No. S271057

In the Supreme Court of the State of California

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Respondent,

v.

RICKY PRUDHOLME,
Defendant and Appellant.

Fourth Appellate District, Division Two, Case No. E076007
San Bernardino County Superior Court, Case No. FWV18004340
The Honorable Kyle S. Brodie, Judge

RESPONDENT'S ANSWER BRIEF ON THE MERITS

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ISSUES PRESENTED

1. Does Assembly Bill No. 1950 (Stats. 2020, ch. 328) apply retroactively under *In re Estrada* (1965) 63 Cal.2d 740?

2. If so, does the remand procedure of *People v. Stamps* (2020) 9 Cal.5th 685 apply?

INTRODUCTION

Appellant Ricky Prudholme was charged with one count of robbery. As part of a negotiated agreement, the robbery count was dismissed, he pleaded no contest to an added charge of burglary, and he was placed on three years' formal probation pursuant to Penal Code[1] section 1203.1 as it existed at the time. While the case was pending on appeal, Assembly Bill No. 1950 (2019–2020 Reg. Sess.) (Stats. 2020, ch. 328, § 2) amended sections 1203a and 1203.1 to limit the maximum term of probation a trial court is authorized to impose for most felony offenses to two years and most misdemeanor offenses to one year.

The parties agree that, under *Estrada*, AB 1950 applies retroactively to those who, like appellant, were actively on probation when the legislation took effect. However, the parties disagree about whether the remedy this Court described in *Stamps*—a remand to permit the trial court and the parties to revisit the plea bargain in light of the new legal landscape—applies in this context. Appellant contends the remand procedure in *Stamps* does not apply to AB 1950 and his probation

[1] All further statutory references are to the Penal Code unless otherwise noted.

term must be reduced to two years on appeal while leaving the rest of the plea bargain intact. He is mistaken. *Stamps* informs the remedy here because while the Legislature may have intended to change the default length of probationary sentences, its action did not operate to change existing law governing plea bargains or a court's sentencing discretion. Like the law at issue in *Stamps*, neither the statutory language nor the legislative history of AB 1950 mentions plea agreements or expresses an intent to override longstanding law codified in section 1192.5 that any modification of a negotiated sentence requires prosecutorial acceptance and judicial approval. There is also nothing to suggest the Legislature intended for AB 1950 to deprive trial courts of their broad sentencing discretion and near-plenary authority to withdraw consent to a plea agreement. The remedy appellant seeks—to have his negotiated probation term unilaterally reduced on appeal without a remand—would violate basic canons of statutory construction and read into AB 1950 an intent that was neither expressed nor otherwise apparent from the legislative amendments.

FACTUAL AND PROCEDURAL BACKGROUND

A. The underlying offense

In November 2018, employees of a trucking company saw appellant and two cohorts load $4,000 worth of merchandise from the company's loading dock onto the beds of their trucks. When appellant and his cohorts tried to drive away, two trucking company employees used their vehicles to block the exit. Appellant tried backing up and hit a metal object that was protruding from one of the employees' vehicles. Appellant yelled

and threatened to sue the employee for the damage to his truck. Officers arrived shortly thereafter and arrested the trio. (CT 199; Opn. 2–3.)

B. Appellant's plea bargain

In December 2018, the People charged appellant with one count of second degree robbery (§ 211), a serious and violent felony punishable by two, three, or five years in prison (§§ 213, 667.5, subd. (c)(9), 1192.7, subd. (c)(19)). (CT 85–86.) Appellant was found mentally incompetent to stand trial and criminal proceedings were suspended for almost two years while appellant was being restored to competence. (CT 126, 131, 190–191; RT 10–12, 14, 73.)

In September 2020, appellant entered into a negotiated agreement with the People and pleaded no contest to an added charge of second degree burglary (§ 459, subd. (b)). In exchange for his plea, the robbery count was dismissed and appellant was placed on three years' formal probation with various conditions, including a stay-away order, a search condition, and 365 days in county jail with credit for time served. (CT 190–194; Supp. CT 15–16; RT 73–78, 82, 84.) The length of the probation term—three years—was specifically called out as a part of the bargain, both in writing and orally in court. (CT 192; RT 74.)

C. The enactment of AB 1950

Subsequent to appellant's plea, the Legislature enacted AB 1950, which amended sections 1203a and 1203.1 to limit the maximum term of probation for most felony offenses to two years

and most misdemeanor offenses to one year. (Stats. 2020, ch. 328, §§ 1–2.)

As amended, section 1203.1, subdivision (a), provides that a trial court, "in the order granting probation, may suspend the imposing or the execution of the sentence and may direct that the suspension may continue for a period of time not exceeding two years, and upon those terms and conditions as it shall determine...." The two-year term limit on felony probation does not apply to: violent felony offenses (§ 667.5, subd. (c)); felonies with specified statutory probation lengths, such as driving under the influence (Veh. Code, § 23600, subd. (b)(1)), and domestic violence offenses (§ 1203.097, subd. (a)(1)); or certain white collar crimes in which the value of the stolen property exceeds $25,000 (§§ 487, subd. (b)(3), 503, 532a). (§ 1203.1, subd. (*l*)(1)–(2).)

Amended section 1203a limits the term of probation for a misdemeanor to "a period not to exceed one year" (§ 1203a, subd. (a)), except in cases where the offense "includes specific probation lengths within its provisions" (*id.* at subd. (b)).

D. Direct appeal

Shortly after appellant filed his appeal, the amendments made by AB 1950 took effect. (Supp. CT 4.) In his opening brief, appellant argued that under the principles of retroactivity set forth in *Estrada*, he was entitled to have his probation term reduced from three years to two years without a remand. (AOB 6–10; Opn. 3, 7.) Respondent conceded, in light of the unanimous published decisions on the issue, that AB 1950 applies retroactively to appellant's probation term as his case was not yet

final. (RB 7; Opn. 3.)[2] However, respondent argued the appropriate remedy was a remand under *Stamps* to permit the People and the trial court an opportunity to accede to the shorter probation term or withdraw from the plea agreement. (RB 8–12; Opn. 7, 9.)

The Court of Appeal accepted respondent's concession and followed the reasoning of *People v. Sims* (2021) 59 Cal.App.5th 943 and *People v. Quinn* (2021) 59 Cal.App.5th 874, in holding that AB 1950 applied retroactively to appellant's nonfinal case under *Estrada*. (Opn. 3–7.) It further agreed with respondent that the remand procedure of *Stamps* applied because "the term of probation was negotiated as part of a plea agreement" (Opn. 7), and "there is no evidence that the Legislature intended [AB] 1950 to permit unilateral modification of plea agreements by shortening negotiated terms of probation" (Opn. 9).

ARGUMENT

I. AB 1950 APPLIES RETROACTIVELY TO APPELLANT'S NONFINAL CASE SINCE IT APPEARS THE LEGISLATURE REASONABLY CONSIDERED THE SHORTENING OF PROBATION TERMS TO BE AN AMELIORATIVE CHANGE TO THE CRIMINAL LAW WITHIN THE MEANING OF *ESTRADA*

Appellant argues that AB 1950 applies to his nonfinal case under the rationale of *Estrada*. (OBM 10–19.) Respondent agrees, though for slightly different reasons. While it is a close question whether AB 1950's provisions on their face qualify as ameliorative for purposes of determining retroactivity, the

[2] In the respondent's brief below, the People neither discussed nor agreed with the rationale of the cases holding that AB 1950 is retroactive under *Estrada*. (RB 7.)

legislative materials suggest that the Legislature viewed shortening the maximum duration of probation as tantamount to an amelioration in punishment. Given that the Legislature's conclusion appears reasonable, that is sufficient justification for applying AB 1950 retroactively to nonfinal probation cases like appellant's.

A. AB 1950, which reduced the maximum length of probation for most offenses, is silent on retroactivity

"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." (*Tapia v. Superior Court* (1991) 53 Cal.3d 282, 287; § 3 [default rule of prospective operation].) "However, this presumption is a canon of statutory interpretation rather than a constitutional mandate. [Citation.] Accordingly, 'the Legislature can ordinarily enact laws that apply retroactively, either explicitly or by implication.' [Citation.] Courts look to the Legislature's intent in order to determine if a law is meant to apply retroactively. [Citation.]" (*People v. Frahs* (2020) 9 Cal.5th 618, 627.)

AB 1950—signed by the Governor on September 30, 2020, and effective January 1, 2021—amended sections 1203a and 1203.1 to limit the maximum duration of probation to one year for most misdemeanors and two years for most felonies, respectively. (Stats. 2020, ch. 328, §§ 1–2.) According to the author of the bill:

> AB 1950 creates reasonable and evidence-based limits on probation terms, while lowering costs to taxpayers,

> allowing for the possible investment of savings in effective measures proven to reduce recidivism and increasing public safety for all Californians. The bill also supports probation officers in completing the duties of their job more effectively, by making their caseloads more manageable.

(Sen. Com. on Public Safety, Analysis of AB 1950 (2019–2020 Reg. Sess.) as amended June 10, 2020, p. 4 ("Sen. Public Safety Analysis").)

