IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE

IN THE MATTER OF ALEJANDRO N., Petitioner, v. SUPERIOR COURT, STATE OF CALIFORNIA, COUNTY OF SAN DIEGO, JUVENILE DIVISION, Respondent.	No. D0 67445 (Pet. No. JCM230808)
THE PEOPLE OF THE STATE OF CALIFORNIA, Real Party in Interest.	

On Petition from the Superior Court of California, County of San Diego
Hon. Robert J. Trentacosta

APPLICATION FOR LEAVE TO FILE *AMICI CURIAE* BRIEF AND [PROPOSED] BRIEF IN SUPPORT OF PETITIONER ALEJANDRO N.'S PETITION FOR WRIT OF MANDATE

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I. APPLICATION

Pursuant to Rule 8.200(c) of the California Rules of Court, Californians for Safety and Justice/Vote Safe, the American Civil Liberties Union of Northern California, the American Civil Liberties Union of Southern California, the American Civil Liberties Union of San Diego and Imperial Counties, and Michael Romano, in his capacity as director of the Stanford Three Strikes Project, ("*Amici*") respectfully apply for permission to file the *Amici Curiae* Brief contained herein.

The question in this case involves the retroactive applicability of Proposition 47 to juveniles. *Amici* were deeply involved with the drafting and/or passage of Proposition 47 and have also advocated for other criminal justice and sentencing reforms in California. Drawing upon this experience, the attached proposed brief offers a perspective that *Amici* believe will assist the Court as follows:

First, the proposed brief examines Proposition 47's legislative intent and explains how the Superior Court's refusal to afford Petitioner the initiative's mandatory benefits runs contrary to its purpose and also to the rehabilitative purpose underlying the juvenile justice system.

Second, the proposed brief analyzes constitutional principles to demonstrate that not applying Proposition 47 retroactively to juveniles violates their equal protection rights and leads to absurd consequences.

Third, the proposed brief offers a detailed account of the many collateral consequences facing juveniles adjudicated as felons for Proposition 47-eligible offenses.

II. INTERESTS OF AMICI CURIAE

Amici are criminal justice nonprofit organizations, and the issues implicated in this case directly impact each organization's members and clients. A brief description of each *amicus* party's specific interest in the matter is set forth here:

Californians for Safety and Justice/Vote Safe ("CSJ") was the principal author of Proposition 47 and thus has a distinct interest in ensuring that the initiative is fully implemented. *See Perry v. Brown*, 52 Cal. 4th 1116, 1143-44 (2011). CSJ advocates for reforms to the state's criminal justice laws and other related programs. CSJ also works to replace prison and justice system waste with common sense solutions that create safe neighborhoods and save public dollars. Through policy advocacy, public education, partnerships and support for local best practices, CSJ promotes effective criminal justice strategies to stop the cycle of crime and build healthy communities.

The American Civil Liberties Union ("ACLU") is a nationwide nonprofit, nonpartisan organization with over 550,000 members dedicated to the defense and promotion of the guarantees of individual rights and liberties embodied in the state and federal constitutions. The ACLU of

Northern California, the ACLU of Southern California, and the ACLU of San Diego and Imperial Counties are the three California affiliates of the ACLU. These ACLU California affiliates have a longstanding interest in preserving the constitutional rights of persons involved in the criminal justice system and have an additional interest in this writ petition because they supported and advocated for Proposition 47's passage.

Michael Romano, in his capacity as the director of the Three Strikes Project at Stanford Law School, also has an abiding interest in this writ petition. Like CSJ, Mr. Romano helped to draft and to enact Proposition 47. Moreover, since the initiative's passage in November 2014, Project staff and students at Stanford Law School have been working alongside public defenders throughout California to ensure that the new law is implemented fairly and correctly. Mr. Romano is familiar with the proceedings in the Superior Court and with the issues presented here for review.

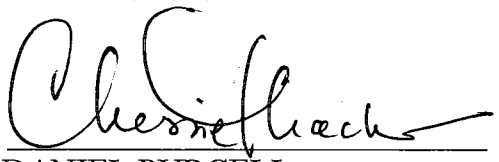
III. DISCLOSURE OF AUTHORSHIP AND MONETARY CONTRIBUTION

No party, or counsel for any party, in this writ petition has authored any part of the accompanying proposed *Amici Curiae* brief. In addition, no person or entity has made any monetary contributions to fund the preparation or submission of this brief.

Respectfully submitted,

Dated: April 20, 2015

KEKER & VAN NEST LLP

By: 

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I. INTRODUCTION

The underlying purpose of the juvenile justice system is rehabilitation. Proposition 47 explicitly furthers this same goal. It creates an avenue for persons convicted of an eligible felony to have their past offenses reduced to misdemeanors, thereby minimizing the myriad negative collateral consequences of a felony record. The voters intended for Proposition 47 relief to be provided as broadly as possible and this expressly retroactive provision was a centerpiece of the initiative.

In refusing to grant the intended retroactive relief to Petitioner, and other juveniles adjudicated prior to Proposition 47's passage, the Superior Court contravened the measure's overarching scheme and violated these individuals' constitutional rights. Moreover, its refusal to apply the initiative's benefits to juveniles has led to absurd results, torturing the meaning of the word "designation" and creating a new, distinct class of felonies with maximum sentences of less than one year.

There is no rational basis—much less a compelling one—to saddle minors alone with severe criminal histories. A minor who is adjudicated a felon is more likely to be unfairly stigmatized, subjected to enhanced criminal penalties, turned down for jobs, rejected from military service, denied admission to college, and placed at risk in immigration proceedings.

The District Attorney discounts these collateral consequences by pointing to the confidentiality of juvenile records and the availability of

record-sealing. But these protections are featherweight in comparison to the relief intended by Proposition 47. Confidentiality rules governing the disclosure of juvenile records are riddled with exceptions, and success in sealing one's record is far from guaranteed.

Six decades ago, the California Court of Appeal in *In re Contreras*, 109 Cal. App. 2d 787 (1952) recognized that, even though a minor's adjudication is technically not a criminal conviction, "for all practical purposes, this is a legal fiction, presenting a challenge to credulity and doing violence to reason." *Id.* at 789. With this fiction in mind, the *Contreras* court declared that "[c]ourts cannot and will not shut their eyes and ears to everyday contemporary happenings." *Id.*; *see also In re Lawanda L.*, 178 Cal. App. 3d 423, 431 (1986) (emphasizing same).

