No. 18-9186

ORIGINAL
PG. ONE

IN THE

SUPREME COURT OF THE UNITED STATES

In Re

BRIAND WILLIAMS — PETITIONER
(Your Name)

vs.

Calif. Dept. of Corr's & Reh et al. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE SUPREME COURT FOR THE STATE OF CALIFORNIA
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

BRIAND WILLIAMS
(Your Name)

c/o BRB WMS-LOGAN-ESQ; 9025 Wilshire Blvd 5th Flr
(Address)

Beverly Hills 90211-1867
(City, State, Zip Code)

None As of Yet but Eventually
(Phone Number)

QUESTION(S) PRESENTED

1) **Did** the California Department of Corrections and Rehabilitation (CDCR) policies and procedures violate the Petitioner's U.S.C.A. 14th Amendment and the Cal. Const. Art 1, §7 Due process Rights Arbitrarily when Petitioner was denied Early Parole Consideration under Prop. 57 as a non-violent felony inmate serving a non-violent sentence although having a 22year old conviction for a non-registrable offense.

2) **Did** CDCR create a **disparity** in treatment in not considering non-violent inmates serving time for **Early Parole Consideration** who have no prior registrable offense in their background history as opposed to other inmates who are also serving time for a non-violent crime but who do have a prior registrable offense in their background**???** And if so, **(2)** Does this infringe on an inmate's Constitution rights**???**

3) **Can** CDCR, along with its officers, agents, representatives and or employees of the State be held in contempt and financially responsible for each inmate that is held in custody beyond the maximum time allotted to be served under the **Cal. Const. Art. I, §32(a)(1)(A),** is "eligible for parole consideration after completing the full term for his . . . primary offense." If so **(2)** Does this court give a legal remedy for the injustice.

4) **Did** the California Department of Correction and Rehabilitation (CDCR) regulations adopted to implement the added provision of the Cal. Const., Art. I, §32, subd. (a)(1) (hereafter section 32(a)(1)) to ***validly exclude admittedly nonviolent offenders*** serving sentences for any nonviolent offense, even if that that person was never convicted of a Registrable Offense ***in the past*** (OAL File No. 2017-0328-01EON, **§§ 3490(a)(3) and 2449.1(a)(3)**) excluding anyone convicted of a Registrable Offense ***from the early parole process*** under and in direct violation of Proposition 57 statute and its Constitutional stare decisis. See CAL. CODE REGS. Tit.15, **§§ 3491(b)(3)** (hereinafter, the Final Regulations) dated January 1, 2019 from Proposition 57 relief.**??**

5) **Did** CDCR and the State of California Discriminate by Denying the Petitioner his rights under the Equal Protection and Due Process Laws of both the Federal and State Constitutions when CDCR did not give the ***[R]etroactive 2-for-1 time credits*** to Petitioner because of his Medical Disabilities and for Mental Health Inmates as ordered by the three panel 9th Cir. Federal Court Judges as of **January 1, 2015** which CDCR in turn further denied him immediate release from prison custody. And, if so **(2)** Was Petitioner held far longer in State Custody than he was actually sentenced too**???** (See, Petitioner's **Exhibits – Zero** (0) **thru Seven** (7) in the Cal. Supreme Ct.)

6) **Did** CDCR violate the Petitioner's guaranteed right to serve **33.3%** of a three yr Primary Prison Term under the Retroactive 2-for1 time credits by willfully denying a Federal Court Order by using the Director's Operation Manual ***(DOM's)*** Underground Regulations **§12010.6** to purposely abridge & disregard the Petr's Fed. & State Rights.

7) **Does** the (CDCR) policies and procedures create a **disparity** in treatment by arbitrarily and purposely denying all inmates (including Petitioner herein) from the benefit of receiving the ***[R]etroactive 2-for-1 time credits*** as ordered by the three panel 9th Cir. Federal Court Judges for inmates who have Medical Disabilities and for Mental Health Inmates **due to having any old conviction(s) for either a registrable or non-registrable offense** although their prior or current sentence was and is a non-violent one**??** And, if so, **(2)** Does those policies and procedures violate the Petitioner and all other inmates similarly situated of their U.S.C.A. 14th Amendment and the Cal. Const. Art 1, §7 Due process Rights to the relief and benefit of that Mandated Order as it was made by the three panel 9th Cir. Federal Court Judges as it relates to the ***Plata*** and ***Coleman*** cases**???** If so, **(3)** should Petitioner be Forthwith Discharge from the arms of CDCR, a political subdivision of the State of California without any further delay for being held far longer in State Custody than he was actually sentenced too**???**

8) **Did** CDCR and the State of California Violate the Petitioner's Fourteenth Amendment Rights under the Equal Protection and Due Process Laws of both the Federal and State Constitutions (as outlined in ***Exhibit No. Seven (7)***) And, **[was]** Petitioner Denied his ***Liberty Interest Rights*** under the Cal. Const., Art. I, §32 (a) (1)(A)(b) to be considered for Parole, but instead was forced to stay in prison and serve out far more time than he was sentence to serve under the ***Color of Law*** due to CDCR Case Records Supervisors' and the State of California's negligence in the miscomputation of Petitioner's Release time**???** And, if so, **(3)** should Petitioner be Forthwith Discharge from the arms of CDCR, a political subdivision of the State of California without any delay**???** (See, ***Lopez vs. Brown*** (2013) 217 C.A. 4th 1114.)

9) **Did** CDCR actions violate the **ADA** by its **disparity** in Discrimination against Pet'r & other inmates**???** If so, **(2) Was** Is it Cruel and Unusual punishment to keep Pet'r and other inmates beyond the amount of time one has been sentenced to serve in custody due to Credit Denial, Miscalculation & Negligence on the part of the officers, agents, representatives and or employees of the State against one's Liberty Interest**??** (***Brown vs. Sup. Ct.*** (2016) 63 Cal. 4th 335 **HN1, 4, 9, 10, *and* 12,** dissent by: Chin, J.; see also Petitioner's **Exhibit Five** (5) **Section** (**c**) in the Cal. S. Ct.)

10) If Petitioner's sentence was actually completed prior to being sent to the CDCR from the Los Angeles County Men's Central Jail on **June 20th, 2017** is there a remedy for the wrong that he has suffered**??? {CC§3523.}** ***People vs. Reid*** (1924) 195 C. 249.

11) **Was** the defendant denied under the 14th Amendment by the State of California to fulfill its duty to provide Petitioner with a complete and effective appellate record for Habeas Review for the Supreme Court of California**???**

12) **Was** the defendant put in any unfavorable Habeas proceedings that were unfair fundamentally unfair in contravention of the Due Process Clause and Equal Protection of the Federal Constitution on Review**???**

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LIST OF PARTIES

[ ] All parties appear in the caption of the case on the cover page.

[X] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

1) **California Department of Corrections and Rehabilitation,** Office of Legal Affairs, 1515 S. Street, Sacramento, California 95811

2) **Ralph M. Diaz & Scott Kernen (Former)** Secretary for Calif. Dept. of Corrections & Reh., Legal Affairs P.O. Box 942883, Sac., Ca. 94283-0001

3) **Michael Martel,** Warden of California Health Care Facility, Stockton, 7707 Austin Road, Stockton, California 95215

4) **The Board of Parole Hearings,** 1515 K. Street, Sacramento, Calif. 95814

5) **Governor Gavin Christopher Newsom,** State of California Capital Building Room 1173, Sacramento, California 95814

6) **Attn. Xavier Becerra** – Atty. General's Office, 300 S. Spring St. 1st. Floor Los Angeles, California 90013

7) **Supreme Court of California,** 350 McAllister Street, Room 1295, San Francisco, California 94102-4797

8) **Second Appellate District Court,** Ronald Reagan Building, 300 S. Spring Street, 2nd Floor – North Tower, Los Angeles, California 90013-1204

9) **Los Angeles Superior Court-LASC,** 210 W. Temple Street, Clerk's Office, Los Angeles, California 90012

10) **Los Angeles District Attorney's Office,** 210 W. Temple Street, District Attorney's Office, Los Angeles, California 90012

11) **Briand Williams, c/o BRB WMS-LOGAN-ESQ.,** 9025 Wilshire Blvd. **Penthouse Suite 500, 5th Floor,** Beverly Hills, California 90211-1867

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In re King (1970) 3 Cal. 3 226, 229, **fn.2**; ***Carafas vs. LaValle*** (1968) 391 US 24, 237;
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PG. Eight

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[ ] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix_____to the petition and is

[ ] reported at_____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the United States district court appears at Appendix_____to the petition and is

[ ] reported at_____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[X] For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix **A** to the petition and is

[ ] reported at_____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the **SECOND APPELLATE DISTRICT COURT** _____court appears at Appendix **B** to the petition and is

[ ] reported at_____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

JURISDICTION

[ ] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was_____.

[ ] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date:_____, and a copy of the order denying rehearing appears at Appendix_____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including_____(date) on_____(date) in Application No.___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

[X] For cases from **state courts**:

The date on which the highest state court decided my case was **Jan. 2nd, 2019**. A copy of that decision appears at Appendix **A**.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix_____.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including_____(date) on_____(date) in Application No.___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Statute

United States Constitutions' **VI Amendment**
United States Constitutions' **XIV Amendment**
United States Constitutions' **VIII Amendment**

California Constitution **Article I, §7 subd (a) (b)**
California Constitution **Article I, §13 & §15 & §17**
California Constitution **Article I, §32 subd (a)(1)(A)**
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STATEMENT OF THE CASE

See Attachment Pages

STATEMENT OF THE CASE

The herein Petition now being presented before his court had nothing to do with Petitioner's criminal appeal (B283473) that the Petitioner had pending in the Second Appellate District Court System (See, ***In re Baker*** (1988) 206 CA 3d 493, **HN 2(a) 2(b)**) when it this **Mandate Petition** was originally presented to the Los Angeles Superior Court in Case No. BH011507 denied on December 29, 2017, decision mail out on Jan. 9, 2018.

