SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

In Re **LESLIE VAN HOUTEN,** **Defendant and Petitioner,** **ON HABEAS CORPUS.**	**Case No. BH _____** **LASC Case No. A253156** **Related Cases: BH007887, B240743, B2860234, S230851 S45 992, S238110, S221618**

PETITION FOR WRIT OF HABEAS CORPUS; VERIFICATIONS; MEMORANDUM OF POINTS & AUTHORITIES

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LESLIE VAN HOUTEN,	**LASC Case No. A253156**
Defendant and Petitioner,	**Related Cases: BH007887; S230851, B291024, B240743, B286023, S45992, S238110, S221619**
ON HABEAS CORPUS	

TO THE HONORABLE PRESIDING JUDGE OF THE LOS ANGELES COUNTY SUPERIOR COURT:

Petitioner, Leslie Van Houten, thereby petitions this Court for a writ of habeas corpus, and by this verified petition represents that:

INTRODUCTION

This petition challenges the Governor's ***fourth*** reversal of a finding by the Board of Parole Hearings ("Board") that petitioner, Ms. Van Houten is suitable for parole.[1] The Governor's fourth reversal leaves no doubt that this case has entered a cycle of parole grants by the Board, acting as an independent factfinder assessing the law and record, and reversals by the Governor, acting as an elected official

[1] Petitioner uses the term "Board" to mean the Board of Parole Hearings and its commissioners.

beholding to his voting constituents. It falls on the judiciary to ensure that a high profile defendant, such as Ms. Van Houten, is judged by the same legal standard as other defendants, even if the outcome is unpopular. That is the very essence of constitutional due process.

More than 50 years ago at the age of 19, Ms. Van Houten was arrested for the murders of Leno and Rosemary LaBianca. After three trials, she was sentenced at the age of 20 to an indeterminate life sentence with a mandatory minimum of seven years. Forty-three years later and after twenty-one denials, the Board of Parole Hearings ("Board") granted her parole at the twenty-second parole hearing. The Board has since found her suitable for parole three more times. The Governor has reversed all four grants of parole.

The most recent reversal by Governor Newsom relies on shallow legal reasoning and a misconstrued record without providing a nexus to Ms. Van Houten's current circumstances. His emphasis on the gravity of the homicides and Ms. Van Houten's youthful offender mentality over 50 years ago, without duly crediting her impeccable prison record and extensive rehabilitative programming, proves there is nothing Ms. Van Houten can do to earn parole where, as here, the parole gatekeeper is an elected official tied to voter approval and the crimes are linked to the infamy of Charles Manson.

The Governor's focus on Manson is apparent in his decisions. The opening paragraphs of Governor Newsom's two reversals describe Manson, his cult, and the crimes the he orchestrated at the Tate residence. Ms. Van Houten had no involvement in those murders and did not learn of them until the next day. The question was not whether Manson deserved parole. The question for the Governor to decide was whether Ms. Van Houten, standing alone, was suitable for parole. The Governor erred by regarding Ms. Van Houten as indistinguishable from

Charles Manson.

Added to this is the Governor error in misconstruing the "historic factors" in the 2018 Comprehensive Risk Assessment (CRA) as proof of Ms. Van Houten's current dangerousness. Contrary to the Governor's interpretation, the evaluating psychologist contrasted the negative factors from Ms. Van Houten's past with the person she is today and concluded that the historic factors are no longer present in her behavior. (Exh. 1, at pp. 11-12.) The CRA does not support the Governor's claim that the historic factors "remain salient despite Ms. Van Houten's advanced age and remain cause for concern should she be released into the community." (Exh. 2, at p 3.)

The Governor further erred by relying on the gravity of the commitment offense as a basis for reversal when the 2016 reversal did not allege this as an unsuitability factor. This is not a case where Ms. Van Houten engaged in conduct since the Governor's prior reversal that placed her suitability in question. Her behavior remains exemplary and continues to garner accomplishments. There also has not been a superceding CRA with negative findings since the favorable evaluation in 2016. Governor Newsom is simply relying on the same evidence in concluding that the "extreme nature of the crime" renders Ms. Van Houten unsuitable for parole. The principle of equitable estoppel prevents the Governor from relying on the gravity of the commitment offense as a reason for denying parole where the Governor did not include this as a reason in the 2016 reversal. (*Driscoll v. City of Los Angeles* (1967) 67 Cal.2d 297, 305.)

The discretion held by the Governor in assessing Ms. Van Houten's grant of parole "is not a whimsical, uncontrolled power, but a legal discretion, which is subject to the limitations of legal principles governing the subject of its action, and to reversal on appeal where no reasonable basis for the action is shown." (*Sargon*

Enterprises, Inc. v. Univ. of So. Cal (2012) 55 Cal.4th 747, 771, 773.) The exercise of discretion also cannot be based on ancillary matters, such as the Governor's personal enmity toward the "Manson Family" or fearing the reaction of the voting public. The Governor's discretion is subject to the limitations of the legal principles governing the subject of his actions and to reversal where no reasonable basis for the action is shown. (*People v. Jacobs* (2007) 156 Cal.App.4th 728, 738.)

After 51 years in prison with an unblemished record of institutional programming, rehabilitation, and psychological treatment, the Governor's ill-supported denial exceeded the limits of his legal discretion and must be reversed. It also violated Ms. Van Houten's rights of due process under the state and federal constitutions. (U.S. Const., 5th & 14th Amends.; *Estelle v. McGuire* (1991) 502 U.S. 62; Cal. Const., art. 1, § 7, subd, (a) *In re Lawrence* (2008) 44 Cal.4th 1181, 1192-1193.)

PRELIMINARY REQUIREMENTS

1. **Custody.** Petitioner is confined by the California Department of Corrections and Rehabilitation ("CDCR") at the California Institution for Women at Corona, California, Mona D. Houston, Warden (A).

2. **Jurisdiction and Venue**. Petitioner was prosecuted in Los Angeles County. This Court has original jurisdiction to adjudicate the petition and issue the writ. (Cal.Const., art.VI, § 10; Pen. Code,§ 1508.)[2]

3. **Administrative Remedy**. The Board provides no administrative remedy for alleged violations of law by its parole hearing panels or Governor reversals of grants of parole.

[2] Undesignated statutory references are to the Penal Code.

PROCEDURAL HISTORY[3]

4. In 1971, a jury convicted Ms. Van Houten of two counts of first degree murder and one count of conspiracy to commit the August 10, 1969, murders of Rosemary and Leno LaBianca. The trial court sentenced her to death. She had no prior criminal convictions, nor has she committed any crimes in the intervening years.

5. In 1976, the convictions were reversed on appeal due to the absence of her attorney from the trial. (*People v. Manson* (1976) 61 Cal.App.3d 102, 205, 217.) Her second trial resulted in deadlock after the jurors deliberated for 30 days. The trial court granted her bail after finding she did not pose an undue risk to public safety, or a flight risk. As the court predicted, Ms. Van Houten conducted herself in an exemplary manner during the six and a half months before her third trial.

6. Ms. Van Houten's third trial occurred in 1978. The jury convicted her of one count of conspiracy to commit murder and two counts of first degree felony murder. Her convictions of felony murder meant the jury was not required to decide if she acted with premeditation or deliberation. This lesser level of culpability resulted in the trial court imposing concurrent indeterminate life sentences with a minimum service term of seven years. The prosecution did not challenge the sentence. (Exh. 4.) She first became eligible for parole the same year as her convictions. (*People v. Van Houten*, supra, 113 Cal.App.3d at p. 347; Exh. 4.)

7. In imposing concurrent sentences, the trial court found as mitigating

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[3] The procedural facts are taken from the appellate opinions in *People v. Manson* (1976) 61 Cal.App.3d 102, 205; *People v. Van Houten* (1980) 113 Cal.App.3d 280; *In re Van Houten* (2004) 116 Cal.App.4th 339; and July 23, 2020 parole suitability hearing transcripts attached as Exhibit 3.

factors Ms. Van Houten's admission that she participated in the LaBianca homicides, and the prosecution's concession that she was not involved in the Tate killings. The court also considered Ms. Van Houten's defense of diminished capacity from the mental illness caused by Charles Manson, as well as her prolonged use of hallucinogenic drugs supplied to her by Manson. (Exh. 4.)

8. The sentencing court gave "serious attention" to sentencing Ms. Van Houten to probation. It decided against probation on the sole ground that no one convicted of first degree murder in California had ever been granted probation. (Exh. 4.)

9. On April 14, 2016, and again on September 6, 2017, the Board found Ms. Van Houten suitable for parole. (Exhs. 10, 11.) Governor Brown reversed the first two grants of parole. (Exhs 6, 7.) The decisions were upheld by the appellate courts.

10. On January 30, 2019, the Board issued its third grant of parole. (Exh. 5) Governor Newsom reversed this decision on June 3, 2019. (Exh. 9.) The decision was again upheld by the appellate courts.

11. On July 23, 2020, after serving more than 51 years in prison as an exemplary inmate, the Board found Ms. Van Houten suitable for parole for a the fourth time. (Exh. 3, at pp. 108-123.) Governor Newsom reversed the fourth grant of parole on November 27, 2020. (Exh. 2.) This petition challenges the Governor's fourth reversal of parole on federal constitutional grounds and as an abuse of discretion under state law.

STATEMENT OF FACTS

A. Facts of the Commitment Murders.

12. Until her parent's divorce when Ms. Van Houten was 14- years of age, she led a happy, mainstream life. She sang in the family's church choir, attended youth fellowship and summer church camp, and attended high school where she was elected as a homecoming princess and class secretary. (*People v. Van Houten, supra,* 113 Cal.App.3d at p. 334.) Her home life changed when her parents divorced and her father started a new life with another woman. (Exh. 3, at pp. 11-12; Exh. 5, at pp. 20-22.)

13. The divorce crumbled the comfortable foundation of Ms. Van Houten's life. Unlike today, divorce carried a negative social stigma in the 1960's. Ms. Van Houten's self image changed from the popular homecoming princess of a conventional middle American family to the daughter of divorced parents. This devastated her sense of self-worth. The divorce was a turning point in Ms. Van Houten's life, and caused her to begin using marijuana. (Exh. 3, at pp. 11-12; Exh. 5, at pp. 22-28.)

14. At the age 15, Ms. Van Houten began associating with other teenagers raised by a single parent. (Exh. 3, at p. 12.) Her boyfriend introduced her to harder drugs. (Exh. 3; at pp. 12-13; Exh. 5, at pp. 22-30.) When Ms. Van Houten was 17, she and her boyfriend ran away to San Francisco and she became pregnant. (Exh. 5, at p. 30.) When she returned home from San Francisco, Ms. Van Houten's mother forced her to undergo an illegal abortion. The fetus was placed in a can and buried in the backyard of Ms. Van Houten's family home. (Exh. 3, at pp. 21-27, 75; Exh. 5, at pp. 30-33.) First she lost her father, then she lost her baby. The first loss

changed the structure of her world. The second loss left her brokenhearted and she was never the same. (Exh. 3; at p. 12.)

15. Ms. Van Houten graduated from business college as a certified secretary. (*People v. Van Houten, supra,* at p. 343.) After graduation, she traveled up and down the coast of California for five months. Shortly after her nineteenth birthday, Ms. Van Houten met Catherine Share, Bobby Beausoleil, and a friend of Bobby's named Gail, who were living at the Spahn Ranch. They described the Spahn Ranch (the "Ranch") as a commune run by a "Christlike" man named Charles Manson. Ms. Van Houten was attracted to the idea of communal living and agreed to visit the Ranch. (Exh. 3, at pp. 30, 79; Exh. 5, at p. 36-38.)

16. Manson started the Spahn Ranch commune after his release from prison in 1967. He named the members of his cult the "Family." Ms. Van Houten initially described her life at the Ranch as idyllic. In the beginning, Manson was very welcoming and treated his cult members with a lot of love, though she did notice he had a "strong personality." (*People v. Van Houten, supra,* 113 Cal.App.3d at p. 344.) By the end of her time at the Ranch, she felt "nothing but fear and survival." (Exh. 3, at p. 19; Exh. 5, at pp. 45-47.) Manson dominated and manipulated the twenty or so permanent "Family" members through isolation, dependence, fear, drugs, sex, and indoctrination. His grip on the Family members became so intractable that, over time, they all accepted Manson's beliefs, including his insistence that acts of murder were required to start the revolution Manson envisioned. (*People v. Van Houten, supra,* 113 Cal.App.3d at pp. 343-344.)

17. On August 10, 1969, Manson ordered Ms. Van Houten and five others cult members to find a change of clothes and get into a car. One of the cult members drove the car around Los Angeles as Manson looked for victims. Manson ordered the driver to stop near the home of Leno and Rosemary LaBianca.

18. Manson and Charles "Tex" Watson went inside the house. The rest of the people stayed behind in the car. Watson was armed with a bayonet. He and Manson tied up and blindfolded the LaBiancas. Manson exited the house and ordered Ms. Van Houten and Patricia Krenwinkel to enter the house "and do what Watson told them to do." (*Id.,* at p. 345.) They entered the house to find Watson holding the LaBiancas at bayonet point. Manson drove away.

19. Once inside the residence, Watson told Ms. Van Houten and Krenwinkel to take Mrs. LaBianca into her bedroom and kill her. Krenwinkel got knives from the kitchen. She gave a knife to Ms. Van Houten and kept one for herself. Ms. Van Houten put a pillowcase over Mrs. LaBianca's head and wrapped a lamp cord around her neck. The cord was still attached to the lamp. Mrs. LaBianca grabbed the lamp and swung it at Ms. Van Houten, who knocked it out Mrs. LaBianca's hand. Ms. Van Houten forced Mrs. LaBianca onto her bed and held her down as Krenwinkel stabbed Ms. LaBianca in the clavicle, bending the knife. (*Id.,* at p. 346.)