This exhortation applies with equal force today. Proposition 47 creates a legal process for the retroactive designation of certain felonies as misdemeanors. Given that the purpose of the juvenile justice system is rehabilitation, excluding minors from Proposition 47 is irrational and leads to innumerable collateral consequences. The Court should not shut its eyes to such an unfair and constitutionally infirm result.

II. BACKGROUND[1]

Proposition 47 seeks to relieve the social and financial burden of California's over-criminalization problem in five distinct ways. First, the initiative amends and redefines certain drug possession and theft offenses as misdemeanors for all purposes. *See* Safe Neighborhood and Schools Act, 2014 Cal. Legis. Serv. Prop. 47, §§ 5-13 (amending Penal Code §§ 459.5, 473, 476a, 490.2, 496, 666 and Health & Safety Code §§ 11357 and 11377). Second, for persons serving sentences for eligible felonies, it creates a misdemeanor resentencing process at Penal Code section 1170.18—the process includes the recalculation of one's sentence *and* the redesignation of one's offense level. *Id.* § 14 (codified at Penal Code § 1170.18(a)-(b), (k)). Third, it permits any qualified offender who has already completed serving a sentence to have his offense redesignated as a misdemeanor. *Id.* (codified at Penal Code § 1170.18(f)-(g), (k)). Fourth, it directs that any savings be funneled into social services, including youth-focused programs for the reduction of truancy and dropout rates in grades K-12. *Id.* § 4 (enacting Ch. 33 in Div. 7 of Title 1 of the Gov't Code). And finally, the initiative mandates a "broad[] construc[tion] to accomplish its purposes." *Id.* § 15; *see also id.* § 18 (also emphasizing liberal construction).

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[1] *Amici* are prepared to submit an appendix of the social science research and literature cited herein should the Court so desire.

Nearly 56% of the voters in San Diego County supported Proposition 47, and it passed with more than 59% of the vote statewide.[2] The initiative went into effect as the Safe Neighborhood and Schools Act on November 5, 2014. Since then, the San Diego Association of Governments ("SANDAG") reports that the Act has contributed to a 15% decrease in jail populations and a 50% decline in bookings for Proposition 47-impacted offenses. Furthermore, as of March 26, 2015, nearly 2,000 adults have been found eligible for redesignation under Penal Code section 1170.18.[3]

The issue here is whether juveniles adjudicated prior to Proposition 47's passage are excluded from the class of persons entitled to the rights guaranteed by the initiative. Many counties across the state, including Sacramento, Alameda, and San Francisco, have already determined that Penal Code section 1170.18 applies to juveniles.[4] For the reasons that follow, *Amici* contend that there is no rational basis for San Diego to reach a different conclusion.

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[2] Debra Bowen, Cal. Sec'y of State, *Statement of Vote: November 4, 2014 General Election* at 51, http://elections.cdn.sos.ca.gov/sov/2014-general/ssov/ballot-measures-summary.pdf.

[3] SANDAG, Crim. J. Res. Div. Report, Vol. 17, Issue No. 3 (March 2015), http://www.sandag.org/uploads/publicationid/publicationid_1932_18922.pdf

[4] *See, e.g.*, *In re Juan M.*, Case No. JV134937, Sacramento Cnty. Super. Ct. Min. Order dated Feb. 11, 2015 (Order granting minor's "motion made pursuant to Proposition 47" for reduction of offense levels, restitution of fines, and removal of DNA sample from CODIS).

III. ARGUMENT

A. Proposition 47's goals, which must be liberally construed, render the initiative applicable in the juvenile context.

In interpreting a voter initiative, the "fundamental purpose" is to "ascertain the intent of the lawmakers so as to effectuate the purpose of the law. *People v. Osuna*, 225 Cal. App. 4th 1020, 1034 (2014) (internal quotation marks omitted). A court therefore looks first to the words of the initiative. It may also look to "extrinsic aids, including the ostensible objects to be achieved, the evils to be remedied, the legislative history, public policy, contemporaneous administrative construction, and the statutory scheme of which the [initiative] is a part." *Id.*

When applying these rules of construction, "it is settled that the language of a statute should not be given a literal meaning if doing so would result in absurd consequences that the [voters] did not intend." *In re Michele D.*, 29 Cal. 4th 600, 606 (2002). "[I]ntent prevails over the letter of the law and the letter will be read in accordance with the spirit of the enactment." *Id.*; *see also People v. Ledesma*, 16 Cal. 4th 90, 95 (1997) (emphasizing same); *People v. Brown*, 230 Cal. App. 4th 1502, 1509 (2014).

Here, the District Attorney argues that Proposition 47, or more specifically Penal Code section 1170.18, is inapplicable to juveniles because the initiative uses terminology more suited to adult criminal proceedings. This argument focuses too literally on the text, overrides the electorate's

intent, and ignores the dual, complementary purposes of Proposition 47 and the juvenile justice system. It also contravenes the initiative's twice-repeated mandate that it be construed liberally. *See* Safe Neighborhood and Schools Act, §§ 15, 18.

Although Proposition 47 does not explicitly reference juveniles, it also does not distinguish between adult and juvenile offenders and it is fully applicable in the juvenile context. Voters adopted the measure to "[r]equire misdemeanors instead of felonies for nonserious, nonviolent crimes." *Id.* § 3. They embraced this purpose for all persons without identifying adults as the only intended beneficiaries. In addition, the Legislative Analyst explained in voter pamphlets that resentencing would be available to any qualified "offender," again making no explicit distinction between adults and juveniles. *See* Voter Info. Guide, Gen. Elec. (Nov. 4, 2014) at 34-37.

Moreover, Proposition 47 was formally endorsed by numerous organizations focusing either primarily or in part on juvenile justice and youth-related issues.[5] It would therefore be nonsensical to conclude that the initiative's proponents, and the voters informed by such proponents,

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[5] These organizations include: Alliance for Boys and Men of Color, California School-based Health Alliance, Children's Defense Fund, East Bay Immigrant Youth Coalition, Inland Empire Immigrant Youth Coalition, Khmer Girls in Action, Reading-Ready Wizards, Anti-Recidivism Coalition, Youth Justice Coalition, California Teachers' Association, Ella Baker Center for Human Rights, and Students for Sensible Drug Policy.

intended to exclude juveniles from Proposition 47's reach.

