IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In re **WILLIAM M. PALMER, II** on Habeas Corpus	**No. S256149**

First Appellate District, Division Two, No. A154269
Riverside County Superior Court, No. CR29074

APPLICATION OF CALIFORNIA DISTRICT ATTORNEYS ASSOCIATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF AND AMICUS CURIAE BRIEF IN SUPPORT OF RESPONDENT BOARD OF PAROLE HEARINGS AND THE CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION

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APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF

TO THE HONORABLE CHIEF JUSTICE TANI CANTIL-SAKAUYE, AND THE HONORABLE ASSOCIATE JUSTICES OF THE CALIFORNIA SUPREME COURT:

The California District Attorneys Association (CDAA), as amicus curiae, hereby requests leave of this Court to file the enclosed amicus curiae brief in support of the Attorney General on behalf of the Board of Parole Hearings.

The California District Attorneys Association (CDAA), the statewide organization of California prosecutors, is a professional organization incorporated as a nonprofit public benefit corporation in 1974. CDAA has over 2500 members, including elected and appointed district attorneys, the Attorney General of California, city attorneys principally engaged in the prosecution of criminal cases, and attorneys employed by these officials.

CDAA presents prosecutors' views as amicus curiae in appellate cases when it concludes that the issues raised in such cases will significantly affect the administration of criminal justice. The case before this Court presents issues of the greatest interest to California prosecutors. As the statewide association of these prosecutors, amicus curiae, CDAA, is familiar and experienced with the issues presented in this proceeding.

California Rules of Court, rule 8.520, subdivision (f)(3), states that an application to file an amicus curiae brief must state the applicant's interest and how the proposed amicus curiae brief will assist the court in the deciding this matter.

Respectfully, the undersigned's interest stems from a long history in forming the San Diego County District Attorney's Lifer Hearing Unit in

1995, appearing at hundreds of parole hearings, and serving as the subject matter expert in the state for CDAA and prosecutors engaged in this line of work. More specifically, the undersigned has filed amicus briefs on behalf of CDAA in all of the recent California Supreme Court lifer/parole cases including, *In re Butler* (2018) 4 Cal.5th 728, *In re Vicks* (2013) 56 Cal.4th 274, *In re Shaputis* (2011) 53 Cal.4th 192 [*Shaputis II*], *In re Shaputis* (2008) 44 Cal.4th 1241 [*Shaputis I]*, *In re Lawrence* (2008) 44 Cal.4th 1181, and *In re Dannenberg* (2005) 34 Cal.4th 1061. In addition, the undersigned has also filed an amicus brief in the Ninth Circuit Court of Appeals decision in *Gilmam v. Brown* (9th Cir. 2016) 814 F.3d 1007. The undersigned has also filed an amicus brief on behalf of CDAA in the *Palmer I* matter currently pending in this court (S252145).

Members of the Association have formed a Lifer Committee which, together with the Appellate Committee, are concerned that this case raises matters of grave concern to prosecutors and represents a serious threat to the administration of justice statewide. CDAA believes the opinion in *In re Palmer* will adversely affect the administration of justice, due to an unwarranted expansion of the principles governing constitutional challenges to the length of life-top sentences under *In re Lynch* (1972) 8 Cal.3d 410, and its progeny.

We respectfully submit that the proposed brief will assist the court in deciding this matter by casting further light on the issue that Palmer's continued confinement, based upon findings of unsuitability for parole, did not become constitutionally disproportionate under article I, section 17 of the California Constitution and/or the Eighth Amendment of the United States Constitution. Moreover, we believe the brief will assist the court in finding even in the rarest of cases, where a life-term inmate's confinement has become disproportionate, termination of parole is contrary to public policy and based upon overriding public safety concerns should not occur.

Pursuant to Rule 8.520(f)(4), the applicant states that no party nor counsel for a party in this appeal authored in whole or in part the proposed amicus brief, nor made any monetary contribution to fund the preparation or submission of the proposed amicus brief. Applicant further states that no person or entity made any monetary contribution to fund the preparation or submission of the proposed amicus brief other than amicus curiae and its members.

The applicant is familiar with the questions involved in this case and the scope of their application. Consequently, additional argument and briefing on these points will be helpful and for these reasons the California District Attorneys Association asks that this Court accept the attached brief and permit them to appear as amicus curiae.

