IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT, DIVISION ONE

In Re	)	**CASE No. B291024**
	)	
LESLIE VAN HOUTEN,	)	
	)	***Related Cases: BH007887*; *S230851***
Petitioner,	)	***B240743; B286023***
	)	***S45992; S238110;***
on Habeas Corpus.	)	***S221618***
_____	)	

Superior Court Case Nos. BH011585 & A253156
The Honorable William C. Ryan, Judge

TRAVERSE TO RESPONDENT'S RETURN TO THE ORDER TO SHOW CAUSE; MEMORANDUM OF POINTS AND AUTHORITIES

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TO THE HONORABLE, JUSTICE FRANCES ROTHSCHILD AND HONORABLE ASSOCIATE JUSTICES OF THE COURT OF APPEAL:

Petitioner, Leslie Van Houten, by and through her attorneys, Rich Pfeiffer and Nancy L. Tetreault, realleges and incorporates by reference, all of the allegations in her initial petition for a writ of habeas corpus. Further, Petitioner offers the following matters to controvert the issues raised by respondent in the return.

I.
EXCEPTION

Petitioner contends Respondent has failed to set forth sufficient facts or law to show cause why the relief requested in the petition for writ of habeas corpus should not be granted.

II.
DENIAL OF ALLEGATIONS IN THE RETURN

1. Petitioner denies each and every allegation of paragraph one of

Respondent's Return to the Order to Show Cause ("return"), and reasserts that she is in the unlawful custody of the California Department of Corrections and Rehabilitation ("CDCR") pursuant to a judgment, in that Governor Edmund Brown improperly concluded that Petitioner was not suitable for parole. The Governor's reversal of the Board of Parole Hearings' (BPH or Board) finding that Petitioner was suitable for parole, lacked a sufficient evidentiary basis because the evidence before the Governor failed to prove Petitioner posed an "unreasonable risk of danger to society if released from prison." (See Cal. Code Regs., tit. 15, section 2402, subd. (a); *In re Lawrence* (2008) 44 Cal.4th 1181, 1191 (*Lawrence*); *In re Shaputis* (2008) 44 Cal.4th 1241, 1246 (*Shaputis*); *In re Dannenberg* (2005) 34 Cal.4th 1061, 1091 [equating suitability with public safety].) The decision infringed Petitioner's due process rights under the Fifth and Fourteenth Amendments of the United States Constitution by continuing to rely on unchanging and unchangeable circumstances, thus turning Petitioner's eligibility for parole into a de facto sentence of life in prison without the possibility of parole. (*Kentucky Dep't of Corrections v. Thompson* (1989) 490 U.S. 454, 459-460; *McQuillion v. Duncan* (2002) 306 F.3d 895, 900.)

Even if a modicum of evidence supported the Governor's isolated

negative findings, which Petitioner does not concede, the overall record fails to support the Governor's ultimate conclusion that Petitioner currently poses an unreasonable risk of danger if released on supervised parole.

Petitioner does admit that a jury convicted her of two counts of first degree murder and one count of conspiracy forty one years ago in 1978, and that the superior court sentenced her to concurrent indeterminate sentences of seven-years-to-life in state prison, as stated in paragraph one of the return. With this single admission, Petitioner denies all other allegations in paragraph one of the return.

2. Petitioner admits that on September 6, 2017, Petitioner appeared before the BPH for a 21st subsequent parole suitability hearing, her 22nd parole suitability hearing. The Board found that Petitioner was suitable for release on parole because she did not currently pose an unreasonable risk of danger to public safety. (Exh. C to the petition [Board Decision, at pp. 276-310].) The Board carefully analyzed Petitioner's almost fifty-year effort while in prison to understand how her life could have resulted in committing the commitment offenses. The Board also examined her deep and sincere remorse, and deemed it sufficient to establish that Petitioner is rehabilitated and no longer posed a threat to public safety. Added to this was the Board's recognition that Petitioner's conduct

exhibited an underdeveloped sense of responsibility stemming from a lack of maturity that is a hallmark of youthful offenders. (Exh. C to the petition [Board Decision, at pp. 293-294].) The Board placed great weight on the "hallmark features of youth" when Petitioner entered prison, and compared the 19-year-old-girl she was then to the 69-year-old women she has become. The Parole Board found that substantial evidence proved that Petitioner had shed herself of that former person and engaged in decades of "prosocial" behavior. (Exh. C to the petition [Board Decision, at p. 294.)

As set out more fully in the petition, the record shows that the Board exhaustively examined Petitioner's early life and the circumstances that led her to the Mason cult. Petitioner explained to the Board how she started her life in a middle-class family in suburban Southern California in the middle 1960's. Her father left the family, which strongly affected Petitioner emotionally. She explained how she went from a homecoming queen to the stigmatized child of divorced parents. She began experimenting with drugs, including marijuana and LSD. She tried to fill the emotional void created by the loss of her father through a romantic relationship resulting in her becoming pregnant at the age of 17. She described how her mother forced her to have an illegal abortion at home and bury the fetus in the backyard of the family resident where she resided. Petitioner testified that the emotional

scars from the abortion changed the direction of her young life. She became apathetic. She contemplated alternative lifestyles to quell her inner turmoil. Her anger eventually led her to drugs. She described herself as emotionally needy, sad, lonely, and suffering from severe guilt over not having saved her baby. She remains childless to this day. (Exh. C to the petition [Parole Board transcript, at pp. 56-76].)

While in this mind set, Petitioner met Mason cult member Catherine Share. Ms. Share recruited Petitioner into the "Manson family,"[1] which she understood to be a commune based on principles of love and acceptance. (Exh. C to the petition [Parole Board transcript, at p. 76].) She surrendered herself to this cult. She described how it first appeared to be a place of safety and support. Over time, the isolation and constant indoctrination torn down her individuality. She was 18-years-old when she joined the Manson cult. (Exh. C to the petition [Parole Board transcript, at pp. 76-105].)

Early in her prison term, Petitioner completely separated herself from the cult and any of its members. She began looking deeply within herself.

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[1] While the "Manson Family" appeared to be a hippie commune common in the late 1960's, it was in reality a cult where Manson was the controlling religious leader. (Exh. C to the petition [Board Decision, at pp. 76, 80, 87, 225].) Later somewhat similar cults demonstrated the power of such a leader where in Jonestown and Heaven's Gate, the religious leaders again wielded so much power and influence over the cult members that parents murdered their own children at the leaders' directives.

She confronted the magnitude of her actions. She made it her life's goal to become a women who never, at any level, harmed others by her words or actions. Petitioner acknowledged with regret the sorrow and pain she caused the La Bianca family. She repeatedly testified that she did not blame Manson for her conduct, but instead has worked hard to understand how she allowed another human being to so completely control her actions. Her years of therapy have focused on gaining insight into her conduct and making sure she never allows another person to control her in that way again.

The Board additionally conducted a lengthy examination of Petitioner's rehabilitative programming. Petitioner obtained a Bachelor's of Arts degree from Antioch-West, Los Angeles, and a Master of Arts degree from California State University, Dominquez Hills. She authored a thesis entitled "Sustainable Rehabilitation." She has been a part of the Chaffey Community College program at the California Institution for Women. She is a facilitator of the Actors' Gang Prison Project, where she has used her own emotional growth to encourage other women to understand their emotions. She is the lead facilitator of the Victim Offender Education Group (VOEG), which focuses on emotional healing through personal accountability. She also is on the executive body of the Women's Advisory

Council (WAC), which serves as a liaison between the inmate population and prison administration. She is an active participant in the Suicide Prevention Outreach Committee (SPOC) and a peer mentor. Through this mentorship, Petitioner works with women in the mental health program of the prison. Petitioner has faithfully continued her active membership in 12-step groups over the past 40-years, as well as engaging in decades of individual and group psychological therapy. She is a positive example to other inmates, and offers her time, insights, and support to those inmates willing to put in the hard work it takes to reform. Added to this is the fact she has sustained no serious rule violations during her 49 years in prison and earned numerous laudatory chronos from prison staff for her exemplary behavior. (Exh. C to the petition [Parole Board transcript, at pp. 168-209, 281-286].) This is more than a sufficient showing for a finding of parole suitability. Under the law, the standard for parole suitability must be the same for Leslie Van Houten as it is for all other inmates in California. She cannot be denied parole because she is tainted by the stigma of Charles Mason.[2] Petitioner must be viewed for her own conduct involving the

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[2] In the superior court's denial of Petitioner's petition for writ of habeas corpus, the court noted Petitioner's attorney made public statements that Petitioner's continued incarceration is in part based on her connection to Charles Manson. While the superior court stated it based Petitioner's denial of parole on her personal conduct and the facts of the commitment offense,

commitment offenses, and not judged by the conduct of Manson.

