Van Houten said, "[I]f I was going along with the program, then my life was pretty steady. If I . . . didn't, then there was a repercussion, humiliation." Asked if her encounters with law enforcement prior to the commitment offenses, none of which resulted in charges, led her to believe there would be no consequences for her crimes, she stated at the time she was only concerned with the impending revolution, and was not thinking about legal consequences or being arrested. Van Houten at the time believed she was obligated to dedicate herself to Manson because in her view he was Christ, and were she to give up her life for him her spirit would live on forever. If she found herself among a violent group today, she would leave and report them: "I wouldn't find myself that long around people that think like that. I . . . don't in here, you know. I don't . . . put myself around violent people." Van Houten also discussed her work with the Inmate Advisory Committee. She said if granted parole she wanted to continue working to reduce recidivism rates.

The deputy district attorney gave a closing statement in which she argued Van Houten's was a rare case in which the circumstances of the life crimes alone justified denial of parole. She described the crimes, not only of Van Houten, but of other Manson cult members, and the impact of those crimes on society. She argued that because Van Houten had adopted Manson's ideology, "every act of this terrorist organization is imputed to her." She contended Van Houten also had not shown sufficient insight into her reasons for committing her life offenses to satisfy the Governor's past concerns, although beyond making this statement the deputy district attorney did not identify anything in the record indicating insufficient insight.

Van Houten's attorney gave a closing statement, urging her release on parole. Van Houten gave her own closing statement, stating, "I [want to] say thank you for having this opportunity today to speak with you. I've answered every question that I can in the most honest way possible. I have worked very hard to become the person that I am today. I regret and have deep remorse for my actions. I offer the sincerest apology to the LaBianca [f]amily and to those that were . . . victims at the Tate house. I'm terribly sorry for the devastation I caused in everyone's life and I do my best to make recompense in who I am today. I appreciate this opportunity, and I hope that I was able to convey to you the sincere nature of my heart today. Thank you."

The Board then heard statements from Sharon Tate Polanski's sister, Debra Tate, and Mr. La Bianca's nephew, Louis Smaldino, both of whom objected to Van Houten's release. Tate stated, inter alia, that there was information of which the Board was unaware, specifically details about the Manson cult's crimes that Tate had learned from attending parole hearings of other cult members, which Tate believed indicated Van Houten was "not coming clean with everything." Tate believed Van Houten had failed to apologize for her actions except during parole hearings, and that her parole hearing testimony was inconsistent hearing to hearing. Tate claimed to have been threatened by supporters of the imprisoned Manson cult members, and believed the cult members continued to communicate with one another. Tate noted Van Houten's past correspondence with a man convicted of a double homicide who then committed suicide (Michael Vines, see fn. 7, *ante*). Tate characterized Van Houten's relationship with Vines as "romantic," and believed it suggested

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Van Houten "still has questionable taste or perhaps is attracted to the same kind of person." Apart from her statement to the Board, the record does not indicate Tate provided any additional evidence against Van Houten.

Smaldino said he had attended 15 of Van Houten's parole hearings, and accused her of repeatedly downplaying her role by claiming she had been forced to commit the crimes, had been abused, or had only stabbed Mrs. La Bianca after Van Houten believed she was dead. He believed Van Houten was a willing participant in the killings. He described the impact of the crimes on his family, noting the emotional harm inflicted upon them, and the loss of the family grocery business after Mr. La Bianca's murder.

b. Board's decision

Following a recess, the Board issued a decision finding Van Houten suitable for parole. Pursuant to Penal Code section 3051, subdivision (a), Van Houten qualified as a "youthful offender" at the time of the life crimes, and the Board found that her positive behavior over the subsequent 50 years "indicates that [she has] participated in long-time reflection, maturity of judgment, . . . appreciation of human worth, and remorse for the things that [she] did when [she was] 19 years old."

The Board considered the circumstances showing unsuitability for parole, and found them outweighed by circumstances suggesting suitability. The Board described Van Houten's crimes as "extremely heinous, cruel, really disturbing, . . . dispassionate." Her "reasons for committing the offense, [her] anger, [her] greed, [her] selfishness, [her] delusional belief system, [her] extreme gang mentality, in no way, justified [her] actions." The Board considered Van Houten's prior

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criminality, including "self-reported theft and drug use," and her "prior unstable social behavior" such as her relationship with her parents, her drug and alcohol use, and her running away. "However, the panel recognizes that after a long period of time, factors such as the commitment offense, prior criminality, and unstable social history . . . no longer indicate a current risk of danger to society in light of a lengthy period of rehabilitation . . . ."

The Board then addressed the circumstances indicating Van Houten was suitable for parole. She had no history of violent crime apart from the commitment offenses, either before those offenses or during her 50-year incarceration. She had a stable social history while incarcerated as indicated by her lack of disciplinary reports and her positive programming. The presiding commissioner said, "I've done over a thousand cases, done over a thousand hearings, and you're one of the best programming inmates I've seen."

The Board found Van Houten's expressions of remorse and her acceptance of responsibility to be consistent with her positive behavior. Her current age "reduces the probability of recidivism." The presiding commissioner praised her work with the Victim Offenders Education Group, which Van Houten had "handled . . . with grace and maturity," and recalled a graduation event he attended at the prison at which speakers indicated that Van Houten had had a positive impact on their lives.

The Board further noted Van Houten had created a "significant support system inside prison for [herself], as well as other people," and had also developed a support system outside to make her transition out of prison "as smooth as [she] could possibly make it." The Board found Van Houten had realistic

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residential plans, marketable skills, and had demonstrated means for support upon release.

The Board referred to the 2018 CRA finding Van Houten to present a low risk of future violence, which was consistent with "decades" of psychological evaluations of Van Houten. The Board quoted at length from the 2018 CRA, including Van Houten's insight into the contributing factors of her life crimes, the role Van Houten's youth played in those crimes, and the lack of findings of antisocial or psychopathic behaviors. The Board noted its earlier decisions granting Van Houten parole, and found Van Houten had "maintained steady behavior and continued growth" since then.