The Petition has always been about for following: Re: **(1) Prop. 57**, Parole to Probation Emergency Release Immediately, a ***Declaratory*** **and** ***Injunctive*** **Immediate Emergency Relief; (2)** the "Unambiguous Plain Meaning Language **and** the effect of the Legislative Intent," surrounding California Constitution Art. I, Sec. 32, subds (a) (1) (A) based off of the **Voters** November 9th, 2016 Enactment of Prop. 57; **(3) Re:** A three panel 9th Cir. Federal Court Order Regarding ***[R]etroactive 2-for-1 time credits*** for inmates with Medical Disabilities **and** Mental Health as of ***January 1, 2015*** based off of both the Plata **and** Coleman cases; **(4)** "ADA Discrimination by a Public Entity" and all officers, agents, employees, representatives and all persons acting in concert **or** participating with each other in Federal and State violations of Petitioner's Equal Protection Due Process as well as keeping Petitioner in a cruel and unusual situations from his **"[Liberty]."** (See, ***Brown vs. Sup. Ct.*** (2016) 63 Cal. 4th 335 **HN1, 4, 9, 10,** ***and*** **12,** dissent by: Chin, J.; Cross Reference to: Former Attorney Gen. Kamala D. Harris (see also Petitioner's **Exhibit Five** (5) **Section** (**c**) in the California S. Ct. file.)

This Court has Jurisdiction (***Griggs vs. Sup. Ct.*** (1976) 16 Cal. 3d 341) Since November 8th, 1966 **Cal. Const. Art VI, §10 Re:** The BPH Decision herein. (See, ***Strumsky vs. S.D. Co. Emp. Ret. Ass'n*** (1974) 11Cal. 3d 28, 34-35, **HN1, 2, 3.**) Also, ***In re King*** (1970) 3 Cal. 3 226, 229, **fn.2** "After we issued an OSC, Petitioner was discharged from custody upon completion of his term. Because the burdens of a Felony conviction are substantial and have a continuing impact upon the convicted defendant even after he has served his term, the discharge of Petitioner during the pendency of this proceeding does not render this Petition Moot. (***Carafas vs. LaValle*** (1968) 391 US 24, 237; ***Sibron vs. N.Y.*** (1968) 392 US 40; ***People vs. Succop*** (1967) Cal. 2d 785, 789-790.) Similarly, although ordinarily a Writ of Habeas Corpus will not be issued when the claimed error could have been, but was not, raised on appeal, Petitioner's arguments are based in part on decisions of the United States Supreme Court rendered subsequent to his conviction and thus present "Special Circumstances" constituting an excuse for failure to employ the remedy on appeal. (***In re Black*** (19670 66 cal. 2d

881, 886-887.) Moreover this court has uniformly held that the Constitutionality of Legislation is always open to change on Habeas Corpus. (See, e.g. ***In re Dixon*** (1953) 41 Cal. 2d 756, 762-763.) Cited in ***In re Harris*** (1993) 5 Cal. 4th 813, **HN11.**

Serving thirty-three and a third percent **(33.3%)** of a three **(3) yr.** Primary **Prison Term** under Prop. 57 and the Order given by the 9th Cir. Three Judge Panel since January 1, 2015 (or prior til) the January enactment made "Retroactively" by CDCR is "One" year and approximately seven days to serve Three Hundred and Seventy-Two **(372) Days.**

Now using the very same information in the prior paragraph above but using a four **(4) yr. Prison Term** (with a one yr. Prop. 57 Illegal Enhancement added sentence) is "One" year, four (4) months and approximately seven days to serve Four Hundred Eighty-Six **(486) Days.** Question is why**???** Was the Petitioner not released while in the custody of the Los Angeles County Sheriff's Department Jail where he had already over served his sentence prior to being shipped off to the CDCR**???**

This Petition presents just a many Questions of not only the current laws but of unforeseen and upcoming pending possible new case laws as well. Review is necessary to obtain Uniformity of decisional laws for not only the benefit of the Petitioner herein, but for other individual people in the same or similar confrontations. A Judgment is not Moot if it "affects [the parties] rights in the future." (***Eye Dog Foundation vs. State Bd. of Guide Dogs for Blind*** (1967) 67 Cal. 2d 536, 542.)

WHAT DEFINES "ABUSE OF DISCRETION"

Toussaint vs. McCarty (1985) 801 F.2d 1080, "Scope of Appellate Review" is an unfortunate label. See ***Person vs. Dennison*** (9th Cir. 1965) 353 F.2d 24, 28 **N.6; *R. Aldisert*** {801 F.2d 1088} **the Judicial Process** 759 (1976). Yet, The Legacy of hundreds of cases renders "abuse of discretion" a term of art. See, ***Friendly Indiscretion about Discretion,*** 31 Emory L.J. 747, 762-63 (1982) We must recognize, however, that the term is a **"Verbal coat of many colors."** Id. at 763 (quoting ***US vs. L.A. Trucker Truck Lines,*** (1952) 344 US 33, 39 (Frankfurter, J. dissenting.)). Judge Friendly notes that there are half a dozen different definitions of "Abuse of Discretion," Ranging from one that would require the Appellate Court to come close to finding that the trial court had taken leave of its senses to others which differ from the definition of error by only the slightest nuance, with Numerous Variations between the extremes. Friendly, supra, at 763. " . . . . Although the standard of review in such instances is generally framed as "abused of discretion," in fact the scope of review will be

directly related to the reason why the category or type of decision is committed to the trial court's discretion in the first instance. ***US vs. Criden,*** (3rd Cir. 1981) 648 F.2d 814, **fn.1** We have recognized implicitly that the abuse of discretion standard varies with the decision being reviewed. See, e.g. ***C-Y Development Co. vs. City of Redlands*** (9th Cir. 1983) 703 F.2d 357, 377; See also ***LeSportsac, Inc. vs. KMART Corp.*** (2nd Cir. 19850 754 F.2d71, 74-75 (the Term, "Abuse of Discretion," is capable of widely varying interpretations); ***Roland Machinery Co. vs. Dresser Industries,*** (7th Cir. 1984) 749 F.2d 380, 390 ("Abuse of discretion" describes a range of standards); ***Osuchukwn vs. INS.*** (5th Cir. 1984 744 F. 2d 1136, 1142 ("abuse of discretion" is a variable standard). But out of all that has been said "The Lower Appellate court, did abuse their discretion."

The Second Appellate district Court Judges, in Division One, outright denied the Petitioner/Defendant herein the ***Equal Protection*** **and** ***Due Process*** - two preeminent words that are the lifeblood of our Constitution. Not a precise term, but most everyone knows when it is present and when it is not. It is often most conspicuous by its absence. Its primary characteristic is fairness. It is self-evident that a trial, an-adjudication or a hearing that may adversely affect a person's life must be conducted with fairness to all parties.

This case matter was originally finally filed in the Supreme Court of California back on ***June 8th, 2018*** after a third attempt in trying to filed it twice previously before by mailing it but, somehow it just kept coming up missing once it was relinquished from the Petitioner's hands and was supposedly in transition on its way to the State of California's Highest Court, The Supreme Court of the State of California.

The prior case number that it was given by the Supreme Court of California was ***S249351,*** prior to the court sending it on down to the Second Appellate District Court on ***July 9th, 2018*** where the Second Appellate Court Judges, failed to address not one of the questions out of the **six (6)** ***grounds*** that the Petitioner had set forth within the four corners of the Mandate Petition **or** any of the **five (5)** ***Questions of Law–Issues Presented.***

In between June 8th, 2018 and March 28th, 2019, there were **four (4)** other *pending pertinent* **{Germaine}** cases along the very same line as the Petitioner's herein (***See Attached Exhibits Titled:*** **#C:** ***In re Gregory Gadlin*****-Decided**; **#D:** ***In re Vicenson D. Edward*****-Decided**; **#E:** ALLIANCE FOR CONSTITUTIONAL SEX OFFENSE LAWS, a California non-profit Corporation, vs. CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION; and, SCOTT KERNAN, in his official capacity as Secretary of the California Department of Corrections and Rehabilitation-

Pending; and **#F:** ALLIANCE FOR CONSTITUTIONAL SEX OFFENSE LAWS, a California non-profit Corporation, vs. CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION; and, SCOTT KERNAN, in his official capacity as Secretary of the California Department of Corrections and Rehabilitation-**Pending**; and Petitioner is thereby requesting that this court hold this Petition in ***Abeyance*** pending the final outcome of the two last currently listed exhibits that are still pending within the State Appellate Courts both of which are exhibits ***#E and #F***.

PROLOGUE

Petitioner was unlawfully sentenced to a three (3) year (high based term) with a one (1) year Illegal Proposition 57 **(hereafter Prop. 57)** Enhancement, based off of **Case No. BA443387** that is currently pending in this very same court from a direct appeal from under **B283473** and this case herein was also one of the prior pending Appellate Case Nos. **B291203.**

On November 29th, 2017 Petitioner had actually completed a full eighteen (18) months of actual in custody time (far more than the Petitioner should have not served) off of a three (3) yr high based term for the Primary Offense as outlined, Per/Cal. **Constitution Art. I, §32 subd. (a)(1)(A)** under **Case No. BA443387.**

Petitioner has **No!!!** Juvenile Record; **No!!!** Serious **or** Violent convictions not even a Domestic Violence Conviction(s). Petitioner's Non-Violent Felony Sentence is not against any human **or** animals. Petitioner is a Fifty-Three (53) year old Gray Head & Gray Beard man who has been permanently confined to a wheelchair for many years now and although Petitioner is supposed protected from discrimination up under the **ADA Subtitle-A of Title II 42 USC 12101 at §12131 et seq; Civil Rights of Institutionalized Persons Act; Title 42USC §1997 et seq;** By court order from the three (3) Federal Panel Judges in ***Plata et al., vs. Brown; Coleman vs. Brown*** as well as up under ***Clark vs. California*** and ***Armstrong vs. Schwarzenegger,*** The Respondents by and through their officers, agents, employees, representatives and all persons acting in concert or participating with Scott Kernan and Michael Martel have been and are currently still as of this very moment in time holding the Petitioner Hostage against his will and Liberty Interest within the CDCR System by denying Petitioner to have earned 66.7% credit against his sentence by ***doing only 33.3% of his*** **time.**

The Fourteenth Amendment of the Federal Constitution, and ***Article I, §7(a)*** Of the California Constitution prohibit all state action which denies to any person the "equal protection of the laws."

As the United States Supreme Court declared in ***Exparte Virgina,*** (1880) 100 US 339, 347; "A State acts by its Legislative, its Executive, or its Judicial authorities. It can act in no other way. The Constitutional provision, therefore, therefore, must mean that no agency of the state or of the officers or agents by whom its powers are exerted, shall deny to any person within its jurisdiction the equal protection of the laws." (e.g. ***O'Shea vs. Littleton,*** (1974) 414 US 488, 502-503; ***Flowler vs. Rhode Island,*** (1953) 345 US 67, 69-70; ***Yick Wo vs. Hopkins,*** (1886) 118 US 356 Stands as the landmark decision applying the principles of the equal protection clause to the discriminatory enforcement of a law by administrative or executive officials.