20. Ms. Van Houten called to Watson who entered the bedroom with a bayonet. Ms. Van Houten turned away as he stabbed Mrs. LaBianca eight times with the bayonet. Each stab wound delivered by Watson's bayonet inflicted a fatal blow. (*Ibid.*) Ms. Van Houten "stared off into a den" as Watson stabbed Mrs. LaBianca. Watson turned Ms. Van Houten around, handed her a knife, and told her to "do something." (Exh. 3, at p. 24; Exh. 5, at pp. 68, 70.) Ms. Van Houten "was having a hard time holding on to what was happening at that moment." In response to Watson's command that she take the knife and "do something," Ms. Van Houten stabbed Mrs. LaBianca as she lay on the floor. Ms. Van Houten "felt" Ms. LaBianca was dead at the time, but she did not know for certain if that was true. (*People v. Van Houten, supra,* 113 Cal.App.3d at p. 346.) After it was over, Ms. Van

Houten did not feel that what she had done was wrong and criticized herself for not being able to participate in the murder in the same way as Watson and Krenwinkel. (5, at pp. 77-78.)

B. <u>Manson's Control Over Family Cult Members</u>.

21. The courts, Board, and prosecutors alike have acknowledged Manson's complete control over his cult members, including Ms. Van Houten. In upholding Manson's murder convictions on direct appeal, Division One of the Second Appellate District found that Ms. Van Houten and the other defendants in the LaBianca murders were acting under the influence and orders of Charles Manson. (*People v. Manson, supra,* 61 Cal.App.3d at p. 205.) The court further found that "Manson's position of authority was firmly acknowledged. It was understood that membership in the Family required giving up everything to Manson and never disobeying him." (*Id.,* at p. 128.) The court described Manson's control over the lives of his cult members as including telling them where they could sleep, when they could eat, and what they could wear. (*Id.,* at p. 127.) According to the court, Manson's "establishment and retention of his position as the unquestioned leader was one of design" (*Id.,* at p. 128), and the willingness of Family members "to follow Manson's every direction was salient to the [prosecution's] case" against Manson, even though he was not the actual killer in any of the murders.

22. The Board also acknowledged Manson's control over the cult members, including Ms. Van Houten. (Exh. 3, at pp. 27, 35, 42, 60; Exh. 5, pp. 120-121.)

23. The Los Angeles District Attorney expressly agreed that Manson exerted complete power and control over his cult members, including Ms. Van Houten. (Exh.*In re Houten*, Cal. Superior Ct. number S230851 [District Attorney's brief].)

The keystone of the District Attorney's case against Manson was that he orchestrated the conduct of cult members who engaged in the actual killings.

24. The evidence at Ms. Van Houten's recent youth offender hearing pursuant to *People v. Franklin* (2016) 63 Cal.4th 261 provided further evidence of Manson's control. The testimony of Catherine Share established that selected cult members were not permitted to leave the Ranch. These cult members were threatened with torture and death if they left the cult.[4] Ms. Van Houten was one of the cult members Manson forbade from leaving the ranch. (Exh. 12, pp. 45-47, 57-58.)

C. <u>November 2018 Comprehensive Risk Assessment ("CRA")</u>.

25. The Board reviewed Ms. Van Houten's November 1, 2018, CRA in considering her suitability for parole. (Exh.1.) This is the CDCR's most recent psychological evaluation of Ms. Van Houten.

26. Forensic Psychologist Tasi Athans, Ph.D., conducted the evaluation and prepared the assessment. Dr. Athans began her report by summarizing Ms. Van Houten's development as a child, adolescent, and adult, including the impact of her parent's divorce and the abortion. (Exh. 1, at pp. 2-7.) She described Ms. Van Houten's criminal history as having no juvenile arrests or adjudications. As an

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[4] The statements of former Family cult member Barbara Hoyt that cult members were "free to come and go as they chose" were proven false at Ms. Van Houten's *Franklin* hearing. Nevertheless, Ms. Hoyt's false statements were relied on by Governor Brown in his 2016 reversal of Ms. Van Houten's grant of parole. (Exh. 12, at pp. 45-50, 57-58.) Unlike Ms. Van Houten, Ms. Hoyt was not among the group of selected cult members whom Manson forbid from leaving the cult.

adult, Ms. Van Houten sustained three arrests for vehicle theft and one arrest for burglary. She was released without charges filed in any of the arrests. Her only convictions were for the life crimes, which also constituted her only acts of violence. (Exh. 1, at pp. 7.)

27. Dr. Athans considered Ms. Van Houten's prior CRAs in assessing her current risk of violence. The doctor cited the CRAs of K. Kropf, Ph.D., which concluded in 2007 and 2016 that Ms. Van Houten represented a "low" risk of violence. Dr. Carrera prepared the 2010 CRA. She too found that Ms. Van Houten presented a low risk of violence. Dr. Larmer issued a Subsequent Risk Assessment ("SRA") on February 2, 2013, updating the 2010 CRA. The SRA did not assess Ms. Van Houten's risk of violence but found she maintained the gains noted in the 2010 CRA. (Exh. 1, p 7-8.)

28. Dr. Athans's described Ms. Van Houten's mental status as normal. She noted Ms. Van Houten's claim that she tried alcohol at the age of 15, and used marijuana, LSD, Benzedrine, Mescaline and Methedrine. At the Spahn Ranch ("the Ranch"), she regularly used LSD and marijuana but was found not to be under the influence of LSD on the night of the killings. When asked about her prior substance abuse, Ms. Van Houten said she had remained sober for many years, and believed using drugs would be "extremely disrespectful to the family and the memory of my victims." She expressed her "love" of being sober, and that when she thinks of freedom "alcohol and drugs are the last thing on my mind." The absence of substance-abuse related RVRs supported this claim. Ms. Van Houten also has participated in substance-abuse treatment programs over the years. (Exh. 1, at pp. 7-9.)

28. Dr. Athans also found Ms. Van Houten to be free of any psychiatric

disorders. The doctor considered Ms. Van Houten's participation in individual psychotherapy and group therapy to address past relationships, history of traumatic incidents, and how her past impacts her current decisions. Ms. Van Houten has continued to remain disciplinary free in prison, with a single counseling chrono in 1981,[5] and never engaged in any acts of violence. She has completed numerous self-help programs, work assignments, and volunteer positions. She also has earned Bachelor and Master degrees in prison. The doctor found Ms. Van Houten's parole plans to be "strong." (Exh. 1, 9-11.)

29. In assessing Ms. Van Houten's current risk of violence, Dr. Athans began by considering her historic behavioral factors from the divorce of Ms. Van Houten's parents at the age of 14 to her incarceration at the age of 19. The doctor described Ms. Van Houten's youthful mentality as including acts of violence and a violent attitude based on her participation in the LaBianca murders, other antisocial behavior, troubled relationships, traumatic experiences, and substance abuse problems. During this same time frame, Ms. Van Houten engaged in impulsive behavior, including drug use and promiscuity, and her involvement in the life crime evinced a callous lack of empathy for the victims. Even so, the doctor found no characteristics of a psychopathology. (Exh. 1, pp 11-12.)

Dr. Athans concluded her assessment of the historic behavioral factors by stating, "For nearly 50 years, she has exhibited prosocial behaviors and has sought positive relationships with others. She has not shown herself to be deceptive,

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[5]Dr. Athans' incorrectly stated in her report that this was a serious rules violation documented in an RVR. It was, instead, a minor rule violation handled with counseling. Ms. Van Houten has never received an RVR.

conning, or to lack remorse. Her total PCL-R score was below the mean of North American female inmates and below the cutoff or threshold commonly used to identify dissocial or psychopathic personality." This conclusion drew a sharp distinction between Ms. Van Houten's mental state prior to the age of 19, and the rehabilitated woman she is today. (Exh. 1, at pp. 16-17.)

30. Dr. Athans' assessment of Ms. Van Houten's "clinical factors" covered the period of time from her prior CRA in 2016. She found Ms. Van Houten continued to demonstrate insight into the factors contributing to her involvement in the killings, including a description of the causative factors. This showed the benefit of Ms. Van Houten's extensive participation in self-help programs, including individual therapy. Dr. Athans found that Ms. Van Houten acknowledged her past susceptibility to the influence of Manson but took full responsibility for her own behavior without minimizing her role or externalizing blame. She was impressed by Ms. Van Houten's genuine remorse for the victims and concluded the "risk factor of a lack of insight" was "not present." (Exh. 1.)

31. In considering the impact of Ms. Van Houten's status as a youth offender, Dr. Athans found it "very likely" that Ms. Van Houten's involvement in the homicides "was significantly impacted by characteristics of youth, including impulsivity, the inability to adequately foresee the long-term consequences of her behavior, and the inability to manage her emotions that resulted from a forced abortion." These factors diminished her culpability in the killings. Dr. Athans found that Ms. Van Houten harbors "genuine regret" for her involvement in the life crime and "assumed full responsibility for her behavior, without externalizing blame." (Exh. 1, pp 15-16)

32. Dr. Athans summarized Ms. Van Houten's suitability for parole as follows,

> [Ms. Van Houten] does not underestimate the impact of her crime, both with respect to the victims and their families, or to society and she appears to be genuinely remorseful for her role in the life crime. She appears to have benefitted from the natural maturation that comes with age, as well as from the many years of programming offered by the institution. Ms. Van Houten appears to have seized every opportunity provided to her to make positive changes in her life (with respect to education, vocation, and self-help). At present, her risk for violent reoffending is in the low range
> . . .

(Exh. 1, at p. 17.)

33. Based on her extensive analysis, the doctor concluded Ms. Van Houten to be a low risk for violence recidivism if released to parole. (Exh. 1, at p. 17.)

D. <u>The Board's 2019 Parole Hearing and Decision</u>.

34. On January 30, 2019, the Board rendered its third straight finding that Ms. Van Houten was suitable for parole. In arriving at this decision, the Board found that Ms. Van Houten's accepted full responsibility for her actions and did not blame Manson. She testified in this regard as follows,

> There is nothing in that night of murder that I don't take responsibility for or all that came before. I went to the ranch. I became a participant in the group at the ranch. I wanted to be a part of the revolution and the murders that were going to spark it. There's no part of me that says it was [Manson's] fault that I did all that. I willingly sat and listened. I let myself let go of who I had been . . . . [¶] I don't minimize. I feel like if I minimized, I would find easy ways to live with the guilt of what happened because I'm passing the buck onto somebody else so my conscience doesn't have to deal with it. But that's not who I am and it's not what I do with my life. . . . [¶] "So I suppose it's always there to say I'm blaming [Manson]. . . .[¶] He was convicted for controlling us and we were convicted for doing what we did in the houses. I don't - - I don't let myself off from personal responsibility.

(Exh. 5, at pp. 86-87)

35. The Board believed the sincerity of this testimony. The presiding commissioner stated, "I did want to put on the record that, you know, it doesn't show over the . . . microphones, but I do want to note the expression of remorse I saw on your face when you talked about the abortion and when you talked about the murders and the realization of . . . how horrific it was." (Exh. 5, at pp. 87-88) He further acknowledged the genuineness of Ms. Van Houten's expressions of remorse for her participation in the murders and commended her extensive

personal growth leading her to engage in positive behaviors aimed at making amends for her actions. He characterized her behavior in prison as "probably one of the most exemplary I've ever seen." (Exh. 5, at p.156.)

E. <u>The Board's 2020 Parole Hearing and Decision</u>.

1. Factual evidence.

36. Ms. Van Houten's most recent parole hearing was held on July 23, 2020. The Board again granted Ms. Van Houten parole at the conclusion of the hearing.

37. Commissioner Grounds presided over the 2020 parole hearing. He began by summarizing Ms. Van Houten's teenage years, including the social stigma she experienced from the divorce of her parents and the way in which the divorce changed Ms. Van Houten's social support system. (Exh. 3, at p. 11.) The commissioner also noted Ms. Van Houten's pregnancy and the illegal abortion forced upon her by her mother. He recognized that , to this day, Ms. Van Houten morns the loss of the only child she will ever conceive, and was never the same after that loss. (Exh. 3, pp. 27-29, 75.)

38. The Board recognized that the abortion and divorce were the causative factors of Ms. Van Houten making her susceptible to becoming a member of the Manson cult. (Exh.3, at pp. 20-33.) Ms. Van Houten explained that Catherine Share recruited her to go to the ranch at a time when she "was at an all-time bottom low." Ms. Van Houten had no income or reliable housing when she met Share. She resented her parents, was grieving the loss of her baby, and felt "extreme guilt" that she allowed her mother to force her into aborting a baby she

dearly wanted. The utopian image of an idyllic communal life containing people dedicated to interpersonal growth sounded to Ms. Van Houten like a perfect solution. She was 19 years of age and operating under the judicially recognized hallmarks of youth, including impulsiveness, gullibility, and susceptibility to the influence of a dominate adult. (Exh. 3, at pp. 10-111; see § 4801, subd. (c); *People v. Franklin, supra*, 63 Cal.4th at p. 268.)

39. Following two months of persistent coaxing, Share succeeded in convincing Ms. Van Houten to visit the Spahn Ranch. She believed Manson, through his teachings, could guide her into overcoming her guilt and low self esteem. (Exh. 3, at pp. 27-29, 31.) She admitted allowing the cult's teachings to become more important than her own sense of right and wrong. She explained she now understood how she sold out herself over and over again during her time as a member of the Manson cult. (Exh. 3, at. p. 29.) Ms. Van Houten wanted Manson's acceptance, whom she regarded as the living embodiment of Jesus Christ. She felt her survival depended on adhering to Manson's teachings. (Exh. 3, at pp. 14, 17, 30, 79.)

In discussing her reasons for following Manson, Ms. Van Houten said she looked back at herself as a weak person who allowed someone else to take control of her life and she handed it over to him. (Exh. 3, at p. 35.) In addressing her involvement in the LaBianca killings, Ms. Van Houten explained it was based on her belief in Manson's apocalyptic prediction of the coming revolution and "felt obligated to participate" because "it was something that had to be done." (Exh. 3, at p. 30.)