Date: March 20, 2020

Respectfully submitted,

MARK ZAHNER
Chief Executive Officer
California District Attorneys Association

By:

RICHARD J. SACHS
Supervising Deputy District Attorney
San Diego County District Attorney's Office
On Behalf of the California District Attorneys Association

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ISSUES PRESENTED

1. Did Palmer's continued confinement become constitutionally disproportionate under article I, section 17 of the California Constitution and/or the Eighth Amendment of the United States Constitution?
2. If Palmer's continued confinement became constitutionally disproportionate, what is the proper remedy?

INTRODUCTION AND SUMMARY OF ARGUMENT

For years, under Penal Code section 3041, "suitability" for parole (no longer representing a current threat to public safety) has been the predicate fact that a hearing panel must find before a life term inmate could be granted parole.

What has become known as the "public safety exception" to a parole grant is found in section 3041, subdivision (b): "The panel or the board, sitting en banc, shall grant parole to an inmate unless it determines that the gravity of the current convicted offense or offenses, or the timing and gravity of current or past convicted offense or offenses, is such that consideration of the public safety requires a more lengthy period of incarceration for this individual." (Ibid.)

The concept that public safety is the paramount concern is not new. It has been well established for over 30 years and reiterated in recent precedents from many courts. (See, e.g., *In re Duarte* (1983) 143 Cal.App.3d 943, 948 [suitability is decided first, and public safety is the "fundamental criterion" in making this decision].) The decision by the lower court suggests that public safety must be secondary to proportionality concerns in life-term parole

hearings, and the concept of term length shall take precedence over all other considerations. As will become clear, the Indeterminate Sentencing Law [hereafter "ISL"] parole scheme was never intended to operate this way.

The holding that Palmer has served a sentence which is "grossly disproportionate" to his offense and he must be released from all forms of custody, including parole supervision, is an unwarranted expansion of the principles governing constitutional challenges to the length of prison sentences and goes far beyond what was intended. "Only in the rarest of cases could a court declare that the length of a sentence mandated by the Legislature is unconstitutionally excessive." (*People v. Weddle* (1991) 1 Cal.App.4th 1190, 1196-1197.) Yet, here the court makes that rare finding in a life-top case for an inmate who kidnapped an off-duty police sergeant for the purposes of a robbery with a gun, and terrorized him by pointing that gun at him during the ordeal.

By making the extraordinary and supposedly "rare" finding that Palmer's sentence was constitutionally disproportional, the court disregarded well established principles reiterated by this court in *Butler*, *supra*, that public safety is the paramount consideration in life-top cases, and an inmate should not be released unless a panel from the Board of Parole Hearings finds that he or she no longer represents a current threat to public safety.

Palmer's sentence and time served did not amount to the rare case that shocked the conscience, or was grossly disproportionate to the crime. In so finding, the court fashioned a new way to challenge life terms: if the decision is allowed to stand, inmates may now pursue such challenges to sentences with regularity, and "rare" will cease to be rare anymore. Thus, if the Board of Parole Hearings finds that parole should be denied for public safety reasons, the inmate can now pursue a "second bite at the apple" with a constitutional challenge to his term length. This is a radical break in the law governing life-top sentences, and thus we respectfully submit the decision by the lower court was erroneous.

ARGUMENT

I.

PUBLIC SAFETY IS THE PARAMOUNT CONCERN IN LIFE-TOP CASES

The lower court decision contravenes the long-established principle that public safety is the paramount consideration in any parole decision. The decision finding a disproportional sentence has the practical effect of deprioritizing public safety concerns in life-top parole cases. Moreover, the decision turns the well-established concept that "suitability" is the predicate fact that must be found before a parole grant can occur on its head. Left unchecked, this decision, and the legal trend it establishes, requires the release of even extremely dangerous inmates without regard to the threat they pose to the public, simply to satisfy a misplaced concept of term proportionality that unjustly expands existing case law, and turns that which was intended to be rare into something that is now commonplace.

