In the Supreme Court of the State of California

In re

MOHAMMAD MOHAMMAD,

On Habeas Corpus.

Case No. S259999

Second Appellate District, Division Five, Case No. B295152
Los Angeles County Superior Court, Case No. BH011959
The Honorable William C. Ryan, Judge

RESPONDENT'S REPLY BRIEF ON THE MERITS

XAVIER BECERRA (SBN 118517)
Attorney General of California
MICHAEL J. MONGAN (SNB 250374)
Solicitor General
LANCE E. WINTERS (SNB 162357)
Chief Assistant Attorney General

JANILL L. RICHARDS (SBN 173817)
Principal Deputy Solicitor General
PHILLIP J. LINDSAY (SBN 204444)
Senior Assistant Attorney General
*HELEN H. HONG (SBN 235635)
Deputy Solicitor General
AMANDA J. MURRAY (SBN 223829)
Supervising Deputy
Attorney General
CHARLES CHUNG (SBN 248806)
Deputy Attorney General
California Department of Justice
600 West Broadway, Suite 1800
San Diego, CA 92101
(619) 738-9693
helen.hong@doj.ca.gov
Attorneys for Respondent

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INTRODUCTION AND SUMMARY OF ARGUMENT

Petitioner Mohammad Mohammad is currently serving a sentence for violent felonies as listed in Penal Code section 667.5, subdivision (c) and other felonies not so listed. Despite serving a sentence for violent felonies, he claims that the text of Proposition 57 (Cal. Const., art. I, § 32) entitles him to participate in the nonviolent parole program established by that initiative, and that the Department of Corrections and Rehabilitation's implementing regulation that excludes mixed-offense inmates like Mohammad (Cal. Code Regs., tit. 15, § 3490, subd. (a)(5)) is invalid.

The Department explained in its opening brief that the voters could not have intended the Court of Appeal's reading of Proposition 57, which would mandate inclusion of any inmate who had committed at least one nonviolent felony, regardless of that person's other offenses. (See OBM 34-40.) Mohammad in response now offers a more limited reading of the initiative's text. In his view, article I, section 32, subdivision (a)(1), imposes an "explicit duty" on the Department to "provide early parole consideration" for a subset of mixed-offense inmates "whose *primary offense* was a nonviolent felony conviction." (ABM 7, italics added.) In other words, Mohammad asserts that parole eligibility for mixed-offense inmates hinges on whether an inmate's longest sentence (imposed for the "primary offense") is a nonviolent felony or not.

But the text of the constitutional amendment says nothing about determining program eligibility for mixed-offense inmates

based on the nonviolent nature of the primary offense. And by offering an alternative to the Court of Appeal's interpretation of the text, Mohammad implicitly acknowledges that the text is susceptible of more than one meaning, so that the meaning of subdivision (a)(1), as applied to mixed-offense inmates, cannot be answered by the plain text alone.

Turning to the extrinsic evidence of voter intent—including Governor Brown's assurances in the ballot arguments, and the Legislative Analyst's discussion of the program's likely effects—the Department reasonably understood that it could not include inmates who had been convicted of a violent felony defined in the Penal Code in the nonviolent parole program. And even if the Department had the power to promulgate a different mixed-offense regulation, the Department did not clearly overstep its authority in deciding to exclude from nonviolent parole consideration mixed-offense inmates who, like Mohammad, are currently serving a sentence for a violent felony.

ARGUMENT

I. PROPOSITION 57 PRECLUDES NONVIOLENT PAROLE CONSIDERATION FOR INMATES CURRENTLY SERVING A SENTENCE FOR PENAL CODE SECTION 667.5 FELONIES

A. The Text of Proposition 57, as Applied to Mixed-Offense Inmates, Is Ambiguous

The text of Proposition 57 does not clearly and unambiguously state that the nonviolent parole program must be open to mixed-offense inmates currently serving a sentence for Penal Code section 667.5 felonies. (See generally OBM 26-33.) While section 32 of the California Constitution directs that "[a]ny

person convicted of a nonviolent felony offense . . . shall be eligible for parole consideration after completing the full term for his or her primary offense," that text does not speak to whether an individual convicted of a violent felony offense and an offense that is not a violent felony is eligible for parole consideration. Indeed, this Court, in examining nearly identical language in an inmate worktime credit statute, held that it is "inescapable" that this particular phrasing is "ambiguous . . . as applied" to mixed-offense inmates. (*In re Reeves* (2005) 35 Cal.4th 765, 770-771 ["any person who is convicted of a [violent felony] shall accrue no more than 15 percent of worktime credit"].) Mohammad does not attempt to distinguish *Reeves*; indeed, *Reeves* does not appear once in his answering brief. (ABM 4-5.)