Petitioner admits that on January 19, 2018, the Governor reversed the Parole Board's finding that Petitioner is suitability for release on parole. Petitioner denies that the Governor considered all of the parole suitability factors required by law in arriving at his conclusion that Petitioner currently poses an unreasonable risk of danger to public safety. The Governor failed to comport with the legal standard for parole suitability by placing undue emphasis on the gravity of her commitment offense, and other crimes orchestrated by Manson. Petitioner denies that the record supported the Governor's finding that Petitioner continues to minimize her role in the commitment offense, and further denies that Petitioner continues to shift blame to Charles Manson.[3] The record fails to support these conclusions.

Petitioner denies that the Governor followed the law in reversing the parole suitability finding of the Parole Board. Specifically, the Governor failed to abide by the California Supreme Court's admonition that the

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Petitioner's attorney stands by his assessment that being involved with Manson continues to be the biggest obstacle to her being released on supervised parole. (Exh. G, p. 16, fn. 6.)

[3] The superior court acknowledged that "Petitioner does appear unable to discuss the commitment offense without imputing some responsibility on Manson, although it is unclear to what degree Petitioner is minimizing her role in the commitment offense and to what degree she is simply recounting the events as she perceives them." (Exh. G, p. 14.)

gravity of the commitment offense rarely, *if ever*, provides evidence of an inmate's current parole suitability, and that the predictability of the commitment offenses diminishes over time. (*In re Lawrence* at p. 1191; *In re Shaputis* at p. 1246.) Given the nearly 50-years since the commitment offenses, it begs credulity that the offenses predict Petitioner's current behavior. This is particularly true when compared to her almost 50-year record of reform and rehabilitation.

The Governor also failed to employ the relevant legal standard in assessing whether Petitioner demonstrated sufficient remorse at the hearing by improperly characterizing her testimony as minimizing her actions. (*In re Shaputis* (2011) 53 Cal.4th 192, 219 (*Shaputis II.*) The record reflects Petitioner's detailed, yet painful description of her involvement in the commitment offenses. It matched, point for point, others' descriptions of the murders. The record further proves that Petitioner neither downplayed nor minimized her responsibility for her own conduct, or the crimes themselves. Petitioner's extensive description of her work to gain insight into her conduct supports a grant of parole. There is no nexus between the record and the Governor's finding that Petitioner continues to "minimize her role in the commitment murders," or that she shifts blame to Mason. The record proves that the opposite is true. (*In re Lawrence, supra*, 44

Cal.4th at p. 1191; *In re Rosenkrantz* (2002) 29 Cal.4th 616, 655; *In re Stoneroad* (2013) 215 Cal.App.4th 596, 615.)

3. Petitioner denies each and every allegation in paragraph three of the return. The Governor's decision failed to satisfy state due process because he based the decision on isolated negative facts to support the overall conclusion that Petitioner currently poses an unreasonable risk of danger if released on parole. This falls short of the individualized assessment of Petitioner's entire record required by due process. The Governor erred by citing isolated negative factors in the record, then concluding from those isolated factors that the overall conclusion of undue dangerousness has a sufficient factual nexus to the record. (See *In re Stevenson* (2013) 213 Cal.App.4th 841, 866-868; see *In re Rosenkrantz, supra,* 29 Cal.4th at p. 655; also see U.S. Const., 5th, 14th Amends.; Cal. Const., art. I, section 7, subd. (a).)

Only by using isolated findings, the Governor concluded that Petitioner posed a current unreasonable risk of danger to public safety. None of these isolated findings provided a nexus between the record and the Governor's overall conclusion of undue danger.

First, the Governor continues to tether Petitioner to the misdeeds of Charles Manson and the Mason cult. (Governor's decision, at p. 3 [Exh. A

to the Petition].) While it is true that Petitioner was indoctrinated into the Manson cult at the age of 18-19, she is now a woman of 69 years. She has had nothing to do with Manson or any members of his cult for almost five decades. It is unfair to deny Petitioner parole because her crime is inextricably tied to Charles Manson.

Due process requires that Petitioner, apart from Charles Manson, be given an independent assessment of her individualized circumstances and overall record of rehabilitation. Had the Governor done this, he would have recognized that the primary focus of Petitioner's psychological therapy has been to understand the dynamics of cult indoctrination as well as her own vulnerability to the cult's influence over her. The record dispels the notion that the Manson's cult, or any form of group behavior can hold sway over Petitioner today. The Governor's repeated reference to Manson and the Manson Family is based on the political fallout the Governor most certainly would face by finding a former member of the Manson Family is no longer a danger to society, even in the face of a legal standard and overwhelming evidence to the contrary. Due process required that the law be followed even when it is unpopular to do so.

Second, the Governor claims Petitioner continues to "downplay" and "minimize" her role in the murders and membership in the Manson cult.

(Governor's decision, at pp. 3-4 [Exh. A to the Petition].) This finding is not supported by the record. In fact, the record directly refutes the notion that Petitioner downplays and minimizes her conduct to this day.

Petitioner's description of her psychological process of recovery included learning the factors that made her vulnerable to the circumstances leading the circumstances surrounding the commitment crimes. The Governor twisted isolated aspects of her testimony to mean she continues to downplay and minimize her culpability. Given the record of the parole suitability hearing, it is hard to know what would have satisfied the Governor. The conclusion that an inmate lacks insight into the commitment offense is not some evidence of current dangerousness unless it is based on evidence in the record that legally may be relied upon. (*In re Swanigan* (2015) 240 Cal.App.4th 1, 14-15, citing *In re McDonald* (2010) 189 Cal.App.4th 1008, 1023.) More to the point, the record does not support the Governor's finding.

The Board's lengthy examination of Petitioner's involvement in the commitment murders spanned 110 pages of the transcript. (Exh. C [Parole Board hearing transcript, at pp. 47-157].) Petitioner described in detail the unique factors that made her vulnerable to joining the Manson Family that evolved into a cult. She described her life as a member of the Mason cult

and how it changed from a place of mutual support to one of physical violence and degradation. (Exh. C [Parole Board hearing transcript, at pp. 111-116].) She described in minute-by-minute detail her conduct in the La Bianca house, and her shame in acting like it had been fun. (Exh. C [Parole Board hearing transcript, at pp. 127-154].) When asked how she felt about the crimes today, Petitioner tearfully stated, "I feel absolutely horrible about it, and I have spent most of my life trying to find ways to live with it." (Exh. C [Parole Board hearing transcript, at pp. 157, 160-162].) Her testimony of how her deep remorse motivated her to gain insight into her conduct and deal with her debilitating sense of guilt. (Exh. C [Parole Board hearing transcript, at pp. 164-165.)

The record directly refutes the Governor's finding that Petitioner "downplayed" and "minimized" her conduct. She has not. The record proves Petitioner has dedicated her life to facing her crimes, understanding their genesis, and making amends.

Third, the Governor cited the decision of the Los Angeles Superior Court in upholding the Governor's reversal of petition's prior grant of parole as support for the Governor reversing the Parole Board's current parole suitability finding. (Governor's decision, at p. 4 [Exh. A to the Petition].) This, above all else, proved the Governor failed to conduct its

own assessment of Petitioner's individualized circumstances relative to the Parole Board's 2017 finding that Petitioner is suitable for release on parole. The Governor, instead, relied on an outdated analysis by a different branch of the government addressing an unrelated parole decision. This is an example of violating Petitioner's rights of substantive due process.

4. Petitioner denies each and every allegation in paragraph 4 of the return. The Governor violated federal due process by failing to provide Petitioner with a fair opportunity to be heard. The Governor failed to give due consideration to Petitioner's record of reform and rehabilitative programming. He failed to factor into his analysis Petitioner's testimony regarding the social factors surrounding her alienation from her biological family and the hallmarks of youth making her vulnerable to the Mason cult. An opportunity to be heard is not an empty act. Petitioner was entitled to a "meaningful opportunity to be heard." (*Mathews v. Eldridge* (1976) 424 U.S. 319, 335.) This means duly considering each aspect of the record. The Governor's written reversal shows he failed to discharge this duty.

5. Petitioner denies that some evidence supported the Governor's conclusion that Petitioner currently poses an unreasonable risk of danger to public safety if released on supervised parole. Petitioner reasserts that the Governor's decision was arbitrary and capricious. Petitioner further

reasserts that the positive factors in Petitioner's overall record and circumstances, far outweigh the negative. Petitioner incorporates by reference as if fully set out herein the detailed responses provided in numbered paragraphs 1-3.