5. *Governor's reversal*

On November 27, 2020, the Governor issued a written decision reversing Van Houten's parole. The decision began with a summary of the Manson cult and its ideology, a description of the murders at the Polanski residence, and a description of the murders of the La Biancas.

The Governor wrote that he "carefully examined the record for evidence demonstrating Ms. Van Houten's increased maturity and rehabilitation, and gave great weight to all the factors relevant to her diminished culpability as a youthful offender." The Governor "acknowledge[d] that Ms. Van Houten has made efforts to improve herself in prison," and listed programs in which she had participated or facilitated, including Narcotics Anonymous, the Victim Offender Education Group, and the Actors' Gang Prison Project. The Governor noted Van Houten's educational and vocational advancements, her service on the Inmate Advisory Council, and her "exemplary disciplinary record." "However, these factors are outweighed by negative

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factors that demonstrate she remains unsuitable for parole at this time."

The Governor wrote, "Ms. Van Houten's explanation of what allowed her to be vulnerable to Mr. Manson's influence remains unsatisfying. At her parole hearing, Ms. Van Houten explained that she was turning her back on her parents following their divorce and after a forced abortion. She described herself at the time of her involvement in the Manson Family as a 'very weak person that took advantage of someone that wanted to take control of my life and I handed it over.' I am unconvinced that these factors adequately explain her eagerness to submit to a dangerous cult leader or her desire to please Mr. Manson, including engaging in the brutal actions of the life crime."

The Governor further stated, "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." The Governor quoted Van Houten's statements from the CRA and parole hearing describing her desire to show Manson she was committed to his cause, and her sense of obligation to kill for him. He quoted her description in the CRA of the commitment offenses, ending with her statement that when she stabbed Mrs. La Bianca, " 'It was a horrible, predatory feeling.' " The Governor found Van Houten's statement "that committing the offense was 'horrible' conflicts with her subsequent conduct. After the murders, Ms. Van Houten reportedly told a young female follower of Mr. Manson that participating in the murders was 'fun.' Moreover, she continued to follow Mr. Manson's instructions and 'continued to prepare for the revolution' until she was arrested. The inconsistency

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indicates gaps in Ms. Van Houten's insight or candor, or both, which bear on her current risk for dangerousness."

The Governor wrote, "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."

The Governor concluded, "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."

6. ***Denial of petition for writ of habeas corpus by superior court***

Van Houten challenged the Governor's decision through a petition for a writ of habeas corpus in the trial court. The trial court ruled there was evidence in the record to support the reversal of parole. The court noted that Van Houten's commitment offenses were heinous, atrocious, and cruel, and that in the 2004 *In re Van Houten* opinion, the appellate court concluded the "character of the offense" alone justified denying parole. The court found the historical psychological factors the Governor quoted from the CRA supported an unsuitability

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finding. The court further found the Governor's determination that Van Houten lacked insight "into exactly what led her to follow such a dangerous man and blindly accept his teachings" supported the reversal decision.

The trial court also read the Governor's decision as finding Van Houten was unsuitable for parole because she had "minimized her culpability in the murders." The court noted that Van Houten had told the Board "she held Mrs. La Bianca down while Krenwinkel stabbed the victim," and "also told the Board that she assumed the victim was dead when she personally stabbed the victim 16 times." "The Governor's finding that [Van Houten] minimized her role in the murders is also some evidence of current dangerousness."

The trial court rejected Van Houten's other arguments, finding the Governor adequately considered her status as a youthful offender, her continued incarceration did not violate the constitutional prohibitions against cruel and unusual punishment, and the Governor's power to reverse parole decisions did not violate constitutional guarantees of equal protection under the law. The court declined to address arguments concerning equitable estoppel and Van Houten's right to access certain evidence, concluding those claims had been raised and rejected in earlier habeas petitions. The court also declined to address the argument that the Governor's reversal was untimely because that issue was under consideration by the Court of Appeal.[7]

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[7] This court later denied Van Houten's challenge to the timeliness of the Governor's decision.

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Following the trial court's denial of her petition, Van Houten filed an original petition for habeas corpus in this court. After requesting and reviewing opposition from the Attorney General, we issued an order to show cause and received full briefing from the parties.

DISCUSSION

A. Applicable Law

1. *Suitability for parole*

The governing regulations provide that "a life prisoner shall be found unsuitable for and denied parole if in the judgment of the [Board] the prisoner will pose an unreasonable risk of danger to society if released from prison." (Cal. Code Regs., tit. 15, § 2402, subd. (a).)[8] "[T]he fundamental consideration in parole decisions is public safety," which requires "an assessment of an inmate's *current* dangerousness." (*In re Lawrence* (2008) 44 Cal.4th 1181, 1205 (*Lawrence*).

The regulations specify circumstances indicating both an inmate's suitability and unsuitability for parole. Circumstances indicating unsuitability include that the prisoner has "committed the offense in an especially heinous, atrocious or cruel manner." (Regs., § 2402, subd. (c)(1).) Factors to be considered in determining the severity of the commitment offense include whether there were "[m]ultiple victims," whether "[t]he offense was carried out in a dispassionate and calculated manner," whether "[t]he victim was abused, defiled or mutilated during or

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[8] Further regulatory citations are to title 15 of the California Code of Regulations.

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after the offense," whether the manner in which the offense was committed "demonstrates an exceptionally callous disregard for human suffering," and whether "[t]he motive for the crime is inexplicable or very trivial in relation to the offense." (*Ibid.*)

Other circumstances tending to indicate unsuitability for parole include that the inmate "on previous occasions inflicted or attempted to inflict serious injury on a victim, particularly if the prisoner demonstrated serious assaultive behavior at an early age"; "has a history of unstable or tumultuous relationships with others;" "previously sexually assaulted another in a manner calculated to inflict unusual pain or fear upon the victim"; "has a lengthy history of severe mental problems related to the offense"; and "has engaged in serious misconduct in prison or jail." (Regs., § 2402, subd. (c).)

