

No. **20-5333**

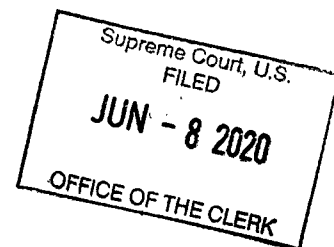
ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

norman blanco — PETITIONER
(Your Name)

vs.

debbie duracion nader — RESPONDENT(S)



ON PETITION FOR A WRIT OF CERTIORARI TO

n/a
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

norman blanco #8-39441
(Your Name)

P.O. box 4490 (B-4-20)
(Address)

Lancaster, California 93539
(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

- (1) Under parole consideration under article I section 32 of California constitution proposition 57 for inmates with a non-violent felony sentence does California penal code 245(A)(2) Assault with a firearm principal primary felony offense qualify under the parole consideration since this offense does not list under California law "violent felony" California penal code 667.5(c)??
- (2) If proposition 57 excludes the imposition of an "enhancement, consecutive sentence or alternative sentence" then how is that implemented and applied since this enhancement is listed under California penal code 667.5(c)??
- (3) Is California penal code 12022.5(A) (firearm enhancement) excluded under proposition 57 even if this conduct enhancement is listed under California penal code 667.5(c) violent felony list....?? Since prop. 57 excludes enhancements, consecutive sentence or alternative sentence and focuses on "primary offenders"??
- (4) Since petitioner California penal code 245(A)(2) Assault with a firearm "primary offense principal felony" is listed under California penal code 1192.7(c) (34) serious felony offense list does he-petitioner qualify under the entitlement to early parole consideration under article I section 32 of the California constitution proposition 57 for inmates??

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ 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:

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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 A 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

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☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix 4 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 california supreme court court appears at Appendix d to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was June 11, 2020.

☒ 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).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was July 18, 2018.
A copy of that decision appears at Appendix d .

☒ 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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gov. code 1142.2	4
cal. constitutional (prop-57) article 1, section 32	14
cal. code of reg. title 15 3490 (c)-(d)-(e)	1
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	3

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The opinion of the highest state court to review the merits appears at Appendix 4 to the petition and is

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☐ 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).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was July 18, 2018.
A copy of that decision appears at Appendix c.

☒ A timely petition for rehearing was thereafter denied on the following date: July 18, 2018, 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).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- (1) United States equal protection clause to the constitutional amendment to the 14th of due process violation,
- (2) early parole consideration eligibility under Proposition 57 to the California constitution article 1, section 32 ...

STATEMENT OF THE CASE

(1) entitlement to parole consideration under article 1, section 32 of the constitution to california (proposition 57) for inmates with a non-violent felony sentence-offense....

argument one

proposition 57 was enacted by the voters at november 2016 general election created a new section 32 of article 1 of the california constitution which provides as follows: (A)... the following provisions are hereby enacted to enhance public safety improve rehabilitation and avoid the release of prisoners by federal court order notwithstanding anything in this article or any other provision of law:

(1) 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...

(A) for purpose of this section only the full term for the primary offense means the longest term of imprisonment imposed by the court for any offense.... "excluding" the imposition of an enhancement, consecutive sentence or alternative sentence....

(2) credit earning: the department of corrections and rehabilitation shall have the authority to award credits earned for good behavior and approved rehabilitative or educational achievements....

(b) the department of corrections and rehabilitations shall adopt regulations in furtherance of these provisions and the secretary of the department of corrections and rehabilitation shall certify that the regulations protect and enhance public safety cal. const. art. I. 32

(b) C.D.C.R. emergency regulations
C.D.C.R. has adopted emergency regulations to carry out the mandate of proposition 57. these regulations include an exclusion from the parole consideration provision of article I, section 32 as to any incarcerated violent felony is a crime or offense as defined in penal code section 667.5(c)..... (title 15 C.C.R. 3490(a)(2)) C.D.C.R. regulations effectively preclude anyone with a firearm enhancement from obtaining parole consideration under proposition 57 even if their "primary offense" is a non-violent serious felony. (california penal code 1192.7(c)(31) lists "assault with a deadly weapon, firearm" violation of section 245 as a serious felony and this includes the penal code section 245(a)(2).)

