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November 5, 2018

California Court of Appeal
Second Appellate District, Division One
Ronald Reagan State Building
300 South Spring Street, Second Floor, North Tower
Los Angeles, CA 90013

RE: INFORMAL OPPOSITION
In re LESLIE VAN HOUTEN, Case No. B291024

Dear Justices:

On October 4, 2018, this Court ordered an opposition to be filed[1] by November 5, 2018. Respondent submits the instant opposition.

INTRODUCTION

Van Houten claims that the Governor failed to support his parole reversal with the requisite "some evidence." However, she continues to minimize her role in her life crimes. Further, the nature of her life crimes themselves provide a rare instance where their circumstances continue to offer evidence of her current dangerousness. As such, some evidence supports the Governor's decision that Van Houten is currently dangerous. The petition should be denied accordingly.

FACTUAL HISTORY

In the summer of 1968, 19-year-old Van Houten met Charles Manson and began living with his cult, the Manson Family, who was trying to provoke Helter Skelter – a civilization ending race war – by killing high-profile Caucasians to incite retaliatory violence against African-Americans. (*In re Van Houten* (2004) 116 Cal.App.4th 339, 344; *People v. Manson* (1976) 61 Cal.App.3d 102, 127-130). Van Houten "desperately wanted to be what [Manson] envisioned" her being, which was "an empty vessel of - - of him." (Pet.-Ex. B at p. 108.) She observed numerous demonstrations on how to kill people and participated in "creepy crawling"

[1] On September 16, 2018, petitioner filed a supplemental petition for writ of habeas corpus. The Court does not reference the supplemental petition in its Order. But, out of an abundance of caution, Respondent addresses both petitions in this Opposition.

outings with the Manson Family to commit thefts and burglaries in preparation for Helter Skelter. (Pet., Ex. C at p. 114; Pet.-Ex. B at p. 5.) Van Houten wanted "to commit to the cause" of Helter Skelter, which she believed meant "revolution and chaos." (Pet., Ex. C at pp. 119-120.) To that end, she burglarized her own father's home and "didn't question" the logic of any of Manson's disturbing philosophies. (*Id.* at pp. 113, 116-117.)

On August 9, 1969, several Family members gruesomely murdered Abigail Folger, Wojiciech Frykowski, Jay Sebring, Steven Parent, and Sharon Tate, who was eight-months pregnant. (*Van Houten*, *supra*, 116 Cal.App.4th at p. 345.) Van Houten was not involved in these murders, but after hearing about them, complained she felt "left out." (*Ibid.*) When Manson asked Van Houten "if she was crazy enough to believe in him and what he was doing," she responded, "Yes." (*Ibid.*) On August 10, 1969, Van Houten, Manson, and others drove around looking for victims, eventually arriving at the home of Rosemary and Leno LaBianca. (*Ibid.*) After Manson and another Family member, Charles "Tex" Watson, had entered, Manson reemerged and told Van Houten and another member, Patricia Krenwinkel, to go inside and "do what Watson told them to." (*Ibid.*)

Upon entering, Van Houten found Mr. and Mrs. LaBianca tied up and was told to take Mrs. LaBianca into her bedroom and kill her. (*Ibid.*) Krenwinkel fetched knives as Van Houten put a pillowcase over Mrs. LaBianca's head and wrapped a lamp cord around her neck. (*Ibid.*) When Mrs. LaBianca heard the "guttural" sounds of her husband being stabbed in the next room, she grabbed the lamp attached to the cord around her neck and swung it at Van Houten—but Van Houten knocked the lamp away, wrestled Mrs. LaBianca onto a bed, and held her steady as Krenwinkel stabbed her with such force that Krenwinkel's knife bent on Mrs. LaBianca's collarbone. (*Van Houten*, at p. 346.) Watson rushed in and began stabbing Mrs. LaBianca with a bayonet and then handed Van Houten a knife, telling her to "do something." (*Ibid.*) Van Houten, unsure if Mrs. LaBianca was dead, proceeded to stab her at least 16 times. (*Van Houten,* at pp. 346, 350-351 [even if Van Houten believed Mrs. LaBianca to be dead, stabbing her would constitute gratuitous mutilation].) Van Houten next wiped fingerprints from the house, before changing into Mrs. LaBianca's clothes, drinking chocolate milk from the refrigerator, and fleeing back to the ranch where she bragged to others that the more times she stabbed Mrs. LaBianca, "the more fun it was." (*Van Houten*, at p. 346.)