Importantly, "the mere presence of a statutory unsuitability factor" is not "the focus of the parole decision"; rather, there must be "reasoning establishing a rational nexus between those factors and the necessary basis for the ultimate decision—the determination of current dangerousness." (*Lawrence*, *supra*, 44 Cal.4th at p. 1210.)

Circumstances tending to show that the prisoner is suitable for release include that the prisoner (1) "does not have a record of assaulting others as a juvenile or committing crimes with a potential of personal harm to victims"; (2) "has experienced reasonably stable relationships with others"; (3) "performed acts which tend to indicate the presence of remorse, such as attempting to repair the damage, seeking help for or relieving suffering of the victim, or indicating that he understands the nature and magnitude of the offense"; (4) "committed his crime as the result of significant stress in his life, especially if the stress

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has built over a long period of time"; (5) at "the time of the commission of the crime, the prisoner suffered from Battered Woman Syndrome . . . and it appears the criminal behavior was the result of that victimization"; (6) "lacks any significant history of violent crime"; (7) "present age reduces the probability of recidivism"; (8) "has made realistic plans for release or has developed marketable skills that can be put to use upon release"; and (9) has engaged in "[i]nstitutional activities [that] indicate an enhanced ability to function within the law upon release." (Regs., § 2402, subd. (d).)

With exceptions not relevant here, the Penal Code imposes additional considerations when the Board is determining parole for youthful offenders—those who committed their offenses at the age of 25 years or younger—and "elderly" inmates—those who are 50 years or older and have served a minimum of 20 years on their current sentence. (Pen. Code, §§ 3055, 4801.) In the case of youthful offenders, the Board "shall give great weight to the diminished culpability of youth as compared to adults, the hallmark features of youth, and any subsequent growth and increased maturity of the prisoner in accordance with relevant case law." (*Id.*, § 4801, subd. (c).) In the case of "elderly" inmates, the Board "shall give special consideration to whether age, time served, and diminished physical condition, if any, have reduced the elderly inmate's risk for future violence." (*Id.*, § 3055, subd. (c).)

2. *Governor's review*

After the Board finds an inmate suitable for release on parole, the Governor may conduct an independent de novo review of the entire record to determine whether the inmate currently poses a threat to public safety. (Cal. Const., art. V, § 8, subd. (b);

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In re Shaputis (2011) 53 Cal.4th 192, 215, 220–221 (*Shaputis*).) " ' "[T]he Governor's decision must be based upon the same factors that restrict the Board in rendering its parole decision," ' " but the Governor may be " ' "more stringent or cautious" ' " than the Board in deciding whether the inmate poses an unreasonable risk to the public. (*In re Prather* (2010) 50 Cal.4th 238, 257, fn. 12.)

We review the Governor's decision under the "some evidence" standard, a standard our Supreme Court has called "extremely deferential." (*In re Rosenkrantz* (2002) 29 Cal.4th 616, 665 (*Rosenkrantz*).) Under that standard, a simple modicum of evidence is all that is required to uphold the Governor's decision. (*Shaputis*, *supra*, 53 Cal.4th at p. 210.) "Only when the evidence reflecting the inmate's present risk to public safety leads to but one conclusion may a court overturn a contrary decision by . . . the Governor." (*Id.* at p. 211.)

In applying the "some evidence" standard, "[t]he court is not empowered to reweigh the evidence." (*Shaputis*, *supra*, 53 Cal.4th at p. 221.) " 'Resolution of any conflicts in the evidence and the weight to be given the evidence are matters within the authority of . . . the Governor," and it is left to the Governor's discretion how " 'the specified factors relevant to parole suitability are considered and balanced.' " (*Id.* at p. 210.) " 'It is irrelevant that a court might determine that evidence in the record tending to establish suitability for parole far outweighs evidence demonstrating unsuitability for parole. As long as the . . . decision reflects due consideration of the specified factors as applied to the individual prisoner in accordance with applicable legal standards, the court's review is limited to

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ascertaining whether there is some evidence in the record that supports the . . . decision.' [Citations.]" (*Ibid.*)

In reviewing an order reversing a grant of parole, we may look to the entire record for evidence supporting the reversal, and are not limited to the evidence specified in the Governor's written decision. (*Shaputis*, *supra*, 53 Cal.4th at pp. 214–215, fn. 11.)

B. The Governor's Decision Is Not Supported By the Record

Acknowledging the Governor's constitutional authority to reverse grants of parole, and our extremely deferential standard of review of the exercise of that authority, we nonetheless conclude that the Governor's reversal in this case is not supported by a modicum of evidence in the record.

1. *The Governor's stated reasons for reversal are not supported by the record*

We begin by addressing the reasoning expressly stated in the Governor's decision. The Governor found that Van Houten's "explanation of what allowed her to be vulnerable to Mr. Manson's influence remains unsatisfying," and he was "unconvinced" that Van Houten's parents' divorce and her forced abortion "adequately explain her eagerness to submit to a dangerous cult leader or her desire to please Mr. Manson, including engaging in the brutal actions of the life crime."

Our Supreme Court has held that an inmate's "failure to 'gain insight or understanding into either his violent conduct or his commission of the commitment offense' support[s] a denial of parole." (*Shaputis*, *supra*, 53 Cal.4th at p. 218.) "[T]he presence or absence of insight is a significant factor in determining whether there is a 'rational nexus' between the inmate's

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dangerous past behavior and the threat the inmate currently poses to public safety." (*Ibid.*) "[A] 'lack of insight' into past criminal conduct can reflect an inability to recognize the circumstances that led to the commitment crime; and such an inability can imply that the inmate remains vulnerable to those circumstances and, if confronted by them again, would likely react in a similar way." (*In re Ryner* (2011) 196 Cal.App.4th 533, 547 (*Ryner*).)

In taking issue with the adequacy of Van Houten's explanation of the causative factors leading to her life crimes, we presume the Governor found Van Houten had an inability or unwillingness "to recognize the circumstances that led to the commitment crime," thus raising the possibility that Van Houten "remains vulnerable to those circumstances" such that she might reoffend. (*Ryner*, *supra*, 196 Cal.App.4th at p. 547.) The question is whether the Governor's conclusion is supported by some evidence in the record.