There is no express statement, or any other clear indication, of legislative intent to have AB 1950 apply retroactively. Neither the bill itself nor the various analyses that accompanied the bill to committee and floor votes expressly mentions retroactivity. (Sen. Public Safety Analysis; Sen. Rules Com., 3d Reading of AB 1950 (2019–2020 Reg. Sess.) as amended June 10, 2020 ("Sen. 3d Reading"); Assem. Floor Analysis of AB 1950 (2019–2020 Reg. Sess.) as amended June 10, 2020 ("June Floor Analysis"); Assem. Com. on Appropriations, Analysis of AB 1950 (2019–2020 Reg. Sess.) as amended May 21, 2020 ("Assem. Appropriations Analysis"); Assem. Floor Analysis of AB 1950 (2019–2020 Reg. Sess.) as amended May 21, 2020 ("May Floor Analysis"); Assem. Com. on Public Safety, Analysis of AB 1950 (2019–2020 Reg. Sess.) as amended May 6, 2020, p. 6 ("Assem. Public Safety Analysis").) Whether retroactive intent can be presumed under *Estrada* depends on whether AB 1950 ameliorates punishment or the possible punishment for a particular crime or class of persons.

B. *Estrada*'s presumption of retroactivity applies to statutes that ameliorate punishment or possible punishment for a crime or class of persons

In *Estrada*, this Court held that, as an exception to the general rule requiring an express or clear indication of retrospectivity, newly enacted legislation lessening criminal punishment or reducing criminal liability presumptively applies to all cases not yet final on appeal when the legislation took effect. (*Estrada*, *supra*, 63 Cal.2d at pp. 743–745.) "The *Estrada* rule rests on an inference that, in the absence of contrary indications, a legislative body ordinarily intends for ameliorative changes to the criminal law to extend as broadly as possible, distinguishing only as necessary between sentences that are final and sentences that are not." (*People v. Conley* (2016) 63 Cal.4th 646, 657.) "'*Estrada* stands for the proposition that, "where the amendatory statute mitigates punishment and there is no saving[s] clause, the rule is that the amendment will operate retroactively so that the lighter punishment is imposed."' [Citations.]" (*Frahs*, *supra*, 9 Cal.5th at p. 628.) "If there is no express savings clause, the statute must demonstrate contrary indications of legislative intent "'with sufficient clarity"' in order to rebut the *Estrada* rule. [Citations.]" (*Frahs*, at p. 628.)

Since its inception, the *Estrada* presumption has been applied to statutes that directly mitigate punishment (*Frahs*, *supra*, 9 Cal.5th at p. 628), as well as certain "statutes that merely made a reduced punishment *possible*" (*id.* at p. 629, original italics). For example, in *People v. Francis* (1969) 71 Cal.2d 66, 76, this Court inferred that the Legislature intended retroactive application of a statute that granted trial courts

discretion to treat what was previously a straight felony offense as either a felony or a misdemeanor. This Court has also given retroactive effect to legislation that ameliorated the possible punishment for a class of persons—specifically, juvenile offenders (*People v. Superior Court (Lara)* (2018) 4 Cal.5th 299, 305–309) and defendants with qualifying mental disorders (*Frahs*, *supra*, 9 Cal.5th at pp. 626–631).

In *Lara*, this Court applied *Estrada*'s presumption to Proposition 57, which eliminated a prosecutor's discretion to directly charge juveniles in adult court, instead requiring a transfer hearing for the juvenile court to determine whether the matter should be heard in juvenile or adult court. (*Lara*, *supra*, 4 Cal.5th at pp. 305–309.) Although "Proposition 57 does not reduce the punishment for a crime," this Court held *Estrada*'s "rationale" applied because "[t]he possibility of being treated as a juvenile in juvenile court—where rehabilitation is the goal—rather than being tried and sentenced as an adult can result in dramatically different and more lenient treatment." (*Lara*, at p. 303.) As the Court explained, "the impact of the decision to prosecute a minor in criminal court rather than juvenile court can spell the difference between a 16-year-old minor … being sentenced to prison for 72 years to life, or a discharge from the [Division of Juvenile Justice's] custody at a maximum of 23 years of age." (*Lara*, at pp. 308–309.)

More recently, in *Frahs*, this Court addressed whether section 1001.36, which created a pretrial diversion program for certain defendants with mental health disorders, applied

retroactively under *Estrada*. (*Frahs, supra,* 9 Cal.5th at pp. 626–631.) The *Frahs* Court found the case analogous to *Lara* in that section 1001.36, like Proposition 57, "provides a possible ameliorating benefit for a class of persons—namely, certain defendants with mental disorders—by offering an opportunity for diversion and ultimately the dismissal of charges." (*Frahs*, at p. 624.) As the Court similarly found, "the impact of a trial court's decision to grant diversion can spell the difference between, on the one hand, a defendant receiving specialized mental health treatment, possibly avoiding criminal prosecution altogether, and even maintaining a clean record, and on the other, a defendant serving a lengthy prison sentence." (*Id.* at p. 631.) It therefore concluded that "the ameliorative nature of the diversion program places it squarely within the spirit of the *Estrada* rule." (*Frahs*, at p. 631.)

Despite expanding *Estrada*'s applicability to laws like Proposition 57 and section 1001.36 that merely made a reduced punishment possible for a class of persons, this Court has nevertheless abided by "the limited role *Estrada* properly plays in our jurisprudence of prospective versus retrospective operation." (*People v. Brown* (2012) 54 Cal.4th 314, 324.) For instance, in *Brown*, this Court refused to give retroactive effect to a statute that temporarily increased the rate at which prisoners in local custody could earn conduct credits against their sentences for good behavior. (*Brown*, at pp. 319–328.) It determined that unlike the legislative mitigation of punishment in *Estrada*, an increase in the ability to earn conduct credits did not support an

analogous inference of retroactive intent. (*Brown*, at p. 325.) As the Court explained, the statutory change did "not alter the penalty for any crime; a prisoner who earns no conduct credits serves the full sentence originally imposed. Instead of addressing punishment for past criminal conduct, the statute addresses *future conduct* in a custodial setting by providing increased incentives for good behavior." (*Id.* at p. 325, original italics.)

C. AB 1950 applies retroactively because the Legislature appears to have reasonably viewed the reduction in probation length as tantamount to an amelioration in punishment

If probation is considered a form of punishment, then shortening the maximum length of probation would be an ameliorative change to that punishment, thereby warranting *Estrada*'s inference of retroactivity. As discussed below, however, probation has not been considered punishment in any other legal context. It is thus doubtful whether, standing alone, AB 1950's shortening of probation terms could be construed as ameliorative within the meaning of *Estrada*. But here, it appears that the Legislature itself construed the new legislation to be ameliorative in certain respects—in that it reduces the amount of time probationers would otherwise be subject to potentially onerous and restrictive conditions and grants probationers the benefit of expungement years sooner. Given that the Legislature's conclusion regarding the ameliorative nature of AB 1950 was reasonable, that suffices to justify *Estrada's* presumption of retroactivity under these particular circumstances.

As this Court has explained, "Probation is neither 'punishment' [citation] nor a criminal 'judgment' [citation]." (*People v. Howard* (1997) 16 Cal.4th 1081, 1092.) Instead, probation is "an act of clemency in lieu of punishment [citation], and its primary purpose is rehabilitative in nature [citation]." (*Ibid.*; see, e.g., *People v. Benitez* (2005) 127 Cal.App.4th 1274, 1278 [no right to jury trial on facts rendering a person ineligible for probation because that right applies only to facts that increase punishment]; *People v. Lofink* (1988) 206 Cal.App.3d 161, 168 [probation not "punishment" for section 654 purposes]; but see *People v. Edwards* (1976) 18 Cal.3d 796, 801 [noting the modern view of treating probation as "an alternative form of punishment in those cases when it can be used as a correctional tool"].)

That a grant of probation may impose some "'meaningful restraints'" does not make it a punishment. (*In re Marcellus L.* (1991) 229 Cal.App.3d 134, 142 (*Marcellus L.*); see, e.g., *People v. Gonzalez* (2020) 57 Cal.App.5th 960, 973–974 [a probation condition is not punishment].) The probationer chooses to accept this offer of clemency in lieu of traditional forms of punishment. (*People v. Moran* (2016) 1 Cal.5th 398, 402.) "If the defendant finds the conditions of probation more onerous than the sentence he would otherwise face, he may refuse probation. [Citation.]" (*People v. Anderson* (2010) 50 Cal.4th 19, 32.)

Nevertheless, it appears the Legislature in this instance reasonably regarded AB 1950 as an ameliorative change to the criminal law within the meaning of *Estrada*. Presumably, the

Legislature was aware such ameliorative changes apply retroactively under *Estrada*'s rationale. (See *People v. Buycks* (2019) 5 Cal.5th 857, 883 [*Estrada* is "well established" authority informing the enacting body's view of retroactivity].)

The legislative history demonstrates that AB 1950 was motivated at least in part by the practical punitive effects that probation may sometimes have. (See Assem. Public Safety Analysis, p. 5 [noting the scholarly literature "'argues that while probation might be intended as a more rehabilitative diversion from prison, in practice it often has the opposite effects'"].) In particular, the Legislature recognized that probation imposes significant intrusions and restrictions on the civil liberties of a probationer. (See, e.g., Sen. Public Safety Analysis, p. 7 ["This bill is important part of the process of … reducing police interference in the lives of the people of the State of California"]; Assem. Public Safety Analysis, p. 5 ["'Scholars argue that the enhanced restrictions and monitoring of probation set probationers up to fail, with mandatory meetings, home visits, regular drug testing, and program compliance incompatible with the instability of probationers' everyday lives'"]; Sen. 3d Reading, p. 5 ["advocates argue that increased levels of supervision can lead to increased involvement with the criminal justice system due to the likelihood that minor violations will be detected"]; Assem. Appropriations Analysis, pp. 1–2 ["defendants who remain on probation for extended periods of time are less likely to be successful because even minor or technical violations of the

law may result in a violation of probation resulting in more fines and longer terms of probation"].)

