NO. S256149

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN RE WILLIAM M. PALMER, ON HABEAS CORPUS

AFTER A DECISION BY THE COURT OF APPEAL
FIRST APPELLATE DISTRICT, DIVISION TWO
CASE NO. A154269

APPLICATION TO FILE *AMICI CURIAE* BRIEF & PROPOSED *AMICI CURIAE* BRIEF OF THE PRISON LAW OFFICE AND VINCENT SCHIRALDI IN SUPPORT OF RESPONDENT WILLIAM M. PALMER

Marisol Orihuela (SBN 261375)
Miriam Gohara* (*Pro Hac* pending)
Jerome N. Frank Legal Services Organization†
Yale Law School
P.O. Box 209090
New Haven, Connecticut 06520
Phone: (203) 436-9167
Fax: (203) 432-1426
Email: marisol.orihuela@ylsclinics.org
Email: miriam.gohara@ylsclinics.org

ATTORNEYS FOR *AMICI CURIAE* THE PRISON LAW OFFICE, DAVID MUHAMMAD, AND VINCENT SCHIRALDI

† This brief has been prepared by a clinic affiliated with Yale Law School, but does not purport to present the school's institutional views, if any. Yale Law School students Alexander Nocks, Destiny Lopez, Elaine Emmerich, and John Gonzalez made substantial contributions to this brief's preparation.

NO. S256149

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN RE WILLIAM M. PALMER, ON HABEAS CORPUS

AFTER A DECISION BY THE COURT OF APPEAL

FIRST APPELLATE DISTRICT, DIVISION TWO

CASE NO. A154269

APPLICATION FOR LEAVE TO FILE *AMICI CURIAE* BRIEF IN SUPPORT OF RESPONDENT WILLIAM M. PALMER

TO THE HONORABLE CHIEF JUSTICE:

Pursuant to California Rules of Court, rule 8.520(f), the Prison Law Office, David Muhammad, and Vincent Schiraldi request permission to file the attached *amici curiae* brief in support of respondent William M. Palmer.

The Prison Law Office, David Muhammad, and Vincent Schiraldi specifically seek to help this Court answer the second question presented by the Court on review: if this life prisoner's continued confinement became constitutionally disproportionate, what is the proper remedy? Because parole is part of the continuing punishment for an underlying conviction, the proper remedy for a constitutionally disproportionate confinement is to end all punishment. The Prison Law Office, David Muhammad, and Vincent Schiraldi stand in a position to offer a unique perspective on legal issues related to parole, and to hopefully aid this Court in resolving any questions about the role of parole in California. This argument complements and is not

duplicative of the briefs submitted by Mr. Palmer and other *amici curiae* supporting Mr. Palmer.

For over 40 years, the Prison Law Office has represented people who are incarcerated and on parole in individual cases as well as in class action impact litigation to improve conditions in prisons, jails, and juvenile halls for adults and children. The Prison Law Office educates the public about prison conditions and provides technical assistance to advocates across the country. In addition, the Prison Law Office engages in advocacy and litigation to foster the use of remedies that reduce the number of people in prison and on parole. Impact cases litigated by the office include *Brown v. Plata*, 563 U.S. 493 (2011) (holding that court-mandated population limit for California prisons was necessary to remedy violations of prisoners' constitutional rights to adequate medical and mental health care in two statewide class action lawsuits), *Pennsylvania Dep't of Corr. v. Yeskey*, 524 U.S. 206 (1998) (unanimously holding the Americans with Disabilities Act applies to state prisoners), *In re Lugo*, 80 Cal. Rptr. 3d 521 (Cal. App. 1st Dist. 2008) (requiring the state to change the parole hearing process following widespread delays in parole hearings), and *In re Rosenkrantz*, 59 P.3d 174, 205 (Cal. 2002) (holding that a prisoner unsuitable for parole is subject to limited review to determine whether the decision is supported by "some evidence").

David Muhammad has worked for more than two decades in various positions to reform the criminal justice system, especially probation and parole. For ten years, Mr. Muhammad worked as a Correctional Administrator in Washington, D.C.; New York City; and Alameda County, California. David Muhammad is the Executive Director of the National Institute for Criminal Justice Reform, where he works on several initiatives across the country to reform Community Corrections systems. Mr.

Muhammad is the former Chief Probation Officer of Alameda County, California. He is also the former Deputy Commissioner of the New York City Department of Probation, where he oversaw the adult probation division. He was also the Chief of Committed Services in Washington, D.C.'s Department of Youth Rehabilitation Services, which included supervision of the youth parole system in the District. David Muhammad is currently the Federal Monitor of the *Morales v. Findley* case, overseeing mandated reforms to Illinois' parole system.

Vincent Schiraldi is co-founder and co-director of the Columbia Justice Lab and previous Commissioner of New York City Probation. One of the projects Schiraldi oversees is the Probation and Parole Reform Project whose goal is to reimagine probation and parole through a combination of research, policy development, capacity building, technical assistance, and communications. This project has organized *EXiT: Executives Transforming Probation and Parole* which has united current and former community supervision executives to build a national movement to transform probation and parole to be smaller, less punitive, and more hopeful, equitable, and restorative. Mr. Schiraldi's research and research he has examined suggests that probation and parole should be reduced in scope and punitiveness and returned to its roots as a system meant to help people reacclimate to their communities in a safe and successful manner.

In accordance with California Rules of Court, rule 8.520(f)(4), counsel for *amici curiae* hereby certify that no party or any counsel for a party in the pending appeal has authored this proposed *amici* brief in whole or in part. Nor has any party or counsel for a party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than the *amici curiae*, their members, or their counsel has made

a monetary contribution intended to fund the preparation or submission of this brief.

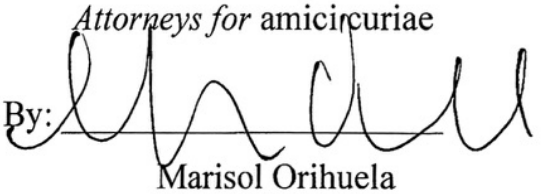
We therefore request that this Court accept for filing the accompanying *amici curiae* brief in support of Mr. Palmer.

