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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

In re **LESLIE VAN HOUTEN (W-13378),** Petitioner, **On Habeas Corpus.**	Case No. BH011585 **RESPONDENT'S RETURN TO ORDER TO SHOW CAUSE; MEMORANDUM OF POINTS AND AUTHORITIES** Dept: 100 Judge: The Honorable William C. Ryan Trial Date: Action Filed: 1/25/2018

RETURN

Respondent submits this return to this Court's March 1, 2018 order to show cause regarding Leslie Van Houten's petition for writ of habeas corpus. Respondent admits, denies, and alleges as follows:

1. Van Houten is lawfully in the custody of the California Department of Corrections and Rehabilitation (CDCR), following her August 1978 conviction for two counts of first degree murder and one count of conspiracy to commit murder in Los Angeles County Superior Court. She was sentenced to concurrent life sentences with the possibility of parole. (Ex. 1, Abstract of Judg.)

2. On September 6, 2017, Van Houten appeared for a parole consideration hearing before the Board of Parole Hearings (Board) and was found suitable for release on parole. (Ex. 2, 2016 Board Transcript.) On January 19, 2018, the Governor considered all of the parole suitability factors required by law and reversed the Board's decision, relying on Van Houten's life crime and her continued minimization of her role in the life crime, specifically her continued shifting blame to Charles Manson and his ability "to do what he did to all of" the members of his "family." (Ex. 3, 2018 Governor's Decision at pp. 3-4.)

3. Respondent alleges that the Governor's decision satisfies state due process because some evidence supports his determination that Van Houten's release to parole poses an unreasonable risk to public safety. Thus, the Governor's decision must be upheld under the some evidence standard of review. (*In re Shaputis* (2011) 53 Cal.4th 192, 212, 214-215 (*Shaputis II*); *In re Lawrence* (2008) 44 Cal.4th 1181, 1212; *In re Shaputis* (2008) 44 Cal.4th 1241, 1258-1260 (*Shaputis I*).)

4. Respondent alleges that the Governor's decision denying Van Houten release to parole satisfies federal due process. (*Swarthout v. Cooke* (2011) 131 S.Ct. 859, 862 (per curiam); *Greenholtz v. Inmates of Neb. Penal & Corr. Complex* (1979) 442 U.S. 1, 16.) The federal constitution guarantees no more than the opportunity to be heard and a statement of reasons Van Houten's parole was denied—here, Van Houten appeared and was granted parole by the Board and received the federal process due. (*Swarthout*, at p. 862.)

5. Respondent denies that no evidence supports the Governor's decision, that the decision is arbitrary or capricious, or that the positive factors outweigh the negative. Respondent alleges that the Governor is entitled to a *de novo* review of all the evidence to determine Van Houten's suitability for parole. (*In re Prather* (2010) 50 Cal.4th 238, 255; *Shaputis II*, *supra*, 53 Cal.4th at 215.)

6. Respondent alleges that the Governor has broad discretion to determine an inmate's suitability for release to parole. (*Shaputis II*, *supra*, 53 Cal.4th at p. 215; *In Lawrence*, *supra*, 44 Cal.4th at p. 1232; *In re Rosenkrantz* (2002) 29 Cal.4th 616, 627; *In re Dannenberg* (2005) 34 Cal.4th 1061, 1080, 1082, 1088.) The Governor duly considered all relevant factors, including the circumstances of Van Houten's life crime, and his decision that Van Houten poses an unreasonable risk of danger to society is supported by some credible evidence; therefore, this Court must defer to the Governor's balancing of the factors. (*Shaputis II*, at p. 218; *In re Lawrence*, at pp. 1232-1233; *Shaputis I*, *supra*, 44 Cal.4th at pp. 1260-1261.)

7. Respondent asserts that, if the Court finds the Governor's decision violates due process in that it is not supported by some evidence, the appropriate remedy is an order that "vacates the Governor's reversal, reinstates the Board's grant of parole, and directs the Board to conduct its usual proceedings for a release on parole." (*In re Lira* (2014) 58 Cal.4th 573, 582.) Respondent denies any other remedy would be appropriate.

8. Except as expressly admitted herein, respondent denies each allegation of the petition. Respondent specifically denies that the Governor's decision was in any way improper or that Van Houten's rights were violated by the decision denying her release to parole. Respondent also denies that Van Houten is entitled to the relief requested or to any relief whatsoever.

9. This return is based upon the allegations made in the pleading portion of the return, the supporting memorandum of points and authorities, and the attached exhibits, all of which are incorporated as though fully set forth herein.

