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February 27, 2017

Mr. Jorge E. Navarrete
Clerk, Supreme Court of California
350 McAllister Street
San Francisco, CA 94102-4797

SUPREME COURT
FILED

FEB 28 2017

Jorge Navarrete Clerk

RE: *People v. Veronica L. De Hoyos, et al.*
California Supreme Court Case No. S228230
San Diego Superior Court, Case No. SCD252670
Fourth Appellate District, Division One, Case No. D065961

Deputy

Dear Mr. Navarrete:

Respondent files this reply to appellant's supplemental letter brief, pursuant to this court's January 25, 2017 order. In appellant's supplemental letter brief, she acknowledges that Proposition 47 contains a petitioning procedure similar to the procedure contained in Proposition 36, as addressed by this court in *People v. Conley* (2016) 63 Cal.4th 646 (*Conley*). (Appellant's supp. letter brief at p. 1.) However, she argues that the reasoning of *Conley* does not apply in this case because, according to her interpretation, Proposition 47 was intended to have a broader reach than Proposition 36. This broad reach, she argues, "should compel the application of *Estrada*[¹]." (Appellant's supp. letter brief at p. 4.)

Appellant misapplies *Estrada* and *Conley*. The relevant question is not how the new statute substantively lessens punishment or whether its reach can generally be described as broad or narrow. Indeed, Propositions 36 and 47 lessen punishments in substantively different ways. Instead, the issue in *Estrada*, *Conley*, and here is whether the new statute states how its ameliorative effects are to be applied retroactively. When the statute is silent on the issue, courts apply the reasoning of *Estrada* and presume broad

¹ *In re Estrada* (1965) 63 Cal.2d 740 (*Estrada*).

retroactive application. (*Conley, supra*, 63 Cal.4th at p. 656.) When, as in Propositions 36 and 47, the statute “is not silent on the question of retroactivity” and instead “creates a special mechanism for application of the new lesser punishment to persons who have previously been sentenced” that is expressly “contingent on a court’s evaluation of the defendant’s dangerousness,” the broad presumption of *Estrada* does not apply. (*Id.* at pp. 657–659.)

Appellant’s argument that Proposition 47’s purpose was to broadly reduce punishment and save taxpayer money (Appellant’s supp. letter brief at pp. 4–5) ignores that the act also sought to promote public safety by not permitting automatic resentencing for anyone currently serving a sentence. As discussed in respondent’s opening brief on the merits, the General Election Voter Guide for November 4, 2014 repeatedly emphasized that individuals currently serving a felony sentence would not be automatically released and would be evaluated for dangerousness by the trial court. (OBM 18–21.) As this court recognized in *Conley*, such petitioning and resentencing procedures “were designed to strike a balance between these objectives of mitigating punishment and protecting public safety” (*Conley, supra*, 63 Cal.4th at p. 658.) In the context of Proposition 47, this court has described the petitioning procedure and dangerousness determination of Penal Code section 1170.18, subdivisions (a) and (b) as a “‘safety valve’ to protect the public.” (*Harris v. Superior Court* (2016) 1 Cal.5th 984, 991–992.)

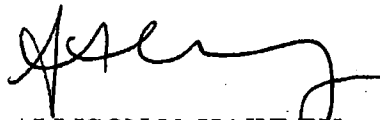
Appellant’s discussion of the “currently serving a sentence” language encourages this court to find ambiguities in the plain language of Proposition 47 where none exist. (Appellant’s supp. letter brief at pp. 7–12.) As this court recognized in the context of Proposition 36, the electorate “drew the relevant line” at whether prisoners are serving a sentence. (Pen. Code, § 1170.18; *Conley, supra*, 63 Cal.4th at p. 657–658.) As argued in respondent’s opening brief on the merits, the plain language of Penal Code section 1170.18 does not support appellant’s creation of additional categories of individuals based on whether their judgments are final. (OBM 6–9.)

In sum, appellant’s arguments ignore the plain language of Proposition 47’s resentencing procedure, which is nearly identical to the resentencing procedure of Proposition 36. There are no material differences between the resentencing procedure of Proposition 36 and the resentencing procedure of Proposition 47; it is the fact that both statutes include a petitioning procedure that is significant. Neither statute is “silent on the question of retroactivity,” neither draws a “distinction between persons serving final sentences and those serving nonfinal sentences,” and both “strike a balance” between mitigating punishment and protecting public safety through a petitioning procedure and dangerousness determination. (Pen. Code, § 1170.18; *Conley, supra*, 63 Cal.4th at pp.

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657-658.) As in *Conley*, *Estrada*'s presumption of broad retroactivity does not apply, and to obtain relief under Proposition 47, appellant must file a petition for recall of sentence so the trial court can determine if she is eligible for relief and if she poses an unreasonable risk of danger to the public.

Respectfully submitted,



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DECLARATION OF SERVICE BY U.S. MAIL & ELECTRONIC SERVICE

Case Name: **People v. Veronica L. De Hoyos, et al.** Case No.: **S228230**

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 that same day in the ordinary course of business.

On February 27, 2017, I served the attached **Reply to Appellant's Supplemental Letter Brief**, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 600 West Broadway, Suite 1800, P.O. Box 85266, San Diego, CA 92186-5266, addressed as follows:

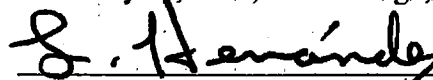
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and, furthermore I declare, in compliance with California Rules of Court, rules 2.251(i)(1)(A)-(D) and 8.71 (f)(1)(A)-(D), I electronically served a copy of the above document by 5:00 p.m. on the close of business day as follows:

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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 February 27, 2017, at San Diego, California.

L. Hernández
Declarant


Signature