Respectfully submitted,

Marisol Orihuela
Miriam Gohara
Jerome N. Frank Legal Services Organization
Yale Law School

Attorneys for amici curiae

Dated: March 17, 2020

By: 
Marisol Orihuela

NO. S256149

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN RE WILLIAM M. PALMER, ON HABEAS CORPUS

AFTER A DECISION BY THE COURT OF APPEAL

FIRST APPELLATE DISTRICT, DIVISION TWO

CASE NO. A154269

AMICI CURIAE BRIEF OF THE PRISON LAW OFFICE, DAVID MUHAMMAD, AND VINCENT SCHIRALDI IN SUPPORT OF RESPONDENT WILLIAM M. PALMER

Marisol Orihuela (SBN 261375)
Miriam Gohara* (*Pro Hac* pending)
Jerome N. Frank Legal Services Organization
Yale Law School
P.O. Box 209090
New Haven, Connecticut 06520
Phone: (203) 436-9167
Fax: (203) 432-1426
Email: marisol.orihuela@ylsclinics.org
Email: miriam.gohara@ylsclinics.org

ATTORNEYS FOR *AMICI CURIAE* THE PRISON LAW OFFICE, DAVID MUHAMMAD, AND VINCENT SCHIRALDI

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Aaron Davis, *Clayton Bans Homes for Released Inmates Everywhere Except for Two Areas*, East Bay Times, August 25, 2019, https://www.eastbaytimes.com/2018/08/25/clayton-bans-homes-for-released-inmates-everywhere-except-for-two-areas/. 31

Amy Solomon et al., *Does Parole Work? Analyzing the Impact of Postprison Supervision on Rearrest Outcomes*, Urban Institute, 1 (March 2005), https://www.urban.org/sites/default/files/publication/51536/311156-Does-Parole-Work-.PDF 23

Anderson et al., *The Conduits and Barriers to Reentry for Formerly Incarcerated Individuals in San Bernardino,* 5 J. Prison Education and Reentry 1, (2018) 26, 30

California Department of Corrections and Rehabilitation, *Vision, Mission, Values, and Goals,* https://www.cdcr.ca.gov/about-cdcr/vision-mission-values/ (2020) 32

California Department of Fair Employment and Housing, *Use of Criminal History Information in Employment*, https://www.dfeh.ca.gov/useofcriminalhistoryinemployment/ 29

California Secretary of State, *Voting Rights: Persons with a Criminal History*, https://www.sos.ca.gov/elections/voting-resources/voting-california/who-can-vote-california/voting-rights-californians. 16

CDCR: Adult Institutions, Programs, and Parole, *Operations Manual* 26, 29

Cecelia Klingele, *Criminal Law: Rethinking the Use of Community Supervision,* 103 J. Crim. L. & Criminology 1015 (2013)..... 23, 25, 29

Christine S. Scott-Hayward, *The Failure of Parole: Rethinking the Role of the State in Reentry,* 41 N.M. L.Rev. 421 (2011)..... 24, 25, 30

Edward E. Rhine et al., *The Future of Parole Release*, 46 Crime and Justice 279 (2017)..... 24

Eli Hager, *At Least 61,000 Nationwide Are in Prison for Minor Parole Violations*, The Marshall Project (April 23, 2017), https://www.themarshallproject.org/2017/04/23/at-least-61-000-nationwide-are-in-prison-for-minor-parole-violations. 15

Eric Westervelt, *From a Cell to a Home: Newly Released Inmates Matched With Welcoming Hosts*, NPR, January 16, 2019, https://www.npr.org/2019/01/16/684135395/from-a-cell-to-a-home-ex-inmates-find-stability-with-innovative-program. 25

Grattet et al., *Supervision Regimes, Risk, and Official Reactions to Parolee Deviance,* 49 Criminology 371 (2011)..... 25

Harding et al., *Custodial Parole Sanctions and Earnings after Release from Prison,* 96 Social Forces 2, 909 (2017) 30

Jennifer M. Ortiz & Haley Jackey, *The System Is Not Broken, It Is Intentional: The Prisoner Reentry Industry as Deliberate Structural Violence,* 99 The Prison Journal 484 (2019). 25, 28

Lauren Markham, *An Airbnb for the Formerly Incarcerated,* The Atlantic, December 16, 2019, https://www.theatlantic.com/politics/archive/2019/12/how-homecoming-project-houses-former-prisoners/603373/ 27

Marisa Endicott, *California Is Letting Thousands of Prisoners Out Early. Its Housing Crisis Is Keeping Them From Starting Over,* Mother Jones, December 6, 2019, https://www.motherjones.com/crime-justice/2019/12/california-prison-reentry-housing-crisis/ 28, 30

Mia Bird et al., *Recidivism of Felony Offenders in California,* Public Policy Institute of California, 23 (2019), https://www.ppic.org/publication/recidivism-of-felony-offenders-in-california/..... 23

Michael Hopkins, *Chapter 789: Banning the Box: The Solution to High Ex-Offender Unemployment?,* 49 U. Pac. L. Rev 513 (2018) 29

Priscilla Ocen, *Awakening to a Mass-Supervision Crisis*, The Atlantic, December 30, 2019, https://www.theatlantic.com/politics/archive/2019/12/parole-mass-supervision-crisis/604108/..... 31

Raven Rakia, *'I Had Nothing': How Parole Perpetuates a Cycle of Incarceration and Instability,* The Appeal, April 5, 2019, https://theappeal.org/how-parole-perpetuates-a-cycle-of-incarceration-and-instability/ 27

Rita Shah, *The Meaning of Rehabilitation and its Impact on Parole: There and Back Again in California* (2017) 22

Robert Werth, *I Do What I'm Told, Sort of: Reformed Subjects, Unruly Citizens, and Parole,* 16 Theoretical Crim. 329 (2011) 14, 27, 31

Root & Rebound, *Roadmap to Reentry: A California Legal Guide*, May 2018, https://objects-us-east-1.dream.io/2018roadmapguide/RoadmaptoReentry.pdf 22

Ryan G. Fischer, *Are California's Recidivism Rates Really the Highest in the Nation? It Depends on What Measure of Recidivism You Use,* UCI Center for Evidence-Based Corrections (2005),

https://ucicorrections.seweb.uci.edu/files/2013/06/bulletin_2005_vol-1_is-1.pdf 23

The Pew Charitable Trusts, *Collateral Costs: Incarceration's Effect on Economic Mobility*, 4 (2010), https://www.pewtrusts.org/en/research-and-analysis/reports/0001/01/01/collateral-costs 30

Times Editorial Board, *Editorial: Probation and Parole Are Supposed to be Alternatives to Incarceration, Not Engines For It, Los Angeles Times,* June 22, 2019, https://www.latimes.com/opinion/editorials/la-ed-parole-violations-recidivism-20190622-story.html 29

Tom Hoffman, *Long Parole Terms Waste Taxpayer Money. Here's One Way to Fix a Broken System*, Sacramento Bee, April 30, 2019, https://www.sacbee.com/opinion/op-ed/article229725254.html 24

