IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

No. S259999

In re MOHAMMAD MOHAMMAD
on Habeas Corpus.

Court of Appeal of California
Second District, Division Five
No. B295152

Superior Court of California
Los Angeles County
No. BA361122
Hon. William C. Ryan

Answer Brief on the Merits

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Answer Brief on the Merits

Comes now Mohammad Mohammad, habeas petitioner in the court below, in answer to the opening brief on the merits (OB) filed May 4, 2020, by respondent Secretary of the California Department of Corrections and Rehabilitation (CDCR or Department). For the reasons set forth below, the Court should affirm the decision of the Court of Appeal granting Mohammad relief from the Department's regulatory exclusion of him from early parole consideration under Proposition 57.

Issue Presented

Did the Court of Appeal correctly grant Mohammad habeas relief from CDCR's exclusion of him from Proposition 57's constitutional amendment (the Amendment) that extends early parole consideration to "any person convicted of a nonviolent felony offense … after completing the full term for his or her primary offense" (Cal. Const., art. I, § 32, subd. (a)(1)), where his sentence is based on a mix of violent and nonviolent felony convictions but his principal term is based on his conviction of a nonviolent felony offense that CDCR concedes is his primary offense?

Summary of Argument

CDCR denied Mohammad early parole consideration under Proposition 57 pursuant to its regulatory exclusion of all offenders committed to prison for a violent felony offense, even if

the offender's principal term is for a nonviolent offense and he has completed the full term for that primary offense. CDCR did so in the face of an explicit duty Proposition 57 imposed on it to provide early parole consideration to all prisoners whose primary offense was a nonviolent felony conviction. The electorate spoke on that question in no uncertain terms, specifying that "any person convicted of a nonviolent felony offense" was entitled to early parole consideration "after completing the full term for his or her primary offense."

CDCR's regulatory exclusion from early parole consideration of persons whose primary offense is a nonviolent felony if they also have a secondary violent offense effectively rewrites the Amendment. Instead of extending early parole consideration to "any person convicted of a nonviolent felony" that comprises his "primary offense," as the Amendment's plain language sets forth, the Department's regulation excludes from early parole consideration "any person convicted of a violent felony." That rewriting breaks a cardinal rule of statutory construction. Moreover, it breaks the central rule of statutory construction that requires reliance on the language itself of a proposition to determine the electorate's intent when that language is clear and unambiguous, as it is here.

The Department asserts otherwise, finding the language sufficiently ambiguous and uncertain to justify reliance on the ballot material to clarify the electorate's intent. But the ballot material only makes more transparent the electorate's intent to extend early parole consideration to every offender whose primary offense is a nonviolent felony, regardless of their secondary offenses. At the very most, the ballot material sends a

mixed message here that further reinforces reliance on the straightforward language of the proposition to find that it covers mixed-offense inmates like Mohammad, whose principal term is based on a nonviolent felony conviction that indisputably is his primary offense.

The electorate determined which class of offenders was entitled to early parole consideration by extending such consideration to all those offenders whose primary offense was a nonviolent felony, and left the determination of dangerousness for the Board of Parole Hearings to make on an individual basis from that class of offenders. The electorate indicated this intent in the usual way it does so – through the ordinary plain language of the text itself. While it may be necessary to resort to consideration of the ballot material when the text leaves its meaning opaque, here the electorate's intent is clear.

Even so, the ballot material reinforces the conclusion that the electorate intended to provide early parole consideration to all prisoners like Mohammad, whose primary offense is a nonviolent felony. 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. This is because the provision of early parole consideration to such mixed-offense offenders furthers the proposition's goal of reducing the prison population to achieve its stated purposes of enhancing public safety, improving rehabilitation, and avoiding the release of prisoners by federal court order.

For all these reasons, the Court should affirm the decision below, holding – as the lower court did -- that Proposition 57 entitles Mohammad to early parole consideration because his primary offense is a nonviolent felony conviction.

Statement of Facts

A. Mohammad's Legal Status.

As recited by the court below:

> On January 20, 2012, petitioner Mohammad Mohammad pled no contest to nine counts of second degree robbery (Pen. Code, § 211), which are violent felonies under Penal Code section 667.5, subdivision (c),1 and six counts of receiving stolen property (Pen. Code, § 496, subd. (a)), which are nonviolent felonies under the same statutory definition. The trial court designated one of the receiving stolen property counts of conviction (count 11) as Mohammad's principal sentencing term, and ordered the sentences imposed for the remaining convictions to run consecutively as subordinate terms. Mohammad's aggregate sentence was 29 years in prison.

(*In re Mohammad* (2019) 42 Cal.App.5th 719, review granted Feb. 19, 2020, No. S259999 [Typ. opn. 2]; see generally Amended. Petn. 4–5 and attachment thereto.)

B. Proposition 57.

On November 8, 2016, California voters approved Proposition 57. (See also *In re Edwards* (2018) 26 Cal.App.5th 1181, 1185

["California voters approved Proposition 57, dubbed the Public Safety and Rehabilitation Act of 2016, at the November 2016 general election."].) "A major feature of the initiative was its design to reduce CDCR's population through amendment of the California Constitution to add article I, section 32, which provides in full:

> (a) The following provisions are hereby enacted to enhance public safety, improve rehabilitation, and avoid the release of prisoners by federal court order, notwithstanding anything in this article or any other provision of law:
>
> (1) Parole Consideration: Any person convicted of a nonviolent felony offense and sentenced to state prison shall be eligible for parole consideration after completing the full term for his or her primary offense.
>
> > (A) For purposes of this section only, the full term for the primary offense means the longest term of imprisonment imposed by the court for any offense, excluding the imposition of an enhancement, consecutive sentence, or alternative sentence.
>
> (2) Credit Earning: The Department of Corrections and Rehabilitation shall have authority to award credits earned for good behavior and approved rehabilitative or educational achievements.
>
> (b) The Department of Corrections and Rehabilitation shall adopt regulations in furtherance of these provisions, and the Secretary of the Department of Corrections and Rehabilitation shall certify that these regulations protect and enhance public safety.

