In the Supreme Court of the State of California

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff and Respondent,

v.

OSCAR MACHADO,

Defendant and Appellant.

Case No. S219819

Second Appellate District, Division One, Case No. B249557
Los Angeles County Superior Court, Case No. YA036692
The Honorable William C. Ryan, Judge

RESPONDENT'S OPENING BRIEF ON THE MERITS

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ISSUE PRESENTED

The question presented by this case is one of statutory interpretation: under Penal Code section 1170.126,[1] is an inmate who has been sentenced pursuant to the Three Strikes Law to an indeterminate term for a serious and/or violent felony eligible for resentencing on other discrete counts for which indeterminate terms were imposed where those additional counts were not based on serious and/or violent felonies?

INTRODUCTION

In 1998, appellant was convicted of first degree residential burglary (a serious felony offense pursuant to section 1192.7, subdivision (c)) and second degree burglary of a vehicle (an offense that is categorized as neither violent nor serious pursuant to sections 667.5, subdivision (c), and 1192.7, subdivision (c)). After finding that he had suffered two prior strike convictions (§§ 667, subds (b)-(i), 1170.12, subds (a)-(d)), the trial court sentenced appellant to two consecutive terms of 25 years to life.

Both the language of section 1170.126 and the evidence of the electorate's intent support the conclusion that any defendant convicted of any serious and/or violent offense is not eligible for resentencing, even on those additional discrete counts that are not serious and/or violent. Accordingly, the Court of Appeal's conclusion to the contrary should be reversed, and the trial court's denial of appellant's petition for recall of sentence should be affirmed.

STATEMENT OF THE CASE

On April 16, 2013, appellant filed a petition for recall of sentence pursuant to section 1170.126 in the Los Angeles County Superior Court.

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[1] Unless stated otherwise, all further statutory references are to the Penal Code.

(CT 3.) According to the petition, a jury convicted appellant of second degree burglary of a vehicle (§ 459) and first degree residential burglary (§ 459) in 1998. After finding that he had suffered two prior strike convictions (§§ 667, subds (b)-(i), 1170.12, subds (a)-(d)), the trial court sentenced appellant to two consecutive terms of 25 years to life. (CT 4, 13-16.)

On April 29, 2013, the superior court denied appellant's petition for recall of sentence because his "current conviction for burglary in the first degree is a serious felony pursuant to Penal Code section 1192.7(c)(18) making [appellant] ineligible for resentencing under Penal Code section 1170.126." (CT 85.)

On appeal, appellant contended that he was eligible for recall and resentencing on his second degree burglary conviction, because second degree burglary was not a serious or violent crime. The Court of Appeal agreed, concluding that the statutory language supported appellant's eligibility for resentencing on his second degree burglary conviction and that such a conclusion was consistent with the voters' objectives in passing the Three Strikes Reform Act of 2012. (Opn. at 2, 7-10, 12-14.) When respondent filed a petition for rehearing requesting that the court address *Braziel v. Superior Court* (2014) 225 Cal.App.4th 933,[2] which had reached a contrary conclusion, the Court of Appeal modified its opinion to add a footnote explaining why it disagreed with *Braziel*, and denied rehearing. (Order Modifying Opn. at 1-2.)

SUMMARY OF THE ARGUMENT

The Court of Appeal below erroneously concluded that, under section 1170.126, appellant was eligible for resentencing on a third-strike term that was imposed for a nonserious, nonviolent offense even though he had also

[2] This Court granted review in *Braziel* along with this case.

suffered a current conviction of a serious offense. Subdivision (a) of section 1170.126 states that the resentencing provisions "apply exclusively to persons presently serving an indeterminate term of imprisonment . . . whose sentence under this [A]ct would not have been an indeterminate life sentence." Because appellant suffered a current conviction of first degree residential burglary – a serious felony – he was ineligible for resentencing under section 1170.126. The language in subdivisions (b), (d), and (e) is consistent with this interpretation of subdivision (a). Indeed, the requirement in subdivision (d) that a petition for recall of sentence specify *all* current felonies resulting in an indefinite life sentence supports the conclusion that the court must consider *all* current felonies in determining eligibility for recall of sentence.