Tonja Jacobi et al., *The Attrition of Rights Under Parole*, 87 S. Cal. L.Rev. 887 (2014) 24

Victoria Edwards, *Parole Rules, Meant to Protect the Public, Can Make Reentry Hard, City Limits,* May 23, 2017, https://citylimits.org/2017/05/23/parole-rules-meant-to-protect-the-public-can-make-inmate-reentry-hard/ 27

INTRODUCTION

In *In re Lynch*, this Court held that the California Constitution bars the state from inflicting excessively disproportionate punishment. *See In re Lynch*, 503 P.2d 921, 930 (Cal. 1972). Also in *Lynch*, this Court established a remedy for when the state has imposed excessive punishment—all future punishment must cease; the defendant is "entitled to his freedom." *Id.* at 940-41. Any other remedy would extend the already excessive punishment, compounding the constitutional violations. Courts only need to ask: is the remedy the State seeks further punishment? As the State has already conceded, the answer here is yes—parole is punishment. *See* Opening Brief on the Merits, 40 ("[B]oth parole and incarceration are punishment for the conviction.").

The argument details how parole is punishment, proposes the appropriate remedy in this case, and refutes the State's legal and policy arguments to the contrary.

I. PAROLE IS PUNISHMENT.

Parole continues to punish people for their underlying convictions. *See, e.g., People v. Nuckles*, 298 P.3d 867, 871-72 (Cal. 2013) ("Further, parole is a form of punishment accruing directly from the underlying conviction . . . Being placed on parole is a direct consequence of a felony conviction and prison term."). In fact, courts agree that parole is a form of punishment existing on the "continuum of state-imposed punishments." *See e.g., Samson v. California,* 547 U.S. 843, 850 (2006); *Nuckles,* 298 P.3d at 871; *United States v. Cervantes* 859 F.3d 1175, 1180–81 (9th Cir. 2017), *reh'g denied en banc* (Sept. 12, 2017). Parole punishes by restraining people's behavior and restricting their rights. *See, e.g., In re Palmer* 245 Cal. Rptr. 3d 708, 730 (Cal. App. 1st Dist. 2019) ("It is difficult to comprehend

how his release under such conditions can be seen as anything other than continued restraint and punishment for his crime.").

A. The State Deprives Individuals on Parole of Fundamental Rights Guaranteed to Individuals Outside of State Custody.

Because parole is a form of punishment, individuals on parole experience restrictions of their fundamental rights and liberties that are otherwise constitutionally guaranteed to free citizens. As this Court has recognized, "[t]he restraints on liberty and constructive custody status further demonstrate that service of parole is part of the punishment imposed following a defendant's conviction." *Nuckles*, 298 P.3d at 872.

1. Individuals on Parole Do Not Enjoy the Full Liberty that Individuals Outside of State Custody Enjoy.

The state is permitted to restrict the liberty of individuals on parole because they are still in state custody. "A prisoner released on parole is not a free man." *People v. Denne*, 297 P.2d 451, 456 (Cal. App. 2d Dist. 1956). Often, individuals on parole serve a portion of their punishment "outside rather than within the prison walls." *Id.* at 457. Thus, courts consider individuals on parole legally akin to people in prison. *See Ex parte Stanton,* 147 P. 264, 265 (Cal. 1915) (stating that an individual "remains a prisoner, although out on parole"). In fact, the "Supreme Court of the United States has characterized the violation of a condition of parole as being, in legal effect, on the same plane as an escape from the custody of the prison warden. 'His status and rights were analogous to those of an escaped convict.'" *Denne*, 297 P.2d at 458 (quoting *Anderson v. Corall*, 263 U.S. 193, 196 (1923)). Due to their constructive custody status, the liberty interests of individuals on parole are "partial and restricted," even though they enjoy some liberty outside of prison. *In re Taylor*, 343 P.3d 867, 878 (Cal. 2015) (citing *Denne,* 297 P.2d at 457).

The state restricts the liberty of people on parole in two ways. First, people on parole must comply with conditions that restrict many aspects of their lives. Second, parole conditions give the state broad latitude to reincarcerate a person on parole for even minor violations of those conditions. *See Morrissey v. Brewer*, 408 U.S. 471, 478 (1972). As one scholar of California parole has observed, "parole's force is intimately connected to the threat of reimprisonment." Robert Werth, *I Do What I'm Told, Sort of: Reformed Subjects, Unruly Citizens, and Parole*, 16 Theoretical Crim. 329, 335 (2011). People on parole do not possess the same level of liberty as free citizens, and what limited liberty they do possess is subject to revocation if they fail to comply with their conditions.

2. *Individuals on Parole Are Entitled to Fewer Due Process Protections Than Free Individuals.*

Although people on parole are entitled to minimal due process rights, they enjoy fewer procedural rights than free people. Moreover, unlike the "absolute liberty" interest that courts recognize for free individuals, those on parole only have "conditional liberty properly dependent on observance of special parole restrictions." *Morrissey*, 408 U.S. at 480 (establishing minimum due process rights for parole revocation hearings). As a result, people facing parole revocation proceedings are entitled to fewer due process protections than those in initial criminal proceedings.

These lower protections are evidence of how parole acts as punishment. Because parole revocation "is not part of a criminal prosecution," the "full panoply of rights due a defendant in an initial criminal proceeding does not apply to parole revocations." *Id.* at 475. For example, evidentiary rules for parole hearings are weaker than for criminal cases. The exclusionary rule generally does not apply, s*ee, e.g.*, *Pennsylvania Bd. of Probation and Parole v. Scott*, 524 U.S. 357 (1988); *In re Ralph Martinez*,

463 P.2d 734 (Cal. 1970), hearsay evidence may be admissible, *see, e.g.*, *United States v. Hall*, 419 F.3d 980, 985 (9th Cir. 2005), and violations are determined by a preponderance of the evidence standard, *see People v. Rodriguez*, 795 P.2d 783, 785 (Cal. 1990).

These diminished rights allow California to reincarcerate individuals on parole without the constitutional protections afforded to defendants facing initial prosecutions. Because the standard of proof for a parole violation is lower than the standard of proof for a criminal conviction, even dismissal or acquittal of underlying criminal charges that provoked the revocation proceedings will not result in automatic dismissal of the parole violation charges. In fact, prosecutors may find it "more expedient" to reincarcerate someone "by simply revoking their parole, rather than by going through the process of indicting, convicting and sentencing them for the new crime they were arrested for." Eli Hager, *At Least 61,000 Nationwide Are in Prison for Minor Parole Violations*, The Marshall Project (April 23, 2017), https://www.themarshallproject.org/2017/04/23/at-least-61-000-nationwide-are-in-prison-for-minor-parole-violations. Employing a practice known as "flash incarceration," the state can incarcerate a person on parole for up to ten days for *any* violation of a parole condition, no matter how small. That person may be detained "in a city or a county jail due to a violation of...[their] conditions of parole" for a period "between one and 10 consecutive days." *See* Cal. Penal Code § 3000.08(e). Simply missing a meeting with a parole supervisor may result in incarceration, destabilizing the life of an individual on parole, and jeopardizing their employment and housing status.

