IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,

Petitioner,

v.

SUPERIOR COURT OF RIVERSIDE COUNTY,

Respondent,

PABLO ULLISSES LARA, JR.,

Real Party in Interest.

S241231

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

SUPPLEMENTAL REPLY BRIEF

MICHAEL A. HESTRIN
District Attorney
County of Riverside
ELAINA GAMBERA BENTLEY
Assistant District Attorney
KELLI M. CATLETT
Chief Deputy District Attorney
IVY B. FITZPATRICK
Acting Supervising Deputy District Attorney
DONALD W. OSTERTAG
Deputy District Attorney
County of Riverside

3960 Orange Street
Riverside, California, 92501
Telephone: (951) 955-0870
Fax: (951) 955-9566
Email: donostertag@rivcoda.org
State Bar No. 254151

Attorneys for Petitioner

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

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

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

SUPPLEMENTAL REPLY BRIEF

MICHAEL A. HESTRIN
District Attorney
County of Riverside
ELAINA GAMBERA BENTLEY
Assistant District Attorney
KELLI M. CATLETT
Chief Deputy District Attorney
IVY B. FITZPATRICK
Acting Supervising Deputy District Attorney
DONALD W. OSTERTAG
Deputy District Attorney
County of Riverside

3960 Orange Street
Riverside, California, 92501
Telephone: (951) 955-0870
Fax: (951) 955-9566
Email: donostertag@rivcoda.org
State Bar No. 254151

Attorneys for Petitioner

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

MICHAEL A. HESTRIN
District Attorney
County of Riverside
ELAINA GAMBERA BENTLEY
Assistant District Attorney
KELLI M. CATLETT
Chief Deputy District Attorney
IVY B. FITZPATRICK
Acting Supervising Deputy District Attorney
DONALD W. OSTERTAG
Deputy District Attorney
3960 Orange Street
Riverside, California 92501
Telephone: (951) 955-0870
State Bar No. 254151

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

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

INTRODUCTION

The juvenile-law amendments enacted by Proposition 57 are not retroactively applicable under the rationale of *In re Estrada* (1965) 63 Cal.2d 740 (*Estrada*). That is because *Estrada*, as previously interpreted by this Court, is applicable where a new law reduces punishment for a particular criminal offense. Proposition 57 fails to meet the requirements of

the *Estrada* exception for two reasons: (1) Proposition 57 did not directly reduce punishment, but rather provided a procedural framework dictating the manner and method by which prosecutions against juvenile offenders may be transferred from juvenile court to adult court; and (2) Proposition 57 did not relate to a particular criminal offense, but rather to a host of various criminal offenses, up to and including *every* felony offense committed when a minor was 16 years of age or older. As such, application of *Estrada* to the instant case would necessitate an expansion of the *Estrada* exception beyond its current parameters.

Expanding *Estrada* in the manner urged by real party would be ill advised. It is an easy task for the drafters of an initiative to include language making a proposed law retroactive. Indeed, the electorate has cast votes on many such initiatives in recent years, including several in the election during which Proposition 57 was approved. But Proposition 57 contained no language regarding retroactive application, triggering the well-established presumption that new laws that are silent regarding retroactivity will be applied prospectively only. A voter considering Proposition 57, presumed aware of existing laws, would have rightly believed the initiative's silence regarding retroactivity equated with a prospective application. What real party urges is for this Court to write an absent provision into the new law. Such a ruling would not only be unjust to the voters who considered Proposition 57, it would threaten the very democracy of California's initiative process.

As stated previously, petitioner fully accepts the broad and widespread changes brought about by Proposition 57. There is no doubting the electorate's intent to overhaul the manner in which prosecution of a juvenile offender may move into a court of criminal jurisdiction. But as broad and sweeping as that intent may have been, the electorate simply did

not express an intent for the new law to apply retroactively. Accordingly, the juvenile-law amendments enacted by Proposition 57 must be applied prospectively only.

ARGUMENT

I.

PROPOSITION 57 IS NOT RETROACTIVELY APPLICABLE UNDER THE RATIONALE OF *ESTRADA*

As relevant here, the *Estrada* exception, as previously interpreted by this Court, is limited to situations where a new law reduces punishment for a particular criminal offense.[1] Proposition 57 neither reduces punishment nor applies to a particular criminal offense. As such, *Estrada* is inapplicable in the present case.