For example, while a person is on probation, he or she may lawfully be ordered to comply with numerous conditions, including restrictions on activities and associations that would otherwise be lawful, and requirements such as drug and/or alcohol testing, meetings with probation officers, and submission to warrantless searches and seizures. (See, e.g., Assem. Public Safety Analysis, p. 6 [listing various probation conditions]; *Sims*, *supra*, 59 Cal.App.5th at pp. 959–960 [same].) Thus, the longer a person is on probation, the greater the encroachment on the person's interest in living free from government intrusion. By limiting the maximum duration of probation, AB 1950 "has a direct and significant ameliorative benefit for at least some probationers who otherwise would be subject to additional months or years of potentially onerous and intrusive probation conditions." (*Sims*, at p. 959.)

The legislative analyses of the bill also address the apparent absence of a need for longer grants of probation for the purpose of rehabilitation. (Sen. Public Safety Analysis, p. 4 ["Research … shows that probation services, such as mental healthcare and addiction treatment, are most effective during the first 18 months of supervision" and "that providing increased supervision and services earlier reduces an individual's likelihood to recidivate"]; Assem. Public Safety Analysis, p. 6 ["A two year period of supervision would likely provide a length of time that would be sufficient for a probationer to complete any counseling or

treatment that is directed by a sentencing court"].) According to the studies relied on by the Legislature, there is little if any rehabilitative impact of probation services beyond the first two years. (*Ibid.*) Proponents of AB 1950 also noted that "[a] shorter probation term, allowing for an increased emphasis on rehabilitative services, would lead to improved outcomes for people on probation and their families." (Sen. 3d Reading, p. 7; Sen. Public Safety Analysis, pp. 7–8; see also June Floor Analysis, p. 1; May Floor Analysis, p. 1.) As the California Public Defenders Association explained:

> Individuals in the criminal justice system often struggle with family violence at home, addiction issues, and mental health issues. Each day can be a challenge, and three years can seem like an eternity. Shortening the probationary period to two years can foster a sense of hope for individuals who are attempting to exit the criminal justice [system].

(Sen. Public Safety Analysis, p. 6.) In addition, shorter probation terms permit an earlier expungement of the underlying conviction pursuant to section 1203.4, thus allowing probationers to pursue opportunities like higher education and better-paying employment much sooner. (June Floor Analysis, p. 2; May Floor Analysis, p. 2.)[3]

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[3] Section 1203.4, subdivision (a), provides probationers with the opportunity to apply for record expungement following completion of probation. Expungement is available "[i]n any case in which a defendant has fulfilled the conditions of probation for the entire period of probation, or has been discharged prior to the termination of the period of probation, or in any other case in which a court, in its discretion and the interests of justice,

(continued…)

The Legislature thus contemplated that reducing the maximum duration of probation was significantly beneficial to probationers, and that being on probation for longer than two years was detrimental "'rather than being rehabilitative'" (Assem. Public Safety Analysis, p. 5). In essence, the Legislature concluded "any additional period of probation can only be regarded as punitive" (*Quinn*, *supra*, 59 Cal.App.5th at p. 883), and that conclusion was reasonable. These circumstances are therefore sufficient to trigger *Estrada*'s presumption of retroactivity despite the fact that probation is not considered a punishment.

Several lower courts—including the Court of Appeal below (Opn. 5–6)—have additionally reasoned that AB 1950 is ameliorative because it reduces the timeframe in which a probationer could theoretically violate probation and be sent to prison as a result. (See, e.g., *Sims*, *supra*, 59 Cal.App.5th at p. 960; *Quinn*, *supra*, 59 Cal.App.5th at pp. 882–883; *People v. Burton* (2020) 58 Cal.App.5th Supp. 1, 14–19; see also Assem. Public Safety Analysis, p. 5 ["If the fact that an individual is on probation can increase the likelihood that they will be taken back into custody for a probation violation that does not necessarily

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(…continued)

determines that a defendant should be granted the relief available under this section." (*People v. Johnson* (2012) 211 Cal.App.4th 252, 264.) A probationer satisfying the first or second clause is entitled as a matter of right to have the accusations dismissed upon a petition for that relief. (*People v. Covington* (2000) 82 Cal.App.4th 1263, 1266.)

involve new criminal conduct, then shortening the period of supervision is a potential avenue to decrease individuals' involvement in the criminal justice system for minor infractions"].) According to those courts, by limiting the maximum length of probation, AB 1950 ameliorates possible punishment for probationers as a class—similar to the laws at issue in *Lara* and *Frahs*—by ensuring "that at least some probationers who otherwise would have been imprisoned for probation violations will remain violation-free and avoid incarceration." (*Sims*, at p. 960; accord, *Quinn*, at p. 882; *Burton*, at p. 15.) Respondent disagrees with that rationale for application of *Estrada*.

AB 1950 is distinguishable from both Proposition 57 in *Lara* and section 1001.36 in *Frahs*. Unlike Proposition 57, which "provides that the 'act shall be liberally construed to effectuate its purposes'" (*Lara*, *supra*, 4 Cal.5th at p. 309), and section 1001.36, which "contains language that could be read as supporting the expansive application of its provisions" (*Frahs*, *supra*, 9 Cal.5th at p. 632), AB 1950 includes no similar provision. Furthermore, the ameliorating benefits offered by Proposition 57—i.e., the possibility of being treated as a juvenile in juvenile court where rehabilitation rather than punishment is the goal (*Lara*, at pp. 308–309), and section 1001.36—i.e., the possibility of being granted mental health diversion rather than being prosecuted and sentenced (*Frahs*, at pp. 630–631)—are a *direct result* of the retroactive application of the change in the law.

On the other hand, the "possible" ameliorative benefit attributed to AB 1950—i.e., the potential "that at least some probationers who otherwise would have been imprisoned for probation violations will remain violation-free and avoid incarceration" (*Sims*, *supra*, 59 Cal.App.5th at p. 960)—does not directly flow from retroactively applying the change in the law. Instead, this "possible" ameliorative benefit is entirely contingent on a speculative act of intervening misconduct committed by the probationer past the second year of probation that would warrant revoking and terminating (rather than revoking and reinstating) probation. (*People v. Jones* (1990) 224 Cal.App.3d 1309, 1315 ["Once a probation violation occurs, the trial court has broad discretion in deciding whether to continue or revoke probation"].) Indeed, the *Sims* court acknowledged that AB 1950 "does not guarantee that a probationer will abide by his or her probation conditions and, as a result, avoid imprisonment." (*Sims*, at p. 960.) Thus, AB 1950 is not comparable to Proposition 57 or section 1001.36 such that the same inference of retroactivity should apply.

Instead, this asserted aspect of AB 1950's potential ameliorative benefit is more akin to the effect of the statute in *Brown*, which did not support an inference of retroactive intent because "[i]nstead of addressing punishment for past criminal conduct, the statute addresse[d] *future conduct* in a custodial setting by providing increased incentives for good behavior." (*Brown*, *supra*, 54 Cal.4th at p. 325, original italics.) Similarly, here, the potential for a probationer to remain violation free and

avoid incarceration by limiting the duration of probation addresses future rather than past misconduct. (See June Floor Analysis, p. 2 [noting that a shorter probation period "'has the added benefit of incentivizing compliance"']; see also *Marcellus L.*, *supra*, 229 Cal.App.3d at p. 142 [explaining that probation is "'a means of testing a convicted defendant's integrity and *future* good behavior"'], italics added.)

To conclude that AB 1950 ameliorates possible punishment for probationers as a class because it reduces the timeframe in which probationers could hypothetically violate probation and be sent to prison, would expand the *Estrada* presumption beyond the bounds contemplated by *Lara* and *Frahs* and run afoul of this Court's holding in *Brown*. (See *Brown*, *supra*, 54 Cal.4th at p. 324 [recognizing the "limited role" *Estrada* plays in determining retroactivity].) Instead, *Estrada* applies to AB 1950 because it appears the Legislature reasonably viewed the reduction in the length of probation as tantamount to a direct amelioration in punishment. And, since AB 1950 contains no savings clause or a clear legislative intent to overcome the *Estrada* presumption, the two-year limitation on felony probation should apply retroactively to appellant's case, which is not yet final on appeal.

II. THE REMAND PROCEDURE DESCRIBED IN *STAMPS* IS THE APPROPRIATE REMEDY WHEN AB 1950 RETROACTIVELY REDUCES A PLEA-BARGAINED TERM OF PROBATION

Although AB 1950 applies retroactively to this case, it does not entitle appellant to whittle down one-third of his negotiated probation term yet leave the remainder of his plea bargain intact. (OBM 31–34.) Contrary to appellant's interpretation (OBM 19–

31), neither the text of the statutory amendments nor the legislative history of AB 1950 suggests that the Legislature intended to override section 1192.5 and unilaterally reduce negotiated terms of probation without affording the People the option to rescind the plea agreement or permitting the trial court to withdraw its prior approval of the agreement. Thus, the proper remedy here is to remand the matter pursuant to the procedure set forth in *Stamps*.