Petitioner admits the Governor's factual finding are reviewed de novo. (*In re Prather* (2010) 50 Cal.4th 238, 255.) However, the factual findings upon which the Governor's dangerousness determination is based are, themselves, subject to review under the substantial evidence standard. This second level of review requires an examination of the entire record to determine if the record discloses evidence that is "reasonable, credible, and of solid value" from which a reasonable trier of fact could make the Governor's factual findings by a preponderance of the evidence. (See *People v. Bolin* (1998) 18 Cal.4th 297, 331.) If the Governor's factual findings are not supported by substantial evidence, the findings cannot form the basis of an unreasonable risk determination. (See *People v. Cluff* (2001) 87 Cal.App.4th 991, 998 [court abuses discretion when factual findings critical to the decision find no support in evidence].) Determinations of law are independently reviewed. (*People v. Love* (2005) 132 Cal.App.4th 276, 284.)

6. Petitioner admits the Governor has broad discretion to determine

whether an inmate poses an unreasonable risk of danger to public safety. In all other respects, Petitioner denies each and every remaining allegation in paragraph six of the return. The Governor did not duly consider all of the relevant factors in Petitioner's record and circumstances. (See, *supra,* responses to paragraphs 1-3.) This Court need not defer to the Governor's factually unsubstantiated and legally incorrect balancing of the isolated factors upon which he based his improper conclusion of an unreasonable risk of danger to public safety.

7. Petitioner denies that the crime alone provides sufficient evidence that Petitioner remains an unreasonable risk to public safety if placed on supervised parole. Petitioner admits that it is possible the crime alone provides some evidence an inmate could remain a public safety risk. For the crime alone to be used as sufficient evidence to maintain a public safety risk, it is Petitioner's actions in that crime that are appropriate for consideration, not her codefendants' actions. Further, the superior court found that "Petitioner may someday be suitable for parole, when her commitment offense is no longer predictive of a current dangerousness, it is not yet that day." (Exh. G, pp. 15-16.) If the commitment offense is alone sufficient to deny parole, there could never be a future time when parole would be appropriate because the commitment offense can never change.

Petitioner has demonstrated she could change, but she concedes her crime will never change. In *Lawrence*, the California Supreme Court found that found that immutable circumstances such as the gravity of the commitment offense that is remote, and mitigated by circumstances indicating the conduct is unlikely to recur, do not provide "some evidence" inevitably supporting the ultimate decision that the inmate remains a "threat to public safety." (*Lawrence,* at p. 1191.) Since *Lawrence*, no published case has found that an inmate, who has been rehabilitated, committed a crime that is so bad that it is appropriate to basically change a court's sentence from the possibility of parole, to a sentence of life without parole. The Board found there was no nexus between the life crime and Petitioner's current parole suitability. (Exh. C, p. 286.) The sentencing court, who heard the witnesses and saw the evidence, gave "serious attention" to sentencing Petitioner to probation, after acknowledging that nobody convicted of a first degree murder in California had ever been granted probation. (Exh. F, p. 131.) Petitioner was given credit for having already served eight years and 120 days, making her *eligible for parole at the time of sentencing, 41 years ago*. (Exh. F, p. 132.) Petitioner was convicted of one count of conspiracy and two counts of first degree murder. "***Concurrent life sentences with the possibility of parole*** were imposed." (*People v. Van Houten* (1980) 113

Cal.App.3d 280, 347, emphasis added (*Van Houten*).) Certainly, the sentencing court could have imposed consecutive life sentences if Petitioner's crime was sufficiently egregious to continue to be sufficient to continue to deny her parole.

8. Petitioner agrees that if this Court finds the Governor's decision violated due process by an insufficient evidentiary foundation, the court should order that the decision be vacated and reinstate the Board's grant of parole. Petitioner denies all remaining allegations in paragraph 7 of the return.

9. Petitioner agrees that the Governor was required to give "great weight" to the youthful offender factors and intimate partner battering facts of this case. (Penal Code[4] section 4801, subds. (b)(1) & (c).) Petitioner denies that these were the only criteria that required "great weight." The Governor was also required to give "great weight" to Petitioner's elderly parole status, which he failed to do.[5] (Section 3055, subd. (c).) Petitioner concedes the supplemental petition for writ of habeas corpus was based on *In re Palmer* (2018) 27 Cal.App.5th 120 (*Palmer*), and the California

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[4] All further statutory references are to the Penal Code unless otherwise stated.

[5] Section 3055, subdivision (a) requires the Elderly Parole Program apply to inmates at least 60 years old who have served a minimum of 25 years of continuous incarceration

Supreme Court granted review and depublished *Palmer*. (Review granted January 16, 2019, Case S252145.) Petitioner agrees with Respondent that currently there is no California Supreme Court authority describing a standard for "great weight" in an adult parole suitability context. (Return, p. 20, fn. 4.) However, in *People v. Martin* (1986) 42 Cal.3d 437 (*Martin*), the supreme court defined the definition of "great weight" that it had utilized in two cases involving a trial courts' review of the Youth Authority's recommendations. Those recommendations were entitled to "great weight" and "must be followed in the absence of 'substantial evidence of countervailing considerations of sufficient weight to overcome the recommendation.'" (*Martin*, at p. 447.) Therefore the Governor must accept those factors as indicating suitability for release on parole absent substantial evidence of countervailing considerations indicating unsuitability. (*Ibid.*)

10. Except as herein expressly admitted, Petitioner generally and specifically denies all other allegations of the return. This traverse is based on the records in this case, Petitioner's writ of habeas corpus and exhibits, and the concurrently filed memorandum of points and authorities in support of the traverse.

11. Petitioner accepts, without admitting or denying, Respondent's

representation that the return is confined to the pleadings, memorandum of points and authorities, and attached exhibits.

WHEREFORE, Petitioner respectfully requests that this Court:

1. Declare that the Governor's decision finding Petitioner unsuitable for parole is capricious, arbitrary, and fails to meet the "some evidence" standard;

2. Issue forthwith a writ of habeas corpus ordering that Petitioner be adjudged suitable for parole; and

3. Grant Petitioner such other and further relief as may be deemed appropriate in the interests of justice, including discovery by Petitioner and an evidentiary hearing on these issues.

Dated: March 17, 2019

Respectfully submitted,

RICH PFEIFFER
Attorney for Petitioner
Leslie Van Houten

MEMORANDUM OF POINTS AND AUTHORITIES

I.
INTRODUCTION AND SUMMARY OF THE ARGUMENT

The Governor's reversal presents two important legal principles. It first raises the overarching question of whether the law will be applied fairly if it is unpopular to do so. Second, this case presents the additional issue of whether the *Lawrence* holding prevents an inmate from being branded a permanent risk to public safety based on the immutable fact that almost 50-years ago, she was associated with Charles Manson who is now dead.

Petitioner has appeared for a parole suitability hearing before the Board 22 times at the time this writ petition was filed.[6] It was not until her twenty-first and twenty-second parole hearings that the Board found her suitable. Needless to say, the Parole Board has proven to be hard to convince. The Board's in-depth examination of Petitioner, together with its consideration of her psychological therapy and evaluations, record of

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[6] Petitioner appeared for a 23rd parole suitability hearing on January 30, 2019. She was once again granted parole. The results of that parole hearing are not yet final, and after they are, then the new Governor will have up to 30 days to once again reverse the Parole Board. The new Governor appears to be reversing grants of parole at a much higher rate than did Governor Brown, however it is too early to tell if this is a policy change.

rehabilitative programming, record of perfect conduct in prison, and the mitigating findings from her recent *Franklin* hearing, convinced the Board that Petitioner is not the same woman who entered prison nearly 50-years-ago. (Exh. C [transcript of 2017 parole hearing]; (Exh. D [hearing pursuant to *People v. Franklin* (2016) 63 Cal.4th 261].)

The Board exhaustively questioned Petitioner about the factors causing her to join the Manson cult, as well as her conduct while a cult member. The Board required that Petitioner give a stark account of her personal role in the La Bianca murders. The Board examined her level of remorse and exactly how she had changed psychologically to ensure that she would never again fall prey to Manson, or anyone else, controlling her actions again. The Board repeatedly asked questions aimed at uncovering any lingering downplaying or minimizing by Petitioner regarding her personal culpability. Petitioner's testimony provided a forthright acceptance of her criminal conduct and detailed account of her almost 50-year journey of reform. Added to this is her age of 69 years, and that the commitment murders occurred nearly a half century ago.

Based on the evidence and controlling legal standard, the Board found that Petitioner no longer posed an unreasonable risk of danger to public safety. The Governor somehow concluded otherwise.