Penal Code section 3 specifies that no statute is retroactive, "unless expressly so declared." (Pen. Code, § 3.) The Civil Code and Code of Civil Procedure contain identical mandates. (Civ. Code, § 3; Code Civ. Proc., § 3.) These statutory provisions serve to codify the long-standing, common-law rule that, "in the absence of an express retroactivity provision, a statute will not be applied retroactively unless it is very clear from extrinsic sources that the Legislature [or electorate] . . . must have intended a retroactive application.' [Citations.]" (*People v. Brown* (2012) 54 Cal.4th

---

[1] This Court has also relied upon *Estrada* to conclude a change in the law that decriminalizes conduct or provides a defendant with a new defense applies retroactively to cases that are not yet final. (See, e.g., *People v. Rossi* (1976) 18 Cal.3d 295, 299-302 ["the common law principles reiterated in *Estrada* apply a fortiori when criminal sanctions have been completely repealed before a criminal conviction becomes final"]; *People v. Wright* (2006) 40 Cal.4th 81, 94-95 [discussing *Rossi* and related cases].) Neither of those scenarios are applicable in the present case.

314, 319 (*Brown*); accord *Tapia v. Superior Court* (1991) 53 Cal.3d 282, 287 (*Tapia*) ["It is well settled that a new statute is presumed to operate prospectively absent an express declaration of retrospectivity or a clear indication that the electorate, or the Legislature, intended otherwise."]; *Evangelatos v. Superior Court* (1988) 44 Cal.3d 1188, 1214 (*Evangelatos*) ["The presumption of prospectivity assures that reasonable reliance on current legal principles will not be defeated in the absence of a clear indication of a legislative intent to override such reliance."].) And although the Welfare and Institutions Code does not contain a provision codifying this common law rule, this Court has previously made clear the presumption in favor of prospective application applies with respect to the interpretation of statutes generally. (*Stenger v. Anderson* (1967) 66 Cal.2d 970, 977 [applying the rule of prospective application to the Welfare and Institutions Code].)

Estrada created a limited exception to the prospective-only presumption of statutory amendments. Specifically, in *Estrada*, the defendant was convicted of escape without force or violence in violation of former Penal Code section 4530. (*Estrada, supra*, 63 Cal.2d at p. 743.) After his commission of the act, but before his conviction and sentence, the applicable statutes were specifically amended to reduce the penalties for an escape without force or violence. (*Ibid.*) *Estrada* identified "[t]he problem" as "one of trying to ascertain the legislative intent," and it specified that "the problem" would be the same even if the amendment had become effective while an appeal was pending. (*Id.* at p. 744.)

Estrada concluded the Legislature must have intended for the amended statutes to apply retroactively, explaining:

> When the Legislature amends a statute so as to lessen the punishment[,] it has obviously expressly determined that its former penalty was too severe and that a lighter punishment is proper as punishment for the commission of the prohibited act. It is an inevitable inference that the Legislature must have intended that the new statute imposing the new lighter penalty now deemed to be sufficient should apply to every case to which it constitutionally could apply. The amendatory act imposing the lighter punishment can be applied constitutionally to acts committed before its passage provided the judgment convicting the defendant of the act is not final. This intent seems obvious, because to hold otherwise would be to conclude that the Legislature was motivated by a desire for vengeance, a conclusion not permitted in view of modern theories of penology.

(*Estrada*, *supra*, 63 Cal.2d at p. 745.)

In the more than 50 years since *Estrada* was decided, this Court has had many opportunities to consider its application in various contexts. In *Brown*, this Court explained the limited nature of the *Estrada* rule:

> *Estrada* is today properly understood, not as weakening or modifying the default rule of prospective operation codified in [Penal Code] section 3, but rather as informing the rule's application in a *specific context* by articulating the reasonable presumption that a legislative act mitigating the punishment for a particular criminal offense is intended to apply to all nonfinal judgments.

(*Brown*, *supra*, 54 Cal.4th at p. 324, italics in original.)