(Cal. Const., art. I, § 32[1]; see also *In re Edwards*, *supra*, 26 Cal.App.5th at p. 1185 ["Under section 32(a)(1), 'Any person convicted of a nonviolent felony offense and sentenced to state prison shall be eligible for parole consideration after completing the full term for his or her primary offense.' (§ 32(a)(1)].) And for purposes of section 32(a)(1), 'the full term for the primary offense means the longest term of imprisonment imposed by the court for any offense, excluding the imposition of an enhancement, consecutive sentence, or alternative sentence.' (§ 32(a)(1)(A).)"].)

C. CDCR's Implementing Regulations.

As set forth above, "Proposition 57 directed CDCR to adopt regulations 'in furtherance of section 32(a)' and 'certify that these regulations protect and enhance public safety.' (Cal. Const., art. I, § 32, subd. (b)." (*In re Edwards*, *supra*, 26 Cal.App.5th at p. 1187, brackets in quote deleted.) The courts to date already have invalidated as contrary to the Amendment certain CDCR regulatory exclusions of inmates whose primary offense is a nonviolent felony. (See, e.g., *id.* at pp. 1192–119 [invalidating CDCR's regulatory exclusion of third strikers whose primary offense was a nonviolent felony]; *In re McGhee* (2019) 34 Cal.App.5th 902, 905 [invalidating CDCR's regulatory exclusion from early parole consideration of "more than a third of otherwise eligible inmates based on their in-prison conduct"]; *In re Gadlin* (2018) 31 Cal.App.5th 784, review granted May 15, 2019, No.

[1] Unless otherwise specified, references to sections are to this section of the California Constitution (hereafter "the Amendment" or "Section 32").

S254599 [invalidating CDCR's regulatory exclusion from early parole consideration of inmates whose primary offense was a nonviolent felony if they had previously been convicted of an offense requiring registration as a sex offender]; *In re Schuster* (2019) 42 Cal.App.5th 943, review granted Feb. 19, 2020, No. S260024 [following *Gadlin*]; *Alliance for Constitutional Sex Offense Laws v. Department of Corrections & Rehabilitation* (2020) 45 Cal.App.5th 225, review granted May 27, 2020, No. S261362 [affirming trial court's invalidation of CDCR's regulatory exclusion from early parole consideration of inmates whose primary offense was a nonviolent felony if any of their current convictions required registration as a sex offender].)

Under review here is the Department's regulation -- California Code of Regulations, title 15, section 3490, subdivision (a)(5) -- which the Court of Appeal invalidated insofar as it excluded from early parole consideration inmates whose primary offense was a nonviolent felony if they had a secondary offense that was a violent felony. (See typ. opn. 3–5, incl. fn. 2; see also Respondent's Opening Brief on Mertis (OB) 9 [invoking Cal. Code Regs., tit. 15, § 3490, subd. (a)(5) to justify its preclusion of Mohammad from early parole consideration].)

As the Court below explained :

> When defining those inmates who will be eligible for early parole consideration, CDCR's rulemaking took a different approach than the constitutional provision— focusing less on the nature of an offense committed by a person (i.e., "a nonviolent felony offense") and more on the person who commits one or more crimes. Specifically, for determinately sentenced inmates like Mohammad, CDCR's

> regulations adopt a definition of "nonviolent *offender*" (emphasis ours) to circumscribe eligibility: "A nonviolent offender, as defined in subsections 3490(a) and 3490(b), shall be eligible for parole consideration by the Board of Parole Hearings under the early parole consideration regulations at California Code of Regulations, title 15, sections 2449.1 et seq." (Cal. Code Regs., tit. 15, § 3491.) Subsection 3490(a), in turn, describes a "'determinately-sentenced nonviolent offender'" by exclusion, not inclusion: "An inmate is a 'determinately-sentenced nonviolent offender' if none of the following are true: … (5) The inmate is currently serving a term of incarceration for a 'violent felony'; … see also Cal. Code Regs., tit. 15, § 3490, subd. (c) ["'Violent felony' is a crime or enhancement as defined in subdivision (c) of section 667.5 of the Penal Code"].) The fifth criterion, excluding from the nonviolent offender definition inmates who are currently serving a term of imprisonment for a violent felony, appears to be the operative criterion in this proceeding.

(*In re Mohammad*, *supra*, 42 Cal.App.5th at pp. 723–724 [Typ. opn. 3–4], brackets deleted; see also OB 20 [setting forth Cal. Code Regs., tit. 15, § 3490].)

D. The Grant of Habeas Relief in the Court Below.

In determining whether CDCR's regulation was inconsistent with the Amendment, the Court of Appeal "g[a]ve effect to the oft-repeated maxim that the best and most reliable indicator of the intended purpose of a law is its text." (*In re Mohammad*, *supra*, 42 Cal.App.5th at p. 722 [Typ. opn. 2], citing, among other cases, this Court's opinion in *California Cannabis Coal. v. City of*

Upland (2017) 3 Cal.5th 924, 933.) At the outset of its discussion, the Court of Appeal framed and answered the issue as follows:

> The issue we decide is whether CDCR's implementing regulations that condition eligibility for early parole consideration on status as a "nonviolent offender" are consistent with the constitutional provision that authorizes their promulgation. As we shall explain, they are not.

(*In re Mohammad*, *supra*, 42 Cal.App.5th at pp. 724–725 [Typ. opn. 6.].)

And the Court of Appeal directly did explain how this regulation conflicts with the Amendment, stating:

> Mohammad was convicted of a nonviolent felony offense, receiving stolen property. There is no dispute that his primary offense as the Constitution defines it ("the longest term of imprisonment imposed by the court for any offense") is the principal term prison sentence he received for the count 11 receiving stolen property conviction. Nor is there any dispute that the "full term" in prison for that conviction, "excluding the imposition of an enhancement, consecutive sentence, or alternative sentence" was three years. Therefore, under the plain meaning of section 32(a)(1), Mohammad is eligible for early parole consideration now that he has served three years in prison.

(*In re Mohammad*, *supra*, 42 Cal.App.5th at p. 726 [Typ. opn. 9].)

Standard of Review

While never identifying the appropriate standard of review to resolve the issue here presented, CDCR appears to recognize that whether its regulation conflicts with the Amendment depends on this Court's ascertainment of the electorate's intent, a matter of law that the Court determines pursuant to its independent judgment. (See OB 27, citing, inter alia, *California Cannabis Coal. v. City of Upland*, *supra*, 3 Cal.5th at p. 933.) As this Court observed in that case, "we apply independent judgment when construing constitutional and statutory provisions." (*Id.* at p. 934.)

