

**In the Supreme Court of the State of California**

In re

**MIGUEL MOLINA,  
On Habeas Corpus**

Case No. S173266

SUPREME COURT  
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Second Appellate District Division Six, Case No. B208705  
San Luis Obispo County Superior Court, Case No. CR13298 (HC-2)  
The Honorable Michael L. Duffy, Judge

**OPENING BRIEF ON THE MERITS**

EDMUND G. BROWN JR.  
Attorney General of California  
DANE R. GILLETTE  
Chief Assistant Attorney General  
MANUEL M. MEDEIROS  
Solicitor General  
JULIE L. GARLAND  
Senior Assistant Attorney General  
HEATHER BUSHMAN  
Supervising Deputy Attorney General  
GREGORY J. MARCOT  
Deputy Attorney General  
State Bar No. 186546  
110 West A Street, Suite 1100  
San Diego, CA 92101  
P.O. Box 85266  
San Diego, CA 92186-5266  
Telephone: (619) 645-2606  
Fax: (619) 645-2581  
Email: Gregory.Marcot@doj.ca.gov  
*Attorneys for Warden Ben Curry*



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## ISSUE FOR REVIEW

When a reviewing court determines that a parole decision by the Board of Parole Hearings violates due process, may the court order the Board to release a life-term inmate without allowing the Board to determine parole suitability or permitting the Governor to exercise his constitutional and statutory authority to review the Board's decision?

## STATEMENT OF THE CASE

In 1985, Miguel Molina pled no contest to second degree murder, and was sentenced to 15 years to life. (*In re Molina* (April 16, 2009 B208705) [nonpub. opn.], review granted July 29, 2009 [Slip opn. at p. 2].) In 2006, the Board considered his suitability for parole. The Board was concerned with a conflict between Molina's version of his commitment offense and the version documented in the record, and it questioned the validity of Molina's remorse and insight into his crime, as well as the validity of a psychological evaluation that was based on Molina's version of the events. Thus, the Board denied Molina parole and ordered an internal investigation to resolve the factual conflict before Molina's next hearing date. (*Id.* at p. 3.) Molina challenged the Board's decision by filing a habeas corpus petition in the San Luis Obispo Superior Court. (*Id.* at pp. 3-4.) The superior court granted Molina's petition and ordered Molina's release from prison within thirty days of the court's order. (*Ibid.*) The Warden (Respondent)<sup>1</sup> filed an appeal and obtained from the appellate court a stay of the superior court's release order pending the resolution of the appeal.

In an unpublished, split decision filed on April 16, 2009, the Court of Appeal affirmed the superior court's order granting Molina's petition. As the superior court had done, the majority concluded that the factual conflict

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<sup>1</sup> For clarity and consistency, the Warden shall be referred to by his original designation in the superior court habeas corpus matter.

that concerned the Board had no bearing on Molina's suitability for parole and that there was no evidence in the record suggesting that Molina currently posed a risk of danger. (Slip opn. at pp. 5-12.) The majority then ordered the matter remanded to the superior court with instructions to the Board to release Molina. (*Id.* at pp. 12-13.) The majority did not allow the Board to exercise its statutory authority to determine Molina's suitability for parole release. Moreover, the majority denied the Governor his constitutional and statutory authority to review the Board's decision. The dissenting justice concluded that there was some evidence of Molina's current dangerousness based on the factual conflict and criticized the majority for, among other things, not remanding the matter to the Board in accordance with this Court's instructions in *In re Rosenkrantz* (2002) 29 Cal.4th 616. (Slip opn. dissent at pp. 6-7.)

#### **SUMMARY OF ARGUMENT**

State law dictates that, in parole matters concerning inmates convicted of murder and sentenced to life terms, the Board has the power to determine parole suitability and the Governor is the final arbiter of parole decisions. While a court may review a parole decision to ensure that the inmate has received due process, the ultimate decision as to whether parole is granted is vested exclusively in the Board and the Governor. Thus, this Court has stated that if a reviewing court determines that a parole decision by the Board violates due process, the proper remedy is to remand the matter to the Board to proceed in accordance with due process. This remedy is consistent with both separation-of-powers principles governing parole matters and the traditional rule of remedying a due process violation by ordering the acting agent or agency to provide the process due.

