IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION ONE

LESLIE VAN HOUTEN,	**Case No. ________**
Defendant and Petitioner,	**LASC Case No. A253156**
JENNIFER CORE, Warden of California California Institute for Women,	**Related Cases**: **BH007887, B240743 B2860234**, **S230851, S45992**, **S238110, S221618**
Respondent,	
ON HABEAS CORPUS.	

PETITION FOR WRIT OF HABEAS CORPUS; VERIFICATIONS; MEMORANDUM OF POINTS AND AUTHORITIES

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
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LESLIE VAN HOUTEN,	**Case No. ________**
Defendant and Petitioner,	**LASC Case No. A253156**
JENNIFER CORE, Warden of California California Institute for Women,	**Related Cases**: **BH007887, B240743 B2860234**, **S230851, S45992**, **S238110, S221618**
Respondent,	
ON HABEAS CORPUS.	

PETITION FOR WRIT OF HABEAS CORPUS; VERIFICATIONS; MEMORANDUM OF POINTS AND AUTHORITIES

TO THE HONORABLE FRANCES ROTHSCHILD, PRESIDING JUSTICE OF THE COURT OF APPEAL, SECOND APPELLATE DISTRICT, DIVISION ONE, AND THE HONORABLE ASSOCIATE JUSTICES:

Petitioner, Leslie Van Houten, petitions this Honorable Court for a writ of habeas corpus, and by this verified petition represents as follows:

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INTRODUCTION

This petition challenges the Governor's ***fourth*** reversal of a finding by the Board of Parole Hearings ("Board") that Ms. Van Houten is suitable for parole.[1] With this fourth reversal, it is apparent the Governor has accorded a talismanic significance to a lack of insight and is using it as a catch all factor to justify the politically unpopular decision of granting parole to a former member of the Manson Family.

In 2019, the Governor's stated reasons for reversing the Board grant of parole were, "the horrendous nature of these murders and Ms. Van Houten's current, related lack of insight" required that she "must take additional steps that demonstrate she will never return to this type of submission or violence again."

Similarly, in 2020, the Governor found that Ms. Van Houten lacked insight into the commitment murders, and "must do more to develop her understanding of the factors that caused her to seek acceptance from such a negative, violent influence, and perpetrate extreme acts of wanton violence." (Exh. 2, at p. 27.) An inmate's lack of analytical depth in describing the inmate's involvement in the commitment offense does not necessarily equate into a lack of insight. An inability to articulate a more insightful explanation for committing the crime does not by itself create a nexus to the inmate's current danger to public safety. (*In re Roderick, supra,* 154 Cal.App.4th at pp. 248-251; see *In re Ryner* (2011) 196 Cal.App.4th 533, 548-549 [no

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[1] Petitioner uses the term "Board" to mean the Board of Parole Hearings and its commissioners.

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evidence of current dangerousness in model prisoner notwithstanding comment in the psychological report that his insight into his criminal behavior was "weak"].)

These vaguely worded reversals are exactly what our Supreme Court admonished against in describing the need to articulate clear factual substantiation linking a "lack of insight" with an inmate's current unreasonable risk of danger.

> Precisely because lack of insight is such a readily available diagnosis, its significance as an indicator of current dangerousness must be rationally articulated under the individual circumstances of each case—lest 'lack of insight' become, impermissibly, a new talisman with the potential to render almost all life inmates unsuitable for parole.

(*Shaputis II, supra,* 53 Cal.4th at p. 230 [J. Liu, concurring].)

The second overarching error by the Governor was his failure to consider the impact of Ms. Van Houten's youth in attempting to describe the motivations for her actions as a 19 year old youth from the perspective of a 72 year old woman who had undergone more than 50 years of rehabilitative programming and psychological therapy. It is too familiar to see parole denials based on a "lack of insight" when inmates long past their youth try to describe their motivations when their decisions arose from developmentally immature cognition at the time of an offense. (*Miller v. Alabama* (2012) 567 U.S. 460, 472.)