In sum, the standard of review here is just as the court below described it, quoting *Edwards*:

> "In order for a regulation to be valid, it must be (1) consistent with and not in conflict with the enabling statute and (2) reasonably necessary to effectuate the purpose of the statute." [Citations.] Therefore, "the rulemaking authority of the agency is circumscribed by the substantive provisions of the law governing the agency." [Citation.] "The task of the reviewing court in such a case is to decide whether the agency reasonably interpreted its legislative mandate. Such a limited scope of review constitutes no judicial interference with the administrative discretion in that aspect of the rulemaking function which requires a high degree of technical skill and expertise. There is no agency discretion to promulgate a regulation which is inconsistent with the governing statute. Whatever the force of administrative construction final responsibility for the interpretation of the law rests with the courts.

> Administrative regulations that alter or amend the statute or enlarge or impair its scope are void.' [Citation.]"

(*In re Mohammad*, *supra*, 42 Cal.App.5th at p. 725 [Typ. opn. 9], quoting *In re Edwards*, *supra*, 26 Cal.App.5th at p. 1189, ellipses and brackets omitted.)

Argument

I. MOHAMMAD 'S EXCLUSION FROM EARLY PAROLE CONSIDERATION IS CONTRARY TO SECTION 32(A)(1), WHICH EXTENDS SUCH CONSIDERATION TO ALL PRISONERS WHOSE PRIMARY OFFENSE IS A NONVIOLENT FELONY CONVICTION.

CDCR and the court below agree that resolution of Mohammad's claim requires a determination whether the electorate intended to include him in its prison population-reduction program for early parole consideration that the electorate established "to enhance public safety, improve rehabilitation, and avoid release of prisoners by federal court order" (§ 32(a)). (Compare *In re Mohammad*, *supra*, 42 Cal.App.5th at 727 & 725, respectively [Typ. opn. 10 & 7, respectively] ["we look for evidence of the voters' intent" to "giv[e] effect to the intended purpose of the provisions at issue"] with OB 27, quoting *Arias v. Superior Court* (2009) 46 Cal.4th 969, 978–979, ellipsis deleted ["When interpreting voter initiatives, a court's 'primary task' is 'to ascertain the intent of the electorate so as to effectuate that intent."].) Mohammad concurs.

The parties and the court below further concur that divining the intent of the electorate typically is accomplished by examination of the text itself. As CDCR put it:

> Courts look "first to the words of the initiative measure, as they generally provide the most reliable indicator of the voters' intent." (*Arias*, *supra*, 46 Cal.4th at p. 979.) In doing so, a court ascribes "to words their ordinary meaning, while taking account of related provisions and the structure of the relevant statutory and constitutional scheme." (*Cal. Cannabis Coalition*, *supra*, 3 Cal.5th at 933.) If the language is clear and unambiguous, the "plain meaning of the language governs." (*People v. Colbert* (2019) 6 Cal.5th 596, 603.)

(OB 27.)

And, as the Court of Appeal put it, after "giv[ing] effect to the oft-repeated maxim that the best and most reliable indicator of the intended purpose of a law is its text" (*In re Mohammad*, *supra*, 42 Cal.App.5th at p. 722 [Typ. opn. 2]):

> There is nothing ambiguous about what section 32(a)(1) means in this case, and there is accordingly no cause to look beyond the text to ballot materials or other extrinsic evidence of the voters' intent. (*Silicon Valley Taxpayers' Assn., Inc. v. Santa Clara County Open Space Authority* (2008) 44 Cal.4th 431, 444–445.)

(*In re Mohammad*, *supra*, 42 Cal.App.5th at p. 727 [Typ. opn. 10].)

CDCR parts ways with both the court below and Mohammad on the question whether the text plainly extends early parole

consideration to him, a mixed-offense prisoner whose nonviolent felony offense is his primary offense and whose violent offenses are secondary ones that run consecutive and subordinate to that primary and principal offense. Mohammad demonstrates below that contrary to CDCR's argument that "[t]he Department was required to exclude" Mohammad from Proposition 57's program for early parole consideration (OB 25), the Department was required to find him eligible for such consideration. After all, he was "convicted of a nonviolent felony offense" that was his "primary offense" and had served his "full term" on that offense within the meaning of Proposition 57's use of those quoted phrases.

Mohammad first demonstrates CDCR's obligation to find him eligible for early parole consideration by consideration of the text of the Amendment itself. He then demonstrates that consideration of that text informed by the voter material reinforces rather than changes that analysis. Finally, he sets forth further considerations that support a finding that the electorate intended to include him in its aim to reduce the prison population.

A. The Department's Regulatory Exclusion of Mohammad From Early Parole Consideration Conflicts with the Plain and Unambiguous Text of Section 32 (a)(1), Which Extends Such Parole Consideration to Him.

Proposition 57 provides: "Any person convicted of a nonviolent offense shall be eligible for parole consideration after completing the full term for his or her primary offense." (Cal. Const., art. I, §

32, subd. (a)(1).) To the degree those words are not plain and unambiguous on their face, they are explicitly defined in the statute: "The full term for the primary offense means the longest term of imprisonment imposed by the court for any offense, excluding the imposition of an enhancement, consecutive sentence, or alternative sentence." (*Id.*, subd. (a)(1)(A).)

As CDCR recognizes: "The 'full term' of Mohammad's 'primary offense'—the longest term of imprisonment imposed by the court for any offense, excluding the imposition of an enhancement, consecutive sentence, or alternative sentence (Cal. Const., art. I, § 32, subd. (a)(1)(A))— was three years on Count 11 for receiving stolen property." (OB 21; see also *In re Mohammad*, *supra*, 42 Cal.App.5th at p. 726 [Typ. opn. 9] ["Nor is there any dispute that the 'full term' in prison for that conviction, 'excluding the imposition of an enhancement, consecutive sentence, or alternative sentence' was three years."].) CDCR further recognizes that receiving stolen property is a nonviolent felony offense under both the Penal Code and its own regulations implementing Proposition 57. (See, e.g., *id.* at p. 724 [Typ. opn. 4], quoting Cal. Code Regs., tit. 15, § 3490, subd. (c) ["'Violent felony' is a crime or enhancement as defined in subdivision (c) of section 667.5 of the Penal Code"].) "Therefore, under the plain meaning of section 32(a)(1), Mohammad is eligible for early parole consideration now that he has served three years in prison." (*In re Mohammad*, *supra*, at p. 726 [Typ. opn. 9].) This is so because the Amendment unambiguously extends early parole consideration to all prisoners whose primary offense is a nonviolent felony conviction.