3. Parole Abridges Other Constitutional Rights of People on Parole.

The state also significantly restricts the Fourth Amendment rights of people on parole. The Fourth Amendment protects ordinary citizens'

reasonable expectations of privacy against unreasonable searches. *See Katz v. United States,* 389 U.S. 347 (1967). However, when granted parole, a person must relinquish their Fourth Amendment rights against unreasonable search and seizure, allowing officers to search them "at any time of the day or night, with or without a search warrant or with or without cause." Cal. Penal Code § 3067. Peace officers are not limited by the usual safeguards that protect ordinary citizens from unreasonable searches, such as securing a warrant. *Denne,* 297 P.2d at 458. The only protection granted to people on parole against unreasonable searches and seizures is a restriction against "arbitrary, capricious, or harassing" searches or seizures. *See People v. Reyes*, 968 P.2d 445 (Cal. 1998), *reh'g denied* (Dec. 2, 1998). In Section III of this brief, we provide examples that illustrate how the loss of these rights affects the lives of individuals on parole.

Additionally, people on parole are not entitled to Fifth Amendment protections against self-incrimination during questioning for parole violations. *See In re Richard T.*, 144 Cal. Rptr. 856, 861 (Cal. App. 2d Dist. 1978) (holding that an individual on parole was not entitled to Miranda warnings before questioning about parole violations). By denying people on parole the fundamental right against self-incrimination, parole heightens the risk of reincarceration.

And like incarcerated individuals, people currently on parole in California cannot vote. *See* California Secretary of State, *Voting Rights: Persons with a Criminal History*, https://www.sos.ca.gov/elections/voting-resources/voting-california/who-can-vote-california/voting-rights-californians.

As these examples demonstrate, the loss of fundamental rights on parole is akin to incarceration, and parole is part of the "continuum of state-imposed punishment." *Samson,* 547 U.S. at 844. Thus, any parole term

adjacent to an already excessive prison term compounds the excessive punishment.

II. THE REMEDY FOR EXCESSIVE PUNISHMENT IS TO REMOVE THAT WHICH IS EXCESSIVE.

When someone has already been punished disproportionately relative to his individual culpability, the state may not continue to punish him further. The *Lynch* test determines when a punishment becomes impermissibly excessive. As this Court described in *Lynch*, punishment becomes excessive when it becomes "so disproportionate to the crime for which it is inflicted that it shocks the conscience and offends fundamental notions of human dignity." 503 P.2d at 930 (Cal. 1972). Excessiveness is a matter of judicial discretion. "Were it otherwise, the [l]egislature would ever be the sole judge of the permissible means and extent of punishment and article I, section 6, of the Constitution would be superfluous." *People v. Anderson*, 493 P.2d 880, 888 (Cal. 1972). After all, the constitutional rights the *Lynch* test protects are only as meaningful as the remedies available when those rights are violated.

The question, then, is what remedy comes closest to protecting people from having to endure excessive punishment. When defendants are sentenced to a punishment that would be excessive, the natural remedy is to eliminate the excessive portion of the sentence. When appellate courts amend a sentence or order a resentencing, they proactively strike punishment that would have been unconstitutional had it been inflicted on the petitioner. This case, however, is not about someone who has been sentenced to an excessive punishment yet to be endured. Instead, Mr. Palmer has *already* experienced "punishment so disproportionate to his individual culpability for the offense he committed, that it must be deemed constitutionally excessive." *In re Palmer* 245 Cal. Rptr. 3d 708, 712 (Cal. Ct. App. 2019). No remedy can

protect Mr. Palmer or those in similar situations from enduring excessive amounts of punishment. They already have.

The premise of *ex post* excessive punishment cases is that the petitioner has already experienced excessive punishment. When, as in this case, a court concludes that "more than thirty years in prison is a consequence far out of proportion to the danger [the petitioner] posed or actual harm he inflicted," it is saying that the imprisonment exceeds the punishment that the state was permitted to lawfully impose. *Palmer,* 245 Cal. Rptr. 3d at 721. If the petitioner is, for example, only five years into the thirty-plus year sentence, courts have an opportunity, as discussed above, to change the sentence and prevent the petitioner from actually enduring an excessive punishment. When, as in Mr. Palmer's case, the defendant has already been punished more than the California and United States Constitutions permit, the standard remedies are not applicable.

Courts cannot spare defendants from excessive punishment they have already endured. That is why this Court must settle for the next-best alternative: protecting a person who has already served an excessive punishment from experiencing even more punishment for the same offense. That remedy flows from the logic of the *Lynch* test. In essence, the *Lynch* test balances the amount of punishment someone has experienced against their individual culpability. *See Palmer* 245 Cal. Rptr. 3d at 803.

The State's argument in this case disregards the *Lynch* test's underlying purpose. *See* Opening Brief on the Merits, 47-48. In doing so, the State is attempting to extend a punishment that the Court of Appeal has already deemed excessive. *See Palmer,* 245 Cal. Rptr. 3d at 730. If thirty years of incarceration exceeds an individual's culpability, surely the punishment inflicted by thirty-five years of state custody (including thirty years of prison and an additional five years on parole) would too. *See Weems v. United States*, 217 U.S. 349, 371 (1910) (internal citations omitted) (noting

that the Eighth Amendment's protection from cruel and unusual punishments must be applied "against all punishments which by their excessive length or severity are greatly disproportioned to the offences charged. The whole inhibition is against that which is excessive either in the bail required, or fine imposed, or punishment inflicted").

Instead, courts have consistently prescribed remedies that resolve the constitutional deficiency. *See Lynch*, 503 P.2d at 940-41; *In re Wells*, 121 Cal. Rptr. 23 (Cal. App.2d Dist. 1975); and *In re Rodriguez*, 537 P.2d 384, 397 (Cal. 1975).