40. Ms. Van Houten described a hierarchy of cult members at the Ranch. The closest people to Manson were Lynette "Squeaky" Fromme, Patricia

Krenwinkle, Mary Brunner, Sandra Good, and Nancy Pitman. They were the first people Manson's recruited into the Family. The next level of the hierarchy included Dianne Lake, Ruthie Morehouse, and the younger women. Ms. Van Houten was in the third circle of cult members, which was the outer most layer. Cult members in this layer were free to come and go from the Ranch once Manson regarded them as no longer useful. Ms. Van Houten, however, was never allowed to leave because Manson used her to keep Bobby Beausoleil happy so he would stay at the Ranch for his musical talent. Manson also required Ms. Van Houten to entertain the "bikers" and clean out the barn. She complied with these orders in an effort to gain Manson's acceptance. (Exh. 3, at pp. 44-47.)

41. Commissioner Grounds asked Ms. Van Houten to describe the causative circumstances leading up to the killings. (Exh. 3, at p. 28.) He did so presumably in response to Governor Newsom's reliance on the gravity of the commitment offense in reversing the Board's third grant of parole. Ms. Van Houten responded that she and the other cult members tried to become a single mind. Manson lectured that they should let go of everything their parents taught them. Ms. Van Houten was vulnerable to this message because of her mother's insistence that she have the abortion and her father leaving the family for another woman. (Exh. 3, at pp.11-12, 28-31, 42)

42. As time went on, Manson escalated his self-proclaimed divinity. He ordered Ms. Van Houten to read aloud to him from the Book of Revelations to find symbolism matching his view of an apocalyptic race war, after which the family would emerge as the world's leaders. (Exh. 3, at p. 16; Exh. 5, at p. 53.) Manson believed the Beatles were talking to him through the White Album by referencing the "son of man," which he believed meant "Manson." In portraying himself as the

reincarnation of Jesus Christ, Manson preached to them that he "died on the cross with forgiveness" but that he was not going to do that again during this "second coming." (Exh. 3, at pp. 16-17.) Ms. Van Houten and the other cult members strove to become "empty vessels" so they could serve Manson and reflect his ideas. (Exh. 3, at p. 25.)

43. At one point, Ms. Van Houten became involved with a biker named Sammy. Manson became furious and evicted Sammy from the Ranch. Manson then told Charles "Tex" Watson "we're losing [Ms. Van Houten], you need to keep an eye on her." (Exh. 3, at p. 20.) This confirmed Ms. Van Houten's suspicion that she was not free to leave the Ranch. A few days later Sammy returned to the Ranch to get Ms. Van Houten. She refused to go with him because she believed leaving the Ranch would expose her to "grave danger," both personally and because of the imminent race war Manson predicted. (Exh. 3, at p. 20.)

44. Manson ordered Ms. Van Houten to stay close to Patricia Krenwinkle shortly after Ms. Van Houten arrived at the Ranch. Krenwinkle was a part of Manson's inner cycle and Ms. Van Houten wanted the same. (Exh. 3, at p. 20.) She suspected there would be killings every night up to the race war but believed in Manson and assumed the killings were a necessary part of surviving the coming apocalypse. She told the Board she believed in Manson and what he saw coming. She was committed to it. (Exh. 3, at pp. 20-22.)

45. On the day after the Tate murders, Manson asked Ms. Van Houten if she was "crazy enough to believe in him." She said yes. That evening she got into a car with Manson, Watson, Krenwinkle, and three other cult members. The evening culminated with her participating in the LaBianca murders. (Exh. 3, at pp. 22-24.)

46. Ms. Van Houten concluded her factual description by excoriating herself for not possessing the humanity to refrain from her part in the killings. She said she asks herself every day how she could have committed this crime, and that she finds it "hard to live with." She now sees there was no justifying what she did, and that her actions were shameful. (Exh. 3, 36-37.)

2. Prior criminal history.

47. Ms. Van Houten was arrested several times prior to the LaBianca killings. She was not arraigned on any of the arrests. (Exh. 5, at pp. 108-109.) Ms. Van Houten later learned that a month before the murders there was a confidential informant residing at the Ranch. (Exh. 3, at p. 80.)

3. Prison achievements and conduct.

48. Ms. Van Houten reviewed her accomplishments since the prior parole hearing. As expected, she had remained free of rule violations or counseling chronos. She continued her work as chairperson of the Inmate Advisory Committee. (Exh. 3, at p. 51.) This is a potentially volatile position for a prison inmate because it requires giving other inmates information they may not want to hear. Notwithstanding the challenges inherent in this position, Ms. Van Houten decided to serve as chairperson for another year because her 50 years of prison experience helped keep the prison administration and inmate population connected. Further, CIW is a "programing prison." Ms. Van Houten stated that she found value in helping to keep the beneficial prison programs operable. Also, she

expressed her belief that staying in touch with the younger inmates reminded her of where she came from. She viewed her work as the chairperson of the Inmate Advisory Committee contributing to her ongoing process of making living amends for the damage she caused when she was young. (Exh. 3, at pp. 51-56.)

49. The Board described Ms. Van Houten's behavior in prison as "exceptional." They found her to be a dependable and efficient worker for many years without a single rule violation during her nearly five decades in prison. She has continually engaged in rehabilitative programming and made amends for her actions by facilitating many programs for other inmates. (Exh. 3, at pp. 51-53.)

4. Board's consideration of the CRA's.

50. The Board considered Ms. Van Houten's most recent CRA in assessing her suitability for parole. The CRA was conducted by forensic psychologist Tesi Athans, Ph.D., on November 1, 2018. (Exh. 3.) The Board noted with favor Dr. Athans's comment that Ms. Van Houten "seized every opportunity provided to her to make positive changes in her life, with respect to education, vocation, and self-help." (Exh. 3, at p. 70.) The Board also relied on Dr. Athans's overall conclusion that Ms. Van Houten presented a "low risk of violent recidivism." (Exh. 3, at pp. 71-72.) Ms. Van Houten has been deemed a low risk of violence since 1978. Her psychological evaluation on August 22, 1978, did not use this same language but concluded, "There is nothing that would indicate [Ms. Van Houten's] violence potential is any greater than average." (R.L. Flanagan, M.D., Psych. Consultant, dated August 22, 1978.)

5. Additional assessments of Ms. Van Houten's behavior.

52. Cult expert, Patrick O'Reilly, Ph.D., regularly met and corresponded with Ms. Van Houten regarding the psychological control Manson exerted over her. Dr. O'Reilly opined that Ms. Van Houten had successfully broken free from Manson's influence. He concluded because she had, through therapy, purged herself of Manson's control, she no longer posed a risk of succumbing to the influence of a dominate personality. Ms. Van Houten told the Board she intended to continue her sessions with Dr. O'Reilly into the future. (Exh. 3, at pp. 59-61.)

53. John Lee, a former Associate Warden at CIW, had known Ms. Van Houten for 14-years. As the associate warden, he and Ms. Van Houten had numerous discussions, which gave him insight into Ms. Van Houten's personality. Mr. Lee testified that Ms. Van Houten expressed to him deep and sincere remorse for her involvement in the life crimes. In his opinion, she is "prosocial" and facilitates many rehabilitative programs inside the prison. (Exh. 3, at pp. 62, 84.)

6. Victim representatives.

54. Debra Tate was allowed to testify at Ms Van Houten's hearing as the representative of a nephew of Mr. LaBianca. She has appeared at Ms. Van Houten's parole hearings since the early 2000's advocating against a grant of parole. Ms. Tate accused Ms. Van Houten of "not coming clean with everything," inferring there were secret facts that had not been disclosed. She accused Ms. Van Houten's attorney of "revictimizing us victims over and over again" by representing

Ms. Van Houten at the parole hearings. (Exh. 3, at pp. 98-99.) Ms. Tate continued by accusing Commissioner Grounds of answering the questions posed to Ms. Van Houten at the last two parole hearings, which she claimed enabled Ms. Van Houten to "have all the right answers." (Exh. 3, at p. 101.) In addition to her personal disagreement that Ms. Van Houten is suitable for parole, Ms. Tate described the petition she initiated to "to keep Ms. Van Houten in prison until she dies." She claimed the petition garnered 170,000 signatures with 28,000 adding written comments. (Exh. 3, at p. 102.)

55. Louis Smaldino testified as the oldest nephew of Leno and Rosemary LaBianca. He claimed Ms. Van Houten "downplayed her role in the murders" and urged the court to disregard her latest ploy for sympathy involving claims of spousal abuse. (Exh. 3, at pp. 103, 106.) Ms. Van Houten has never made claims of spousal abuse at a parole hearing or otherwise. Mr. Smaldino made an emotional plea that Ms. Van Houten not be released on parole because of her participation in killing "all these innocent young people and even an unborn child." (Exh. 3, at p. 103.) This comment confused the Tate killings with the LaBianca murders. There is no evidence that Ms. Van Houten knew of the Tate murders until the day after those murders occurred. She did not participated in the Tate murders.

7. The Board's 2020 decision.

56. The Board again concluded that Ms. Van Houten "does not pose an unreasonable risk to public safety and is suitable for parole." (Exh. 3, at p. 109.) In explaining the Board's reasoning, the presiding commissioner stated that Ms. Van Houten "exhibited extreme immature thinking" in handling the traumatic events of

her early teenage years. He identified the childhood traumas as including her forced abortion and the breakup of her family. (Exh. 3, at p. 110.) The Board found that Ms. Van Houten's "immature thinking" led to her associating with people she met "on the road" and "getting into drugs" at an early age, which proved her "diminished culpability" because of the hallmarks of her youth. The Board gave great weight to her age as a youthful offender and found that her young age made her "very vulnerable to negative influences." (Exh. 3, at pp. 110-111.)

57. The Board noted with favor Ms. Van Houten's participation in numerous rehabilitative programs and 50 years of positive institutional behavior. The Board found that her record of positive conduct supported the answers she gave at the hearing and showed "a life that's turned around." (Exh. 3, at pp. 111, 113.) Commissioner Grounds summarized the Board's findings by stating,

> I've done over a thousand cases, done over a thousand hearings, and you're one of the best programming inmates I've seen. You've shown signs of remorse and accepting responsibility for your criminal actions as evidenced by your testimony. Your disciplinary-free behavior, your positive behavior, your words and your deeds agree with each other. There's no discrepancy, and I hold great weight to your behavior.

(Exh. 3, at p. 113.)

58. Commissioner Grounds also commended Ms. Van Houten on the way she had used her educational and rehabilitative accomplishments to positively impact

other inmates. He described a school graduation he attended at the prison where "the great majority of [graduates] spoke to [sic] how you'd helped them. I could see that you were having a very positive affect on the culture at CIW." (Exh. 3, at p. 114.) According to the commissioner, Ms. Van Houten created "a significant support system inside the prison for herself and others and also developed one for the outside to make her transition as smooth as possible." (Exh. 3, at p. 115.)

F. <u>Governor Newsom's Reversals</u>.

1. The Governor's 2019 reversal.

59. Governor Newsom issued his first reversal in 2019. This reversal was in response to the Board's third grant of parole. The decision began by describing Ms. Van Houten's act of joining the Manson cult in 1968 at the age of 19, and Manson's belief in a racially-motivated apocalypse he called "Helter Skelter." The Governor continues by describing the murders of Sharon Tate, Steven Parent, Abigail Folger, Wojiciech Fryowski, and Jay Sebring, and that Ms. Tate was eight-months pregnant when she was stabbed 16 times, as well as the number of times each of the other "Tate" victims was stabbed. This lurid description of the Tate murders was irrelevant, as Ms. Van Houten was not involved in those murders and nor did she know of them until the day after they happened. (Exh. 9, at p. 1.)

60. Only after describing the Tate murders and Manson's terrifying vison of "Helter Skelter" does the Governor summarize Ms. Van Houten's involvement in the August 10, 1969, murders of Leno and Rosemary LaBianca, and her subsequent arrest on November 25, 1969. (Exh. 9, at pp. 1-2.)

61. In articulating the issues and governing legal standard, Governor Newsom stated the question he must decide is "whether Ms. Van Houten will pose a current danger to the public if released from prison." That is an incorrect statement of the law. The applicable legal standard is whether Ms. Van Houten currently posed an *"unreasonable risk"* of danger or threat to public safety. (*In re Lawrence* (2008) 44 Cal.4th 1181, 1208, 1214; *In re Shaputis* (2008) 44 Cal.4th 1241, 1254.) The risk must be "unreasonable" because every convicted felon, poses a risk of danger, no matter how low. (*Ibid.*)

62. The Governor further lessened his evidentiary burden by citing the statement in *Lawrence* that "In rare circumstances, the aggravated nature of the crime alone can provide a valid basis for denying parole, even when there is strong evidence of rehabilitation and no other evidence of current dangerousness." (Exh. 9, at p. 2 [citing *In re Lawrence, supra*, 44 Cal.4th at pp. 1211, 1214.) The cited passage is taken out of context and, again, oversimplifies the legal standard. Though our Supreme Court in *Lawrence* acknowledged that in rare circumstances, the aggravated nature of the crime alone can provide some evidence of current dangerousness if there is a nexus between the crime and the inmate's current individualized circumstances. (*In re Lawrence, supra,* 44 Cal.4th at p. 1214.) Governor Newsom's contention that the gravity of Ms. Van Houten's commitment offense alone can sufficiently support a finding of current dangerousness is an incorrect interpretation of the legal standard.

63. After citing the facts of the case and his interpretation of the legal standard, Governor Newsom concludes Ms. Van Houten was not suitable for parole because she *and* the Manson Family committed "some of the most notorious and brutal killings in California's history," and that the "gruesome crimes perpetrated

by Ms. Van Houten and other Manson Family members in an attempt to incite social chaos to continue to inspire fear to this day." The Governor continues, "Almost 50 years later, the magnitude of these crimes and their impact on society endure." This is not an analysis of Ms. Van Houten's current circumstances, nor does it establish the legally necessary nexus between the murders and her current circumstances. It, instead, focuses on the public's reaction to the Manson murders. (Exh. 9, at p. 3.)

64. The Governor next expressed "concern" over Ms. Van Houten's role in the killings and her "potential for future violence" because of her "eager participation" in the killings. He found her explanation of these aspects of the murders "insufficient." (Exh. 9, at p. 3.)