(c) the regulations are contrary to the plain language of proposition 57 and thus unlawful, it is well settled that an administrative agency "has no discretion to promulgate a regulation which is inconsistent with the governing statute" (Wood v. Superior Court (1981) 28 Cal. 3d 668 679 govt. code 1134 2.2 a word may v. City of Milpitas (2013) 217 Cal. app. 4th 1307 1336.) "where a statute empowers an administrative agency to adopt regulations such regulations must be consistent not in conflict with the statute and reasonably necessary to

2

1 effectuate its purpose" (Woods, supra at p. 679 quoting
2 money v. pickett (1971) 4 cal. 3d 699 679) the plain language
3 of article I section 32 includes no suggestion or indication
4 that persons with a crime penal code section 245(a)(1) assault
5 with a deadly weapon (firearm) were intended to be excluded
6 from parole consideration provisions. the only defining
7 characteristic of eligibility provided therein is the
8 phrase "any person convicted of a non-violent felony and
9 sentenced to state prison" ... primary offense means the
10 "single crime" for which any sentencing court imposed the
11 longest term of imprisonment. "excluding" all enhancements
12 alternative sentences and consecutive sentences. with such
13 person stated to be eligible for parole after completion of
14 his or her primary offense. the term violent necessary refers
15 to 667.5(c) of the penal code. which provides a specified
16 list of crimes which are classified as a "violent felony
17 crime. under california law. (see title 15 C.C.R. 3940.4(a))

18 II

19 parties

20 petitioner norman blanco is a prisoner of the state of californ-
21 nia presently incarcerated at lancaster state prison.
22 respondent debbie arnison is warden of I.A.C.C.V.P and
23 is the legal custodian of petitioner

24 III

25 statements of fact

26 however california penal code 17072.5 is a "conduct enha-
27 nancement" the term enhancement is narrowly defined - as
28 an additional term of imprisonment added to the "base term"

california rules of court 4.428 criteria affecting imposition of enhancement. (amended effectively jan. 1, 2011 ca. rules of court ~~rule~~ 4.428.) california rules of court 4.405(3) enhancements is a additional prison term that is added to the base term. are generally of two types: conduct enhancements which go to the nature of the offense (penal code 12022.5 series) and prior conviction or prison term enhancements (prior) which go to the nature of the offenders criminal record. (penal code 667(a)) "conduct enhancement" a statutorily designated fact relating to the defendant-petitioner conduct during commission of the offense that if found true requires or permits a specific additional punishment added to the base term. examples are armed allegations (pen C 12022.5) because conduct enhancements are count specific. effective january 1, 2003 the penal code 12022.5 enhancements must be imposed for any violation of penal code 245. (assault with a deadly weapon) involving a firearm even if the use of a firearm is an element of the offense. penal code 12022.5 is a "conduct enhancement" and not a "primary offense base term." definition "base term" - the determinate prison term selected from among the three possible terms prescribed by statute or not prescribed for each felony on which the court imposed sentence. (cal. rules of ct. 4.405(2)) - websters dictionary defines "primary" as first in time, degree, original. - penal code 12022.5 is a consecutive sentence enhancement and also a subordinate alternative sentence. - proposition 57 californian constitution art. I new section 32 states "primary offense" means the

single crime offense for which any sentencing court imposed the longest term of imprisonment." cal. penal code 245(a)(2) assault with a deadly weapon (firearm) is a primary offense with a "base term" which carries 2 (lower term) 3 (middle term) 4 (upper term) years in a state prison and listed under California penal code 1192.7(c)(3) under "serious felony". —

proposition 21 amended 1192.7(c) by adding 11 new felonies to the "serious felony list" which included firearm-machinegun, assault weapon. in the case of people v. rindler (2008) supra cal. penal code 245(a)(2) is not listed as a "violent felony" in cal. penal code 667.5(c) and in the case of people v. maldonado supra. several aspects of proposition 57 strongly indicate an intent to include and not exclude penal code 245(a)(2) assault with a deadly weapon within the parole consideration provisions of article 1 section 32. First, as mentioned above the use of the term non-violent strongly indicates that the only basis for excluding an inmate from the parole consideration provisions is if his current crime is defined as violent under section 667.5(c) — and cal. penal code 245 assault with a deadly weapon is listed under cal. penal code 1192.7(c)(3) as a serious felony but only the firearm "conduct enhancement" p.c. 17022.5 is listed in 667.5(c) in the cal. penal code. (a cal. penal code 17022.5 is a conduct enhancement and not a primary offense, but a consecutive sentence attachment to the base term-primary offense.) in order for a criminal to even be charged with a p.c. 17022.5 in the state of California there has to be a "primary offense-base term first". this is precisely what the legislative analyst told the voters about