CDCR resists this plain reading of the Amendment, asserting that "Proposition 57 flatly precludes that result, and the Department therefore was required to exclude inmates like Mohammad who are currently serving a sentence for a violent felony listed in Penal Code section 667.5." (OB 10.) In so asserting, CDCR overlooks the critical fact that Mohammad's violent felony convictions are secondary to his primary offense, with terms subordinate to the principal term he is serving for his nonviolent felony conviction. Contrary to CDCR's assertion, Proposition 57 speaks very clearly to the eligibility of mixed-offense inmates like Mohammad whose primary or principal offense is a nonviolent felony: Those inmates are eligible for early parole consideration once they have served the full term for that offense, just as the Court of Appeal held.

CDCR's claim of "perverse effect[s]" and "arbitrary results" (OB 10) of that holding misreads the textual construction of the Amendment that supports that holding and bespeaks a misreading of the Court of Appeal's opinion that construes it much more broadly than warranted or necessary. CDCR's fundamental error is its approach to interpretation of the Amendment as one that requires an "all or nothing" approach to early parole consideration for so-called "mixed-offense inmates." That approach ignores the fact that the Court of Appeal's textual interpretation concerns a very small class of mixed-offense inmates – namely, those whose primary term under Proposition 57 is for a nonviolent felony conviction. Only by glossing over this critical fact can CDCR assert that the Court of Appeal's textual analysis "expands parole eligibility to nearly all inmates in the Department's custody" – i.e., to "96% of the prison population."

(OB 37.) In fact, the primary terms for very few mixed-offense inmates will be for their nonviolent felony conviction, as the Court of Appeal recognized when it observed:

> [I]t bears emphasizing that Mohammad's case is an unusual one. The court at Mohammad's sentencing designated one of the receiving stolen property convictions—i.e., one of the nonviolent felonies—as the principal term of Mohammad's sentence. Often, however, an inmate convicted of both violent and nonviolent felonies will have the most serious of his or her violent felonies set as the principal term. Thus, the situation we confront in this case … will not frequently arise.

(*In re Mohammad*, *supra*, 42 Cal.App.5th at p. 728 [Typ. opn. 12].)

In short, the question here is whether the text of the Amendment clearly and unambiguously provides for early parole consideration for inmates whose nonviolent felony convictions constitute their primary offense. CDCR never addresses that question. Rather, CDCR inserts ambiguity by broadening that question to one that treats mixed-offense inmates as an undifferentiated single entity. CDCR's ambiguity argument fails to distinguish between the rare mixed-offense inmate with a primary and controlling term for a nonviolent offense and the usual mixed-offense inmate whose primary and controlling term is for a violent offense.

For example, CDCR asserts that "the text and statutory context of Proposition 57 do not expressly address the eligibility of mixed-offense inmates" for parole consideration. (OB 26, capitalization and bold deleted; see also OB 28 ["The text of

section 32, subdivision (a) does not explicitly address the eligibility of mixed-offense inmates"].) That may be, but the Amendment implicitly does so by explicitly limiting early parole consideration to those inmates whose primary offense is a nonviolent one. Under the Amendment, the line of demarcation that separates the qualified inmate from the unqualified one is a very thick and clear one: the qualified inmate's primary offense is a nonviolent felony, while the unqualified inmate's primary offense is a violent felony. Thus, a straightforward consideration of the text of the statute discloses the electorate's unambiguous intent to extend early parole consideration to inmates, like Mohammad, whose primary offense is a nonviolent felony.

The lower court cases that have found other CDCR regulatory exclusions from early parole consideration contrary to the plain language of the Amendment provide a ready and persuasive model here. For example, after reciting the proposition's purposes that are set forth in its preamble -- and specifically included in the text of the Amendment (see § 32 (a)) -- the *Edwards* Court began its analysis by properly focusing on the provision's plain language in the context of those express purposes:

> The text of section 32(a)(1) that furthers these purposes is of course crucial to the question we decide, so we shall reiterate the key language. Under section 32(a)(1), "Any person convicted of a nonviolent felony offense and sentenced to state prison shall be eligible for parole consideration after completing the full term for his or her primary offense." (§ 32(a)(1).) And for purposes of section 32(a)(1), "the full term for the primary offense means the longest term of imprisonment imposed by the

> court for any offense, excluding the imposition of an enhancement, consecutive sentence, or alternative sentence." (§ 32(a)(1)(A).)

(*In re Edwards*, *supra*, 26 Cal.App.5th at p. 1185.)

Edwards concluded its analysis by relying on the plain meaning of that key language: Given that "the 'full term' of Edwards's primary offense is 'the longest term of imprisonment imposed by the court for any offense, *excluding the imposition of an enhancement, consecutive sentence, or alternative sentence,*" … [t]he plain language analysis is therefore straightforward in our view." (*Id.* at pp. 1189–1190, italics in *Edwards*; see also *Alliance for Constitutional Sex Offense Laws v. Dep't of Corr. & Rehab, supra,* 45 Cal.App.5th at p. 238, review granted May 27, 2020, No. S261362 ["Because we find the plain language of the statute unambiguous as to the voters' intent in passing Proposition 57, we need not address the Department's argument that the ballot materials support its position regarding the voters' intent."].) In both *Edwards* and *Alliance*, the plain language of the Amendment implementing its explicit purposes controlled over the Department's regulatory spin that limited the breadth of the Amendment. The same is true here.

While Mohammad may have been committed to prison for additional offenses, including violent ones, they are irrelevant because they resulted in subordinate or consecutive sentences. As we have seen, calculation of the full term for the primary offense excludes sentences that are running consecutive to the primary or principal offense, as are Mohammad's subordinate violent offenses here. Thus, straightforward application of the text of the Amendment demonstrates that the Department's regulatory

exclusion from early parole consideration of offenders like Mohammad, whose primary or principal offense is nonviolent, is unlawful. This properly ends the analysis. (See, e.g., *People v. Valencia* (2017) 3 Cal.5th 347, 357, quoting *Lungren v. Deukmejian* (1988) 45 Cal.3d 727, 735, brackets in quote deleted ["We have long recognized that the language used in a statute or constitutional provision should be given its ordinary meaning, and 'if the language is clear and unambiguous there is no need for construction, nor is it necessary to resort to indicia of the intent of the Legislature (in the case of a statute) or of the voters (in the case of a provision adopted by the voters)."].)