To illustrate the above points, general principles governing constitutional challenges to sentence length are instructive. To violate the Constitution, the punishment must be "so disproportionate to the crime for which it is inflicted that it shocks the conscience and offends fundamental notions of human dignity." (*In re Lynch* (1972) 8 Cal.3d 410, 424.) The burden of demonstrating such disproportionality rests with the defendant. (*People v. Wingo* (1975) 14 Cal.3d 169, 174.) "Findings of disproportionality have occurred with exquisite rarity in the case law." (*People v. Weddle* (1991) 1 Cal.App.4th 1190, 1196.) This is because "[t]he mostly determinate sentencing regime now in effect reflects the Legislature's design to reduce the number of offenders receiving indeterminate sentences, thereby limiting the possibility that these serious

offenders will suffer constitutionally excessive punishment." (*In re Butler*, *supra*, 4 Cal.5th at p. 745.)

Here, a possible life sentence is not grossly disproportionate to the crime of kidnap for robbery. In the abstract, "kidnaping is one of the most serious of all crimes." (*In re Maston* (1973) 33 Cal.App.3d 559, 564.) "By its very nature it involves violence or forcible restraint," and "substantively increase[s] the risk of bodily harm." (Ibid.) For example, transporting the victim gives "rise to dangers, not inherent in robbery, that an auto accident might occur or that the victim might attempt to escape from the moving car or be pushed therefrom." (*In re Earley* (1975) 14 Cal.3d 122, 132.) Consequently, kidnap for robbery results in a life sentence and, if the victim suffers bodily harm, life without parole is the only available sentence. (*In re Maston*, *supra*, 33 Cal.App.3d at p. 564; accord Pen. Code, § 209, subd. (a).)

II.

PALMER'S CRIME WAS SERIOUS AND WARRANTED A LIFE-TOP SENTENCE

Palmer's kidnap and robbery of Sergeant Randall Compton was no less serious and terrifying than contemplated by the Legislature, and Palmer's continued imprisonment was constitutionally proportionate to the crime. The facts taken from the briefs filed by the parties in this matter indicate that in 1988, at age 17, Palmer wore a ski mask and lied in wait in a residential parking garage while in possession of an unloaded stolen gun. Sergeant Compton was walking toward the driver's side of his truck when Palmer approached him from behind.

Palmer brandished the gun; Sergeant Compton was unaware it was unloaded. Palmer ordered Sergeant Compton to put his hand up and get into the truck. Palmer sat in the backseat and order Sergeant Compton to drive.

Sergeant Compton complied and Palmer ordered him where to drive, keeping the gun pointed at him the entire time.

Palmer forced Sergeant Compton to drive to a bank. During the drive, Palmer asked Sergeant Compton about whether he was married and had children, causing Sergeant Compton to fear for his life. At the bank, Sergeant Compton was able to grab his loaded gun from a backpack and open fire on Palmer. Palmer was shot once in his leg while fleeing and, although not physically injured, Sergeant Compton suffered psychological trauma.

It was only happenstance that none of the 15 gunshots Sergeant Compton fired injured anyone else. Somehow Sergeant Compton escaped the ordeal without suffering physical harm, which is the only reason Palmer was not sentenced to life without the possibility of parole. Given these facts, and the guiding legal principles, Palmer's sentence and time served did not rise to the level of cruel or unusual punishment in violation of the California Constitution. (Cal. Const., art. I, § 17.)

III.

THE NATURE OF THE OFFENDER ANALYSIS CONTRAVENES THE COURT'S DECISION

In ruling upon these types of challenges, a court also considers the nature of the offender and "asks whether the punishment is grossly disproportionate to the defendant's individual culpability as shown by such factors as his age, prior criminality, personal characteristics, and state of mind." (*People v. Dillon* (1983) 34 Cal.4th 441, 450.) There was nothing unique about Palmer to show that the nature of the offender and the manner in which the crime was committed demonstrate that the punishment was unconstitutionally disproportionate. Despite being age 17, Palmer admitted he had a criminal,

adult mindset. Moreover, before the life crime, Palmer was made a ward of the court for a misdemeanor, a felony, and a probation violation.

The sentence was lawfully predicated on the heinous nature of the crime and Palmer's individualized culpability and criminal history. Taken together, it is difficult to conclude that Palmer's time served of more than 29 years in prison shocks the conscience and is one of the "rarest of the rare" cases warranting his release. (*In re Nunez* (2009) 173 Cal.App.4th 709, 725.)