Moreover, the Voter Information Guide told voters that the enactment of section 1170.126 would confer "no benefits whatsoever" on "truly dangerous criminals." Appellant, an inmate serving a third-strike life sentence for a serious felony, is clearly one of the truly dangerous criminals upon whom the electorate was told it would not be conferring any benefits. Furthermore, the Court of Appeal's construction of section 1170.126 could lead to the absurd result of precluding resentencing for an inmate who had suffered a *prior* conviction of an offense listed in sections 667, subdivision (e)(2)(C)(iv), or 1170.12, subdivision (c)(2)(C)(iv), but permitting resentencing for an inmate who had suffered a *current* conviction of one of those offenses. Finally, the rule of lenity has no application here because the meaning of the statute, and the intent of the electorate to preclude resentencing for petitioners such as appellant, is clear.

ARGUMENT

THE THREE STRIKES REFORM ACT DOES NOT PROVIDE FOR SEPARATE CONSIDERATION OF A DEFENDANT'S ELIGIBILITY FOR RESENTENCING AS TO EACH COUNT

Because appellant suffered a current conviction of a serious felony (as well as a conviction of a nonviolent/nonserious offense), he is ineligible for resentencing under section 1170.126. Both the statutory language and the Voter Information Guide evince an intent on the part of the electorate to exclude petitioners who have suffered a current conviction of a serious and/or violent felony from taking advantage of the resentencing provisions of section 1170.126. Accordingly, the judgment of the Court of Appeal should be reversed.

A. The Three Strikes Reform Act of 2012

On November 6, 2012, the electorate approved Proposition 36, the Three Strikes Reform Act of 2012 (hereafter the "Act"), which amended sections 667 and 1170.12, and added section 1170.126 to the Penal Code. The Act's effective date was November 7, 2012. Prior to the Act's enactment, the Three Strikes Law provided that a recidivist offender with two or more prior qualifying strikes was subject to an indeterminate life sentence if convicted of any new felony offense. (See *People v. Superior Court* (*Kaulick*) (2013) 215 Cal.App.4th 1279, 1285-1286; *People v. Yearwood* (2013) 213 Cal.App.4th 161, 167-168.) The Act now reserves

> the life sentence for cases where the current crime is a serious or violent felony or the prosecution has pled and proved an enumerated disqualifying factor. In all other cases, the recidivist will be sentenced as a second strike offender.

(*People v. Yearwood*, *supra*, 213 Cal.App.4th at pp. 167-168; see also § 667, subd. (e)(2)(C) [a defendant with two prior strikes whose current conviction is not defined as a serious or violent felony shall be sentenced as a second strike offender], 1170.12, subd. (c)(2)(C) [same].)

The Act also created a procedure for "persons presently serving an indeterminate term of imprisonment" under the former Three Strikes Law "whose sentence under this [A]ct would not have been an indeterminate life sentence." (Pen. Code, § 1170.126, subd. (a).) Under the Act, any person serving a Three Strikes sentence, whose triggering offense is not defined as serious or violent (see §§ 667.5, subd. (c), 1192.7, subd. (c)), could file, before the court that entered the judgment of conviction, a "petition for a recall of sentence" within two years of the date of the Act or at a later date on a showing of good cause. (§ 1170.126, subd. (b).)

Pursuant to section 1170.126, a defendant is eligible for resentencing if: (1) the defendant is serving an indeterminate term of life imprisonment imposed under the Three Strikes Law for a conviction of a felony that is not defined as serious and/or violent (see §§ 667.5, 1192.7, subd. (c)); (2) the defendant's current sentence was not imposed for disqualifying offenses specified in sections 667, subdivision (e)(2)(C), and 1170.12, subdivision (c)(2)(C); and (3) the defendant has no prior convictions for offenses listed in sections 667, subdivision (e)(2)(C)(iv), and 1170.12, subdivision (c)(2)(C)(iv). (§ 1170.126, subd. (e).)[3]

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[3] Penal Code section 1170.126, subdivision (e), states:

> An inmate is eligible for resentencing if: (1) The inmate is serving an indeterminate term of life imprisonment imposed pursuant to paragraph (2) of subdivision (e) of Section 667 or subdivision (c) of Section 1170.12 for a conviction of a felony or felonies that are not defined as serious and/or violent felonies by subdivision (c) of Section 667.5 or subdivision (c) of Section 1192.7.
>
> (2) The inmate's current sentence was not imposed for any of the offenses appearing in clauses (i) to (iii), inclusive, of subparagraph (C) of paragraph (2) of subdivision (e) of Section

(continued...)