The District Attorney's contrary argument overly relies on a pedantic legal distinction between adult criminal terminology—terms like "conviction" and "sentence"—and juvenile analogs like "adjudication" and "disposition," a distinction undoubtedly lost on the general electorate. Certainly, very few people, even legal practitioners working outside the juvenile context, understand the formal difference between an adult "conviction" and a juvenile "adjudication." Given the well-settled principle that, in interpreting initiatives, courts are to discern a word's ordinary meaning as understood by "the average voter, unschooled in the patois of criminal law," there is no basis to conclude that the voters intended to distinguish between convictions and adjudications. *Robert L. v. Super. Ct.*, 30 Cal. 4th 894, 902 (2003).

The District Attorney further conjures a basis for excluding juveniles by arguing that Proposition 47 was only concerned with cost savings stemming from reduced prison populations. This reading of the initiative's purpose is insupportably narrow. By extending Penal Code section 1170.18 to those who have already completed their sentences, the initiative clearly is designed to minimize the collateral consequences associated with a felony *record*, not just the costs of felony *incarceration*. Imposing these significant consequences, discussed *infra*, on juveniles alone is unfair in light of the voters' intent to reduce these felonies to misdemeanors for all purposes.

But even accepting the District Attorney's argument, overspending on *juvenile* incarceration and overburdening of state-run *juvenile* facilities are serious problems. For example, according to the California Department of Finance, in 2012-2013, the state spent a per capita cost of $208,338 ($570.79 per day) on detention in juvenile justice facilities. The estimated per capita cost for 2013-2014 was $260,653 ($714.12 per day).[6] More locally, the San Diego Probation Department states that, in 2008-2009, over 6,500 youth were booked into the Kearny Mesa and East Mesa Juvenile Detention Facilities at a daily cost of $237.64.[7] Petitioner himself was detained at Juvenile Hall and—even after the Superior Court found him to be "over-detained"—was ordered released only when "a bed bec[ame] available" at the California Family Life Center Program. Pet. Ex. H (Minute Order dated Nov. 5, 2014); *see also id.* Ex. G (Minute Order dated Oct. 16, 2014). As also discussed below, prior felony adjudications can lead to increased and increasingly costly incarceration in future proceedings. Thus, even if cost-savings was the *only* purpose animating Proposition 47, which it isn't, there would be reason to apply it in the juvenile context.

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[6] *See* Justice Policy Institute, *Sticker Shock: Calculating the Full Price Tag for Youth Incarceration* (Dec. 2014) at 11, n.57 (citing Cal. Dep't of Fin., *2014 Governor's Budget* § 5225), *available at* http://www.justicepolicy.org/research/8477.

[7] San Diego Cnty., Prob. Dep't Facts, http://www.sandiegocounty.gov/probation/Facts.html.

B. Failing to apply Proposition 47 retroactively to juveniles violates their equal protection rights.

The Superior Court's interpretation that Proposition 47 does not retroactively apply to juveniles violates the equal protection clauses of the California and United States Constitutions. Petitioner is similarly situated to adults who were convicted of the same felonies prior to Proposition 47's passage and also to youth who are adjudicated of the same offenses today. Petitioner therefore must receive similar treatment under the law.

1. Juveniles like Petitioner are similarly situated to adults with respect to the purpose of Proposition 47.

An equal protection analysis turns not on "whether persons are similarly situated for all purposes," but on "whether they are similarly situated for purposes of the law challenged." *Cooley v. Super. Ct.*, 29 Cal. 4th 228, 253 (2002). "In other words, [a court] ask[s] at the threshold whether two classes that are different in some respects are sufficiently similar with respect to the laws in question to require the government to justify its differential treatment." *People v. McKee*, 47 Cal. 4th 1172, 1202 (2010).

In most respects—but not all, as this case shows—adults and juveniles are different. Each is a part of a justice system with distinct objectives: the adult system focuses on punishment and the juvenile system focuses on rehabilitation. *See In re Greg F.*, 55 Cal. 4th 393, 416-17 (2012). Accordingly, juveniles and adults have been found differently positioned

with respect to laws governing liberty and privacy interests and with respect to drug treatment and other rehabilitative programs. *See, e.g., In re Eric J.*, 25 Cal. 3d 522, 528-33 (1979); *In re Jose Z.*, 116 Cal. App. 4th 953, 961 (2004); *In re Nan P.*, 230 Cal. App. 3d 751, 757 (1991); *In re Samuel V.*, 225 Cal. App. 3d 511, 516-17 (1990).

But with respect to Proposition 47, the distinction between the juvenile and adult justice systems does not hold. In fact, by treating adults and juveniles differently for purposes of Penal Code section 1170.18, the absurd result is that adults enjoy *rehabilitation* as misdemeanants, while minors are *punished* with felony records and the collateral consequences that come with them. Such a result contravenes the guiding objective of the Welfare and Institutions Code—that minors *shall* "receive care, treatment, and guidance that is consistent with their best interest, that holds them accountable for their behavior, and that is appropriate for the circumstances." Welf. & Inst. Code § 202(b). It is also at odds with Section 726 in the Code, where the Legislature codified the commonsense principle that juveniles should not be subjected to more severe criminal sanctions than an adult convicted of the same offense. *Id.* § 726(d).[8]

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[8] As one court explained, "[t]he obvious purpose of the . . . amendments to Welfare and Institutions Code section 726 was 'to treat adult and juvenile offenders on equal footing as far as the maximum duration of their incarceration is concerned.'" *In re Jovan B.*, 6 Cal. 4th 801, 819 (1993)

"Under elementary principles of equal protection," a juvenile must receive "all of the rights an adult offender would receive except those which are completely inconsistent with the philosophy of the juvenile court, i.e., bail and a jury trial." *In re Harm*, 88 Cal. App. 3d 438, 446 (1979). Here, Petitioner, and other minors adjudicated prior to the initiative's passage, have committed exactly the same illegal acts as adults and therefore are identically situated for the purposes of Proposition 47. Yet by the District Attorney's logic, these minors would be denied the right to minimize the collateral impacts of that misconduct—a right now guaranteed to adults under Penal Code section 1170.18. That provision is unquestionably the most "rehabilitative" aspect of Proposition 47, and thus it is also the most consistent with the "philosophy" of juvenile law. Excluding juveniles from Section 1170.18 therefore not only violates the Equal Protection Clause, but is contrary to the intent of Proposition 47 and manifestly unfair.

2. Juveniles adjudicated prior to Proposition 47's passage are similarly situated to juveniles adjudicated after its enactment.