A. A plea bargain is a contractual agreement that may be unilaterally altered by a retroactive change in the law only where the new law is specifically intended to affect existing plea bargains

The process of plea bargaining, which is governed by section 1192.5, contemplates a contractual agreement negotiated by the parties and approved by the court. (*People v. Clancey* (2013) 56 Cal.4th 562, 569–570.) "Critical to plea bargaining is the concept of reciprocal benefits." (*People v. Collins* (1978) 21 Cal.3d 208, 214.) "When either the prosecution or the defendant is deprived of benefits for which it has bargained," that party will be entitled to some form of relief. (*Ibid.*)

"Because a 'negotiated plea agreement is a form of contract,' it is interpreted according to general contract principles. [Citations.]" (*People v. Segura* (2008) 44 Cal.4th 921, 930.) When a plea agreement is accepted by the parties and approved by the trial court, the court is bound by the agreement and must proceed as specified in the plea. (§ 1192.5, subd. (b); *Stamps*, *supra*, 9 Cal.5th at p. 700.) Section 1192.5 prohibits the court from "'unilaterally modifying the terms of the bargain without

affording an opportunity to the aggrieved party to rescind the plea agreement and resume proceedings where they left off.' [Citation.]" (*Stamps*, at p. 701.) Substantially restoring the agreement previously negotiated "permits the defendant to realize the benefits he derived from the plea bargaining agreement, while the People also receive approximately that for which they bargained." (*Collins*, *supra*, 21 Cal.3d at p. 217.)

An exception to this general rule is when the Legislature makes clear its intent to override section 1192.5's mandates through new legislation. (*Stamps*, *supra*, 9 Cal.5th at p. 701; *Doe v. Harris* (2013) 57 Cal.4th 64, 66 (*Doe*) ["That the parties enter into a plea agreement thus does not have the effect of insulating them from changes in the law that the Legislature has *intended to apply to them*"], italics added.) While the Legislature (or the electorate) "'may bind the People to a unilateral change in a sentence without affording them the option to rescind the plea agreement,'" it must make its intent to do so explicit—e.g., through express references to plea bargains, convictions by plea, or resentencing provisions. (*Stamps*, at p. 703.)

Indeed, when the enacting body has intended for a new law to override section 1192.5 and bind the court and parties to their existing plea agreements, it has made this intent plain, either in the express language of the statute or the legislative history materials. (See, e.g., Senate Bill No. 483 (2021–2022 Reg. Sess.) (Stats. 2021, ch. 728, § 1) ["any changes to a sentence as a result of the act that added this section shall not be a basis for a prosecutor or court to rescind a plea agreement"]; Assembly Bill

No. 1618 (2019–2020 Reg. Sess.) (Stats. 2020, ch. 586, § 1) [invalidating any "provision of a plea bargain that requires a defendant to generally waive unknown future benefits of legislative enactments"]; Senate Bill No. 1437 (2017–2018 Reg. Sess.) (Stats. 2018, ch. 1015, § 4) [applying certain resentencing provisions to those who were "convicted of murder, attempted murder, or manslaughter following a trial or accepted a plea offer in lieu of a trial"]; Prop. 47, as approved by voters, Gen. Elec. (Nov. 4, 2014) [creating a resentencing provision that applies to those "serving a sentence for a conviction, whether by trial or plea"].)

When a retroactive change in the law modifies a negotiated sentence and the Legislature evinced no intent to contravene section 1192.5, the proper remedy, as this Court articulated in *Stamps*, is to provide the People and the trial court with an opportunity to either accept the modification or withdraw approval for the plea agreement. (*Stamps*, *supra*, 9 Cal.5th at pp. 703–705.)

In *Stamps*, this Court considered Senate Bill No. 1393 (2017–2018 Reg. Sess.) (Stats. 2018, ch. 1013, §§ 1–2), which repealed a prohibition against courts striking certain prior serious felony enhancements in the interests of justice. (*Stamps*, *supra*, 9 Cal.5th at p. 693.) SB 1393 became effective after the defendant's plea and sentencing but applied to the defendant's nonfinal case under *Estrada*. (*Stamps*, at p. 699.) In addressing the question of remedy, this Court determined that SB 1393 "was intended to bring a court's discretion to strike a

five-year serious felony enhancement in line with the court's general discretion to strike other enhancements." (*Stamps*, at p. 702.) But "the legislative history [did] *not* demonstrate any intent to overturn existing law regarding a court's lack of authority to unilaterally modify a plea agreement. Indeed, none of the legislative history materials mention plea agreements *at all*." (*Ibid.*, original italics.)

Stamps contrasted SB 1393 and its legislative intent with Proposition 47, a voter-approved initiative that the Court had previously decided was intended to unilaterally alter plea agreements. (*Stamps*, *supra*, 9 Cal.5th at pp. 702–703 [discussing *Harris v. Superior Court* (2016) 1 Cal.5th 984].) Proposition 47, which reduced a category of nonviolent felony crimes to misdemeanors, expressly applied to those convicted of the enumerated offenses "'whether by trial or plea.'" (*Stamps*, at p. 704.) This Court reasoned that the electorate's broad policy goal of reclassifying certain low-level crimes to misdemeanors would be frustrated if, in response to resentencing petitions, prosecutors were permitted to withdraw from plea agreements and recharge offenders with formerly dismissed felonies. (*Ibid.*)

In the absence of any mention of plea agreements or any discernable intent regarding plea agreements in the legislative materials, the *Stamps* Court concluded that there could be no unilateral alteration of a plea bargain if the plea included an enhancement subject to SB 1393. (*Stamps*, *supra*, 9 Cal.5th at pp. 704–705.) Instead, this Court determined the proper remedy for retroactively applying SB 1393 was a limited remand to allow

defendant an opportunity to seek the trial court's exercise of its new section 1385 discretion. (*Stamps*, at p. 707.) If the trial court indicated its intent to exercise its authority under section 1385, the prosecution must be afforded the opportunity to withdraw from the agreement. (*Stamps*, at p. 707.) The trial court would also be allowed to withdraw its prior approval of the plea bargain should it determine that the downward departure in sentence is no longer a fair disposition that furthers the interests of society. (*Id.* at pp. 708–709.)

B. The *Stamps* remedy applies here because nothing in the statutory language or legislative history of AB 1950 demonstrates any intent to override the governing law on plea bargains

Like the legislation in *Stamps*, nothing in the statutory amendments or legislative history of AB 1950 evinces an intent contrary to the well-established principle that a court cannot unilaterally modify a plea agreement. Thus, the matter must be remanded to give the People and the trial court an opportunity to accept the modification or, if appropriate, withdraw approval of the plea agreement.

The interpretation of a statute is a question of law subject to de novo review. (*Union of Medical Marijuana Patients, Inc. v. City of San Diego* (2019) 7 Cal.5th 1171, 1183.) "The fundamental purpose of statutory construction is to ascertain the intent of the lawmakers so as to effectuate the purpose of the law." (*People v. Pieters* (1991) 52 Cal.3d 894, 898.) In approaching this task, courts "must first look at the plain and common sense meaning of the statute because it is generally the most reliable indicator of legislative intent and purpose."

(*People v. Cochran* (2002) 28 Cal.4th 396, 400.) "If the language is clear, courts must generally follow its plain meaning unless a literal interpretation would result in absurd consequences the Legislature did not intend." (*Meza v. Portfolio Recovery Associates, LLC* (2019) 6 Cal.5th 844, 856 (*Meza*).) When there is "no ambiguity or uncertainty in the language, the Legislature is presumed to have meant what it said," and it is not necessary "to resort to legislative history to determine the statute's true meaning." (*Cochran*, at pp. 400–401.) However, "[i]f the statutory language permits more than one reasonable interpretation, courts may consider other aids, such as the statute's purpose, legislative history, and public policy." (*Meza*, at p. 856.)

The statutory amendments made by AB 1950 contain no reference to plea agreements whatsoever, and this Court may not, under the guise of construction, rewrite the law or add to it what has been clearly omitted. (*People v. Massicot* (2002) 97 Cal.App.4th 920, 925.) Instead, this Court must take the language of section 1203.1, "as it was passed into law, and must, if possible without doing violence to the language and spirit of the law, interpret it so as to harmonize and give effect to all its provisions." (*People v. Garcia* (1999) 21 Cal.4th 1, 14, fn. omitted.) That the statutory language, on its face, "is silent regarding pleas and provides no express mechanism for relief undercuts any suggestion that the Legislature intended to create special rules for plea cases" involving negotiated grants of probation. (*Stamps*, *supra*, 9 Cal.5th at p. 704.)

Nothing in the text of section 1203.1 supports an inference that despite its silence on the matter, the statutory amendment was intended to override longstanding law that a court cannot unilaterally modify the terms of a plea agreement without obtaining the parties' consent or affording them the opportunity to withdraw from the plea. (§ 1192.5, subd. (b).) Nor is there any evidence in the text of an intent to retroactively strip the court of its broad sentencing discretion relating to probation or deprive the court of its statutory authority to approve and withdraw its approval of plea agreements. (See, e.g., §§ 1192.5, subd. (c) [authorizing courts to withdraw prior approval of a plea], 1202.7 [listing the court's primary considerations in granting probation], 1203.2, subd. (b)(1) [authorizing courts to "modify, revoke, or terminate supervision"], 1203.3, subd. (a) [providing courts with "the authority at any time during the term of probation to revoke, modify, or change" the conditions or duration].)

Consideration of AB 1950 in the context of the overall structure of the probation statute further supports the conclusion that the Legislature did not intend to unilaterally modify negotiated terms of probation and deprive the trial court of its statutorily vested sentencing discretion and authority to withdraw approval of a plea if it is no longer a fair disposition that furthers the interests of society. (See *Marshall M. v. Superior Court* (1999) 75 Cal.App.4th 48, 55 ["'the various parts of a statutory enactment must be harmonized by considering the particular clause or section in the context of the statutory framework as a whole'"].) The statute expressly preserves the

court's broad sentencing discretion and anticipates the exercise of that discretion in imposing any "reasonable conditions, as it may determine are fitting and proper to the end that justice may be done, that amends may be made to society for the breach of the law, for any injury done to any person resulting from that breach, and generally and specifically for the reformation and rehabilitation of the probationer." (§ 1203.1, subd. (j).)