Brown rejected the defendant's argument that, under *Estrada*, a statute increasing the rate at which eligible defendants could earn conduct

credits (thereby reducing the amount of time such defendants were required to spend in custody) applied retroactively. (*Id.* at p. 325.) *Brown* reasoned that the "holding in *Estrada* was founded on the premise that '"[a] legislative mitigation of the penalty for a particular crime represents a legislative judgment that the lesser penalty or the different treatment is sufficient to meet the legitimate ends of the criminal law,"'" and concluded that the statute at issue did "not represent a judgment about the needs of the criminal law with respect to a particular criminal offense, and thus does not support an analogous inference of retroactive intent." (*Ibid.*)

Here, just as in *Brown*, Proposition 57 neither represents a change regarding a particular criminal offense, nor does it mitigate punishment for a particular criminal offense. Rather, Proposition 57 alters only the procedural aspects of prosecuting minor offenders, dictating the manner and method by which such prosecutions may be transferred from juvenile courts to courts of criminal jurisdiction. Just as in *Brown*, this type of change is outside the rule of *Estrada*, and is therefore subject to the general rule that newly enacted laws apply prospectively only.

Similarly, in *People v. Conley* (2016) 63 Cal.4th 646 (*Conley*), this Court concluded the Three Strikes Reform Act of 2012 (Reform Act) could not be applied retroactively pursuant to *Estrada* so as to mandate "automatic resentencing for third strike defendants serving nonfinal sentences imposed under the former version of the Three Strikes law." (*Conley*, *supra*, 63 Cal.4th at p. 657.) *Conley* reasoned that although there was "no doubt that the Reform Act was motivated in large measure by a determination that sentences under the prior version of the Three Strikes law were excessive," the "presumption about legislative intent" reflected in *Estrada* did not apply. (*Id.* at pp. 656, 658.)

In support of this conclusion, *Conley* noted that the Reform Act did not merely reduce penalties, as in *Estrada*. (*Conley*, *supra*, 63 Cal.4th at p. 659.) Rather, the Reform Act also contained a "new set of disqualifying factors that preclude a third strike defendant from receiving a second strike sentence." (*Ibid.*) Thus, as *Conley* explained, an "application of the Reform Act's revised sentencing scheme would not be so simple as mechanically substituting a second strike sentence for a previously imposed indeterminate life term." (*Id.* at p. 660.) Under these circumstances, *Conley* refused to apply *Estrada* because it could not say with "confidence, as [it] did in *Estrada*, that the enacting body lacked any discernible reason to limit application of the law with respect to cases pending on direct review." (*Id.* at pp. 658-659.)

Here, like in *Conley*, application of Proposition 57 to cases that were already pending in adult court prior to the new law's effective date would not be so simple as mechanically substituting a more lenient sentencing scheme upon a defendant's conviction (or true finding). Rather, it would require uprooting properly pending cases, invalidating prior lawful decisions to move those cases into adult court, and ascertaining a mechanism by which to apply the newly enacted procedural requirements in juvenile court. A *possible* result of such actions would be that some of those cases might remain in juvenile court (which would render meaningless any procedural acts that occurred while the cases were previously in adult court). But a *certain* result of those actions would be that many negative unintended consequences—as outlined in previous briefing—would arise. A voter considering Proposition 57 may have very well believed it important to avoid such negative consequences, and believed that the initiative's silence regarding retroactivity addressed his or her concern. As such, just in in *Conley*, it cannot be said the electorate

"lacked any discernible reason to limit application of the law" with respect to cases properly pending in adult court prior to the law's effective date. (*Conley*, *supra*, 63 Cal.4th at pp. 658-659; see *People v. Superior Court (Walker)* (2017) 12 Cal.App.5th 687, 705 ["both the procedural difficulties with respect to *how* to apply Proposition 57 retroactively, as well as the existence of a legitimate motive that voters may have had for intending that the proposition apply only prospectively, support our conclusion that *Estrada* does not require a retroactive application of the new law."].)

Given that *Estrada*, in its current form, is inapplicable to Proposition 57, the issue shifts to whether this Court should expand *Estrada* beyond its current parameters. Real party suggests *Estrada* should not be limited to reductions in punishment for specific criminal offenses, but should also encompass new laws, like those enacted by Proposition 57, altering past procedural acts that could potentially lead to a more lenient sentence. For the reasons set forth below, not only is this argument without merit, it threatens the very integrity of California's initiative process.