IV.
IN RE RODRIGUEZ IS INAPPOSITE

Moreover, the decision puts misplaced reliance on *In re Rodriguez* (1975) 14 Cal.3d 639, 642-643 as an example of when 22 years of incarceration on a one-year-to-life sentence had become unconstitutionally disproportionate to the offender's culpability. As this court recently explained, *Rodriguez* addressed issues arising under the former Indeterminate Sentencing Law scheme. (*In re Butler*, *supra*, 4 Cal.5th at pp. 744-745.)

Under the ISL, almost all felons were subject to an indeterminate sentence, a scheme which meant a very high proportion of inmates could be imprisoned for life. (*Id*. at p. 744.) Thus, to guard against disproportionate punishment, the Court required the parole authority to set a maximum term of incarceration for each inmate, based on the inmate's culpability. (Ibid.) Consequently, the parole authority was required to release an inmate once he reached his maximum term even if the authority had not found him suitable for parole. (Ibid.) The *Butler* Court explained that the *Rodriguez* decision was unique to the comprehensive indeterminate sentencing system in effect at that time. (*Id*. at p. 745.) By contrast, now that most felons are sentenced under the Determinate Sentencing Law, the Board need not "measure each inmate's culpability for the purpose of guarding against unconstitutionally excessive

punishment." (*Id*. at pp. 746-747.) Thus, *In re Rodriguez* is inapposite as it arose in a different sentencing construct which no longer exists today.

V.

THE DECISION INVITES NEW AD HOC CHALLENGES TO ALL LIFE-TOP SENTENCES

The decision by the appellate court ultimately results in a back-door challenge to lawful parole denials by the Board of Parole Hearings and new ad hoc challenges to the length of time served in all life-top sentences.

The decision also strays from the fundamental concept that before a life-top inmate can be granted parole he or she must first be found suitable for parole. In *In re Lawrence* (2008) 44 Cal.4th 1181, this court stated that "the core statutory determination entrusted to the Board … is whether the inmate poses a current threat to public safety." (*Id*. at p. 1191.) Noting that section 3041, subdivision (a), provided parole applicants with an expectation of parole ("normally set a parole release date"), this court still recognized that this rule is always subject to the public safety exception found in subdivision (b), when the Board finds "in the exercise of its discretion, that [the inmate is] unsuitable for parole in light of the circumstances specified by statute and by regulation." (Id. at p. 1204.)

Any doubt about this concept was laid to rest by this court at page 1227 of the *Lawrence* opinion: "The relevant determination for the Board … is, and always has been, an individualized assessment of the continuing danger and risk to public safety posed by the inmate. If the Board determines, based upon an evaluation of each of the statutory factors as required by statute, that an inmate remains a danger, it can, and must, decline to set a parole date." (Ibid, emphasis added.)

Section 2281, subdivision (a), of Title 15 of the California Code of Regulations derives from this well-established principle and prominently states: "Regardless of the length of time served, a life prisoner shall be found unsuitable for and denied parole if in the judgment of the panel the prisoner will pose an unreasonable risk of danger to society if released from prison." (Ibid.) Thus, in all but the rarest of cases, a life-top sentence can actually mean "life."

Having stated in its *Butler* opinion that base terms should be a measure of constitutional proportionality and having lost that issue when this Court decided the matter on review, the court below now resurrects the concept with an ill-founded finding of a disproportional sentence, and a foreboding of more to come. We respectfully submit that the decision was erroneous because it elevates, stretches and enshrines term length over the well-established public safety criteria that govern parole release decisions in life-top cases. By so doing, the court impliedly invites further challenges to term length, even by inmates deemed too dangerous to release. Under the instant decision, even an inmate who declares he will murder others if released and remains a grave danger to public safety and crime victims, must nonetheless be released from all forms of custody, including parole supervision, if his sentence is somehow deemed excessive or disproportional. Clearly the lifer parole system was never intended to operate this way and the rare successful challenges to term length were supposed to be just that: rare.

VI.

IN RE DANNENBERG: PUBLIC SAFETY "TRUMPS" TERM LENGTH IN LIFE-TOP CASES

The *Lawrence* case reaffirmed the principle that suitability is the predicate fact which must be found before an ISL inmate can receive a grant of

parole. The seminal case which focused directly on this issue was *In re Dannenberg* (2005) 34 Cal.4th 1061. Noting that suitability is the predicate issue that must be resolved before a parole release date can be set, this court stated, "the suitability determination precedes any effort to calculate a parole release date, [and] has long been noted in the case law." (*Id*. at pp. 1079-1080, emphasis added; see also the numerous cases cited at p. 1080.)