We hold it is not. It cannot be said that Van Houten has not extensively identified and discussed the factors leading to her life crimes, only some of which briefly are referenced in the Governor's decision. In both her interview with the CRA evaluator and at the parole hearing, Van Houten expounded at length on the causative factors, beginning with her feelings of anger and abandonment after her parents' divorce, a stigmatizing event in that era, and how that led to drug and alcohol abuse. She ran away from home with her boyfriend, who had impregnated her. Her mother then forced her to have an illegal abortion against her wishes, unmedicated, in her bedroom, instructed to keep quiet so as to not wake her siblings. Van Houten spoke of shutting down emotionally and feeling

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numb after the abortion. The CRA evaluator wrote that, even now, Van Houten "was tearful as she spoke of the abortion and what 'might have been.' " Van Houten described herself at that point in time as being " '[d]esperate to be accepted,' " and " 'ha[ving] no sense of value. My value came in the eyes of other people.' "

Van Houten stated when she met Manson cult member Catherine Share, she "was at an all-time bottom low. I had no income, I did not feel good about either of my parents, and when I met her, it seemed to me that I was being offered a pretty good life." She described how Manson slowly indoctrinated her, often while she was under the influence of LSD. The cult was not murderous and violent at the outset—rather, she stated her time at the ranch initially " 'seemed fun,' " and the talk of and preparation for violence and revolution came later. Van Houten said she " 'wanted to belong and . . . wanted to belong to something that wasn't connected to my past.' " Van Houten explained how Manson used her anger with her parents and her shame about the abortion to convince her to turn her back on society, accept the alternative lifestyle he offered, and reject the lessons of right and wrong she had learned in her youth. Manson successfully transformed any doubts Van Houten had about the cult into her own self-criticism for failing to achieve the enlightenment he purportedly offered. By the time Manson's talk turned to violence and murder, Van Houten already had fully committed to him, so much so that she believed he was Christ reborn. She also believed in the impending revolution, and that remaining with Manson was key to her survival.

The Governor found Van Houten's extensive discussion of the causative factors inadequate to explain her life crimes. This

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necessarily implies the Governor believes there are additional factors for which Van Houten has failed to account, factors that, unaddressed, create a risk of violent recidivism.

There is no indication in the record, however, of a latent underlying factor that potentially could result in violent conduct, nor has the Governor identified one. The CRA evaluator found Van Houten did not meet the criteria for psychopathy or a personality disorder, and there was no evidence of a thought disorder, hallucinations, or homicidal or suicidal thoughts or behavior. The evaluator further found it "very likely" that Van Houten's youth at the time "significantly impacted" her involvement in the life offense, a factor obviously no longer applicable five decades later. The CRA's finding that Van Houten presented a low risk of recidivism was consistent with similar evaluations over many years. Van Houten, moreover, has no history of violence either before the life crimes or in the 50 years since, and the prison staff regarded her highly enough to place her in positions of leadership within the prison, including facilitating groups intended to help other inmates with their rehabilitation.

The record shows no additional factors Van Houten has failed to articulate, or what further evidence she could have provided to establish her suitability for parole. The Governor's concern that there is more than meets the eye is, on this record, speculation, but the Governor's "decisions must be supported by some *evidence*, not merely by a hunch or intuition." (*Lawrence*, *supra*, 44 Cal.4th at p. 1213.)

In *Ryner*, the appellate court upheld the trial court's overturning of the Governor's parole reversal, finding that when "undisputed evidence shows that the inmate has acknowledged

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the material aspects of his or her conduct and offense, shown an understanding of its causes, and demonstrated remorse, the Governor's mere refusal to accept such evidence is not itself a rational or sufficient basis upon which to conclude that the inmate lacks insight, let alone that he or she remains currently dangerous." (*Supra*, 196 Cal.App.4th at p. 549.)

The *Ryner* court reasoned, "[W]e have to question whether anyone can ever fully comprehend the myriad circumstances, feelings, and current and historical forces that motivate conduct, let alone past misconduct. Additionally, we question whether anyone can ever adequately articulate the complexity and consequences of past misconduct and atone for it to the satisfaction of everyone. Indeed, the California Supreme Court has recognized that 'expressions of insight and remorse will vary from prisoner to prisoner and . . . there is no special formula for a prisoner to articulate in order to communicate that he or she has gained insight into, and formed a commitment to ending, a previous pattern of violent behavior.' " (*Ryner*, *supra*, 196 Cal.App.4th at p. 548, quoting *In re Shaputis* (2008) 44 Cal.4th 1241, 1260, fn. 18.) The court continued, "[O]ne always remains vulnerable to a charge that he or she lacks sufficient insight into some aspect of past misconduct even after meaningful self-reflection and expressions of remorse." (*Ryner*, at p. 548.) "[A]lthough a 'lack of insight' may describe some failure to acknowledge and accept an undeniable fact about one's conduct, it can also be shorthand for subjective perceptions based on intuition or undefined criteria that are impossible to refute." (*Ibid.*)

As in *Ryner*, we hold that, on this record, the Governor's dissatisfaction with Van Houten's insight appears to be a "mere

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refusal to accept" her description of what led her to be an acolyte of the Manson cult and its murderous objectives, as well as the evidence of her rehabilitation. As we have explained, the record provides no basis to support that refusal.

The Governor's other stated reasons to reverse Van Houten's parole do not withstand scrutiny. The Governor found a discrepancy between Van Houten's statements now and her purported statements and actions shortly after she committed the life crimes, which "indicates gaps in Ms. Van Houten's insight or candor, or both." Specifically, the Governor referred to Van Houten's current description that stabbing Mrs. La Bianca " 'was a horrible, predatory feeling,' " and contrasted that with Van Houten reportedly telling a fellow cult member the day after the murder that it was " 'fun.' " The Governor further noted that Van Houten " 'continued to prepare for the revolution,' " which we presume the Governor was suggesting is inconsistent with Van Houten's indication that she felt horrible about the murder.