It is an easy task for the drafters of an initiative to include language making a proposed law retroactive. Indeed, in recent years the electorate has cast votes on a host of various initiatives containing such language. For example, at the same election during which the voters approved Proposition 57, they also voted on Proposition 62, the text of which stated: "SEC. 10. Retroactive Application of Act. (a) In order to best achieve the purpose of this act . . . and to achieve fairness, equality, and uniformity in sentencing, this act shall be applied retroactively." (Voter Information Guide, Gen. Elec. (Nov. 8, 2016) text of Prop. 62, p. 163.) Similarly, at the same election, the voters approved Proposition 64, which reduced punishment for various marijuana-related offenses, and included express provisions permitting retroactive application of those reductions. (Ballot Pamp., Gen.

Elec. (Nov. 8, 2016) text of Prop. 64, § 3, subd. (z), p. 180 [purpose and intent of new law is to permit relief for persons previously convicted of reduced offenses]; see Health & Saf. Code, § 11361.8 [new statute added by Proposition 64 expressly outlined procedure by which to apply the reductions retroactively].) Proposition 47, passed by the voters on November 4, 2014, contained similar language. (Voter Information Guide, Gen. Elec. (Nov. 4, 2014) analysis of Prop. 47 by Legis. Analyst, p. 35; see Pen. Code, § 1170.18.)

Although examples like those listed above abound, Proposition 57 is not one of them. Rather, the drafters of Proposition 57 left the initiative wholly silent regarding whether the proposed juvenile-law amendments should be applied retroactively. That silence leaves us with the presumption that the voters intended the new to apply prospectively only. (See *People v. Gonzales* (2017) 2 Cal.5th 858, 869 [the electorate is presumed aware of existing laws and the "judicial construction thereof"]; *Brown, supra,* 54 Cal.4th at p. 319 [absent an express retroactivity provision, a new law is presumptively prospective].) If *Estrada* were now expanded to apply Proposition 57 retroactively, the new law will take a form very different from that considered by the voters. As this Court has stated: """[I]n the case of a voters' initiative statute . . . we may not properly interpret the measure in a way that the electorate did not contemplate: the voters should get what they enacted, not more and not less."""" (*People v. Valencia* (2017) 3 Cal.5th 347, 375, quoting *Robert L. v. Superior Court* (2003) 30 Cal.4th 894, 909, and *Hodges v. Superior Court* (1999) 21 Cal.4th 109, 114.)

Of the utmost importance is ensuring voters are provided with the law they intended. (See *Estrada, supra,* 63 Cal.2d at pp. 744-746.) Had the drafters of Proposition 57 expressly stated the new laws were to apply

retroactively, and had Proposition 57 still been passed by the electorate including such language, there would be no question regarding intent. Indeed, had an express retroactivity provision been included within Proposition 57, it likely would have also contained a procedural mechanism by which to apply the new law retroactively, as was included by the drafters of Proposition 64 (Health & Saf. Code, § 11361.8) and Proposition 47 (Pen. Code, § 1170.18), among others. And as beneficial as it may be for the drafters of initiatives to include language specifically stating the proposed law is *not* retroactive, such language is unnecessary. That is due to the long-standing presumption that, absent an express retroactivity provision, new laws are prospective only. (See *Brown, supra,* 54 Cal.4th at p. 319; *Tapia, supra,* 53 Cal.3d at p. 287; *Evangelatos, supra,* 44 Cal.3d at p. 1214.)

What remains is an initiative that did not contain an express retroactivity provision, and does not fit within the *Estrada* exception as previously interpreted by this Court. And while this Court could of course expand *Estrada* to encompass Proposition 57, such an expansion is not something the voters who considered the initiative could have predicted. In addition, such an expansion would send a message to the drafters of initiatives that silence and vagueness regarding retroactivity might nonetheless lead to a retroactive application. This would not only produce a dramatic shift in the current state of the law, it would strip voters of the clarity and candor necessary for the effective exercise of their constitutionally protected ability to enact new laws through the initiative process. (See *Briggs v. Brown* (Aug. 24, 2017, S238309) ___ Cal.5th ___ [2017 Cal. Lexis 6575 *101] (dis. opn. of Cuellar, J.) ["What voters most need so they can exercise their constitutionally protected franchise effectively is clarity and candor."].)