"The purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the states' jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents . . . . It is . . . . Clear that mere errors of judgment by officials will not support a claim of discrimination. There must be something more - - something which in effect amounts to an intentional violation of the essential principle of practical uniformity." (Italics added.) (***Sunday Lake Iron Co. vs. Wakefield,*** (1918) 247 US 350, 352-353; ***Snowden vs. Hughes,*** (1944) 321 US 1, 8.) The equal protection guarantee simply prohibits prosecuting officials from purposefully and intentionally singling out individuals for disparate treatment on an invidiously discriminatory basis. (***Murgia vs. Municipal Court,*** (1975) 15 Cal. 3d 286.)

PREFACE

Petitioner has been forced thus far to serve out and has fully completed seventy-five (75) percent of a supposedly half-time fifty (50%) percent sentence that should have been served at thirty-three and a-third **(33.3%)** percent **{[O]NLY]}** while earning sixty-six point seven **(66.7%)** percent credit towards and against his sentence. (See, **Exhibit – One (1)** in the Cal. S. Ct.) In fact, even before Petitioner had arrived at: WASCO State Prison reception center on ***June 21st, 2017*** **as a non-violent prisoner** with No Gang Ties; No Drug Use (ever) and still had not had any write-ups for nothing **"at all"** whatsoever; Petitioner had already "**Over Served**" and "**Over Stayed**" his prison sentence by having already served three hundred and eighty-five **(385)** days **on that date alone.** Even if Petitioner would have served 33.3% of a four (4) yr. sentence while still earning 66.7% Petitioner should have been "released" back on ***October 1st, 2017*** at the latest, or better yet; Petitioner should have been "released" from Wasco just after having arrived from the custody of the LASD.

ISSUES PRESENTED FOR REVIEW ON LEGALITY AND MEANING OF PROP 57 PRIMARY PRISON TERM; 9TH CIR. POSTSENTENCE 2-FOR-1 TIME CUSTODY CREDITS RETROACTIVE & ADA DISCRIMINATION

The two-for-one Time Credits have been in effect since January 1st, 2015; and it is "Retroactive," So once Petitioner had become Minimum "A" Custody back on September 14th, 2017 (See, **Exhibit – Two (2)** in the Cal. S. Ct.) and having Classification points between or below a Level I or Level II as needed under **CCR Title 15 §3375.1**, Petitioner did not need to be housed at Fire Camp or in a Minimum support Facility (MSF) in order to receive the 2-for-1 time credits. **In fact,** Petitioner had already been told "twice" that **he would not be** on any type of parole upon his release but on probation instead as outlined under **CCR Title-15, Sec. §3049**, Post Release Community Supervision (PRCS) Therefore this clearly would state **that the Petitioner is not a threat to the Public Safety**; Yet and still the respondents continue to violate the **Cal. Const. Art. I, §17**, which prohibits the Infliction of "[c]ruel or unusual punishment . . ." in continuing to **make and keep Petitioner locked up for additional [m]onths to serve out the Enhancement time.** Petitioner was denied his Liberty Interest of the Right to be Free from Restraints & to be Free from custody [t]imely.

STATEMENT OF FACTS

One of the objectives of Proposition 57 (hereafter Prop. 57) is to reduce the size of the prison population in this state, as well as to increase the incentives and opportunity for inmate to rehabilitate themselves. In CDCR's own words, "California voters overwhelmingly passed Prop 57 (64.5% to 35%) to enhance public safety, stop the revolving door of crime by emphasizing rehabilitation and prevent Federal Courts from indiscriminately releasing inmates."

Within the passing of Prop 57, November 8th, 2016 (well over 2½ yrs ago) and Enacted on November 9th, 2016 it amended the California Constitution "to make individuals who are convicted of non-violent felony offenses eligible for parole consideration after serving the full prison term for their primary offense. As amended by Prop. 57, The California Constitution now provides:

> "Parole Consideration: Any person convicted of a non-violent felony offense and sentence to state prison [SHALL] be eligible for parole consideration after completing the Full Term for his or her Primary offense."

Cal. Const. Article I, §32 (a)(1)(A). This "early parole consideration" provision is mandatory and leaves no' discretion for CDCR to pick and choose the Non-Violent felony offenses to which it applies. **Section §667.5(c)** of the **Penal Code** already list the twenty-three (23) specific offenses that constitute "Violent Felonies" under state law.

State law treats all remaining offenses as Non-Violent. Prop. 57 therefore renders' all individuals eligible of early parole consideration if they are incarcerated for offenses other than those listed in §667.5(c). In essence, Petitioner alleges that the clear and unambiguous language in the newly added Cal. Const. Art. I, §32, Mandates that Parole Consideration **"SHALL"** be immediately given to any person convicted of a Non-Violent Felony, Minus any enhancements, consecutive sentences, or alternative sentences; who have already [completely] "served" "The Full Term for his or her Primary Offense." Petitioner further contends that the "Credit Earning" Provision of Subd. (a)(2), and the adoption of regulations mandated under subd.(b) [only] applies to California Prisoners with time left to serve on the Full Term of their Primary offence.

And, the use of the term "Any Person" is contingent on that person being a Non-Violent Felony Offender, (absent [any] enhancements, consecutive sentences, or alterative sentences).

Prop. 57 and the California Constitution mandate that all convictions are eligible for Early Parole Consideration, unless they are designated "Violent Felonies" by State law. Prop. 57 was supported by numerous civic leaders; including Gov. Jerry Brown. According to the Calif. Secretary of State, Prop. 57 seek to reduce the state's prison population by increasing the opportunities for release for all but the state's most dangerous criminals.

The newly-added provision is mandatory and makes no distinction among the various types of offenses that qualify as "non-violent". Neither Prop 57 nor any other provision of state law exhaustively list all "non-violent felonies". This is because state law defines "violent felonies" by statute and thereby designates the remaining universe of offenses as "non-violent". To qualify as "violent", an offense must normally be "committed by force, violence, duress, menace, fear of immediate and unlawful bodily injury on the victim or another person." (e.g. ***Cal. Welf. & Inst. Code §6600(b) (Deering 2017)*** (defining "sexually violent offenses").

Pen Code §667.5(c) lists the offenses that are deemed by state law to be "violent felonies" (See, **Exhibit – Three (3)** in the Cal. S. Ct.) which are routinely cited by courts as the definitive list under state law. Notably the state also defines a broader list of serious felonies of which the §667.5(c) are a subset. (See, **Cal. Pen. C. §1192.7(c)**) Offenses that are not listed in either §667.5(c) or §1192.7(c) are consistently deemed "non-violent" and/or "non-serious" under state law. Most registrable offenses are non-violent and are therefore eligible for early parole consideration under 57.

If an offense - including a registrable offense – is not classified as "violent" by §667.5(c), it is a non-violent offense under California law. Because most registrable offenses do not involve "force,

violence, duress, menace, fear of immediate and unlawful bodily injury on the victim or another person," Notably, certain non-violent contact offenses (Sec. **§243.4(a), (d)** and Sec. **§288.(c)** are also excluded from the list of "serious felonies" in Sec. §1192.7(c), which underscores the fact that they are not "violent" offenses for the purpose of state law.

Prop. 57's inclusion of all offenses not already designated "violent" by state law was well intentional, well-publicized, and within the contemplation of those who vote for it. During the 2016 election season, the public debate surrounding Prop 57 was vigorous, particularly the provision granting early parole consideration for non-violation felony convictions. Supporters and opponents of the measure routinely listed and described the specific offenses that would be eligible for early parole consideration "If Prop. 57 became law," including the non-violent registrable offenses.

For example, in the Official Voter Information Guide for Prop 57 published by the California Secretary of State, proponents of the measure explained that only "[v]iolent criminals as defined in Pen. C. §667.5(c) are excluded from parole" under Prop. 57. In the same Voter Information Guide, opponents of the measure likewise pointed to this fact as their first "Argument against Prop. 57," and specifically listed "one" of the registrable offenses that would become eligible for early parole is: Failure to update Registration! CDCR has repeatedly confirmed that Prop. 57 encompasses all felonies not already designated "violent" under state law.

In its public statements, CDCR has repeatedly confirmed that all inmates are eligible for early parole consideration unless their convictions are designated as violent by Pen. C.§667.5(c). CDCR has also confirmed that under Prop. 57, it has no! discretion to determine which offenses qualify for early parole consideration because the universe of "non-violent felony offenses" is already "defined by the Cal. Pen C."

Additionally, CDCR stated in its **"Fact Sheet" dated March 24th, 2017** that "Prop. 57 creates a process for Non-Violent Offenders, as defined by Cal. Pen. Code, who have served the full term for their primary offense ***to be considered for parole by the Board of Parole Hearing (BPH).***" Respondent Former CDCR Secretary Scott Kernan, had also released a video to inmate in which he explained that "all inmates currently serving convictions for a Non-Violent offense, as defined by the Cal. Pen. C. **will be able to participate in this parole process**." Finally, in his own written commentary on Prop 57, Former CDCR Secretary Kernan stated: "It is also important to stress that **Prop. 57 does not change the Pen. Code in regards to what crimes are considered non-violent**."

California voters enacted Prop. 57 with full knowledge that its reforms mandate early parole consideration for registrable offenses, provided they are not among the nine offenses also designated "violent felonies" by state law. There is no! Lawful basis is the text of Prop. 57, The Calif. Const. The Calif. Administrative Procedure Act (**Cal. Gov't Code §11340, et seq.**) or elsewhere that permits CDCR to unilaterally reclassify non-violent registrable offenses as "violent" and thereby **nullify the decision of Calif. Voters in enacting Prop. 57. CDCR lacks the authority to draft regulations that categorically exclude** registrable offenses from the offenses eligible for early parole consideration under Prop. 57. **In enacting "Unofficial Regulations**," CDCR has ***violated its ministerial duties under California Law*** and has otherwise failed to act as required by California Law. **CDCR's Unofficial Regulations** also impermissibly conflict with, and impair and limit, the scope of Prop. 57 by categorically excluding all registrable offenses from its definition of "Non-Violent Offender."

This is one of the many and various ways that the respondents attempt to get over pursuant to the ***Director's Operation Manual*** (DOM's) Underground Regulations **§12010.6** to purposely abridge and disregard the Petitioner's State and Federal Const. Rights which in turn abridge the very same right of Petitioner's Liberty Interest and to be free from any other Injuries and Injustice.