AB 1950 also incorporates the trial court's authority under sections 1203.2 and 1203.3 "to modify and change any and all the terms and conditions" of probation. (§ 1203.1, subd. (j).) Thus, while section 1203.1 mandates a "'one-size-fits-all approach to the length of probation'" for all non-exempted felonies (OBM 24), it does not curtail the trial court's broad discretion in fashioning an appropriate sentence within the confines of the two-year probation term. (§ 1203.1, subd. (a) [authorizing court to impose felony probation "for a period of time not exceeding two years, and *upon those terms and conditions as it shall determine*"], italics added.) And indeed, the sentencing considerations in section 1203.1, subdivision (j), significantly mirror the factors informing the trial court's discretion whether to grant probation, and whether to approve or withdraw approval from a plea bargain. (See, e.g., §§ 1192.5, subd. (c), 1202.7.)[4]

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[4] In the granting of probation, the Legislature has declared the primary considerations to be: "the nature of the offense; the interests of justice, including punishment, reintegration of the offender into the community, and enforcement of conditions of probation; the loss to the victim; and the needs of the defendant." (§ 1202.7.) Similarly, "'a trial court's approval of a proposed plea (continued…)

Even if the text and structure of the statutory scheme were unclear, nothing in the legislative history of AB 1950 suggests that the Legislature intended to affect existing plea bargains. (*People v. Scarano* (2022) 74 Cal.App.5th 993, 1006–1014, review granted June 1, 2022, S273830 [*Stamps* remedy applies because nothing in AB 1950 suggests the Legislature intended to override section 1192.5's mandates]; but see, e.g., *People v. Flores* (2022) 77 Cal.App.5th 420, 429, 442–449, review granted June 22, 2022, S274561 [*Stamps* remedy inapplicable to AB 1950 because it would frustrate legislative intent to advance specific social and financial public policy goals through the categorical reduction of probation terms]; *People v. Butler* (2022) 75 Cal.App.5th 216, 221–226, review granted June 1, 2022, S273773 [same].)

Notably, the word "plea" appears only once throughout the legislative history materials, and it is in the context of a possible solution to the problem of completing the requisite 52-week

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(…continued)

bargain must represent an informed decision in furtherance of the interests of society'" since "'trial courts are charged with the protection and promotion of the public's interest in vigorous prosecution of the accused, imposition of appropriate punishment, and protection of victims of crimes. [Citation.]'" (*Stamps*, *supra*, 9 Cal.5th at p. 706.) Additionally, "a trial court may exercise its discretion to withdraw approval of a plea bargain because: (1) it believes the agreement is 'unfair' [citation]; … or (4) when, after further consideration, the court concludes that the agreement is 'not in the best interests of society.' [Citation.]" (*People v. Mora-Duran* (2020) 45 Cal.App.5th 589, 595–596.)

domestic violence class within the short timeframe of misdemeanor probation:

> A one year period of misdemeanor probation would have some conflict with the existing probation requirements for a domestic violence conviction. Courts could potentially manage this by providing a gap between entry of *a guilty plea* and then sentencing date to provide a defendant time to start the domestic violence course prior to the time the defendant was actually placed on probation ....

(Assem. Public Safety Analysis, p. 6, italics added.) There is no other mention of plea bargains anywhere in the legislative materials. Without an expression of intent to modify probationary sentences that are the product of existing plea agreements, it is speculative to read such an intent into AB 1950. (*Scarano*, *supra*, 74 Cal.App.5th at p. 1011.)

It would be equally speculative to read into AB 1950 from its purposes an intent to bypass section 1192.5 or override the trial court's sentencing discretion and statutory authority to withdraw consent from a plea agreement. The Legislature's concern in enacting AB 1950 was that lengthy probationary periods do not necessarily serve a rehabilitative function and often lead to re-incarceration for technical violations, costing taxpayers millions of dollars per year. (Sen. Public Safety Analysis, p. 4; see also June Floor Analysis, p. 1; May Floor Analysis, p. 1; Assem. Public Safety Analysis, p. 3.) As the legislative history reflects, the drafters of AB 1950 relied on studies showing that probation services are most effective during the first 18 months of supervision and concluded that a "shorter term of probation, allowing for an increased emphasis on services, should lead to

improved outcomes for both people on misdemeanor and felony probation while reducing the number of people on probation returning to incarceration." (June Floor Analysis, p. 1; May Floor Analysis, p. 1; Assem. Public Safety Analysis, p. 3; see also Sen. Public Safety Analysis, p. 4.) Thus, the Legislature's intent in enacting AB 1950 was to reduce the number of probationers who end up incarcerated for minor or technical violations, reinvest funding into supportive services and treatment programs proven to reduce recidivism, and help alleviate the caseloads of probation officers to allow for more effective supervision. (June Floor Analysis, p. 1; Sen. Public Safety Analysis, p. 4; Sen. 3d Reading, p. 7; Assem. Appropriations Analysis, pp. 1–2; May Floor Analysis, p. 1; Assem. Public Safety Analysis, p. 3.)

The Legislature may have intended to modify the probationary sentencing scheme (i.e., by shortening the default probation duration), "but the legislative history does *not* demonstrate any intent to overturn existing law regarding a court's lack of authority to unilaterally modify a plea agreement." (*Stamps*, *supra*, 9 Cal.5th at p. 702, original italics.) Indeed, the legislative materials acknowledge section 1202.7 and the trial court's "broad discretion to impose conditions that foster the defendant's rehabilitation and protect the public safety." (Sen. Public Safety Analysis, p. 5; Sen. 3d Reading, pp. 4–5; Assem. Public Safety Analysis, p. 4.) As the proponents of AB 1950 explain, "this bill does not take the 'teeth' out of probation or the courts" since courts retain the discretion to "set" the conditions of probation and "may revoke the person's probation until the

person is back in compliance." (Sen. Public Safety Analysis, p. 7; Sen. 3d Reading, p. 7.)

"The enacting body is deemed to be aware of existing laws and judicial constructions in effect at the time legislation is enacted." (*People v. Weidert* (1985) 39 Cal.3d 836, 844.) Yet there is no mention of section 1192.95 or any general principles governing plea bargains in the legislative materials. This is in stark contrast to the Legislature's contemporaneous approach to laws that it does intend to affect existing plea bargains, such as AB 1618 and SB 483.

The Legislature enacted AB 1618 during the same legislative session as AB 1950. With AB 1618, the Legislature expressly referenced section 1192.5 in the legislative history (Sen. Com. on Public Safety, Analysis of AB 1618 (2019–2020 Reg. Sess.) July 2, 2019 hearing, p. 2), and created section 1016.8, which codified this Court's decision in *Doe* (§ 1016.8, subd. (a)(1)), and clarified that any "provision of a plea bargain that requires a defendant to generally waive unknown future benefits of legislative enactments … that may retroactively apply after the date of the plea is void as against public policy" (*id.* at subd. (b)). (*Stamps*, *supra*, 9 Cal.5th at p. 705.)

More recently, the Legislature enacted SB 483, which, subject to certain exceptions, invalidates prior prison term and prior drug conviction enhancements imposed under former section 667.5, subdivision (b), and Health and Safety Code section 11370.2, respectively. (Stats. 2021, ch. 728, §§ 1–3.) SB 483

specifies that it applies to plea bargains as well as other convictions, stating:

> [I]t is the intent of the Legislature to retroactively apply Senate Bill 180 … and Senate Bill 136 … to all persons currently serving a term of incarceration in jail or prison for these repealed sentence enhancements. *It is the intent of the Legislature that any changes to a sentence as a result of the act that added this section shall not be a basis for a prosecutor or court to rescind a plea agreement.*

(Stats. 2021, ch. 728, § 1, italics added.)

Recent legislation like AB 1618 and SB 483 show ""that the Legislature knew how to create an exception [to the general principles governing plea bargains] if it wished to do so."" (*People v. Vargas* (2014) 59 Cal.4th 635, 648.) That no similar intent can be discerned from the text or legislative history of AB 1950 is a strong indication that the Legislature did not intend for the amendments to bypass long-standing law governing pleas and plea procedure. (See *In re Jennings* (2004) 34 Cal.4th 254, 273 (*Jennings*) ["'It is a settled rule of statutory construction that where a statute, with reference to one subject contains a given provision, the omission of such provision from a similar statute concerning a related subject is significant to show that a different legislative intent existed with reference to the different statutes"'].)

Appellant's proposed remedy of unilaterally reducing his term of probation would give AB 1950 ""an effect beyond that gathered from the plain and direct import of the terms used, … so as to make it conform to a presumed intention not expressed or otherwise apparent in the law."" [Citation.]" (*Soto v. Motel 6*

Operating, L.P. (2016) 4 Cal.App.5th 385, 393.) Instead, as this Court has explained, "In these circumstances, we must limit ourselves to interpreting the law as written and leave for the People and the Legislature the task of revising it as they deem wise." (*Garcia*, *supra*, 21 Cal.4th at p. 15; see, e.g., *Scarano*, *supra*, 74 Cal.App.5th at p. 1000, fn. 2 ["These issues need not be addressed by appellate litigation if *the Legislature* expressly states whether the sentencing reforms it enacts are to be given retroactive application on appeal or not, and if so, whether retroactive application applies to negotiated sentences or not"], italics added; *Flores*, *supra*, 77 Cal.App.5th at p. 442 [urging "greater clarity from *the Legislature* and electorate on these matters"], italics added.)