Unlike the lengthy and detailed Board decision, the Governor's cursory written reversal was only four pages long. The discussion portion of the decision comprised only two of the four pages. The Governor's legal analysis cited to one case and one Penal Code statute. (Exh. A.)

The Governor placed paramount weight on the gravity of the commitment offense and Petitioner's association with Charles Manson. Certainly, those immutable facts cannot be disputed, nor can Petitioner do anything to change this part of her past.

The Governor next faulted Petitioner for "downplaying" and "minimizing" her role in the murders by placing responsibility on Charles Mason and the Mason cult. (Exh. A.) Ironically, the Governor's prior reversal faulted Petitioner for failing to recognize her involvement with the Manson cult. (Exh. B.) In 2018, the Governor accused Petitioner of overemphasizing the role of Manson in her conduct, while in 2016, the Governor faulted her for under-emphasizing her association with Charles Manson. These duplicitous rulings illuminate the Governor's refusal to give fair consideration to the relevant evidence. Such arbitrary state action violates constitutional due process. (*In re Rosenkrantz, supra,* 29 Cal.4th at p. 655; *In re Dannenberg, supra,* 34 Cal.4th at p. 1082; *In re McDonald, supra,* 189 Cal.App.4th at p. 1023.) This factor should be excluded from

this Court's consideration.

The Governor's final factor cited for reversing Petitioner's grant of parole is the quoted analysis of the superior court's decision upholding the Governor's 2016 parole reversal. (Exh. A.) This represents an abdication of the Governor's obligation to act as an independent decision-maker. Further, the superior court's quoted analysis is irrelevant because it addressed a prior parole hearing before a different panel of the Board, and failed to account for new information presented at the current parole hearing, including the findings made at the *Franklin* hearing. Petitioner's rights of due process render this factor void. It too should be excluded from the Court's consideration. This leaves the gravity of the commitment offense as the only viable factor supporting the Governor's decision. This factor does not overcome Petitioner's overall record of rehabilitation.

An inmate is entitled to parole unless it is determined that the inmate presently poses an unreasonable risk of danger to public safety if placed on supervised parole. (*In re Lawrence, supra,* 44 Cal.4th at p. 1191; *In re Shaputis, supra,* 44 Cal.4th at p. 1246.) The aggravated nature of a commitment offense will not automatically provide "some evidence" supporting the ultimate decision that the inmate remains a current threat to public safety. (*Ibid*.) Courts must consider "whether the circumstances of

the commitment offense, when considered in light of other facts in the record, are such that they continue to be predictive of current dangerousness many years after commission of the offense." (*Ibid*.) This inquiry cannot be undertaken "simply by examining the circumstances of the crime in isolation, without consideration of the passage of time or the attendant changes in the inmate's psychological or mental attitude." (*In re Lawrence, supra,* 44 Cal.4th at 1222; *In re Shaputis, supra,* 44 Cal.4th at 1255.) The immutable facts of Petitioner's 50-year-old crime are far outweighed by her remarkable record of reform.

The Governor's reversal was not based on Petitioner's individualized circumstances. It appears based, at least partially, on a political decision meant to quell the public's fear of Charles Manson, who has died. Due process protects individuals from this type of arbitrary and capricious governmental action. The Governor's reversal violated the controlling decisional law and Petitioner's state and federal rights of constitutional due process. If this flawed decision is allowed to stand, it will establish a standard that converts life sentences *with* the possibility of parole to life sentences *without* the possibility of parole if it is politically unwise to sanction the inmate's release. This "change of sentence" would overrule the sentencing court, which heard all of the evidence and witnesses, without

any party appealing or complaining about the sentence that was rendered over 40 years ago.

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

A. The Governor Violated Petitioner's Federal Rights of Due Process.

The Due Process Clause of the Fourteenth Amendment prohibits state action that deprives a person of life, liberty, or property without due process of law. (U.S. Const., 14th Amend.) A person alleging a due process violation must first demonstrate that he or she was deprived of a liberty or property interest protected by the Due Process Clause and then show that the procedures attendant upon the deprivation were not constitutionally sufficient. (*Kentucky Dep't of Corrections v. Thompson* (1989) 490 U.S. 454, 459-460; *McQuillion v. Duncan* (9th Cir.2002) 306 F.3d 895, 900.) The United States Supreme Court recognizes a federal due process liberty interest in parole. (*Greenholtz v. Inmates of Nebraska Penal* (1979) 442 U.S. 1, 7.) The court held in 1979, and reaffirmed in 1987, that "a state's statutory scheme, if it uses mandatory language, creates a presumption that parole release will be granted when or unless certain designated findings are made, and thereby gives rise to a constitutional liberty interest." (*Board of*

Pardons v. Allen (1987) 482 U.S. 369, 373; *Greenholtz, , supra,* 442 U.S. at p. 7).

The parties agree that the Governor's reversal is subject to federal due process. (Return, at p. 7.) Respondent errs by attempting to impose an overly narrow definition of due process in parole decisions. According to Respondent, federal due process merely requires that the Governor provide Petitioner with notice and an opportunity to be heard. (Return, at p. 7.) What Respondent neglected to include is that the "opportunity to be heard" must be meaningful. (*Gagnon v. Scarpelli* (1973) 411 U.S. 778, 786-787.) Petitioner's "opportunity to be heard" was the 2017 parole hearing. It was her twentysecond appearance before the Board. At the conclusion of the hearing, the Board was convinced that Petitioner no longer posed an unreasonable risk of danger to public safety. It granted parole and set a parole date. (Exh. C.)

Without question, the Governor had the legal authority to reverse this decision, provided the decision complied with due process and the controlling legal standard. It did not. Because Petitioner was not allowed to appear before the Governor and personally demonstrate her reform, a meaningful opportunity to be heard meant the Governor had to consider every word of every page of every piece of evidence. The Governor's

written decision needed to account for this evidence. (*Gagnon v. Scarpelli, supra,* 411 U.S. at pp. 786-787.) The Governor failed to discharge this burden my focusing nearly exclusively on the facts of the 50-year-old murders without duly considering the totality of Petitioner's decades-long record of reform, rehabilitation, and remorse.

The best evidence of this failing is the return itself. Respondent concedes that the Governor's reversal is bound by the rigors of due process, but spends the next three plus pages, recounting the grim details of the commitment offense, and arguing why this, alone, is a sufficient basis for the reversal. Respondent also included the murders committed at the Tate residence, that in no way involved Petitioner in an apparent attempt to make Petitioner's commitment offense appear more aggravated than it actually was. (Return, at p. 12.) A "meaningful opportunity to be heard" required a meaningful examination of the record. The Governor failed to discharge this constitutionally mandated duty.

B. <u>The Governor Violated Petitioner's Rights of Due Process Rights under the State Constitution</u>.

Petitioner's liberty interest in resentencing is likewise protected under the broader due process guarantees of the California constitution. (Cal. Const, art. 1, § 7, subd, (a), 15.) The California Supreme Court long ago recognized that freedom from arbitrary adjudicative procedures is a

substantive component of an individual's liberty interests. (*People v. Ramirez* (1979) 25 Cal.3d 260, 266-269.) In rejecting the restrictive federal approach, which conditions due process protections on statutorily created entitlements of liberty or property, our high court in *Ramirez* held "when an individual is subjected to deprivatory governmental action, he always has a due process liberty interest both in fair and unprejudiced decision-making and in being treated with respect and dignity." (*Ibid*.; *In re Lawrence, supra*, 44 Cal.4th at p. 1191, quoting *In re Rosenkrantz, supra,* 29 Cal.4th at p. 654; *In re Stoneroad* (2013) 215 Cal.App.4th 596, 615.) Thus, under state constitutional due process, the Governor's decision must comport with the substantive due process strictures of fundamental fairness. Due process gave Petitioner an expectation that she would be granted parole unless the Governor found, in the exercise of his discretion, that she was unsuitable for parole based on the "circumstances specified by statute and by regulation." (*In re Lawrence, supra,* 44 Cal.4th at p. 1191; *In re Perez* (2016) 7 Cal.App.5th 65, 83-84.)