proposition 57: although the measure and current law not specify which crimes are defined as non-violent this analysis assumes a non-violent felony offense would include any felony crime that is not specifically defined in statute as violent (official ballot guide 2016 p-57) — the opponents of prop. 57 made exactly the same point arguing that proposition 57 ... would allow criminals convicted of crimes like rape, lewd acts against a child and human trafficking to be released early from prison ... with the opponents later specifying that they referring to crimes such as rape by intoxication, arson, and assault with a deadly weapon crimes which arguably involve violence, but none of which are defined as violent felonies under section 667.5(e) (see opponents ballot arguments official ballot guide 2016 p-59) the proponents in response point out that parole eligibility under prop. 57 applies "only to prisoners convicted of a non-violent felony and under cal. penal code 245(a)(2) assault with a deadly weapon (firearm) is defined as a serious felony under cal. penal code 1192.7(c)(3) (brown v. superior court June 6, 2016 supra.) violent criminals as defined with felony crimes in penal code 667.5(e) are excluded from parole (ballot arguments on prop. 57 p-59 emphasis added) furthermore the opponents argument plainly assumes that prop. 57 would make cal. p.c 245(a)(2) eligible for parole consideration. "prop. 57 effectively "overturns" key provisions of marshall law, 3 strike and your out, victim bill of rights, california against sexual exploitation act, measures enacted by voters that have protected victims and made communities safer," susan

1 Fisher former chairwoman state parole board. (opponents ballot
2 arguments p. 59) courts frequently rely on ballot arguments
3 and the legislative analysts comments in deciding how to
4 interpret an initiative measure drawing this to discern what
5 the average voter would understand to be the intent of the law
6 upon which he or she was voting. (legislature v. eu (1991) 54 cal.
7 36 492 505. accord vernon v. state board of equalization (1992)
8 4 cal. app. 4th 110 112 see also mclaughlin v. state board of
9 education (1999) 75 cal. app. 4th 196 205 216. see also in re
10 mich eld. (2007) 79 cal. 4th 606 628 cal. rptr. 2d 92 89 p. 32
11 164, people v. henjin (1998) 18 cal. 4th 24 34 fn. 6 74 cal. rptr. 2d
12 294 p. 22 557.) in determining legislative intent we may consider
13 bill analysis prepared by the staff of legislative committees.
14 (silicon valley taxpayers ann. inc. v. santa clara county open
15 space authority (2008) 44 cal. 4th 431 444 445.) —
16 "if the language is ambiguous we consider extrinsic
17 evidence in determining voter intent including the legisla-
18 tive." (in legislature v. eu supra 54 cal. 36 at p. 505.)

19
20 the supreme court focused on the opponents ballot argument
21 as to the potential harm of the measure — term limits
22 creating a life time ban from holding office, stating "we
23 think it likely the average voter reading the proposed
24 constitutional language as supplemented by the foregoing
25 analysis and arguments would conclude the measure
26 contemplated a life time ban against candidacy for the
27 office once the prescribed maximum number of terms had
28 been served." — the same arguments apply here as to prop.

57 make the assumption that non-violent felony means any felony crime-primary offense not "conduct enhancement". consecutive sentence define under cal-penal code 1192.7(c)(31) would be eligible for non-violent parole consideration and penal code 245(a)(2) assault with a deadly weapon is not defined under cal-penal code 667.5(e) which is my current primary offense. - but the conduct enhancement p.c. 12022.5

consecutive sentence attachment-added to the base term-primary offense is listed in cal-p.c. 667.5(e). - which is the voters intent "primary offense" means the longest term of imprisonment imposed by the court for any offense, excluding the imposition of an enhancement, consecutive sentence or alternative sentence..... it must be the case that the average voter reading the proposed constitutional language or supplemented by the foregoing analysis and arguments..... would conclude that cal-p.c. 245(a)(2) is listed as a serious felony would be eligible for parole consideration under proposition 57 which is a non-violent felony.