C. Appellant's contrary arguments are unpersuasive and not relevant to the question of remedy

Appellant argues the *Stamps* remedy does not apply here because the Legislature intended to bypass section 1192.5 by directly mandating the reduction in probation lengths (OBM 7, 20, 24–28), and allowing the People to withdraw from the plea would frustrate the legislative purpose of AB 1950 (OBM 32). Thus, in light of *Doe*'s holding that plea agreements are not insulated from retroactive changes in the law that the Legislature has intended to apply to them, appellant claims he is entitled to a unilateral reduction of his negotiated probation term while leaving the remainder of his plea bargain intact. (OBM 7, 20, 28–32.) In making these arguments, however, appellant conflates the issue of *whether* AB 1950 applies with *how* it applies. As explained below, neither the mandatory nature or

legislative purpose of AB 1950, nor the notion that plea agreements are not insulated from changes in the law intended to apply to them, informs the proper remedy in this case.

1. The mandatory nature of the change in the law is not determinative of remedy

Appellant claims the *Stamps* remedy has no application to his case because the mandatory nature of the change in the law enacted by the Legislature through AB 1950 does not implicate *Stamps*'s concern about courts unilaterally modifying plea agreements. (OBM 7, 25–28.) He relies on *Butler*, *supra*, 75 Cal.App.5th 216, which declined to apply the *Stamps* remedy to AB 1950 plea cases based upon the fact that SB 1393 permitted trial courts to make a discretionary decision that could alter the terms of a plea bargain whereas AB 1950 directly invalidates a term of the bargain. (OBM 27–28.) The *Butler* court concluded that *Stamps* was distinguishable because it "'had no occasion to consider the effect on a plea bargain of retroactive application of a law through which the Legislature directly affected a plea bargain by rendering one of its terms invalid.'" (*Butler*, at p. 223.)

Seizing on this reasoning, appellant attempts to draw a dispositive distinction between the discretionary nature of the change brought about by SB 1393 and the lack of judicial discretion in the AB 1950 context. (OBM 25–28.) But such a distinction is not the dispositive issue in determining the appropriate remedy where a retroactive change in the law impacts a negotiated term of a plea bargain. Instead, both *Stamps* and *Harris* focused on the history of the statutory

amendments to determine whether there was any intent to "to change well-settled law that a court lacks discretion to modify a plea agreement unless the parties agree to the modification." (*Stamps*, *supra*, 9 Cal.5th at pp. 702, 704; *Harris*, *supra*, 1 Cal.5th at pp. 991–992.) The question is not whether the reduction in the *length* of probation is discretionary or mandatory but whether, after a court reduces the term of probation, it has the authority to modify the plea agreement by leaving the remnants of the plea bargain intact without securing the parties' assent to the modification.

Allowing defendants to serve reduced sentences at their request, and over a prosecutor's objection, would contravene the basic tenets of contract law that are applicable to plea bargains. (See *Serpa v. California Surety Investigations, Inc.* (2013) 215 Cal.App.4th 695, 706 (*Serpa*) ["an agreement is illusory if it leaves one party 'free to perform or to withdraw from the agreement at his own unrestricted pleasure'"].) So in the absence of clear evidence that "the Legislature intended to overturn" these general rules, a court should not do so unilaterally. (*Stamps*, *supra*, 9 Cal.5th at p. 701.)

Furthermore, despite the mandatory nature of the reduction in probation term lengths, AB 1950 nevertheless implicates a trial court's sentencing discretion. As noted above, section 1203.1 expressly authorizes the trial court to impose felony probation "for a period of time not exceeding two years, and *upon those terms and conditions as it shall determine*" (§ 1203.1, subd. (a), italics added), including any "reasonable conditions, as it may

determine are fitting and proper to the end that justice may be done" (*id.* at subd. (j)), and "to modify and change any and all the terms and conditions" of probation (*ibid.*).

Thus, with AB 1950, the Legislature merely decided that *if* the trial court exercises its discretion to grant probation in a particular case, it can be for no more than two years for non-exempted felonies (§ 1203.1) and no more than one year for non-exempted misdemeanors (§ 1203a). The court, however, remains the decisionmaker as to any particular defendant's sentence. "The decision to grant probation to a defendant as part of a plea bargain, the decision as to whether probation is 'in furtherance of the interests of society' as to that particular defendant, and the decision to maintain or withdraw consent to a plea bargain on remand are discretionary decisions. Thus, judicial discretion is implicated here just as it is when a court determines whether it is in 'the furtherance of justice' to strike or dismiss a prior serious felony conviction on remand under section 1385 as the Legislature authorized in [SB] 1393." (*Scarano*, *supra*, 74 Cal.App.5th at p. 1008.)

2. This Court's holding in *Doe* speaks only to a new law's applicability to plea bargains, not the proper remedy

Appellant claims a unilateral reduction of his probation term without a *Stamps* remand is mandated by the holding in *Doe* that parties to a plea agreement are not insulated by changes in the law that the Legislature intended to apply to them (*Doe*, *supra*, 57 Cal.4th at p. 66), and section 1016.8, which codified this concept. (OBM 7, 20, 28–32.) However, this concept speaks to

only the law's applicability to a plea, not the proper remedy. Thus, appellant's reliance on *Doe* and section 1016.8 is misplaced.

In *Doe*, this Court answered a question directed to it by the Ninth Circuit Court of Appeals, pertaining to litigation commenced by the defendant wherein he sought to avoid the public disclosure of his sex offender status required by amendments to California's Sex Offender Registration Act (§ 290 et seq.), which were enacted after his plea and sentencing. (*Doe*, *supra*, 57 Cal.4th at pp. 65–67.) The defendant argued that requiring him to comply with these amendments would violate his plea agreement. (*Ibid.*) This Court understood the Ninth Circuit's question as: "'Under California law of contract interpretation as applicable to the interpretation of plea agreements, does the law in effect at the time of a plea agreement *bind the parties* or can the terms of a plea agreement be affected by changes in the law?'" (*Id.* at p. 66, italics added.) The Court answered:

> We respond that the general rule in California is that the plea agreement will be "'deemed to incorporate and contemplate not only the existing law but the reserve power of the state to amend the law or enact additional laws for the public good and in pursuance of public policy....'" [Citation.] *That the parties enter into a plea agreement thus does not have the effect of insulating them from changes in the law that the Legislature has intended to apply to them.*

(*Id.* at p. 66, italics added.)

Doe does not assist appellant here. First, as the above italicized text makes clear, *Doe* was focused on the rights of the parties to a plea agreement. (*Doe*, *supra*, 57 Cal.4th at p. 66.) As

the *Doe* Court explained, its "task [was] limited" (*id.* at p. 68) to providing "guidance on a rule of contract interpretation to ensure [the Ninth Circuit's] decision on that point is consistent with California law." (*Ibid.*) In doing so, *Doe* provided no occasion for the Court to address the legislative intent behind the change in the law and whether that intent was "to overturn long-standing law that a court cannot unilaterally modify an agreed-upon term." (*Stamps*, *supra*, 9 Cal.5th at p. 701.) Here, by contrast, the legislative intent behind AB 1950 is dispositive. As discussed above, AB 1950 "is silent regarding pleas" and that silence "undercuts any suggestion that the Legislature intended to create special rules for plea cases" involving negotiated terms of probation. (*Stamps*, *supra*, 9 Cal.5th at p. 704.)

Furthermore, the certified question addressed by this Court had nothing to do with a trial court's discretion to withdraw consent from a plea agreement. (See *Doe*, *supra*, 57 Cal.4th at pp. 65–74.) Thus, *Doe* did not speak to a trial court's authority to withdraw consent from a plea agreement if it determines the agreement, modified by the legislative change, is not in the interests of society. (See *People v. Ault* (2004) 33 Cal.4th 1250, 1268, fn. 10 ["It is axiomatic that cases are not authority for propositions not considered"].) Appellant's reliance on *Doe* ignores that trial courts retain discretion to withdraw from plea agreements—at least when the Legislature fails to expressly say otherwise in the ameliorative amendment, as is the case here.

Second, the general rule that plea agreements incorporate subsequent changes in the law pertains only to changes that the

Legislature or electorate "'*intended to apply to*'" the parties to plea agreements, which is a crucial limitation. (*Harris*, *supra*, 1 Cal.5th at p. 991, original italics.) The amendment to sex offender registration requirements that was at issue in *Doe* applied to "'every person described in [section 290.46]'"—that is, every person required to register as a sex offender—"'without regard to when his or her crimes were committed or [when] his or her duty to register pursuant to Section 290 arose.'" (*Doe*, at pp. 66–67.) Thus, in *Doe*, the statutory language ("every person") reflected a clear intent that the amendment apply to *all* defendants convicted by plea. AB 1950 reflects no such intent.

Third, unlike the present case, *Doe* did not involve a negotiated term of a plea agreement but, rather, a "statutory consequence" of conviction. (*Doe*, *supra*, 57 Cal.4th at p. 71.) Under section 290, the sex offender registration requirement is "a statutorily mandated element of punishment for the underlying offense." (*People v. McClellan* (1993) 6 Cal.4th 367, 380.) It "is not a permissible subject of plea agreement negotiation" and neither the prosecutor nor the court has authority to exempt a defendant from mandatory sex offender registration. (*Ibid.*) In fact, the parties did not discuss section 290 during the plea negotiations, other than to acknowledge that the defendant would have to register under its provisions. (*Doe*, at p. 67.) Because the sex offender registration requirement was not bargained for (and could not have been bargained for) between the parties, a change in law that affects it could not undermine or alter the bargain made by the parties. (See also *Johnson v.*

Department of Justice (2015) 60 Cal.4th 871, 888, fn. 10 [citing *Doe* for the proposition that a defendant's plea agreement is not violated where subsequent changes in the case law alter the defendant's eligibility for relief from sex offender registration requirements].)