Courts review the Governor's parole decisions under a highly deferential "some evidence" standard. (*In re Shaputis II, supra,* 53 Cal.4th at p. 221.) Though strict, this standard is not without legal teeth. The Governor's decision may not be arbitrary, capricious, or procedurally

flawed. Court's must "review the entire record to determine whether a modicum of evidence supports the parole suitability decision." (*Shaputis II, supra,* 53 Cal.4th at p. 221.) The Governor's decision must reflect due consideration of "all of the specified factors as applied to the individual prisoner in accordance with applicable legal standards." (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; *In re Stoneroad, supra,* 215 Cal.App.4th at p. 616.) Reviewing courts must reverse a denial of parole if the Governor's decision "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 nexus to current dangerousness is critical in determining if the due process standard of fundamental fairness in parole decisions has been met. In evaluating a parole-suitability determination by either the Parole Board or the Governor, the reviewing court must focus upon "some evidence" supporting the core statutory determination that a prisoner remains a *current* threat to public safety. The standard is not merely "some evidence" supporting the Governor's characterization of the facts contained in the record. (*In re Prather, supra,* 50 Cal.4th at pp. 251-252; *In re*

Stoneroad, supra, 215 Cal.App.4th at p. 615.) As our supreme court has held, "It is not the existence or nonexistence of suitability or unsuitability factors that forms the crux of the parole decision; the significant circumstance is how those factors interrelate to support a conclusion of current dangerousness to the public." (*In re Lawrence, supra,* 44 Cal.4th at p. 1212.) Due process requires that a particular factual finding is probative of the central issue of current dangerousness when considered in light of the full record, rather than whether isolated negative facts are supported by the record. (*In re Prather, supra,* 50 Cal.4th at p. 255.) "[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.)

Respondent states that the Governor must duly consider the relevant parole factors, and identify "some credible evidence" probative of Petitioner's current dangerousness. (Return, at p. 8.) Respondent continues by admonishing that "[j]udicial review of the Governor's parole decision is highly deferential, as the Court views the record in the light most favorable to the Governor's determination." (Return, at p. 10.) This is not the

standard. Respondent's contrary assertion notwithstanding, the actual standard requires that the Governor consider the entire record along with Petitioner's individualized circumstances and measure this evidence against the parole factors. In order to support a denial of parole, the factors relied upon by the Governor must be supported by "some evidence" in the record sufficient to prove the overall conclusion that Petitioner *currently* poses an unreasonable risk of danger to public safety. Due process 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.

The Governor's decision in this case does not meet this standard because of his undue reliance on the immutable fact of the commitment offense, and Petitioner's long-ago involvement with Charles Manson, who is no longer even alive. When these immutable factors are measured against Petitioner's entire record, it becomes evidence that, while these factors are supported by "some evidence," they do not support the conclusion of an unreasonable risk of danger because they have lost their predictive value.

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III.
THE PAROLE BOARD CORRECTLY FOUND THAT PETITIONER DOES NOT CURRENTLY POSE AN UNREASONABLE RISK OF DANGER TO PUBLIC SAFETY.

A. Introduction.

The Governor cited *In re Lawrence* and Penal Code section 4801 as the sole legal authority for his decision. Petitioner agrees that *Lawrence* applies to this case, together with the many cases interpreting the *Lawrence* standard in the ten years since it was rendered. Applying the *Lawrence* standard here establishes that the Governor committed reversible error in denying Petitioner parole.

B. The Governing Legal Framework.

The California Supreme Court's 2008 decision in *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.) In *Lawrence*, the Governor used the gravity of the commitment offense as the reason to reverse a grant of parole to Ms. Lawrence. Ms. Lawrence was

involved in a romantic affair with a dentist who she worked with, who was married to another woman. (*Id.* at p. 1192.) The dentist repeatedly told Ms. Lawrence he would leave his wife and marry her but he never did. At Ms. Lawrence's 24th birthday celebration, the dentist again stated this plan but three days later, he again changed his mind and told her so. (*Ibid.*) Ms. Lawrence armed herself with a pistol and a potato peeler and went to the dentist's office where the dentist's wife was helping set up the new office. (*Id.* at p. 1193.) Ms. Lawrence argued with the dentist's wife prior to a physical altercation. Then Ms. Lawrence shot the wife four times, wounding her. Ms. Lawrence completed the murder by repeatedly stabbing the wife with the potato peeler. Ms. Lawrence told her family she killed the dentist's wife "as a birthday present to herself." (*Ibid.*) Ms. Lawrence fled to Chicago, and after learning about a fugitive warrant for her arrest, she fled to various locations and worked various jobs for 11 years. Finally, Ms. Lawrence turned herself in and suggested the dentist killed his wife. (*Ibid.*) Ms. Lawrence "utterly failed to accept any personal responsibility for her actions" and turned down a plea agreement. (*Id.* at p. 1231.) She was ultimately convicted of first

degree murder. (*Ibid.*)

Early in her prison term, Ms. Lawrence's psychological evaluations characterized her as "moderately psychopathic." (*Id*., at p. 1195.) As of 1993, her psychological evaluations showed she no longer posed a danger to society. (*Ibid*.) She remained free of serious discipline violations throughout her 23-years in prison, and contributed to the prison community in a variety of ways. She participated in many educational groups and earned a bachelor's and master's degree in prison. (*Id*., at p. 1194.)

In 2005, Ms. Lawrence received her fourth finding by the BPH that she was suitable for parole. The Governor reversed the Board's finding on the ground that "the gravity alone of this murder is a sufficient basis on which to conclude presently that Ms. Lawrence's release from prison would pose an unreasonable public-safety risk." (*Id*., at p. 1200.) The Governor noted contributing factors, such as Ms. Lawrence's initial lack of remorse for the crime, her early negative psychological evaluations, and eight counseling "chronos" for minor prison violations. (*Id*., at p. 1199)

In analyzing the factors cited by the Governor, the Supreme Court found that, though each factor was historically true, none of the factors applied to Ms. Lawrence's current behavior. The court credited Ms. Lawrence's repeated expressions of deep remorse for the crime and her own

statements condemning her behavior as proof she accepted responsibility for her conduct. (*Id*., at p. 1222.) The high court found that her positive psychological evaluations over the past 15-years negated the evidentiary value of her early negative reports. The court disregarded Ms. Lawrence's eight counseling chronos as immaterial. (*Id*., at pp. 1222-1223.)

The Supreme Court ultimately held that none of the findings cited by the Governor provided a sufficient evidentiary basis for the conclusion that Ms. Lawrence currently posed an unreasonable risk of danger to public safety. (*Id*., at p. 1191.) *Lawrence* established that the relevant inquiry in parole decisions is, "whether the circumstances of the commitment offense, when considered in light of other facts in the record, are such that they continue to be predictive of current dangerousness many years after the commission of the offense." (*Id*., at p. 1235.) This inquiry is an "individualized one, and cannot be undertaken simply by examining the circumstances of the crime in isolation, without consideration of the passage of time" or other mitigating factors. (*Ibid*.)

The *Lawrence* court found Ms. Lawrence suitable for parole even though she shot her lover's wife and stabbed her to death, that the factors relied upon by the Governor in denying parole were overcome by Ms. Lawrence's record of rehabilitation in prison. (*Ibid*.)

Like the defendant in *Lawrence*, Petitioner's conviction arose from stabbing Mrs. La Bianca, after which she told fellow cult members she enjoyed doing it. The Board found that Petitioner's crime, and her initial lack of remorse, was overcome by her remarkable record of rehabilitation. The Board recognized that Petitioner has spent the last 40+ years agonizing over her criminal conduct and working to overcome the damage she had caused. Petitioner underwent extensive psychological counseling. She had positive psychological evaluations in which the psychologists have labeled her "prosocial." She advanced herself educationally by earning both a Bachelor and Master degree. During the parole suitability 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 Board concluded that Petitioner is not the same person as the young woman who entered prison almost 50-years-ago.

Also like *Lawrence*, the Governor in the present matter placed undue importance on the commitment offense. Though he made secondary findings, the findings were not supported by the record. The Supreme Court found Ms. Lawrence suitable for parole on similar facts. The same legal standard should apply to Leslie Van Houten, regardless of her

notoriety. The *Lawrence* decision strongly favors the Board's decision in this case.

In the companion case of *In re Shaputis I, supra,* 44 Cal.4th 1241, our Supreme Court examined the significance of an unrepentant defendant who continuously minimized his culpability. The facts of *Shaputis* provide a sharp contrast to the record in this case. For several years before the commitment offense, Mr. Shaputis severely abused his wife and daughters. He was charged with raping his 16-year-old daughter and threatening to send his wife "home in a box." (*Id*., at pp. 1246-1247.) In 1987, Mr. Shaputis was convicted of second degree murder for shooting and killing his wife. (*Id*., at p. 1245.) The murder occurred during what he described as a "little fight" with his wife. (*Id*., at p. 1258.)