If a trial court determines that the defendant satisfies this criteria, then it shall resentence the defendant as a second strike offender, "unless the court, in its discretion, determines that resentencing the petitioner would pose an unreasonable risk of danger to public safety." (Pen. Code, § 1170.126, subd. (f).) In exercising its discretion, the trial court may consider the defendant's criminal conviction history, disciplinary record and record of rehabilitation while incarcerated, and any other evidence the court, in its discretion, determines to be relevant. (Pen. Code, § 1170.126, subd. (g).)

B. The Act Does Not Provide for Separate Consideration of a Defendant's Eligibility for Resentencing as to Each Count

In interpreting a ballot initiative, this Court has held that courts should look to the initiative's plain language and attempt to effectuate the voters' intent:

> [O]ur interpretation of a ballot initiative is governed by the same rules that apply in construing a statute enacted by the Legislature. [Citations.] We therefore first look to "the language of the statute, affording the words their ordinary and usual meaning and viewing them in their statutory context." [Citations.] Once the electorate's intent has been ascertained, the provisions must be construed to conform to that intent. [Citation.] "[W]e may not properly interpret the measure in a way that the electorate

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(...continued)

> 667 or clauses (i) to (iii), inclusive, of subparagraph (C) of paragraph (2) of subdivision (c) of Section 1170.12.
>
> (3) The inmate has no prior convictions for any of the offenses appearing in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 or clause (iv) of subparagraph (C) of paragraph (2) of subdivision (c) of Section 1170.12.

> did not contemplate: the voters should get what they enacted, not more and not less." [Citation.]

(*People v. Park* (2013) 56 Cal.4th 782, 796.) "If the statutory language is not ambiguous, then the plain meaning of the language governs." (*People v. Lopez* (2005) 34 Cal.4th 1002, 1006.)

> "'If, however, the statutory language lacks clarity, we may resort to extrinsic sources, including the ostensible objects to be achieved and the legislative history. [Citation.] In such situations, we strive to select the construction that comports most closely with the Legislature's apparent intent, with a view to promoting rather than defeating the statute['s] general purposes. [Citation.] We will avoid any interpretation that would lead to absurd consequences. [Citation.]' [Citation.]" [Citation.]

(*People v. Elliot* (2005) 37 Cal.4th 453, 478.)

In interpreting section 1170.126, this Court should give primacy to subdivision (a), because it is a declaration of purpose. (See *Schinkel v. Superior Court* (2014) 229 Cal.App.4th 935, 943 ; *People v. Anthony* (Oct. 30, 2014, E058264) ___ Cal.App.4th ___, ___ [2014 WL 5395784, *3].) Subdivision (a) provides that the resentencing provisions "apply exclusively to persons presently serving an indeterminate term of imprisonment . . . whose sentence under this [A]ct would not have been an indeterminate life sentence."

The Court of Appeal below erroneously concluded that the language of subdivision (a) "is consistent with a conclusion that a petitioner is eligible for resentencing on a third-strike term that was imposed for a nonserious, nonviolent commitment offense, notwithstanding ineligibility on other third-strike terms . . . ." (Opn. at 7.) It is undisputed that the sentence for one of appellant's current offenses (first degree residential burglary – a serious felony (§ 1192.7, subd. (c)) would have been an indeterminate life sentence under the Act. The only way the current

sentence would not have been an indeterminate life term under section 1170.126, subdivision (a) is if *no* commitment conviction was disqualifying, and thus eligibility must be assessed on the commitment judgment as a whole and not per offense. Accordingly, appellant is not eligible for recall and resentencing under section 1170.126. (See *Schinkel v. Superior Court*, *supra*, 229 Cal.App.4th at p. 943 [defendant who had disqualifying current conviction was "not someone 'whose sentence under this [A]ct would not have been an indeterminate life sentence'"; consequently, Act's resentencing provisions were not meant to apply to him]; see also *People v. Anthony*, *supra*, 2014 WL 5395784, *3 ["The use of the terms 'exclusively' and 'persons' [in § 1170.126, subd. (a)] directly supports the People's position that the overall intent of the statute is to exclude from its benefits any persons whose current commitment offenses include a serious or violent felony."].)