Mohammad nonetheless contends that the text of Proposition 57 applies in "no uncertain terms" (ABM 7) to a subset of mixed-offense inmates: those "whose nonviolent felony offense is [their] *primary* offense and whose violent offenses are *secondary* ones that run consecutive and subordinate to that primary and principal offense" (ABM 18, italics added). (See also ABM 21 [proposing to exclude "mixed-offense inmate[s] whose primary and controlling term is for a violent offense"].) But Mohammad cannot link his proposed interpretation to any language in article I, section 32.

Mohammad quotes the entirety of section 32, subdivision (a)(1), providing that "[a]ny person convicted of a nonviolent felony offense . . . shall be eligible for parole consideration after completing the full term for his or her primary offense."

(ABM 18.) He also quotes the language of subdivision (a)(1)(A), which defines "the full term for the primary offense" to mean "the longest term of imprisonment imposed by the court for any offense, excluding the imposition of an enhancement, consecutive sentence, or alternative sentence." (ABM 19.) But after quoting the text, he conducts no analysis of it. (See ABM 18-24.)

Such analysis reveals the lack of textual support for the line that Mohammad proposes to draw. Section 32, subdivision (a)(1)(A) does not, for example, link the definition of "primary offense" to the nonviolent felony offense that Mohammad contends makes an inmate eligible under subdivision (a)(1). To the contrary, it provides that the "full term for the primary offense" is the "longest term of imprisonment imposed by the court for *any* offense." (Cal. Const., art. I, § 32, subd. (a)(1)(A), italics added.) By using the phrase "*any* offense"—rather than expressly tying the definition of primary offense to the nonviolent felony offense qualifying an inmate for parole in subdivision (a)(1)—subdivision (a)(1)(A) offers even less textual support to Mohammad's proposed interpretation than the construction advanced by the Court of Appeal. In short, nothing in section 32 makes Mohammad's construction "explicit" (ABM 7), "plain" (ABM 8), "straightforward" (ABM 23), or obvious "in no uncertain terms" (ABM 7), as he repeatedly insists. Nor does "Proposition 57 speak[] *very clearly* to the eligibility of mixed-offense inmates like Mohammad whose primary or principal offense is a nonviolent felony." (ABM 20, italics added.)

Mohammad's attempt to distance himself from the overly-literal reading of section 32 adopted by the Court of Appeal—where inmates are eligible for the nonviolent parole program if they have been convicted of *a* nonviolent offense—is understandable.[1] But in so distancing, Mohammad moves even further from the text than the court below.[2] And in proposing an alternative construction of the text, he effectively concedes that the text is susceptible of more than one meaning. Moreover, he acknowledges that his construction is at best "implicit[]" in the text. (ABM 22.) But implied meaning is not plain and unambiguous. (See *Estate of Joseph* (1998) 17 Cal.4th 203, 219 ["an admittedly implied requirement" that is "not apparent from the words of the statute" is not one that is plainly required].)

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[1] See *In re Mohammad* (2019) 42 Cal.App.5th 719, 725 ["Section 32(a) grants eligibility for early parole consideration to '[a]ny person convicted of a nonviolent felony offense . . . after completing the full term of his or her primary offense,' and the use of the singular 'a' in a sentence that expressly contemplates criminals would be sent to prison for more than one offense means any nonviolent felony offense component of a sentence will suffice."]; see also *id.* at p. 726 ["The phrase 'a nonviolent felony offense' takes the singular form, which indicates it applies to an inmate so long as he or she commits 'a' single nonviolent felony offense—even if that offense is not his or her only offense."].