In 2006, the Parole Board found Mr. Shaputis suitable for parole. The Governor reversed the decision. (*Id.*, at p. 1245.) Mr. Shaputis's prison record was remarkable. He remained discipline free throughout his incarceration, participated in all available Alcoholics Anonymous and Narcotics Anonymous programs, and completed all applicable self-help programs. (*Id*., at p. 1249) However, the record contained evidence from the licensed psychologist evaluating Mr. Shaputis that he lacked insight into his commitment offense and previous acts of violence, even after

rehabilitative programming tailored to address the issues that led to commission of the offense. The aggravated circumstances of the crime reliably continued to predict current dangerousness even after many years of incarceration. The Governor found that Mr. Shaputis posed an unreasonable risk of danger because the commitment offense involved extensive premeditation. Added to this was the fact that Mr. Shaputis failed to gain insight into the murder of his wife, or his deplorable behavior in the decades preceding the murder. (*Id*., at p. 1253.)

The Supreme Court upheld the Governor's reversal. In doing so, the court stressed that this was not a case where the murder was an isolated incident. Instead, the murder was the culmination of many years of Mr. Shaputis's "violent and brutalizing" behavior toward his wife and daughters. (*Id*., at p. 1259.) His prison record indicated he had failed to gain any insight at all into his violent behavior after years of rehabilitative therapy and programming. (*Id*., at p. 1246.) He continuing to refer to the murder as "an accident" in which his dead wife played a part even though the evidence found against him indicated otherwise. (*Ibid*.) He also continued to deny his many years of brutally beating and raping his daughters by referring to their allegations as "inexplicable." (*Id*. p. 1249.) The high court refined the "lack of insight" suitability factor in *Shaputis II.*

(*In re Shaputis II. supra,* 53 Cal.4th at p. 221.) In *Shaputis II*, our Supreme Court "expressly recognized that the presence or absence of insight is a significant factor 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." (*Shaputis II, supra,* 53 Cal.4th at p. 218.) Even so, the court made clear that a "lack of insight, like any other parole unsuitability factor, supports a denial of parole only if it is rationally indicative of the inmate's current dangerousness." (*Id*., at p. 219.) A lack of insight is not necessarily indicative of present dangerousness, as is "most obviously the case when an inmate, due to advanced age and infirmity, is no longer capable of being dangerous, no matter how little insight he has into previous criminal behavior." (*In re Morganti* (2012) 204 Cal.App.4th 904, 923; *Shaputis II, supra,* 53 Cal.4th at p. 226 (conc. Opn. of Liu, J.).) When a reviewing court evaluates a parole suitability determination, the court cannot look for some evidence in the abstract. "The nexus to current dangerousness is critical." (*In re Perez, supra,* 7 Cal.App.5th ay pp. 84-85.)

Petitioner's individualized circumstances couldn't be more different from the defendant in Shaputis. Mr. Shaputis had a history of beating his wife and raping his daughters. His prior criminal record included charges of raping his 16-year-old daughter and threatening to murder his wife.

(*Shaputis I, supra,* 44 Cal.4th at pp. 1246-1247.) He called the eventual murder of his wife the result of a "little fight." (*Id*., at p. 1258.) Though he was a model prisoner, the evidence amply established that Mr. Shaputis utterly failed to take responsibility for his "deplorable and violent criminal behavior" in the many decades before he murdered his wife. (*Id*., at p. 1249, 1253.) He showed no insight into his actions or remorse for his conduct. (*Ibid*.)

Comparing the *Shaputis* defendant to Petitioner reveals the impropriety of the Governor's decision in this case. Petitioner has done everything in her power to make amends. At the parole suitability hearing, Petitioner courageously confronted her personal failings and proved that she had dedicated the past almost 50 years to reform, both psychologically and behaviorally. She provided a detailed account of joining the Manson cult and her participation in the murders. (Exh. C.) Contrary to the Governor's findings, the record demonstrated that Petitioner had taken full responsibility for her conduct, and did not minimize any part of it. The Governor simply refused to acknowledge the evidence.

In the Governor's prior reversal of the Board's suitability finding, he faulted Petitioner for not sufficiently acknowledging the role that Charles Manson, and the Mason cult, played in Petitioner's criminal behavior. (Exh.

B, at p. at pp. 3-5.) In the current reversal, the Governor now calls Petitioner's acknowledgment of Mason and the Manson cult, evidence of "downplaying" and "minimizing" her personal culpability. (Exh. A, at pp. 3-4.) These inconsistent rulings make clear that no matter what Petitioner does, the Governor will never grant Leslie Van Houten parole. Due process prevents this type of improper governmental action.

C. <u>The Governor Abused his Discretion by Reversing the Parole Board's Finding</u>.

The Governor based his reversal on three factors. None of these factors, whether considered in isolation or collectively, support the conclusion that Petitioner currently poses an unreasonable risk of danger to public safety. (*In re Prather, supra,* 50 Cal.4th at p. 255.)

1. Gravity of the commitment offense.

The Governor's primary reason for reversing Petitioner's grant of parole is the gravity of the commitment offense, and her membership in the Manson cult. (Exh. A, at passim.) Both of these circumstances are immutable factors that Petitioner can never change, circumstances that occurred a half-century ago. Immutable historic facts, such as the gravity 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.)

Respondent attempts to bolster the Governor's reversal by citing *Lawrence* for the proposition that a particularly egregious murder can, without more, provide an indication of an inmate's potential for future danger. (Return, at p. 8.) This is an incorrect interpretation of *Lawrence*. While Respondent's interpretation may have been the standard before *Lawrence*, the *Lawrence* holding changed the parole suitability standard to require more than an egregious commitment murder.

Lawrence and *Shaputis* clarified that the propriety of the parole decision does not depend upon whether the commitment offense was an exceptional murder. The Supreme Court made it clear that "the determination 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." (*In re Lawrence, supra,* 44 Cal.4th at p. 1221; *In re Dannenberg, supra*, 34 Cal.4th at pp. 1083–1084, 1095; see *In re Shaputis, supra,* 44 Cal.4th at p. 1254.) "Focus upon whether a petitioner's crime was

'particularly egregious' in comparison to other murders in other cases is not called for by the statutes, which contemplate an individualized assessment of an inmate's suitability for parole . . . ." (*In re Lawrence, supra,* 44 Cal.4th at p. 1217.) The determination of current dangerousness does not depend "upon whether the circumstances of the offense exhibit viciousness above the minimum elements required for conviction of that offense." (*In re Shaputis, supra,* 44 Cal.4th at p. 1254.)

All murders are egregious crimes involving extreme violence. Nevertheless, reviewing courts have repeatedly found defendants convicted of particularly violent murders suitable for parole. For example, in *In re Moses* (2010) 182 Cal.App.4th 1279, the defendant and his brother drove to visit their family on Thanksgiving day. The defendant became very intoxicated during the drive and decided he wanted to "get even" with the man whose brother killed the defendant's father. Instead of going to the family gathering, the defendant drove to the man's house and shot him to death at close range. Applying the *Lawrence* standard, the First Appellate District overturned the Governor's finding that Mr. Moses currently posed an unreasonable risk of danger to public safety. (*Id*., at pp. 1285-1286.)

In re Dannenberg is another example of a excessively violent murder in which the reviewing court overturned the governor's parole reversal.

The defendant in *Dannenberg* murdered his wife by beating her with a pipe wrench during a domestic argument. While she was helpless from the beating, the defendant drowned her in the bathtub by forcing her head under the water. (*In re Dannenberg, supra,* 34 Cal.4th at p. 1069 (*Dannenberg I.*) Prior to the *Lawrence* decision, the California Supreme Court upheld the Governor's finding that the gravity of the commitment offense made the defendant an unreasonable risk of danger to public safety. *(Ibid*.) Following *Lawrence*, the Sixth Appellate District overturned a subsequent denial of parole by the Governor. (*In re Dannenberg* (2009) 173 Cal.App.4th 237, 241 (*Dannenberg II*).

The Second Appellant District, Division Seven held in *In re Twinn* (2010) 190 Cal.App.4th 447, that the defendant of a particularly brutal murder was suitable for parole, thereby reversing the Governor's denial. On the morning of June 16, 1990, Irma Blockman (Twinn's stepbrother's aunt) was collecting bottles on the street in Venice. She saw a couple of bottles near three men who stood on a corner. When she approached the men intending to pick up the bottles, one of the men named Curtis Golder stopped her. An argument ensued. Ms. Blockman was under the influence of cocaine and Mr. Golder was intoxicated on alcohol. A short time later, Ms. Blockman and Mr. Golder got into a physical altercation over an

abandoned shopping cart. (*Id.*, at p. 452.)

That night, Ms. Blockman was visiting defendant's mother and told the family what had happened. The petitioner was 17-years-old at the time. He and another young man decided to retaliate for the assault on Ms. Blockman by beating up Mr. Golder. They found Mr. Golder on the street and beat him to death with their bare hands. Decades later, the reviewing court reversed the Governor's finding that the Mr. Twinn continued to pose an unreasonable risk of danger to public safety. (*Id*., at pp. 451, 474.)

