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November 4, 2019

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Honorable Chief Justice Tani Cantil-Sakauye, and
Associate Justices of the California Supreme Court
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102-4797

**Re: *In re Alonzo M.*, No. S25870
Court of Appeal No. A154923
Amicus Curiae Letter in Support of Petition for Review**

Dear Chief Justice Cantil-Sakauye and Associate Justices of the Supreme Court:

The Youth Law Center urges the Court to grant the Petition for Review filed by the minor Alonzo M. in the above-referenced case. This case merits review (or transfer back to the Court of Appeal) because it improperly applies this Court's holding in *Ricardo P.*, 7 Cal. 5th 1113 (2019), relying on reasoning that would validate an electronic search condition *in virtually every juvenile delinquency case*.

This letter is submitted under the authority of the California Rules of Court, rule 8.500(g). Counsel for the minor is aware of our interest, and supports the filing of this letter.

I. Amicus Curiae Youth Law Center's Interest in Review

The Youth Law Center is a San Francisco-based national non-profit, public interest law firm that works to protect the rights of children at risk of or involved in the juvenile justice and child welfare systems. Since 1978, Youth Law Center attorneys have represented the interests of young people in California and more than two dozen other states across the country. Our staff has long been involved in public discussions, legislation, and court challenges involving the treatment and the conditions of confinement of minors in the juvenile court system. Our advocacy is informed by social science research regarding young people involved in the juvenile court system, including psychology, child and adolescent development, and neuroscience.

The Youth Law Center is interested in this case because of the significant impact of probation conditions on the developmental process of a young person.¹ Wardship probation is the most common juvenile court disposition in California,² and it

¹ See NAT'L COUNCIL OF JUVENILE AND FAMILY COURT JUDGES, RESOLUTION REGARDING JUVENILE PROBATION AND ADOLESCENT DEVELOPMENT (2017), available at: https://www.ncjfcj.org/sites/default/files/Fnl_AdoptedProbationPolicyResolution_7-2017_1.pdf.

² CRIMINAL JUSTICE STATISTICS CTR., CAL. DEP'T OF JUSTICE, JUVENILE JUSTICE IN CALIFORNIA 2018 v (2019).

disproportionately impacts youth of color. Juvenile probation terms are frequently “indefinite,” terminating with the court’s jurisdiction when the youth reaches age twenty-one.³ Because probation conditions can impact a young person throughout his or her childhood, and because violations of probation often lead to incarceration and deeper involvement with the juvenile delinquency system, it is crucial that these conditions be carefully and properly applied by the courts.

II. Support for Review

The Court of Appeal in the instant case misapplies the standard announced by this Court in *Ricardo P.* In doing so, it negates the Court’s purpose in *Ricardo P.* of ensuring that probation conditions are proportionate to legitimate ends, particularly where they burden a probationer’s constitutional rights. *See Ricardo P.*, 7 Cal. 5th at 1127.

Just as in *Ricardo P.*, the probation condition at issue in this case is an electronic search condition that significantly burdens petitioner’s fundamental privacy rights. The condition requires the minor Alonzo to submit to warrantless search of any electronic device under his control, at any time of day or night, including passcodes. Slip Opinion, p. 7-8. The search condition applies to conduct that is not itself criminal, and it bears no relationship to Alonzo’s offenses. Slip Op. at 9. Accordingly, the electronic search condition can be proper under the *Lent* test and *Ricardo P.* only if it is reasonably related to future criminality. Slip Op. at 9; *Ricardo P.*, 7 Cal. 5th at 1114.

The Court of Appeal erred by failing to identify in the record a “substantial and particularized justification” for the electronic search condition. *See Ricardo P.*, 7 Cal. 5th at 1126. According to the appellate court, the juvenile court’s purpose in imposing the condition was to “address Alonzo’s susceptibility to negative social influences.” Slip Op. at 12. The court based its conclusion on evidence in the record that Alonzo reported a “negative social environment” and “negative peer group” in Oakland, where he planned to live to be close to his job. Slip Op. at 5. Yet, the juvenile court also acknowledged that negative influences could be encountered anywhere. Slip Op. at 6. Thus, the justification upheld by the appellate court was simply a generalized concern about peer influence, one that could apply in nearly every juvenile court case.

Having failed to identify a particularized ends, the court similarly could not assess the fit of the means. *See Ricardo P.*, 7 Cal. 5th at 1128. The appellate court identified no basis for concluding that the electronic search condition would actually further the purpose of preventing contact with negative peers, let alone “an abstract or hypothetical” one. *See id.* at 1121. For example, no evidence was cited to indicate that Alonzo had ever used his electronic devices to communicate with or interact with negative influences. The only fact cited by the appellate court in analyzing whether the electronic search condition would serve the interest of preventing interaction with negative peers was that “Alonzo spends a significant amount of his time using electronic devices.” Slip Op. at 11. Again, a fact that could apply in nearly every juvenile court case.