The record does not support the Governor's conclusion that Van Houten's statements suggest a lack of insight or candor. Van Houten's bravado to the fellow cult member[9] and her continued involvement with Manson following the murders are completely consistent with her current description of her attitude at the time, which was to prove her devotion to Manson and the cult and suppress any personal misgivings she may have had about the killings.

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[9] Van Houten told both the CRA evaluator and the Board she did not recall telling the cult member the murder was fun, although she did not deny doing so.

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More important, it is unreasonable to compare Van Houten's description of her emotions during the crime now, after decades of therapy, self-help programming, and reflection, to how she characterized her feelings at age 19, while still deeply enmeshed in drug abuse and the Manson cult. The 19-year-old, drug-addled Van Houten characterized the surge of adrenaline and emotion she felt committing her first murder as "fun," whereas the 69-year-old Van Houten, looking back, would realize those feelings in fact reflected aggression and predation.[10] The Attorney General argues one cannot feel something is "fun" and also "horrible, aggressive, predatory," but these are descriptions given 50 years apart, through very different lenses.

The Governor also referenced the CRA's listing of " 'historical factors' " that were " 'present and relevant to future risk of violent recidivism,' " including " 'prior violence, violent attitude, other antisocial behavior, troubled relationships, traumatic experiences, and substance abuse problems.' " The Governor wrote, "These factors remain salient" and give "cause for concern."

These historical factors are, of course, historical, meaning they are immutable factors arising from Van Houten's past conduct and experiences. Our Supreme Court has cautioned that, although the Governor may base a parole reversal on "immutable facts" such as the "circumstances of the offense" or an "inmate's criminal history," the Governor may do so only "if those facts support the ultimate conclusion that an inmate *continues* to pose an unreasonable risk to public safety." (*Lawrence*, *supra*,

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[10] Van Houten was 69 years old at the time of the 2018 CRA.

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44 Cal.4th at p. 1221.) In *Lawrence*, the court held the Governor could not rely "solely upon the immutable circumstances of the [commitment] offense" to reverse a grant of parole given the inmate's "extraordinary rehabilitative efforts specifically tailored to address the circumstances that led to her criminality, her insight into her past criminal behavior, her expressions of remorse, her realistic parole plans, the support of her family, and numerous institutional reports justifying parole, as well as the favorable discretionary decisions of the Board at successive hearings." (*Id.* at p. 1226.) In that circumstance, "the unchanging factor of the gravity of petitioner's commitment offense has no predictive value regarding her *current* threat to public safety, and thus provides no support for the Governor's conclusion that petitioner is unsuitable for parole at the present time." (*Ibid.*)

Van Houten has shown extraordinary rehabilitative efforts, insight, remorse, realistic parole plans, support from family and friends, favorable institutional reports, and, at the time of the Governor's decision, had received four successive grants of parole. Although the Governor states Van Houten's historical factors "remain salient," he identifies nothing in the record indicating Van Houten has not successfully addressed those factors through many years of therapy, substance abuse programming, and other efforts. The CRA evaluator, although acknowledging the historical factors, nonetheless concluded Van Houten presented a low risk for recidivism. As in *Lawrence*, under these circumstances Van Houten's unchanging historical risk factors do not provide some evidence that she is currently dangerous and unsuitable for parole.

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2. *Additional reasons proffered by the Attorney General, the trial court, and the dissent are not supported by the record*

The Attorney General, in his return to Van Houten's petition, the trial court, in its decision denying Van Houten's habeas petition, and our dissenting colleague offer additional bases, not specifically cited in the Governor's decision, to support the reversal of Van Houten's parole. We reject these additional bases.

The Attorney General quotes *Rosenkrantz*, *supra*, 29 Cal.4th at p. 682, for the proposition that " 'The nature of the prisoner's offense, alone, can constitute a sufficient basis for denying parole.' " The Supreme Court later held in *Lawrence*, however, that "the 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 postincarceration 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 of the statutory determination of a continuing threat to public safety." (*Supra*, 44 Cal.4th at p. 1214; see *In re Swanigan* (2015) 240 Cal.App.4th 1, 16 [rejecting parole denial based on circumstances of commitment offense when Board failed to link those circumstances to a risk of current dangerousness].) As discussed, in *Lawrence*, the court concluded the circumstances of the inmate's commitment offense was no longer predictive of her risk of recidivism, given her stellar postconviction record. (*Lawrence*, at p. 1226.) *Lawrence* compels the same conclusion here.

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The Attorney General argues that Van Houten is inconsistent in her statements as to whether she willingly participated in the murders or was "in a sort of unconscious state due to obligation and indoctrination." The Attorney General contrasts Van Houten's statements about taking part in the murders to prove her devotion to Manson and the cult, and statements that she " 'felt obligated to participate.' " The Attorney General also notes Van Houten's statement in describing her actions during the murders that " 'none of this was conscious.' "

We disagree with the Attorney General's characterization of the record, which takes Van Houten's statements out of context. Van Houten never denied, either in her CRA interview or at her parole hearing, that she was anything less than a willing participant in the murders. Certainly Manson's indoctrination led her to believe in his divinity and the rightness of his cause, but she did not claim she was not acting of her own free will. The full quotation referenced by the Attorney General reads, "I believed in Manson. I believed in his belief system, I felt obligated to participate. I wanted to participate. I believed that it was something that had to be done." This cannot be read as Van Houten suggesting she was "obligated" through some unconscious urge, when in the very next sentence she emphasized that she "wanted to participate."

