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ARIZONA SUPREME COURT

In the matter of :	)	
	)	
PETITION TO AMEND RULE 7.2,	)	Supreme Court No. R-15_____
RULES OF CRIMINAL	)	(Emergency or Expedited
PROCEDURE	)	Adoption Requested)
_____	)	

Pursuant to Arizona Supreme Court Rule 28, David K. Byers, Director, Administrative Office of the Courts, Arizona Supreme Court, respectfully petitions this court to adopt the attached proposed rule amendment to the Rules of Criminal Procedure.

I. Background and Purpose of the Proposed Rule Amendment

In response to petition R-07-0003 the Court adopted amendments to Rules 4.2, 7.2, 7.4, 27.7 and 31.6 and Forms 4(a) and 4(b), Ariz. R. of Crim. P. to implement amendments to A.R.S. § 13-3961 and provisions of Proposition 100 adopted by the voters in November 2006 concerning offenses categorically not bailable. On October 15, 2014 the United States Court of Appeals for the Ninth Circuit issued its decision in Lopez-Valenzuela v. Arpaio, 770 F.3d 772 (9th Cir. 2014), *stay denied*, 574 U.S. ____ (2014). The court held facially unconstitutional

the provisions of Arizona law contained in Proposition 100, implementing statutes, and rules that categorically prohibit “granting undocumented immigrants arrested for a wide range of felony offenses any form of bail or pretrial release, even if the particular arrestee is not a flight risk or dangerous.” Id at 777. On November 13, 2014 the Ninth Circuit issued its mandate in this case following the U.S. Supreme Court denial of the state’s request for a stay pending the filing of a Petition for a Writ of Certiorari. In response to this order the state requested bail hearings in pending criminal cases in Maricopa County in which denial of bail was based upon the bail provision held unconstitutional and stopped seeking bail on that basis.

The proposed changes in the Court’s rules are needed to comply with the Ninth circuit’s mandate and to promote uniform implementation of this change in law throughout the state.

Contents of the Proposed Rule Amendment

The amendment proposed in Appendix A deletes the language of Rule 7.2(b) held unconstitutional in Lopez-Valenzuela v. Arpaio that provides a person charged with a serious offense who entered or remained in the United States illegally is not bailable. Also proposed is a footnote that refers to the provisions of the constitution and statute not yet amended and to the Lopez-Valenzuela case which clearly identifies the language of these provisions held unconstitutional. These constitutional and statutory provisions should be cited in the rules because

they include requirements concerning denial of bail not at issue in Lopez-Valenzuela.

The amendment proposed in Appendix B to paragraph (B)(1) of Form 4(a) deletes the language that identifies as “non-bondable” a person who has entered or remained in the United States illegally. The other changes in rules and forms made by the Court in response to petition R-07-0003 provide for judicial consideration of the fact that a person entered or remained in the United States in deciding whether to grant bail and on what conditions. This language of the rule and form need not be changed as it was not at issue in Lopez-Valenzuela.

II. Pre-Petition Distribution and Comment

Due to the immediacy of the court decision the proposed amendment has not been reviewed by any criminal justice system interested parties.

III. Effective Date of the Proposed New Rule

We respectfully request emergency adoption of the proposed rule changes.

Respectfully submitted this _____ day of _____ 2014.

By /s/
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Appendix A

Rule 7.2. Right to release

a. Before Conviction; Persons Charged With an Offense Bailable as a Matter of Right. Any person charged with an offense bailable as a matter of right shall be released pending or during trial on the person's own recognizance, unless the court determines, in its discretion, that such a release will not reasonably assure the person's appearance as required. If such a determination is made, the court may impose the least onerous condition or conditions contained in Rule 7.3 (b) which will reasonably assure the person's appearance.

b. Before Conviction; Persons Charged With an Offense Not Bailable as a Matter of Right. A person shall not be released on bail if the court finds the person is not bailable pursuant to ~~law~~A.R.S. Const. Art. 2, § 22 and A.R.S. § 13-3961.¹ ~~If the allegation involves A.R.S. § 13-3961(A)(5), the person shall not be considered bailable if the court finds (1) that the proof is evident or the presumption great that the person committed a serious offense, and (2) probable cause that the person entered or remained in the United States illegally.~~

c-d. No change

¹ See A.R.S. Const. Art. 2, § 22 and A.R.S. § 13-3961. But see also *Lopez-Valenzuela v. Arpaio*, 770 F.3d 772 (9th Cir. 2014), stay denied, 574 U.S. ____ (2014) holding unconstitutional A.R.S. Const. Art. 2, § 22 (A)(4) and A.R.S. § 13-3961 (A)(5).

Appendix B

Form 4(a). Release Questionnaire/Law Enforcement

_____ COURT [Precinct ____] _____ County, Arizona

STATE OF ARIZONA Plaintiff

[CASE/COMPLAINT NO.]

-VS-

RELEASE

QUESTIONNAIRE

(To be completed by

Law Enforcement)

Defendant (FIRST, MI, LAST)

Booking No.

Alias(es)

(Check and explain where applicable)

A. GENERAL INFORMATION

Charges:

Offense Date:Offense Time:

Location:

Arrest Date:Arrest Time:

Arrest Location:

B. PROBABLE CAUSE STATEMENT

1. Summarize and include the facts which establish **probable cause for the crime(s) charged**. Certain felonies may be non-bondable and require facts which establish **proof evident or presumption great** for the crime(s) charged. These include (1) felonies involving a capital offense, sexual assault, sexual conduct with a minor who was under fifteen years of age, or molestation of a child who is under fifteen years of age, and (2) ~~any class 1, 2, 3, or 4 felony or any violation of § 28-1383 if the person has entered or remained in the United States illegally, and (3) felony offenses committed when the person charged is already admitted to bail on a separate felony charge.~~

Explain the crime(s) in detail (e.g., arresting officer or other law enforcement officers witnessed offense, physical evidence directly connects defendant to offense, multiple eyewitnesses, defendant admissions, victim statements, nature of injuries, incriminating photographic, audio, visual, or computer evidence, defendant attempted to flee or resist arrest):

- 2.-3. No changes.

C-H No changes.