Here, instead of ensuring that the Board provided Molina due process, the appellate court conducted its own parole suitability determination and ordered Molina's immediate release. This remedy not only prevents the

Board from exercising its discretion to determine whether Molina should be granted parole, it prohibits the Governor from exercising his constitutional and statutory power to review Molina's case. In usurping the Board's and the Governor's authority to grant parole, the appellate court violated the separation of powers doctrine and provided Molina with far more than the process he is due. Where the Board's decision is not supported by some evidence, the court should vacate the Board's decision and order the Board to proceed in accordance with due process by providing the inmate a new hearing to determine his suitability for parole under all relevant statutory and regulatory factors, considering all relevant and reliable evidence.

### ARGUMENT

#### **I. THE SEPARATION-OF-POWERS DOCTRINE DICTATES THAT THE ULTIMATE DECISION TO GRANT PAROLE TO A LIFE-TERM INMATE MUST BE MADE BY THE EXECUTIVE BRANCH.**

Upon finding the Board's decision denying Molina parole was unsupported by some evidence, the Court of Appeal here ordered Molina released on parole. This remedy violates the separation-of-powers doctrine in two ways – by taking the parole suitability determination out of the Board's control, and by entirely bypassing the Governor's constitutional and statutory authority to review parole decisions relating to murderers.

Within the context of parole, the executive and judicial branches have distinct roles. The executive branch has the exclusive authority to determine parole suitability (Cal. Const., art. V, § 8, subd. (b); Pen. Code, §§ 3041-3041.2, 5054, 5077; *In re Rosenkrantz*, *supra*, 29 Cal.4th at p. 659; *In re Powell* (1988) 45 Cal.3d 894, 901 (*Powell*)), while the judicial branch has the limited authority to review a parole decision to ensure that the prisoner has received due process. (*Rosenkrantz*, *supra*, 29 Cal.4th at p. 625 [a parole decision “is subject to a limited judicial review to determine only whether the decision is supported by ‘some evidence.’”]; see also

*Morrissey v. Brewer* (1972) 408 U.S. 471, 488-489 [task of the courts in parole matters is to decide the minimum requirements of due process].) Although a judicial determination of due process necessarily contemplates an evaluation of the record, the ultimate discretionary decision of parole suitability remains with the executive branch. (*In re Lawrence* (2008) 44 Cal.4th 1181, 1212.) “By its nature, the determination whether a prisoner should be released on parole is generally regarded as an executive branch decision. The decision, and the discretion implicit in it, is expressly committed to the executive branch. It is not a judicial decision.” (*In re Morrall* (2002) 102 Cal.App.4th 280, 287.)

A violation of the separation-of-powers doctrine occurs when the inherent authority over an essential function of any branch of government is defeated or materially impaired by the actions of another branch. (*In re Rosenkrantz, supra*, 29 Cal.4th at p. 662, citing *Obrien v. Jones* (2000) 23 Cal. 4th 40, 44.) Accordingly, when a court determines that a parole decision violates due process, it follows that the court should not provide a remedy that materially impairs or defeats the Board’s inherent authority to determine an inmate’s suitability for parole. (See *In re Lugo* (2008) 164 Cal.App.4th 1522, 1538 [“Intrusions by the judiciary into the Board’s realm of parole matters may violate separation of powers.”], citing *Hornung v. Superior Court* (2008) 81 Cal.App.4th 1095, 1099 [court order allowing inmate to question commissioners regarding their parole-related decision process violated separation of powers].) Rather, as this Court instructed in *Rosenkrantz*, when a parole decision does not satisfy due process, the reviewing court should order the Board to “vacate its decision denying parole and thereafter to proceed in accordance with due process of law.” (*In re Rosenkrantz, supra*, 29 Cal.4th at p. 658, citing *In re Ramirez* (2001) 94 Cal.App.4th 549, 572, disapproved on another ground in *In re Dannenberg* (2005) 34 Cal.4th 1061, and *In re Bowers* (1974) 40

Cal.App.3d 359, 362.) This Court's references to *Ramirez* and *Bowers* in *Rosenkrantz* suggests that separation-of-powers principles are to be observed not only when a court is assessing whether a parole decision satisfies due process, but also when fashioning a remedy once a due process violation has been determined.