The California Administrative Procedure Act declares that, to be effective, regulations "shall be within the scope of authority conferred and in accordance with standards prescribed by other provisions of law," and that "No! Regulation adopted is valid or effective unless consistent and not in conflict with the statute and reasonably necessary to effectuate the purpose of the statute." **Cal. Gov't Code §§11342.1, 11342.2** (Deering 2017).

Cal. Gov't Code Sec. §§11350(a) states: "Any interested person may obtain a judicial declaration as to the validity of any regulation or order of repeal by bringing an action for declaratory relief in the Superior Court in accordance with the Code of Civil Procedure. The right to judicial determination shall be affected by the failure either to petition or to seek reconsideration of a petition filed pursuant to Sec. §11340.7 before the agency promulgating the regulation or order of repeal. The regulation or order of repeal may be declared to be invalid for a substantial failure to comply with this chapter or, in the case of an emergency prepared pursuant to **subdivision (b)** of **section §11346.1** do not constitute an emergency with the provisions of section **§11346.1"**

Petitioner is an "interested person" within the meaning of the **Cal. Gov't Code §11350(a)** and therefore have standing to bring this action for **Declaratory and Injunctive Relief.**

Petitioner seeks a declaration that the **two provisions of the regulations** challenged in this Petition (i.e. **OAL File No. 2018-1211-01EON**, approved and rendered effective on **January 1st, 2019**) ***See Appendix "C" at pg. 20*** (by the ***Office of Administrative Law (OAL)***) are void, invalid and otherwise unlawful. Specifically, Petitioner seeks a Declaration that the ***definition of "non-violation offender"*** codified at ***Cal. Code Regs. (CCR) Tit. 15 §§ 3490-91, et seq. and §2449.1, et seq.*** is void, invalid, and otherwise unlawful on the grounds that Respondents **lack the authority to issue Unofficial Regulations** that exclude individuals incarcerated for sex offenses from early parole consideration pursuant to Article I, §32(a)(1) of the Cal. Const. unless those individuals are serving sentences exclusively for "violent felonies" as defined by state law. ***See Appendix "C" at pg. 20***

Petitioner also seeks a declaration ***that the definition of "non-violent offender"*** codified at CCR Tit. 15 §§3490-91, et seq. and §2449.1, et seq., is void, invalid, and otherwise unlawful on the grounds that the definition: **(i)** is inconsistent with and in conflict with Art. I, §32(a)(1) of the Cal. Constitution, **(ii)** is inconsistent with and in conflict with state law, including but not limited to Cal. Pen. Code §667.5(c), **(iii)** exceeds to scope of authority granted to Respondents in Art. I, §32(a)(1) of the Cal. Const. and (iv) impermissibly impairs and restricts the scope of Art. I, §32(a)(1) of the California Constitution. ***See Appendix "C" at pg. 20***

Petitioner also seeks a Declaratory Relief that the definition of the **word "[SHALL]" as used** and codified in the Cal. Const. Art. I, §32(a)(1)(A), has been rendered contrary to effectively elevate this process thus far, due to the facts as stated herein ***and for the most part above***, that the actions by the Respondents who have codified at CCR Tit. 15 §§3490-91, et seq. and §2449.1, et seq. **do not confer to the Legislature and the voter's intent** up under the enactment of Prop. 57 in order to render Public Safety, but the incentives , are in contrast to reducing the prison overcrowding, is not being policed into place, accordingly. ***See Appendix-C, at pg. 20.***

Petitioner seek even further, a declaratory relief that that the Definition of Respondents Understanding and/or Misinterpretation of the Cal. Pen. Code §§667.5(c) and §1192.7 of what crimes are clearly defined as either a "Serious" or a "Violent" Felony aside and outside of these two (2) Pen. Code Sec and that all other Non (not) listed crimes are therefore considered "Non-Violent Offenses" that would therefore qualify under the meaning for the newly-added Cal. Const. Art. I, §32(a)(1) (A).

[A], Declaratory Relief should be granted when it will serve a useful purpose in clarifying and setting the Legal relation in issue, nor terminate the proceeding, and afford relief from uncertainly, and controversy by the parties. (***US vs. Wash.,*** (9th Cir. 1985) 759 F.2d 1353, 1357; See, also ***Public***

Affairs Associates vs. Rickover, (1962) 369 US 111, 112, "that the decision to grant declaratory relief should always be made with reference to the public interest." A liberty interest may arise from either of two sources: The Due Process Clause of the US Const. 14th Amendment itself, or State Law. (***US vs. McCarthy,*** (9th Cir. 1986) 801 F.2d 1080 ***(Permanent Injunctive Relief – Granted.)*** As a court of unlimited jurisdiction, the LASC, the Second Appellate Dist. & the Cal. Supreme Court all had vested original jurisdiction over this action for declaratory and injunctive relief pursuant to **Cal. CCP §1084, et seq.; §1060** and **Cal. Gov't Code §11350(a),** where venue was proper pursuant to **CCP §395.**

The Proposition 57 Regulations Promulgated by CDCR

Proposition 57 directed CDCR to adopt regulations "in furtherance of [section 32(a)]" and "certify that these regulations protect and enhance public safety." (Cal. Const., Art. I, §32, subd (b) (hereafter section 32(b)).)

In April 2017, California's Office of Administrative Law (OAL) approved an "emergency rulemaking action"[1] promulgated by CDCR in response to section 32(b)'s direction. The rulemaking purported to flesh out the terms of section 32(a), adding definitions of "nonviolent offender," "primary offense," and "full term." (Cal. Code Regs., Tit. 15, former §3490.) Most relevant here was the definition of nonviolent offender, which the emergency regulations defined as all inmates *except* those who (1) are "[c]ondemned, incarcerated for a term of life without the possibility of parole, *or incarcerated for a term of life with the possibility of parole*," (2) are incarcerated for a violent felony within the meaning of Penal Code section 667.5, subdivision (c), or (3) have been convicted of a sexual offense that requires registration as a sex offender. (Cal. Code Regs., Tit. 15, former §3490, subd.(a), italics added; see also Cal. Code Regs., Tit. 15, former § 2449.1, subd.(a).)

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[1] CDCR is empowered to adopt emergency regulations without the usual required showing of an emergency. ***(Pen. Code, §5058.3, subd (a)(2).)*** Instead, CDCR certifies in a written statement filed with OAL that "operational needs of the department require adoption, amendment, or repeal of the regulation on an emergency basis. The written statement shall include a description of the underlying facts and an explanation of the operational need to use the emergency rulemaking procedure." (Pen. Code, § 5058.3, subd. (a)(2).) The emergency regulation becomes effective upon filing, or upon any later date specified by CDCR in writing, for a period of 160 days. (Gov. Code, § 11346.1, **subd. (d)**; Pen. Code, § 5058.3, **subd. (a)(1)**.)

When it later came time to issue final, adopted regulations in May 2018 after a public comment period, CDCR reconsidered its definition of nonviolent offender. The adopted regulations, now codified at sections 3490 and 2449.1 of title 15 of the California Code of Regulations, no longer exclude Petitioner and others like him from the nonviolent offender definition. (Cal. Code Regs., tit. 15, § 3490, subd. (a) [providing an inmate is a nonviolent offender so long as the inmate is not, among other things, condemned to death, serving a life without possibility of parole sentence, or serving a sentence for commission of a violent felony within the meaning of Penal Code section 667.5, subdivision (c)]; Cal. Code Regs., Tit. 15, §2449.1,subd.(a) [same].)

STANDARD OF REVIEW

"In order for a regulation to be valid, it must be **(1)** consistent with and not in conflict with the enabling statute and **(2)** reasonably necessary to effectuate the purpose of the statute. **(Gov. Code, § 11342.2.)**" (***Physicians & Surgeons Laboratories, Inc. v. Department of Health Services*** (1992) 6 Cal.App.4th 968, 982; ***Henning v. Division of Occupational Saf. & Health*** (1990) 219 Cal.App.3d 747, 757 (*Henning*).) Therefore, "the rulemaking authority of the agency is circumscribed by the substantive provisions of the law governing the agency." (*Henning, supra,* at p. 757.) "'The task of the reviewing court in such a case is to decide whether the [agency] reasonably interpreted [its] legislative mandate. . . . Such a limited scope of review constitutes no judicial interference with the administrative discretion in that aspect of the rulemaking function which requires a high degree of technical skill and expertise. . . . [T]here is no agency discretion to promulgate a regulation which is inconsistent with the governing statute. . . . Whatever the force of administrative construction. . . final responsibility for the interpretation of the law rests with the courts. . . . Administrative regulations that alter or amend the statute or enlarge or impair its scope are void . . . .' [Citation.]" (*Id.* at pp. 757-758.)

When construing constitutional provisions and statutes, including those enacted through voter initiative, "[o]ur primary concern is giving effect to the intended purpose of the provisions at issue. [Citation.] In doing so, we first analyze provisions' text in their relevant context, which is typically the best and most reliable indicator of purpose. [Citations.] We start by ascribing to words their ordinary meaning, while taking account of related provisions and the structure of the relevant statutory and constitutional scheme. [Citations.] If the provisions' intended purpose nonetheless remains opaque, we may consider extrinsic sources, such as an initiative's ballot materials.

[Citation.] Moreover, when construing initiatives, we generally presume electors are aware of existing law. [Citation.] Finally, we apply independent judgment when construing constitutional and statutory provisions. [Citation.]" (***California Cannabis Coalition v. City of Upland*** (2017) 3 Cal.5th 924, 933-934 (*California Cannabis*).)

Certain Provisions of CDCR's Regulations Are Inconsistent With Section 32(a)(1) and Therefore Invalid

It is (now) undisputed that Petitioner qualified as a nonviolent offender and, under section 32(a)(1), is "eligible for parole consideration after completing the full term for his . . . primary offense." There is also no dispute that Petitioner had served the "full term" of Petitioners' primary offense is "the longest term of imprisonment imposed by the court for any offense, *excluding the imposition of an enhancement, consecutive sentence, or alternative sentence*." (§ 32(a)(1)(A), italics added.) The plain language analysis is therefore straightforward in the view of the Second Appellate District Court Judges. There is no question that the voters who approved Proposition 57 intended for Petitioner and others serving non-violent determinate sentences to be eligible for early parole consideration; the express exclusion of alternative sentences when determining the full term is dispositive. (*California Cannabis*, *supra*, 3 Cal.5th at p. 934 ["[W]hen construing initiatives, we generally presume electors are aware of existing law"]; ***People v. Frutoz*** (2017) 8 Cal. App. 5th 171, 174, **fn. 3** *Frutoz*, *supra*, 8 Cal.App.5th at p. 174, fn. 3 ["It has long been settled that the [T]hree [S]trikes law 'articulates an alternative sentencing scheme . . .'"].) The Attorney General and CDCR present no persuasive interpretation of section 32(a)(1) that does not render this exclusionary language largely if not entirely surplusage—indeed, CDCR's Statement of Reasons accompanying the adopted regulations never mentions the exclusionary language at all.