1. California Courts Have Released People Who Have Already Endured an Unconstitutionally Excessive Punishment.

California courts have taken two general approaches for remedying excessive confinement. The first approach, which this Court embraced in *Lynch* and the California Second District Court of Appeal adopted in *Wells*, looks to the amount of time the petitioner would have served under an appropriate alternative. *See Lynch*, 503 P.2d at 940-41; *Wells*, 121 Cal. Rptr. at 31. The second approach, which this Court adopted in *Rodriguez*, allows courts to end excessive punishment even without determining what alternative amount of punishment would have been proportional. *See Rodriguez*, 537 P.2d at 397. Under both models, however, courts have a duty to do what is necessary to resolve the constitutional deficiency.

The first approach depends on the legislature prescribing a new, appropriate sentencing scheme after the petitioner's trial. When the petitioner's excessive punishment was greater than the new, proportional sentence he would have been assigned had he committed his crimes later, he is released. *See, e.g.*, *Lynch*, 503 P.2d at 941 and *Wells*, 121 Cal. Rptr. 3d at 31. When Mr. Lynch sought habeas relief, for example, a new law meant his offense would have resulted in, at most, felony charges with a maximum

punishment of five years in prison. Since he had already served slightly more than the five years that the new statute allowed, he was "entitled to his freedom." *Lynch*, 503 P.2d at 941. Similarly, the modern maximum permissible sentence for Mr. Wells was, at most, five years. Since his excessive prison term was already longer than the new maximum sentence for his offense, the court concluded that he was "entitled to be freed from all custody, actual or constructive." *See Wells*, 121 Cal. Rptr. 3d at 31.

The second approach is a better fit for this case. In *Rodriguez*, the straightforward fact that the petitioner had been punished more than the California Constitution allowed was enough to justify relief—even without the legislature defining a lesser maximum. *See Rodriguez*, 537 P.2d at 397 ("Petitioner has already served a term which by any of the *Lynch* criteria is disproportionate to his offense. His continued imprisonment thus constitutes both cruel and unusual punishment within the meaning of article I, section 17, of the California Constitution. He is therefore entitled to be discharged from the term under which he is imprisoned."). Since Mr. Palmer is challenging the amount of his time spent in state custody—a sum unique to him given his indeterminant sentence—this Court does not need to determine what an appropriate sentence would be, or how long ago Mr. Palmer's confinement became excessive. Here, as in *Rodriguez*, this Court may end an already excessive punishment without determining what an appropriate punishment might have been.

When someone has endured an unconstitutionally excessive punishment, the remedy is to end any further punishment, lest the constitutional violation worsen. *See, e.g.*, *Lynch*, 503 P.2d at 940-41; *Wells*, 121 Cal. Rptr. at 31; and *Rodriguez*, 537 P.2d at 397. Acknowledging a punishment as excessive and then nevertheless allowing more punishment, would be anomalous.

2. The Court of Appeal Correctly Analyzed Lira *When it Concluded that the State Could Not Extend an Already Excessive Punishment.*

The Court of Appeal correctly rejected the Attorney General's reliance on *Lira*. *See Palmer,* 245 Cal. Rptr. 3d at 730 ("The cases upon which the Attorney General relies dealt with entirely different circumstances."). *Lira* offers little guidance here for two main reasons.

First, *Lira* entails a categorically different claim. *See In re Lira*, 317 P.3d 619 (Cal. 2014). The state infringed on Mr. Lira's due process rights, so he sought procedural relief. Here, the state infringed on Mr. Palmer's substantive right to be free from excessive punishment; no procedural changes would have made the state's actions permissible.

Second, Mr. Palmer and Mr. Lira seek different remedies. Mr. Lira was denied a procedural safeguard in a parole hearing, so the appropriate remedy was a parole hearing with the proper procedural safeguards. *See id.* at 621. Mr. Palmer, on the other hand, was denied substantive protection against excessive punishment. Since he cannot be "unpunished," the appropriate remedy is the next-best thing: ending punishment.

3. Providing an Equitable Remedy in Excessive Punishment Cases Does Not Raise Meaningful Separation of Powers Concerns.

Contrary to the State's separation of powers argument, a judicial remedy is appropriate here. *See, e.g.*, Opening Brief on the Merits, 39-47. Courts are the last line of defense to protect individuals' rights. When they identify a constitutional violation—someone being confined to state custody for an excessive period, for example—courts alone are left to deliver the requisite remedy. As this Court has noted: "the most fundamental [separation of powers check] lies in the power of the courts to test legislative and executive acts by the light of constitutional mandate and in particular to

preserve constitutional rights." *Bixby v. Pierno*, 481 P.2d 242, 249 (Cal. 1971) (internal citations omitted). Deciding whether to allow the state to extend an already excessive punishment is not a question of inter-branch deference, it is a question of judicial duty.

III. PAROLE IS INEFFECTIVE AT REDUCING RECIDIVISM, AND MANY PAROLE CONDITIONS ARE COUNTERPRODUCTIVE TO REHABILITATION.

As this Court explained in *Dannenberg*, even a public safety interest cannot justify continuing an already excessive punishment. *See In re Dannenberg*, 104 P.3d 783, 803 (Cal. 2005). Yet, the State asks this Court to subjugate constitutional protections to its policy judgments, arguing that Mr. Palmer's parole should be reinstated because "release without parole deprives him of services that are essential to his reintegration into society." *See* Reply Brief on the Merits, 25. That request is misguided for two reasons.

First, even if parole did live up to its rehabilitative aspirations, it would remain unconstitutional if part of an excessive punishment. Second, parole is not the only means by which people released from prison may access reintegration services. *See, e.g.*, Root & Rebound, *Roadmap to Reentry: A California Legal Guide*, May 2018, https://objects-us-east-1.dream.io/2018roadmapguide/RoadmaptoReentry.pdf, 2, 1127-39 (describing Root & Rebound's Reentry Hotline number and educational and housing resources, and listing additional legal and social services organizations for reentering individuals in California). Rather, parole provides a law-enforcement-based approach to some social services with an emphasis on surveillance. *See, e.g.*, Rita Shah, *The Meaning of Rehabilitation and its Impact on Parole: There and Back Again in California* (2017). Neither providing limited social services nor preserving public

safety, however, can justify extending an already excessive punishment. *See Dannenberg*, 104 P.3d at 803.