[2] Mohammad at points appears to argue that the Department has misread the Court of Appeal's decision, and that the court below adopted the reading he now advances. (ABM 20, 21.) That cannot be squared with the broad language used by the court below. (See, e.g., *In re Mohammad*, *supra*, 42 Cal.App.5th at p. 725.) The court did not purport to narrow the rule it derived from the words "any" and "a" to apply only to mixed-offense inmates whose primary offense was nonviolent. (See *id.* at pp. 725-726.)

Further, as the Department noted in its opening brief, even where text may appear plain and certain when viewed in isolation, ambiguities may appear when that text is viewed in context. (See OBM 31-33; *People v. Valencia* (2017) 3 Cal.5th 347, 360.) Such is the case for article I, section 32, subdivision (a)(1). As the Department explained, the text of Proposition 57 focuses on individuals "convicted of a *nonviolent* felony offense," singling out a class of nonviolent individuals who may be considered for parole consistent with the proposition's stated "public safety" purposes. (Cal. Const., art. I, § 32, subd. (a)(1), italics added; Voter Information Guide, Gen. Elec. (Nov. 8, 2016), text of Prop. 57, § 2, at p. 141.) Including individuals convicted of *violent* felony offenses listed in Penal Code section 667.5 in the nonviolent parole program simply because they had also committed a crime not listed in that provision would be in tension with those stated goals. (OBM 32-33.) As the Legislature has observed, the crimes listed in Penal Code section 667.5 "merit special consideration when imposing a sentence to display society's condemnation for these extraordinary crimes of violence against the person." (Pen. Code, § 667.5, subd. (c).)

Mohammad largely fails to address the contextual factors that confirm that the text is ambiguous as applied to mixed-offense inmates. He asserts that his reading of Proposition 57 "concerns a very small class of mixed-offense inmates" (ABM 20), including only "the rare mixed-offense inmate with a primary and controlling term for a nonviolent offense" (ABM 21). Even accepting Mohammad's quantitative assertions as true, the

tension his reading creates with public safety goals would still be significant even if it affected only a small number of inmates. On Mohammad's reading of Proposition 57, some individual convicted of an "extraordinary crime[] of violence against the person" (Pen. Code, § 667.5, subd. (c))—like rape, mayhem, robbery, arson, or kidnapping—may be eligible for nonviolent parole consideration simply because the inmate was also convicted of another offense that is not a violent felony listed in Penal Code section 667.5. Even if the number of violent felons that come within Mohammad's interpretive scope is limited, it would nonetheless create significant tension with the public safety aims of the initiative by offering inmates serving sentences for violent felonies an opportunity for nonviolent parole.

Mohammad also points to "lower court cases that have found other . . . regulatory exclusions from early parole consideration contrary to the plain language of" Proposition 57. (ABM 22.) But none addresses the interpretive question presented here. One case assessed whether inmates sentenced to indeterminate sentences for nonviolent Third Strike offenses may qualify for Proposition 57 relief. (*In re Edwards* (2018) 26 Cal.App.5th 1181, 1184.) This Court granted review in the other case, which examined whether the Department could exercise its discretion to exclude inmates required to register as sex offenders under Penal Code 290 from parole consideration. (*Alliance for Constitutional Sex Offense Laws v. Dept. of Corr. & Rehab.* (2020) 45 Cal.App.5th 225, 238, review granted May 27, 2020, No. S261362.) Neither case says anything about whether the text plainly covers

mixed-offense inmates. And neither speaks to the features of the text and statutory context that justify an inquiry into voter intent in assessing whether mixed-offense inmates serving sentences for violent felonies under Penal Code section 667.5 are entitled to nonviolent parole.

Mohammad cannot show that the text is "clear, unambiguous, and susceptible to only" his preferred interpretation so that he may avoid examination of extrinsic evidence of voter intent. (*Estate of Joseph*, *supra*, 17 Cal.4th at p. 219.) That evidence, as discussed in the opening brief and below, requires the Department to exclude inmates serving sentences for Penal Code section 667.5 violent felony offenses from nonviolent parole consideration.

