In the Supreme Court of the State of California

THE PEOPLE OF THE STATE OF CALIFORNIA, **Plaintiff and Respondent,** **v.** **ROPATI SEUMANU,** **Defendant and Appellant.**	**CAPITAL CASE** Case No. S093803

Alameda County Superior Court Case No. H24057A
The Honorable Larry J. Goodman, Judge

PEOPLE'S RESPONSE TO APPELLANT'S SUPPLEMENTAL BRIEF

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

CASES

STATUTES

CONSTITUTIONAL PROVISIONS

THIS COURT'S CAPITAL REVIEW PROCEDURES ARE CONSTITUTIONAL

Appellant has filed a supplemental brief in which he alleges that "systemic delay render[s] the infliction of the death penalty in California arbitrary and capricious, and therefore in violation of the Eighth Amendment proscription of cruel and unusual punishment." (SAOB at p. 3.) That argument is based on the recent order issued by United States District Judge Cormac J. Carney in *Jones v. Chappell* (C.D. Cal., July 16, 2014, No. CV 09-02158-CJC) 2014 WL 3567365 ("*Jones*"), *appeal docketed*, No. 14-56373 (9th Cir. Aug. 21, 2014). The *Jones* decision, of course, is not binding on this Court. (*People v. Crittenden* (1994) 9 Cal.4th 83, 120, fn. 3.) More importantly, the decision is wrong on the facts and squarely inconsistent with longstanding precedent.

The district court ruled, in essence, that the period of time typically consumed on direct and collateral review of capital judgments by this Court is so lengthy that the process is rendered "arbitrary," as are any executions that occur after the process is concluded. (*Jones v. Chappell, supra,* 2014 WL 3567365 at *1, 8, 14.) That is incorrect. The time it takes to review and implement a capital sentence results from the interaction of legal rules, procedural protections, and practical accommodations that are designed to protect state and individual interests of exceptional importance. For the People, those rules in part protect significant federalism interests, ensuring respect for the state's judicial process. For both the People and individual defendants, they protect the mutual interest in ensuring that the ultimate criminal sanction is imposed only on individuals who have been convicted and sentenced in full accordance with the law. A system that painstakingly strives to promote these interests is not "arbitrary." On the contrary, it reflects a judgment that an exceptional penalty demands exceptional process. To be sure, special protections afforded to death-sentenced

prisoners lengthen the period needed to review capital judgments beyond what it would be otherwise. But these important protections do not make the system unconstitutional.

The district court criticized the structure and funding of California's capital review process. (See *Jones v. Chappell, supra,* 2014 WL 3567365 at *3-5.) As this Court has observed, however, "this court, and this state, . . . [have] assume[d] a generous postconviction position: vis-à-vis other states, we authorize more money to pay postconviction counsel, authorize more money for postconviction investigation, allow counsel to file habeas corpus petitions containing more pages, and permit more time following conviction to file a petition for what is, after all, a request for collateral relief." (*In re Reno* (2012) 55 Cal.4th 428, 456-457.) Granted, attorneys who are qualified to handle capital cases are not always willing or immediately available to do so. But any delay resulting from that fact is inherent in a system that is intent on providing capital defendants both with ample opportunity to raise any claims they may have and with capable counsel through every stage of review. Delay inherent in a system designed to "assure[] careful review of the defendant's conviction and sentence" reflects "a constitutional safeguard, not a constitutional defect," and "is not a basis for concluding that either the death penalty itself, or the process leading to its execution, is cruel and unusual punishment." (*People v. Anderson* (2001) 25 Cal.4th 543, 606.)[1]

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[1] The district court appears to believe that delay could be reduced if appellate counsel were routinely appointed to represent the same prisoner in state collateral proceedings and if state collateral counsel were routinely appointed for federal collateral proceedings. (See *Jones v. Chappell, supra,* 2104 WL 3567365 at *4). On the first point, the administrative advantages and drawbacks of separate, rather than "dual" (or "unitary"), state counsel may be fairly debated, but California's presumption in favor of separate counsel fully comports with Congress's apparent understanding of the

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Equally without merit is the district court's suggestion that the lengthy delays that can occur while capital cases are on collateral review in federal court are attributable to deficiencies in state judicial process. (See *Jones v. Chappell, supra,* 2014 WL 3567365 at *5-6.) Such a suggestion ignores, among other things, the frequency with which federal courts order proceedings stayed and held in abeyance while prisoners return to state court to file second, third, and fourth state petitions, and the length of time for which the district courts hold federal proceedings in that posture. Even if such procedures are necessary under some circumstances in order to give the state courts an opportunity to consider new contentions in the first instance (but see, e.g., *Pinholster v. Ayers* (9th Cir. 2009) 590 F.3d 651, 689 (dis. opn. of Kozinski, C.J.) [criticizing "habeas-by-sandbagging"]), any "delay" they involve once again cannot be blamed on the state courts, or support claims by a defendant that the State is unduly prolonging the process of review. Likewise, the frequency with which federal courts have ordered evidentiary hearings or granted relief to state prisoners—especially in the period predating the decision in *Cullen v. Pinholster* (2011) ___ U.S. ___ [131 S.Ct. 1388]—reveals nothing about the constitutionality, or even the effectiveness, of the state review process. (Compare *Jones*, *supra*, at *2.)[2]

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preferred method for reducing delay in the long-run. (110 Stat. 1226, former 28 U.S.C. §2261(d) , amended 120 Stat. 250 ["fast-track" provisions of Title 28, United States Code].) On the second point, federal appointments are made, of course, by the federal courts, and thus, if any "dysfunction" results at that juncture, the fault therefor can scarcely be laid at the feet of the state courts.