Rather than reckon with the exclusion for alternative sentences, CDCR highlights other features of section 32(a)(1)'s text, devising an argument by negative implication that is at war with the straightforward textual conclusion just outlined. Here is the argument, as articulated by the Attorney General: "The proposition defines 'the full term for the primary offense' to mean 'the longest term of imprisonment imposed by the court for any offense, excluding the imposition of an enhancement, consecutive sentence, or alternative sentence.' [Citation.] The phrasing of this definition indicates that it applies to determinate sentences, which involve 'fixed and uniform terms, set by the court at the time of conviction.' [Citations.]

In other words, CDCR believes California voters should be understood to have barred a "nonviolent offender" like Petitioner from relief not by expressly limiting Proposition 57 relief to those serving determinate sentences, but by using "term of imprisonment" in a technical, idiosyncratic sense to sub rosa exclude those currently serving indeterminate terms by implication.

This intricate argument creates tension in the statutory terms that is unnecessary, and it does not reflect the legislative intention behind Proposition 57. (***People v. Pennington*** (2017) 3 Cal.5th 786, 795 [courts should adopt statutory construction that best serves to harmonize the statute internally and with related statutes]; see ***People v. Valencia*** (2017) 3 Cal.5th 347, 373 [refusing to attribute to "'the average voter, unschooled in the patois of criminal law'" an arcane understanding of legal terminology that is more straightforwardly understood otherwise].) This is especially true when considering the purposes animating Proposition 57, which include reducing wasteful spending on prisons, emphasizing rehabilitation, protecting public safety, and avoiding compelled, indiscriminate inmate releases by federal court decree. (Ballot Pamp., Gen. Elec. (Nov. 8, 2016) text of Prop. 57, p. 141 [§ 2].)

There is strong evidence the voters who approved Proposition 57 sought to provide relief to nonviolent offenders and CDCR's concessions in its briefing and in the adopted regulations themselves that ***Petitioner is*** such an offender (at least for Proposition 57 purposes) should convinced the courts that excluding Petitioner for relief is inconsistent with the voters' intentions. (Ballot Pamp., Gen. Elec. (Nov. 8, 2016) argument in favor of Prop. 57, p. 58 ["[A]s the California Supreme Court clearly stated: parole eligibility in Prop. 57 applies '*only to prisoners convicted of non-violent felonies*'"]; Ballot Pamp., Gen. Elec. (Nov. 8, 2016) rebuttal to argument against Prop. 57, pg. 59 ["The California Supreme Court clearly stated that parole eligibility under Prop. 57 applies '*only to prisoners convicted of non-violent felonies.*' (***Brown v. Superior Court,*** June 6, 2016). Violent criminals as defined in Penal Code [section] 667.5[, subdivision] (c) are excluded from parole"]; see also ***Brown v. Superior Court*** (2016) 63 Cal.4th 335, 353 ["[S]ome offenders covered by the original proposal [that eventually became Proposition 57 as enacted] are serving Three Strikes sentences. Those prisoners would have been middle aged by the time they received parole suitability review. The amended version would apply to the same class of offenders, so long as their offense was nonviolent"].) In addition, excluding from early parole consideration the prison population of indeterminately sentenced inmates deemed nonviolent by CDCR frustrates rather than facilitates the voters' declared intention to avoid indiscriminate inmate releases that might otherwise be required to

respond to constitutional overcrowding concerns (see, e.g., ***Coleman v. Schwarzenegger*** (E.D.Cal. 2009) 922 F.Supp.2d 882, 949, affd. ***Brown v. Plata*** (2011) 563 U.S. 493).

It is Petitioner's interpretation that the **sentence enhancement** "is put aside for purposes of determining the full term for his primary offense, which [here] is the upper term of three years." The language in section 32(a)(1) that excludes any alternative sentence from consideration is most naturally understood as a command to calculate the parole eligibility date as if the alternative sentencing scheme had not existed at the time of Petitioners' sentencing. In that circumstance, the maximum term Petitioner would face for the current crime of conviction is three years in state prison. (Pen. Code § 18.) With the Presentence Custody Credits that Petitioner had on the date of his sentencing **(May 8th, 2017)** Petitioner had long ago since completed his prison term, even before he was transferred and he is therefore now way overdue for eligible early parole discharge consideration.

In sum, CDCR's adopted regulations impermissibly circumscribe eligibility for Proposition 57 parole by barring relief for Petitioner and other similarly situated inmates serving sentences for nonviolent offenses. The offending provisions of the adopted regulations are inconsistent with section 32 and therefore void. (***Henning,*** *supra* 219 Cal. App. 3d at pg. 758.)

In CDCR's own words, "California voters overwhelmingly passed Proposition 57 (64% to 35%) to enhance public safety, stop the revolving door of crime by emphasizing rehabilitation, and prevent federal courts from indiscriminately releasing inmates."**1** To achieve these objectives, Proposition 57 amended the California Constitution "to make individuals who are convicted of 'nonviolent felony' offenses eligible for parole consideration after serving the full prison term for their primary offense."**2** As amended by Proposition 57, the California Constitution now provides:

> **Parole Consideration:** *Any person convicted of a nonviolent felony offense and sentenced to state prison shall be eligible for parole consideration after completing the full term for his or her primary offense.*

CAL. CONST. Art. I, §32(a)(1) (emphasis added).3 Proposition 57 directs CDCR to issue regulations consistent with its provisions. CAL. CONST. Art. I, §32(b). The "early parole consideration" provision of Proposition 57 is mandatory and leaves no discretion for CDCR to pick and choose the persons to whom it applies.

However, on March 5, 2018, in the first related case Alliance for Constitutional Sex Offense Laws, et al. v. CDCR, et al. **(Case No. 34-2017-80002581),** (See, **Exhibit - F**) the Court ruled that

CDCR lacks the authority to exclude all Registrants from the benefits of Proposition 57. Specifically, the Court ruled that "excluding crimes based upon recidivism rates rather than violence is contrary to the voters' focus in Proposition 57 on 'nonviolent' felonies." (**Order dated March 5, 2018** in Case No.34-2017-80002581, at 2:7-13 (emphasis in original).) The Court explained that "[t]he voters decided parole consideration for those convicted of 'nonviolent' felony offenses is consistent with public safety. CDCR cannot override the voters' direction placed in the Constitution by substituting a differing view of public policy." (Id. at 14:14-17.) The Court further explained that, in categorically excluding Registrants from the benefits of Proposition 57, CDCR's emergency regulations "impermissibly modifie[d] the voters' directive by amending Proposition 57 to insert the phrase 'except for registered sex offenders.'" (Id. at 13:8-10.) The Court also issued a Writ of Mandate directing CDCR "to define 'nonviolent' in a manner consistent with the Constitution and the voters' directive." (See Peremptory Writ of Mandate, as **Exhibit "F"** Re: Judgment Granting Peremptory Writ of Mandate, dated March 20, 2018.)

In issuing its Final Regulations, CDCR blatantly disregarded that Court's Order, as well as the Court's Writ of Mandate, by again excluding anyone convicted of a Registrable Offense from the early parole process under Proposition 57. See CAL.CODE REGS. Tit. 15, §§ 3491(b)(3) (hereinafter, the "Final Regulations"). In so doing, CDCR again relied upon the same erroneous public safety argument rejected by that Court. (See, e.g., Final Statement of Reasons, dated April 30, 2018, at pp. 20-21 [discussing amendment to Section 3491], pp. 57-60 ["Standard Response #15"].)

By excluding all individuals convicted of nonviolent Registrable Offenses from early parole consideration under Proposition 57, CDCR's Final Regulations nullify the vote of the majority of Californians, who approved Proposition 57 with full knowledge that its early parole consideration provision applies to all nonviolent offenses, including nonviolent Registrable Offenses. CDCR's categorical exclusion of all Registrable Offenses from the Final Regulations implementing

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1 PROPOSITION 57, THE PUBLIC SAFETY AND REHABILITATION ACT OF 2016, http://www.cdcr.ca.gov/proposition57/.

2 Prop 57, Analysis by the Legislative Analyst, at 56(emphasis added), http://vig.cdn.sos.ca.gov/2016/general/en/pdf/prop57-title-summ-analysis.pdf.

3 Although Article I, Section 32 of the California Constitution is now the governing law, for ease of reference this Petition will refer to both that constitutional provision and Proposition 57 interchangeably.

Proposition 57 repeats the agency's earlier error because it impermissibly restricts and impairs the scope of Proposition 57, in violation of the California Administrative Procedure Act (CAL. GOV'TCODE § 11340, et seq.), as well as Article I, Section 32 of the California Constitution.

Petitioner therefore respectfully seeks, in this action, a Writ of Mandate directing CDCR to treat as void and to repeal Section 3491(b)(3) of the Final Regulations. Petitioner also seeks a judgment in this action declaring that CDCR lacks the authority to exclude those convicted of nonviolent Registrable Offenses from its Final Regulations implementing Proposition 57's early parole provision. Further, Petitioner seeks a judgment declaring that CDCR's exclusion of those convicted of nonviolent Registrable Offenses is unconstitutional, void, and otherwise invalid.

PROCEDURAL HISTORY

On May 8th, 2017 Petitioner was sentenced to State Prison for the three (3) yr high term with a one (1) year enhancement, although Petitioner was sentenced six (6) months after the voters had passed Prop 57 on November 8th, 2016; and it went into effect on the following day, 11/09/2016 and thus the Cal. Const. Art. I., §32(a)(1)(A) was also amended. Petitioner was given 340days actual and 340 days Good Time Work Time Credits for a total of 680 days in **Case No. BA443387.**

On June 21st, 2017 Petitioner arrived at Wasco State Prison with 386 days of actual custody credits. (46 more days after sentencing) Petitioner has been denied the right to earn and be given ***[R]etroactive 2-for-1 time credits*** as ordered by the three (3) panel 9th Cir. Federal Court Order effective January 1st, 2015. (See, **Exhibit-(1)** in the Cal. S. Ct.)