This court considered the argument that the measure of term length has significance in the lifer arena and the threat posed by the inmate to public safety should not be the predicate fact in a parole release decision. (*Id*. at p. 1081.) This court summarized the countervailing argument as follows: "Thus, it is asserted, the Legislature has imported into the realm of indeterminate life sentences the philosophy of a fixed and uniform period of incarceration, intended simply as punishment proportionate to the commitment offense, and the Board has a presumptive obligation to set life inmate's parole release dates accordingly." (*Id*. at p. 1083, emphasis added.)

This court flatly rejected this argument and found the lower court "misperceived the priorities reflected in section 3041 and other statutes governing parole," especially as it relates to serious offenders. (*Id*. at p. 1081; see also p. 1087 rejecting that this approach would destroy "proportionality" contemplated by subdivision (a) In examining the presumption of parole formerly found in subdivision (a), and the public safety exception subdivision (b), this court stated: " [T]he overriding statutory concern for public safety in the individual case trumps any expectancy the indeterminate life inmate may have in a term of comparative equality with those served by other similar offenders. Section 3041 does not require the Board to schedule such an inmate's release when it reasonably believes the gravity of the commitment offense indicates a continuing danger to the public, simply to ensure that the length of the inmate's confinement will not exceed that of others who committed similar crimes." (*Id*. at p. 1084.)

In reaching this conclusion, this court reaffirmed the long-standing principle that it has uniformly been held that an "'indeterminate sentence is in legal effect a sentence for the maximum term' [citation], subject only to the ameliorative power of the [parole authority] to set a lesser term. [Citations.]" (*Id*. at pp. 1097-1098.) "Indeed, '[i]t is fundamental to [the] indeterminate sentence law that every such sentence is for the [statutory] maximum unless the [parole] [a]uthority acts to fix a shorter term. The [a]uthority may act just as validly by considering the case and then declining to reduce the term as by entering an order reducing it....'" (Ibid.) Thus, though the court below will no doubt fervently disagree, in a life-top case, life can mean a lifetime in prison.

VII.

DANNENBERG PRINCIPLES REMAIN CURRENT LAW

The guiding principle this court laid out in *Dannenberg* and the importance of public safety as the predicate fact in parole cases has never been eroded and has been reaffirmed many times.

While *Lawrence* was primarily concerned with the role of the commitment offense in determining whether the inmate represents a "current threat" to public safety, it did not change the long-standing rule that suitability is the predicate fact before parole. (*Id*. at p. 1221.)) This court "despite the conclusion we reach in the present case, we reiterate our recognition in *Dannenberg* that pursuant to section 3041, subdivision (b), the Board has the express power and duty, in an individual case, to decline to fix a firm release date, and thus to continue the inmate's indeterminate status within his or her life maximum sentence, if it finds that the circumstances of the inmate's crime or criminal history continue to reflect that the prisoner presents a risk to public safety." (*In re Lawrence*, *supra*, 44 Cal.4th at pp. 1227-1228.)

Three years later, this court reiterated the concept that suitability is the predicate fact when it stated that the "Board is given the initial responsibility to determine whether a life prisoner may safely be paroled." (*In re Shaputis* [*Shaputis II*] (2011) 53 Cal.4th 192, 215, emphasis added.)

Also, when this court considered whether the longer denial times in Marsy's Law were constitutional it similarly reiterated the concept that suitability is the predicate fact. (*In re Vicks* (2013) 56 Cal.4th 274, 295-296.) All of these cases unmistakably point to the clear conclusion that no inmate is entitled to a parole date unless they are first found suitable for parole and are no longer a current threat to public safety.

VIII.

PALMER IS NOT THE RARE CASE WHICH WARRANTS DEPARTURE FROM THE PUBLIC SAFETY CONSTRUCT INHERENT IN LIFER CASES

In what appears to be an unwarranted expansion of the principles set forth in *Lynch*, *supra*, the court has rendered a decision which provides inmates with a de facto workaround the public safety construct governing parole release decisions. Your amicus respectfully submits that Palmer's sentence did not shock the conscience and was not constitutionally excessive. Under Eighth Amendment analysis, a punishment violates this prohibition only if it is grossly disproportionate to the offense. (*Ewing v. California* (2003) 538 U.S. 11, 23.)

