> 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

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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

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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.

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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

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"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

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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

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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

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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

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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.

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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.)

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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*

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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.

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(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

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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

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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.)

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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

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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

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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

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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.

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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

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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

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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.

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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

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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."

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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*

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(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

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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.

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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

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> 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.

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(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

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> 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

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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

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> 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

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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

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

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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

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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.

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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

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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.

RICH PFEIFFER

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