In *Bowers*, an inmate filed a habeas petition challenging the Board's (then known as the Adult Authority) revocation of his parole without providing him with a pre-revocation hearing. (*In re Bowers, supra*, 40 Cal.App.3d at pp. 360-361.) The trial court determined that the Board's failure to provide the mandatory pre-revocation hearing was improper, ordered the inmate's release, and precluded the Board from seeking any further revocation proceedings based on the parole violation that served as the basis for the revocation proceeding at issue. (*Id.* at p. 361.) On review, the appellate court agreed that the inmate was entitled to relief, but found that the superior court "went too far" by ordering the inmate's release and barring the Board from further consideration of the basis for the revocation proceedings. (*Id.* at pp. 361-362.) Because the "power to grant and revoke parole is vested in the Department of Corrections, not the courts," and the proper function of the courts in parole matters "is simply to ensure that the prisoner is accorded due process," the court concluded that the proper remedy was to order the Board to vacate its prior revocation order and then "proceed in accordance with due process of law." (*Id.* at p. 362, citations omitted.) Thus, the *Bowers* court recognized the constitutionally distinct roles of the judiciary and the executive in regard to parole matters.

A similar conclusion was reached in *Ramirez*, where the superior court determined that the Board's parole denial was not supported by any evidence, and ordered the Board to set a release date for the inmate. The Court of Appeal affirmed the superior court's granting of the petition, but remanded the matter back to the Board to reconsider Ramirez's suitability

for parole without any restrictions, explaining that “[i]n deference to the Board’s broad discretion over parole suitability matters,” the judiciary should be “reluctant to direct a particular result” in a parole suitability proceeding and that the Board “must be given every opportunity to lawfully exercise its discretion” in parole matters. (*In re Ramirez, supra*, 94 Cal.App.4th at p. 572, citing *In re Powell, supra*, 45 Cal.3d at p. 904.) Implicit within the *Ramirez* court’s conclusion is the recognition that any attempts by the judiciary to “direct a particular result” by ordering the Board to release an inmate, or restrict the Board’s ability to consider an inmate’s suitability for parole by placing conditions on remand, would impermissibly interfere with the Board’s inherent discretion over parole. As was the case in *Bowers*, the *Ramirez* court recognized that it would be improper for the court to obstruct the Board’s ability to consider the inmate’s parole status.

Despite this Court's references to *Bowers* and *Ramirez*, significant confusion has arisen as to what the Court meant by its instruction to allow the Board to “proceed in accordance with due process of law.” Following *Rosenkrantz*, most appellate courts ordered the Board simply to provide the inmate with due process upon reconsideration. (See, e.g., *In re Roderick* (2007) 154 Cal.App.4th 242, 278; *In re Barker* (2007) 151 Cal.App.4th 346, 378; *In re Weider* (2006) 145 Cal.App.4th 570, 590; *In re DeLuna* (2005) 126 Cal.App.4th 585, 600.) However, since this Court issued *In re Lawrence, supra*, 44 Cal.4th 1181 and *In re Shaputis* (2008) 44 Cal.4th 1241, which involved gubernatorial parole decisions and did not address the question of remedy, many appellate courts have directly ordered the Board to grant parole absent evidence of certain circumstances specified by the reviewing court. (See, e.g., *In re Prather* (2009) 2009 Cal. App. Unpub. LEXIS 3292, \*17 [Board directed to find petitioner suitable for parole unless new and different evidence of petitioner’s conduct in prison

subsequent to parole hearing at issue supports a determination that he currently poses an unreasonable risk of danger to society if released on parole] [rev. granted July 29, 2009, S172903]; *In re Gaul* (2009) 170 Cal.App.4th 20, 41 [same] *In re Rico* (2009) 171 Cal.App.4th 659, 689 [Board directed to find petitioner suitable for parole unless previously undiscovered evidence or new evidence subsequent to the parole hearing at issue, regarding his conduct, circumstances, or change in his mental state, supports a determination that he currently poses an unreasonable risk of danger to society if released on parole]; *In re Palermo* (2009) 171 Cal.App.4th 1096, 1112-1113 [same]; *In re Singler* (2008) 169 Cal.App.4th 1227, 1245 [same].)

The Court of Appeal in this case took an even more extreme approach and in doing so, completely eliminated the executive branch's authority to determine Molina's parole suitability. Instead of limiting judicial review to a determination of whether the Board's decision was supported by some evidence, the court determined Molina was suitable for parole and ordered his immediate release. (Slip opn. at p. 13.) Despite the facts that the Board had never found Molina to be suitable for parole and the Governor had not been provided the opportunity to exercise his constitutional and statutory authority to review a Board determination of Molina's suitability, the appellate court concluded that Molina "is a more suitable candidate for parole [than was Sandra Lawrence]" and refused to remand the matter to the Board to make the final parole decision, stating that any further delay in his parole release was "unwarranted." (Slip opn. at p. 12.)