On September 14th, 2017 (Eighty-Five (85) days later) after arriving at Wasco State Prison, Petitioner was granted minimum – A privileges. When he had asked his counselor 'B. Zollinger about his 2-for-1 credit status (33.3%) Petitioner was informed by **Zollinger** that once he was transferred out and went to his next (UCC) Classification Hearing then that's when Petitioner could ask about the 2-for-1 credit status. (See, **Exhibit-(2)** in the Cal. S. Ct.)

Petitioner sentencing was not for anything serious **or** for a violent crime as listed in the Cal. Pen. Code §667.5(c) nor does Petitioner have any serious **or** violent convictions. (See, **Exhibit-(3)** in the Cal. S. Ct.) **On September 15th, 2017** Petitioner is transferred to a Mainline Prison.

On September 27th, 2017 Petitioner was told at his (UCC) Classification by **Capt. A. Vasquez,** that because Petitioner was not serving a "LWOP" sentence, that Petitioner did not qualify for Prop 57 to be Release Early. (See, **Exhibit-(4)** in the Cal. S. Ct. But, also look at **Exhibit-Zero**

too in the Cal. S. Ct.) Petitioner is supposed get his 2-for-1 credit status (33.3%) started in order to earn sixty-six point seven (66.7%) credit earning status as a matter of that Federal Court Order.

On September 27th, 2017 Pursuant to the **CCR Tit. 15 §3086 et seq.** Petitioner (using the Prison Mailbox Rule and Pursuant to the Department's Operation Manual **(DOM's) Section §5410.8** Petitioner) had mailed out his request to find out **Why** was there **Discrimination** against him for not getting what the Three panel Federal judges had granted inmates with medical disabilities.

On October 11th, 2017 petitioner had mailed out a Second Request to the same address by legal mail again.

On October 27th, 2017 Petitioner filed an Administrative 602 Appeal regarding the board's reason for the discrimination against Pet'r for not being release. (See, **Exhibit-(5)** in the Cal. S. Ct.)

On November 7th, 2017 Petitioner had finally received back the September 27th, 2017 first mailed-out Inquiry. (See, **Exhibit-(6)** in the Cal. S. Ct.) which had only came back after Petitioner had mailed out the 602 with a proof of service and one also out to his attorney Gary S. Casselman.

On or about November 8th, 2017 Petitioner's 602 Appeal was sent back with an attachment. (See, **Exhibit-(7)** in the Cal. S. Ct.)

On or about November 7th or 8th, 2017 Petitioner had resubmitted the September 27th, 2017 request back out to get a Supervisor's reply since that was the alleged reason for the return of Pet'r's 602 Discrimination Appeal Denying the 2-for-1 credit status. Petitioner is an ADA Wheelchair I/M.

On or about November 28th, 2017 Petitioner had resubmitted and re-mailed back out the 602, along with filling out the attachment advising that over three (3) weeks had gone by and **No! Supervisor** was willing to answer my questions in the required time frame as stated in the **DOM's** up under **Section §54090.4.3** and probably will not because I was not informed that the BPH had abolished their administrative appeal procedure nearly fifteen (15) yrs ago and all BPH Denial Must be taken up by a Writ, so on December 1st, 2017 Petitioner filed a Mandate against the Respondents.

On or about November 21st, 2017; November 29th, 2017 and on **December 8th, 2017** while Petitioner's Writ was pending it had came to Petitioner's attention that the Respondent's had been trying to get certain unofficial languages to be added into Prop 57 that was not apart what the voter's voted for and was trying to change what additional offenses that they believe are violent that are not listed up under the California Penal Code Section §667.5 (c) (See, **Exhibit-(8)** in the Cal. S. Ct.)

On December 13th, 2017 Petitioner's 602 Appeal was returned stating rejected for allegedly/ supposedly not attaching a document that was already attached. (See, **Exhibit-(9)** in the Cal. S. Ct.)

On January 4th, 2018 and after waiting at least two (2) months for Ms. Maria Allen, the C. R. Manager in The records department to respond back to the re-submitted "22" form that Petitioner had received back on November 7th, 2017 and resent back the following day (See, **Exhibit-(6) Again,** in the Cal. S. Ct.) using the Prison Mailbox Rule and Pursuant to the DOM's Sec. §5410.8. Petitioner re-mailed back out the 602 appeal before the 30days were up. (See, **Exhibit-(10)** in the Cal. S. Ct.)

On or about January 26th, 2018 Petitioner's 602 Futile Appeal was returned as "Cancelled" for supposedly not returning it in within the thirty (30) days time allotted although it was, So Petition took out the time and wrote the attached letter (See, **Exhibit-(11)** in the Cal. S. Ct.) to M. Voong – Chief Appeals Coordinator with the Proof of Service (POS) and copies from the **Legal Mail Log Book** along with the Original filed Futile Appeal that I had been submitting now for over the past three (3) months during that time period. This had exhausted the **Futile Appeal Process!!!**

ARGUMENT

Because Prop 57 Mandates that all non-violent offenders "shall" be eligible for early parole consideration, Petitioner and probably many others with pass registrable or non-registrable priors are being denied. By excluding such individuals, CDCR regulatory definition of a "non-violent offender" nullify the vote of the majority of Californians, who approved Prop 57 with full knowledge that its early parole consideration provision applies to all non-violent offenses including registrable offenders

CDCR's categorical exclusion of all registrable offenses from their unofficial regulations implementing Prop 57 impermissibly restricts and impairs the scope of Prop 57 in violation of the Cal Admin. Procedure Act. (Cal Gov't Code §11340 et seq.) as well as Art. I, §32. Of the Cal. Const.

Petitioner's issues are Akin to the case of "***In re Reina*** (1985) 171 CA 3d 638"; except Petitioner is clearly outright being denied a Federal Order for the ***[Rletroactive 2-for-1 time credits***.

In the most recent case on a Judicial Review of one of the Board's Decisions the court in "***In re Ilasa,*** (2016) 3 CA 5th 489, 500-510, has stated in section two (2) Parole Following . . . . "Under specified standards set forth in §3041, subd (b) "The Board Must Grant Parole unless it determines that public safety requires a lengthier period of incarceration for the individual because of the gravity of the offense underlying the conviction."" (See also, ***In re Elkins,*** (2006) 144 CA 4th 475, 496.)

Pursuant to **28 USC 1343 (3)** Civil Rights and Elective Franchise, petitioner brings this Writ Petition here based upon the aforementioned as stated above an up under **42 USC §12131 & § 12132 "Public Entity" Discrimination.**

ISSUES PRESENTED FOR REVIEW ON LEGALITY AND MEANING OF PROP 57 PRIMARY PRISON TERM; 9TH CIR. POSTSENTENCE 2-FOR-1 TIME CUSTODY CREDITS RETROACTIVE & ADA DISCRIMINATION

FACTUAL ALLEGATIONS

Petitioner realleges and incorporates herein, as though fully set forth, each and every, all and inclusively, pages 1 through 19.

As a court of unlimited jurisdiction, over this action for Declaratory and Injunctive relief pursuant to California Code of Civil Procedure sections 1084, et seq. and §1060, as well as California Government Code section 11350(a). Venue is also proper pursuant to California Code of Civil Procedure section 395.

Respondent California Department of Corrections and Rehabilitation ("CDCR") is a political subdivision of the State of California.

CDCR is the agency responsible for operating the state's prison system, and issued the Regulation at issue in this action.

Respondent Scott Kernan ("Kernan") is and at all material times was the Secretary of CDCR. Petitioner is informed and believes and thereon alleges that Secretary Kernan is and was responsible for drafting, issuing, and enforcing the Final Regulations that are the subject of this action, with ultimate responsibility for ensuring CDCR's compliance with its legal duties. Secretary Kernan is sued in his official capacity along with ***Ralph M. Diaz who is the new Secretary for CDCR.***

Respondents CDCR, Kerna & Diaz shall be referred to herein collectively as "Respondents."

Proposition 57 and the California Constitution Mandate that All Convictions Are Eligible for Early Parole Consideration, Unless they are Designated "Violent Felonies" by State Law

On November 8, 2016, California voters approved Proposition 57 by a margin of 64.5% to 35.5%.**4** Proposition 57 was supported by numerous civic leaders, including Governor Jerry Brown. According to the California Secretary of State, Proposition 57 seeks to reduce the state's prison population by increasing the opportunities for release for all but the state's "most dangerous criminals."**5** To that end, Proposition 57 amended the California Constitution to "to make individuals who are convicted of 'nonviolent felony' offenses eligible for parole consideration after serving the full prison term for their primary offense."**6** As amended and added by Proposition 57, Article I, Section 32 of the California Constitution now provides: **Parole Consideration: Any person convicted of a nonviolent felony offense and sentenced to state prison shall be eligible for parole consideration after completing the full term for his or her primary offense.**

CAL. CONST. Art. I, § 32(a)(1) (emphasis added). This provision is mandatory and makes no distinction among the types of offenses that qualify as "nonviolent."

Neither Proposition 57 nor any other provision of state law exhaustively lists all "nonviolent felonies." That is because state law defines "violent felonies" by statute and thereby designates the remaining universe of offenses as "nonviolent." To qualify as "violent," an offense must normally be "committed by force, violence, duress, menace, fear of immediate and unlawful bodily injury on the victim or another person." E.g., **CAL. WELF. & INST. CODE § 6600(b) (Deering 2017)** (defining "sexually violent offenses"). Penal Code section 667.5(c) lists the 23 offenses that are deemed by state law to be "violent felonies," of which the following offenses are Registrable Offenses:

> (c) For the purpose of this section, "violent felony" shall mean any of the following: 16
> . . . .
> (3) Rape as defined in paragraph (2) or (6) of subdivision (a) of Section 261 or paragraph (1) or (4) of subdivision (a) of Section 262 [of the California Penal Code].
> (4) Sodomy as defined in subdivision (c) or (d) of Section 286.
> (5) Oral copulation as defined in subdivision (c) or (d) of Section 288a.
> (6) Lewd or lascivious act as defined in subdivision (a) or (b) of Section 288.
> . . . .
> (11) Sexual penetration as defined in subdivision (a) or (j) of Section 289.
> . . . .
> (15) Assault with the intent to commit a specified felony, in violation of Section 220.

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4 California Proposition 57, Parole for Non-Violent Criminals and Juvenile Court Trial Requirements (2016), BALLOTPEDIA, https://ballotpedia.org/California_Proposition_57,_Parole_for_NonViolent_Criminals_and_Juvenile_Court_Trial_Requirements_(2016) (last visited April 24, 2017).