Van Houten is lawfully incarcerated following her August 1978 conviction for two counts of first degree murder and one count of conspiracy to commit murder in Los Angeles County Superior Court. She was sentenced to concurrent life sentences with the possibility of parole. (Ex. 1, Abstract of Judg.) On September 6, 2017, Ms. Van Houten was found suitable for parole at a hearing by the Board of Parole Hearings. On January 19, 2018, the Governor reversed her suitability finding after having considered all of the parole suitability factors required by law and relying on Van Houten's life crime and her continued minimization of her role in the life crime, specifically her continued shifting blame to Charles Manson and his ability "to do what he did to all of" the members of the "family." (Petn. Ex. A, 2018 Governor's Decision at pp. 3-4.) The instant petition challenges the Governor's reversal. Because the decision was supported by some evidence, and was not made arbitrarily or capriciously, the Court should deny the petition.

I. DUE PROCESS WAS NOT VIOLATED BECAUSE SOME EVIDENCE SUPPORTS THE GOVERNOR'S CONCLUSION THAT VAN HOUTEN POSES A CURRENT RISK TO PUBLIC SAFETY.

A parole decision complies with due process so long as the Governor duly considers the relevant parole factors and identifies some evidence probative of the prisoner's current dangerousness. (See *In re Shaputis* (2011) 53 Cal.4th 192, 199 (*Shaputis II*); *In re Lawrence* (2008) 44 Cal.4th 1181, 1212.) Judicial review of the Governor's parole decision is highly deferential, as the Court views the record in a light most favorable to the Governor's determination. (*Shaputis II*, *supra*, 53 Cal.4th at p. 214.[2]) As explained below, the Governor found that Van Houten committed exceptionally egregious crimes and continues to minimize her willing participation in such extreme violence. Such evidence is probative of Van Houten's current dangerousness and the Governor's findings are supported by the record. The Governor is constitutionally authorized to make "an independent decision" as to parole suitability and may weigh the evidence in the record differently than the Board of Parole Hearings. (Cal. Const., art. V, § 8, subd. (b); *In re Rosenkrantz* (2002) 29 Cal.4th 616, 670; *In re Elkins* (2006) 144 Cal.App.4th at p.490.) For these reasons, the Governor's decision satisfies due process of law.

To assess Van Houten's current dangerousness, the Governor properly considered the aggravated nature of Van Houten's crimes. (Pet., Ex. A at pp. 3-4.) While the circumstances of an inmate's offense do not, "in every case, provide evidence that the inmate is a current threat to public safety," in rare and particularly egregious cases, the fact that the inmate committed the offense can provide an indication of the inmate's potential for future danger, even absent other evidence of rehabilitation in the record. (*Lawrence*, *supra*, 44 Cal.4th 1181, 1213-1214.) The notoriously brutal and disturbing circumstances of Van Houten's crimes as a Manson Family member provide a reasonable basis for the Governor to conclude that the crimes are so aggravated in nature that they exemplify the rare instance in which the crimes alone support a denial of parole. (Pet., Ex. A at p. 4.) See *Lawrence*, *supra*, 44 Cal.4th at p. 1211; *In re Van Houten* (2004) 116 Cal.App.4th 339, 353 ["the Board would have been justified in relying solely on the character of the offense in denying parole, and the Board was justified in relying primarily and heavily on the character of the offense in denying parole"].)