"Outside the context of capital punishment, successful challenges to the proportionality of particular sentences have been exceedingly rare." (*Rummel v. Estelle* (1980) 445 U.S. 263, 272.) Palmer's sentence was not the exceedingly rare, noncapital case that violates the Eighth Amendment. The Supreme Court has rejected Eighth Amendment challenges to cases with similar facts or even more severe sentences with less egregious conduct than Palmer's actions here.

(See, *e.g.*, *Ewing*, at pp. 28-30 [holding 25-years-to-life sentence for felony grand theft under "Three Strikes" law is not a grossly disproportionate sentence]; *Harmelin v. Michigan* (1991) 501 U.S. 957, 962-966 [upholding mandatory life sentence, without possibility of parole, for cocaine possession by a first-time felon]; see also *Rummel v. Estelle* (1980) 445 U.S. 263, 270-274 [upholding life sentence for multiple nonviolent theft convictions].)

Since the United States Supreme Court has decided that these sentences are not cruel and unusual, it logically follows that the sentence imposed for the present offense leads to the same conclusion: Palmer's sentence and time served pass constitutional muster. Accordingly, Palmer's continued incarceration should not have been considered grossly disproportionate to his culpability under Eighth Amendment analysis.

IX.

PALMER SETS A BAD PRECEDENT AND WILL RESULT IN VOLUMINOUS, UNMERITORIOUS CONSTITUTIONAL CLAIMS OF EXCESSIVE SENTENCES IN LIFE-TOP CASES

Finally, although successful challenges to term length in the lifer context are rare, it is also true that they are not foreclosed. *Dannenberg* stated, "Of course, even if sentenced to a life-maximum term, no prisoner can be held for a period grossly disproportionate to his or her individual culpability for the commitment offense. Such excessive confinement, we have held, violates the cruel or unusual punishment clause (art. I, § 17) of the California Constitution. (*Rodriguez*, *supra*, 14 Cal.3d 639, 646–656; *Wingo*, *supra*, 14 Cal.3d 169, 175–183.) Thus, we acknowledge, section 3041, subdivision (b) cannot authorize such an inmate's retention, even for reasons of public safety, beyond this constitutional maximum period of confinement." (*In re Dannenberg*, *supra*, 34 Cal.4th at p. 1096, emphasis added.)

The difficulty here is that in the ensuing paragraphs immediately following this quote, this court made clear that these proportionality issues were more common under the older ISL (pre-1976 law), and the new ISL scheme greatly lessened their possibility; in the rare case that they did arise the court stated an inmate could bring their claim to court, and suitability still must remain the predicate fact without regard to term length. (*Id*. at pp. 1096-1098.)[1]

In referring to the proportionality quote relied upon by the lower court, this court stated: "Our prior ruling that the parole authority had such a general duty [to set terms] was influenced by the nature and provisions of the more comprehensive indeterminate sentencing system then in effect." (*Id*. at p. 1096.)

The main reason for this statement was, as noted above, the prior ISL law "subjected most convicted felons to a broad disparity between their statutory minimum and maximum periods of confinement, and it imposed life maximums for a wide range of offenses, serious and less serious." (Ibid.) For example, the inmate in *Rodriguez* was serving 22 years of an ISL sentence of one year to life in prison for a single count of child molest. The inmate in *People v. Wingo* (1975) 14 Cal.3d 169 was serving a sentence of six months to life for a conviction of assault by means of force likely to cause great bodily injury (Pen. Code, § 245, subd. (a).) There are many similar examples of the wide range and uncertain punishment afforded to those inmates under the older ISL law – a high percentage of state prison felons were "lifers" with a broad sentencing range of a few months or years to life.