65. The Governor also faulted Ms. Van Houten for telling the Board she would have been a better daughter if she could redo the past. This, according to the Governor, showed a lack of understanding for the serious trauma she suffered from living in a dysfunctional family environment. Her comment about being a better daughter demonstrated to the Governor that Ms. Van Houten "still cannot adequately explain her destructive reaction to difficult external factors beyond her control." (Exh. 9, at p. 4.)

66. The Governor said he was "troubled" by Ms. Van Houten's comment to the Board that Manson never forced himself on her sexually. The Governor ignored Ms. Van Houten's explanation that, though Manson had not forced himself on her sexually, he regularly gave her high doses of mind-altering drugs and exerted violent control over all of his cult members. Setting aside the unnecessarily demeaning description of the nature of Manson's sexual acts, her statement that Manson had not raped her had nothing to do with whether she had fully examined

her "ongoing susceptibility to negative influences and manipulation." (Exh. 9, at p. 4.)

68. Governor Newsom concluded "the horrendous nature of these murders and Ms. Van Houten's current, related lack of insight" required that she "must take additional steps that demonstrate she will never return to this type of submission or violence again." He gave no guidance on the additional steps he considers necessary to make Ms. Van Houten suitable for parole. (Exh. 9, at pp. 4-5.)

2. The Governor's 2020 reversal.

69. The Governor's 2020 reversal adds little new to his 2019 reversal. He again begins with the same description of Ms. Van Houten's membership in the Manson cult, the Tate murders, and Manson apocalyptic vison of Helter Skelter. (Exh. 2, at p. 1.) He again relies primarily on the gravity of the commitment offense and his misinterpretation of Dr. Athans's findings regarding Ms. Van Houten's mentality prior to her incarceration. Also like the 2019 decision, the Governor again contends Ms. Van Houten failed to adequately explain why she allowed herself to succumb to Manson's influence. As again emphasized the public's reaction to the crimes that he characterized as "among the most infamous and fear-inducing in California history." (Exh. 2, at p. 3.)

70. In addition to his recapitulation of the 2019 reversal, the Governor found that Ms. Van Houten gave conflicting testimony during the 2020 parole when she said she felt obligated to participate in the killings and called on Watson to kill Mrs. LaBianca when Krenwinkle's knife bent. She described the feeling of stabbing Ms. LaBianca as " horrible" and "predatory." (Exh. 2, at pp. 2-3.) According to the

Governor, this conflicted with the purported comment she made after returning to the Ranch that the killings were "fun," and the fact she continued to follow Manson until her arrest. (Exh. 2, at p. 3.) The Governor found that these "inconsistencies" indicated "gaps" in her "insight or candor, or both, which bear on her current risk for dangerousness." (Exh. 2, at p. 4.)

A fair reading of the transcript proves Ms. Van Houten described the killings as "horrible" from her current perspective looking back. Her description of the killings as "fun" were from the perspective of a 19-year-old under influence of a dangerous cult who was trying to attain the cult's approval. (Exh. 3.) The record does not support the Governor's conclusion that the differing perspectives showed a lack of insight. Unlike the Governor, the Board interpreted Ms. Van Houten's current description of the murder as "horrible" and "predatory" proved she had faced the harsh reality of her actions rather than minimizing her responsibility. (Exh. 3.)

The Governor again misinterpreted the record when he found Dr. Athans' summary of the "historic factors" from the 2018 CRA proved Ms. Van Houten's was currently dangerous. (Exh. 2, at p. 4.) Dr. Athans was crystal clear that her summary of the historic facts described Ms. Van Houten at the time of the murders and that those same factors are not present today. (Exh. 1, at p. 11.)

In reversing the grant of parole, Governor Newsom concluded that Ms. Van Houten "must do more to develop her understanding of the factors that caused her to seek acceptance from such a negative, violent influence, and perpetrate extreme acts of wanton violence." (Exh. 2, at p. 4.) He gave no guidance regarding what Ms. Van Houten "must do" beyond the exhaustive rehabilitative programming she has already done.

REQUEST FOR RELIEF

WHEREFORE, Petitioner respectfully asks this Court to:

(1) Grant this Petition for Writ of Habeas Corpus on the finding that the Governor's reversal not supported by the evidence or legal standard; or

(2) Issue an order directing Respondent to show cause why the petition should not be granted; and

(3) Find the Governor is equitably estopped from asserting reasons to deny parole that were not raised in the 2016 reversal; and

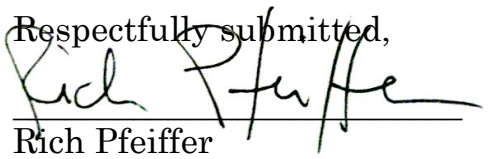
(4) Order the immediate release of the Charles "Tex" Watson tapes to counsel for Ms. Van Houten; and

(4) Find that Ms. Van Houten is suitable for parole and order her immediate placement on parole without remanding the matter to the Governor (*In re Masoner* (2009) 179 Cal.App.4th 1531, 1538), and

(5) Grant any other such further relief as the Court deems just and proper.

Dated: June 8, 2021

Respectfully submitted,



Rich Pfeiffer
Attorney for Leslie Van Houten

VERIFICATION

I, Rich Pfeiffer, declare:

1. I am an attorney licensed to practice law before the courts of the State of California, with a State Bar Number of 189416.
2. I make this verification because petitioner is incarcerated in a county different from my business address of P.O. Box 721, Silverado, CA 92676. In addition, I am more familiar with the legal allegations in the petition and thus in a better position to declare that the information in the petition is true on my information and belief.
3. I have read the records of the Board's hearing and decision. I also have read all of the exhibits attached to the petition. I believe the contents of the petition to be a true and accurate representation of these records.

I declare under penalty of perjury under the laws of the State of California that the attested allegations are true. Executed on June 8, 2021, at Los Angeles, California.

Rich Pfeiffer
Attorney for Petitioner,
Leslie Van Houten

MEMORANDUM OF POINTS AND AUTHORITIES

I.

THE GOVERNOR'S REVERSAL VIOLATED PETITIONER'S STATE AND FEDERAL RIGHTS OF CONSTITUTIONAL DUE PROCESS.

A. Procedural and Substantive Due Process Applies to Parole Decisions.

California's parole scheme creates a cognizable liberty interest in an inmate's release on parole. This interest is protected by the procedural safeguards of the Due Process Clause of the United States Constitution. (U.S. Const., 5th & 14th amends.) Generally, federal due process is satisfied when the prisoner is given notice of the parole hearing and an opportunity to be heard. If parole is denied, due process further requires a statement of the reasons for the denial. (*Greenholtz v. Inmates of Neb. Pen. & Corr. Complex (*1979) 442 U.S. 1; see also *Morrissey v. Brewer* (1972) 408 U.S. 471, 481; accord *In re Rosencrantz* (2002) 29 Cal.4th 616, 655.)

An inmate's liberty interest in parole is likewise protected under the broader due process guarantees of the California constitution. (Cal. Const, art. 1,§ 7, subd, (a), 15; *People v. Ramirez* (1979) 25 Cal.3d 260, 266-269.) The California Supreme Court long ago recognized that freedom from arbitrary adjudicative procedures is a substantive component of an individual's liberty interests. (*People v. Ramirez, supra,* 25 Cal.3d at pp. 266-269.) In criticizing and rejecting the restrictive federal

approach, which conditions due process protections on statutorily created interests, our high court in *Ramirez* held "when an individual is subjected to deprivatory governmental action, he always has a due process liberty interest both in fair and unprejudiced decision-making and in being treated with respect and dignity." (*Ibid*.) Accordingly, the California Constitution recognizes both substantive and procedural due process interests in parole. (*In re Rosenkrantz, supra*, 29 Cal.4th at pp. 676-677; *People v. Ramirez, supra,* 25 Cal.3d at p. 268; *In re Powell* (1988) 45 Cal.3d 894, 904.)

Before an inmate may receive a parole date, the Board must find the inmate suitable for parole. In murder cases, the Governor has authority to reverse a grant of parole. The Board and Governor are equally bound by the requirements of constitutional due process in making parole decisions. (Pen. Code, § 3041; Cal. Code Regs. tit. 15, §§ 2401, 2281; *In re Rosenkrantz, supra,* 29 Cal.4th at p. 655.) Due process is satisfied if the assessment of the inmate's current risk of danger is supported by "some evidence" in the record. (*In re Dannenberg, supra,* 34 Cal.4th at p. 1091; see § 3041, subd. (b).)

The "some evidence" standard derives from the United States Supreme Court's decision in *Walpole v. Hill* (1985) 472 U.S. 445, in which the high Court addressed judicial review of a prison disciplinary proceeding. In balancing the prisoner's due process right to a decision that is neither arbitrary nor capricious against the institution's interest in running a safe prison, due process minimally requires that the disciplinary board's findings be supported by "some evidence" in the record. (*Id.,* at p. 454.)

Two years after the United States Supreme Court established the "some evidence" standard, the California Supreme Court imported the standard into

parole decisions. In *In re Powell*, *supra,* 45 Cal.3d 894, the California Supreme Court held for the first time that parole decisions must comport with due process, and that due process is met if there is "some evidence in the record" supporting the decision. (*Id.,* at p. 904.)

In 2002, the California Supreme Court applied the "some evidence" standard to parole suitability hearings. In *In re Rosenkrantz, supra,* 29 Cal.4th 616, the court began by acknowledging the Board's broad discretion in rendering parole suitability decisions, and that appellate courts cannot apply a *de novo* standard of review to such decisions. (*Id.,* at p. 679; *In re Dannenberg, supra,* 34 Cal.4th at p. 1082.) While acknowledging this deferential standard of review, the *Rosenkrantz* court admonished that judicial review of suitability decisions is not merely pro forma. In reviewing a decision that an inmate is unsuitable for parole, "the judicial branch is authorized to review the factual basis of a decision of the Board denying parole in order to ensure that the decision comports with the requirements of due process of law." (*In re Rosenkrantz, supra,* 29 Cal.4th at p. 658.) The decision comports with due process if there is "some evidence in the record before the [decision maker] supporting the decision to deny parole, based on the factors specified by statute and regulation." (*Id.,* at p. 658.)

Courts also must ensure that the evidence meeting the "some evidence" standard is both reliable and of a solid value. (*Id.,* at p. 655; see Cal. Code. Regs., tit. 15, § 2402, subd. (b).) It is not sufficient to derive findings from a silent or misconstrued record. Reviewing courts additionally must determine if the decision maker gave the inmate "individualized consideration of all relevant factors," and that the conclusion was neither arbitrary nor capricious. (*In re Rosenkrantz, supra*, 29 Cal.4th at p. 655; *In re DeLuna* (2005) 126 Cal.App.4th 585; see U.S. Const.,

amends. V, XIV; Cal. Const., art. I, § 7, subd. (a).)

Applying this standard to the process for assessing a life prisoner's suitability for parole, section 3041, subdivision (b)(1) provides that the parole decision maker "shall grant parole to an inmate unless it determines that the gravity of the current convicted offense or offenses, or the timing and gravity of current or past convicted offense or offenses, is such that consideration of the public safety requires a more lengthy period of incarceration for this individual." (§ 3041, subd. (b)(1).) "As a result, parole applicants have a due process liberty interest in parole and an expectation that they will be granted parole unless the Board finds, in the exercise of its discretion, that they are unsuitable for parole in light of the circumstances specified by statute and by regulation." (*In re Lawrence* (2008) 44 Cal.4th 1181, 1191, 1204, quoting *In re Rosenkrantz, supra,* 29 Cal.4th at p. 654; *In re Stoneroad* (2013) 215 Cal.App.4th 596, 615.)

B. <u>The Governor Violated Ms. Van Houten's Rights of Constitutional Due Process by Reversing the Board's Fourth Grant of Parole Without Providing Her With a Meaningful Opportunity to Be Heard and Basing His Decision on a Misconstrued Record</u>.

The Governor, without question, had the legal authority to reverse the Board's fourth grant of parole, provided the decision complied with due process and the controlling legal standard. It did not. Ms. Van Houten was not allowed to appear before the Governor and personally demonstrate her suitability. This violated the procedural due process guarantee of a meaningful opportunity to be heard.

The Governor's grant of discretion under state statutory law allowed him to reverse Ms. Van Houten's grant of parole if he found her currently unsuitable. The substantive due process requirement of a fundamentally fair proceeding compelled the Governor to impartially consider *all* of the evidence and make a decision based on evidence accurately construed. (*Gagnon v. Scarpelli, supra,* 411 U.S. at pp. 786-787.) The Governor failed to discharge this burden my focusing nearly exclusively on the gravity of the commitment murders without articulating a nexus between the murder and Ms. Van Houten's current circumstances. He also misconstrued the evidence supporting the reversal.

During the 2020 parole hearing, the commissioners asked Ms. Van Houten to describe how it felt to stab Mrs. LaBianca. She responded that, "It was a horrible, predatory feeling." The Governor found this description to be inconsistent with Ms. Van Houten's conduct immediately after the murders, when she is said to have called the murders "fun,"and continued to follow Manson until her arrest. (Exh. 2, p. 4.) This, according to the Governor, indicated gaps in her "insight or candor, or both, which bear on her current risk for dangerousness." (Exh. 2, p. 4.) In other words, the Governor found no difference between Ms. Van Houten's view of the murders 50 years ago at the age of 19 while such was under the control of a dangerous cult, and her perspective of the murders today as a 71-year-old woman who has undergone five decades of therapy and rehabilitative programming.

Ms. Van Houten's statement that stabbing Ms. LaBianca was a "horrible and predatory feeling" was from the perspective of her current recollection of the murders after 50 years of intensive psychotherapy and rehabilitative programming. The Board correctly interpreted this recollection as proving Ms. Van Houten has gained insight into her conduct and faced the harsh reality of her actions rather

than minimizing her responsibility. It is a measure of her growth rather than a lifelong brand of undue danger.