Thus, the appellate court identified a generalized interest—avoiding negative social influences—and paired it with a generic fact about Alonzo’s devices—that he uses them a lot—and

³ Welf. & Inst. Code § 607(a).

concluded that this record was sufficient to justify an electronic search condition.⁴ Yet, this Court held in *Ricardo P.* that such a “burdensome and intrusive” condition as surrendering electronic devices and passwords requires a “substantial and particularized justification” in order to be reasonable. *See Ricardo P.*, 7 Cal. 5th at 1126. The holding of the appellate court essentially nullifies that requirement.

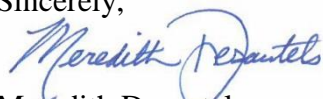
What has actually happened in this case is that the appellate court has reverted back to a categorical application of *People v. Olguin*, 45 Cal. 4th 375 (2008), which this Court specifically rejected in *Ricardo P.* *See id.* at 1127. Although the appellate court referenced an overarching goal of “avoiding negative influences,” the court specifically concerned itself with “the probation department’s legitimate interest in monitoring Alonzo’s compliance with the stay-away orders.” Slip Op. at 13. In this way, the court grounded its approval of the electronic search condition in the goal of supervising compliance with the other terms of probation—namely, the no-contact orders.

The effect of the court’s reasoning is to eliminate the third prong of *Lent* by holding that an electronic condition is reasonable if it facilitates the goal of ensuring that Alonzo complies with his other probation terms. As this Court noted in *Ricardo P.*, under this reasoning it would be difficult to draw the line between this condition and a condition “permit[ting] a probation officer to accompany them at all times.” *See Ricardo P.*, 7 Cal. 5th at 1121. Rather than considering the proportionality between the privacy burden and a legitimate, fact-based purpose for the condition, the appellate court defaults to approval simply on the basis of enhancing monitoring of probation compliance.

Consistent with *Ricardo P.*, the Court of Appeal in this case was obligated to assess the proportionality between the burden imposed by the condition and a legitimate purpose in preventing future criminality. Because of the significant privacy concerns implicated by an electronic search condition, that purpose must be “substantial and particularized,” anchored in facts in the record. The generalized conclusions drawn by the appellate court in this case fail to meet this standard, with the result of categorically approving an invasive electronic search condition on the basis that it enhances probation supervision.

This case contradicts this Court’s opinion in *Ricardo P.*, and for this reason we urge this Court to grant review. Thank you for your consideration.

Sincerely,



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⁴ In its ruling, the Court of Appeal concluded that the “wide-ranging search clause” ordered by the juvenile court was too broad, and remanded the case for the court to impose a properly drawn electronic search term related to “monitoring the company Alonzo keeps.” Slip Op. at 12. This limited remand does not address the concerns outlined above.

Declaration of Service

Re: A. M. v. Superior Court, No. S258707

I, the undersigned, declare that I am over 18 years of age and not a party to the within cause. I am employed in San Mateo County, California. My business address is 446 Old County Road, Suite 100 PMB 404, Pacifica, CA 94044. My electronic service address is emv_law@sbcglobal.net.

By U.S. Mail

On November 4, 2019, I served a true copy of the attached **Amicus Curiae Letter in Support of Petition for Review** on the following, by placing same in an envelope addressed as follows:

Contra Costa Co. District Attorney
Attn: Diana Becton
900 Ward Street
Martinez, CA 94553

Contra Costa Co. Superior Court
Attn: Hon. Rebecca Hardie
1020 Ward Street
Martinez, CA, 94553

sealing and depositing said envelope with the United States Postal Service at Pacifica, California, with postage thereon fully prepaid.

By Email

On November 4, 2019, I served via email, and no error was reported, a copy of the attached **Amicus Curiae Letter in Support of Petition for Review** on the following:

Office of the Attorney General - sfag.docketing@doj.ca.gov - (for The People)

First District Appellate Project - eservice@fdap.org - (for A. M.)

Violet Elizabeth Grayson, Counsel for appellant A. M. - vegrayson@gmail.com

By TrueFiling

On November 4, 2019, I served via TrueFiling, and no error was reported, a copy of the attached **Amicus Curiae Letter in Support of Petition for Review** on the following:

Supreme Court of California

First District, Division Four

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on November 4, 2019, at Pacifica, California.

Eileen Manning-Villar
DECLARANT