a further indication that prop 57 intended to include cal-p.c. 245(a)(2) assault with a deadly weapon (firearm) because that is the primary offense and that felony offense is listed in cal-penal code 1192.7(c)(31) as a serious felony so this crime is included in the parole consideration provisions from the way the initiative measure employs the term "primary offense" which it states "means the longest term of imprisonment imposed by the court for any offense, excluding the imposition of an enhancement, consecutive sentence or

alternative sentence". (article 1.32 ~~added~~ ^{emphasized} added.) the legislative analyst's official voter information guide on prop. 57 stated: the measure changes the state 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 a result the board of parole hearings would decide whether to release these individuals before they have served any additional time related to other crimes or sentencing enhancements. (emphasis added) — but the legislative analyst did not explain the basis for this assumption nor did the legislative "ever" mention section p.c. 667.5(e).

* a long line of cal. cases expressly characterizes cal. p.c. 245(a)(2) assault with a deadly weapon (firearm) as a serious felony. (people v. vinclair (2008) 166 cal. app. 4th 848 83 cal. rptr. 3d 128 2008 cal. app. lexis 1405. people v. maldonado supra 134 cal. app. 4th at p. 635.)*

* in march 2000 the voters approved proposition 21, known as the gang violence and juvenile crime prevention initiative which became effective the day after passage. (see cal. const. art. 11, § 10 subb. (a)) prop. 21 was a wide ranging measure that effected numerous changes to the penal code and welfare and institutions code relating to the adult and juvenile justice system including the treatment of juvenile offenders the confidentiality protections afforded that can be tried in adult court and the punishment for gang related offenses and offenders. (in re melvin t. (2001))

81 cal. app. 4th 742 744 96 cal. rptr. 2d 917) amongst other things "proposition 21" amended section cal. penal code 1192.7(c) by adding 14 new felony's to the statutory "serious felony" list. (ballot pamph primary elec. mar. 7, 2000 text of prop 21 11 p. 124.) one of the newly added felony's was "assault with a deadly weapon. (firearm) machinegun, assault weapon or semi-automatic firearm or assault on a peace officer or fire fighter in violation of section cal. p.c. 245. (1192.7(c) reads 667.1, 1170-125.) *

A statute is not to be read in isolation but must be considered in the context of the statutory framework as a whole. (people v. murphy (2001) 25 cal. 4th 136 142 105 cal. rptr. 2d 381 19 p. 32 1129) a statute will not literally construed if such a construction does not comport with the manifest purpose of the legislation or is inconsistent with other provisions that are part of the same statutory scheme. (people v. king (1993) 5 cal. 4th 59 69 19 cal. rptr. 2d 233 851 p. 26 21, california school employees assn. v. governing board (1994) 8 cal. 4th 333 340 33 cal. rptr. 2d 109 818 p. 26 1321) — here the statutory language is clear and unambiguous. section cal. p.c. 1192.7(c)(31) specifies that "assault with a specified weapon or an assault on a peace officer or fire fighter in violation of section 245 is a "serious felony".

in the absence of any ambiguity on the face of the statute we must presume that section 1192.7(c)(31) reflects the voters intent and apply the statute in accordance with its plain to

meaning. (People v. Unook (1997) 16 Cal. 4th 1210 1215, 99 Cal. Rptr. 481 470 p. 28617) a court cannot under the guise of statutory interpretation create an offense by enlarging a statute inverting or deleting words or giving the term used false or unusual meanings, penal statutes will not be made to reach beyond their plain intent but will include only those offenses coming clearly within the import of their language. Thus, the use of the term "enhancement and consecutive sentence" as excluded from calculations at the longest term of imprisonment imposed by the court. — plainly signifies that the non-violent parole consideration provisions of article 1 section 32 were "intended" to include inmates with Cal. P.C. 245(a)(2) assault with a deadly weapon sentences for non-violent parole process which is serious felony and the full term for primary offense means the longest of imprisonment imposed by the court for any offense "excluding" the imposition of an enhancement, consecutive sentence or alternative sentence under the parole consideration provisions and consecutive sentence or Cal. Penal Code 17022.5. (3-4-10 years conduct enhancement consecutive sentence.)