B. The Ballot Materials Do Not Support Mohammad's Alternative Construction of Proposition 57 to Include Mixed-Offense Inmates Serving Time for Violent Felonies

Because the language of Proposition 57 does not speak clearly about its application to mixed-offense inmates, courts "may resort to extrinsic sources" to determine the provision's meaning. (*People v. Hazelton* (1996) 14 Cal.4th 101, 105; see also OBM 34-40.) Mohammad agrees that extrinsic sources may be consulted to discern voter intent, but disagrees about what those sources show here. (ABM 24-32.) For example, Mohammad agrees that the Official Title and Summary prepared by the Attorney General merely disclosed that the proposition would "allow[] parole consideration for persons convicted of nonviolent felonies, upon completion of prison term for their primary offense,

as defined." (ABM 25, quoting Voter Information Guide, *supra*, Official Title and Summary, p. 54.) From that generic description, Mohammad asserts that voters would have "gleaned" that the proposition would make inmates "like Mohammad whose primary offense was a nonviolent felony conviction" eligible for parole. (ABM 25.) But that inference is not supported. Nothing in the summary addresses whether mixed-offense inmates would be eligible for parole; indeed, the singular focus on "nonviolent felonies" supports the inference that individuals serving time for violent felonies would not be eligible. For that reason, Mohammad cannot draw meaning from the absence of any statement in the summary expressly *excluding* persons with "secondary offenses that were violent convictions with terms subordinate to their prison term for their primary offense." (See *ibid.*)

As the Department explained in the opening brief, other parts of the ballot materials make clear that individuals convicted of violent felonies under Penal Code section 667.5 are excluded from Proposition 57's parole program. (OBM 35-39.) Mohammad's attempts to discount that evidence are not persuasive. For example, Mohammad dismisses the repeated promises from Governor Brown that Proposition 57 would keep "dangerous criminals behind bars," keep "the most dangerous offenders locked up" and apply only to "prisoners convicted of non-violent felonies." (ABM 25-26.) According to Mohammad, he is such an inmate because he has a nonviolent felony conviction, and he contends that excluding inmates whose primary offense is

a violent felony remains faithful to the pledge to keep "dangerous offenders" in custody. (ABM 26.) Still, that does not address "dangerous offenders," like Mohammad, who have also been convicted of "extraordinary crimes of violence against the person." (Pen. Code, § 667.5, subd. (c).) Mohammad offers no reason for this Court to conclude that such offenders are any less dangerous than other inmates convicted of the same violent felony, but no other offense. (ABM 30.)[3] More importantly, he offers no reason to believe that the electorate would have reached that conclusion based on the information provided in the ballot materials.

Critically, Mohammad can offer no counter-interpretation of Governor Brown's promise in the ballot materials that "[v]iolent criminals as defined in Penal Code 667.5(c) are excluded" from the proposed parole program. (Voter Information Guide, *supra*, rebuttal to argument against Prop. 57, p. 59.) Mohammad fully admits that he was "committed to prison for . . . violent" offenses listed in Penal Code section 667.5. (ABM 23.) Rather, he suggests that the meaning of Governor Brown's pledge is not clear. According to Mohammad, the Governor's assurance "merely beg[s] the question whether Proposition 57 treated mixed offenders whose primary offense was nonviolent as included in or excluded from its program for early parole consideration." (ABM 27.) In fact, Governor Brown was pointedly responding to

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[3] Mohammad also fails to offer any reason to conclude that he is any less dangerous than an inmate convicted of the same exact offenses as he was—and sentenced to the same aggregate 29 year term—but where the robbery offense happened to be the primary offense carrying a three-year prison term.

criticism that the proposition could release dangerous criminals from custody; he confirmed that "[v]iolent criminals as defined in Penal Code 667.5(c) are excluded" from the proposed parole program. (Voter Information Guide, *supra*, rebuttal to argument against Prop. 57, p. 59.) That precise rebuttal offers direct insight into the voters' intent in passing Proposition 57.