Ordering such extensive relief to Molina has more than a mere "incidental effect" on the discretionary power vested in the executive branch, but rather allows the court to substitute its judgment for the Board and strips the Governor of his right to be the final arbiter of Molina's parole suitability. There could not be a more manifest violation of the separation-

of-powers doctrine than circumventing the Board's performance of its essential function (*In re Schoengarth* (1967) 66 Cal.2d 295,300, citing Pen. Code sections 3040, 5077), and prohibiting the Governor's exercise of his constitutional power. (*In re Morrall, supra*, 102 Cal.App.4th at pp. 295-296 [court may not arrogate to itself the exercise of authority that the Constitution expressly vests in the Governor].)

Respondent does not suggest that separation-of-powers principles would allow the Board to disregard a judicial determination regarding the sufficiency of the evidence. The Board must, however, retain the discretion to determine the inmate's current suitability for parole in light of the entire record, including the interrelation of all relevant factors, and with guidance from the reviewing court. Upon reconsideration, the Board may determine that the inmate is suitable for parole and calculate his release date. Until that final decision is made, however, the law is clear that the Board is the entity vested with the authority to determine an inmate's parole suitability and accordingly, it should not be constrained in its authority to make that decision.

## **II. THE REMEDY FOR A DUE PROCESS VIOLATION IN THE PAROLE CONTEXT IS AN ORDER FOR THE BOARD TO PROVIDE THE PROCESS DUE.**

Rather than ordering Molina released to parole, the Court of Appeal should have ordered the Board to provide the process due, which is the traditional remedy when a due process violation is found. (See *In re Carr* (1995) 38 Cal.App.4th 209, 218 [remedy for the failure to hold an annual parole hearing would be to order the hearing to be held], citing *In re Bowers, supra*, 40 Cal.App.3d at p. 363.) This longstanding rule has been applied in several post-conviction cases related to parole. In *Carr*, the appellate court found no due process violation in the Board's decision not to hold an annual parole discharge review for Carr after his parole had been

revoked. (*Carr, supra*, 38 Cal.App.4th at p. 218.) In reversing the trial court's decision to discharge Carr from parole, however, the Court of Appeal stated that even if a due process violation had occurred, "the remedy would not be to nullify the [Board's] decision to revoke parole. . . . Rather, the remedy would be to grant Carr the process he was due: an annual hearing." (*Ibid.*)

Similarly, in *In re Love* (1974) 11 Cal.3d 179, this Court found that Love had a right to disclosure of a confidential report relevant to his parole revocation proceedings. (*Id.* at p. 185.) Because Love was not provided with the confidential report before his revocation hearing, this Court ordered that the report be provided and a new revocation hearing be conducted. (*Ibid.*; see also *In re Ruzicka* (1991) 230 Cal.App.3d 595, 604 [after finding that the Board's failure to provide Ruzicka with a copy of its decision to retain him on parole violated his due process rights, the Court of Appeal ordered that Ruzicka be provided with a copy of the decision so that he could pursue his appeal rights].)

Likewise, in *In re Castaneda* (1973) 34 Cal.App.3d 825, the appellate court found that the Board's failure to hold a pre-revocation hearing violated due process and that the proper remedy was to order the Board to vacate the revocation decision and conduct the hearing. (*Castaneda*, at pp. 832-833.)

At first blush these procedural issues might not appear analogous to a decision found to be unsupported by some evidence, however, a decision supported by some evidence is a procedural due process right as well. (*Superintendent v. Hill* (1985) 472 U.S. 445, 454 [procedural due process requires findings supported by some evidence]; see also *Rosenkrantz, supra*, 29 Cal.4th at pp. 655-658.) Thus, this Court has indicated that the same concept of remedying a due process violation by providing the process due applies when a parole decision lacks sufficient evidence.

Specifically, this Court stated in *Rosenkrantz* that remand to proceed in accordance with due process is the proper remedy when a decision by the Board denying parole is not supported by some evidence. (*Rosenkrantz, supra*, 29 Cal.4th at p. 658, citing *In re Ramirez, supra*, 94 Cal.App.4th at p. 572 and *In re Bowers, supra*, 40 Cal.App.3d at p. 362.)