The Governor misconstrued Dr. Athans' analysis of Ms. Van Houten's "historic" personality factors as evidence of her current unsuitability for parole. The "Historic Factors" section of Dr. Athans' CRA listed several post convection attributes of Ms. Van Houten, including "prior violence, violent attitude, other antisocial behavior, troubled relationships, traumatic experiences, and substance abuse problems." (Exh. 1, p. 11.) The Governor found these factors to "remain salient despite Ms. Van Houten's advanced age and remain cause for concern should she be released into the community." (Exh. 2, p. 4.) This conclusion constitutes error for several reasons. First, it presumes a person cannot change for the better in 51 years. Second, it ignores the large body of law describing the diminished culpability of youthful offenders and their remarkable ability to reform. (Pen. Code, § 4801, subd. (c); *People v. Franklin, supra*, 63 Cal.4th at p. 268.) The law defining the hallmarks of youth was something the Governor was assumed to understand and apply.

The third problem with the Governor's reliance on Dr. Athans's summary of the historic factors is that it misstates Dr. Athans's evaluation and conclusion.

The Governor relies on Dr. Athans's summary of the historic factors as follows,

> The evaluating psychologist noted that several historical factors including "prior violence, violent attitude, other antisocial behavior, troubled relationships, traumatic experiences, and substance abuse problems are present and

> relevant to future risk of violent recidivism." These factors remain salient despite Ms. Van Houten's advanced age and remain cause for concern should she be released into the community.

(Exh. 2, at p. 4.)

The portion of the CRA referred to by the Governor is contained in the section entitled "Analysis of Historic Factors." It states in relevant part,

> Ms. Van Houten displayed the presence of predictive factors for future dangerous behavior within this domain, including prior violence, violent attitude, other antisocial behavior, troubled relationships, substance abuse problems, and traumatic experiences. *The risk factors, major mental disorder, personality disorder, employment problems, and treatment and supervisions [sic] response, are not currently present or relevant to violence risk.*

(Exh. 1, p. 11 [emphasis added].)

Dr. Athans acknowledged that the risk factors of "prior violence, violent attitude, other antisocial behavior, troubled relationships, traumatic experiences, and substance abuse problems" are present in Ms. Van Houten's prior behavior and relevant in determining her future risk of violent recidivism. (Exh. 1, p. 11.) In analyzing the current significance of the historic factors, Dr. Athans states

> Ms. Van Houten has a history of engaging in impulsive behavior, including drug use and promiscuity, and her involvement in the life crime reflected a callous lack of empathy for the victims. Nonetheless, absent are a number of characteristics commonly seen in psychopathic individuals. *For nearly 50 years, she has exhibited prosocial behaviors and has sought positive relationships with others. She has not shown herself to be deceptive, conning, or to lack remorse. Her total PCL-R score was below the mean of North American female inmates and below the cutoff or threshold commonly used to identify dissocial or psychopathic personality***.**

(Exh. 1, pp. 11-12 [emphasis added].)

Dr. Athans's conclusion regarding the clinical factors present in Ms. Van Houten's case is as follows,

> Ms. Van Houten demonstrated insight into the contributing factors of the life crime and was able to adequately discuss the causative factors involved. Over the years, she has participated extensively in self-help programs, including individual therapy, which have helped her understand the pertinent factors that allowed her to become involved in the life crime. *Although she spoke of her susceptibility to the influence of Manson, she also wished to take full*

> *responsibility for her behavior without minimizing her role or externalizing blame. Ms. Van Houten's expressions of remorse for the victims appeared genuine. At present, the risk factor, lack of insight, is not present.*

(Exh. 1, at p. 12 [emphasis added].)

Under the subtitle. "Risk of Future Violence: Case Formulation and Opinions" Dr. Athans summarized her findings as follows:

> Ms. Van Houten is nearly 70-years old and has been incarcerated for almost 50 years. During that time period, she has not engaged in violence, she has largely abided by the rules of the institution having been issued one 115 in 1981, and she has participated in numerous hours of therapy, treatment groups, and self-help programs. She has addressed issues of sobriety and has made a concerted effort to understand what prompted her to engage in the life crime. She accepted responsibility for her behavior without minimizing her role or externalizing blame and although she recognized the impact of her emotional functioning on her behavior, she wished to clarify that she alone was responsible for her involvement in the crime. At present, she appears to represent a low risk for violent recidivism.

(Exh. 1, at pp. 11-12.)

When read in context, it is not possible to interpret Dr. Athans's evaluation as concluding Ms. Van Houten currently poses an unreasonable risk of violence. The

doctor contrasted the 19-year-old girl she was to the rehabilitated 71-year-old woman she is today. The doctor unequivocally concluded that Ms. Van Houten is fully rehabilitated and does not present an unreasonable risk of danger to the public if released on parole. (Exh. 1.)

The Governor violated Ms. Van Houten's rights of substantive due process by misconstruing Ms. Van Houten's testimony at the parole hearing, as well as Dr. Athans's psychological evaluation. The Governor placed undue emphasis on isolated and unsupported "facts" tending to show unsuitability, rather than assessing Ms. Van Houten's entire circumstances in determining if she met the overarching question of whether she currently poses an unreasonable risk of danger to public safety. It is well established that the Governor's decision must "reflect[ ] due consideration of the specified factors as applied to the individual prisoner in accordance with applicable legal standards." (*In re Shaputis* (2011) 53 Cal.4th 192, 210 (*Shaputis II*); *In re Lawrence, supra,* 44 Cal.4th at p. 1204; *In re Shaputis* (2008) 44 Cal.4th 1241, 1260–1261 (*Shaputis I*); *In re Rosenkrantz, supra,* 29 Cal.4th at p. 677; *In re Shelton* (2020) 52 Cal.App.5th 595, 607-608; *In re Stoneroad, supra*, 215 Cal.App.4th at p. 616.) He violated this legal mandate.

"[I]n cases where psychological evaluations consistently indicate that an inmate poses a low risk of danger to society, a contrary conclusion must be based on more than a hunch or mere belief that he should gain more insight into his past behavior." The Governor must point to evidence from which it is reasonable to infer that the inmate's current mentality reveals a danger undetected or underestimated in the psychological reports. (*Shaputis II, supra,* 53 Cal.4th at p. 228 (conc. opn. of Liu J.); *In re Young* (2012) 204 Cal.App.4th 288, 312; *In re Roderick* (2007) 154 Cal.App.4th 242, 271–272.) The Governor's decision does not point to such

evidence, nor does explain how his conclusion that Ms. Van Houten "needs to do more" takes into account her consistently low risk assessments.

"[A]ll exercises of legal discretion must be grounded in reasoned judgment and guided by legal principles and policies appropriate to the particular matter at issue." (*People v. Russel* (1968) 69 Cal.2d 187, 195.) " To exercise the power of judicial discretion all the material facts in evidence must be known and considered, together also with the legal principles essential to an informed, intelligent and just decision." (*Estate of Gilkison* (1998) 65 Cal.App.4th 1443, 1448, quoting *In re Cortez* (1971) 6 Cal.3d 78, 85–86.)

The Governor's decision in this case is based on findings from a misconstrued record. The Governor's conclusion that Ms. Van Houten "must do more" to prove her suitability neglects to give any guidance as to what more she can do, given that she has done virtually everything possible, and has been doing it for five decades. It is evident there is nothing more Ms. Van Houten can do to overcome the taint of the commitment offense and its connection to Charles Manson. While this may be appropriate for a sentence of life *without* the possibility of parole, it is a violation of the legal standard for an indeterminate life term. Our Supreme Court long ago denounced the blanket denial of parole as a violation of constitutional due process. (*In re Rosencrantz* (2000) 29 Cal.4th 616, 655, 682; *In re DeLuna* (2005) 126 Cal.App.4th 585; see U.S. Const., amends. V, XIV; Cal. Const., art. I, § 7, subd. (a).) The Governor's flawed decision should be reversed and Ms. Van Houten's grant of parole reinstated.

II.

THE GOVERNOR ERRED IN FINDING THAT MS. VAN HOUTEN CURRENTLY POSES AN UNREASONABLE RISK OF DANGER TO PUBLIC SAFETY BY FAILING TO ASSESS HER OVERALL CIRCUMSTANCES UNDER THE PROPER LEGAL STANDARD.

A. The Standard of Review.

1. The "some evidence" standard of review.

A parole decision by the Governor must be based on the same factors the Board is required to consider. Constitutional due process requires that the decision be supported by "some evidence" in the record. (*In re Shaputis* (2011) 53 Cal.4th 192, 221 (*Shaputis II*); *In re Rosenkrantz*, *supra,* 29 Cal.4th at pp. at pp. 676–677.) Although the precise manner in which the Governor balances the relevant factors lies within the Governor's discretion, "the decision must reflect an individualized consideration of the specified criteria and cannot be arbitrary or capricious." (*Ibid.)* "[T]he aggravated nature of the crime does not in and of itself provide some evidence of *current* dangerousness to the public unless the record also establishes that something in the prisoner's pre or post incarceration history, or his or her current demeanor and mental state, indicates that the implications regarding the prisoner's dangerousness that derive from his or her commission of the commitment offense remain probative to the statutory determination of a continuing threat to public safety." (*In re Lawrence*, *supra,* 44 Cal.4th at p. 1214, italics in original.)

Appellate courts independently review the entire record to determine

"whether the identified facts are probative to the central issue of current dangerousness when considered in light of the full record before . . . the Governor." (*In re Lawrence*, at p. 1221.) To meet this standard of review, the Governor's decision must establish a nexus between the suitability factor and the finding of currently dangerous that is based on an application of the proper legal standard to an accurate interpretation of the material facts. (*In re Rosenkrantz, supra,* 29 Cal.4th at p. 677; *In re Lawrence, supra*, 44 Cal.4th at p. 1204; *In re Shaputis* (2008) 44 Cal.4th 1241, 1260–1261 (*Shaputis I*); *In re Stoneroad, supra,* 215 Cal.App.4th at p. 616.) Thus, "[t]he proper articulation of the standard of review is whether there exists 'some evidence' demonstrating that an inmate poses a current threat to public safety, rather than merely some evidence suggesting the existence of a statutory factor of unsuitability." (*In re Lawrence, supra*, 44 Cal.4th at p. 1191; *Shaputis II, supra*, 53 Cal.4th at p. 209.)

The Governor's decision is subject to a reversal if it "does not reflect due consideration of all relevant statutory and regulatory factors or is not supported by a modicum of evidence in the record rationally indicative of current dangerousness, not mere guesswork." (*Ibid.*) The some evidence standard is violated if the Governor merely proves the existence of a statutory factor of unsuitability without balancing that factor against the conclusion of a current unreasonable risk of danger.

2. De novo review is appropriate in this case.

Based on the absence of evidence supporting the Governor's reversal, this case triggers the Court's interpretation of law, rather than the examination of

disputed facts. In a habeas corpus proceeding, "the court may grant (or deny) the relief sought without ordering an evidentiary hearing as long as resolution of the petition does not depend on any disputed issue of fact." (*In re Zepeda* (2006) 141 Cal.App.4th 1493, 1497.)

In this case, the Governor's factual findings that Ms. Van Houten gave inconsistent testimony, and his contention that Dr. Athans's analysis of the historic psychological factors proved that Ms. Van Houten remains a current risk of danger are not supported by the record. Further, the Governor's continued reliance on the gravity of the commitment offense is a legally invalid basis upon which to deny parole when balanced against Ms. Van Houten's proven rehabilitation for the past 50 years. (*In re Lawrence, supra,* 44 Cal.4th at p. 1191.)

Moreover, Ms. Van Houten qualified for parole under three separate legal categories, each of which required the Governor to give "great weight" to these ameliorating factors. Ms. Van Houten qualified as a youthful offender, obligating the Governor to give great weight to the effect of the hallmarks of youth on her culpability. (§ 3051; *People v. Franklin* (2016) 63 Cal.4th 261.) She also qualified as a victim of intimate partner battering because of her cohabitation relationship with Manson, during which he physically, psychologically, and sexually abused her. Her age qualified her for release under Elderly Parole Program. (§ 3055.)

The Board gave great weight to these three categories in concluding that Ms. Van Houten is suitable for release on parole. In contrast, while the Governor claimed to give "great weight" to the youthful offender criteria, his conclusory decision does not analyze how the hallmarks of youth factored into Ms. Van Houten level of culpability. (Exh. 2, p 2.) He entirely failed to consider Ms. Van Houten's status as a battered intimate partner or how her advanced age favorably impacted

her parole suitability.

Further, the petition raises the legal issue of the Governor's misapplication of the law to a long-established factual record. There is nothing new in the record from Ms. Van Houten's last three parole hearings, other than stronger reasons to grant her parole. This implicates a mixed issue of law and facts. De novo review is the standard when a mixed question of law and fact implicates constitutional rights. (*People v. Cromer* (2001) 24 Cal.4th 889, 894; see *Sanchez v. California* (2009) 179 Cal.App.4th 467, 486.) These principles of review apply to a petition for habeas corpus. (*In re Rosenkrantz, supra,* 29 Cal.4th at p. 677.)

The standard of review by this Court must be something more than just "some evidence" supporting the Governor's conclusion. The Court should undertake de novo review in this case.

B. <u>The Governing Legal Framework</u>.

The California Supreme Court's 2008 decision in *In re Lawrence, supra,* 44 Cal.4th 1181, provides the foundational legal framework for the standard of proof in parole decisions. The high court in *Lawrence* reversed the Governor's finding that Ms. Lawrence was not suitable for parole on the ground that "some evidence" did not support the Governor's determination that Ms. Lawrence currently posed an unreasonable risk of danger to public safety. (*In re Lawrence, supra,* 44 Cal.4th at p. 1191.) The defendant in *Lawrence* shot her lover's wife four times then stabbed the wife to death with a potato peeler after becoming enraged when the husband ended his extra martial affair with the defendant. After committing the murder the defendant told her family the murder was a birthday present to herself then fled

the state. (*Id.,* at p. 1193.) Eleven years later, the defendant voluntarily returned to California and surrendered herself to the authorities, but denied involvement in the murder. In 1983, she was convicted of first degree murder and sentenced to an indeterminate life sentence. (*Id.,* at p. 1190.)