5 California Secretary of State, OFFICIAL VOTER INFORMATION GUIDE, "Argument in Favor of Proposition 57," at 58, http://vig.cdn.sos.ca.gov/2016/general/en/pdf/complete-vig.pdf (hereinafter, "VOTER INFORMATION GUIDE"). The additional reforms enacted by Proposition 57, which are not at issue in this action, "require judges, rather than prosecutors, to determine whether juveniles charged with certain crimes should be tried in juvenile or adult court," and "give[] inmates the opportunity to earn additional credits for good behavior and participation in rehabilitative, educational, and career training programs so they are better prepared to succeed and less likely to commit new crimes when they re-enter our communities." CDCR, Proposition 57: The Public Safety and Rehabilitation Act of 2016 – Frequently Asked Questions, at 1 (March 2017), http://www.cdcr.ca.gov/proposition57/docs/faq-prop-57.pdf. The full text of Proposition 57 as maintained by the California Secretary of State can be found here: https://www.gov.ca.gov/docs/The_Public_Safety_and_Rehabilitation_Act_of_2016_(00266261xAEB03).pdf.

6 VOTER INFORMATION GUIDE, supra note 5.

(16) Continuous sexual abuse of a child, in violation of Section 288.5. 1

. . . .

(18) Rape, spousal rape, or sexual penetration, in concert, in violation of Section 264.1. 7

The Section 667.5(c) list above is routinely cited by courts as the definitive list of "violent felonies" under state law. Notably, state law also defines a broader list of "serious felonies," of which the Section 667.5(c) "violent felonies" are a subset. See CAL. PENAL CODE § 1192.7(c). Offenses that are not listed in either Section 667.5(c) or Section 1192.7(c) are consistently deemed "nonviolent" and/or "non-serious" under state law.

Consistent with Section 667.5(c), a separate statute (Section 6600(b) of the Welfare and Institutions Code) reiterates the subset of Registrable Offenses that qualify as "violent sex crimes," as follows:

> "Sexually violent offense" means the following acts when committed by force, violence, duress, menace, fear of immediate and unlawful bodily injury on the victim or another person, or threatening to retaliate in the future against the victim or any other person, and that are committed on, before, or after the effective date of this article and result in a conviction or a finding of not guilty by reason of insanity, as defined in subdivision (a): a felony violation of Section 261, 262, 264.1, 269, 286, 288, 288a, 288.5, or 289 of the Penal Code, or any felony violation of Section 207, 209, or 220 of the Penal Code, committed with the intent to commit a violation of Section 261, 262, 264.1, 286, 288, 288a, or 289 of the Penal Code.

CAL. WELF. & INST. CODE § 6600(b) (Deering 2017). This list is redundant of the Section 667.5(c) list, which confirms that the nine Registrable Offenses listed in Section 667.5(c) are the only offenses deemed "violent" for the purposes of state law. **8**

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7 The remaining offenses listed in Section 667.5(c) are: "(1) Murder or voluntary manslaughter. (2) Mayhem. . . . (8) Any felony in which the defendant inflicts great bodily injury on any person other than an accomplice which has been charged and proved as provided for in Section 12022.7, 12022.8, or 12022.9 on or after July 1, 1977, or as specified prior to July 1, 1977, in Sections 213, 264, and 461, or any felony in which the defendant uses a firearm which use has been charged and proved as provided in subdivision (a) of Section 12022.3, or Section 12022.5 or 12022.55. (9) Any robbery. (10) Arson, in violation of subdivision (a) or (b) of Section 451. . . . (12) Attempted murder. (13) A violation of Section 18745, 18750, or 18755. (14) Kidnapping. . . . (17) Carjacking, as defined in subdivision (a) of Section 215. . . . (19) Extortion, as defined in Section 518, which would constitute a felony violation of Section 186.22. (20) Threats to victims or witnesses, as defined in Section 136.1, which would constitute a felony violation of Section 186.22. (21) Any burglary of the first degree, as defined in subdivision (a) of Section 460, wherein it is charged and proved that another person, other than an accomplice, was present in the residence during the commission of the burglary. (22) Any violation of Section 12022.53 (23) A violation of subdivision (b) or (c) 11418.

Most Registrable Offenses are Nonviolent and are Therefore Eligible for Early Parole Consideration Under Proposition 57

If an offense – including a Registrable Offense – is not classified as "violent" by Section 667.5(c), it is a nonviolent offense under California law. Because most Registrable Offenses do not involve "force, violence, duress, menace, fear of immediate and unlawful bodily injury on the victim or another person," they are not classified by Section 667.5(c) as "violent," and are therefore nonviolent. For example, a non-contact Registrable Offense is inherently nonviolent. Such non-contact offenses include possession or control of child pornography (Sections 311.11(a) and 311.2), sending or exhibiting harmful material to a minor (Section 288.2), contacting a minor with the intent to commit a sex offense (Sections 288.3 and 288.4(a)), and inveigling or enticing a minor to have sexual contact (Section 266). Additionally, certain contact offenses that do not involve "force, violence, duress, menace, fear of immediate and unlawful bodily injury on the victim or another person" are also deemed nonviolent, including sexual battery (Section 243.4(a), (d)), and lewd or lascivious acts with a child aged 14 or 15 (Section 288(c)). Notably, these nonviolent contacts offenses are also excluded from the list of "serious felonies" in Section 1192.7(c), which underscores the fact that they are not considered "violent" offenses for the purposes of state law.

California Voters Understood that Proposition 57 Applies to All Felonies Not Already Designated "Violent" by State Law

Proposition 57's inclusion of all offenses not already designated "violent" by state law was intentional, well-publicized, and within the contemplation of those who voted for it. For example, during the 2016 election season, the public debate surrounding Proposition 57 was vigorous, particularly the provision granting early parole consideration for nonviolent felony convictions. Supporters and opponents of the measure routinely listed and described the specific offenses that would be eligible for early parole consideration if Proposition 57 became law, including nonviolent Registrable Offenses.

Another example is found in the Official Voter Information Guide for Proposition 57 published by the California Secretary of State. In that Guide, proponents of the measure explained that only "[v]iolent criminals as defined in Penal Code 667.5(c) are excluded from parole" under Proposition 57. **9** In the same Guide, opponents of the measure likewise pointed to this fact as their first "Argument Against Proposition 57," and specifically listed some of the Registrable Offenses that would become eligible for early parole consideration, as follows:

> Proposition 57 will allow criminals convicted of RAPE, LEWD ACTS AGAINST A CHILD, GANG GUN CRIMES and HUMAN TRAFFICKING to be released early from prison.. . . Here are the facts:
>
> The authors of Proposition 57 claim it only applies to "non-violent" crimes, but their poorly drafted measure deems the following crimes "non-violent" and makes the perpetrators eligible for EARLY PAROLE and RELEASE into local communities: • Rape by intoxication • Rape of an unconscious person • Human Trafficking involving sex act with minors • Drive-by shooting • Assault with a deadly weapon • Hostage taking • Attempting to explode a bomb at a hospital or school • Domestic violence involving trauma • Supplying a firearm to a gang member • Hate crime causing physical injury • ***Failing to register as a sex offender*** • Arson • Discharging a firearm on school grounds • Lewd acts against a child 14 or 15 • False imprisonment of an elder through violence. *partial list. **10**

- During the election season, many law enforcement officials also explained to the public that Proposition 57's use of the phrase "nonviolent felonies" would render all convictions eligible for early parole consideration, unless they were specifically designated "violent" felonies by Penal Code section 667.5(c) for example, Ballotpedia.com, an authoritative website regarding California's initiative and referendum system, published an interview with Sacramento County ***District Attorney Anne Marie Schubert who confirmed that:***

> the California Penal Code defines 23 crimes as ***"violent."*** According to Schubert, "Domestic violence, rape of an unconscious person, exploding a bomb with the intention of hurting people . . . The public rightly believes those crimes are violent, but under the penal code they are nonviolent."
> . . . .
> Moreover, under California legal precedent, any offense that is not among the 23 designated "violent" in Section 667.5(c) of the state penal code is regarded as ***"nonviolent."***
>
> Numerous other commentators and newspaper editorials throughout California echoed these statements, and discussed their merits pro and con. In the context of these explanations from law enforcement, including a District Attorney, the voters overwhelmingly passed Proposition 57 with 64.5% of the vote.

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8 Penal Code Section 667.6(e) also applies sentencing enhancements to convictions for each of the of the violent Registrable Offenses listed in Section 667.5(c), as well as for the crime of rape "[w]here a person is prevented from resisting by any intoxicating or anesthetic substance, or any controlled substance, and this condition was known, or reasonably should have been known by the accused," [Section 261(a)(3)], and for certain Registrable Offenses that are accomplished "by threatening to use the authority of a public official [Sections 261(a)(7), 262(a)(5), 286(k), 288a(k), and 289(g)]." However, Penal Code Section 667.6(e) does not designate these additional offenses as "violent."

[9] VOTER INFORMATION GUIDE, *supra* note 5. [10] VOTER INFORMATION GUIDE, *supra* note 5.

The Sacramento Superior Court Ruled that CDCR Lacks the Authority to Exclude those Convicted of Registrable Offenses from the Benefits of Proposition 57 (See, ***Exhibit - F***)

CDCR is the agency responsible for administering the state's prisons and for issuing Regulations that govern parole consideration. Proposition 57 specifically provides that CDCR "shall adopt regulations in furtherance of these provisions," including those that govern the eligibility of inmates for early parole consideration. **CAL. CONST. Art. I, §32(b).**

On March 24, 2017, CDCR submitted draft emergency regulations purporting to implement Proposition 57 to the Office of Administrative Law ("OAL"). (OAL File No. 2017-0328-01EON.) CDCR petitioned OAL to exempt the emergency regulations from public comment pursuant to the "emergency" provisions of Penal Code section 5058.3. OAL complied with CDCR's request and issued the emergency regulations on April 18, 2017 without public comment. CDCR's emergency regulations deprived those convicted of Registrable Offenses from the early parole process of Proposition 57 by defining "nonviolent felony" to exclude anyone convicted of a Registrable Offense, as follows: **Definitions.**

> For the purpose of this article, the following definitions shall apply:
> **(a)** A "Nonviolent Offender" is an inmate who is not any of the following:
> **(1)** Condemned, incarcerated for a term for life without the possibility of parole, or incarcerated for a term of life with the possibility of parole;
> **(2)** Serving a term of incarceration for a "violent felony;" or
> **(3)** Convicted of a sexual offense that requires registration as a sex offender under Penal Code section 290.. . . .
> **(c)** "Violent Felony" is a crime or enhancement as defined in Penal Code section 667.5, subdivision (c).
> (OAL File No. 2017-0328-01EON, §§ 3490(a)(3) and 2449.1(a)(3).)