A. Parole is Ineffective at Reducing Recidivism and is More Oriented Toward Surveillance than Rehabilitation.

Empirical research shows that parole is ineffective at reducing recidivism. Amy Solomon et al., *Does Parole Work? Analyzing the Impact of Postprison Supervision on Rearrest Outcomes*, Urban Institute, 1 (March 2005), https://www.urban.org/sites/default/files/publication/51536/311156-Does-Parole-Work-.PDF ("Overall, parole supervision has little effect on rearrest rates of released prisoners."). People on parole in California experience high rates of recidivism largely on the basis of technical parole violations rather than criminal violations. Ryan G. Fischer, *Are California's Recidivism Rates Really the Highest in the Nation? It Depends on What Measure of Recidivism You Use,* UCI Center for Evidence-Based Corrections (2005), https://ucicorrections.seweb.uci.edu/files/2013/06/bulletin_2005_vol-1_is-1.pdf; Mia Bird et al., *Recidivism of Felony Offenders in California,* Public Policy Institute of California, 23 (2019), https://www.ppic.org/publication/recidivism-of-felony-offenders-in-california/.

In fact, scholars have noted that "too much supervision can result in higher rates of revocation." Cecelia Klingele, *Criminal Law: Rethinking the Use of Community Supervision,* 103 J. Crim. L. & Criminology 1015, 1037-38 (2013) (footnotes omitted). By exposing people on parole to greater state surveillance, even if that surveillance includes ostensibly rehabilitative services such as required counseling or drug treatment, parole sets them up for higher recidivism rates and hinders reintegration, rather than encouraging

it. *Id.; see also* Tonja Jacobi et al., *The Attrition of Rights Under Parole*, 87 S. Cal. L.Rev. 887, 928-29 (2014).

The seemingly impossible demands of meeting myriad and stringent parole conditions coupled with the prospect of reincarceration for minor infractions suggest that parole is a counterproductive means of rehabilitation. Rather than allowing for an efficient transition from prison to free society, onerous parole conditions create opportunities for violation and recidivism, and prioritize surveillance over rehabilitation. Surveillance and control follow people from prison to parole. As a recent Director of the CDCR's Department of Adult Parole Operations noted, when he began his tenure, he "discovered . . . a system that was mostly committed to surveillance and enforcement. In many ways, parole was functioning as an extension of the local police. All too often, this misaligned focus resulted in people failing to get the help they needed to successfully reintegrate into their communities." Tom Hoffman, *Long Parole Terms Waste Taxpayer Money. Here's One Way to Fix a Broken System*, Sacramento Bee, April 30, 2019, https://www.sacbee.com/opinion/op-ed/article229725254.html. As one scholar has noted, "[p]arole officers today spend more time monitoring conditions than providing services. In how they carry out their jobs, parole officers look less like social workers and more like police officers." Christine S. Scott-Hayward, *The Failure of Parole: Rethinking the Role of the State in Reentry,* 41 N.M. L.Rev. 421, 439 (2011) (footnotes omitted).

Moreover, parole has become progressively more punitive since the 1980s. *See* Edward E. Rhine et al., *The Future of Parole Release*, 46 Crime and Justice 279, 323 (2017). In fact, as "the number of conditions has increased, they often incorporate more surveillance than treatment, and agents devote greater percentages of their time to monitoring compliance." *Id.* Studies show that the number of parole conditions is a strong predictor of

recidivism rates; more parole conditions tend to be associated with higher recidivism rates. *See, e.g.*, Grattet et al., *Supervision Regimes, Risk, and Official Reactions to Parolee Deviance,* 49 Criminology 371, 389 (2011) ("We find that supervision intensity increases the risk of violations, holding constant the offender's personal attributes, offense background, and other aspects of supervision to which they are subject."); s*ee also* Scott-Hayward, *supra,* at 460 ("Increased supervision and the associated conditions increases the likelihood that violations will occur."); Klingele, *supra,* at 1060 ("Post-release supervision does not accomplish its intended purposes in many cases: it does not prevent re-offense, and it delivers transitional services poorly at the cost of subjecting ex-prisoners to the constant specter of possible revocation."). These empirical findings demonstrate that "parole and postrelease supervision are merely extensions of the carceral apparatus. [Their] primary focus is surveillance, not assistance or reentry. Consequently, supervision often hinders reentry by enforcing unrealistic expectations and conditions." Jennifer M. Ortiz & Haley Jackey, *The System Is Not Broken, It Is Intentional: The Prisoner Reentry Industry as Deliberate Structural Violence,* 99 The Prison Journal 484, 492-93 (2019).

B. Many Common Conditions of Parole are Counterproductive, Presenting Challenges that Often Result in Parole Violations.

Ironically, for many individuals on parole, the greatest hurdle to successful reintegration can be surviving parole itself. As Alex Busansky, a former prosecutor explains, "for people getting out of prison, the penalty hasn't ended and re-entry is its own obstacle course that everybody has to navigate." Eric Westervelt, *From a Cell to a Home: Newly Released Inmates Matched With Welcoming Hosts*, NPR, January 16, 2019, https://www.npr.org/2019/01/16/684135395/from-a-cell-to-a-home-ex-inmates-find-stability-with-innovative-program. More specifically, parole

conditions often interfere with parolees' employment, and disrupt relationships with their families.[1]

1. Parole Conditions Often Stymie Employment Opportunities for People on Parole.

Individuals on parole face numerous responsibilities when reentering society including securing housing, finding medical care, reconnecting with family members, developing a daily routine, and complying with their conditions of parole. *See* Anderson et al., *The Conduits and Barriers to Reentry for Formerly Incarcerated Individuals in San Bernardino,* 5 J. Prison Education and Reentry 1, 4 (2018). Many of these needs—particularly finding housing in California's expensive housing market—require a source of income. *Id.* And those are just the challenges of staying afloat. For some people, finding employment is one of their explicit parole conditions. For others, it is an implicit, but no less critical, requirement.[2] Thus, employment is both necessary to provide people on parole with a source livelihood and satisfying one's parole conditions may also depend on finding and maintaining employment. However, other parole conditions may make maintaining employment difficult, or even impossible. By imposing additional (and often competing) requirements on individuals on parole, parole itself can serve as a barrier to employment, and employment can in turn present a challenge to succeeding on parole.

---

[1] Some of the stories below are from people on parole outside of California but illustrate typical parole experiences.

[2] The CDCR's Department Operations Manual (DOM) categorizes employment as positive behavior for people on parole (and rewards such behavior with benefits such as bus tokens and travel passes) but categorizes lack of employment and a lack of income as negative behavior. *See* CDCR: Adult Institutions, Programs, and Parole, *Operations Manual* § 81020.13.1 at 677 (2020) (DOM).