"[E]xamples of aggravated conduct reflecting an 'exceptionally callous disregard for human suffering,' are set forth in Board regulations relating to the matrix used to set base terms for life prisoners (§ 2282, subd. (b)); namely, 'torture,' as where the '[v]ictim was subjected to the prolonged infliction of physical pain through the use of non-deadly force prior to act resulting in death,' and 'severe trauma,' as where '[d]eath resulted from severe trauma inflicted with deadly intensity; e.g., beating, clubbing, stabbing, strangulation, suffocation, burning, multiple wounds inflicted with a weapon not resulting in immediate death or actions calculated

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[2] Petitioner's supplemental petition argues that a recent First District Court of Appeal, Division Two case, *In re Palmer* (2018) 5 Cal.App.5th ___ [2018 WL 435791] ,should be followed. However, *Palmer* is at odds with longstanding, well-established case law which describes the standard of review in this context. Further, it is not binding on this Court. A Petition for Review is pending in the California Supreme Court. (Cal. Supreme Case No. S252145.)

to induce terror in the victim.'" (*In re Scott* (2004) 119 Cal.App.4th 871, 891.) Van Houten's crime exceeds any definition of "especially heinous." (Cal. Code Regs., tit. 15, § 2402, subd. (c)(1); *Van Houten, supra*, 116 Cal.App.4th at p. 351.) Indeed, the Governor took note of Van Houten's extraordinary violence, noting that her crimes stand apart from others by their heinous nature and shocking motive. Unquestionably, Van Houten was both fully committed to the radical beliefs of the Manson Family and she actively contributed to "a bloody horror that terrorized the nation." (Pet., Ex. A, p. 4.) By engaging in Manson's philosophy, she set out to start a civilization-ending war between the races, and played a vital part in brutally stabbing Mrs. LaBianca numerous times, then coldly cleaning the scene and disposing the evidence. Van Houten's participation, along with the devastation and impact on the victims' families and society rendered it one of the rare circumstances in which the crime alone justified a finding that Van Houten remained currently dangerous and unsuitable for parole. (Pet., Ex. A at p. 4.) That conclusion is well-supported. Therefore, Van Houten's due process rights would not be violated had the Governor denied parole solely based on the commitment offense. (*In re Rozzo* (2009) 172 Cal.App.4th 40, 58-59.) The egregiousness of Van Houten's crimes, however, was not the sole basis for the Governor's decision.

The Governor also found that Van Houten continues to downplay her role in these murders and in the Manson Family's ideology. (Pet., Ex. A at pp. 3-4.) Established law provides that "an inmate's understanding, current mental state and insight into factors leading to the life offense are highly probative 'in determining whether there is a 'rational nexus' between the inmate's dangerous past behavior and the threat the inmate currently poses to public safety.'" (*In re Montgomery* (2012) 208 Cal.App.4th 149, 161 *citing Shaputis II*, at p. 218; see *Lawrence, supra,* 44 Cal.4th at p.1220.)

Courts have found that downplaying responsibility may support a parole denial. In *In re Shigemura* (2012) 210 Cal.App.4th 440, 457, the court found the inmate was a "willing participant" in the murder, which was "totally at odds with her continuing portrayal of the crime as something which simply happened in her presence and without her active assistance." Likewise, in *In re Tapia* (2012) 207 Cal.App.4th 1104, 1113, the court held there was some evidence supporting the Board's finding the inmate was downplaying the crime's planning elements and justified the Board's conclusion that the inmate was unsuitable for parole.

Similarly, here, the evidence shows Van Houten enthusiastically participated in the murders and other Manson Family activities, contradicting her shifting blame to Manson and his "being able to do what he did to all of us." (Pet., Ex. A at pp. 3-4.) Van Houten still conditions her responsibility on her "allow[ing Manson] to conduct [her] life in that way" without adequately noting her own active participation. (*Ibid.*)

In fact, during her 2016 psychological evaluation, Van Houten told the psychologist that when asked to join Manson's "utopia," she "bit into it, hook, line and sinker." (Pet., Ex. A at p. 3.) Reiterating at her 2017 hearing that she "desperately wanted to be what [Manson] envisioned us being." (*Ibid.*) And, confirming she wanted to participate in the LaBianca murders because she "wanted to go and commit to the cause too." (Pet., Ex. A at pp. 3-4.) Her inability to discuss her role in these crimes demonstrated her susceptibility to their root causes in the future. Without

"imputing some responsibility to her drug use" and her dependent personality, Van Houten continues to evidence a lack of insight into her crimes. (Pet., Ex. A at p. 4.)

