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June 14, 2019

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The Honorable Chief Justice Tani G. Cantil-Sakauye
and Honorable Associate Justices
Supreme Court of California
350 McAllister Street
San Francisco, California 94102-3600

Re: Opposition to Request for Depublication of *In re William M. Palmer* (2019) 33 Cal.App.5th 1199 (First Appellate District, Division Two, Case No. A154269) (Supreme Court Case No. S256149)

Dear Chief Justice Cantil-Sakauye and Associate Justices:

We write on behalf of petitioner William M. Palmer to oppose the June 3, 2019 request for depublication of *In re Palmer* (2019) 33 Cal.App.5th 1199 made by the California District Attorneys Association (“CDA”). The Court of Appeal held in *Palmer* that Mr. Palmer’s continued confinement after more than 30 years was grossly disproportionate to his culpability for the offense he committed as a teenager, violating California and U.S. constitutional bans on cruel and unusual punishment. Accordingly, on April 5, 2019, the Court of Appeal ordered that Mr. Palmer be discharged “from all forms of custody, physical and constructive,” upon the finality of the opinion. *Id.* at 1224. The Attorney General’s Office neither petitioned for review of the decision nor requested its depublication.

CDA does not argue that *Palmer* should be depublished because it fails to meet the standards found in the California Rules of Court, rule 8.1105. Instead, it argues that *Palmer* was wrongly decided and will encourage too many other inmates to bring constitutional claims. These arguments do not pass muster.

First, *Palmer* does not “contravene the long established principle that public safety is the paramount consideration in any parole decision” (Request for Depublication at 2). To be clear: The opinion did not decide a challenge to a parole suitability determination, it did not involve the standard for release on parole, the relief granted was neither a new parole hearing nor release on parole, and in fact, Mr. Palmer *was already on parole* when the case was decided. *Palmer*, *supra*, 33 Cal.App.5th at p. 1203. Mr. Palmer challenged the length of his confinement, and the Court of Appeal ordered him discharged from state custody.

CDA also inexplicably accuses the Court of Appeal of “resurrect[ing]” the notion that “base terms should be a measure of constitutional proportionality.” (Request for Depublication at 5.) The Court of Appeal’s decision in *Palmer* was based on its application of the traditional three-part disproportionality analysis described in *In re Lynch* (1972) 8 Cal.3d 410, not Mr. Palmer’s base term. Indeed, CDA acknowledges that the Court of Appeal applied the *Lynch*

test but appears to argue that *Lynch* does not apply to life-term sentences under the Determinate Sentencing Law (“DSL”). (Request for Depublication at 9–10.) That is a remarkable assertion. This Court and other courts in this state continue to recognize *Lynch* as establishing the controlling test for disproportionality under the DSL. This is illustrated by cases such as *In re Dillon* (1983) 34 Cal.3d 441—one of the key cases relied on by the Court of Appeal—in which this Court applied *Lynch* to conclude that a 17-year-old’s life sentence under the DSL was unconstitutionally disproportionate to his culpability. (*Id.* at pp. 477, 482, 489.)

CDAA further urges depublication because it disagrees that Mr. Palmer’s continued confinement was grossly disproportionate to his culpability. (Request for Depublication at 3–5.) Nearly all of sections A through D of CDAA’s Request for Depublication are copied verbatim from Respondent’s briefing in the Court of Appeal. (Compare Request for Depublication at 3–5 with Return at 19–23.) Mr. Palmer already dismantled these arguments in his Traverse, and the Court of Appeal rightly rejected them. And at any rate, an interest group’s disagreement with an opinion is not a basis for depublication, not least of all because a depublication order “is not an expression of the court’s opinion of the correctness of the result of the decision or of any law stated in the opinion.” (Cal. R. Ct., rule 8.1125, subd. (d).)

Finally, CDAA’s contention that *Palmer*’s publication will encourage too many other inmates to bring constitutional claims lacks merit. (See Request for Depublication at 2, 5–6, 8.) *Palmer* was certified for publication over two months ago, but CDAA does not claim to have observed any uptick in claims like Mr. Palmer’s—which its membership of “more than 2800 prosecutors” in the state of California presumably would have noticed. (Request for Depublication at 1.) More importantly, the same argument could be made about *any* judicial decision that reaffirms the constitutional rights of inmates. To conclude that no such opinions should be published would undermine the integrity of this State’s jurisprudence and disserve the public interest in the vindication of constitutional rights.

Because CDAA has not shown that depublication of *Palmer* would serve any legitimate jurisprudential goal, Mr. Palmer respectfully requests that the Court deny CDAA’s request for depublication.

Sincerely,



Cara L. Gagliano
for O’MELVENY & MYERS LLP

PROOF OF SERVICE

Case Name: **In re Palmer**

Case No.: **S256149**

I, Sanaa Kharufeh, declare:

I am a resident of the State of California, over the age of eighteen years, and not a party to this action; my business address is Two Embarcadero Center, 28th Floor, San Francisco, California 94111-3823.

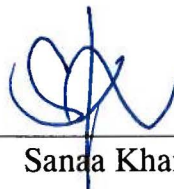
On June 14, 2019, I served the attached **Opposition to Request for Depublication of *In re William M. Palmer* (2019) 33 Cal.App.5th 1199 (First Appellate District, Division Two, Case No. A154269) (Supreme Court Case No. S256149)** by placing a true and correct copy thereof together with an unsigned copy of this declaration, in a sealed envelope addressed as follows, with delivery fees paid or provided for, for delivery the next business day:

Xavier Becerra
Attorney General of California
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(Case No. A154269)

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I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on June 14, 2019, at San Francisco, California.



Sanaa Kharufeh