

## **In the Supreme Court of the State of California**

**In re**

**MOHAMMAD MOHAMMAD,**

**On Habeas Corpus.**

Case No. S259999

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

### **RESPONDENT'S NOTICE OF CORRECTION**

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## **NOTICE OF CORRECTION**

The California Department of Corrections and Rehabilitation provides notice that in updating certain data provided in its merits briefing in preparation for oral argument, it has discovered that the data already provided to the court are in error. For that reason, it withdraws the statistics in the answer and reply reflecting the number of mixed-offense inmates and the number of inmates convicted of only offenses listed in Penal Code section 667.5, subdivision (c) (violent felonies), and those specific arguments relying on those statistics. A list of the page numbers and the arguments that the Department withdraws are set out in the table below.

### **DISCUSSION**

In December 2019, the Department collected data reflecting the number of inmates convicted of only violent felony offenses, mixed-offense inmates, and inmates convicted of only offenses not listed as violent felonies in section 667.5, subdivision (c). At the time, the data appeared to reflect approximately 90,000 mixed-offense inmates, 29,000 inmates convicted of only nonviolent felony offenses, and approximately 5,000 inmates convicted of only violent felony offenses. The Department relied on that data in making certain arguments in its petition-stage briefing. After the Court granted review and before the opening brief was filed, the Department confirmed in April 2020 that the data appeared to reflect that the Department had 90,000 inmates in custody with mixed-offense convictions and the Department relied on that data in its merits briefing.

In connection with updating the data in preparation for oral argument scheduled for October 5, 2021, the Department realized, and subsequently informed undersigned counsel in the afternoon on October 1, that the 2019 data appeared to contain errors that substantially overcounted the number of mixed-offense inmates in the Department’s custody and undercounted the number of inmates convicted of violent-only offenses. It appears that in “filtering” the data, an error led to including a substantial number of inmates convicted of only violent felony offenses in the mixed-offense inmate count. But because the Department did not preserve the dataset used to compile the data in 2019, the Department is unable (with adequate confidence in the integrity of the data) to provide statistics on the 2019 population that do not contain such an error in advance of oral argument.

The Department is in the process of gathering statistics from a data set that it can confidently check for errors, involving current inmates in the Department’s custody. To assure that the data is accurate and quality checked, the Department requires additional time to gather the data and anticipates finalizing the process by October 8, 2021. Although the Department withdraws its arguments relying on such statistics, it will provide the new data for the Court and opposing counsel on October 8, 2021.

The affected arguments are as follows:

Petition for Review at p. 8	“Further, the legality of the regulatory exclusion for violent offenders profoundly affects the scope of the program and public safety. Without the regulation, over 90,000 violent felons will
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	<p>now be eligible for early parole consideration. This result contradicts both the purpose of Proposition 57 and the description of the program provided in the Official Voter Information Guide and will place a significant administrative strain on the Department.</p>
<p>Petition for Review at pp. 15-16</p>	<p>The entire paragraph beginning:</p> <p>“But there are more than 90,000 inmates statewide who (i) are currently incarcerated for both violent and nonviolent felonies, (ii) were excluded from Proposition 57’s parole process under the Department’s regulations, and (iii) would now be eligible should the Court of Appeal’s decision stand.”</p>
<p>Reply in Support of Petition for Review at pp. 3-4</p>	<p>“The decision would appear to apply to the approximately 90,000 violent offenders statewide with at least one nonviolent conviction; adding these violent offenders to the pool of parole-eligible inmates would dwarf the approximately 26,500 nonviolent offenders who, in the Department’s view, are the intended beneficiaries of the voters’ parole program.”</p>
<p>Reply in Support of Petition for Review at p. 6</p>	<p>“As stated in the petition for review, there are more than 90,000 inmates statewide who are convicted of both violent and nonviolent felony offenses.</p>

	<p>(PFR 15.) Following the decision below, the Department will likely face requests for nonviolent parole consideration from all of these violent offenders that are ineligible under the Department’s regulations. This would impose a staggering burden on the Department, resulting in a sudden four-fold increase in the population of parole-eligible inmates—a significantly larger nonviolent parole program than the one previewed for the voters who approved Proposition 57. (PFR 15-16.)”</p>
<p>Opening Brief on the Merits at p. 10</p>	<p>“Further, including mixed-offense inmates like Mohammad would extend program eligibility to most of the State’s prison population, well beyond the numbers estimated in the ballot materials.”</p>
<p>Opening Brief on the Merits at p. 26</p>	<p>“Further, including mixed-offense inmates like Mohammad would cause the program to encompass nearly all the current inmate population, contrary to the more limited numbers disclosed to the voters by the Legislative Analyst.”</p>
<p>Opening Brief on the Merits at pp. 37-39</p>	<p>The two full paragraphs beginning</p> <p>“Including mixed-offense inmates expands parole</p>

	eligibility to nearly all inmates in the Department’s custody.”
Opening Brief on the Merits at p. 43	“It also avoids flooding the nonviolent parole process with nearly all the inmates in the Department’s custody,”
Reply Brief on the Merits at p. 18	“The Court of Appeal’s approach of allowing all mixed-offense inmates to participate in the nonviolent parole program would sweep in 96% of the prison population. Had voters intended to grant nearly all prisoners the opportunity for early release—except the 4% convicted of only violent felonies—one ‘would anticipate that this intent would be expressed in some more obvious manner.”

Undersigned counsel and the Department sincerely apologize for the error and regret falling short of the Court's high standards.

Dated: October 4,  
2021

Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE

I certify that the attached RESPONDENT'S NOTICE OF CORRECTION uses a 13-point Century Schoolbook font and contains 959 words.

Dated: October 4, 2021

ROB BONTA  
Attorney General of California

S/ HELEN H. HONG

HELEN H. HONG  
Deputy Solicitor General  
*Attorneys for Respondents*



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

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

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collecting and processing electronic and physical correspondence. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business. Correspondence that is submitted electronically is transmitted using the TrueFiling electronic filing system. Participants who are registered with TrueFiling will be served electronically. Participants in this case who are not registered with TrueFiling will receive hard copies of said correspondence through the mail via the United States Postal Service or a commercial carrier.

On October 4, 2021, I electronically served the attached RESPONDENT'S NOTICE OF CORRECTION by transmitting a true copy via this Court's TrueFiling system. Because one or more of the participants in this case have not registered with the Court's TrueFiling system or are unable to receive electronic correspondence, on October 4, 2021, I have caused to be mailed in the Office of the Attorney General's internal mail system, the foregoing document(s) by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within three (3) calendar days to the following:

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Los Angeles, CA 90012  
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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 October 4, 2021, at San Diego, California.

Helen H. Hong

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Declarant

s/ Helen H. Hong

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Signature

STATE OF CALIFORNIA  
Supreme Court of California**PROOF OF SERVICE**STATE OF CALIFORNIA  
Supreme Court of CaliforniaCase Name: **MOHAMMAD (MOHAMMAD) ON H.C.**Case Number: **S259999**Lower Court Case Number: **B295152**

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

10/4/2021

Date

/s/Helen Hong

Signature

Hong, Helen (235635)

Last Name, First Name (PNum)

California Department of Justice, Office of the Solicitor General

Law Firm