As fair a ruling as *Estrada* may have been at the time, it has produced a plethora of litigation and confusion in the more than 50 years since it was decided. And although this Court has repeatedly reiterated the limited nature of *Estrada*, a practical reality in the lower courts is that nearly anytime a new initiative fails to contain an express retroactivity provision, an argument is raised that it is nonetheless retroactive under *Estrada*. Proposition 57 is just one example of the many recent initiatives that have divided the lower courts regarding *Estrada*'s application. That division not only comes at the cost of scarce judicial resources, it hampers the fair administration of justice for persons, such as real party, who are accused or convicted of crimes. The drafters of initiatives must be made aware that if a proposed law is meant to apply retroactively, the initiative must clearly state, and the voters must be clearly presented with, express language indicating such an intent. The continued integrity of the initiative process requires such a result.

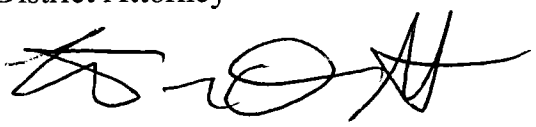
CONCLUSION

For the reasons stated above, in addition to the reasons set forth in previous briefing, the juvenile-law amendments enacted by Proposition 57 are not retroactively applicable under the rationale of *Estrada*.

Dated: September 5, 2017

Respectfully submitted,

MICHAEL A. HESTRIN
District Attorney
County of Riverside
ELAINA GAMBERA BENTLEY
Assistant District Attorney
KELLI M. CATLETT
Chief Deputy District Attorney
IVY B. FITZPATRICK
Acting Supervising Deputy
District Attorney



DONALD W. OSTERTAG
Deputy District Attorney
County of Riverside

CERTIFICATE OF WORD COUNT

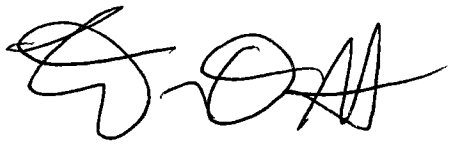
Case No. S241231

The text of the **SUPPLEMENTAL REPLY BRIEF** in the instant case consists of 2,922 words as counted by the Microsoft Word program used to generate the said **SUPPLEMENTAL REPLY BRIEF.**

Executed on September 5, 2017.

Respectfully submitted,

MICHAEL A. HESTRIN
District Attorney
County of Riverside
ELAINA GAMBERA BENTLEY
Assistant District Attorney
KELLI M. CATLETT
Chief Deputy District Attorney
IVY B. FITZPATRICK
Acting Supervising Deputy District Attorney



DONALD W. OSTERTAG
Deputy District Attorney
County of Riverside

DECLARATION OF ELECTRONIC SERVICE

Case Name: People v. Superior Court (Lara)
Case No.: S241231 (Related Case No. E067296)

I, the undersigned, declare:

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

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

My electronic service address is Appellate-Unit@RivCoDa.org.

That on September 5, 2017, I served a copy of the within, **SUPPLEMENTAL REPLY BRIEF**, by electronically serving the following parties:

LAURA ARNOLD
Public Defender's Office
LOPDAppellateUnit@rivco.org

Riverside County Superior Court
Attn: Hon. Richard T. Fields
Attn: Hon. Mark E. Petersen
appealsteam@riverside.courts.ca.gov

Appellate Defender's, Inc.
eservice-court@adi-sandiego.com

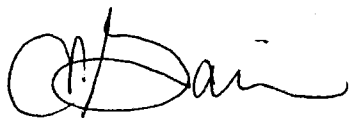
Attorney General's Office
sdag.docketing@doj.ca.gov

Fourth District Court of Appeal
Division Two
Case No. E067296
(served via TrueFiling)

STEVEN S. MITCHELL
mitchelllaw4u@gmail.com

I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct.

Dated: September 5, 2017



ESPERANZA GARCIA