As for Van Houten's statement in describing the murders that "none of this was conscious," this specifically related to her actions during the murders themselves, not her willingness to participate in the murders. Van Houten made the statement to the CRA evaluator after describing how she held Mrs. La Bianca down while Krenwinkel stabbed her. Van Houten stated, " 'I

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went to hold her down and she began to hear Mr. La Bianca dying. She yelled out for her husband. I was trying to hold her down and Pat went to stab her and hit the collar bone and it [the knife] bent. And I ran to the door of the bedroom, said, "We can't do it. We can't kill her." [Charles Tex Watson] came into the bedroom, Pat went into the living room, I stood at the doorway, none of this was conscious, I was running on fear. Tex had stabbed her. I assumed she was dead. That's been an issue of controversy for Board hearings. She could have been alive, but I assumed she was dead, Tex said, "Do something," and handed me a knife. So, I stabbed her in the lower torso 16 times."

The above context makes clear that Van Houten was not suggesting she did not consciously participate in the murders—such an interpretation is inconsistent with her many other statements indicating her desire and willingness to participate. Rather, Van Houten was describing the chaos that ensued once the murders began, and how she took certain actions without thinking. She emphasized to the Board, however, that throughout the killings she remained conscious of her desire to please Manson, stating, "I became very critical of myself [during the killings] because I felt that I wasn't carrying my weight," by which she meant she was not doing enough to "mutilate" and kill the La Biancas as Manson had directed.

The trial court read the Governor's decision to fault Van Houten for minimizing her role in the La Bianca murders. The trial court referenced Van Houten's statement that Krenwinkel, not Van Houten, initially stabbed Mrs. La Bianca, and also Van Houten's statement that she believed Mrs. La Bianca already was dead when she stabbed her.

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We will accept arguendo the trial court's reading of the Governor's decision. Even so, we fail to see how Van Houten admitting she held Mrs. La Bianca down so Krenwinkel could stab her minimizes Van Houten's role in the murder. Van Houten's statement that she believed Mrs. La Bianca was dead before Van Houten herself stabbed her cannot, in context, be read as an attempt to minimize Van Houten's culpability, when, as previously discussed, Van Houten admitted that during the murders she felt frustration that she wasn't doing *more* to contribute to the crimes. Further, as discussed, Van Houten's repeatedly admitted that she willingly engaged in the commitment offenses, spurred on by her belief in Manson's ideology and her desire to please him. Again, we fail to see how this could be read as an attempt to minimize her culpability.

Referring to Van Houten's statements in the CRA regarding her brief marriage following her third trial in 1978, our dissenting colleague contends there is a modicum of evidence that Van Houten continues to lack insight into her life offenses because she "failed to identify parallels between her relationship with Manson . . . and her marriage years later to another man seeking to exploit her." (Dis. opn., *post*, p. 7.) Acknowledging no one at the parole hearing actually asked Van Houten to discuss that marriage or whether it had similarities to her relationship to Manson, the dissent nonetheless argues Van Houten should have "independently identif[ied] the possibility that similar tendencies were at play when she married a man who, like Manson, sought to exploit her." (*Id.* at p. 8.)

We are unwilling to hold against a parole candidate a failure independently to raise an issue from decades earlier that no one—not the parole board, the district attorney, nor the

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Governor—inquired about or discussed. To do so is fundamentally unfair, and imposes obstacles a parole candidate cannot reasonably be expected to overcome.

Also, the fact that no one has raised the issue of Van Houten's marriage decades ago in any recent parole proceeding means that the record has virtually no information regarding that marriage that would allow us to compare it to Van Houten's relationship with Manson. The record before us reveals nothing about Van Houten's interactions or communications with her ex-husband, how much time they spent together, or the circumstances of their divorce. We therefore cannot assume, as does the dissent, that the marriage had "parallels" to Van Houten's relationship with Manson. (See dis. opn., *post*, p. 7.)

Even if, arguendo, there were such parallels, we reject the dissent's assumption that, because Van Houten did not raise the issue of her marriage in her most recent parole proceeding, she therefore has never acknowledged those parallels. Since her divorce, Van Houten has had decades of rehabilitative programming, therapy, psychological evaluations, risk assessments, and parole hearings. The record before us covers only the most recent few years of that history. To assume an issue not raised in the recent record has never been addressed in the previous decades is speculation and not "some" evidence.

We respectfully disagree with the dissent's contention that the record before us is not sufficiently different from the record in Van Houten's 2019 habeas corpus petition, which a majority of

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the panel denied in an unpublished opinion,[11] to support a different result. Any ambiguity the majority identified in the 2019 record regarding Van Houten's sense of personal responsibility and remorse for her crimes is absent from the record now before us.[12] As discussed above, Van Houten made clear in her 2020 parole hearing that she was a willing, enthusiastic participant in the murders, and she described in detail her remorse and the impact of her crimes on the victims' family members and the nation as a whole.

C. We Do Not Reach Van Houten's Remaining Arguments

Van Houten raises a number of arguments in addition to challenging the evidentiary basis of the Governor's decision, including that the Governor violated her due process rights by reversing her parole without allowing Van Houten personally to appear before him; the Governor failed to give great weight to Van Houten's status as a youthful offender; Van Houten's continued incarceration constitutes cruel and unusual punishment under the United States and California Constitutions; Van Houten was wrongly denied access to exculpatory evidence, namely audio recordings of interviews with Charles Tex Watson; and the Governor's power to reverse parole violates constitutional principles of equal protection "by creating a different parole standard for inmates whose murder convictions arise from celebrated or notorious crimes."

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[11] *In re Van Houten* (Sept. 20, 2019, B291024) [nonpub. opn.].

[12] In her dissent to our 2019 opinion, Justice Chaney read the record to require Van Houten's release then.

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Because we grant Van Houten's petition for lack of some evidence in support of the Governor's decision, we decline to reach these alternative arguments, on which we express no opinion.

DISPOSITION

The petition for writ of habeas corpus is granted. The Governor's decision reversing the Board of Parole Hearings' July 2020 decision finding Leslie Van Houten suitable for parole is vacated, the grant of parole is reinstated, and the Board of Parole Hearings is directed to conduct its usual proceedings for a release on parole. (See *In re Lira* (2014) 58 Cal.4th 573, 582.)

CERTIFIED FOR PUBLICATION.

BENDIX, J.

I concur:

CHANEY, J.

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ROTHSCHILD, P. J., Dissenting.