Mohammad criticizes the Department for relying on "partisan" statements by the proponents and opponents of initiatives in ballot materials. (ABM 28-29.) But arguments are an essential part of the state information guides. (See Elec. Code, § 9084, subd. (c) [requiring a "copy of the arguments and rebuttals for and against each state measure" in the voter guide].) Voters rely on the arguments' back-and-forth to understand the effect of initiatives, which may not be apparent to the general public from the text alone. For this reason, the Court for at least a century has consistently relied on such statements to discern voter intent when the text of an initiative is ambiguous. (See, e.g., *People v. Morales* (2016) 63 Cal.4th 399, 406 ["When the language is ambiguous, 'we refer to other indicia of the voters' intent, particularly the analyses and arguments contained in the official ballot pamphlet.'"].[4] Mohammad does not seriously

[4] See also *Carter v. Com. on Qualification of Jud. Appts.* (1939) 14 Cal.2d 179, 185 ["This argument [of the proponent] may be resorted to as an aid in determining the intention of the framers of the measure and of the electorate when such aid is necessary."]; *Delaney v. Super. Ct.* (1990) 50 Cal.3d 785, 802 ["We therefore consider the ballot argument (set forth in full in the

(continued…)

contend that this Court should depart from that well-established interpretive rule now. And here, Governor Brown himself explained that inmates convicted of felonies listed in Penal Code section 667.5 would be excluded from the nonviolent parole program—a promise that voters would be unlikely to dismiss as partisan posturing, or to take "with a grain of salt." (See ABM 28.)

Mohammad next suggests that Governor Brown's assurance is cancelled out by the opponents' assertion that violent criminals would be released from custody under Proposition 57. (ABM 28.) But the opponents' statements appeared to focus on their belief that only inmates convicted of violent felonies listed in Penal Code section 667.5 would be excluded from parole consideration. The opponents were arguing that individuals convicted of some offenses that the general public might consider to be violent—like human sex trafficking, assault with a deadly weapon or hate crimes causing injury—but that are not listed in Penal Code section 667.5, would not automatically be excluded from parole consideration. (Voter Information Guide, *supra*, rebuttal to argument in favor of Prop. 57, p. 58.) The opponents' argument would not have put voters on notice that persons who had committed felonies listed in Penal Code section 667.5 would be eligible for the nonviolent parole program if they happened also

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(…continued)
margin) to determine if it demonstrates the voters did not mean what they said."].

to have committed, in addition, a felony not listed in that provision.

Mohammad also contends that his eligibility for parole furthers the electorate's stated intent to reduce the prison population and "abandon an outdated philosophy of mass incarceration." (ABM 31.) But the electorate did not enact a parole program that indiscriminately offered all prisoners an opportunity for parole consideration. Rather, the electorate focused on nonviolent offenders, endorsing a "common sense, long-term solution" that balanced prison-reduction needs against the public's interest in keeping some inmates (including offenders convicted of Penal Code section 667.5 offenses) in custody. (Voter Information Guide, *supra*, argument in favor of Prop. 57, p. 58.)

Finally—after acknowledging that the ballot materials do not clearly support his preferred reading of the proposition—Mohammad falls back to his principal claim that the language of the text is clear. (ABM 31-32.)[5] Mohammad therefore urges this Court to rely on the "unrestricted and unambiguous language of the measure itself," not any "possible inference in an extrinsic source (a ballot argument)." (ABM 32, italics and citations omitted.) But, as Mohammad essentially concedes (*ante*, p. 9), the ballot materials must be consulted to discern the voters'

[5] See, e.g, ABM 7-8 ["At the very most, the ballot material sends a mixed message here[.]"]; ABM 8 ["At most, the ballot material points in both directions, and cannot be used to dislodge the presumption that the proposition means what it says here."].

probable intent because the text alone does not answer whether mixed-offense inmates enjoy the parole benefits of Proposition 57.

C. Other Extrinsic Evidence of Voter Intent Refutes Mohammad's Alternative Construction

In the opening brief, the Department pointed to other evidence confirming that the voters intended that mixed-offense inmates serving a sentence for Penal Code section 667.5 violent felonies would be excluded from nonviolent parole consideration. (OBM 36-40.) For example, the Department explained that the Legislative Analyst projected that less than a quarter of the prison population would become eligible for the nonviolent parole program. (OBM 36-38.) The Court of Appeal's approach of allowing all mixed-offense inmates to participate in the nonviolent parole program would sweep in 96% of the prison population. (OBM 37-38.) Had voters intended to grant nearly all prisoners the opportunity for early release—except the 4% convicted of only violent felonies—one "would anticipate that this intent would be expressed in some more obvious manner." (*People v. Skinner* (1985) 39 Cal.3d 765, 776; see OBM 37-38.)