Even assuming arguendo that the word "sentence" in subdivision (a) is ambiguous in that it could be used to describe a component of an aggregate sentence as well as the aggregate sentence itself, subdivision (d) of section 1170.126 conclusively resolves any ambiguity. Subdivision (d) states that "[t]he petition . . . shall specify *all of the currently* charged *felonies*, which resulted in *the sentence* . . ." presently served. Because "[i]t is . . . generally presumed that when a word is used in a particular sense in one part of a statute, it is intended to have the same meaning if it appears in another part of the same statute" (*Delaney v. Baker* (1999) Cal.4th 23, 41), "sentence" in subdivision (a) must have the same meaning as in subdivision (d), i.e., the aggregate sentence. Subdivision (d) clearly employs "sentence" to mean the aggregate sentence – the sentence that resulted from the total of all felonies charged and convicted. If "sentence" in subdivision (a) means aggregate sentence, appellant is clearly ineligible for resentencing under section 1170.126 because his aggregate sentence under

the Act would have included an indeterminate life term. (See *People v. Anthony*, *supra*, 2014 WL 5395784, *3.)

The other provisions of section 1170.126 are consistent with this interpretation. Subdivision (b) provides that only those inmates who are serving an indeterminate life sentence for an offense that was not serious and/or violent may petition for recall of sentence. Appellant, in addition to serving an indeterminate term for a nonserious and nonviolent felony, is serving an indeterminate term for a serious felony. Thus, appellant is not eligible to petition for recall and resentencing under subdivision (b) of the statute.

Similarly, section 1170.126, subdivision (e)(1), provides that an inmate is eligible for resentencing if he is serving an indeterminate life term under the Three Strikes Law for a conviction of a felony that is not categorized as serious or violent. Stripped of language irrelevant to the discussion here, the section reads, "The inmate [must be] serving an indeterminate term of life imprisonment . . . for a conviction of a felony or felonies that are not [serious or violent]." This formulation admits of two cases: (1) The inmate is serving a third-strike sentence for a single underlying "felon[y] that [is] not [serious or violent]," or (2) The inmate is serving a third strike sentence for two or more "felonies that are not [serious or violent]." Nowhere in this formulation is there room for "The inmate is serving a term for one or more serious or violent felonies," which would be the case if any of the felonies underlying the term were serious or violent. The statute's language simply does not allow room for the Court of Appeal's interpretation below. (Opn. at 8.) In addition to serving a third-strike sentence for a felony that is not violent and/or serious, appellant is serving a third-strike sentence for a serious felony. Hence, appellant is also ineligible for resentencing under subdivision (e)(1).

However, even if there is room for ambiguity in the language of subdivision (e)(1), the structure of subdivision (e) demonstrates that any inmate who is serving an indeterminate term under the Three Strikes Law for a serious and or violent felony is ineligible for relief. Subdivisions (e)(2) and (e)(3) disqualify inmates from eligibility for resentencing on all counts if those inmates have factors relating to their current offenses, or specific prior offenses, respectively. Thus, subdivisions (e)(2) and (e)(3) support the conclusion that a court looks to the judgment as a whole, rather than to a discrete offense, to determine eligibility under (e)(1). To interpret subdivisions (e)(2) and (e)(3) to render an inmate ineligible based on a single disqualifying conviction, while interpreting subdivision (e)(1) to permit eligibility despite a disqualifying conviction makes little sense. Instead, if Penal Code section 1170.126, subdivisions (e)(1), (e)(2), and (e)(3) are harmonized, a single serious or violent offense would preclude resentencing for any other commitment offenses under subsection (e)(1), much as a single disqualifying offense would preclude resentencing for any other commitment offense under subsections (e)(2) and (e)(3). The plain language of the statute supports this interpretation. The Court of Appeal's interpretation below instead creates operative discord between the three subsections of subdivision (e). (See *People v. Arias* (2008) 45 Cal.4th 169, 177 [when construing an ambiguous statute, courts must favor a construction which is internally consistent.].)

The presence of section 1170.126, subdivision (d), which requires the petition for recall of sentence to specify *all* of the current felonies resulting in an indeterminate life sentence, also strongly weighs in favor of a conclusion that a petitioner such as appellant is ineligible for resentencing. The determination of the Court of Appeal below that the purpose of subdivision (d) is to "ensure[] that, in exercising its discretion under subdivision (f) of section 1170.126, the trial court will have before it a

significant body of relevant information as to other convictions" (Opn. at 9) is untenable. The purpose of the requirement in subdivision (d) is to give the trial court the opportunity to identify inmates who are not eligible for recall and resentencing due to their current convictions of serious and/or violent felonies. (See *People v. Anthony*, *supra*, 2014 WL 5395784, *3.) The requirement that an inmate list all of his triggering felonies resulting in his life sentence can only reasonably be read as relating to eligibility under subdivision (e)(1), and not a determination of dangerousness under subdivision (f), which would occur after a noticed hearing at which evidence is presented, and would necessarily be based on all of the defendant's current and prior offenses, and not just those current offenses that are serious and/or violent. (§ 1170.126, subds. (f) & (g); see *People v. Superior Court* (*Kaulick*), *supra*, 215 Cal.App.4th at p. 1297, fn. 20.).