By citing *Bowers* and *Ramirez*, this Court appeared to signal that ordering the Board to act in a certain way, including ordering the Board to find a life prisoner suitable for parole and release him immediately, was improper because it exceeded the process that the inmate was due. (*In re Rosenkrantz, supra*, 29 Cal.4th at p. 658.) Indeed, it is significant that this Court cited to both *Bowers*, which involved the clearly procedural error of failing to hold a pre-revocation hearing, and *Ramirez*, which involved lack of evidence supporting a parole decision. The issue in both cases was essentially the same – the inmate did not receive the process he was due – and thus, the remedy in both cases was the same — to provide the inmate with the process he was due. In both cases, the remedies were consistent with the fundamental requirement of due process, which is “the opportunity to be heard ‘at a meaningful time and in a meaningful manner.’ [Citation.]” (*Mathews v. Eldridge* (1976) 424 U.S. 319, 333; *People v. Allen* (2008) 44 Cal.4th 843, 869.)

Remand to the Board for a new review of parole suitability remedies the due process violation by placing the parties in the same position in which they would have been as if the challenged decision had never taken place. Thus, the remedy provided in *Ramirez*, and cited approvingly by this Court in *Rosenkrantz*, should be provided to Molina and applied in all other cases where Board parole decisions are found to violate due process because they lack sufficient evidentiary support.

**III. REMANDING A PAROLE MATTER TO CONSIDER ALL RELEVANT AND RELIABLE EVIDENCE PROVIDES THE INMATE WITH THE PROCESS DUE WHILE MAINTAINING THE BOARD'S DISCRETION TO DETERMINE THE INMATE'S INDIVIDUAL RISK TO PUBLIC SAFETY IN ACCORDANCE WITH CONTROLLING STATE LAW.**

The appellate court concluded that remanding Molina's case back to the Board was unwarranted because there was no evidence cited by the Board suggesting that Molina is currently dangerous. (Slip opn. at p. 12.) This conclusion implies that, on remand, the Board's consideration of Molina's suitability would be limited to the information and findings already considered by the court. As a matter of law, however, the Board is required to consider all relevant and reliable evidence concerning an inmate's parole suitability, and thus the Board must be permitted to exercise its full discretion upon remand.

The Penal Code requires the Board to set a release date unless it determines that the timing and gravity of the inmate's current or past convicted offenses "is such that consideration of the public safety requires a more lengthy period of incarceration" so that a parole date cannot currently be fixed. (Pen. Code, § 3041, subd. (b).) The regulations cite several specific categories of information that must be considered, including an inmate's social history, past and present mental state, past criminal history, commitment offense, past and present attitude toward the crime, and any conditions of treatment or control. (Cal. Code Regs., tit. 15, §§ 2281, subd. (b), 2402, subd. (b).) The regulations also set forth several specific examples of suitability and unsuitability factors. (*Id.* at subs. (c) and (d).) Aside from the enumerated factors, the regulations require the Board to consider "[a]ll relevant, reliable information available to the panel" and "any other information which bears on the prisoner's suitability for release." (*Id.* at subd. (b).)

Several decisions from this Court confirm that it is important for parole decisionmakers to consider all available information when determining an inmate's parole suitability. In *Powell*, this Court stated that the Board's exercise of its broad discretion "involves the deliberate assessment of a wide variety of individualized factors on a case-by-case basis, and the striking of a balance between the interests of the inmate and of the public." (*Powell, supra*, 45 Cal.3d at p. 902.) Similarly, in *In re Minnis* (1972) 7 Cal.3d 639, this Court stated that "[m]any factors are to be considered by the [Board] in deciding whether to fix a sentence at less than maximum and whether to grant parole." (*Id.* at p. 644.) In fact, this Court went so far as to state that "[a]ny official or board vested with discretion is under an obligation to consider *all* relevant factors." (*Id.* at p. 645, emphasis in original.) And in *In re Schoengarth* (1967) 66 Cal.2d 295, this Court observed that the Board's parole suitability decision "is not guided solely by the good conduct of the prisoner while incarcerated. The nature of his offense, his age, his prior associations, his habits, inclinations and traits of character, the probability of his reformation and the interests of public security are all taken into consideration." (*Id.* at 300.)

Most recently, in *Lawrence* this Court found that "the Penal Code and corresponding regulations establish that the fundamental consideration in parole decisions is public safety." (*In re Lawrence, supra*, 44 Cal.4th at p. 1205.) Moreover, "the core determination of 'public safety' under the statute and corresponding regulations involves an assessment of an inmate's *current* dangerousness." (*Ibid.*, emphasis in original.) This Court further held that the statutory and regulatory factors "are designed to guide an assessment of the inmate's threat to society, *if released*, and hence could not logically relate to anything but the threat *currently* posed by the inmate." (*Id.* at p. 1206, emphasis in original.) Thus, in order to properly consider an inmate's current dangerousness to public safety, as required by

statute and regulation, the Board must be permitted to consider all relevant and reliable evidence in accordance with the applicable statutory and regulatory factors.