Mohammad now concedes this is true, departing from the Court of Appeal's reading of article I, section 32, subdivision (a)(1) and rejecting an interpretation of Proposition 57 that would lead to such extreme results. (ABM 20-21, 26-27.) Instead, he responds that the statistics showing that nearly all inmates would be eligible for parole do not bear on whether a smaller cohort of mixed-offense inmates—those whose primary offense is nonviolent—fall within the scope of the nonviolent parole

program. (ABM 27.) But Mohammad must establish that the text and extrinsic evidence supports this interpretation of Proposition 57, which he has not done. The fact that Mohammad's proffered approach might have been a reasonable one for the drafters of Proposition 57 and the voters to have taken is irrelevant, without some evidence that this is in fact what they intended to do.[6]

The Department also identified how any interpretation including mixed-offense inmates within the scope of Proposition 57 would result in "anomalous . . . consequences" that could not have been intended by the voters. (OBM 39, quoting *Horwich v. Super. Ct.* (1999) 21 Cal.4th 272, 280.) As the Court of Appeal described, its construction led to peculiar results: "a defendant who is convicted of more crimes, i.e., both violent and nonviolent felonies, [is] eligible for early parole consideration while a defendant convicted of fewer crimes, i.e., the same violent felony but no nonviolent felonies, is not." (*In re Mohammad*, *supra*, 42 Cal.App.5th at p. 727.) The same remains true of Mohammad's approach.

While the court below thought it was powerless to avoid the result because of the text—and Mohammad suggests the same—the text does not compel that result. And rather than address the

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[6] Mohammad also suggests that "there is nothing unreasonable in the electorate's focus on the nonviolent nature of a prisoner's primary offense." (ABM 34.) But whether a different regime would be reasonable is the wrong focus; the question is whether Mohammad has identified evidence that the voters intended his proposed scheme. He has not.

anomalous consequences that flow from his reading, Mohammad suggests that the Department is "now requesting this Court" avoid a "plain reading of the text in favor of a rewriting of the text." (ABM 34.) He contends the Department is "effectively rewrit[ing] the constitutional amendment's language from 'any person convicted of a nonviolent felony' to 'any person not convicted of a violent felony[,]'" and that if the voters intended the nonviolent parole program to have that scope, the language of Proposition 57 would have been written to "directly say" that. (ABM 34-35.)

But there are many reasons that the voters could have settled on the broader language as passed in section 32. The phrase "nonviolent felony" is not specially defined, and the electorate could reasonably have decided to leave the "margins of" who may benefit from parole consideration deliberately undefined, allowing the Department to fill in the details through its rulemaking authority—as Proposition 57 expressly contemplates, and as the Department has done. (See Dept. of Corrections and Rehabilitation, Final Statement of Reasons, Inmate Credit Earning and Parole Consideration (Apr. 30, 2018) at pp. 14-15; see also *In re Gadlin*, (2019) 31 Cal.App.5th 784, 793-94, review granted May 15, 2019, No. S254599 (conc. op. of Baker, J.).)[7] That would allow the Department, as argued in *Gadlin*, to exclude from the class of eligible inmates individuals required to register as sex offenders under Penal Code 290; it

[7] The Department previously filed a Motion for Judicial Notice, attaching the Final Statement of Reasons (Ex. A).

could also permit the Department in the future to exclude individuals convicted of crimes that involve the use or threatened use of physical force against another, but that are not listed as violent felonies under Penal Code section 667.5.

The Department is not asking for revision of the initiative's plain text. Rather, the point is that the language is *not* plain, and the anomalous consequences that flow from a proposed interpretation show that the electorate could not have intended that meaning.[8] Because the text is not clear, crediting extrinsic evidence of voter intent and considering the practical consequences of a proffered interpretation do not "rewrite" any part of Proposition 57. They properly inform its construction.

As the Department established in the opening brief, every relevant consideration confirms that the Department was required to exclude inmates serving a sentence for violent felonies under section 667.5, like Mohammad, from nonviolent parole consideration. (OBM 34-40.)