B. The Extrinsic Evidence of the Official Ballot Material Supports the Textual Indications that the Electorate Intended to Provide Early Parole Consideration to Mixed-Offense Inmates, Like Mohammad, Whose Primary Offense Is a Nonviolent Felony.

Resorting to the ballot material contained in the Voter Information Guide, Gen. Elec. (Nov. 8, 2016)[2], CDCR argues that it discloses the electorate's intent to exclude mixed-offense inmates like Mohammad, notwithstanding the fact that his primary offense is a nonviolent felony. (OB 34–35.) It does not. To the contrary, the ballot material is fully consistent with the textual indications that the electorate intended to provide early parole consideration to Mohammad and all other offenders whose primary or controlling offense is nonviolent.

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[2] The Voter Information Guide can be found in the record as Exhibit 3, pp. 15-21, supporting the return to the order to show cause filed in the Court of Appeal. (See OB 15, fn. 3.)

First, the summary of Proposition 57 prepared by the Attorney General explained that, among other things, the proposition "allows parole consideration for persons convicted of nonviolent felonies, upon completion of prison term for their primary offense as defined." (Voter Information Guide, *supra*, Prop. 57, Official Title and Summary prepared by the Attorney General, p. 54.) Notably, the Attorney General did not indicate that there was any exception for such persons if they had secondary offenses that were violent convictions with terms subordinate to their prison term for their primary offense. Thus, to the degree there is any truth to the observation that "[o]ften voters rely solely on the title and summary of the proposed initiative and never examine the actual wording of the proposal" (OB 34–35, quoting *Taxpayers to Limit Campaign Spending v. Fair Pol. Practices Com* (1990) 51 Cal.3d 744, 770, in turn quoting a dissenting opinion), the electorate would have gleaned that the proposition provided for early parole consideration for a person like Mohammad whose primary offense was a nonviolent felony conviction.

Ignoring the above, CDCR first notes:

> In the ballot materials, the Governor advised voters that Proposition 57 offered a "common sense, long-term solution" to prison overcrowding by allowing "parole consideration for people with non-violent convictions who complete the full prison term for their primary offense." (Voter Information Guide, *supra*, argument in favor of Prop. 57, p. 58.) According to the Governor, the measure would serve its inmate-reduction purpose but still "keep[] dangerous criminals behind bars," "keep[] the most dangerous offenders locked up," and apply "only to prisoners convicted of non-violent felonies." (*Ibid.*)

(OB 14.) Well, Mohammad is one of those persons "with non-violent convictions" who "completed the full term for their primary offense," which was nonviolent. Moreover, by providing early parole consideration to all prisoners whose primary offense was a nonviolent felony – and perhaps to no others – "the measure would serve its inmate-reduction purpose but still 'keep dangerous criminals behind bars,' 'keep the most dangerous offenders locked up,' and apply 'only to prisoners convicted of non-violent felonies.'"

CDCR also relies on the Legislative Analyst's assumption that Penal Code section 667.5 would serve to distinguish a nonviolent felony from a violent felony to disclose to the voters the "practical effects" of the Amendment. (OB 15). That reliance does not advance its cause, however, for there is no question that Mohammad's primary offense is a nonviolent felony conviction. Nevertheless, CDCR argues: "Based on this assumption, the Legislative Analyst estimated that of the State's 128,000 inmates, approximately 30,000 (or less than a quarter of existing inmates)—and an additional 7,500 inmates a year—would become eligible for nonviolent parole consideration. (*Id.* at pp. 54, 56.)" (OB 15–16.) Missing from CDCR's analysis is any evidence that these estimates of the number of inmates who would become eligible for early parole consideration do not include all inmates whose primary offense is a nonviolent felony, regardless of their other offenses. Indeed, the Legislative Analyst advised the electorate in this regard:

> Most people in state prison have received a determinate sentence. Individuals in prison have

> been convicted of a main or primary offense. They often serve additional time due to other, lesser crimes for which they are convicted at the same time.

(Voter Information Guide, *supra*, analysis by Legislative Analyst, at p. 54.) Thus, it is decidedly *not* "evident from the estimated number of individuals that would be affected" that "the Legislative Analyst believed that this parole program was not intended to apply" to all prisoners whose primary offense was nonviolent, regardless of their secondary offense. (See OB 36.)

CDCR principally relies on the proponents' argument, in rebuttal to the opponents' argument, "that Proposition 57 'does NOT authorize parole for violent offenders,' and specifically stated that 'violent criminals as defined in Penal Code 667.5 are excluded from parole.'" (OB 15, quoting Voter Information Guide, *supra*, rebuttal to argument against Proposition 57, p. 59.) But those arguments merely beg 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, the answer to which depends upon what the text itself said.

Indeed, the proponents also advised the electorate that "Proposition 57 is straightforward" and in this respect "allows parole consideration for people with non-violent convictions who complete the full prison term for their primary offense." (Voter Information Guide, *supra*, argument in favor of Prop. 57, p. 58.) Again, that description fairly describes Mohammad, as the court below found through a straightforward application of the plain language of the Amendment.

Because the ballot arguments by the proponents and opponents of the measure are partisan and thus may serve to mislead a voter about an initiative's purpose, intent, and effect, the Secretary of State includes the following warning about advocate claims in his running foot to arguments by such partisans: "*Arguments printed on this page are the opinions of the authors, and have not been checked for accuracy*." (See Voter Information Guide, *supra*, running foot to Arguments, pp. 58–59.) Hence, the voters were properly warned to take the arguments of both the proponents and opponents of the measure with a grain of salt when comparing them to the actual text of the proposition. After all, "ballot arguments that are mere appeals to passion on emotionally charged topics of public policy illuminate the electorate's intent feebly if at all." (*Taxpayers to Limit Campaign Spending v. Fair Pol. Practices Com*, *supra*, 51 Cal.3d at p. 771 (conc. & dis. opn. of Mosk, J.).)

