Office of the State Public Defender

OAKLAND OFFICE
1111 Broadway, 10th Floor
Oakland, CA 94607
(510) 267-3300 (510) 452-8712 (fax)
www.ospd.ca.gov

SACRAMENTO OFFICE
770 L Street, Suite 1000
Sacramento, CA 95814
(916) 322-2676 (916) 327-0459 (fax)
www.ospd.ca.gov

December 1, 2025 **CAPITAL CASE**

Mr. Jorge E. Navarrete
Clerk and Executive Officer
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102

Re: ***People v. Run Peter Chhuon*, Case No. S105403**
Appellant's Supplemental Reply Brief on Assembly Bill 1071

Dear Mr. Navarrete:

Pursuant to the Court's October 22, 2025, Order, Appellant Run Peter Chhuon respectfully submits this reply brief addressing the effect of Assembly Bill No. 1071 (2025-2026 Reg. Sess.) (AB 1071) on the issues in this appeal.

The Attorney General agrees that the Racial Justice Act (RJA) is constitutional on its face both before and after the passage of AB 1071. He also agrees that the Legislature did not violate the California Constitution by making ineligibility for the death penalty a remedy for a trial contaminated by racial bias or by requiring reversal absent a separate prejudice analysis. In prior briefing, the Attorney General proposed a reading of the RJA that would not require a court to reverse the judgment or render the defendant ineligible for the death penalty if it found there was a violation. (Respondent's Supplemental Brief on Racial Justice Act Remedy Questions, pp. 24-32; Respondent's Supplemental Reply Brief on Racial Justice Act Remedy Questions, pp. 6-13.) That reading is erroneous for all the reasons set forth in prior briefing. (Appellant's Second Supplemental Reply Brief (2SARB), pp. 17-19, 24-27; Appellant's Second Supplemental Opening Brief, pp. 16-21.)

The Legislature passed and the Governor signed AB 1071 into law while briefing was pending in this case. Among other things, it clarifies that death ineligibility is required any time there has been a violation of the RJA. (Stats. 2025, ch. 721, § 1, subd. (e).) The Attorney General now concedes the point. (Respondent's Supplemental Brief on the Effect of Assembly Bill No. 1071 (SRB 1071), p. 6.) But while the Attorney General continues to agree that the death ineligibility provision is facially

constitutional, he limits that concession to "flagrant" violations committed by the prosecution. (SRB 1071, pp. 6-7, 12.) The Attorney General does not explain how the nature of the violation that is being remedied by death ineligibility is relevant to whether there has been an unconstitutional amendment. But it is the same distinction that the Attorney General fabricates concerning the constitutionality of the other RJA remedies – reversal of the judgment or sentence absent a separate prejudice analysis. And it fails for all the same reasons. (2SARB, pp. 10-17, incorporated here by reference.)

The Attorney General equates "flagrant" violations with willful prosecutorial misconduct, and the term would encompass only the most explicit appeals to racial bias. (SRB 1071, p. 12.) Such a distinction between "flagrant" and "non-flagrant" RJA violations is unsupportable and in direct tension with both the legislation and the science of implicit bias. The risk that language activated jurors' biases does not depend on whether the bias being exhibited was flagrant or subtle because a subtle appeal can be just as corrosive, if not more so, than a flagrant one. Nor does the risk change based on the person who made the appeal. It is hearing the language – not the identity of the speaker – that activates jurors' subconscious biases. (2SARB, pp. 16-17.) The Attorney General does not ground its creation of flagrant and non-flagrant categories of violations in the text of either the RJA or AB 1071; it is a distinction of his own creation. More to the point, the Attorney General does not argue that the violations at issue in this appeal were less than obvious or that it would be unconstitutional to prohibit the death penalty under the facts of this case.