The Court of Appeal erred when it declared that respondent's interpretation of the eligibility requirements for section 1170.126 would "rob" the public of the trial court's suitability determination regarding dangerousness under subdivision (f). (Opn. at 13.) The "danger to public safety" determination is not the vehicle through which to deny relief to defendants with hybrid sentences. (§ 1170.126, subd. (f).) According to the plain language of the statute, the suitability determination is not appropriately considered until after the "criteria" for eligibility is "satisfie[d]," which also emphasizes a concern for public safety. (§ 1170.126, subds. (e), (f); *People v. White* (2014) 223 Cal.App.4th 512, 522.) The eligibility analysis is focused on screening out *offenses* that are deemed to be a danger to society, and the public safety analysis serves to screen out *offenders* whose characteristics otherwise represent a danger. A concern for public safety is not confined to a determination of suitability under section 1170.126, subdivision (f), as advanced by the Court of Appeal below, but is at the heart of the eligibility determination within

section 1170.126, subdivision (e). To obscure the two subdivisions eliminates the public's concern for safety encompassed within the eligibility requirements and subverts voter intent.

Also troubling is the fact that under the Court of Appeal's construction of the statute in this case, an inmate with a *current* conviction for a serious and/or violent triggering offense that is also listed in sections 667, subdivision (e)(2)(C)(iv) or 1170.12, subdivision (c)(2)(C)(iv) (by way of § 1170.126, subdivision (e)(3)) (including sexually violent offenses, various sex offenses involving child victims, homicide offenses, and assault with a machine gun on a peace officer), may be eligible for resentencing on a separate nonserious or nonviolent count, yet that same inmate would be ineligible for resentencing on a nonserious or nonviolent count if any one of his *prior* offenses was for a triggering offense listed in sections 667, subdivision (e)(2)(C)(iv) or 1170.12, subdivision (c)(2)(C)(iv). (See § 1170.126, subd. (e)(3).) However, a defendant whose triggering offenses under the Three Strikes Law include those offenses listed in sections 667, subdivision (e)(2)(C)(iv), or 1170.12, subdivision (c)(2)(C)(iv), is even more dangerous than one who had a prior, remote conviction falling within the enumerated statutes. Thus, the Court of Appeal's construction of the statute in this case, which would preclude consideration of an additional current serious or violent felony that would render a defendant ineligible for resentencing under section 1170.126, subdivision (e)(3), if suffered as a prior, leads to absurd consequences that could not possibly have been intended by the electorate. (See *People v. Walker* (2002) 29 Cal.4th 577, 581 [in construing a statute, a reviewing court must select the interpretation that comports with the intent of the electorate and avoid and interpretation that would "lead to absurd consequences."].)

Furthermore, the Court of Appeal's conclusion that permitting petitioners such as appellant to be resentenced is "[t]he resolution most

faithful to the voters' intent" (Opn. at 12) is dubious. The Voter Information Guide stated that Proposition 36 was "carefully crafted" "so that truly dangerous criminals will receive no benefits whatsoever from the reform." (Voter Information Guide, Gen. Elec. (Nov. 6, 2012) Official Title and Summary of Prop. 36, p. 52.) Enhancing public safety was "a key purpose" of the Act. (*People v. Blakely* (2014) 225 Cal.App.4th 1042, 1054; *People v. Yearwood*, *supra*, 213 Cal.App.4th at p. 175.) The electorate "approved a mandate that the Reform Act be liberally construed to effectuate the protection of the health, *safety* and welfare of the People of California." (*People v. White*, *supra*, 223 Cal.App.4th at p. 522, italics supplied.)