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MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

Van Houten claims that she is suitable for release to parole. However, she continues to minimize her role in life crimes which terrorized an entire country and generation. Further, the nature of her culture-shifting life crimes themselves provide a rare instance where their circumstances continue to offer evidence of her current dangerousness. As such, some evidence supports the Governor's decision that Van Houten is currently dangerous. The petition should be denied accordingly.

ARGUMENT

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

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

To assess Van Houten's current dangerousness, the Governor properly considered the aggravated nature of Van Houten's crimes. (Pet., Ex. A at pp. 3-4.) While the circumstances of an inmate's offense do not, "in every case, provide evidence that the inmate is a current threat to

public safety," in rare and particularly egregious cases, the fact that the inmate committed the offense can provide an indication of the inmate's potential for future danger, even absent other evidence of rehabilitation in the record. (*Lawrence*, *supra*, 44 Cal.4th 1181, 1213-1214.) The notoriously brutal and disturbing circumstances of Van Houten's crimes as a Manson Family member provide a reasonable basis for the Governor to conclude that the crimes are so aggravated in nature that they exemplify the rare instance in which the crimes alone support a denial of parole. (Pet., Ex. A at p. 4.) See *Lawrence*, *supra*, 44 Cal.4th at p. 1211; *In re Van Houten* (2004) 116 Cal.App.4th 339, 353 ["the Board would have been justified in relying solely on the character of the offense in denying parole, and the Board was justified in relying primarily and heavily on the character of the offense in denying parole"].)

In the summer of 1968, 19-year-old Van Houten met Charles Manson and began living with his cult, the Manson Family, who was trying to provoke Helter Skelter – a civilization ending race war – by killing high-profile Caucasians to incite retaliatory violence against African-Americans. (*Van Houten*, at p. 344; *People v. Manson* (1976) 61 Cal.App.3d 102, 127-130). Van Houten "desperately wanted to be what [Manson] envisioned" her being, which was "an empty vessel of - - of him." (Pet.-Ex. B at p. 108.) She observed numerous demonstrations on how to kill people and participated in "creepy crawling" outings with the Manson Family to commit thefts and burglaries in preparation for Helter Skelter. (Pet., Ex. C at p. 114; Pet.-Ex. B at p. 5.) Van Houten wanted "to commit to the cause" of Helter Skelter, which she believed meant "revolution and chaos." (Pet., Ex. C at pp. 119-120.) To that end, she burglarized her own father's home and "didn't question" the logic of any of Manson's disturbing philosophies. (*Id.* at pp. 113, 116-117.)

On August 9, 1969, several Family members gruesomely murdered Abigail Folger, Wojiciech Frykowski, Jay Sebring, Steven Parent, and Sharon Tate, who was eight-months pregnant. (*Van Houten*, *supra*, 116 Cal.App.4th at p. 345.) Van Houten was not involved in these murders, but after hearing about them, complained she felt "left out." (*Ibid.*) At some point, when Manson asked Van Houten "if she was crazy enough to believe in him and what he was doing," she responded, "Yes." (*Ibid*; Cal. Code Regs., tit. 15, § 2281, subd. (c)(1)(E) [an inexplicable or trivial motive for a crime indicates a prisoner's parole unsuitability].) On August 10, 1969, Van

Houten, Manson, and others drove around looking for victims, eventually arriving at the home of Rosemary and Leno LaBianca. (*Van Houten*, at p. 345; Cal. Code Regs., tit. 15, § 2281, subd. (c)(1)(B) [a dispassionate and calculated murder indicates a prisoner's parole unsuitability].) After Manson and another Family member, Charles "Tex" Watson, had entered, Manson reemerged and told Van Houten and another member, Patricia Krenwinkel, to go inside and "do what Watson told them to." (*Van Houten*, at p. 345.)