Like Ms. Van Houten, Ms. Lawrence received positive psychological evaluations during the last decade of her incarceration. (*Id.,* at p. 1195.) Also like Ms. Van Houten, Ms. Lawrence remained free of serious discipline violations throughout her incarceration and contributed to the prison community in a variety of ways. She participated in many educational groups and earned Bachelor and Master degrees in prison. (*Id.,* at p. 1194.) Again like Ms. Van Houten, the Governor reversed Ms. Lawrence's fourth consecutive grant of parole. In reinstating the Board's decision, the Supreme Court in *Lawrence* found the Governor's decision unsupported by the evidence or proper legal standard.

The Governor in *Lawrence* based his decision primarily on the gravity of the commitment evidence, with the contributing factors of Ms. Lawrence's initial lack of remorse, early negative psychological evaluations, and eight counseling "chronos" for minor prison violations. (*Id.,* at p. 1199) In analyzing these factors, the Supreme Court found that, though each factor was historically true, none of the factors applied to Ms. Lawrence's current behavior, nor had the Governor cited a nexus between the historic factors and Ms. Lawrence's current circumstances. The Supreme Court held that a finding of parole unsuitability requires proof that the inmate *currently* poses an *unreasonable* risk of danger to public safety. (*Id.,* at p. 1191.) *Lawrence* established that the relevant inquiry in parole decisions 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 the commission of the offense." (*Id.,* at p. 1235.) This inquiry is an "individualized one, and cannot be undertaken simply by examining the circumstances of the crime in isolation, without consideration of the passage of time" or other mitigating factors. (*Ibid*.)

The *Lawrence* court found Ms. Lawrence suitable for parole even though she shot her lover's wife and stabbed her to death with a vegetable peeler, after which she characterized the murder as a birthday present to herself. Psychological evaluations found her to be mildly psychotic, and that she initially showed no remorse for the murder. (*Id.,* at p. 1199.) The court found that the factors relied upon by the Governor in denying parole were overcome by Ms. Lawrence's record of rehabilitation in prison. (*Ibid.*) The legal standard applied to Ms. Lawrence proves Ms. Van Houten too is suitable for parole because she currently does not pose an unreasonable risk of danger to public safety.

C. <u>None of the Factors Cited by the Governor Prove Ms. Van Houten Currently Poses an Unreasonable Risk of Danger</u>.

In assessing Ms. Van Houten's suitability for parole, the Governor was required to go beyond the question of whether some evidence supported the unsuitability factors he cited. The governing legal standard compelled him to decide if some evidence supported the core determination of whether Ms. Van Houten's release to parole would unreasonably endanger public safety. (*In re Lawrence, supra,* at p. 1209, italics added.) The Governor's decision failed to meet this standard.

1. Gravity of the commitment offense.

The Governor's primary reason for reversing Ms. Van Houten's grant of parole is the gravity of the commitment offense and her membership in the Manson cult. (Exh. 2, at pp. 3-4.) Immutable historic facts, such as egregious details of the commitment offense, lose their predictive value over time because they do not account for the inmate's intervening reform. (*In re Lawrence, supra,* 44 Cal.4th at p. 1191.) Where the record is replete with evidence establishing an inmate's rehabilitation, remorse, and current psychological health, balanced against a record devoid of evidence that the inmate currently poses a threat to public safety, the inmate's due process rights are violated by relying on immutable and unchangeable circumstances in denying a grant of parole. (*Id.* at p. 1227.) The parole decision does not depend upon whether the commitment offense was an exceptionally brutal murder. The Supreme Court has repeatedly established that "the determination of whether an inmate poses a current danger is not dependent upon whether his or her commitment offense is more or less egregious than other, similar crimes. (*Id.,* at p. 1221; *In re Dannenberg, supra,* 34 Cal.4th at pp. 1083–1084, 1095; see *In re Shaputis, supra,* 44 Cal.4th at p. 1254.) "Focus upon whether a petitioner's crime was 'particularly egregious' in comparison to other murders in other cases is not called for by the statutes, which contemplate an individualized assessment of an inmate's suitability for parole . . . .' " (*In re Lawrence, supra,* 44 Cal.4th at p. 1217.) The determination of current dangerousness does not depend "upon whether the circumstances of the offense exhibit viciousness above the minimum elements required for conviction of that offense." (*In re Shaputis, supra,* 44 Cal.4th at p. 1254.)

All murders are egregious crimes involving extreme violence. This does not preclude parole where the defendant is sentenced to an indeterminate life term. Many individuals convicted of egregious murders have been found suitable under the legal standard that they no longer pose an unreasonable risk of danger to public safety. (See, e.g., (*In re Dannenberg* (2005) 34 Cal.4th 1061, 1069; *In re Dannenberg* (2009) 173 Cal.App.4th 237, 241; *In re MacDonald* (2010) 189 Cal.App.4th 1008, 1013-1017*; In re Moses* (2010) 182 Cal.App.4th 1279, 1285-1286; *In re Twinn* (2010) 190 Cal.App.4th 447, 452.)

Ms. Van Houten's participation in the LaBianca murders and her membership in the Manson cult more than 50 years ago are immutable facts she can never change, regardless of the amount of rehabilitation or positive programming she has accomplished. The Supreme Court in *Lawrence* acknowledged that, "in rare circumstances, the aggravated nature of the crime alone can provide a valid basis for denying parole, even when there is strong evidence of rehabilitation and no other evidence of current dangerousness." (*Ibid.*) The court continued by explaining that the gravity of the commitment offense, as an immutable and unchangeable circumstance, must have a *nexus* between the elevated circumstances of the commitment murder and the inmate's current circumstances in order for it to support a conclusion that those same factors are present in the inmate's current behavior. (*In re Lawrence, supra,* at pp. 1181, 1221; *In re Stoneroad* (2013) 215 Cal.App.4th 596, 614, 617.) The result of *Lawrence* and its progeny is that the aggravating nature of a crime can no longer provide evidence of current dangerousness "unless there is also evidence that there is something about the commitment offense which suggests the inmate still presents a threat to public safety." (*In re Denham* (2012) 211 Cal.App.4th 702, 715, citing *In re*

Lawrence, *supra,* at p. 1214; *In re Stoneroad, supra,* 215 Cal.App.4th at p. 621.) Since *Lawrence*, no published case has found that a rehabilitated inmate remains unsuitable for parole based solely on the gravity of a commitment murder.

The presiding commissioner at Ms. Van Houten's 2020 parole hearing addressed the current impact of the commitment murders by finding she no longer posed the risk factors present at the time of the murders. (Exh. 3, at p.116.) The Board found no nexus between Ms. Van Houten's commitment offense and her current risk of danger. (Exh. 3, at p. 119.) According to the Board, her many years of positive reform has purged those factors from the person she is today.

The Governor's reversal contradicted the legal standard requiring a nexus to a petitioner's current circumstances. He began by describing Charles Manson, Manson's cult, Manson's apocalyptic vision of a race war called "Helter Skelter," and Ms. Van Houten's membership in the cult at the age of 19. (Exh. 2, at p. 1) The Governor's second paragraph describes the Tate murders. He does not describe the LaBianca murders until the third paragraph. (Exh. 2, at pp. 1-2.)

The Governor concludes his decision by stating,

> Given the extreme nature of the crime in which she was involved, I do not believe she has sufficiently demonstrated that she has come to terms with the totality of the factors that led her to participate in the vicious Manson Family killings. Before she can be safely released, Ms. Van Houten must do more to develop her understanding of the factors that caused her to seek acceptance from such a negative, violent influence, and perpetrate extreme acts of wanton violence.

(Exh.2, at p. 4.) He gives no indication of what more Ms. Van Houten must do to prove her suitability.

The Governor's description of Manson, his vision of Helter Skelter, and the more vicious Tate murder was a way of bolstering the gravity of Ms. Van Houten's involvement in the La Bianca killings. Certainly the LaBianca murders were terrible, as are all murders, but the Governor's attempt to augment the facts with the brutality of the Tate murders must be disregarded.

Further, the Governor failed to cite a single circumstance from Ms. Van Houten's participation in the LaBianca murders or membership in the Manson cult that remains uncorrected today, given her 50 years of psychological therapy and rehabilitative programming. The Governor erred by placing primary emphasis on the gravity of the commitment murders and Ms. Van Houten's connection to Charles Manson in finding her unsuitable for parole.

2. Inconsistency between Ms. Van Houten's description of the murders in 1968 and today.

The body of the Governor's decision states his reasons for reversing the Board's grant of parole. First, he found Ms. Van Houten's detailed explanation of why she allowed herself to become vulnerable to Manson and his cult "unsatisfying." He expressed concern over Ms. Van Houten's explanation that her involvement in the LaBianca murder stemmed from a desperate need for acceptance by Manson and the cult, with the Governor describing the murders as "part of a series of crimes that rank among the most infamous and fear-inducing in

California history." Once again, the Governor improperly combines the Tate and La Bianca murders to support his decision.

The Governor continues by describing Ms. Van Houten's current description of the crimes as "horrible" and "predatory" is inconsistent with her describing the killings as "fun" to a fellow cult member in 1969, and the fact she remained with Manson until her arrest. The governor found "inconsistency" and"gaps in Ms. Van Houten's insight or candor, or both, which bear on her current risk for dangerousness." (Exh. 2, at p. 4.) This finding is not supported by the evidence. Ms. Van Houten's description of the killings as horrible and predatory was from her perspective of a 71-year-old woman looking back after 50 years of therapy. She commented that the killings were "fun" when she was 19 and under the influence of a dangerous cult. The inconsistency noted by the Governor is a measure of Ms. Van Houten's current rehabilitation. It does not provide a nexus between her mentality at the time of the murders and her current risk of danger.

3. Historic factors from the CRA.

The Governor continues by describing the "historical factors" cited by Dr. Athans in the 2018 CRA of "prior violence, violent attitude, other antisocial behavior, troubled relationships, traumatic experiences, and substance abuse problems" to be "present and relevant to [Ms. Van Houten's] future risk of violent recidivism." The Governor found these same factors "salient despite Ms. Van Houten's advanced age and remain cause for concern should she be released into the community." (Exh. 2, at p. 3-4.) This finding misconstrued the record. Dr. Athans made it very clear that the historic factors described in the CRA were

present in Ms. Van Houten's mentality from the age of 14 up to the time of the LaBianca murders when she was 19. (Exh. 1, at p. 11.) Dr. Athans was required to consider these factors in assessing Ms. Van Houten's suitability for parole. The doctor concluded these factors, "are not currently present or relevant to violence risk." (Exh. 1, at p. 11.) Thus, the historic factors do not support the Governor's finding of current dangerousness.

As demonstrated above, none of the factors relied on by the Governor provide some evidence of Ms. Van Houten's current dangerousness. Even assuming there is evidence supporting a given unsuitability factor, which petitioner does not concede, none of the factors provide the critical nexus between the factor and Ms. Van Houten's current unreasonable risk of danger to the public. (See: *Stoneroad*, at pp. 621-622; *In re Shaputis* (2008) 44 Cal.4th 1241, (*Shaputis I*).) This omission rendered the Governor's reversal a violation of state statutory law, and a violation of constitutional due process.

D. <u>Ms. Van Houten's Overall Circumstances Establish That She Meets the Standard for Parole Suitability</u>.

Ms. Van Houten's conviction arose from stabbing Mrs. La Bianca, after which she purportedly told a fellow cult member it was "fun." The Board found Ms. Van Houten's crimes and her initial lack of remorse overcome by her remarkable record of rehabilitation. She has undergone extensive psychological therapy. The success of her therapy can be seen in the 27 CRAs, and the unanimous conclusions beginning in 1978 that she was not violent and presented a low risk of violent recidivism if she was released on parole. (See Exh. 1, at pp.7-8, 17-18.)

Since 1976, Ms. Van Houten has been free of all drugs and alcohol and continues to participate in substance abuse rehabilitation programs. (Exh. 3, at pp. 56-58.) A sampling of the programs she has completed include Self-Management and Recovery Training (SMART); Inside out; Suicide Prevention Committee; Narcotics Anonymous (NA); Business Smarts; Helping Women Recover; Advanced Trauma; Victim Offender Education Group (VOEG); Actor's Gang Prison Project; and Victim Offender Reconciliation Program. (See, e.g., Exh. 3, 56-58, 67.) Ms. Van Houten has also engaged in one-on-one counseling, which helped her develop a deeper understanding of her parents' divorce, the abortion, and her mind set at the time of the murders. (Exh. 3, at pp. 53, 116, 118.)

Ms. Van Houten has worked as a tutor for nearly 20 years. She has earned a Bachelor of Arts degree in English Literature, with a minor in psychology. She also earned a Master Degree in the humanities. The subject of her Master's thesis was sustainable rehabilitation and used to this day in clinical applications. (Exh. 3, at pp. 6-7, 115) She also has worked as a teaching assistant in the expanding Chaffey College prison program and UCLA's Merits of Change. She has repeatedly served as the chairperson of the Women's Advisory Council, which she counts as one of her hardest, yet most rewarding positions. (Exh. 3, at p. 6, 98.) Her many laudatory chronos are too numerous to list. (Exh. 3, at p. 98.)

The Board recognized that Ms. Van Houten has spent the last 50- years agonizing over her criminal conduct and working tirelessly to overcome the damage she has caused. During the parole board hearing, she expressed wrenching remorse for her conduct and provided extensive testimony describing her personal culpability and participation in the Manson cult. Based on this evidence, the Parole Board concluded that petitioner is not the same person as the young woman who

entered prison 50-years-ago.

The Governor brushed over these accomplishments and gave little consideration of the way in which Ms. Van Houten's youth contributed to her behavior. By focusing on her past and ignoring the woman she is today, the Governor's reversal failed to establish the requisite evidentiary nexus between Ms. Van Houten's current circumstances and the factors he claimed proved that she remains unsuitable for release to parole. (*Shaputis II, supra,* 53 Cal.4th at p. 209; *In re Prather, supra*, 50 Cal.4th at pp. 251-252; *In re Lawrence, supra,* 44 Cal.4th at p. 1191.)