The District Attorney does not contest that juveniles adjudicated before and after Proposition 47's enactment are similarly situated to one another. Nor could it do so—both groups of juveniles have been adjudicated pursuant to the same justice system for the same conduct. The only

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(quoting *In re Aaron N.*, 70 Cal. App. 3d 931, 939 (1977)); *see also In re Carlos E.*, 127 Cal. App. 4th 1529, 1542 (2005).

difference is that one group was found to have acted unlawfully prior to November 4, 2014, and the other group afterwards.

The District Attorney instead asserts that the minors' differential treatment is "limited to the categorization of the juvenile adjudication (misdemeanor or felony)" and does not rise to "the level of an equal protection violation." (Resp't Return to Order to Show Cause ("Return") at 33, March 27, 2015.) In support of this position, the District Attorney cites a number of cases that it claims have "consistently rejected the argument that the timing of the effective date of a statute lessening the punishment for a particular offense creates an equal protection violation." *Id.* at 32-33.

But the cases upon which the District Attorney relies for this overly broad proposition are inapposite. Each considered a statute with an explicit beginning date or saving clause—a stark contrast to the express retroactive application mandated by Proposition 47 and enacted in Penal Code section 1170.18. For example, in *People v. Floyd*, 31 Cal. 4th 179 (2013), the California Supreme Court considered whether the state's prospective-only application of Proposition 36 drug diversion gave rise to an equal protection violation. *Id.* at 188-90. The Court found that it did not because statutes are permitted to have starting dates and the drafters of Proposition 36 chose July 1, 2001 as its starting date. *Id.*

Similarly, in *People v. Yearwood*, 213 Cal. App. 4th 161 (2013), the court approved the prospective application of a statute that had "the

functional equivalent of a saving clause." *Id.* at 172. In reaching this decision, the *Yearwood* court found it significant that the defendant had access to an alternate remedy in that he could petition for recall and resentencing as provided by the statute. *See id.* at 168. This is precisely the relief being denied here.

More applicable to the present matter is *In re Estrada*, 63 Cal. 2d 740 (1965), which considered a statute that was silent as to a start date or saving clause. The Supreme Court reasoned:

> When the Legislature amends a statute so as to lessen the punishment it has obviously expressly determined that its former penalty was too severe and that a lighter punishment is proper . . . . It is an inevitable inference that the Legislature must have intended that the new statute . . . should apply to every case to which it constitutionally could apply.

Id. at 745; *see also Tapia v. Super. Ct.*, 53 Cal. 3d 282, 301 (1991).

Subsequent courts have departed from the *Estrada* standard "only when new legislation has included an express saving clause or its equivalent or when some other consideration clearly dictated a contrary result." *In re Pedro T.*, 8 Cal. 4th 1041, 1055 (1994); *see also People v. Nasalga*, 12 Cal. 4th 784, 792 (1996) ("The rule in *Estrada* has been applied to statutes governing penalty enhancements, as well as to statutes governing substantive offenses.").

Proposition 47 not only fits under *Estrada*, it goes one step farther because it is expressly retroactive. While initiatives and statutes can have

start dates, if no start date is present and the statute calls for retroactive application, it infringes statutory construction rules and constitutional principles to draw an arbitrary line between two identically situated groups. Providing relief to a minor adjudicated on November 5, 2014, while denying the same relief to one adjudicated two days earlier, is as clear a denial of equal protection as can be imagined. *See, e.g., In re Kapperman*, 11 Cal. 3d 542, 544-47 (1974) (concluding that prospective-only application of statute giving credit to persons convicted of felony offenses for time served in custody violates equal protection clause).

3. No rational basis justifies treating these similarly situated groups differently—in fact, doing so leads to absurd results.

A court faced with the differential treatment of similarly situated groups must "undertake a serious and genuine judicial inquiry" into the government's asserted basis for its treatment. *People v. Valdez*, 174 Cal. App. 4th 1528, 1531 (2009) (internal quotation marks omitted). Here, an inquiry into the Superior Court's interpretation of Proposition 47 does not satisfy even the most lenient standard of equal protection review: the rational basis test.

The District Attorney argues that not applying Penal Code section 1170.18 to Petitioner is "related to the legitimate government purpose of the treatment and rehabilitation of juvenile offenders." (Return at 30.) But the District Attorney does not, and cannot, explain how saddling a juvenile with

a felony adjudication instead of a misdemeanor could possibly further any "treatment" or "rehabilitation." Instead, the District Attorney merely repeats the mantra that juveniles and adult proceedings are different. (Return at 30-31.) This reasoning is circular and cannot survive the sort of "genuine judicial inquiry" required. *Cf. Valdez*, 174 Cal. App. 4th at 1531.

Also specious is the District Attorney's contention that any potential constitutional issues are cured by the Superior Court's reduction of confinement terms pursuant to Welfare and Institutions Code section 726 subdivision (d). In arguing that the Superior Court has fulfilled its legal duty by recalculating Petitioner's "custody credits to reflect a custodial sentence commensurate with a misdemeanor sentence," (Return at 17), the District Attorney focuses on a single tree and misses the whole forest. Adopting this practice leads to at least three absurd results.

First, recalculating a juvenile's confinement term, while simultaneously refusing to redesignate his offense, creates a class of juvenile felonies with maximum terms of one year or less. Such a distinct class conflicts with Penal Code section 17, which defines a felony as any crime punishable: "with death, by imprisonment in the state prison, or notwithstanding any other provision of law, by imprisonment in a county jail under the provisions of subdivision (h) of Section 1170."[9] None of the

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[9] *See also* Penal Code § 17(a) (explaining that "[e]very other crime or public

crimes amended or created by Proposition 47 is punishable in any of these ways.

Second, interpreting Penal Code section 1170.18 to be "very narrowly focused on the *penalties* stemming from an offense (such as sentencing) and not reclassification" eliminates certain provisions in the statutory scheme. (Return at 18.) In particular, it ignores subdivision (k), which states: "[a]ny felony conviction that is recalled and resentenced . . . *shall be considered a misdemeanor for all purposes*." Penal Code § 1170.18(k) (emphasis added). The District Attorney's further assertion that subdivision (k) is somehow "focused toward penalties that would stem from a felony offense, not the characterization of the offense itself" is even more baffling. (Return at 19.) Construing the statute in this way flouts entirely subdivision (k)'s reference to subdivision (g)—which is focused on the designation (*i.e.*, characterization) of past offenses. Specifically, subdivision (g) states that, if an application satisfies certain criteria, then "the court *shall designate* the felony offense . . . as a misdemeanor."