I disagree with the majority because, in my view, the record contains some evidence to support the Governor's decision to reverse Leslie Van Houten's 2020 grant of parole in at least two ways. First, the current record and the record before this court in 2019 are not so materially different as to warrant our reaching a different result today than we did in considering Van Houten's 2019 petition. The current record supports the Governor's reversal for the same reasons the record in 2019 supported the Governor's reversal: Some evidence indicates Van Houten still "minimize[s] her role in the murder[s] of [Rosemary and Leno] La Bianca[ ], thus indicating a lack of insight into her crimes." (*In re Van Houten* (Sept. 20, 2019, B291024) [nonpub. opn.].) Second, the record contains some evidence that Van Houten has failed to show sufficient insight by failing to make a connection between her relationship with Charles Manson and her prison marriage to a man who sought to take advantage of her. Van Houten's lack of insight into the commitment offense in these two ways "indicates that the implications regarding [her] dangerousness that derive from . . . her commission of the commitment offense remain probative of the statutory determination of a continuing threat to public safety." (*In re Lawrence* (2008) 44 Cal.4th 1181, 1214 (*Lawrence*).) This, when combined with "the aggravated circumstances of the commitment offense . . . provide[s] some evidence of current dangerousness to the public." (*Ibid.*, italics omitted; see *ibid.* [permitting court to rely on aggravated circumstances of offense as a basis for denying parole if "the record also establishes that something in the prisoner's pre- or postincarceration history, or his or her

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current demeanor and mental state" connects the circumstances of that crime with current dangerousness].) Accordingly, and as I explain in further detail below, I dissent.

In 2019, this court concluded that Van Houten had failed to take sufficient responsibility for participation in the commitment offenses, because she stated that she accepted responsibility for committing her crimes, notwithstanding that her description of how she came to commit them focused on Manson having manipulated her, i.e., she blamed Manson more than she blamed herself. As evidence supporting this conclusion, we cited her 2017 parole hearing testimony, which we concluded could be understood as her "qualify[ing] the responsibility she feels for the crimes by emphasizing Manson's role." (*In re Van Houten*, *supra*, B291024.) And we noted that, at the 2017 hearing, " 'Van Houten explained that she "desperately wanted to be what [Manson] envisioned us being." She admitted that following the Tate murders, she wanted to participate in the La Bianca murders because she "wanted to go and commit to the cause, too." Van Houten told the [parole b]oard she committed the crimes in order to "prove my dedication to the revolution and what I knew would need to be done to, um, have proved myself to Manson." ' " (*Ibid*.)

We recognized in our 2019 decision, however, that Van Houten had also made statements during the 2017 parole hearing that "show[ed] some willingness to accept responsibility" both for her crimes and for Manson's ability to manipulate her. (*In re Van Houten*, *supra*, B291024.) For example, we recognized that she had stated in her 2017 testimony: " 'I take responsibility for the entire crime. I take responsibility going back to Manson being able to do what he did to all of us. I allowed it.' Then,

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‘I take responsibility for Mrs. La Bianca, Mr. La Bianca.’ ” (*Ibid.*) Nevertheless, we viewed it as “[s]ignificant[ ]” that, “when the district attorney later requested clarification whether Van Houten was taking responsibility for her actions, or only for allowing Manson to influence how she conducted her life, Van Houten replied, ‘I take responsibility that I allowed myself to follow him, and in that, I take responsibility for the actions that I did by allowing him to influence me in the manner that he did . . . [¶] . . . [¶] . . . without minimizing my—my, uh, involvement.’ ” (*Ibid.*) Based on these types of statements, we concluded Van Houten was “[unable] . . . to discuss that responsibility [for the murders she committed] except through the lens of Manson’s influence” and that this “reasonably could suggest to the Governor that Van Houten has not accepted full moral culpability for her actions, that is, that she considers herself less blameworthy because she committed her crimes at Manson’s behest” and viewed herself as more of a victim than a perpetrator. (*Ibid.*) “This in turn create[d] concern that Van Houten presents a current danger, because in emphasizing Manson’s influence, she minimizes the fact that she chose, indeed enthusiastically, to murder the La Biancas.” (*Ibid.*)

At the 2020 parole hearing at issue in the instant petition, Van Houten’s testimony likewise contains both types of statements. On the one hand, she stated—as she did in 2017—that she accepts responsibility for participating in the La Bianca murders and that she wanted to participate in them. On the other hand, she focused heavily—as she did in 2017—on Manson’s manipulation of her and how such manipulation and a desire to be accepted by Manson led her to commit murder on his command. Often, these two types of statements are

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combined into a single answer. For example, when asked why she continued to follow Manson after his plans started "moving towards violence," Van Houten indicated: "I believed in Manson. I believed in his belief system[;] I felt obligated to participate [in the murders]. I wanted to participate. I believed that it was something that had to be done." When asked to discuss the causative factors leading to the murders, she described being "at an all-time bottom low." She stated: "[T]he things that made me weak and lost were ultimately used as manipulations against me in my conversations with Manson and how [he] chose to relate to me." "I allowed myself to make the group more important than my early teachings of right and wrong." Also in the context of describing the causative factors leading to the murder, she described her relationship with Manson as one "where one participant needs to be in control and the other person needs to have someone take control." In this context, she stated: "I didn't know what I was doing[;] I didn't know where I was going." She further said that, because she viewed Manson as "Christ-come back, I was obligated [to do what he said]. Because I was close to him, I was obligated to see through what he knew had to happen."

The majority concludes that such statements from the 2020 hearing "cannot be read as Van Houten suggesting she was 'obligated' through some unconscious urge," because in them she also "emphasize[s] that she 'wanted to participate [in the murders].' " (Maj. opn. *ante*, at p. 53.) But at the 2017 hearing, as noted above, Van Houten likewise emphasized that she "wanted" to participate in the murders, and expressly accepted responsibility for the murders and her actions leading to them. This is thus not a point of distinction between the 2017

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and 2020 testimony, and not a basis for reaching a different conclusion than we did in 2019.