Here, the proponents and opponents made opposing arguments about the Amendment. (See, e.g., Voter Information Guide, *supra*, rebuttal to argument in favor of Proposition 57, p. 58 ["The authors of Prop. 57 are not telling you the truth. IT APPLIES TO VIOLENT CRIMINALS."].) The overriding presumption is that the voters resolved those competing arguments by considered reference to the text. "[I]in accordance with our tradition, '*we ordinarily should assume that the voters who approved a constitutional amendment 'have voted intelligently upon an amendment to their organic law, the whole text of which was supplied each of them prior to the voter inf and which they must be assumed to have duly considered*.'

[Citations.]" (*Brosnahan v. Brown* (1982) 32 Cal.3d 236, 252, emphasis added by Court, ellipsis and inside quotation marks omitted.)

Finally, CDCR relies on the proponents' rebuttal argument "that Proposition 57 would be 'implemented' 'through Department of Corrections and Rehabilitation regulations developed' only after 'public and victim input and certified as protecting public safety." (OB 15, quoting Voter Information Guide*, supra,* rebuttal to argument against Proposition 57, p. 59.) But that argument did not suggest that the electorate gave CDCR authority to exclude from early parole consideration an inmate whose primary offense was a nonviolent felony – not in the face of the text providing those inmates with such consideration – and not in the face of the text that limited the authority of CDCR to promulgation of regulations "in furtherance of" the Amendment. (§ 32 (b).)

Ultimately, whatever public safety concerns the electorate had about application of the early parole provision to all those convicted of a nonviolent felony as their primary offense are reflected in the fact that the provision conditioned release pursuant to it on the Board's finding that the inmate could be safely paroled. As the proponents of the measure advised the voters:

> *No one is automatically released, or entitled to release from prison, under Prop. 57.*
>
> To be granted parole, all inmates, current and future, must demonstrate that they are rehabilitated and do

> not pose a danger to the public. The Board of Parole Hearings – made up mostly of law enforcement officials – determines who is eligible for release.

(Voter Information Guide, *supra*, argument in favor of Proposition 57, p. 58, italics in original.)

Yes, the letter of the law must be read in conformance with that law's manifest purpose and spirit (OB 28), but the whole spirit and design of Proposition 57 as reflected in both its text and ballot guide is to mitigate the extraordinary punishment mandated by alternative sentences and enhancements and consecutive sentences and other pile-ups of the DSL, so that as many inmates whose primary offense is a nonviolent felony can be released as the Board of Parole finds fit to free up space and concentrate resources on the confinement of more dangerous prisoners. (See, e.g., Voter Information Guide, *supra*, Prop. 57 (analysis by the Legislative Analyst, p. 56 ["This measure makes changes to the State Constitution to increase the number of inmates eligible for parole consideration"].) As the proponents of the initiative further advised the voters:

> Prop. 57 focuses resources on keeping dangerous criminals behind bars, while rehabilitating juvenile and adult inmates and saving tens of millions of taxpayer dollars.
>
> Over the last several decades, California's prison population explored by 500% and prison spending ballooned to more than $10 billion every hear. Meanwhile, too few inmates were rehabilitated and most re-offended after release.

> Overcrowded and unconstitutional conditions led the U.S. Supreme Court to order the state to reduce its prison population. Now, without a common sense, long-term solution, we will continue to waste billions and risk a court-ordered release of dangerous prisoners. This is an unacceptable outcome that puts Californians in danger – and that is why we need Prop. 57.

(Voter Information Guide, *supra*, argument in favor of Proposition 57, p. 58.)

The electorate consequently endorsed the "common sense, long-term solution" of early parole consideration for all those prisoners whose primary offense is a nonviolent felony – whether determinately or indeterminately sentenced, and whether convicted of secondary offenses violent or not – to carry out the network of Proposition 57's stated goals and purposes. Granting Mohammad consideration for early parole effectuates each and all of the Amendment's purposes. This fact is particularly persuasive in interpretation of the Amendment because Proposition 57 is a remedial one that the electorate directed be liberally and broadly construed to accomplish and effectuate its purposes. (Voter Information Guide, Gen. Elec., *supra*, text of Prop. 57, §§ 5 & 9, pp. 145–46.) It was the electorate's choice to abandon an outdated philosophy of mass incarceration in favor of a program to reduce the prison population through early parole consideration of prisoners whose primary offense was a nonviolent felony.

In sum, the ballot material is consistent with the textual indications that the electorate intended to extend early parole consideration to all persons whose primary offense is a nonviolent

felony. In any event, "a possible inference based on the ballot argument is an insufficient basis on which to ignore *the unrestricted and unambiguous language of the measure itself*. (*Delaney v. Superior Court* (1990) 50 Cal.3d 785, 803, emphasis in original.) As this Court there explained: "It would be a strained approach to constitutional analysis if we were to give more weight to a possible inference in an extrinsic source (a ballot argument) than to a clear statement in the Constitution itself." (*Ibid.*) And as this Court said about another initiative whose language was clear and unambiguous, "it was the Three Strikes law that was enacted, not any of the documents within its legislative or initiative history." (*In re Cervera* (2001) 24 Cal.4th 1073, 1079.) Likewise, here, it was Proposition 57 that the voters approved -- including its key provision providing for early parole consideration for all prisoners whose nonviolent felony conviction was their primary offense -- not any of the ballot material about it.

C. Other Considerations Similarly Reinforce the Textual Indications that the Electorate Intended to Provide Early Parole Consideration to Mixed-Offense Inmates, Like Mohammad, Whose Primary Offense Is a Nonviolent Felony.

CDCR further argues that granting Mohammad early parole consideration would "lead to the anomalous result that an inmate who has been convicted of more crimes—a nonviolent felony plus a violent felony—would be entitled to an accommodation not afforded to an inmate who has been convicted of only a violent felony." (OB 26; see also OB 39, citing *Horwich v. Superior Court*

(1999) 21 Cal.4th 272, 280 ["Principles of statutory construction also counsel that we should avoid an interpretation that leads to anomalous or absurd consequences."].)

