in original.)

The court went on to state:

> [C]ontrary to the *Lara* court, we conclude that applying Proposition 57 to cases properly filed in Adult Court under prior law *does* attach a new legal consequence to an event completed prior to the change in the law. [Citation.] Specifically, such application attaches a new legal consequence to the prior proper *filing* of charges in Adult Court, an event completed prior to the change in the law, by invalidating the filing and transferring the matter back to Juvenile Court.

(*Id.* at p. 717.) We fully concur.

As *Tapia* itself additionally noted, a retroactive law is defined as " 'one which affects rights, obligations, acts, transactions and conditions which are performed or exist prior to the adoption of the statute.' " (*Tapia*, *supra*, 53 Cal.3d at p. 291, quoting *Evangelatos*, *supra*, 44 Cal.3d at p. 1206.) Again, that is exactly what would occur here if new section 707 is applied to the case at bar. The People's *right* to proceed in adult court (without the need of a 707 hearing) was both proper and lawful when this case was filed and any attempt to apply new section 707 to this direct-file case would clearly affect that right by imposing new legal obligations that did not exist or apply to the right when the filing occurred.

III.

ALTHOUGH PENAL CODE SECTION 1170.17 HAS NO IMMEDIATE IMPACT ON THE PRESENT ISSUES, IT DOES PROVIDE YET ANOTHER REASON WHY THE DRAFTERS OF PROPOSITION 57 DID NOT NEED TO MAKE NEW SECTION 707 *RETROACTIVE*

Penal Code section 1170.17 covers the procedures used to determine whether a minor convicted in a direct-file case will be subject to adult or juvenile sentencing. The Legislature enacted this section to give minors who are convicted in direct-file cases the ability to achieve a juvenile disposition if, at the time they are convicted, their conviction offense meets

one of the exceptions listed in Penal Code section 1170.17.

And if this court ultimately agrees that Proposition 57 does not authorize direct-file cases to be remanded to the juvenile court for a 707 hearing, as the People and Amicus assert, then any direct-file cases that are currently pretrial will remain in adult court and, therefore, subject to Penal Code section 1170.17.[4]

But as we shall explain, if a minor is convicted in adult court *after* the effective date of Proposition 57, the minor will now receive a full juvenile disposition under Penal Code section 1170.17 unless the prosecutor files a motion and convinces the court, based upon a showing that mirrors the procedures required for a 707 hearing, that the minor is not a fit subject for handling under the juvenile law. (Pen. Code, § 1170.17, subd. (c)(2).) This outcome is a direct result of the recent changes to sections 602 and 707. Put differently, the potential exceptions to adult sentencing found in Penal Code section 1170.17 are directly dependent on the provisions of sections 602 and 707 in effect at the time of the conviction in a direct-file case.

Penal Code section 1170.17, subdivision (a), states:

> When a person is prosecuted for a criminal offense committed while . . . under 18 . . . and the prosecution was lawfully initiated in a court of criminal jurisdiction without a prior finding that the person is not a fit and proper subject to be dealt with under the juvenile court law, *upon subsequent conviction for any criminal offense*, the person shall be subject to the same sentence as an adult convicted of the

---

[4] Indeed, nothing in Proposition 57 mentions or discusses Penal Code section 1170.17, or specifies any intent to abrogate its provisions. Moreover, this court has long held that repeal of a statute by implication is disfavored. (*In Re White* (1969) 1 Cal.3d 207, 212.) " '[C]ourts are bound, if possible, to maintain the integrity of both statutes if the two may stand together.' " (*Ibid*; *State Dept. of Public Health v. Superior Court* (2015) 60 Cal.4th 940, 955-956.) Here, both new sections 602 and 707 and Penal Code section 1170.17 can clearly stand together.

> identical offense . . . *except* under the circumstances described in subdivision (b), (c) or (d).

(Italics added.)

And because the exceptions in subdivisions (b), (c) and (d) are dependent upon the language of sections 602 and 707, and because Penal Code section 1170.17, by its terms, only applies upon a defendant's *conviction*, it is necessarily the provisions of sections 602 and 707 that are in effect at the time of any subsequent conviction that will determine which exceptions under Penal Code section 1170.17, if any, will apply. In other words, employing new sections 602 and 707 to determine which exception under Penal Code section 1170.17 might apply to a subsequent conviction in a direct-file case, is a clear *prospective* application of the new laws.