Upon entering, Van Houten found Mr. and Mrs. LaBianca tied up and was told to take Mrs. LaBianca into her bedroom and kill her. (*Van Houten*, *supra*, 116 Cal.App.4th at p. 345; Cal. Code Regs., tit. 15, § 2281, subd. (c)(1)(A) [a crime involving multiple victims indicates a prisoner's unsuitability for parole].) Krenwinkel fetched knives as Van Houten put a pillowcase over Mrs. LaBianca's head and wrapped a lamp cord around her neck. (*Van Houten*, at p. 345; Cal. Code Regs., tit. 15, § 2281, subd. (c)(1)(D) [a murder displaying callous disregard for human suffering indicates a prisoner's parole unsuitability].) When Mrs. LaBianca heard the "guttural" sounds of her husband being stabbed in the next room, she grabbed the lamp attached to the cord around her neck and swung it at Van Houten—but Van Houten knocked the lamp away, wrestled Mrs. LaBianca onto a bed, and held her steady as Krenwinkel stabbed her with such force that Krenwinkel's knife bent on Mrs. LaBianca's collarbone. (*Van Houten*, at p. 346.) Watson rushed in and began stabbing Mrs. LaBianca with a bayonet and then handed Van Houten a knife, telling her to "do something." (*Ibid.*) Van Houten, unsure if Mrs. LaBianca was dead, proceeded to stab her at least 16 times. (*Van Houten,* at pp. 346, 350-351 [even if Van Houten believed Mrs. LaBianca to be dead, stabbing her would constitute gratuitous mutilation]; Cal. Code Regs., tit. 15, § 2281, subd. (c)(1)(C) [mutilating or abusing a victim during a crime indicates a prisoner's parole unsuitability].) Van Houten next wiped fingerprints from the house, before changing into Mrs. LaBianca's clothes, drinking chocolate milk from the refrigerator, and fleeing back to the ranch where she bragged to others that the more times she stabbed Mrs. LaBianca, "the more fun it was." (*Van Houten*, at p. 346; Cal. Code Regs., tit. 15, § 2281, subd. (c)(1)(B).)

"[E]xamples of aggravated conduct reflecting an 'exceptionally callous disregard for human suffering,' are set forth in Board regulations relating to the matrix used to set base terms for life

prisoners (§ 2282, subd. (b)); namely, 'torture,' as where the '[v]ictim was subjected to the prolonged infliction of physical pain through the use of non-deadly force prior to act resulting in death,' and 'severe trauma,' as where '[d]eath resulted from severe trauma inflicted with deadly intensity; e.g., beating, clubbing, stabbing, strangulation, suffocation, burning, multiple wounds inflicted with a weapon not resulting in immediate death or actions calculated to induce terror in the victim.'" (*In re Scott* (2004) 119 Cal.App.4th 871, 891.) Van Houten's crime exceeds any definition of "especially heinous." (Cal. Code Regs., tit. 15, § 2402, subd. (c)(1); *Van Houten, supra*, 116 Cal.App.4th at p. 351.) Indeed, the Governor took note of Van Houten's extraordinary violence, noting that her crimes stand apart from others by their heinous nature and shocking motive. Unquestionably, Van Houten was both fully committed to the radical beliefs of the Manson Family and she actively contributed to "a bloody horror that terrorized the nation." (Pet., Ex. A, p. 4.) By engaging in Manson's philosophy, she set out to start a civilization-ending war between the races, and played a vital part in brutally stabbing Mrs. LaBianca numerous times, then coldly cleaning the scene and disposing the evidence. Van Houten's participation, along with the devastation and impact on the victims' families and society rendered it one of the rare circumstances in which the crime alone justified a finding that Van Houten remained currently dangerous and unsuitable for parole. (Pet., Ex. A at p. 4.) That conclusion is well-supported. Therefore, Van Houten's due process rights would not be violated had the Governor denied parole solely based on the commitment offense. (*In re Rozzo* (2009) 172 Cal.App.4th 40, 58-59.) The egregiousness of Van Houten's crimes, however, was not the sole basis for the Governor's decision.

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

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

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

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

Van Houten's shifting focus to Manson's influence are incompatible with the record evidence and offer the false impression that she was a helpless victim forced to participate in the Manson Family activities. According to statements from another Manson Family member at Van Houten's 2013 hearing, many people visited the ranch, coming and going as they pleased, without planning or participating in murders. (Pet., Ex. B at p. 4.) Van Houten admitted that she liked living on the ranch. (*Van Houten, supra*, 116 Cal.App.4th at p. 344.) She had lived with the Manson Family for about a year before the murders and participated in criminal activity with them. (Pet., Ex. C at pp. 262-263.) Van Houten also admitted she had thought about killing

someone for "quite a while" before deciding that she could do it. After being left out of the Sharon Tate murders, she begged to be a part of the next Family outing to murder someone. (*Van Houten*, at p. 345.)

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

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

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CONCLUSION

Van Houten challenges the Governor's decision by asking this Court to reweigh the evidence and disregard the Governor's credibility determinations. "When, as in this case, the parole authority declines to give credence to certain evidence, a reviewing court may not interfere unless that determination lacks any rational basis and is merely arbitrary." (*Shaputis II*, *supra*, 53 Cal.4th at p. 215.) The Governor's findings are reasonably supported by ample evidence in the record. Therefore, Respondent respectfully requests that the Court deny the petition.

Dated: May 3, 2018

Respectfully Submitted,

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