But CDCR goes too far here in claiming that "the Court of Appeal itself acknowledged" that its "literal interpretation leads to unreasonable consequences" or an "arbitrary result." (See OB 39, quoting a sentence from *In re Mohammad*, *supra*, 42 Cal.App.5th at p. 727.) The full quote puts the nature of the Court of Appeal's acknowledgment in context:

> We do acknowledge … that the argument for reaching a different result has some intuitive appeal. It cannot be, the argument goes, that voters intended a defendant who is convicted of more crimes, i.e., both violent and nonviolent felonies, to be eligible for early parole consideration while a defendant convicted of fewer crimes, i.e., the same violent felony but no nonviolent felonies, is not. But we look for evidence of the voters' intent, not intuition, and as our Supreme Court has said repeatedly, the best evidence we have is the text the voters put in the Constitution. (*De La Torre v. CashCall, Inc.* (2018) 5 Cal.5th 966, 981;*California Cannabis, supra*, 3 Cal.5th at p. 933; *Professional Engineers in California Government v. Kempton* (2007) 40 Cal.4th 1016, 1037 ["'Absent ambiguity, we presume that the voters intend the meaning apparent on the face of an initiative measure and the court may not add to the statute or rewrite it to conform to an assumed intent that is not apparent in its language'"]; see also *People v. Valencia* (2017) 3 Cal.5th 347, 379 (conc. opn. of Kruger, J.) ["California cases have established a set of standard rules for the construction of voter initiatives. 'We interpret voter initiatives using the same principles that govern construction of legislative enactments. Thus, we begin with the text

> as the first and best indicator of intent'"].) The Constitution's text compels the result we reach, and we are not prepared to declare that result so absurd (see, e.g., *Lopez v. Sony Electronics, Inc.* (2018) 5 Cal.5th 627, 638) as to disregard the Constitution's plain meaning—and, indeed, the Attorney General does not ask us to.

(*In re Mohammad*, *supra*, 42 Cal.App.5th at p. 728 [Typ. opn. 10–11].)

It is not clear whether CDCR is now requesting this Court to declare this result "so unreasonable that the [electorate] could not have intended it" (*Lopez v. Sony Elecs., Inc.* (Cal. 2018) 5 Cal.5th 627, 638), so as to sanction CDCR's rejection of a plain reading of the text in favor of a rewriting of the text. But there is nothing unreasonable in the electorate's focus on the nonviolent nature of a prisoner's primary offense in fashioning a program for early parole consideration to reduce the prison population. CDCR nevertheless submits that the electorate did not mandate it to provide early parole consideration to every prisoner whose primary offense was a nonviolent felony; rather, what the electorate mandated it to do was exclude from early parole consideration every prisoner who was convicted of a violent felony whether as a primary or secondary offense.

CDCR's regulatory exclusion from early parole consideration of persons whose principal term of his sentence is based on a nonviolent offense effectively rewrites the constitutional amendment's language from "any person convicted of a nonviolent felony" to "any person not convicted of a violent felony." Had the electorate intended to exclude any person convicted of a violent felony from early parole consideration, it

would have been simple for it to directly say so. That is, "we would anticipate that this intent would be expressed in some more obvious manner" than the convoluted way in which CDCR here interprets that plain language. (See *People v. Skinner* (1985) 39 Cal.3d 765, 776.) As CDCR acknowledges, "section 32, subdivision (a)(1), does not explicitly limit parole eligibility to those convicted of 'only' nonviolent felony offenses, and says nothing about disqualifying individuals with violent secondary or other offenses." (OB 29.) Consequently, as in CDCR's exclusion of third-strike inmates from early parole consideration, its "intricate argument creates tension in the statutory terms that is unnecessary, and we are convinced it does not reflect the legislative intention behind Proposition 57." (*In re Edwards*, *supra*, 26 Cal.App.5th at p. 1191.)

Again, CDCR cannot, under the guise of regulation, rewrite the legislation enabling its regulation. Rather, to be valid, CDCR's regulations must be consistent with Proposition 57 *and* reasonably necessary to implement its purposes. (See, e.g. *Assn. of Cal. Ins. Cos. v. Jones* [*ACIC*] (2017) 2 Cal.5th 376, 397.) CDCR's regulation at issue here fails on both counts, for it is both inconsistent with Proposition 57 *and* not reasonably necessary to implement its purposes. Not only are the Amendment's purposes well carried out by including all prisoners whose primary offense is a nonviolent felony, but the Amendment requires such inclusion.

Nevertheless, CDCR insists that it "reasonably exercised its authority to 'fill up the details' here." (OB 41, quoting *ACIC*, *supra*, 2 Cal.5th at p. 391.) But, as stated in *In re McGhee*, *supra*, 34 Cal.App.5th at p. 911: "While Proposition 57 delegated

rulemaking authority to the department to 'fill up the details,' as the Attorney General argues, the exclusion of otherwise eligible inmates from board consideration is hardly a detail." CDCR nevertheless arrogates to itself the right to make this "judgment" call on eligibility for early parole consideration (OB 41), arguing:

> Section 3490, subdivision (a)(5) is the product of the Department's assessment about whether public safety is promoted or thwarted through parole consideration of mixed-offense inmates. (Cal. Code Regs., tit. 15, § 3490, subd. (a)(5).) That is a "quasi legislative endeavor, a task which necessarily and properly requires the Department's exercise of a considerable degree of policy-making judgment and discretion." (*Ramirez v. Yosemite Water Co.* (1999) 20 Cal.4th 785, 800.)

(OB 41, brackets omitted) Not so.

CDCR's eligibility regulation at issue here for early parole consideration was not an exercise of a power to make law; rather, the 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. Thus, the regulation was quintessentially an interpretive rule or regulation that "represents the agency's understanding of the statute's or constitutional provision's meaning and effect." (*ACIC, supra*, 2 Cal.5th at p. 397.) In any event:

> Even quasi-legislative rules are reviewed independently for consistency with controlling law. A court does not, in other words, defer to an agency's view when deciding whether a regulation lies within

> the scope of the authority delegated by the Legislature. The court, not the agency, has "final responsibility for the interpretation of the law" under which the regulation was issued. (*Whitcomb Hotel, Inc. v. Cal. Emp. Com.* (1944) 24 Cal. 2d 753, 757; see cases cited, *post*, at pp. 11–12; *Environmental Protection Information Center v. Department of Forestry & Fire Protection* (1996) 43 Cal. App. 4th 1011, 1022 [Standard of review of challenges to "fundamental legitimacy" of quasi-legislative regulation is "'respectful nondeference.'"].)

(*Yamaha Corp. of Am. v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 11, fn. 4.)