Third, and finally, the District Attorney's statutory construction leads to the absurd result that juveniles adjudicated prior to Proposition 47's passage will be treated more harshly than adults who committed the exact

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offense" that is not a felony is "a misdemeanor except those offenses that are classified as infractions"); *see also id.* § 19 (describing misdemeanors).

same offenses. These juveniles will also be treated more harshly than juveniles adjudicated of committing the exact same offenses today. As detailed below, there are many instances in which an adjudication for a felony, versus a misdemeanor, impedes a juvenile's future prospects. In attempting to underplay these collateral consequences, the District Attorney asserts that it is "speculative to presume" that a felony adjudication will have any negative influence. (Return at 34.) This cavalier outlook is unfounded and represents a complete perversion of the juvenile justice system's rehabilitative goals.

C. The collateral consequences of a felony adjudication are significant and should not be discounted.

1. Increased Stigmatization

Try as the District Attorney might to eliminate the difference between a felony and a misdemeanor adjudication, the two labels carry very different connotations. The California Supreme Court long ago described a misdemeanor as an act that is typically "insignificant as far as its effect upon the body politic is concerned." *People v. Dawson*, 210 Cal. 366, 370-71 (1930). Conversely, the Court characterized a felony as something that can be "so heinous in character that to its frequent and unchecked commission might be attributed the origin of a possible statewide disaster, or eventually, the downfall of organized society." *Id.*

While today's language might not be quite so apocalyptic, the labeling of one's criminal past still has tangible impacts. For example, one study of 96,000 adult probationers showed higher recidivism rates if individuals left court with a "felon" label than if they did with no label imposed. *See* Chiricos et al., *The Labeling of Convicted Felons and its Consequences for Recidivism*, 45 Criminology 547, 548-49 (2007). Other studies have noted the high correlation between stigma and school dropout rates, emphasizing that "a delinquent label redirects a youth's self-conception or personal identity toward a deviant self-concept," while at the same time changing the way institutions treat that student. *See* Liberman, et al., *Labeling Effects of First Juvenile Arrests: Secondary Deviance and Secondary Sanctioning*, 52 Criminology 345, 347 (2014).

Indeed, contrary to the District Attorney's assertions, courts have found it to be "common knowledge" that "an adjudication when based upon a charge of committing *an act that amounts to a felony*, is a blight upon the character of and is a serious impediment to the future of such minor." *In re Manzy W.*, 14 Cal. 4th 1199, 1209 (1997) (internal quotation marks omitted) (emphasis added). The same is simply not true for a misdemeanor. *See TNG v. Super. Ct.*, 4 Cal. 3d 767, 776 n.10 (1971) ("[A] juvenile arrest record has proven in many cases to be a serious handicap to a person in life, *especially if a felony charge is involved.*") (internal quotation and citations omitted). It thus cannot seriously be argued that a minor with a felony on

his record is no worse off—in terms of both self-perception and treatment by society as a whole—than one with a misdemeanor.

2. Enhanced Criminal Penalties in Future Proceedings

In both juvenile and criminal court, an individual with a felony record is also likely to suffer more severe outcomes in future proceedings. First, if a minor, such as Petitioner, does not have his felony designated as a misdemeanor, and he then reoffends, he faces an increased risk of being deemed "unfit" for juvenile court. *See* Welf. & Inst. Code § 707(a)(2)(A).

Welfare and Institutions Code section 707 is clear that, when a minor with two prior felonies commits a third felony offense, it "shall" lead to the presumption of unfitness—a result underplayed by the District Attorney, (Return at 26-27), but recognized by the California Supreme Court to be "the worst punishment the juvenile system is empowered to inflict." *Ramona R. v. Super. Ct.*, 37 Cal. 3d 802, 810 (1985) (quoting *Separating the Criminal from the Delinquent: Due Process in Certification Procedure*, 40 So. Cal. L. Rev 158, 162 (1967)). Further, such a finding may result in a sentence in state prison, to commitment at the Department of Corrections, or to commitment at the Division of Juvenile Facilities. Welf. & Inst. Code § 707(a)(3).[10]

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[10] *Amici* note that transfers to the adult criminal system and the outcomes of cases tried there often yield troubling disparate racial impacts. Data collected by the California Department of Justice ("DOJ") in 2013 reveals

Even where a minor is found to be fit, the severity of his criminal history can still lead to more serious dispositions. Juvenile judges have wide latitude at dispositional hearings, and a minor's prior felony could weigh in favor of placement out of the home, commitment to a state-run facility, or more restrictive probation terms. Such was the case in *In re Manzy W.*, 14 Cal. 4th 1199 (1997), where a trial court considered a juvenile's criminal history in finding "lesser alternative placements" inappropriate. *Id.* at 1203. On appeal, the California Supreme Court approved this practice. It remanded, however, because the trial court had failed to declare the juvenile's offense a misdemeanor or a felony as required by Welfare & Institutions Code section 702.[11] *Id.* at 1205. The *Manzy* Court concluded that such a determination was important because of its bearing on "future adjudications"—the same argument that *Amici* raise here. *Id.*

Similarly, a felony adjudication sustained as a minor can negatively affect a defendant who enters the criminal justice system as an adult. With respect to plea bargain negotiations, a prosecutor may consider the severity

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that, of those transferred, "a greater percentage of black juveniles were convicted (91.7 percent) compared to all other race/ethnic groups." DOJ Crim. J. Statistics Ctr., *Juvenile Justice in Cal.* at 51 (2013), *available at* http://oag.ca.gov/sites/all/files/agweb/pdfs/cjsc/publications/misc/jj13/preface.pdf?

[11] In addition to Welfare & Institutions Code section 702, California Rules of Court 5.780 and 5.790 both require a juvenile court to "expressly declare" whether a juvenile charged with a wobbler offense has committed a misdemeanor or a felony.

of a defendant's criminal record, including his juvenile adjudications. *See, e.g.*, Welf. & Inst. Code § 506. In addition, a court deciding whether to grant probation must consider if a defendant has a "[p]rior record of criminal conduct, *whether as an adult or a juvenile*." Cal. R. Ct. 4.414(b)(1) (emphasis added). A court must also take into account one's juvenile adjudications during sentencing. Cal. R. Ct. 4.421(b)(2), 4.423(b)(1); *see also People v. Lucky*, 45 Cal. 3d 259, 295 n.24 (1988) (acknowledging that courts have "long assumed" a juvenile record may be used for enhancement purposes in adult-sentencing). Federal law likewise permits consideration of juvenile records in determining an appropriate sentence. *See, e.g., United States v. Williams*, 891 F.2d 212, 213-15 (9th Cir. 1989).[12]

3. Reduced Professional Opportunities with Respect to Employment, the Military, and Licensing

A felony adjudication can also hinder one's professional opportunities because many policies—written, de facto, or otherwise—discriminate against those who have committed more serious offenses.[13]

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[12] As discussed in Richard E. Redding, *Using Juvenile Adjudications for Sentence Enhancement under the Federal Sentencing Guidelines: Is it Sound Policy?*, 10 Va. J. Soc. Pol'y & L. 231 (2002-2003), numerous problems arise when a juvenile adjudication is included in the computation of a criminal history score under the Federal Sentencing Guidelines.