Finally, when *Doe* was decided, prosecutors could protect plea bargains against changes in the law. (*Doe*, *supra*, 57 Cal.4th at pp. 71, 73–74.) As this Court explained, because "California law does not hold that the law in effect at the time of a plea agreement binds the parties for all time, it is not impossible the parties to a particular plea bargain might affirmatively agree or implicitly understand the consequences of a plea will remain fixed despite amendments to the relevant law." (*Id.* at p. 71.)

But this premise of *Doe* is no longer applicable. With the 2019 enactment of AB 1618, prosecutors are now forbidden from insulating their plea bargains against any future changes in the law. (See Stats. 2019, ch. 586, § 1.) AB 1618, which added section 1016.8 codifying this Court's holding in *Doe*, unilaterally modified existing plea agreements by declaring: "A provision of a plea bargain that requires a defendant to generally waive future benefits of legislative enactments, initiatives, appellate decisions, or other changes in the law that may retroactively apply after the date of the plea is void as against public policy." (§ 1016.8, subd. (b).)

So long as a prosecutor had the option of insulating the plea agreement, any failure to do so might have been construed as "accepting" subsequent legislation. (See *Doe*, *supra*, 57 Cal.4th at

p. 71.) Since plea bargains are grounded in contract law, this tacit "acceptance" could form the basis for enforcing a bargain even when subsequently modified by a court. (See *Segura*, *supra*, 44 Cal.4th at p. 930 ["acceptance" binds the parties in a plea bargain].) However, now that prosecutors have no control over whether the plea agreement will incorporate a future change in law (§ 1016.8, subd. (b)), they can hardly be deemed to "accept" such a change. (See *Serpa*, *supra*, 215 Cal.App.4th at p. 706.)

The concept that "a plea agreement … does not have the effect of insulating [the parties] from changes in the law that the Legislature has intended to apply to them" (*Doe*, *supra*, 57 Cal.4th at p. 66)—which AB 1618 codified in section 1016.8, subdivision (a)(1)—confirms only that the new law may affect an existing plea agreement, but it does not speak to remedy. (*Stamps*, *supra*, 9 Cal.5th at p. 705 [noting that AB 1618 "says nothing about the proper remedy should we conclude a law retroactively applies"].) As this Court explained in *Stamps*: "The *Estrada* rule only answers the question of *whether* an amended statute should be applied retroactively. It does not answer the question of *how* that statute should be applied." (*Stamps*, at p. 700, original italics.) Instead, "[t]he proper remedy requires an examination of the court's role in approving a plea agreement." (*Id.* at p. 705.) *Doe* and section 1016.8, like *Estrada*, say "nothing about the proper remedy should we conclude [that AB 1950] retroactively applies." (*Stamps*, at p. 705.)

3. The legislative history and purpose of AB 1950 do not support appellant's position

Appellant argues "the history and effect of the bill compels the conclusion that the Legislature intended to bypass the general rule that a court cannot unilaterally modify an agreed-upon term by striking portions of it." (OBM 28.) He reasons that: (1) in passing AB 1950, "the Legislature implicitly rejected a tailored approach, finding probation should be uniform in all cases to which the revised provision applies" (OBM 24); (2) since the vast majority of convictions are the result of plea bargains, "AB 1950's uniform decrease in probation duration would reasonably be intended by the Legislature to apply to cases resolved by plea" (OBM 24–25); and (3) "a probation term in excess of two years [is] now unauthorized, and AB 1950 gave courts no discretion to reject a nonfinal plea due to the change in law" (OBM 20, 25). Appellant is mistaken. As none of these points speaks to remedy, they cannot support an inference that the Legislature intended for AB 1950 to override long-standing law governing plea bargains and plea procedure. (See *Stamps*, *supra*, 9 Cal.5th at pp. 704–705 [drawing a distinction between the application of the new law and the corresponding remedy for its retroactive application].)

The fact that most convictions result from a plea does not compel a conclusion that AB 1950 "would reasonably be intended by the Legislature to apply to cases resolved by plea bargain." (OBM 24–25.) If the sheer number of plea bargains were enough on its own to support such an inference, there would be no reason for the Legislature or electorate to specify that a new or amended

law expressly applies to convictions by plea. This would render the deliberate references to plea bargains in Proposition 47, SB 483, AB 1618, and SB 1437 superfluous and meaningless, in contravention of fundamental rules of statutory construction. (See *Imperial Merchant Services, Inc. v. Hunt* (2009) 47 Cal.4th 381, 390 [courts do not presume that the Legislature performs idle acts, nor do they construe statutory provisions so as to render them superfluous].)

Moreover, applying the *Stamps* remedy to negotiated probation terms such as appellant's would not "run counter to the legislative intent to reduce incarceration for probationers." (OBM 32.) In enacting AB 1950, the Legislature determined that the rehabilitative purpose of probation could best be met, and deleterious effects of the existing probation system minimized, by limiting the maximum duration of felony probation to two years and misdemeanor probation to one year, except as specified in sections 1203a, subdivision (b), and 1203.1, subdivision (*l*). "[T]he legislative concern relates to people who are placed on probation and thus, the legislative purpose is advanced only *if* a court determines probation is appropriate." (*Scarano*, *supra*, 74 Cal.App.5th at p. 1017, original italics.)

AB 1950 left intact the trial court's "broad discretion to determine whether an eligible defendant is suitable for probation and, if so, under what conditions" (*People v. Carbajal* (1995) 10 Cal.4th 1114, 1120), and the legislation does not speak to alternative sentences beyond probation, which could have been imposed in this case. Nor did the Legislature suggest that AB

1950's purpose relates to sentences for legally valid offenses or enhancements that have been dismissed pursuant to the plea agreement and which, in a court's discretion, could be imposed after the parties are returned to the status quo ante. In fact, the Legislature recognized that in some instances, AB 1950's reforms could increase in prison commitments—even if in other instances probation violations would be reduced by AB 1950. (Assem. Public Safety Analysis, pp. 5–6.) As the legislative history materials acknowledged, "If judges do not have the ability to place an individual on probation for [the] length of time they feel is necessary from a public safety and rehabilitative standpoint, it is possible that judges will be more likely [to] sentence the defendant to a longer period of incarceration." (*Id.* at p. 6.)

The only thing the Legislature sought to do directly in enacting AB 1950 is what it did: reduce the period of probation for non-exempt offenses. Had the Legislature intended to reach probationary sentences that were the product of a plea bargain and take other alternative sentences off the table, it would have expressed such intent either in the statutory amendments or somewhere in the legislative history. The Legislature's recent enactment of SB 483—which declared "the intent of the Legislature to prohibit a prosecutor or court from rescinding a plea agreement based on a change in sentence as a result of this measure" (Legis. Counsel's Dig., SB 483 (2021–2022 Reg. Sess.) Stats. 2020, ch. 328, p. 1)—shows the Legislature is well aware of how to express this intent. Its silence in AB 1950 "is significant to show that a different legislative intent existed" with respect to

this measure. (*Jennings*, *supra*, 34 Cal.4th at p. 273 ["'omission of such provision from a similar statute concerning a related subject is significant to show that a different legislative intent existed with reference to the different statutes'"].)

It would be speculative to infer from AB 1950's purposes an intent to deprive the trial court of its broad sentencing discretion and statutorily vested authority to withdraw its prior approval of the plea in cases where a shorter probation term does not further the interests of justice or society. Contrary to appellant's assertion, renegotiating for a prison term is not the "only option here." (OBM 32.) If the parties are restored to the status quo ante, the robbery charge that was dismissed pursuant to the plea agreement could be used to support a three-year probation term, which was the original duration agreed to by the parties and approved by the court. (CT 85–86, 192; Supp. CT 15; RT 84.) Since robbery is a violent felony within the meaning of section 667.5, subdivision (c)(9), it is expressly excluded from AB 1950's probation term limit. (§ 1203.1, subd. (*l*)(1).) Thus, the robbery count provides a viable probationary sentence as an alternative option to imprisonment.

Employing the *Stamps* remedy in these circumstances would not undermine the *Estrada* principle that the Legislature intends a lighter penalty to "apply to every case to which it constitutionally could apply." (*Estrada*, *supra*, 63 Cal.2d at p. 745; see, e.g., *Scarano*, *supra*, 74 Cal.App.5th at p. 1012.) Assuming AB 1950 applies retroactively to appellant under *Estrada*, requiring the trial court and parties to abide by the

strictures of section 1192.5 on remand does not prevent the application of AB 1950 to appellant's negotiated grant of probation. Since appellant's burglary conviction is not exempt from AB 1950, he would be entitled to have his probation term reduced to two years; *Stamps* merely dictates *how* that reduction will apply to a term of probation that was part of a plea bargain. (*Stamps*, *supra*, 9 Cal.5th at p. 700 [*Stamps* remedy answers the question of *how* an amended statute found retroactive under *Estrada* should be applied].) Here, *Stamps* dictates that such reduction would allow the prosecution to revive the robbery charge to support the three-year grant of probation that was part of the bargain.

Moreover, when this Court referred to a "lighter penalty" in *Estrada* (see OBM 12), it spoke only of the penalty related to the specific sentence amended by the ameliorative statute. (*Estrada*, *supra*, 63 Cal.2d at p. 745 ["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"], italics added.) "*Estrada* applies to sentences for which the Legislature has made an ameliorative change; it does not apply to potential sentences that may be imposed on remand for which there has been no legislative change" (*Scarano*, *supra*, 74 Cal.App.5th at p. 1012), such as appellant's original charge of robbery in this case (see § 1203.1, subd. (*l*)(1)).