The remaining question therefore is which, if any, of the circumstances providing a potential exception to adult sentencing under Penal Code section 1170.17, namely subdivision (b), (c) or (d), will be applicable to a minor in a direct-file case who is subsequently convicted in a court of criminal jurisdiction after the effective date of Proposition 57.

The exception listed in subdivision (b) of Penal Code section 1170.17 only applies to a conviction that is for an offense involving "a rebuttable presumption that the person is *not* a fit and proper subject to be dealt with under the juvenile court law." (Italics added.) Since there is no such provision in the current version of sections 602 and 707, and since it is new sections 602 and 707 that will apply to the resolution of this question, subdivision (b) is simply inapplicable.

And subdivision (d) only arises when the offense for which the defendant is convicted no longer makes the person eligible for adult prosecution. While this is likely to have limited application in most direct-file convictions, if and when it is applicable, subdivision (d) *mandates* a juvenile disposition despite the minor's conviction in adult court.

The final exception to adult sentencing is found in subdivision (c) of Penal Code section 1170.17. It is this subdivision that will now apply to all remaining direct-file defendants who are subsequently convicted after the effective date of Proposition 57. This subdivision states:

> [w]here the *conviction* is for the type of offense which, in combination with the person's age at the time the offense was committed, makes the person eligible for transfer to a court of criminal jurisdiction, pursuant to *a rebuttable presumption that the person is a fit and proper subject to be dealt with under the juvenile court law*, then the person shall be sentenced as follows . . . .

(Italics added.) This is the very situation created by new sections 602 and 707.

Under new section 602, all minors (for all offenses) are now *presumed fit* and are subject to the jurisdiction of the juvenile court unless and until the prosecutor subsequently *rebuts that presumption* by convincing a judge to the contrary upon a motion under section 707. And as stated earlier, since Penal Code section 1170.17 only applies to a *conviction* in a direct-file case, it is necessarily the provisions of sections 602 and 707 in effect at the time of the conviction that will control the outcome. Thus, assuming the current provisions of sections 602 and 707 remain in force at the time of any subsequent *conviction*, it is necessarily subdivision (c) of Penal Code section 1170.17 that will provide the exception to adult sentencing for all such minors.

And pursuant to subdivision (c), any individual falling within its ambit is automatically subject to disposition under juvenile court law *unless* the prosecutor files a motion and, using specific procedures comparable to a 707 hearing, demonstrates to the court that the defendant is not a fit and proper subject to be dealt with under the juvenile law. Specifically, this provision states:

> The person shall be subject to a juvenile disposition under the juvenile court law unless the district attorney demonstrates,

> by a preponderance of the evidence, that the person is not a fit and proper subject to be dealt with under the juvenile court law, based upon the five criteria set forth in paragraph (2) of subdivision (b).

(Pen. Code, § 1170.17, subd. (c)(2).)

These criteria mirror the five criteria found in subdivision (a)(2) of new section 707.[5] The fitness determination under Penal Code section 1170.17 also requires reports from the Probation Department equivalent to those generated for a 707 hearing. (Pen. Code, § 1170.17, subd. (c)(2) ["the court shall order the probation department to prepare a written social study and recommendation concerning the person's fitness to be dealt with under the juvenile court law."].)

As such, direct-file defendants who are convicted in a court of criminal jurisdiction after November 8, 2016, will possess the ability to obtain a juvenile disposition despite their conviction in adult court. That determination will be automatic unless the prosecutor files a motion and is able to convince the court, at the conclusion of the required hearing, that the defendant is not a fit and proper subject for juvenile jurisdiction. Moreover, the evidence received in that setting, in conjunction with the evidence received at trial, should give the judge a far superior opportunity to properly gauge, on behalf of the defendant and society, whether the defendant should be processed as an adult or a juvenile.