Once prop. 57 came into passage (Brown v. Superior Court (2016) supra.) it excluded my enhancements, consecutive sentence and alternative sentence and qualifies me for the non-violent parole consideration because my "primary offense" Cal. Penal Code 245(a)(2) is listed under Cal. Penal Code 1192.7(e)(3) as a serious felony.

contentions

respondents refusal to allow inmates with a non-violent cal.
penal code 245(a)(2) assault with a deadly weapon (Firearm)
that is listed in the cal-p-c 1192.7(e)-(3) as a serious felony
be eligible for parole consideration and receive good conduct
credits violates petitioner 14th amendments rights and
violates the legislative and voters intent with the
passage of proposition 57.

request for relief

petitioner is without remedy save for habeas corpus petition
accordingly petitioner requests that the court

- 1: issue a writ of habeas corpus
- 2: issue an order to show cause
- 3: declare the rights of the parties
- 4: order respondent to allow petitioner eligible for parole
consideration under prop-57 relief and credits.
- 5: appoint counsel or award reasonable attorney fees and
- 6: grant any and all relief found necessary or appropriate.

dated: 8-16-2018

Norman Blanco
pro-per

government code section 11342.2 is part of the administrative
procedure act which sets procedural requirements state agency
must follow when adopting regulations. (cal. chamber of commerce
vs. state for resources 66. (2017) 10 cal. app. 5th 602 619 20; see also
in re lucas (2012) 53 cal. 4th 839 849.) courts do not deference
to an administrative interpretation that is clearly erroneous.
if the regulation does not properly implement the

of date the regulation must fail. (Yamaha Corp of America v. State Bd. of Equalization (1998) 19 Cal. 4th 111 fn. 4.) here petitioners claim C.D.C.R regulations "conflict" with the voters language and intent in prop. 57. in interpreting a voter initiative courts apply the same principles governing statutory construction. (Citizens to Save California v. California Fair Political Practices Commission (2006) 145 Cal. app. 4th 736 747.) the fundamental purpose of construction is to ascertain the voters intent to effectuate the purpose of the law. (People v. Superior Court (Cervantes) (2014) 225 Cal. app. 4th 1607 1614.)

however, if the language of proposition 57 is ambiguous or permits more than one reasonable interpretation the court may refer to extrinsic of the voters intent particularly the analysis and arguments in the official voter information guide. (Citizens to Save Calif. supra 145 Cal. app. 4th at 747, blue v. bonta (2002) 99 Cal. app. 4th 980 988.)

C.D.C.R definition of non-violent offender is "overbroad" and completely at odds with the clear language of proposition 57 as enacted into article I, Section 32 and are thus unlawful. — it is therefore irrational and violative of the equal protection clause of the state of due process of the state and federal united states constitution for C.D.C.R to arbitrarily classify Cal. P.C 245(a)(2) assault with a deadly weapon (firearm) sentences imposed which is listed under Cal. penal code 1192.7(k)(3)

REASONS FOR GRANTING THE PETITION

As A serious felony ineligible for any benefit from parole consideration provision under Proposition 57 of article 1, section 32...

~~REDACTED~~

california department of corrections and rehabilitation's regulations are completely at odds with the clear language of Proposition 57 as enacted into article 1, section 32 and are thus unlawful and violates petitioner's equal protection clause under the united states constitution 14th amendment of due process clause.. "no regulation adopted is valid or effective unless consistent ~~with~~ and not in conflict with the statute and reasonably necessary to effectuate the purpose of the statute". (government code 11342.2) Accordingly california penal code 245 sub (A)(2) A person with a deadly weapon (firearm) who are serving a determinate sentence should be eligible for parole consideration under the provisions of Proposition 57 since Proposition 57 "excludes" imposition of A enhancement, corrective sentence and alternative sentence and a california penal code 12072.5(A) A gun enhancement is A enhancement and corrective sentence from the "primary offense"... and C.d.c.r must afford them administrative hearings under there early parole consideration provisions under california code of regulations title 15 3490(A)..... because petitioner's primary offense is not listed under california penal code 667.5(c) violent felony list...

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

norman blanco

Date: ~~████████~~ July 29, 2020