In re MacDonald, supra, 189 Cal.App.4th at pp. 1013-1017, provides yet another example of a reversal of the Governor's finding that an inmate posed an unreasonable risk of danger to public safety. As with the other examples, the commitment murder was particularly brutal. The defendant was convicted of murdering a 16-year-old male with whom his girlfriend was having sexual relations while the defendant was away on military duty. The defendant told friends he was going to kill the minor. Several days later, the defendant lured the minor to go out with him and some friends. He strangled the minor and threw him off a cliff. The minor died of a combination of ligature strangulation and the fall. Years later, the Governor found the defendant not suitable for parole. The reviewing court reversed the Governor's decision.

Certainly, the aggravated circumstances of the commitment offense is one factor that can provide "some evidence" of current dangerousness, even decades later, where the inmate "has failed to make efforts towards rehabilitation, has continued to engage in criminal conduct post incarceration, or has shown a complete lack of insight or remorse." (*Id*. at p. 1227-1228.) An egregious murder balanced against almost 50 years of continuous rehabilitation does not meet this standard. The Governor's undue reliance on the gravity of Petitioner's commitment offense was an insufficient basis for his overall conclusion of current dangerousness.

2. Downplaying and minimizing Petitioner's involvement.

Petitioner came before the Parole Board a total of 22 times. It was not until her twentyfirst parole hearing that the Board deemed her suitable. The Governor reversed that grant of parole in 2016. (Exh. B.) The Board again found Petitioner suitable for parole at the subsequent parole hearing in 2017. (Exh. C.) In January 2018, the Governor reversed this second grant of parole. The 2018 reversal is the subject of this petition. (Exh. A.) Petitioner's January 2019 grant of parole is still pending.

In his 2018 reversal of the Parole Board's 2017 grant of parole, the Governor attempted to tie the commitment offense to Petitioner's current circumstances by accusing her of "long downplay[ing] her role in these

murders and in the Manson Family, and her minimization of her role continues today." (Exh. A, at p. 3.) The Governor faulted Petitioner for stating at the Parole suitability hearing: "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," and "I accept responsibility that I allowed [Manson] to conduct my life in that way." (Exh. A, at p. 3.) According to the Governor, this meant she blamed Manson for exerting control over her.

The Governor took an opposite position in his 2016 reversal. In 2016, the Governor faulted Petitioner for giving the "false impression that she was a victim who was forced into participating in the Family without any way out." (Exh. B, at p. 4.) The Governor faulted Petitioner for discussing the control she believed Manson exerted over her.[7] (Exh. B, at p. 5.)

These two decision cannot be reconciled. In 2017, the Governor found Petitioner unreasonably dangerous because she answered questions regarding Mason's control over her actions. According to the Governor,

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[7] Discussed *infra* is the evidence admitted at the *Franklin* hearing where Catherine Share described under oath, subject to cross examination, that in no uncertain terms, core members of the cult were not free to leave and Ms. Share was personally threatened with torture should she attempt to leave. Ms. Share's testimony impeached statements made by Barbara Hoyt, and relied upon by the Governor, that cult members were free to come and go as they pleased. (Exh. B, pp. 4-5.)

this showed she was shifting blame to Manson instead of accepting responsibility for her own actions. (Exh. B, at p. 4.) In 2018, the Governor found Petitioner unsuitable for parole because she "downplayed" and "minimized" her role in the murders by not sufficiently acknowledging her involvement with Mason and the cult. (Exh. A, at p. 3.) These contrary findings show that Petitioner can never satisfy the Governor, notwithstanding his obligation to act as a neutral arbitrator who evenhandedly applies the controlling legal standard to the evidence. The Governor's finding that Petitioner continues to "downplay" and "minimize" is unsupported by "some evidence" in the record. It also violates due process by ignoring the dictates of fundamental fairness.

3. Reliance on court findings from a prior hearing.

The Governor's final finding constituted his quoting the decision of the superior court upholding his July 22, 2016, parole reversal. The quoted passage attributed to the "Los Angeles Superior Court" states,

" '[S]pecifically her inability to discuss her role in the Manson Family and LaBianca murd
responsibility to her drug use and her danger of falling prey to the influence of other people because of her dependent personality,' have demonstrated a lack of insight into her crimes. '[She] was not violent before she met Manson, but upon meeting such a manipulative individual she chose to participate in the cold-blood murder of multiple innocent victims.' The court continued, 'while it is unlikely [Van Houten] could ever find another

Manson-like figure if released, her susceptibility to dependence and her inability to fully recognize why she willingly participated in her life crime provides a nexus between the commitment offense and her current mental state, demonstrating she poses a danger to society if released on parole.' " (Exh. A, at p. 4.)

The Governor's errors in relying on the analysis of the superior court in an unrelated proceeding are numerous. First, the Governor is required to make an independent review of all the relevant evidence up to and including the record of the current parole hearing, and, based on this evidence, conduct an independent analysis of Petitioner's suitability. Quoting the analysis of the superior court addressing a prior hearing proves the Governor abdicated his responsibility to the superior court. What is more, the superior court's analysis was based on a prior parole hearing before a different panel of the BPH involving different testimony and without the benefit of the *Franklin* hearing evidence. This is a stark abdication of the Governor's obligations under constitutional due process.

Moreover, the quoted conclusions of the superior court have no support in the current record. At the September 6, 2017 parole suitability hearing, Presiding Commissioner Roberts acknowledged the concerns raised by the Governor in his 2016 reversal, and specifically addressed them. Commissioner Roberts asked Petitioner to explain "how and why

Van Houten drastically transformed from an exceptional, smart - exceptionally smart, driven, young woman, class secretary and homecoming princess to a member of one of the most notorious cults in history and an eager participant in the cold-blooded and gory murder of innocent victims aimed to provoke an all-out race war." (Exh. C, at pp. 47-48.) Petitioner carefully answered the question.

She detailed the events in her early life leading to her need for love and acceptance. (Exh. C, at pp. 47-50.) She described her forced abortion and subsequent involvement in drugs, including extensive use of marijuana, methamphetamine, and LSD. (Exh. C, at pp. 50-71.) She described her psychological condition when she met Catherine Share of the Manson cult, and the way she allowed herself to be recruited into the cult. (Exh. C, at pp. 72-76.) She testified that living in a commune was fun at first, and it gave her the acceptance she felt she was lacking. (Exh. C, at pp. 77-80.) Petitioner discussed her first meeting with Charles Mason and how his personality changed charged over time. At first he presented himself as an accepting father figure to his "family." He gradually became degrading and violent. (Exh. C, at pp, 81-89, 92-94, 107.) She described how her drug use served as a mechanism for her indoctrination into the cult. (Exh. C, at p. 87.)

Petitioner took responsibility for letting go of her morality and ethics as a member of the Manson cult. (Exh. C, at p. 88.) She allowed the acts of violence and degradation make her compliant until Manson had "total control." (Exh. C, at pp. 90, 94-101.) While explaining the mechanism by which she become part of the cult, Petitioner took full responsibility for her involvement. She did not mince words, nor did she shy away from difficult details.

Commissioner Roberts asked Petitioner how she felt about her membership in the Manson cult and her part in the murders. She tearfully responded, "I feel absolutely horrible about it, and I have spent most of my life trying to find ways to live with it." (Exh. C, at p. 157.) Her record of reform proves this to be true.

Since her incarceration, Petitioner has undergone extensive psychological treatment to understand the wrongs she committed. Her life now is dedicated to making amends. (Exh. C, at p. 160.) She explained that part of her remorse is understanding who she was at that time and "making sure those behaviors never surface again." (Exh. C, at p. 162.) She admitted feeling guilt, shame, and deep regret over her conduct. (Exh. C, at pp. 162-163.) Her psychological treatment has included developing empathy for her victims and their families. (Exh. C, at p. 166.)

Commissioner Roberts recognized that it is easy to say the right words, but asked what Petitioner had done "beyond words" to prove her she is not the person she was when she was involved with Mason and the Mason Family cult. Petitioner cited her membership in the Victim Offender Education Group which got her in touch with the damage she did to the La Bianca family. (Exh. C, at pp. 168-169.) She described her active membership in the Executive Body of the inmate Activities Group. This group allowed Petitioner to make "living amends" for her crimes by providing service work to other female inmates on the yard. (Exh. C, at p. 170.) As part of her "living amends," Petitioner also detailed her work as a tutor at Chaffey College helping female inmates advance themselves educationally. (Exh. C, at pp. 170-171.) For the sake of brevity, Petitioner cites but a few examples. The extensive transcript of the parole hearing lists more.