[13] For a discussion of how criminal background checks can brand former offenders with "the mark of a criminal record" and the racially disparate impact of this practice, see Roberto Concepcion, *Need Not Apply: the Racial Disparate Impact of Pre-Employment Criminal Background Checks*,

Indeed, even the Equal Employment Opportunity Commission ("EEOC") states that it is permissible to consider the "gravity" of an applicant's crime as it relates to the position being sought. To this end, the EEOC advises that "offenses identified as misdemeanors may be less severe than those identified as felonies." *See* EEOC Enforcement Guidance, *Consideration of Arrest and Conviction Records in Employment Decisions under Title VII of the Civil Rights Act of 1964*, Part V.B.4-6.[14]

Additionally, the military—a particularly important source of opportunity for young people in San Diego—considers criminal histories a potential bar to enlistment.[15] Prospective recruits to the Armed Forces must typically obtain waivers for most prior adjudications, and it is undisputedly more difficult to obtain a waiver for a felony adjudication than it is for a

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19 Geo. J. on Poverty L. & Pol'y 231 (2012). In particular, the article notes that the percentage of employers conducting criminal background checks has risen from 51% in 1996 to 92% in 2010. *Id.* at 237. It further states that a criminal record reduces the likelihood of a callback or employment offer by nearly 50%. *Id.* at 238; *see also Hung Ping Wang v. Hoffman*, 694 F.2d 1146, 1149 (9th Cir. 1982) (citing *Green v. Mo. Pac. R.R. Co.*, 523 F.2d 1290, 1294-95 (8th Cir. 1975) for proposition that a policy of inquiring into criminal records can amount to a civil rights violation because of its disproportionate impact on hiring and promotion practices).

[14] The EEOC Guidelines are *available at* http://www.eeoc.gov/laws/guidance/arrest_conviction.cfm.

[15] *See, e.g.,* Pacific Juvenile Defender Center, *Collateral Consequences of Juvenile Delinquency Proceedings in California* at 119-21 (2011) (detailing other recruiting issues and conditions for waiver), http://njdc.info/wp-content/uploads/2014/04/PJDC-CA-Collateral-Consequences-Handbook-2011.pdf [hereinafter, "PJDC Handbook"].

misdemeanor.[16] The Marines, for example, advise that, "[f]or purposes of a waiver, processing will be based on the severity of the specific offenses for which an applicant was adjudged or convicted."[17] The District Attorney fails to acknowledge this issue when it breezily offers that an "applicant is not automatically excluded" from service because of a prior adjudication. (Return at 35.)

The same impediments also exist in the licensing arena, especially with respect to becoming a credentialed nurse, social worker, or other type of caregiver. *See* Bus. & Prof. Code §§ 144, 144.5, 475, 480; Labor Code § 432.7(f); Penal Code § 11105 (providing for access to criminal history information). Further, having a felony adjudication instead of a misdemeanor is likely detrimental whenever a "good moral character" determination is required for a professional license. *See, e.g.*, Bus. & Prof. Code § 6060(b) (setting forth good moral character requirement to become a licensed attorney); Cal. State Bar Rules 4.16, 4.41.

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[16] *See id.*; *see also* Army Regulation 601-210, Rule 4-4 (Mar. 2013) (advising recruiters that "[i]f the local law considers the offense a felony, then treat as a major misconduct"), *available at* http://www.apd.army.mil/pdffiles/r601_210.pdf.

[17] Marines: Military Personnel Procurement Manual, Vol. 2, No. MCO-P1100.72C (2004) at 3-96, *available at* http://www.marines.mil/Portals/59/Publications/MCO%20P1100.72C%20W%20ERRATUM.pdf.

4. Potential Bars to Higher Education

Being adjudicated for a felony instead of a misdemeanor can also affect one's ability to get into college. Specifically, more than 500 colleges and universities around the country—including the University of San Diego and the University of Southern California—use the Common Application, which includes a "Disciplinary History" Section. This Section asks applicants if they have "ever been adjudicated guilty or convicted of a misdemeanor, felony, or other crime?" *See* The Common Application, Inc., First-Year Application (2015).[18] Should an applicant answer this question in the affirmative, he then must explain the "situation," which invariably requires disclosing whether his adjudication was considered a felony or a misdemeanor offense. *Id.*

While the Common Application instructions provide that an applicant who has had his record sealed is "not required to answer 'yes' to this question," confusion over terminology and the challenges (if not outright bars) to getting one's record sealed, discussed *infra*, greatly undercut this

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[18] The Common Application is *available at* https://www.commonapp.org. Additional instructions to the above question are not a model of clarity. They advise: "'Adjudicated delinquent' is the juvenile equivalent of 'adjudicated guilty.' If the conviction is ordered sealed or expunged, you do not need to answer 'yes.' If you have a juvenile delinquency on your record, you must answer 'yes' to this question." *Id.*

safeguard.[19] Moreover, if an applicant has not had his record sealed and is asked about his criminal history, he then must truthfully and fully disclose his prior adjudications.

5. Immigration Risks

A felony adjudication can also be detrimental in the immigration context. The Department of Homeland Security, for example, requires juveniles to report their criminal histories in any application for Consideration of Deferred Action for Childhood Arrivals ("DACA"). *See* U.S. Citizenship and Immigration Services, Application Form I-821D, Part IV.[20] The instructions accompanying the DACA Application specifically advise that the Department will run a background check on each applicant and evaluate criminal records in light of "the totality of the circumstances." *See id.*

Certainly, it is beyond dispute that an adjudication for a felony—rather than for a misdemeanor—might bear more negatively in such a discretionary evaluation process. The same is also true whenever the

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[19] *See generally* Gowen et al., *The ABA's Approach to Juvenile Justice Reform: Education, Eviction, and Employment: The Collateral Consequences of Juvenile Adjudication*, 188 Duke Forum for Law & Soc. Change 187, 195 (2011) (discussing challenges and confusion applicants with juvenile adjudications face in college admission process).