For example, parole conditions that mandate curfews may interfere with a person's employment prospects. One individual on parole reported that he was offered a night-shift cleaning job at a Planet Fitness, but "because the job would require him to be out after 7 p.m. he was forced to turn it down." Raven Rakia, *'I Had Nothing': How Parole Perpetuates a Cycle of Incarceration and Instability,* The Appeal, April 5, 2019, https://theappeal.org/how-parole-perpetuates-a-cycle-of-incarceration-and-instability/. Curfews may also preclude people from job opportunities that start early in the morning. For example, another person on parole had to turn down a construction job that required him to be on-site by 6 a.m., because his curfew required him to be at home until 7 a.m. Victoria Edwards, *Parole Rules, Meant to Protect the Public, Can Make Reentry Hard, City Limits,* May 23, 2017, https://citylimits.org/2017/05/23/parole-rules-meant-to-protect-the-public-can-make-inmate-reentry-hard/. Furthermore, even when a curfew is not a specific condition of parole, transitional housing programs (which are often a special condition of parole) subject people on parole to those programs' rules, which often include curfews. Lauren Markham, *An Airbnb for the Formerly Incarcerated,* The Atlantic, December 16, 2019, https://www.theatlantic.com/politics/archive/2019/12/how-homecoming-project-houses-former-prisoners/603373/ (describing halfway houses for people on parole, explaining that "in many cases, they mimic some aspects of prison, with strict regulations restricting residents' freedom: curfews, required drug testing, unannounced visits from parole officers, restrictions on travel"). Other, non-curfew restrictions can be equally prohibitive: one woman in California was subject to special conditions prohibiting her from travelling to her county of residence and maintaining a bank account or ATM. As a result, her job prospects were limited, as she found it nearly impossible to find a job inside her county that paid in cash. Werth, *supra,* at 338-39.

People on parole are often required to also complete non-residential programs or classes that interfere with work opportunities. These programs are often held during business hours, which creates an impossible choice for people on parole: miss work and risk getting fired, or miss class and risk being sanctioned (or worse, reincarcerated) for violating a condition of parole. *See, e.g.,* Ortiz & Jackey, supra, at 493 (citations omitted). As one California woman on parole explained, "it was really difficult being able to hold down a full-time job, which is thankfully now giving me an income, and also meet the program's requirements of classes that I didn't even need in the first place." Marisa Endicott, *California Is Letting Thousands of Prisoners Out Early. Its Housing Crisis Is Keeping Them From Starting Over,* Mother Jones, December 6, 2019, https://www.motherjones.com/crime-justice/2019/12/california-prison-reentry-housing-crisis/ (referring to substance abuse classes that she was required to complete despite being a certified drug and alcohol counselor herself). One of the employees of the Prison Law Office recalls that when completing a required program for a parole condition, he attempted to reschedule a class session that interfered with his job. He was told that he could not do so, despite the availability of make-up classes, causing him to question what the purpose of parole truly was if not to facilitate reintegrative activities such as employment.

The collateral consequences of convictions can make the tension between parole conditions and reintegration even more salient. As the Los Angeles Times Editorial Board recently asked, "[h]ow, for example, can a parolee comply with a requirement that he be employed, when at the same time, his conviction makes him ineligible for any job that pays enough to allow him to get an apartment and provide for his family?" Times Editorial Board, *Editorial: Probation and Parole Are Supposed to be Alternatives to Incarceration, Not Engines For It, Los Angeles Times,* June 22, 2019,

https://www.latimes.com/opinion/editorials/la-ed-parole-violations-recidivism-20190622-story.html. Yet, missing work for mandatory programming may require people on parole to disclose their parolee status to employers, despite California's "ban-the-box" law designed to protect most job applicants from discrimination on the basis of prior criminal history.[3] *See* Cal. Gov't Code Ann. § 12952.

Moreover, an arrest or reincarceration for a parole violation may further harm an individual's employment prospects and financial outcomes. Even short periods of arrest and reincarceration may do permanent damage to a paroled individual's employment prospects. "Sentences of one week, thirty days, or even ninety days are not insignificant. They impose both financial costs (in terms of jail beds used) and human costs (in terms of lost employment, housing, and child custody)." Klingele, *supra*, at 1049.

Flash incarceration's impact is not a hypothetical problem for the majority of people on parole in California. According to CDCR data, 58.8% of people on parole were returned to custody at some point due solely to a technical parole violation during the 2018-2019 fiscal year alone.[4] This

---

[3] "Ban-the-box" refers to laws which limit or forbid the practice of asking job applicants about their criminal histories. California's law is a limited protection that allows employers to inquire about prior convictions after making a conditional offer of employment, but parole conditions often require direct and immediate disclosure to employers or prospective employers. *See* DOM, *supra,* at 692; *see also* Michael Hopkins, *Chapter 789: Banning the Box: The Solution to High Ex-Offender Unemployment?,* 49 U. Pac. L. Rev 513, 516 (2018); California Department of Fair Employment and Housing, *Use of Criminal History Information in Employment*, https://www.dfeh.ca.gov/useofcriminalhistoryinemployment/.

[4] In other words, 27,528 individuals were returned to custody for technical parole violations in 2018-2019. *See* CRCR, *Supplemental Report of the 2018-2019 Budget Package: Annual Performance Measures,* at p. 40, https://www.cdcr.ca.gov/research/wp-content/uploads/sites/174/2020/02/CDCR-_Fiscal_Year_2018-

reincarceration has serious financial impacts for people on parole. In one study, scholars found that people subject to flash incarceration for parole violations, "lost approximately 37 percent of their earnings in quarters during which they were in short-term custody." Harding et al., *Custodial Parole Sanctions and Earnings after Release from Prison,* 96 Social Forces 2, 909, 911 (2017). They experienced long-term earning losses as well. *Id.* Importantly, people on parole are already at an economic disadvantage due to their prior convictions. A different study estimated that previous incarceration reduces a person's annual earnings by 40% and negatively affects the economic mobility of not only the formerly incarcerated individual, but also that of their children. The Pew Charitable Trusts, *Collateral Costs: Incarceration's Effect on Economic Mobility*, 4 (2010), https://www.pewtrusts.org/en/research-and-analysis/reports/0001/01/01/collateral-costs.

2. *Parole Interferes With Family Relationships.*

Individuals on parole depend on their families' support for their successful return to their communities. Scott-Hayward, *supra,* at 425. Family is an important conduit to housing or employment for many people exiting the prison system. Anderson, *supra,* at 5. However, parole conditions restricting travel and residence, as well as no-contact conditions, often interfere with people on parole's ability to reconnect with family members, hindering their rehabilitation and reintegration on parole. For example, in California, one woman on parole who was required to live in a residential program noted that "her house allowed visitors from 1 p.m. to 5 p.m.," which was "less time to spend with your family than in prison." Endicott, *supra.*

2019_Annual_Performance_Measures_Report.pdf (as of February 22, 2020).