Dannenberg recognized that the new ISL law significantly changed the legal landscape. The Dannenberg court stated, "[d]ifferent considerations apply under current law. In contrast with the prior situation, the number of persons

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[1] By stating inmates could "bring their claims to court," your amicus respectfully submits it is apparent that BPH hearing panels are not in a position to determine proportionality, and this is a function best left to a judge in a habeas proceeding.

now serving indeterminate life-maximum sentences, while substantial, is but a fraction of California's prison population. And, unlike the former system, which imposed life maximums for a broad range of offenses, the current scheme reserves such sentences for a much narrower category of serious crimes and offenders." (*Id*. at p. 1097.)

Significantly, this court went on to state: "Moreover, as we have explained, section 3041 expressly instructs the Board to set an indeterminate life prisoner's parole release date—the equivalent of term-setting in such cases—unless it finds that the aggravated nature of the inmate's offense or criminal history raises public safety considerations warranting longer incarceration for that inmate. All these factors diminish the possibility that the Board's refusal, under section 3041, subdivision (b), to set parole release dates in individual cases will result in the de facto imposition of constitutionally excessive punishment or, will overwhelm the courts' ability to assess claims of constitutional disproportionality." (Ibid.) Simply put, Palmer contravenes established case law by unjustly expanding *In re Lynch* to a sentencing scheme that did not exist at the time it was decided, and to a set of facts and circumstances that do not warrant the extraordinary, rare relief given to this inmate. Thus, your amicus respectfully submits that the judgment of the court of appeal should be reversed.[2]

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[2] Amicus respectfully agrees with the Attorney General's argument that even if (assuming arguendo) Palmer's continued confinement became constitutionally disproportionate, terminating parole presents a grave risk to public safety, and thus is not an appropriate remedy. (See Attorney General Brief on the Merits, pp. 38-39; Attorney General Reply Brief, pp. 18-27.) Given the important societal interested served by affording aid to an offender in reintegrating into society after a long period of incarceration, and the threat posed to victims and their families, terminating parole is this situation is inherently reckless. Without a meaningful parole period, the inmate cannot be ordered to "stay away" from the victim. Established principles of Marsy's Law are impacted. Thus, termination of parole

CONCLUSION

As has been the case for decades, the instant crime itself warrants a life-top sentence and the time served was not unconstitutionally excessive or a shock to the conscience based upon these facts and the lack of positive adjustment and programming while incarcerated (11 rules violation reports, and found by a clinician to represent an elevated risk relative to life-term inmates).

Consequently, since the decision by the court of appeal in this case rests upon mistaken legal principles and represents an unjustified expansion of the law governing constitutionally excessive sentences, your amicus respectfully submits that the lower court decision was erroneous, and the judgment should be reversed.

Date: March 20, 2020

Respectfully submitted,

MARK ZAHNER
Chief Executive Officer
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By:

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Attorneys for Amicus Curiae
California District Attorneys Association

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should never be an appropriate remedy in the rare case of excessive confinement.

CERTIFICATE OF WORD COUNT

Pursuant to California Rules of Court, rules 8.486(a)(6) and 8.204(c), I certify that this brief has been prepared using 13 point Times Roman font and contains 4277 words, excluding covers, tables, this certificate, and declaration of proof of service, based on the word count feature of the computer program used to prepare this brief.

March 20, 2020 Richard Sachs

DECLARATION OF SERVICE BY MAIL

I, the undersigned, declare: I am a resident of or employed in the County Sacramento. I am over the age of 18 years and not a party to the within action. My business address is 2495 Natomas Park Drive, Suite 575, Sacramento, CA 95833. On March19, 2020, I served a copy of the within:

APPLICATION OF CALIFORNIA DISTRICT ATTORNEYS ASSOCIATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF AND AMICUS CURIAE BRIEF IN SUPPORT OF RESPONDENT BOARD OF PAROLE HEARINGS AND THE CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION

on the following, by placing a copy of same in postage prepaid envelopes addressed as follows:

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I declare the foregoing to be true and correct under penalty of perjury.

Executed on March 19, 2020, at Sacramento, California

_____

Laura Bell

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **PALMER (WILLIAM M.) ON H.C.**
Case Number: **S256149**
Lower Court Case Number: **A154269**

1. At the time of service I was at least 18 years of age and not a party to this legal action.

2. My email address used to e-serve: **mzahner@cdaa.org**

3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

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This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

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

3/20/2020
Date

/s/Laura Bell
Signature

Zahner, Mark (137732)
Last Name, First Name (PNum)

California District Attorneys Association
Law Firm