Commissioner Roberts next turned to Petitioner's acceptance of responsibility for her criminal conduct. Petitioner said, "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." (Exh. C, at p. 172.) She further stated, "I take responsibility for Mrs. La Bianca, Mr. La Bianca. (Exh. C, at p. 172.) Petitioner stated that, through therapy, she

has learned she was "weak in character." She explained, "I was easy to give over my belief system to someone else. That I sought peer attention and acceptance more than I did my own foundation. That I looked to men for my value, and I didn't speak up. I avoided any kind of conflicts." (Exh. C, at p. 173.) She stated that at the base of her problems was "very, very, very, low" self esteem. (Exh. C, at p. 172.)

Petitioner described her many years of on-going psychological therapy and the many positive changes it has had on her mental outlook. (Exh. C, at pp. 174-179, 180-182.) She verified that she has always maintained her membership in Alcoholics Anonymous and Narcotics Anonymous, plus a group called Emotions Anonymous, that is sanctioned by Alcoholics Anonymous. (Exh. C, at p. 179.) Through this work, she has developed a lifestyle and pattern that does not involve drugs. She adamantly practices the 12-step principles, and intends to do so for the remainder of her life. (Exh. C, at pp. 182-186.)

Added to this is Petitioner's highly favorable psychological examinations which rate her as a "low risk" for future violence. This is born out by the fact she has sustained only one CDCR form 115 chrono during the entire span of her incarceration, and no serious rule violations. (Exh. C, at pp. 195-198, 205.)

Balanced against this record, the Governor's reliance on the analysis of the superior court, in a different hearing with different parole commissioners, and missing the updated information presented at the parole suitability hearing and the *Franklin* hearing, rendered this factor irrelevant and unsupported by "some evidence" in the current record. Additionally, it constituted a violation of due process by abdicating the Governor's role to independently evaluate Petitioner's suitability for parole. This Court must disregard this factor. As proven above, none of the three factors relied upon by the Governor supported his overall conclusion that Petitioner, as she stood before the Board on September 6, 2017, continues to pose a current unreasonable risk of danger to public safety.

IV.
RESPONDENT'S RETURN CONTAINS INACCURATE REPRESENTATIONS OF THE EVIDENCE.

The Return relied upon "statements from another Manson Family member at Van Houten's 2013 hearing" that stated people at the ranch came and left "as they pleased." (Return, pp. 17-18.) That other Manson Family member was Barbara Hoyt, whose statements the Governor relied upon in his 2016 reversal of the grant of parole specifically quoting Hoyt's statement that cult members " 'came and went at will.' ". (Exh. B, pp. 1, 4-5.) However, at the *Franklin* hearing, Barbara Hoyt's prior hearsay

statements, that were not made under oath, and not subject to cross examination, were impeached by the testimony of Catherine Share. (Exh. D, pp. 45-49, 57.) To his credit, the Governor did not rely on Hoyt's statements in his latest reversal like he previously did. (Exh. A.) The BPH panel included the *Franklin* hearing transcripts, as well as transcripts of an interview of Barbara Hoyt that was done for a book, as part of the parole hearing record. (see Exh. C. pp. 26-29, 283-284.) While the Governor acknowledged by not including Hoyt's statements in his 2018 reversal that Hoyt was not reliable, Respondent continues to rely on Hoyt's statements, despite the record's demonstration of her unreliability. It appears that Respondent is forced to rely on statements outside the parole hearing record, that are not supported by the evidence, in order to make the claim that the Governor's reversal should stand.

CONCLUSION

The Governor's reversal relied on two basis to reverse the grant of parole, neither of which has merit.

First, the commitment offense was so egregious that he was entitled to rely solely on the gravity of the commitment offense to reverse the grant of parole. (Exh. A, pp. 2, 4.) In *Lawrence*, the California Supreme Court found that found that immutable circumstances such as the gravity of the

commitment offense that is remote, and mitigated by circumstances indicating the conduct is unlikely to recur, do not provide "some evidence" inevitably supporting the ultimate decision that the inmate remains a "threat to public safety." (*Lawrence,* at p. 1191.) Since *Lawrence*, no published case has found that an inmate, who has been rehabilitated, committed a crime that is so bad that it is appropriate to change a court's sentence from the possibility of parole, to a sentence of life without parole. Additionally, the record of the commitment offense is best viewed by the superior court who viewed all of the evidence, and watched and heard every witness testify. That sentencing court gave "serious attention" to sentencing Petitioner to probation, after acknowledging that nobody convicted of a first degree murder in California had ever been granted probation. (Exh. F, p. 131.) Petitioner was convicted of one count of conspiracy and two counts of first degree murder. "Concurrent life sentences with the possibility of parole were imposed." (*People v. Van Houten*, at p. 347.) Because the sentencing court could easily have imposed consecutive life sentences if Petitioner's crime was sufficiently egregious, but chose the appropriate sentence was to have Petitioner serve the counts concurrently, the sentencing court determined Ms. Van Houten's actions during the commitment offense were not so egregious that she should be denied parole

forever. At the time of sentencing, Petitioner was given credit for having already served eight years and 120 days, making her *eligible for parole at the time of sentencing, 41 years ago*. (Exh. F, p. 132.) If the People were not happy with that sentence, they could have appealed. They did not.

The superior court in the related writ petition struggled with this same issue. The superior court found that "Petitioner may someday be suitable for parole, when her commitment offense is no longer predictive of a current dangerousness, it is not yet that day." (Exh. G, pp. 15-16.) If the commitment offense alone is legitimately sufficient to deny parole, there could never be a future time when parole would be appropriate because the commitment offense can never change.

The second reason for reversing the grant of parole is the Governor's claim that Petitioner failed to take sufficient responsibility for the commitment offense when she shifted some blame onto Manson. (Exh. A, p. 3.) However, if Petitioner failed to recognize the true facts regarding Manson's control of herself and others, she would lack the insight into the causative factors that led to the crime and it could happen again by others controlling her. If she does testify to that control, she shifts some blame to Manson and does not take full responsibility, and is denied parole for that reason. The Governor cannot have it both ways.

Again, the superior court struggled with this issue as well. The superior recognized that the Governor found that Petitioner downplayed her role in the commitment offense by shifting blame to Manson. However, the court also recognized that "Petitioner does appear unable to discuss the commitment offense without imputing some responsibility on Manson, although it is unclear to what degree Petitioner is minimizing her role in the commitment offense and to what degree she is simply recounting the events as she perceives them." (Exh. G, p. 14.)

Then there is the real reason why the Governor reversed Petitioner's grant of parole - - her relationship with Manson. The reason defendants are required to be given due process in courts is because courts are required to follow the law, even if to do so might be unpopular with a large section of the public. Petitioner concedes that many citizens, who may or may not know the specifics about Petitioner's actions during the commitment offense, are opposed to any Manson cult member ever being released from prison. If the citizens are able to dictate the outcome, this would be no different than a large mob making the rules. Politicians rely on the public to get re-elected, and therefore are more easily influenced by mob rule. This is why courts, who are under much less public pressure, can provide due process and follow the law, even when that might be unpopular.

Petitioner amply meets the legal standard for release on parole. The Governor's cursory and unsupported reversal represents a violation of constitutional due process. The Governor was obligated to conduct an independent review of the person Leslie Van Houten is today. The Governor's failure to do so requires the reversal of his parole reversal. Accordingly, Petitioner respectfully requests that this Court:

1. Declare that the Governor's decision reversing the Board's grant of parole violative of due process and the "some evidence" standard;

2. Issue forthwith a writ of habeas corpus ordering that Petitioner be adjudged suitable for parole;

3. Grant Petitioner such other and further relief as may be deemed appropriate in the interests of justice, including discovery by Petitioner and an evidentiary hearing on these issues.

Dated: March 17, 2019

Respectfully submitted,

RICH PFEIFFER
Attorney for Petitioner
Leslie Van Houten

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CERTIFICATION OF WORD COUNT

I certify that the foregoing brief complies with California Rules ofCourt, rule 8.360(b)(1) and contains 13,989 words, including footnotes, according to the word count feature of Corel WordPerfect 10, the computer program used to prepare the brief.

DATED: March 17, 2019

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In re Leslie Van Houten
On Habeas Corpus

Case No. BH011585

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, and my email address is highenergylaw@yahoo.com. I caused to be served the **PETITIONER'S TRAVERSE TO RESPONDENT'S RETURN TO THE ORDER TO SHOW CAUSE; MEMORANDUM OF POINTS AND AUTHORITIES** by placing copies thereof in a separate envelope addressed to each addressee in the attached service list or by email as indicated.

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 March 17, 2019.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on March 17, 2019, at Silverado, California.

RICH PFEIFFER

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