The predisposition for sensation seeking, hypersensitivity to immediate rewards, and decision making that focuses on the

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present is highest in middle to late adolescence. The cognitive capacity for self-regulation does not stabilize until around the age of 25. (*White Paper on the Science of Late Adolescence A Guide for Judges, Attorneys, and Policy Makers* (2022) Harvard Medical School, at p. 10 [hereinafter "*White Paper*"].)[2]

Emotional cues diminish a youth's self-control into the mid-twenties. (*Id*. at p. 12.) The hypersensitivity to emotional stimulus and resulting lack of self control causes the adolescent mind to make emotionally driven decisions, as well as engage in impulsive behavior and poor judgment. (*Id.* at p. 13.)

Immature brain development also causes youths to evaluate risks and benefits differently than people in their late twenties and thirties. "While adults tend to integrate the potential consequences of decisions, middle and late adolescents exhibit less future-oriented decision-making." (*Id.* at p. 14.) Peer influence also plays a large role in adolescence behavior. People in late adolescence are more likely to take risks in the presence of peers than when they are alone. This explains why many of the crimes committed by adolescents involve peers. (*White Paper,* at p. 24.)

Thus, there is a direct connection between a "lack of insight" and the youth offender factors. The requirement that the Governor give great weight to the hallmark features of youth of Ms. Van Houten's youth included consideration of the difficulty adults have in describing their motivations decades earlier when

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[2] https://clbb.mgh.harvard.edu/white-paper-on-the-science-of-late-adolescence/

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they were making decisions with a developmentally immature brain. Ms. Van Houten's insights are those of an adult who, through extensive therapy, has come to understand the causes of her youthful conduct and profound remorse she has for her actions. This was not enough for the Governor. He predicated Ms. Van Houten's parole on the ability to put herself into the underdeveloped brain of her youth and, when she tried to do this, the Governor faulted her as inconsistent. (Exh. 2, at p. 27.) This raises to the level of a constitutional due process violation by creating a parole standard Ms. Van Houten can never attain because she no longer thinks with the developmentally immature brain of a 19-year-old youth.

More than 50 years ago at the age of 19, Ms. Van Houten was arrested for the murders of Leno and Rosemary LaBianca. After three trials, she was sentenced to an indeterminate life term with mandatory service term of seven years. Forty-three years later and after eighteen parole denials, the Board of Parole Hearings ("Board") issued its fourth grant of parole in this case, which the Governor reversed.[3]

The most recent reversal by Governor Newsom relies on shallow legal reasoning and a misconstrued record without duly crediting her impeccable prison record, extensive rehabilitative programming, educational achievements, decades of psychological therapy, and important contributions to the prison community through her work on numerous committees, tutoring, and peer counseling. Regardless of the potential political peril Governor

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[3] Ms. Van Houten received a fifth grant of parole in 2021, which the Governor recently reversed.

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Newsom may perceive in allowing Ms. Van Houten's grant of parole to stand, that is not the legal standard. His grant of discretion does not include political considerations.

The Governor's ill-supported denial exceeded the limits of his legal discretion and must be reversed. It also violated Ms. Van Houten's rights of due process under the state and federal constitutions. (U.S. Const., 5th & 14th Amends.; *Estelle v. McGuire* (1991) 502 U.S. 62; Cal. Const., art. 1, § 7, subd, (a) *In re Lawrence* (2008) 44 Cal.4th 1181, 1192-1193.)

PLEADING ALLEGATIONS

A. Custody. Petitioner is confined by the California Department of Corrections and Rehabilitation ("CDCR") at the California Institution for Women at Corona, California, Jennifer Core, Warden.

B. Jurisdiction and Venue. Petitioner was prosecuted in Los Angeles County. This Court has original jurisdiction to adjudicate the petition and issue the writ. (Cal.Const., art.VI, § 10; Pen. Code,§ 1508.)[4]

C. Administrative Remedy. The Board provides no administrative remedy for alleged violations of law by its parole hearing panels or Governor reversals of grants of parole.

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[4] Undesignated statutory references are to the Penal Code.

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PROCEDURAL HISTORY[5].

4. In 1971, a jury convicted Ms. Van Houten of two counts of first degree murder and one count of conspiracy to commit the August 10, 1969, murders of Rosemary and Leno LaBianca. The trial court sentenced her to death. She had no prior criminal convictions, nor has she committed any crimes in the intervening years.