Van Houten's shifting focus to Manson's influence is incompatible with the record evidence and offers the false impression that she was a helpless victim forced to participate in the Manson Family activities. According to statements from another Manson Family member at Van Houten's 2013 hearing, many people visited the ranch, coming and going as they pleased, without planning or participating in murders. (Pet., Ex. B at p. 4.) Van Houten admitted that she liked living on the ranch. (*Van Houten*, *supra*, 116 Cal.App.4th at p. 344.) She had lived with the Manson Family for about a year before the murders and participated in criminal activity with them. (*Ibid.*) Van Houten also admitted she had thought about killing someone for "quite a while" before deciding that she could do it. After being left out of the Sharon Tate murders, she begged to be a part of the next Family outing to murder someone. (*Van Houten*, at p. 345.)

On the night of the LaBianca murders, Van Houten entered the LaBianca home cognizant of her surroundings. (*Van Houten*, *supra*, 116 Cal.App.4th at p. 345.) Van Houten restrained Mrs. LaBianca while others stabbed her. (*Ibid.*) Van Houten herself stabbed Mrs. LaBianca at least 16 times before wiping away her fingerprints, treating herself to chocolate milk from the LaBiancas' refrigerator, and bragging about the murder back on the ranch. (*Id.* at pp. 345-346.) From this record, the Governor could conclude that Van Houten did not behave as someone with an aversion to violence, who was trapped and desperate to escape the Manson Family once the Family began its murder spree. Rather, the evidence demonstrates that Van Houten weighed the consequences of murder before preparing and participating in the LaBianca slaying. (Pet., Ex. A at p. 3.) Thus, the Governor reasonably concluded that Van Houten has not come to terms with her central role in the Manson Family and their crimes.

The Governor identified evidence "sufficient to at least raise an inference that petitioner remains dangerous because [s]he has not . . . taken full responsibility for [her violent actions]." (*In re Shippman* (2010) 185 Cal.App.4th 446, 459.) The Governor also acknowledged and gave great weight to Van Houten's youth offender status, her claims of intimate partner battering by Manson, the positive aspects of Van Houten's record, as well as the positive gains she made while incarcerated. However, after considering "all relevant, reliable information available," the Governor reasonably concluded Van Houten would still pose an unreasonable risk to society. (Cal. Code Regs., tit. 15, § 2281, subd. (a).) It is the Governor who must weigh the factors and the evidence in the record: "it is not for the reviewing court to decide which evidence in the record is convincing." (*Shaputis II*, *supra*, 53 Cal.4th at pp. 199, 214.)

II. THE ISSUE OF THE "TEX" WATSON TAPES AT PETITIONER'S *FRANKLIN* HEARING HAS BEEN PREVIOUSLY DETERMINED ADVERSELY TO PETITIONER.

Petitioner argues that the failed disclosure of tapes from co-defendant, "Tex" Watson at her *Franklin* hearing violated her *Brady* rights. This is inaccurate, and there was no failed disclosure. The evidence at issue was presented to the superior court at petitioner's *Franklin* hearing where the superior court reviewed transcripts of the tapes and issued a "written decision denying release of the tapes because they contained nothing that was not already 'very well

known.'" (Petn. at pp. 12-13.) Petitioner filed petitions for review (Cal. Supreme Case Nos. S230851 & S238110) regarding the Watson tapes. (*Id.*) Because these evidentiary issues have already been heard by this Court and the California Supreme Court, this latest iteration is a successive bite at the apple, and should be denied.

Substantively, a *Franklin* hearing is not a criminal or post-conviction hearing. Ms. Van Houten's criminal guilt and sentence was not at issue. As such, petitioner has no *Brady* right to this information. Regardless it was not withheld, but was admittedly produced to the superior court who made a merits determination that it was duplicative of information already on the record. Because the issue has been previously decided, petitioner has no *Brady* right to the Watson Tapes, and because transcripts of the tapes were in fact shared at her *Franklin* hearing, any further claim regarding this information should be denied.