The majority concludes that, at the 2020 hearing, when Van Houten discussed Manson's effect on her, she was merely recognizing that "Manson's indoctrination led her to believe in his divinity and the rightness of his cause, but she did not claim she was not acting of her own free will." (Maj. opn. *ante*, at p. 53.) But one could also reasonably characterize Van Houten's 2020 description of Manson's effect on her in a different way. In 2019, we concluded that another reasonable interpretation of such testimony was that Van Houten viewed herself as less culpable due to being manipulated by Manson. Because I see no material difference between the testimony offered in 2017 and that offered in 2020 as to this issue, and given our "extremely deferential" standard of review (*In re Rosenkrantz* (2002) 29 Cal.4th 616, 665), I continue to view the Governor as justified in rejecting the interpretation set forth by the majority today and instead adopting an interpretation we concluded in 2019 was reasonable. (See *In re Shaputis* (2011) 53 Cal.4th 192, 211 (*Shaputis*) ["[o]nly when the evidence reflecting the inmate's present risk to public safety leads to but one conclusion may a court overturn a contrary decision by . . . the Governor"].)

I do not view Van Houten's more recent parole hearing testimony regarding what she would do differently, were she somehow given that opportunity, as materially different from her testimony in response to the same question in 2017. At the 2017 parole hearing, "Van Houten replied that she would have stayed at her father's house and sought a job, the implication being that had she done so, she would not have become involved with

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Manson. Asked what one act by someone else she would change if she could, she said she would have her father not leave her and her mother." (*In re Van Houten*, *supra*, B291024.) In our 2019 opinion, we concluded that this testimony reflected, "Van Houten, [when] asked hypothetically to rewrite the past, focused on where things went wrong for her personally rather than on the horrific acts that followed." (*Ibid.*) We noted that "[i]t was only in her closing statement that she acknowledged the harm she caused the La Biancas when she said, 'I also want to apologize to all of those in the room and those that are not for the damage that I did and the stealing of their loved ones' li[ves] in a senseless manner. I apologize very deeply for that.' " (*Ibid.*)

At the 2020 parole hearing, when the board asked Van Houten the same question, she likewise responded by first focusing on how she might have acted differently vis-à-vis her parents in her early years, and only later indicated she would change her behavior with respect to the murders. Specifically, she responded: "[I]t's a multilayered question, you know. Early on, what I would have done is I would have been more supportive in hindsight of my mom when dad left. I wouldn't have been blaming her and becoming rebellious. I, I wish that I would have been more steadfast in the direction my life was going. When I look back, I wish that, had I ended up at the ranch and meeting the people that I would have followed my intuitions that I got, when things began to change and leave. Regarding the murders, on hindsight, I wish I could have gone to the police and talked to someone before it ever started." When asked whether there was anything else she would change, Van Houten again focused on her lot in life as a teenager, rather than on the murders: "I would not have started smoking marijuana. I would not have, uh,

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gotten so involved with [the boyfriend who got her pregnant as a teenager]. All of those things were spearheaded by my anger and rebelliousness at my mom and feeling that dad had left me."

Thus, in her 2020 response, Van Houten continued to focus primarily on changing her lot in life early on, rather than on her role in the murders. Van Houten did also mention in her 2020 response that she would have called the police before the murders took place, but I do not view this as reflecting the insight one could reasonably conclude was lacking in Van Houten's 2017 answer. In both 2017 and 2020, Van Houten indicated she would use a hypothetical ability to rewrite the past *first* to change the circumstances in her life as a teenager, rather than undo the murders she committed. In her 2020 response, she merely appended to that response that she would also take steps to prevent the murders. This response continues to suffer from the same lack of insight we identified in 2019.

I further conclude that the record contains at least a " 'modicum' " of evidence to support the Governor's reversal of parole in a manner not discussed in our 2019 opinion. (*Shaputis*, *supra*, 53 Cal.4th at p. 210.) Specifically, the record contains evidence from which one could reasonably conclude that Van Houten failed to identify parallels between her relationship with Manson—a relationship in which, according to Van Houten, Manson manipulated her and was able to do so because she was desperately seeking his acceptance—and her marriage years later to another man seeking to exploit her. The record reflects Van Houten was married "briefly" to a parolee she met in the visitors' room while in prison. She initially was not aware that this man—like Manson—"wanted to exploit [her]." Van Houten's counsel urges that, because Van Houten divorced the man after a

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short time, the relationship actually indicates that Van Houten has learned from the past. This is one, but certainly not the only reasonable interpretation of the evidence. And the record does not contain anything indicating Van Houten ever made the connection that she, through this marriage, was again setting herself on a path to be manipulated by a man. To the contrary, Van Houten downplayed the relationship when speaking to the parole board by indicating she "didn't have any relationships while in prison, but [rather] she wrote to a couple guys."[1]

Van Houten's counsel noted at the hearing before this court that Van Houten was never asked whether there were any similar tendencies at play in her prison marriage and her relationship with Manson, and suggested we therefore should not draw conclusions from her failure to identify such tendencies or other similarities between the two relationships. But given her claim that, through her extensive therapy and programs, she has gained insight into how she came to commit heinous crimes as a way to make a man "believe . . . in [her]" and "accept[ ]" her, her failure to independently identify the possibility that similar tendencies were at play when she married a man who, like Manson, sought to exploit her, constitutes at least some evidence that her insight into the causes of her crime is lacking.

In the foregoing ways, I conclude the record contains some evidence Van Houten lacked insight into the commitment offense. Coupled with the heinous nature of that crime, this is sufficient

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[1] Further information in the record about these relationships is sparse, but includes evidence that Van Houten corresponded for approximately 16 years with a man who murdered two women, that this relationship was romantic in nature, and that it ended because the man committed suicide.

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under *Lawrence, supra,* 44 Cal.4th at p. 1214, to provide some evidence of current dangerousness and support the Governor's decision. Accordingly, I would deny Van Houten's petition for writ of habeas corpus.

ROTHSCHILD, P. J.

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