Moreover, this Court clarified in *Lawrence* that “[i]t is not the existence or nonexistence of suitability or unsuitability factors that forms the crux of the parole decision; the significant circumstance is how those factors interrelate to support a conclusion of current dangerousness to the public.” (*Lawrence, supra*, 44 Cal.4th at p. 1212.) The “relevant inquiry is whether the circumstances of the commitment offense, when considered in light of other facts in the record, are such that they continue to be predictive of current dangerousness many years after commission of the offense.” (*Id.* at p. 1221.) This Court specifically warned that “rarely (if ever) will the existence of a single isolated fact in the record, evaluated in a vacuum, suffice to support or refute” a parole decision. (*Id.* at p. 1214.)

As held in *Lawrence*, “the paramount consideration for both the Board and the Governor under the governing statutes is whether *the inmate* currently poses a threat to public safety and thus may not be released on parole.” (*Lawrence, supra*, 44 Cal.4th at p. 1210, emphasis added.) The only way the Board can make this determination, however, is if it is able to consider all information allowable by law. If restricted in the type of information that may be considered, the inmate receives less than an individualized consideration of his suitability, which realistically places the public at risk. Accordingly, when a parole decision is found to violate due process, remanding the matter to the Board to consider all relevant and reliable evidence pertaining to the inmate’s suitability for parole provides the inmate the process due while at the same time maintaining the executive branch’s discretion to determine the inmate’s individual risk to public safety in accordance with controlling state law.

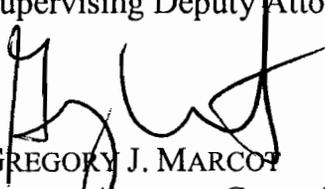
## CONCLUSION

Respondent respectfully requests that the remedy ordered by the Court of Appeal be modified to allow the Board to proceed in accordance with due process on remand by providing Molina a new hearing to determine his suitability for parole under all relevant statutory and regulatory factors, considering all relevant and reliable evidence.

Dated: August 28, 2009

Respectfully submitted,

EDMUND G. BROWN JR.  
Attorney General of California  
DANE R. GILLETTE  
Chief Assistant Attorney General  
MANUEL M. MEDEIROS  
Solicitor General  
JULIE L. GARLAND  
Senior Assistant Attorney General  
HEATHER BUSHMAN  
Supervising Deputy Attorney General



GREGORY J. MARCOT  
Deputy Attorney General  
*Attorneys for Ben Curry*

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**CERTIFICATE OF COMPLIANCE**

I certify that the attached **OPENING BRIEF ON THE MERITS** uses a 13 point Times New Roman font and contains 4,180 words.

Dated: August 28, 2009

EDMUND G. BROWN JR.  
Attorney General of California

A handwritten signature in black ink, appearing to read 'G. Marcot', written over the printed name of Gregory J. Marcot.

GREGORY J. MARCOT  
Deputy Attorney General  
*Attorneys for Respondent-Appellant*



**DECLARATION OF SERVICE BY U.S. MAIL**

Case Name: **In re Molina**  
No.: **S173260**

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 that same day in the ordinary course of business.

On August 28, 2009, I served the attached **OPENING BRIEF ON THE MERITS** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 110 West A Street, Suite 1100, P.O. Box 85266, San Diego, CA 92186-5266, addressed as follows:

Law Offices of Michael Sattris  
Michael Sattris, Esq.  
P. O. Box 337  
Bolin, CA 94924-0337

Court of Appeal of the State of California  
Second Appellate District  
200 East Santa Clara Street  
Ventura, CA 93001

San Luis Obispo County Superior Court  
The Honorable Michael L. Duffy  
County Government Center  
1035 Palm Street, #385, Department 5  
San Luis Obispo, CA 93408

California Appellate Project  
520 S. Grand Avenue 4th Floor  
Los Angeles, CA 90071

Office of the District Attorney  
County of San Luis Obispo  
County Government Center  
1055 Monterey Street  
San Luis Obispo, CA 93408

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 28, 2009, at San Diego, California.

\_\_\_\_\_  
M. Torres-Lopez  
Declarant

\_\_\_\_\_  
*M. James Lopez*  
Signature