III.

THE GOVERNOR'S SERIAL DENIALS OF PAROLE VIOLATE THE EIGHTH AMENDMENT'S PROHIBITION AGAINST CRUEL AND UNUSUAL PUNISHMENT BY TURNING MS. VAN HOUTEN'S INDETERMINATE LIFE SENTENCE INTO A DE FACTO SENTENCE OF LIFE WITHOUT THE POSSIBILITY OF PAROLE.

The Governor's refusal to fairly apply the governing legal standard to Ms. Van Houten's individualized circumstances constitutes the imposition of a de facto sentence of life without the possibility of parole. The Governor lacks the authority to change Ms. Van Houten's indeterminate life sentence with a minimum service term of seven years, into a sentence where she never has a meaningful chance at life outside of prison. (See *In re Lynch* (1972) 8 Cal.3d 410, 414 [if claim of

constitutionally excessive punishment is properly presented, it is for the courts, "as coequal guardian[s] of the Constitution, to condemn any violation of that prohibition"].) The serial denial of parole can constitute a constitutionally excessive punishment under the Eighth Amendment of the federal Constitution and article I, section 17 of the California Constitution. (*In re Palmer* (2021) 10 Cal.5th 959, 855-956.) This is particularly true where, as here, the inmate qualifies as a youthful offender. (*Id.,* at p. 902 [concurring opn., Liu, J.]; § 3051.) The California Supreme Court in *Palmer* agreed that habeas corpus relief is available to inmates whose continued incarceration has become constitutionally excessive by the serial denial of parole. (*In re Palmer, supra,* 10 Cal.5th at p. 974-975.)

In general, fixing appropriate penalties for crimes falls within the exclusive province of the Legislature. (See, e.g., *People v. Ward* (2005) 36 Cal.4th 186, 218; *People v. Dillon* (1983) 34 Cal.3d 441, 478.) Sentences implicate sensitive questions of policy and values that "are in the first instance for the judgment of the Legislature [or the people] alone." (*In re Lynch, supra,* 8 Cal.3d at p. 414.) However, the legislative power to craft punishments is subject to the constraints imposed by the state and federal Constitutions against sentences that constitute cruel and unusual punishment. Defendants may rely on these constitutional provisions to obtain relief from a sentence that was otherwise lawfully imposed. (See *Hutto v. Davis* (1982) 454 U.S. 370, 374; *In re Dannenberg, supra,* 34 Cal.4th at p. 1071.) An inmate may challenge the minimum term established by a statute, "without regard to the constitutionality vel non of the maximum." (*In re Lynch, supra,* 8 Cal.3d at p. 419, fn. 9.) Inmates also may challenge the constitutionality of the long years of imprisonment the inmate has served. "Life-top inmates may test, in court, whether their continued punishment violates the Constitution" based on

the serial denial of parole. (*In re Palmer II, supra,* 10 Cal.5th at p. at 971.)

Ms. Van Houten's continued incarceration for more than 50 years based on a crime she committed as a youthful offender, in which the Board has found her suitable for parole at four consecutive parole hearings is "shocking and offensive" within the meaning of the state and federal Constitutions. (U.S. Const., 8th Amend; Cal. Const., art. I, § 17.) After 30 days of deliberation, the jury was unable to find Ms. Van Houten premeditated and deliberated the murders because of her diminished capacity from Manson's control and her use of mind-altering drugs.[6] Ms. Van Houten's third trial resulted in a conviction under the felony murder rule. This meant the jury found her to be vicariously liable. It did not find that Ms. Van Houten acted with premeditation or deliberation in committing the murders. Because of this, the trial court was able to impose concurrent indeterminate life sentences with a minimum service term of seven years. (*People v. Van Houten supra,* at p. 347.)

The sentencing court presided over the trial and heard the evidence supporting Ms. Van Houten's conviction. At the sentencing hearing, the court gave "serious attention" to sentencing Ms. Van Houten to probation. It ultimately declined to do so because nobody convicted of a first degree murder in California had ever been granted probation. (Exh. 4.) The court awarded Ms. Van Houten

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[6] Not available to the jury was consideration of diminished capacity for being a youthful offender. The science regarding adolescent brain development has only been recognized in criminal law for around the last 15 years old. This science led to the United States Supreme Court changing how juveniles are sentenced in 2012 in the landmark case *Miller v. Alabama* (2012) 132 S.Ct. 2455, and since then subsequent United States and California Supreme Court cases extending youthful offender considerations.

eight years and 120 days of presentence custody credits, making her eligible for parole at the time of sentencing. (Exh.3, at pp. 3, 95.) Neither side appealed the sentence. The Governor cannot now override this sentence, especially when his motive is based on implementing the will of the voting public.

The purpose of parole is to help an inmate "reintegrate into society as constructive individuals as soon as they are able, without being confined for the full term of the sentence imposed." (*Morrissey v. Brewer* (1972) 408 U.S. 471, 477.) Ms. Van Houten was sentenced to life with the possibility of parole after a minimum service term of seven years. She has served more than 50 years of that sentence and found suitable for parole after four consecutive parole hearings. The Governor's refusal to allow parole in Ms. Van Houten's case not only violates constitutional due process, but it negates the importance of the vital role parole serves in our system of criminal justice.

IV.

THE GOVERNOR FORFEITED THE ABILITY TO RELY ON THE GRAVITY OF THE COMMITMENT OFFENSE IN 2020 REVERSAL BY FAILING TO CITE THIS AS A FACTOR IN THE 2016 REVERSAL.

The principle of equitable estoppel prevents the Governor from relying on the gravity of the commitment offense as a reason for denying parole because he did not cite this as a reason in the 2016 reversal.

"Generally speaking, four elements must be present in order to apply the doctrine of equitable estoppel: (1) the party to be estopped must be apprised of the facts; (2) he must intend that his conduct shall be acted upon, or must so act that

the party asserting the estoppel had a right to believe it was so intended; (3) the other party must be ignorant of the true state of facts; and (4) he must rely upon the conduct to his injury." (*Driscoll v. City of Los Angeles* (1967) 67 Cal.2d 297, 305.)

The doctrine of equitable estoppel prevents the Governor from claiming the gravity of Ms. Van Houten's commitment offense alone is sufficient to reverse a grant of parole based on the Governor's failure to cite this factor in the 2016 parole reversal. The Governor's 2016 decision relied almost exclusively on the unsworn statements of Barbara Hoyt. It can reasonably be inferred that the Governor's decision to omit the gravity of the commitment offense as a factor in his 2016 parole reversal was based on his recognition that Ms. Van Houten's many years of positive programming negated the predictive value of the commitment offense in assessing her current risk of danger. Because the Governor agreed by this omission that the commitment offense was not a valid reason to reverse the grant of parole in 2016, he should be equitably estopped from resurrecting this as the primary factor for reversing Board's grant of parole in 2020, particularly where there is no new evidence since 2016 other than Ms. Van Houten's continued exemplary behavior and rehabilitative programming. The Governor knew of these same facts in 2016 and in 2020, thus meeting the first element of equitable estoppel. (*Driscoll v. City of Los Angeles, supra,* 67 Cal.2d at p. 305.)

The second and third elements of equitable estoppel are met because the Governor must have known that if he relied on the gravity of commitment offense as a reason for denying parole in 2016, Ms. Van Houten would have stridently opposed such a finding. The California Supreme Court decided *Lawrence* in 2008. Its holding requiring a nexus between an inmate's current circumstances and the

gravity of the commitment offense as a predicate to relying on this factor in denying parole was the law in 2016, just as it was in 2020. (*In re Lawrence, supra,* 44 Cal.4th at p. 1191.) By omitting this as a basis for denying parole in 2016, Ms. Van Houten assumed the Governor was simply following the holding of *Lawrence*, because there is no nexus to her current circumstances. Because Ms. Van Houten did not anticipate that the Governor would rely on the gravity of the commitment offense as a basis for denying parole in 2020, after rejecting this theory in 2016, she did not argue against the factor in her opposition to the 2016 reversal. She also did not address this in her 2020 parole, as the issue seemed moot. Thus, she was prejudiced by not addressing an issue she assumed was irrelevant. (*Driscoll v. City of Los Angeles, supra,* 67 Cal.2d at p. 305.)

Fundamental fairness requires that the equitable estoppel doctrine be applied to the Governor's claim that the gravity of the commitment offense compelled the reversal of the Board's grant of parole. Unless the Governor is prevented from mining old evidence to support new parole reversals in hearing after hearing, he will be allowed to improperly change the top-life sentence imposed by the trial court some 50 years ago to a sentence of life without the possibility of parole through repeated parole denials. Equitable principles are a safeguard against this abuse.

IV.

MS. VAN HOUTEN WAS DENIED HER RIGHTS OF CONSTITUTIONAL DUE PROCESS WHEN THE PROSECUTION WITHHELD EXCULPATORY EVIDENCE CONTAINED IN THE AUDIO RECORDINGS OF CHARLES "TEX" WATSON ("WATSON TAPES").

A. Summary of the Argument and Evidence.

Ms. Van Houten was denied access to the Watson Tapes at her 2017 *Franklin* hearing and all of her parole hearings. A *Franklin* hearing permits the introduction of evidence regarding the hallmarks of youth by a defendant who qualifies as a youthful offender. (*People v. Franklin* (2016) 63 Cal.4th at p. 284; § 3051.) The evidence admitted at a *Franklin* hearing can come from the defendant and prosecution, and is subject to the rules of evidence. (*Ibid.*)

Ms. Van Houten has been attempting to obtain the Watson Tapes since her parole hearing in 2017. At the beginning of each hearing, she objects to the Watson Tapes not being disclosed despite counsel having filed repeated discovery motions for the disclosure of the tapes. (Exh. 12.) At the 2017 hearing, Ms. Van Houten's counsel went so far as making a motion to disqualify the entire Office of the District Attorney due to the unfairness of the District Attorney having access to the Watson Tapes, but refusing to provide this discovery to the defense. The District Attorney's initial reason for not disclosing the tapes was that ongoing investigations would be jeopardized by the disclosure of the tapes. The superior court conducting Ms. Van

Houten's 2017 *Franklin* hearing did not believe that any investigations could still be "ongoing" for a crime committed in 1969 and after the responsible parties had been tried and convicted. The court demanded that the prosecutor provide it with the transcripts of the tapes, which it reviewed in camera.

Prior to providing the court with the tapes, the prosecutor admitted that there were no ongoing investigations after 48 years and that there were four references to Ms. Van Houten in the tapes. The court ordered the prosecutor to flag the four references to Ms. Van Houten prior to providing the court with the tapes. The prosecutor then admitted there might be more than four references to Ms. Van Houten. To this day, neither Ms. Van Houten nor her counsel have been given access to the Watson Tapes notwithstanding the admitted references to Ms. Van Houten. The Watson Tapes are necessary to prove the truth of Ms. Van Houten's statement regarding Manson's conduct as the leader of his cult, and the violent control he exerted on his cult members, including Ms. Van Houten.

Penal Code section 1054.1 states in pertinent part,

> The prosecution "shall disclose to the defendant or his or her attorney all of the following materials and information, if it is in the possession of the prosecuting attorney or if the prosecution attorney knows it to be in the possession of the investigating agencies: . . . (b) Statements of all defendants . . . (c) All relevant real evidence seized or obtained as a part of the investigation of the offenses charged."

Charles "Tex" Watson was a co-defendant, but he and Ms. Van Houten were tried separately. Therefore, Ms. Van Houten had the statutory right to disclosure of the tapes under section 1054.1.

Further, Ms. Van Houten has the right to disclosure of the tapes as part of her *Franklin* evidence. A hearing under *Franklin* allows the defendant access to any evidence pursuant to the procedures set forth in section 1204 and rule 4.437 of the California Rules of Court limited only by the evidence code. The subject of the *Franklin* hearing is allowed to "place on the record any documents, evaluations, or testimony (subject to cross-examination) that may be relevant at his eventual youth offender parole hearing, and the prosecution likewise may put on the record any evidence that demonstrates the juvenile offender's culpability or cognitive maturity, or otherwise bears on the influence of youth-related factors." (*People v. Franklin, supra,* 63 Cal.4th at p. 284.) Therefore, any admissible, relevant evidence, including but not limited to evidence subject to disclosure under *Brady v. Maryland* (1963) 373 U.S. 83 material, should be given to the defendant for purposes of establishing the youthful offender evidence for use in obtaining parole. Ms. Van Houten has repeatedly been denied this opportunity. This is a direct violation of right under state statutory law, and Constitutional rights of confrontation under the Sixth Amendment.

B. <u>The Constitutional Right to Discovery Under *Brady v. Maryland*</u>.

There are three components of *Brady*: the evidence at issue must be favorable to the accused; that evidence must have been suppressed by the State, either willfully or inadvertently; and prejudice must have resulted. (*Strickler v. Greene*

(1999) 527 U.S. 263, 281-282 (*Strickler*); *Edwards v. Ayers* (9th Cir. 2008) 542 F.3d 759, 768.) The terms "suppression," "withholding," and "failure to disclose" have the same meaning for *Brady* purposes. (See *Benn v. Lambert*, 283 F.3d 1040, 1053 (9th Cir.2002).) It does not matter that *Brady* material involves "the good faith or bad faith of the prosecution." (*Brady v. Maryland* (1963) 373 U.S. at p. 87.) *Brady* does not distinguish between pre and post conviction evidence held by the government. (*Ibid.*) Ms. Van Houten renews her request that the Court apply *Brady* in this case.

It cannot be disputed that the first component of *Brady* requiring that the evidence is favorable to the defendant exists in this case. The Court conducting the *Franklin* hearing found that Ms. Van Houten was mentioned eight times on the Watson Tapes, and that Watson repeatedly talked about Manson's control over the Manson cult members. (Exh. 12, at p. 3.) In Supreme Court case number S230851, the Attorney General conceded Manson's control over his cult members who acted on his behalf, as stated by Watson in the tapes. Therefore, the tapes unquestionably contain exculpatory evidence involving Ms. Van Houten. They also directly dispute the Governor's finding that Ms. Van Houten is attempting to shift blame to Manson.