However reasonable in the abstract may be CDCR's policy judgment on who should be considered for parole to reduce its population, that was not its call. Its call was to promulgate regulations within the framework of the Amendment, which provided that all prisoners whose primary offense is a nonviolent felony be considered for early parole. As other courts have stated in striking down regulations that CDCR similarly has sought to justify as an exercise of its discretionary judgment to deny early parole consideration to certain prisoners whose primary offense was a nonviolent felony: "These policy considerations … do not trump the plain text of section 32, subdivision (a)(1)." (*In re Gadlin*, *supra*, 31 Cal.App.5th at p. 789; see also *In re McGhee*, *supra*, 34 Cal.App.5th at p. 905 ["Despite the policy considerations advanced by the department, section 32, subdivision (a)(1) mandates that these prisoners receive parole consideration if they have been convicted of a nonviolent felony and have served the full term of their primary offense"].)

Neither a court nor an administrative agency may substitute its view of what is a sensible reform for the electorate's view when interpreting an initiative. This Court has emphasized its limited role in this regard:

> "It is our task to construe, not to amend, the statute. 'In the construction of a statute the office of the judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted or omit what has been inserted.' [Citation.] We may not, under the guise of construction, rewrite the law or give the words an effect different from the plain and direct import of the terms used." [Citation.]

(*People v. Leal* (2004) 33 Cal.4th 999, 1008, ellipses in quote deleted.)

CDCR's regulatory role must be even more limited. Otherwise, its substitution of what it deems a more sensible law through its implementing regulations serves only to undermine the populist process of an initiative. As the court below warned:

> If courts are to have a sound, predictable means of adjudicating interpretive questions concerning popularly enacted laws (or any laws for that matter); and if government agencies and Californians are to have a reliable means of discerning their legal rights and obligations; privileging focus-group-tested ballot arguments, incomplete legislative analyses, or intuited voter intentions over clear textual provisions is not the answer. Indeed, that would invite confusion and manipulation of the initiative process. If voters want a different result, the ballot box is open every two years to change what the Constitution now says

(*In re Mohammad*, *supra*, 42 Cal.App.5th at p. 728 [Typ. opn. 11].)

Thus, CDCR has it backwards when it submits that "[i]nquiry into intent beyond the bare text of a provision is particularly important in the initiative context" to determine what the electorate really meant to say. (OB 34.) Rather, faith in the electorate's ability to mean what it plainly said is particularly important to "jealously guard the sovereign people's initiative power." (OB 34, quoting *Raven v. Deukmejian* (1990) 52 Cal.3d 336, 341.)

The proposition's grant of regulatory power to the Department under Section 23(b) and the Secretary's duty to certify that it has carried out that power consistent with public safety are subordinate to Section 23(a)'s grand scheme to release as many persons whose primary offense was a nonviolent felony as soon as they can be safely released after they have served the full term for that offense. Inarguably, CDCR's exclusion of Mohammad and his class impedes and undermines rather than furthers and advances those purposes and that goal. To be sure, simply warehousing Mohammad and those like him to mete out prison terms imposed upon them for punishment and incapacitation purposes is contrary to the proposition's reform purposes. As the *McGhee* court stated about CDCR's policy determination behind its regulatory restriction on early parole consideration there at issue:

> We unequivocally reject the assertion that compliance with Proposition 57 will undermine public safety. Before granting parole the board will continue to review the record of an eligible inmate to

> determine whether the inmate presents a risk to public safety. (Cal. Code Regs., tit. 15, § 2449.4, subd. (b).) In doing so, the board must consider "all relevant and reliable information." (*Ibid.*) There is no reason to assume that the board will be insensitive to the concern for public safety or will grant parole to those who present a public danger. By enforcing the mandate of section 32, subdivision (a)(1), we hold that McGhee and similar inmates are entitled to parole consideration, not that they are necessarily entitled to release.

(*In re McGhee*, *supra*, 34 Cal.App.5th at p. 913.)

The Court of Appeal made a similar point here:

> [F]or those inmates who are eligible for early parole consideration under section 32(a) as we read it today (and as it must be read), the ultimate parole determination to be made on the merits by the Board of Parole Hearings (Board) is not limited in the way that the eligibility determination is. The Board's decision on whether an inmate should be granted parole will take into account the inmate's full criminal history— nonviolent and violent offenses alike—when determining whether the inmate poses a risk to public safety. (Pen. Code, § 3041, subd. (b); Cal. Code Regs., tit. 15, § 2449.4, subd. (b).) So the bottom line consequence of our decision today is that more inmates like Mohammad will receive individualized parole consideration earlier than they otherwise would have. If the Board is convinced one of these inmates poses no unacceptable risk to public safety, the Board can approve the inmate for release; if instead there are violent aspects of an inmate's history that were not part of an early parole hearing eligibility determination, the Board can take those into account and issue a parole denial where it deems it prudent

(*In re Mohammad*, *supra*, 42 Cal.App.5th at pp. 728–729 [Typ. opn. 12–13.)

There is certainly nothing absurd, anomalous, or otherwise unreasonable about establishing a program for early parole consideration that focuses on those inmates whose primary offense is a nonviolent felony. This Court should accordingly affirm the judgment of the Court of Appeal that invalidated the Department's regulation here at issue insofar as it excluded such inmates from early parole consideration.

Conclusion

For the reasons set forth above, the Court should affirm the judgment of the Court of Appeal.

Respectfully submitted,

Dated: June 3, 2020 By: /s/ Michael Satris

Attorney for Petitioner
Mohammad Mohammad

CERTIFICATE OF COMPLIANCE

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Dated: June 3, 2020 By: /s/ Michael Satris

DECLARATION OF SERVICE

Case Name:In re Mohammad
No.: S259999

I, the undersigned, declare that I am over 18 years of age and not a party to the within cause. I am employed in the County of Marin, State of California. My business address is P.O. Box 337, Bolinas, California 94924. My electronic service address is satrislaw.eservice@gmail.com. On June 3, 2020, I electronically served the attached **ANSWER BRIEF ON THE MERITS** by transmitting a true copy via this Court's TrueFiling system. Because one or more of the participants are unable to be served though the Court's TrueFiling system, on June 3, 2020, I have emailed a copy of the to the recipient at the email address as stated below or placed a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Law Office of Michael Satris, addressed as follows:

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Court of Appeal Second Appellate District-Div. 5 2d1.clerek5@jud.ca.gov Via e-mail	Charles Chung, Deputy Attorney General Via TrueFiling

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 3, 2020, at Bolinas, California.

/s/ Amber Distasi
Signature

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

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

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