[2] The district court criticized this Court's practice of disposing of most habeas petitions by summary order, contending that the practice contributes to delay "because '[o]ften the federal courts cannot ascertain why state relief was denied.'" (*Jones v. Chappell, supra,* 2014 WL

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In short, there is nothing to support the district court's assertion that "much of the delay in California's postconviction review process is created by the State itself, not by inmates' own interminable efforts to delay." (See *Jones v. Chappell, supra,* 2104 WL 3567365 at *11-12; see also, e.g., *Rhines v. Weber* (2005) 544 U.S. 269, 277-278; *In re Reno, supra*, 55 Cal.4th at p. 514; *Mayle v. Felix* (2001) 545 U.S. 644, 674 (dis. opn. of Souter, J., joined by Stevens, J.) [noting "capital petitioners' incentive for delay"].)

Unsurprisingly, both this Court and the Ninth Circuit have expressly rejected the argument that procedural "delay" in carrying out a death sentence may itself constitute cruel and unusual punishment. (*People v. Anderson, supra*, 25 Cal.4th at p. 606; *Smith v. Mahoney* (9th Cir. 2010) 611 F.3d 978, 998-99; *Allen v. Ornoski* (9th Cir. 2006) 435 F.3d 946, 958.) For its part, the U.S. Supreme Court has repeatedly refused even to entertain such a contention. (See *Lackey v. Texas* (1995) 514 U.S. 1045; see also *Valle v. Florida* (2011) ___ U.S. ___ [132 S.Ct. 1]; *Johnson v. Bredesen* (2009) 558 U.S. 1067; *Thompson v. McNeil* (2009) 556 U.S. 1114; *Smith v. Arizona* (2007) 552 U.S. 985; *Allen v. Ornoski* (2006) 546 U.S. 1136; *Foster v. Florida* (2002) 537 U.S. 990; see generally *Knight v. Florida* (1999) 528 U.S. 990 (opn. of Thomas, J., conc. in den. cert.) ["I am unaware of any support in the American constitutional tradition or in this

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3567365 at *5 fn.14.) The criticism has no force, however, in light of what the U.S. Supreme Court has made clear about the properly limited scope of federal collateral review. (*Pinholster*, 131 S.Ct. at p. 1402 ["'[A] habeas court must determine what arguments or theories . . . *could* have supporte[d] the state court's decision; and then it must ask whether it is possible fairminded jurists could disagree that those arguments or theories are inconsistent with the holding in a prior decision of this Court'"], emphasis added.)

Court's precedent for the proposition that a defendant can avail himself of the panoply of appellate and collateral procedures and then complain when his execution is delayed"].)

The district court sought to distinguish this authority on the following ground:

> Unlike Mr. Jones's claim here, in previous instances where federal courts have been presented claims of unconstitutional delay preceding execution, they have generally appeared in the context of claims brought by inmates in whose individual cases the delay was extraordinary. See, e.g., *Lackey v. Texas*, 514 U.S. 1045 (17 years of delay); *Smith v. Mahoney*, 611 F.3d 978 (9th Cir. 2010) (25 years of delay). In those cases, however, the petitioner did not argue, as does Mr. Jones here, that his execution would be arbitrary and serve no penological purpose because of system-wide dysfunction in the post-conviction review process.

(*Jones v. Chappell, supra,* 2104 WL 3567365 at *11, n. 19.) But the court could find nothing to rely on for its "system-wide dysfunction" argument beyond the general principle, stated in *Furman v. Georgia* (1972) 408 U.S. 238 (per curiam) and other cases, that the Constitution does not permit the imposition of punishment on "arbitrary" grounds. No other court has ever held that the time it takes to review capital convictions and sentences through the state and federal judicial process can make it "arbitrary" to impose punishment after all of a prisoner's claims have been considered, reconsidered, and rejected. Indeed, "*Furman* held only that, in order to minimize the risk that the death penalty would be imposed on a capriciously selected group of offenders, the decision to impose it had to be guided by standards so that the sentencing authority would focus on the particularized circumstances of the crime and the defendant." (*Gregg v. Georgia* (1976) 428 U.S. 196, 199.) Nothing about California's or this Court's processes runs afoul of that teaching.

Dated: August 29, 2014

Respectfully submitted,

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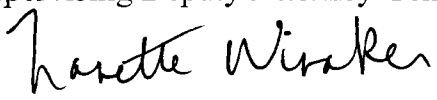

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CERTIFICATE OF COMPLIANCE

I certify that the attached **PEOPLE'S RESPONSE TO APPELLANT'S SUPPLEMENTAL BRIEF** uses a 13-point Times New Roman font and contains 1,607 words.

Dated: August 29, 2014

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DECLARATION OF SERVICE BY U.S. MAIL

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No.: **S093803**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On August 29, 2014, I served the attached **PEOPLE'S RESPONSE TO APPELLANT'S SUPPLEMENTAL BRIEF** by placing a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on August 29, 2014, at San Francisco, California.

Nelly Guerrero
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