CONCLUSION

In sum, as the Governor's 2018 decision is supported by some evidence, petitioner's due process rights were not violated, and the petition should be denied without issuance of an order to show cause.

Sincerely,

/s/ Jill Vander Borght
JILL VANDER BORGHT
Deputy Attorney General
State Bar No. 240004

For XAVIER BECERRA
Attorney General

JVB:

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EXHIBIT 1

~~W08374~~
W13378

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

1858

April 19 19 71 Department No. 104

CHARLES H OLDER Judge E DARROW Clerk

APPEARANCES: J HOLLOMBE Reporter
(Parties and Counsel checked if present. W MURRAY, Deputy Sheriff
Counsel shown opposite parties represented.)

Case No. A253156 Joseph P. Busch, Jr. District Attorney by

THE PEOPLE OF THE STATE OF CALIFORNIA X V BUGLIOSI and S KAY Deputy District Attorneys

vs

X VAN HOUTEN, LESLIE X J KEITH

Whereas the said defendant having been duly found guilty in this court of the crime of MURDER (Sec 187 PC), a felony, as charged in each of the Counts 6 and 7 of the indictment, which the Jury found to be Murder of the first degree and fixed the penalty at death and CONSPIRACY TO COMMIT MURDER (Secs 182.1 and 187 PC), a felony, as charged in Count 8 and the Jury fixed the penalty at death; Counts 6 and 7 having been merged as one count for purpose of sentence.

It is now the judgment and sentence of this Court for the offense of Murder in the first degree on the merged count, you suffer the death penalty, and that said penalty be inflicted within the walls of the State Penitentiary at San Quentin, California, in the manner and means as prescribed by law and you are remanded to the care, custody and control of the Sheriff of Los Angeles County, to be by him delivered within ten days from date hereof to the Superintendent of the California Institution for Women at Frontera, California, to be held by said superintendent pending final determination of the appeal in this matter, which is automatic.

Execution on Count 8 is stayed pending determination of any appeal on other counts, such stay to become permanent when sentence on any one of Counts 6 and 7 has been completed.

~~[illegible]~~

THIS MINUTE ORDER WAS ENTERED 4.19.71
WILLIAM G. SHARP, COUNTY CLERK AND CLERK OF THE SUPERIOR COURT

☐ Remaining counts dismissed
☐ Released
☐ Bail exonerated

Corrected Nunc Pro Tunc per minute order of NOV 17 1971

PROB.____
CSHR.____
MISC.____

JUDGMENT - STATE PRISON

~~Any suspended sentences are not remanded~~

76J700-Cdb 3-67

DECLARATION OF ELECTRONIC SERVICE AND SERVICE BY U.S. MAIL

Case Name: ***In re Leslie Van Houten on Habeas Corpus***

No.: **B291024**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter.

On November 5, 2018, I electronically filed the attached **INFORMAL OPPOSITION** with the Clerk of the Court using the Court's TrueFiling system provided by the California Court of Appeal, Second Appellate District.

On November 5, 2018, I served the attached **INFORMAL OPPOSITION** by transmitting a true copy via the TrueFiling system to:

Richard D. Pfeiffer, Esq.
highenergylaw@yahoo.com
Attorney for Petitioner Leslie Van Houten

Office of the District Attorney
appellate.nonurgent@da.lacounty.gov

Nancy Tetreault, Esq.
tetreault150352@gmail.com
Attorney for Petitioner Leslie Van Houten

I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business.

On November 5, 2018, I served the attached **INFORMAL OPPOSITION** by placing a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 300 South Spring Street, Suite 1702, Los Angeles, CA 90013, addressed as follows:

The Honorable William C. Ryan
Los Angeles County Superior Court
Clara Shortridge Foltz Criminal Justice Center
210 West Temple Street, Department 100
Los Angeles, CA 90012

The one copy for the California Appellate Project were placed in the box for the daily messenger run system established between this Office and California Appellate Project (CAP) in Los Angeles for same day, personal delivery.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on November 5, 2018, at Los Angeles, California.

Virginia Gow	*/s/ Virginia Gow*
Declarant	Signature