D. Applying the *Stamps* remedy to nonfinal plea cases impacted by AB 1950 best serves the fair and uniform administration of justice

Remanding for further proceedings pursuant to *Stamps* would put defendants who entered into plea bargains, like appellant, into the exact same position as defendants who are charged today—where any grant of probation as part of a plea bargain requires prosecutorial acceptance and judicial approval. (§ 1192.5.) Allowing defendants to serve a new probation term that no prosecutor ever agreed to and no sentencing court ever approved, would go further than AB 1950's amendments and do something neither *Estrada* nor the Legislature ever intended. It would give a defendant seeking retroactive relief under AB 1950 a more favorable outcome than a defendant being prosecuted under the prospective application of AB 1950, who must still obtain a prosecutor's agreement and a court's approval before entering a plea bargain for a two-year probation term. Requiring the trial court and parties to abide by the requirements of section 1192.5 on remand would thus ensure the uniform application of AB 1950 to all defendants granted probation pursuant to a plea bargain regardless of when the plea was entered. Applying the *Stamps* remedy would also protect the integrity of the plea-bargaining process and further the interests of justice.

A court's decision regarding the appropriateness of probation turns on a number of considerations, including the length of the supervision period as that bears on the prospect of rehabilitation, the protection of the public relative to the specific defendant before the court, and other sentencing alternatives in determining what sentence is in the best interests of society.

(§ 1202.7; *Carbajal*, *supra*, 10 Cal.4th at pp. 1120–1121.) These discretionary decisions are "critical to the administration of justice." (*Scarano*, *supra*, 74 Cal.App.5th at p. 1007.) As this Court has noted, trial courts have the duty to ensure a proposed plea bargain furthers "'the interests of society'" in light of "'the public's interests in vigorous prosecution of the accused, imposition of appropriate punishment, and protection of victims of crimes.'" (*Stamps*, *supra*, 9 Cal.5th at p. 706.) And, as illustrated by AB 1950's amendments and legislative history, judicial discretion is also an essential component of any grant of probation. (§ 1203.1, subds. (a) & (j); Sen. Public Safety Analysis, p. 5; Sen. 3d Reading, pp. 4–5; Assem. Public Safety Analysis, p. 4.) A *Stamps* remand will ensure that every plea-bargained grant of probation, regardless of when the plea was entered, represents "'an informed decision'" by the court that a two-year probation period is "'in furtherance of the interests of society'" (*Stamps*, at p. 706) and meets the rehabilitative and public safety goals of probation (§ 1202.7). Remanding the matter would also allow the trial court to determine whether a defendant met his conditions of probation for the purpose of expungement relief under section 1203.4, subdivision (a).

In addition, adhering to the *Stamps* remedy would protect the integrity of plea bargains as a contractual agreement between the parties. (§ 1192.5, subd. (b) [once a plea is accepted by the parties and approved by the court, the court may not proceed other than as specified in the plea].) Here, the prosecution agreed to dismiss the original charge of robbery (§ 211) and allow

appellant to enter a plea to an added count of burglary (§ 459). (CT 85, 86, 190–194; Supp. CT 15; RT 73–78, 84.) Appellant therefore benefitted from the plea by avoiding a possible conviction for a serious and violent felony offense (§§ 667.5, subd. (c)(9), 1192.7, subd. (c)(19)), which is punishable by imprisonment in the state prison for two, three, or five years (§ 213), and which is specifically exempted from AB 1950's two-year term limitation (§§ 1203.1, subd. (*l*)(1)). (See RT 77.)

In exchange for the plea, the prosecution "contemplate[d] a certain ultimate result" (*Collins*, *supra*, 21 Cal.3d at p. 215)—that appellant would be subject to *three years* of supervised probation with various terms and conditions in effect for the entire duration. (CT 192; Supp. CT 15–16; RT 82–83.) The trial court imposed a search condition, a stay-away order preventing appellant from being within 100 yards of the victims (i.e., YRC Trucking and its employees), a condition prohibiting appellant from associating with known convicted felons or anyone actively engaged in criminal activity, except for his codefendants (i.e., appellant's brother and the brother's girlfriend), and a requirement to participate in rehabilitative programs contemplating that these conditions would be enforced for three years. (CT 205–207; Supp. CT 16; RT 80–81, 83.) This implies a finding that those conditions for that duration would foster appellant's rehabilitation and protect society, thereby making this specific grant of probation in the interests of society. (§ 1202.7; *Scarano*, *supra*, 74 Cal.App.5th at p. 1008; see *People v. Olguin* (2008) 45 Cal.4th 375, 380 ["conditions of probation 'are

meant to assure that the probation serves as a period of genuine rehabilitation and that the community is not harmed by the probationer's being at large'"].)

Such a finding is supported by the record in this case. The probation report indicates that while appellant "does not appear to be criminally sophisticated, … his actions suggest he is an opportunist and will engage in behavior to benefit himself despite the law." (CT 202.) This trait, coupled with his familial relationship and continued association with his partners in crime, increases appellant's risk of reoffending, which poses a manifest danger to society. (See *People v. Mantanez* (2002) 98 Cal.App.4th 354, 366.) The record also demonstrates that appellant has had "some mental health challenges over the years and some of those appeared to be kind of ongoing." (RT 15.) Indeed, appellant had been declared mentally incompetent to stand trial and committed to a state hospital for competency restoration treatment. (RT 14–15, 55, 66, 72–74.) Nevertheless, the prosecutor agreed to release appellant into the community with the assurance that he would be closely monitored and subject to a search condition for three years. "'By allowing close supervision of probationers, probation search conditions serve to promote rehabilitation and reduce recidivism while helping to protect the community from potential harm by probationers.' [Citation.]" (*Olguin*, *supra*, 45 Cal.4th at p. 380.) Reducing appellant's probation term to two years deprives the prosecution of the benefits for which it bargained.

And even if on remand the prosecution were to accept the one-third reduction in appellant's probation that he seeks, the trial court must still approve of the agreement as modified. (§ 1192.5, subd. (b); *Scarano*, *supra*, 74 Cal.App.5th at pp. 1013–1014.) The court may adjust, modify, or strike probation terms so that they can be satisfied before termination of probation or removed from consideration of whether the probation terminated successfully. (§§ 1203.2, subd. (b)(1), 1203.3, subd. (a).) The prosecutor may also request that certain probation conditions be added or modified to compensate for one less year of supervision. (*Ibid.*)

However, if the trial court determines that a two-year probation term is not sufficient to rehabilitate appellant or protect society, it may withdraw consent to the plea agreement. (*Stamps*, *supra*, 9 Cal.5th at pp. 708–709; *Scarano*, *supra*, 74 Cal.App.5th at pp. 1009, 1013–1014.) Should the court or prosecutor withdraw from the plea, the trial court """must restore the parties to the status quo ante""" (*Stamps*, at p. 707), meaning before the plea and before the second degree robbery charge was dismissed. (*Scarano*, at p. 1014.)

In contrast, bypassing section 1192.5 without legislative intent to do so and depriving the People of their only recourse when subsequent legislation alters an integral term of their bargain will have a chilling effect on the willingness of prosecutors to enter into negotiated dispositions. Though prosecutors can no longer insulate their plea agreements from "changes in the law that may retroactively apply after the date of

the plea" (§ 1016.8, subd. (b)), the restorative remedy approved in *Collins* and adopted in *Stamps* provides the People some reassurance that they will "receive approximately that for which they bargained." (*Collins*, *supra*, 21 Cal.3d at p. 217; *Stamps*, *supra*, 9 Cal.5th at pp. 706–707 [parties must be restored to the status quo ante].)

Such a remedy is particularly important in cases where the specific grant of probation was an integral part of the bargain. For example, in cases where a probationer must pay a large sum in victim restitution, the probation period must be long enough to increase the likelihood that a crime victim is paid in full. The length of probation is also essential in cases like appellant's where stay-away orders and search conditions are imposed to protect victims and society as a whole. (*Olguin*, *supra*, 45 Cal.4th at p. 382 ["'the purpose of the search condition is to deter the commission of crimes and to protect the public, and the effectiveness of the deterrent is enhanced by the potential for random searches'"], quoting *People v. Reyes* (1998) 19 Cal.4th 743, 753.)

Thus, the appropriate remedy here, which best serves the interests of uniformity and justice, is the remand procedure articulated by this Court in *Stamps*. This remedy gives effect to the Legislature's intent to reduce the length of probation while preserving the parties' ability to reach an appropriate disposition without granting the defendant a windfall or putting either party at a disadvantage. (See, e.g., *Stamps*, *supra*, 9 Cal.5th at p. 702; *Collins*, *supra*, 21 Cal.3d at pp. 215–216.) Such a remedy also

allows the trial court to reevaluate the propriety of a two-year probation term and make any necessary adjustments to tailor the conditions to the shorter duration pursuant to its sentencing discretion under the statutory amendment. And it puts the parties and the court on equal footing with cases initiated after the enactment of AB 1950.

CONCLUSION

The matter should be remanded to the trial court in accordance with the procedure set forth in *Stamps*.

Respectfully submitted,

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July 20, 2022

CERTIFICATE OF COMPLIANCE

I certify that the attached RESPONDENT'S ANSWER BRIEF ON THE MERITS uses a 13-point Century Schoolbook font and contains 13,263 words.

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July 20, 2022

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