The second element of *Brady* requires the evidence to be in the possession of the government who refuses to share it with the defense. (*Strickler v. Greene, supra,* 527 U.S. at pp. 281-282.) Again, there is no dispute about the government's possession of the Watson Tapes, and that it is withholding this evidence from Ms. Van Houten.

The final element of *Brady* is prejudice. Because the tapes contain evidence that Manson controlled his followers, Ms. Van Houten's participation in the

LaBianca murders is mitigated by that control. The Governor's 2020 reversal dismissed Manson's control as a factor diminishing Ms. Van Houten's culpability. Evidence of this control in the words of Manson's "first lieutenant" directly contradicts the Governor's contrary findings.

"The *Brady* rule . . . is over 50 years old. It is alive, well, and, as we explain, it is self executing. There need be no motion, request, or objection to trigger disclosure. The prosecution has a sua sponte duty to provide *Brady* information." (*People v. Harrison* (2017) 16 Cal.App.5th 704, 706.) Ms. Van Houten has a right to the disclosure of the Watson Tapes. Alternatively, should the Court persist in refusing to order the disclosure of this evidence, the District Attorney and Governor should be precluded from arguing against Manson's violent control of Ms. Van Houten as a factor favoring parole.

Ms. Van Houten concedes that no case has held that *Brady* applies to a parole hearing. However, there is no authority whatsoever that states it does not apply to a parole hearing. Because Ms. Van Houten remains incarcerated, and the *Brady* material in this case could promote her release, fundamental fairness and due process require the tapes be released.

V.

ALLOWING THE GOVERNOR, AS AN ELECTED OFFICIAL, TO MAKE THE FINAL PAROLE DECISION IN MURDER CASES VIOLATES EQUAL PROTECTION BY CREATING A DIFFERENT STANDARD FOR PERSONS, LIKE MS. VAN HOUTEN, WHO HAVE BEEN CONVICTED OF CELEBRATED OR NOTORIOUS CRIMES.

A. Summary of the Argument.

Under the California Constitution, the Governor is given the authority to reverse grants of parole in murders cases. (Cal. Const., art. V, subd.(b), § 8.). The Governor, as an elected official, has an inherent conflict against approving parole for high profile defendants, such as Ms. Van Houten, whose grant of parole may be unpopular with the voting public. This results in an equal protection violation by creating a different parole standard for inmates whose murder convictions arise from celebrated or notorious crimes.

Governor Newsom's two parole reversals prove he did not act as an impartial factfinder who applied the same legal standard in Ms. Van Houten's case. In 2019, the Governor stated in his written parole reversal,

> Ms. Van Houten and the Manson Family committed some of the most notorious and brutal killings in California's history. The gruesome crimes perpetrated by Ms. Van Houten and other Manson Family members in an attempt

> to incite social chaos continue to inspire fear to this day. As acknowledged by the Board in Ms. Van Houten's parole hearing, the crimes were "heinous, cruel, and inexplicably disturbing and dispassionate. Almost 50 years later, the magnitude of these crimes and their impact on society endure.

(Exh. 9; at p. 3.)

In his 2020 reversal Governor Newsom similarly states,

> I remain concerned by Ms. Van Houten's characterization of her participation in this gruesome double murder, part of a series of crimes that rank among the most infamous and fear-inducing in California history.

(Exh. 2, at p. 3.) The Governor goes on to state,

> Given the extreme nature of the crime in which she was involved, I do not believe she has sufficiently demonstrated that she has come to terms with the totality of the factors that led her to participate in the vicious Manson Family killings. Before she can be safely released, Ms. Van Houten must do more to develop her understanding of the factors that caused her to seek acceptance from such a negative, violent influence, and perpetrate extreme acts of wanton violence.

(Exh. 2, at p. 4.)

The Governor's characterization of the LaBianca murders as "the most infamous and fear-inducing in California history," coupled with his finding that "Before she can be safely released, Ms. Van Houten must do more to develop her understanding of the factors that caused her to seek acceptance from such a negative, violent influence, and perpetrate extreme acts of wanton violence" without citing what more she must do before the Governor will find her suitable for parole shows there is nothing Ms. Van Houten can do to obtain parole from this Governor. Accordingly, Ms. Van Houten and similarly situated inmates are evaluated by a different parole legal standard than other inmates convicted of murder.

B. <u>The Governor Violated Equal Protection by Evaluating Ms. Van Houten Under a Different, Harsher, Standard for Granting Parole</u>.

Article V, section 8, subdivision (b) of the California Constitution states,

> No decision of the parole authority of this State with respect to the granting, denial, revocation, or suspension of parole of a person sentenced to an indeterminate term upon conviction of murder shall become effective for a period of 30 days, during which the Governor may review the decision subject to procedures provided by statute. The Governor may only affirm, modify, or reverse the decision of the parole authority on the basis of the same factors which the parole authority is required to consider. The Governor

> shall report to the Legislature each parole decision affirmed, modified, or reversed, stating the pertinent facts and reasons for the action.

The statutory procedures for the Governor's review of a parole decision are set forth in section 3041.2, which states:

> (a) During the 30 days following the granting, denial, revocation, or suspension by a parole authority of the parole of a person sentenced to an indeterminate prison term based upon a conviction of murder, the Governor, when reviewing the authority's decision pursuant to subdivision (b) of Section 8 of Article V of the Constitution, shall review materials provided by the parole authority.
>
> (b) If the Governor decides to reverse or modify a parole decision of a parole authority pursuant to subdivision (b) of Section 8 of Article V of the Constitution, he or she shall send a written statement to the inmate specifying the reasons for his or her decision."

Prior to the addition of subdivision (b) to section 8 of article V, the power to grant or deny parole was statutory and committed exclusively to the judgment and discretion of the Board. (*In re Rosenkrantz, supra,* 29 Cal.4th at pp. 658–659; *In re Fain* (1983) 145 Cal.App.3d 540, 548–550.) The Governor had no direct role in

decisions whether to grant or deny parole to an incarcerated individual, other than to request that the full Board sitting in bank review a parole decision (§ 3041.1) or revoke parole (§ 3062). The constitutional authority of the Governor to reverse a grant of parole by the Board was limited to the fundamentally distinct power to grant a reprieve, pardon, or commutation. (*In re Fain, supra,* 145 Cal.App.3d at p. 548; see Cal. Const., art. V., § 8, subd. (a).) By adding subdivision (b) to section 8 of article V, the California voters conferred upon the Governor constitutional authority to review the Board's decisions concerning the parole of individuals who have been convicted of murder and serving indeterminate sentences for that offense.

Prior to the addition of subdivision (b), the American Civil Liberties Union ("ACLU") opposed this expansion of the Governor's role in parole decisions because it raised "serious questions of due process and equal protection by attempting to create a different standard for persons convicted of celebrated or notorious crimes." (Exh. 13, [arguments in opposition to SCA 9].)

The ACLU further opposed the proposal as adding a supplemental level of executive authority not in existence at the time the individual committed and subsequently convicted of a criminal offense and argued against expanding the Governor's role in this way because it "improperly attempts to override the neutrality and expertise of the parole authority." As relevant here, the ACLU further argued,

> Decisions made by the granting authority would be provisional for the 30-day term during which the state executive may find it expedient to unilaterally disregard or disaffirm the initial decision. Such revisions

> by a Governor could easily result from political or popular influences that, properly, are not considered by the parole authority. This factor alone would allow subjective and often irrelevant or irrational concerns to override carefully considered factual judgments.

(Exh. 13, [arguments in opposition to SCA].)

This prescient concern has materialized in Ms. Van Houten's case. The Governor's four parole reversals in Ms. Van Houten's case that were based on a lack of evidence and improper application of the relevant law, violated equal protection by creating a class of inmates convicted of infamous murders who are judged more harshly by the Governor.

The Fourteenth Amendment to the United States Constitution and article I, section 7 of the California Constitution guarantee all persons the equal protection of the laws. (*In re Williams* (2020) 57 Cal.App.5th 427, 433.) Persons who are similarly situated with respect to a law's legitimate purposes must be treated equally. (*People v. Brown* (2012) 54 Cal.4th 314, 328.) Equal protection of the law is denied only where no rational relationship exists between the disparity of treatment and a legitimate governmental purpose. (*People v. Turnage* (2012) 55 Cal.4th 62, 74.)

In evaluating a claimed equal protection violation, courts undertake de novo review in answering two questions to decide whether a statutory distinction is so devoid of even minimal rationality that it violates equal protection. (See *People v. Laird* (2018) 27 Cal.App.5th 458, 469.) First, it must be determined if the state has adopted a classification affecting two or more groups that are similarly situated in an unequal manner. (*People v. Chatman* (2018) 4 Cal.5th 277, 289.) Here, article

V, section 8, subdivision (b) of the California Constitution has resulted in the creation of a class of inmates convicted of high profile, notorious murders whose grants of parole by the Board are reversed by the Governor as a result of political or popular influences that, properly, are not considered by the parole authority. This allows subjective and often irrelevant or irrational concerns to override carefully considered factual judgments by the Board. The first step of an equal protection argument is satisfied in this case.

Second, an equal protection claim is successfully stated if the challenged classification of a similarly situated group bears no relationship to a legitimate state purpose under "rational basis" scrutiny. (*People v. Love* (2020) 55 Cal.App.5th 273, 287–288.) This second element is met because there can be no legitimate purpose to disregard the applicable standard for assessing parole suitability based on the subjective and irrelevant concern over currying public favor by an elected official. Although "'rational basis scrutiny" is exceedingly deferential, it is met in this case because it is not possible to conceive of a rational reason for the resulting differential treatment between rehabilitated inmates who qualify for release to parole under the governing legal standard, but who are denied parole because a contrary finding would be unpopular with the voting citizenry.

At the parole suitability hearing, Debra Tate described the petition she initiated to "to keep Ms. Van Houten in prison until she dies." She claimed the petition garnered 170,000 signatures with 28,000 adding written comments. (Exh. 3, at p. 102.)[7] It is reasonable to infer that this great number of voters opposing

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[7] The record contains a transcription error stating the petition has "170" signatures.

parole influenced Governor Newsom's decision to reverse Ms. Van Houten's parole despite no evidence of a current risk to public safety.

Governor Newsom's reversal of parole in this case must be reversed for the additional reason that it violated Ms. Van Houten's rights of equal protection under the law.

VI.

THE GOVERNOR'S REVERSAL IS INVALID BECAUSE HE EXCEEDED HIS 30-DAY PERIOD OF JURISDICTION TO ISSUE THE DECISION.

As stated above, Article V, section 8, subdivision (b) of the California Constitution, and section 3041.2, give the Governor only a 30-day window of jurisdiction in which to affirm, modify, or reverse the decision of the parole authority on the basis of the same factors which the parole authority is required to consider. The 30 day period commences on the effective date of the Board's decision. The Board's decision become effective on the date it refers the decision to the governor. (*In re Arafiles* (1992) 6 Cal.App.4th 1467, 1474.) Since around March 2020, concerns over COVID have caused the Board to prioritize its review of hearings where an inmate is found suitable for parole.

Ms. Van Houten was found suitable for parole on July 23, 2020. The Governor reversed the grant of parole **127 days later** on November 27, 2020, a Friday after the Thanksgiving holiday. This unusually lengthy time between the suitability finding and the Governor's reversal strongly suggests the Governor exceeded his 30-day window of authority to reverse Ms. Van Houten's parole

suitability finding.

On November 16, 2020, prior to the Governor's November 27 reversal, petitioner's counsel attempted to ascertain the date of the Board's referral to the Governor because of the unusually long period of time that had passed since the Board's decision. On November 19, 2020, a representative of the Board advised counsel it did not disclose when a case goes to the Governor's officer for review. (Exh. 8, p. 2.) The fact the Board would not disclose the referral date reinforces a conclusion that the Governor missed his statutorily mandated deadline for issuing the denial, as there is no legitimate reason to keep secret when the Governor's review period begins.

Petitioner recognizes that in *In re Johnson* (1992) 8 Cal.App.4th 618, the Governor made an untimely request to have the Board reconsider a grant of parole. Although the Governor's referral was untimely, the Board had jurisdiction to review the matter because the inmate had not yet served his minimum sentence. Because of this, the Board had jurisdiction to reverse the grant of parole. (*Id.* at p. 624.) *Johnson* does not apply to the present case. Ms. Van Houten has served 51 years on an indeterminate life sentence with a minimum service term of seven years. She completed her minimum sentence 44 years ago.

If respondent is able to provide evidence that the Board referred its decision to the Governor on or after October 29, 2020 on a parole decision dated July 23, 2020, then petitioner concedes the Governor acted within the 30-day period of his jurisdiction. If, however, the Board sent the governor its decision prior to October 29, 2020, Governor acted beyond his 30-day window of jurisdiction, his reversal was a nullity.

CONCLUSION

The real reason for the Governor's reversal is the name Manson. Although Manson has since passed away, Ms. Van Houten continues to carry the brand of a despicable criminal who deceived her and so many others.

Because all of the evidence indicates Ms. Van Houten is not currently an unreasonable risk to public safety if placed on supervised parole, no matter what standard is applied, it is respectfully requested this Honorable Court grant the requested relief.

DATED: June 8, 2021

Respectfully submitted,

Rich Pfeiffer
Attorney for Petitioner
Leslie Van Houten

DECLARATION OF SERVICE

I, the undersigned, declare: I am over the age of eighteen years and not a party to the cause; I am employed in the County of Orange, California, and my business address is P.O. Box 721, 14931 Anderson Way, Silverado, CA 92676. I caused to be served the **PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS** by placing copies thereof in a separate envelope addressed to each addressee in the attached service list.

I then sealed each envelope and with the postage thereon fully prepaid, I placed each for deposit in the United States mail, at Silverado, California, on June 8, 2021.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on June 8, 2021 at Silverado, California.

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