---

[5] Real party agrees "[t]he criteria for determining fitness under Penal Code section 1170.17 are identical to those [in] section 707, as amended," but adds "the nonexhaustive list of factors to be considered in analyzing each criterion are not articulated in the former." (ABM, pp. 29-30.) That statement is wholly inaccurate. Both statutes include the same material. The only functional difference is that section 707 divides each of the five criterion into two parts, the first listing the criterion itself, and the second listing the factors to be considered under that criterion. On the other hand, subdivision (b)(2) of Penal Code section 1170.17 combines each criterion and its relevant related factors into the same paragraph.

Thus, while the provisions of Penal Code section 1170.17 do not themselves directly address the immediate question at issue before this court, the fact that a juvenile disposition remains fully applicable to all direct-file defendants who are currently facing prosecution, does provide yet another reason why the drafters of new section 707 did not need to make its provisions retroactive, and why the voters were never given any such consideration.

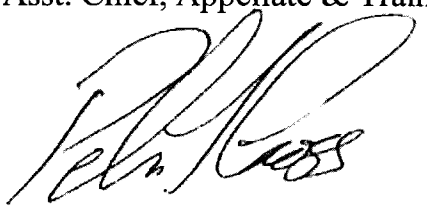
CONCLUSION

Based on the foregoing, we ask this court to find that a minor whose case was directly filed in a court of criminal jurisdiction, is not entitled to have his case returned to the juvenile court for a fitness hearing under new section 707.

Dated: August 11, 2017

Respectfully Submitted,

SUMMER STEPHAN
District Attorney
MARK A. AMADOR
Deputy District Attorney
Chief, Appellate & Training Division
LINH LAM
Deputy District Attorney
Asst. Chief, Appellate & Training Division



PETER J. CROSS
Deputy District Attorney

Attorneys for Amicus Curia
San Diego County District Attorney

In Support of Petitioner

CERTIFICATE OF WORD COUNT

I certify that this **AMICUS CURIAE BRIEF**, including footnotes, and excluding tables and this certificate, contains 4,295 words according to the computer program used to prepare it.

PETER J. CROSS
Deputy District Attorney

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA, Petitioner, v. THE SUPERIOR COURT OF RIVERSIDE COUNTY, Respondent.	For Court Use Only
PABLO ULLISSES LARA, JR., Real Party in Interest.	Supreme Court No.: S241231 Court of Appeal No.: E067296 Riverside County Sup. Ct. Nos.: RIF1601012 and RIJ1400019

PROOF OF SERVICE

I, the undersigned, declare as follows:

I am employed in the County of San Diego, over eighteen years of age and not a party to the within action. My business address is 330 West Broadway, Suite 860, San Diego, CA 92101.

On August 11, 2017, a member of our office served a copy of the within **APPLICATION OF THE SAN DIEGO COUNTY DISTRICT ATTORNEY FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF PETITIONER; AMICUS CURIAE BRIEF** to the interested parties in the within action by placing a true copy thereof enclosed in a sealed envelope, with postage fully prepaid, in the United States Mail, address as follows:

Laura Arnold Office of the Public Defender Attn: Writs & Appeal 30755-D Auld Rd., Suite 2233 Murrieta, CA 92563 ***Attorney for Pablo U. Lara***	Donald W. Ostertag Office of the District Attorney 3960 Orange Street Riverside, CA 92501
Superior Court of Riverside County Hon. Mark E. Petersen, Dept. J2 9991 County Farm Riverside, CA 92501 ***Respondent***	

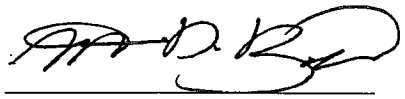
I electronically served the same referenced above document to the following entities:

ATTORNEY GENERAL'S OFFICE: AGSD.DAService@doj.ca.gov
APPELLATE DEFENDERS, INC: eservice-criminal@adi- sandiego.com
RIVERSIDE CO. SUP. COURT: appealsteam@riverside.courts.ca.gov

I also served the following parties electronically via www.truefiling.com:

COURT OF APPEAL, FOURTH DISTRICT, DIVISION ONE

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on August 11, 2017 at 330 West Broadway, San Diego, CA 92101.



Marites D. Balagtas