[20] The I-821D application is *available at* http://www.uscis.gov/sites/default/files/files/form/i-821d.pdf, and the application instructions are *available at* http://www.uscis.gov/sites/default/files/files/form/i-821dinstr.pdf.

government might decide to exercise its discretion to waive a finding of inadmissibility, to grant a request for cancellation of removal, or to find the "good moral character" requirement satisfied in a naturalization proceeding. *See* 8 U.S.C. §§ 1182, 1229b, 1427; 8 C.F.R. § 316.10; *see also Padilla v. Kentucky*, 559 U.S. 356, 364, 377-79 (2010) (acknowledging that "deportation is an integral part—indeed, sometimes the most important part—of the penalty that may be imposed on noncitizen defendants . . . ").

D. Record-confidentiality and record-sealing do not fully protect juveniles from the collateral consequences of a felony adjudication.

1. Many Exceptions to Confidentiality of Juvenile Records

The District Attorney dismisses the above collateral consequences and asserts that no differential treatment will occur if one is adjudicated of a felony because it is "well established" that juvenile criminal records and the proceedings in juvenile cases are confidential. (Return at 25). But it is equally well established that this confidentiality is "not absolute"—especially where a felony adjudication is concerned. *In re Keisha T.*, 38 Cal. App. 4th 220, 231 (1995). In fact, the U.S. Supreme Court has dubbed "the claim of secrecy" to be "more rhetoric than reality." *In re Gault*, 387 U.S. 1, 24 (1967). And others have called the assertion that "juvenile records are protected from public view" a "widely held misconception."[21]

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[21] *See* Christopher Gowen & Anne G. Helms, *The Legal Community's*

First, Welfare and Institutions Code section 827—which is the principal statute providing for record-confidentiality—sets forth seventeen categories of persons who are entitled access to a juvenile's criminal records. Welf. & Inst. Code § 827(a)(1). Besides a minor and his family, this extensive list includes law enforcement agencies, the superintendent of a juvenile's school district, members of child protective agencies, and "[a]ny other person who may be designated by court order . . . upon filing a petition." *Id.* § 827(a)(1)(P); *see also id.* §§ 827.1, 828; *Keisha T.*, 38 Cal. App. 4th at 232 (describing section 827 as containing "open-ended language" for the court's wide discretion in permitting inspection of records).[22]

Second, and "[n]otwithstanding Section 827 or any other provision of law," a juvenile court that adjudges a minor to have committed "*any felony* pursuant to Section 602" must send written notice to the local sheriff's

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Collaborative Effort to Address Collateral Consequences for Youth, 38 Human Rights 20 (2011); *see also* Ashley Nellis, *Collateral Consequences for Young Offenders*, The Champion, at 22 (July/August 2011) ("In the past two decades, information sharing about adjudicated juveniles has become easy and encouraged, and rules surrounding youth privacy and confidentiality have loosened in the interest of public safety."), *available at* http://sentencingproject.org/doc/publications/Collateral%20Consequences%20NACDL%202011.pdf.

[22] San Diego's Local Court rules also set forth procedures providing for the "Disclosure of Law Enforcement Reports Regarding Juveniles to Persons and Agencies Not Designated in Welfare & Institutions Code Section 828." *See* L.R. 6.6.7.

department. Welf. & Inst. Code §§ 827.2(a), 827.7(a) (emphasis added). The court must also send the California Department of Justice ("DOJ") the "complete criminal history" of any person adjudged to be "a ward . . . under Section 602 because of the commission of *any felony offense*." *Id.* § 602.5 (emphasis added). As the Fourth District recognized in *In re Spencer S.*, 176 Cal. App. 4th 1315 (2009), the DOJ retains "this information and makes it available in the same manner as information collected under Penal Code section 13100 et seq. (providing for efficient recording and dissemination of information for speedy access to policing agencies and courts)." *Id.* at 1328 (internal quotation marks omitted).

While the information in the DOJ's database is not available to the public *per se*, it may still be released to those persons, entities, and agencies listed in or authorized by Penal Code section 11105.[23] This list includes law enforcement, as well as certain public and private entities for purposes of fulfilling employment, licensing, and certification duties, as well as other legal obligations. *See* Penal Code §§ 11105, 13300, 13102.

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[23] The California DOJ apparently represented in a letter on December 21, 2010 that a juvenile's arrest and dispositional information will not be disclosed to employers and licensing agencies. *See* PJDC Handbook at 22. *Amici* are, however, familiar with anecdotal reports of a juvenile's criminal history information being released to prospective employers and licensing organizations—though it is unclear if these incidents occurred because the DOJ inadvertently disclosed information or because a private firm conducted unlawfully broad background checks by employing a variety of tactics. *See id.* at 115.

Third, the Federal Bureau of Investigation ("FBI") also collects a juvenile's criminal history information and, like the DOJ, is authorized to disseminate it in background checks for certain employment and licensing purposes. *See* 28 C.F.R. §§ 20.21, 20.32, 50.12; *see also* 42 U.S.C. § 2169; *id.* § 5119(a). This practice is so prevalent that, in 2011-2012, California exceeded one million FBI criminal background checks, which represented "a considerable share of the 17 million rap sheets generated by the FBI for employment screening" nationally.[24]

Finally, regardless of whether one's juvenile records are confidential, a person who has not had his records sealed—which many juveniles are not automatically entitled to—still may be required to disclose his criminal history in applications for employment, property leases, personal loans, professional licenses, and educational opportunities. Not disclosing this information risks it being disclosed via a background check. And regardless of how one's criminal history is disclosed, the collateral consequences to

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[24] Madeline Neighly & Maurice Emsellem, *Accurate FBI Background Checks for Employment* at 24 (July 2013), *available at* http://nelp.org/content/uploads/2015/03/Report-Wanted-Accurate-FBI-Background-Checks-Employment.pdf. This article further reported: "California laws mandating FBI background checks cover a range of occupations, with the highest volume of FBI background checks produced for school employees, social service workers, private security guards, and law enforcement personnel." *Id.*

which it leads are the same.[25]

2. Record-Sealing is Difficult to Achieve

The District Attorney further asserts that no problem arises from refusing to apply Proposition 47 to juveniles because juvenile records "remain" sealed post-adjudication. (Return at 25.) This assurance is misleading at best.