On March 5, 2018, The Sacramento Superior Court granted the moving party's Motion for Peremptory Writ of Mandate, (Order dated ***March 5, 2018*** in Case No. 34-2017-80002581, at p. 22:16-26.) (See, **Exhibit-(12)** in the Cal. S. Ct.) (See, ***Exhibit*** – **F, herein**) and ruled as follows:

CDCR must promulgate regulations defining "nonviolent felony offenses" to implement Proposition 57. CDCR declared no person convicted of a sex offense requiring registration shall be reviewed for parole, even though the Legislature has not deemed all such sex offense to be violent crimes. CDCR based this exclusion on recidivism rates – not whether a particular sex offense is "nonviolent." That is not what the voters directed. CDCR went even further by declaring that all persons previously convicted of a sex offense requiring registration under section 290 are ineligible for parole review mandated by Proposition 57 – even if currently serving a prison sentence for a

nonviolent offense. That is not what the voters said.

CDCR cannot substitute its judgment for what it wishes the drafters of Proposition 57 had said. **Nor may CDCR's departmental regulations override a clear directive of the Constitution.**

Yet, rather than comply with this "clear directive of the Constitution," CDCR has defied it, as well as this Court's ruling, by issuing Final Regulations that repeat its prior error by excluding all Registrants from the early parole process of Proposition 57. Notably, CDCR repeats its error via a different path. That is, Final Regulations do not repeat the absurdity, present in the emergency regulations, of excluding anyone convicted of a nonviolent Registrable Offense from the regulatory definition of "nonviolent offender." See CAL. CODE REGS. Tit. 15, §§3490(a), 2449.1(a). Instead, CDCR's Final Regulation achieve the same unlawful result by adding a new provision that categorically exempts anyone convicted of a Registrable Offense from eligibility for early parole consideration, even if they meet the definition of "nonviolent offender," and otherwise qualify for relief under Proposition 57. Section 3491 of the Final Regulations states:

> **Section 3491. Eligibility Review.**
> (a) A nonviolent offender, as defined by subsections 3490(a) and 3490(b), shall be eligible for parole consideration by the Board of Parole Hearings under article 15 of chapter 3 of division 2 of this title.
> (b) *Notwithstanding subsection (a), an inmate is not eligible for parole consideration by the Board of Parole Hearings under article 15 of chapter 3 of division 2 of this title if any of the following apply:*
> . . .
> (3) The inmate is convicted of a sexual offense that currently requires or will require registration as a sex offender under the Sex Offender Registration Act, codified in sections 290 through 290.24 of the Penal Code.

CAL. CODE REGS. tit. 15, § 3491 (emphasis added). In categorically excluding anyone convicted of a Registrable Offense from the benefits of Proposition 57's early parole consideration provision, CDCR's Final Regulations again rely upon the same erroneous public safety and recidivism arguments rejected by this Court. (See, e.g., Final Statement of Reasons, dated April 30, 2018, at pp. 20-21 [discussing amendment to Section 3491], pp. 57-60 ["Standard Response #15"].)

California voters enacted Proposition 57 with full knowledge that its reforms mandate early parole consideration for nonviolent Registrable Offenses. There is no lawful basis in the text of Proposition 57, the California Constitution, the California Administrative Procedure Act (CAL. GOV'T CODE § 11340, et seq.), or elsewhere that permits CDCR to unilaterally reclassify nonviolent Registrable Offenses as "violent," or to deny the benefits of Proposition 57 to anyone

convicted of a nonviolent Registrable Offense. CDCR lacks the authority to draft Final Regulations that categorically exclude Registrable Offenses from the offenses eligible for early parole consideration under Proposition 57. In enacting the Final Regulations at issue, CDCR has violated its ministerial duties under California law, and has otherwise failed to act as required by California law. CDCR's Final Regulations also impermissibly conflict with, as well as impair and limit, the scope of Proposition 57 by categorically excluding anyone convicted of a Registrable Offense from eligibility for Proposition 57's early parole consideration process.

There are no plain, adequate, complete, speedy, or required alternative remedies available to Redress the violations of law committed by Respondents in this action, nor are there any available, Non-futile or required administrative remedies available to redress the violations of law committed by Respondents. Damages are not adequate to protect Petitioner from the continuing effects of Respondents' violations of the law and from Respondents' failure to carry out their duties under the law. Petitioner is still an individual who is currently kidnapped within the system by the State of California, CDCR for an invalid conviction for a non-violent and an alleged registrable offense. Petitioner is one who Prop. 57 should have been entitled to; applied to, and who is an injured party by the use of the CDCR **Unofficial Regulations** at issue here in imposed through the **DOM's §12010.6**

In, ***In re Kali D.*** (1995) 37 CA 4th 381, "The Objective of statutory interpretation is to ascertain and effect legislative intent, and in doing so the court generally look first at the "plain meaning" of the words used. (***People vs. Overstreet,*** (1986) 42 Cal. 3d 891, 895). When the statutory language is clear and unambiguous, there is no need for further analysis, nor is there a need to resort to "indicia of the intent of the legislature." (***Lungren vs. Deukmejian,*** (1988) 45 Cal. 3d 727, 735.) However, the "plain meaning rule does not prohibit a court from determining whether the literal meaning of a statute comports with its purpose" and provisions relating to the same subject matter must be construed together and "harmonized to the extent possible." (Ibid.)

During the era of ***People vs. Canty,*** (2004) 32 cal. 4th 1266, 1276, "In interpreting a Voter initiative such as Prop 36, we apply the principles that govern the construction of a statute. "Our role in construing a statute is to ascertain the legislature's intent so as to effectuate the purpose of the law" (***Curle vs. Sup. Ct*** (2001) 24 Cal. 4th 1057, 1063; ***People vs. Pieters,*** (1991) 52 Cal. 3d 894, 898.) and forty yrs after the case of **Solberg vs. Sup. Ct.** (1977) 19 Cal. 3d 182, 198 our State Supreme Ct. had even stated "When statutory language is thus clear and unambiguous there is no need for construction and courts should not indulge in it." Prop 57 was adopted by voters, there is no Ambiguous language!

REASONS FOR GRANTING THE PETITION

Because it would be the right concise act to do in light of the information presented herein, and Pursuant to Rule 20.4(a); ***Picard vs. Connor*** (1971) 404 US 270, 275; ***Taylor vs. Lewis*** **(9th Cir 2006)** 460 F.3d 1093, 1097 **n4 and** ***Hovey vs. Ayers*** **(9th Cir. 2006)** 458 F.3d 892, 901-902.

"A denial by a State Court of a Writ of Habeas Corpus to one who claims that the judgment under which he is imprisoned was rendered in violation of his Constitutional Rights is review by the Supreme Court of the United States as necessarily involving a Federal Question. State Court's, equally with Federal Courts, are under an obligation to guard and enforce every right secured by the Federal Question." ***Smith vs. O'Grady*** (1941) 312 US 329, 334.

"An accused may have been denied the assistance of counsel under circumstances which constitute an infringement of the United States Constitution. If the State affords No! Mode for redressing that wrong, he may come to the Federal Courts for relief...." ***Carter vs. Illinois*** (1946) 329 US 173, 174-175 **HN6.**

In ***Bowen vs. Johnson*** (1939) 306 US 19-30 **HN9, 10** citing: "***Ex parte Nielsen*** (1889) 131 US 176, 183 [33 L. Ed 118, 120, 9 S. Ct. 672] and the remedy of Habeas Corpus may be needed to release the prisoner from a punishment imposed by a court manifestly without Jurisdiction to pass judgment. It ***[MUST]*** **[n]**ever be forgotten that the Writ of Habeas Corpus is the precious safeguard of personal liberty and there is no higher duty than to maintain it unimpaired. (See, also ***In re Bonner*** (1894) 151 US 242, 26.)"

Ex parte Lange (1874) 85 US 163, "The rule requiring resort to appellate procedure when the trial court has determined its own jurisdiction of an offense is not a rule denying the power to issue a Writ of Habeas Corpus when it appears that never the less the trial court was without jurisdiction. The rule is not one defining power but one which relates to the appropriate exercise power." "Throughout the Centuries the Great Writ has been the shield of personal freedom insuring liberty to persons illegally detained. Respecting the state's grant of a right to test their detention, the Fourteenth Amendment weighs the interest of rich or poor criminals in equal scale, and its hand extends as far to each." ***Smith vs. Bennett*** (1961) 365 US 708, 713 **HN9.**

Miller vs. Pate (1967) 386 US 1 **N2,** "More than 30 years ago this court held that the Fourteenth Amendment cannot tolerate a State Criminal Conviction obtained by the knowing use of false evidence. ***Mooney vs. Holohan*** (1935) 294 US 103. There has been **No!** Deviation from that established principle. ***Napue vs. Illinois*** (1959) 360 US 264; ***Pyle vs. Kansas*** (1942) 317 US 213; cf. ***Alcorta vs. Texas*** (1957) 355 US 28. There can be no retreat from that principle here."

"The United States Supreme Court holds allegation of a pro se complaint to less stringent standards than formal pleadings drafted by lawyers. A complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the Plaintiff can prove No! Set of facts in support of his claim which would entitle him to relief." "We conclude that he is entitled to an opportunity to offer proof." ***Haines vs. Kerner*** (1942) 404 US 519 **HN 1, 2, 3.**

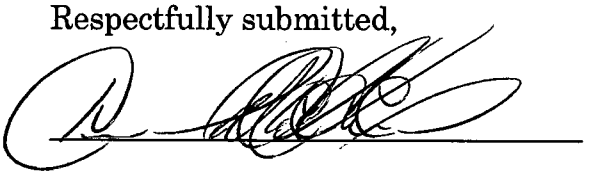
As Chief Justice Burger has written: "[Under] our adversary system an Appellate Court cannot function efficiently without lawyers to present whatever there is to be said on behalf of an appellant, however meager his claims may be, So that the court can make an informal appraisal." (***Johnson vs. United States*** (1966) 360 F. 2d 844, 847 [124 App. D.C. 29] concurring opinion.) Cited In ***People vs. Smith,*** (1970) 3 Cal. 3d 192.

"The Sixth Amendment Right to Counsel is the right to the effective assistance of counsel." ***McMann vs. Richardson*** (1970) 397 US 759, 771 **N*14,** 90 S. Ct. 1441, 25 L. Ed. 2d 763

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: March 30th, 2019