An inmate legitimately serving a third-strike sentence for a serious felony – as appellant concedes he is – is clearly one of the "truly dangerous criminals" to whom the Voter Information Guide was referring. (See *Schinkel v. Superior Court*, *supra*, 229 Cal.App.4th at pp. 943-944; *People v. Anthony*, *supra*, 2014 WL 5395784, *3.) If a "truly dangerous" felon – i.e., one who has committed a present serious or violent felony – is not to get any benefit under section 1170.126, then a situation in which this felon committed *even more* felonies *in addition* to a disqualifying serious or violent felony is not one entitling such felon to any amelioration of the resulting sentence. Although the voters were promised that he and inmates like him would receive "no benefits whatsoever," the Court of Appeal's construction of section 1170.126 would confer upon him an enormous benefit. Moreover, the Voter Information Guide stated that the "measure limits eligibility for resentencing to third strikers whose current offense is nonserious [and] non-violent . . . ." (Voter Information Guide, *supra*, analysis by the Legislative Analyst of Prop. 36, p. 50.) Because appellant has a current conviction for a serious felony, the electorate would have believed that he was ineligible for resentencing.

Finally, to the extent the Court of Appeal below determined that "the rule of lenity" compelled it to rule in appellant's favor (Opn. at 13-14), it erred. As this Court explained in *People v. Nuckles* (2013) 56 Cal.4th 601:

> [The rule of lenity] generally requires that ambiguity in a criminal statute should be resolved in favor of lenity, giving the defendant the benefit of every reasonable doubt on questions of interpretation. But . . . that rule applies only if two reasonable interpretations of the statute stand in relative equipoise. The rule of lenity does not apply every time there are two or more reasonable interpretations of a penal statute. Rather, the rule applies only if the court can do no more than guess what the legislative body intended; there must be an egregious ambiguity and uncertainty to justify invoking the rule.

(Id. at p. 611, internal quotation marks and citations omitted.) Here, there was no egregious ambiguity or uncertainty to justify invoking the rule of lenity. Rather, as discussed above, the statutory language and Voter Information Guide indicate that the voters intended to exclude from resentencing inmates who had suffered a current conviction of a serious felony. When the meaning of the statute is reasonably clear, the rule of lenity has no application. (*Schinkel v. Superior Court*, *supra*, 229 Cal.App.4th at p. 944 [rule of lenity did not entitle defendant to resentencing under section 1170.126 on nonviolent/nonserious counts because it was reasonably clear that Act did not provide for separate consideration of defendant's eligibility for resentencing as to each count].) Here, the rule of lenity is inapplicable because voters, in enacting section 1170.126, did not give equal weight to fiscal concerns and public safety; rather, voters were concerned with saving money only if public safety were ensured at the same time. (See *People v. White*, *supra*, 223 Cal.App.4th at p. 522; *People v. Yearwood*, *supra*, 213 Cal.App.4th at p. 175.)

CONCLUSION

In sum, the statutory language and the Voter Information Guide evince an intent on the part of the electorate to exclude petitioners who have suffered a current conviction of a serious and/or violent felony from taking advantage of the resentencing provisions of section 1170.126. Because appellant suffered a current conviction of a serious felony (as well as a conviction of a nonviolent/nonserious offense), he is ineligible for resentencing under section 1170.126. Accordingly, respondent respectfully requests that this Court reverse the judgment of the Court of Appeal and affirm the trial court's denial of appellant's petition for recall of sentence.

Dated: November 10, 2014

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the attached **RESPONDENT'S OPENING BRIEF ON THE MERITS** uses a 13 point Times New Roman font and contains 4,299 words.

Dated: November 10, 2014

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DECLARATION OF SERVICE

Case Name: **People v. Oscar Machado** **Case** No.: **S219819**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On **November 10, 2014**, I served the attached **RESPONDENT'S OPENING BRIEF ON THE MERITS** by placing a true copy thereof enclosed in a sealed envelope in the internal mail system of the Office of the Attorney General at 300 South Spring Street, Suite 1702, Los Angeles, CA 90013, addressed as follows:

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On **November 10, 2014**, I caused original and eight copies of the **RESPONDENT'S OPENING BRIEF ON THE MERITS** in this case to be delivered to the California Supreme Court at 350 McAllister Street, First Floor, San Francisco, CA 94102-4797 by Federal Express, **Tracking #** .8055 1140 9595

On **November 10, 2014**, I caused one electronic copy of the **RESPONDENT'S OPENING BRIEF ON THE MERITS** in this case to be submitted electronically to the California Supreme Court by using the Supreme Court's Electronic Document Submission system.

On **November 10, 2014**, I caused one electronic copy of the **RESPONDENT'S OPENING BRIEF ON THE MERITS** in this case to be served electronically on the California Court of Appeal by using the Court's Electronic Service Document Submission system.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on **November 10, 2014**, at Los Angeles, California.

Maria P. Navarro	
Declarant	Signature

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