It is true that, on January 1, 2015, California enacted Welfare and Institutions Code section 786 to automatically seal the records of any juvenile adjudicated of a non-serious felony. Welf. & Inst. Code § 786. But it is also true that this automatic sealing is contingent upon *satisfactory* completion of probation and is only available to those who complete probation *after* January 1, 2015. *Id.* Thus, even if Petitioner might eventually be able to avail himself of Section 786, many juveniles will find automatic sealing out of reach.

Rather, these persons will have to apply for a judicial order to seal their records pursuant to Welfare and Institutions Code section 781—a process that is neither guaranteed nor straightforward. Perhaps most problematically, Section 781 is limited to those who: (1) are over eighteen

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[25] The California Court's own website advises that the value of sealing one's records is that "you can legally say you do not have a record in most cases," which "may make it easier for you to find a job, get a driver's license, get a loan, rent an apartment, or go to college." Cal. Courts, Self-Help: Sealing Juvenile Records, http://www.courts.ca.gov/28120.htm.

years old; (2) have had their case closed; or (3) are deemed "rehabilitated" after no contact with probation for at least five years. *Id.* at § 781. As the Supreme Court recognized, these criteria can make sealing impossible "at precisely the time at which most juveniles first apply for jobs or attempt to obtain entrance to higher educational institutions." *TNG*, 4 Cal. 3d at 782.

Moreover, to initiate the Section 781 sealing process, a juvenile in San Diego has to submit an application, supporting documentation, and a non-refundable $150 sealing fee to the County Probation Department.[26] A probation officer must then conduct a background investigation, determine the applicant's eligibility, and write up a recommendation. Lastly, the court must review the application and schedule a hearing if necessary. In San Diego, this process can take up to nine months.[27]

Lastly, even if a juvenile's criminal records are sealed, they are still discoverable in certain key instances. The federal government, including the military and the FBI, as well as private businesses doing business with the government can see sealed records if a position being sought requires security clearance. The Department of Homeland Security can also access sealed records. In fact, one prominent legal advocacy group explains:

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[26] Fee-waiver forms are available at the San Diego Probation Department's Juvenile Business Desk, but these are also complicated to complete.

[27] *See* Seal It, San Diego Cnty., http://sealitca.org/San-Diego.

> [T]here is no known legal exception allowing nondisclosure of a juvenile adjudication for federal immigration purposes even when a state law provides that the juvenile adjudication does not exist. Even if an entire case is sealed, it is recommended that the [applicant] disclose the incident because it may appear that [one is] . . . engaging in fraud if he or she fails to disclose the information.[28]

These exceptions are not mere technicalities or inconsequential flukes. As the California Supreme Court recognized long ago, "[o]bviously, if prospective employers and sometimes third parties may obtain information as to juvenile records without the permission of the juvenile court and may use these records to deny opportunities to young persons, the rehabilitative efforts of the juvenile court will often be thwarted." *TNG*, 4 Cal. 3d at 778.

E. The Rule of Lenity weighs in favor of redesignating Petitioner's felony adjudication.

The interpretation of Proposition 47 adopted by the District Attorney and Superior Court also runs contrary to the Rule of Lenity, which dictates that "ambiguity in a criminal statute should be resolved in favor of lenity, giving the defendant the benefit of every reasonable doubt on questions of interpretation." *People v. Nuckles*, 56 Cal. 4th 601, 611 (2013) (quotation marks omitted). "[T]his principle of statutory construction applies not only to interpretations of the substantive ambit of criminal prohibitions, but also

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[28] *See* Immigrant Legal Resource Center, Frequently Asked Questions: DACA and Juvenile Delinquency, http://www.ilrc.org/files/documents/ilrc-faq-daca__juv_del_adjud__records-2013-04_15.pdf

to the penalties they impose." *Bifulco v. United States*, 447 U.S. 381, 387 (1980); *People v. Rizo*, 22 Cal. 4th 681, 685-86 (2000) (applying rule to construe ballot initiatives).

Similarly, even if this Court concludes that Proposition 47 does not apply to juveniles, its benefits should still run to juveniles through Welfare and Institutions Code sections 775 and 778, which permit a court to modify or amend any prior order upon a change in circumstance and if in the best interest of the juvenile. *See In re Corey*, 230 Cal. App. 2d 813, 831 (1964). Here, California voters have spoken and redefined as a misdemeanor the offenses for which Petitioner, and many others like him, were adjudicated. This change warrants modifying these juveniles' offense levels and, for all of the reasons discussed above, such a modification is in their best interests.

IV. CONCLUSION

Applying Penal Code section 1170.18 to juveniles comports with the purposes of Proposition 47 and the juvenile justice system as a whole. Conversely, not applying the statute to juveniles frustrates the voters' clear intent, violates rights enshrined in the Constitution, exposes minors to significant collateral consequences, and undermines the juvenile justice system's rehabilitative principles. *Amici* respectfully urge the Court to grant Petitioner's Petition for Writ of Mandate.

Respectfully submitted,

Dated: April 20, 2015

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By: 

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Attorneys for Californians for Safety and Justice/Vote Safe, the American Civil Liberties Union of Northern California, the American Civil Liberties Union of Southern California, the American Civil Liberties Union of San Diego and Imperial Counties, and Michael Romano, in his capacity as director of the Stanford Three Strikes Project

CERTIFICATE OF WORD COUNT

I certify that the text of this brief consists of 7,752 words as counted by the Microsoft Word program used to generate the brief.

Dated: April 20, 2015

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS (CAL. RULES OF COURT, RULE 8.208)

Pursuant to California Rule of Court 8.208(e)(3), there are no interested entities or persons to list in this certificate.

Dated: April 20, 2015

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PROOF OF SERVICE

I am employed in the City and County of San Francisco, State of California in the office of a member of the bar of this court at whose direction the following service was made. I am over the age of eighteen years and not a party to the within action. My business address is Keker & Van Nest LLP, 633 Battery Street, San Francisco, CA 94111-1809.

On **April 20, 2015**, I served the following document:

Application for Leave to File Amici Curiae Brief and [Proposed] Brief in Support of Petitioner Alejandro N.'s Petition for Writ of Mandate

✓ by **FEDEX**, by placing a true and correct copy in sealed envelopes addressed as shown below. I am readily familiar with the practice of Keker & Van Nest LLP for correspondence for delivery by FedEx Corporation. According to that practice, items are retrieved daily by a FedEx Corporation employee for overnight delivery.

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

Robert W. Thomas