Additionally, certain parole conditions prevent people from contacting or living near their family members. One study of people on parole in California noted that "a number of individuals felt that various rules, including travel restrictions and prohibitions against association with 'criminal others,' made it difficult to establish social networks and maintain contact with family and friends." Werth, *supra,* at 339. One Californian on parole could not associate with her own family members without an officer's permission after being released because they were technically also the family members of her alleged victim. Priscilla Ocen, *Awakening to a Mass-Supervision Crisis*, The Atlantic, December 30, 2019, https://www.theatlantic.com/politics/archive/2019/12/parole-mass-supervision-crisis/604108/. The conditions were placed on her despite these family members having written letters of support to the parole board advocating for her release.[5]

Parole conditions that interfere with family relationships also further limit already limited housing options available to people on parole. Private housing can be prohibitively costly for people returning from prison, public housing excludes individuals with certain criminal convictions, and landlords are permitted to deny housing applications after conducting background checks.[6] When parole conditions prohibit people from living

---

[5] The victim in question was the parolee's son, who died as a result of abuse by her abusive ex-husband. *Id.* Although her sentence was commuted by the governor before she was released by the parole board – who also acknowledged her abuse and its role in what happened to her son – the parole board still mandated parole conditions which prevented her from spending time with her family members. An additional condition was that she could not carry a picture of her deceased son. *Id.*

[6] Some California municipalities have imposed further restrictions to housing for people on parole. *See* Aaron Davis, *Clayton Bans Homes for Released Inmates Everywhere Except for Two Areas*, East Bay Times, August 25, 2019, https://www.eastbaytimes.com/2018/08/25/clayton-bans-homes-for-released-inmates-everywhere-except-for-two-areas/.

with supportive family, they deprive them of emotional support and housing, both essential elements of rehabilitation.

The preceding studies and anecdotes demonstrate that, in practice, parole often inhibits rehabilitation and enhances the risk of recidivism. Moreover, on the continuum of punishment that CDCR administers, parole merely shifts people from one penal phase to the next. In fact, California's prison and parole systems share CDCR's leadership, administration, and mission statement. California Department of Corrections and Rehabilitation, *Vision, Mission, Values, and Goals,* https://www.cdcr.ca.gov/about-cdcr/vision-mission-values/ (2020). In this context, parole is both legally and practically part of the punishment that a person serves for a crime, not a separate set of services provided to facilitate rehabilitation. Thus, any parole term that follows an already excessive prison term must be vacated.

CONCLUSION

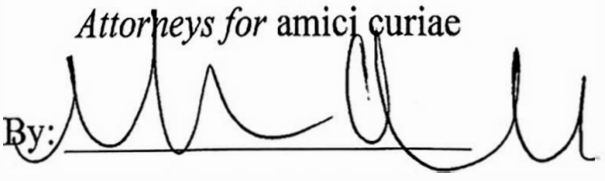
The judgment of the Court of Appeal should be affirmed.

Respectfully submitted,

Marisol Orihuela
Miriam Gohara
Jerome N. Frank Legal Services Organization
Yale Law School

Attorneys for amici curiae

Dated: March 17, 2020

By: 

Marisol Orihuela

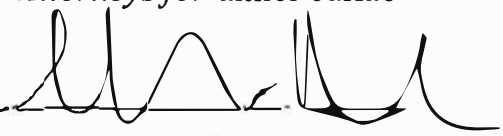
CERTIFICATION OF WORD COUNT

Pursuant to California Rules of Court, rule 8.204(c)(1), I certify that this *Amici Curiae* Brief in Support of Respondent William M. Palmer contains 8,510 words, as counted by the Microsoft Word program used to generate the brief.

Marisol Orihuela
Miriam Gohara
Jerome N. Frank Legal Services Organization
Yale Law School

Attorneys for amici curiae

Dated: March 17, 2020

By: 

Marisol Orihuela

DECLARATION OF SERVICE

Case: *In re Palmer*
No: S256149

I, Destiny Lopez, am a certified legal intern at Yale Law School's Jerome N. Frank Legal Services Organization in the City of New Haven, Connecticut. I am over the age of eighteen (18) years and am not a party to the within action. My business address is 127 Wall St. New Haven, CT 06511.

On March 17, 2020, I served the attached true copies of the following documents described as **APPLICATION FOR LEAVE TO FILE AMICI CURIAE BRIEF AND AMICI CURIAE BRIEF ON BEHALF OF DEFENDANT AND RESPONDENT WILLIAM M. PALMER,** on the interested parties in this action by placing a true and correct copy thereof enclosed in sealed envelope(s) addressed as follows:

SEE ATTACHED SERVICE LIST

By FedEx: on the parties in said cause, by placing true and correct copies thereof enclosed in sealed envelopes addressed to the below addresses and causing said envelopes, with postage thereon fully prepaid, deposited with the Federal Express at New Haven, Connecticut.

I declare under penalty of perjury under the laws of the states of California and Connecticut that the foregoing is true and correct. This declaration was executed on March 17, 2020, at New Haven, Connecticut.

Destiny Lopez

SERVICE LIST

Case: *In re Palmer*
No: S256149

Megan L. Havstad O'Melveny Myers, LLP Two Embarcadero Center, 28th Floor San Francisco, CA 94111	*Attorney for William M. Palmer, II: Petitioner*
Xavier Becerra Lance E. Winters Phillip J. Lindsay Amanda J. Murray Office of the Attorney General, Dept of Justice 600 West Broadway, Suite 1800 San Diego, CA 92101 455 Golden Gate Avenue, Suite 11000 San Francisco, CA 94102-7004	*Attorneys for California Department of Corrections and Rehabilitation: Non-Title Respondent, and Board of Parole Hearings: Non-Title Respondent*
Richard J. Sachs Office of the District Attorney P.O. Box 121011 San Diego, CA 92112-1011	*Attorney for California District Attorneys Association: Pub/Depublication Requestor* *921 11th Street, Suite 300* *Sacramento, CA 95814*
Kristen Bell Attorney at Law 1515 Agate Street Eugene, OR 97403	*Attorney for Sentencing Project: Amicus curiae*
First District Appellate Project 475 14th Street, Suite 650 Oakland, CA	

14th Street, Suite 650 Oakland, CA
94612
California State Bar
180 Howard St.
San Francisco, CA 94105

Supreme Court of California
350 McAllister Street
Room 1295
San Francisco, CA 94102-4797

The Honorable J. Anthony Kline
Presiding Judge
Court of Appeal of the State of
California
First Appellate District, Division
Two
350 McAllister Street
San Francisco, CA 94102-3600