II. EVEN ASSUMING THE DEPARTMENT HAD DISCRETION TO INCLUDE MIXED-OFFENSE INMATES, IT DID NOT CLEARLY OVERSTEP ITS AUTHORITY IN EXCLUDING INMATES SERVING SENTENCES FOR SECTION 667.5 FELONIES

Even if the text and evidence of voter intent did not *require* the Department to exclude mixed-offense inmates serving

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[8] Mohammad also does not address the Department's observation that any construction that treats violent offenders who were convicted of additional nonviolent crimes differently from inmates who were convicted of only violent felonies raises potential constitutional concerns. (OBM 39, fn. 16.)

sentences for Penal Code section 667.5 violent felonies, the Department explained in the opening brief that it did not clearly overstep its regulatory authority in excluding this group from the nonviolent parole program. (OBM 40-43; Cal. Code Regs., tit. 15, § 3490, subd. (a)(5).) And as the Department explained, the Department's regulatory exclusion is valid because it is "reasonably necessary to effectuate the purpose of the" initiative. (*Assn. of Cal. Ins. Co. v. Jones* (2017) 2 Cal.5th 376, 397.) Mohammad does not challenge the agency's rulemaking on this point, except to say that the text compels his inclusion in the Proposition 57 program, so any contrary regulation is invalid. (ABM 36 ["[T]he electorate had already legislated who was eligible for early parole consideration—namely, any person whose primary offense was a nonviolent felony—and imposed a ministerial duty on CDCR to provide them with such early parole consideration."].) His textual argument fares no better in this context than above.

CONCLUSION

The judgment of the Court of Appeal should be reversed.

Dated: June 23, 2020

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
LANCE E. WINTERS
Chief Assistant Attorney General
MICHAEL J. MONGAN
Solicitor General
JANILL L. RICHARDS
Principal Deputy Solicitor General
PHILLIP J. LINDSAY
Senior Assistant Attorney General

s/ Helen H. Hong

HELEN H. HONG (SBN 235635)
Deputy Solicitor General
AMANDA J. MURRAY
Supervising Deputy Attorney General
CHARLES CHUNG
Deputy Attorney General
California Department of Justice
600 West Broadway, Suite 1800
San Diego, CA 92101
(619) 738-9693
helen.hong@doj.ca.gov
Attorneys for Respondent

CERTIFICATE OF COMPLIANCE

I certify that the attached RESPONDENT'S REPLY BRIEF TO THE MERITS uses a 13 point Century Schoolbook font and contains 4,470 words.

Dated: June 23, 2020

XAVIER BECERRA
Attorney General of California

S/ HELEN H. HONG

HELEN H. HONG
Deputy Solicitor General
Attorneys for Respondents

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

Case Name: In re Mohammad Mohammad Case No.: S259999

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 collecting and processing electronic and physical correspondence. 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 with postage thereon fully prepaid that same day in the ordinary course of business. Correspondence that is submitted electronically is transmitted using the TrueFiling electronic filing system. Participants who are registered with TrueFiling will be served electronically. Participants in this case who are not registered with TrueFiling will receive hard copies of said correspondence through the mail via the United States Postal Service or a commercial carrier.

On June 23, 2020, I electronically served the attached RESPONDENT'S REPLY TO THE MERITS by transmitting a true copy via this Court's TrueFiling system. Because one or more of the participants in this case have not registered with the Court's TrueFiling system or are unable to receive electronic correspondence, on June 23, 2020, I have caused to be mailed in the Office of the Attorney General's internal mail system, the foregoing document(s) by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within three (3) calendar days to the following:

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Los Angeles, CA 90012
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Second Appellate District-Div. 5
2d1.clerk5@jud.ca.gov
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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 June 23, 2020, at San Diego, California.

B. Romero
Declarant

s/ B. Romero
Signature

STATE OF CALIFORNIA
Supreme Court of California

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Case Number: **S259999**
Lower Court Case Number: **B295152**

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/s/BLANCA ROMERO
Signature

Hong, Helen (235635)
Last Name, First Name (PNum)

California Department of Justice, Office of the Solicitor General
Law Firm