The Attorney General's entire analysis of whether the death ineligibility remedy unconstitutionally amends the Briggs Initiative (Prop. 7, as approved by voters, Gen. Elec. (Nov. 7, 1978)) flows from the fallacy that there can be an RJA violation in court and during proceedings that does not result in a miscarriage of justice. (SRB 1071, pp. 13-14.) But any time language appealing to racial bias is used during trial, as defined by the statute, there is a reasonable probability that it activated jurors' subconscious biases and distorted their ability to evaluate the evidence. That is the science of implicit bias. The Attorney General disregards this and posits that the death ineligibility remedy might unconstitutionally amend Prop. 7 in three scenarios: strategic violations by the defense, an (a)(2) violation by a non-testifying officer, and a violation by a defense expert who used racially discriminatory language that did not reflect "obvious racial animus." (SRB 1071, pp. 13-14.) None of the hypothetical scenarios raise "grave and doubtful constitutional questions" about the RJA's prohibition against racially discriminatory language during

proceedings sufficient to warrant rewriting the RJA as a matter of constitutional avoidance. (*People v. Anderson* (1987) 43 Cal.3d 1104, 1146, superseded on other grounds as stated in *People v. Mil* (2012) 53 Cal.4th 400, 408-409.) Any RJA claim arising from gamesmanship may be deemed waived and result in attorney disciplinary proceedings. (See Pen. Code § 745, subd. (c); *People v. Majors* (1998) 18 Cal.4th 385, 409 [invited error doctrine]; see, e.g., Rules Prof. Conduct, rules 3.3(b), 8.4.) This hypothetical, like the others, is not relevant to what is before the Court: racially discriminatory language that contaminated the jury.

The Attorney General urges the Court to reject the Legislature's clarification as to remedies set forth in AB 1071 and adopt a complicated scheme of piecemeal remedies that has no basis in the text or legislative intent. The RJA is not as complicated as the Attorney General conceives. Trial courts and reviewing courts assess if there has been a violation of the statute, according to the tests set forth in the statute, as amended by AB 1071, with the knowledge of racial and ethnic stereotypes and tropes, both old and new. (See Stats. 2025, ch. 721 § 1, subd. (d).) If the court determines there has been an appeal to racial bias, the prejudice that flows from it is inherent, and the court applies the remedy or remedies prescribed by the statute. If, at some future date, a reviewing court finds itself confronted by a "strategic violation" or one of the other hypotheticals constructed by the Attorney General, it can review any "as applied" constitutional challenges at that time. Courts remain free to reject any construction of the RJA "that would lead to absurd results." (*Simpson Strong-Tie Co. v. Gore* (2010) 49 Cal.4th 12, 27.)

The District Attorneys writing as amici curiae continue to argue the RJA, both before and after the amendments enacted by AB 1071, is unconstitutional and unnecessary. Those arguments have been addressed in Mr. Chhuon's earlier briefing. The subordinate law enforcement agencies are free to suggest changes to the RJA to the Legislature.

GALIT LIPA
State Public Defender

/s/
ALEXANDER POST
Assistant Chief Counsel

Attorneys for Appellant

DECLARATION OF SERVICE

Case Name: ***People v. Run Peter Chhuon & Samreth Sam Pan***
Case Number: **Cal. Supreme Ct. Case No. S105403**
Los Angeles County Superior Court Case No. KA032767

I, **Yasmine Kahly**, declare as follows: I am over the age of 18 and not a party to this cause. I am employed in the county where the mailing took place. My business address is 1111 Broadway, Suite 1000, Oakland, California 94607. I served a true copy of the following document:

APPELLANT'S SUPPLEMENTAL REPLY BRIEF ON ASSEMBLY BILL 1071

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Run Peter Chhuon, #P-75108 Centinela State Prison P.O. Box 921 Imperial, CA 92251-0921	Los Angeles Superior Court Capital Appeals Unit 210 West Temple St., Rm. M-3 Los Angeles, CA 90012

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Office of the Attorney General Attn: Louis W. Karlin Deputy Attorney General 300 S. Broadway, Ste. 1702 Los Angeles, CA 90013 *docketingLAAWT@doj.ca.gov* *louis.karlin@doj.ca.gov*	California Appellate Project 425 California St., Ste. 800 San Francisco, CA 94104 *filing@capsf.org*
Joseph F. Walsh Attorney at Law P.O. Box 270 Covina, CA 91723 *attyjoewalsh@aol.com*	Michael Burt Attorney at Law 1000 Brannan St., Ste. 400 San Francisco, CA 94103 *mb@michaelburtlaw.com*

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Signed on **December 1, 2025**, at Alameda County, CA.

Yasmine Kahly

Digitally signed by Yasmine Kahly
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YASMINE KAHLY

STATE OF CALIFORNIA
Supreme Court of California

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Supreme Court of California

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Case Number: **S105403**
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Date

/s/Yasmine Kahly
Signature

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