5. In 1976, the convictions were reversed on appeal due to the absence of her attorney from the trial. (*People v. Manson* (1976) 61 Cal.App.3d 102, 205, 217.) Her second trial resulted in deadlock after the jurors deliberated for 30 days. The trial court granted her bail after finding she did not pose an undue risk to public safety, or a flight risk. As the court predicted, Ms. Van Houten conducted herself in an exemplary manner during the six and a half months before her third trial.

6. Ms. Van Houten's third trial occurred in 1978. The jury convicted her two counts of first degree felony murder for the homicides of the LaBianca, and one count of conspiracy to commit the LaBianca murders. Her convictions of felony murder meant the jury was not required to decide if she acted with premeditation or deliberation. (*In re Van Houten* (2004) 116 Cal.App.4th 339, 352.) This lesser level of culpability resulted in the trial court imposing concurrent indeterminate life sentences with a minimum service term of seven years. The prosecution did

[5] The procedural facts are taken from the appellate opinions in *People v. Manson* (1976) 61 Cal.App.3d 102, 205; *In re Van Houten* (1980) 113 Cal.App.3d 280; *In re Van Houten* (2004) 116 Cal.App.4th 339; and the July 23, 2020 parole suitability hearing transcripts attached as Exhibit 3.

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not challenge the sentence. (Exh. 4.) She first became eligible for parole the same year as her convictions. (*In re Van Houten*, supra, 113 Cal.App.3d at p. 347; Exh. 4.)

7. In imposing concurrent sentences, the trial court found as mitigating factors Ms. Van Houten's admission that she participated in the LaBianca homicides, and the prosecution's concession that she was not involved in the Tate killings. The court also considered Ms. Van Houten's defense of diminished capacity from the mental illness caused by Charles Manson, as well as her prolonged use of hallucinogenic drugs supplied to her by Manson. (Exh. 4.)

8. The sentencing court gave "serious attention" to sentencing Ms. Van Houten to probation. It decided against probation on the sole ground that no one convicted of first degree murder in California had ever been granted probation. (Exh. 4.)

9. On April 14, 2016, and again on September 6, 2017, the Board found Ms. Van Houten suitable for parole. (Exhs. 10, 11.) Governor Brown reversed the first two grants of parole. (Exhs 6, 7.) The decisions were upheld by the appellate courts.

10. On January 30, 2019, the Board issued its third grant of parole. (Exh. 5) Governor Newsom reversed this decision on June 3, 2019. (Exh. 6.) The decision was again upheld by the appellate courts.

11. On July 23, 2020, after serving more than 51 years in prison as an exemplary inmate, the Board found Ms. Van Houten suitable for parole for a the fourth time. (Exh. 3, at pp. 136-149) Governor Newsom reversed the fourth grant of parole on November 27, 2020. (Exh. 2.) This petition challenges the

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Governor’s fourth reversal of parole on federal constitutional grounds and as an abuse of discretion under state law.

STATEMENT OF FACTS

A. The Commitment Murders.

12. Until her parent’s divorce when Ms. Van Houten was 14- years of age, she led a happy, mainstream life. She sang in the family’s church choir, attended youth fellowship and summer church camp, and attended high school where she was elected as a homecoming princess and class secretary. (*In re Van Houten, supra,* 113 Cal.App.3d at p. 334.) Her home life changed when her parents divorced and her father started a new life with another woman. (Exh. 3, at pp. 39-40; Exh. 5, at pp. 175-177.)

13. The divorce crumbled the comfortable foundation of Ms. Van Houten’s life. Unlike today, divorce carried a negative social stigma in the 1960's. Ms. Van Houten’s self image changed from the popular homecoming princess of a conventional middle American family to the daughter of divorced parents. This devastated her sense of self-worth. The divorce was a turning point in Ms. Van Houten’s life, and caused her to begin using marijuana. (Exh. 3, at pp. 39-40; Exh. 5, at pp. 177-183.)

14. At the age 15, Ms. Van Houten began associating with other teenagers raised by a single parent. (Exh. 3, at p. 40.) Her boyfriend introduced her to harder drugs. (Exh. 3; at pp. 40-41; Exh. 5, at pp. 177-185.) When Ms. Van Houten was 17, she and her boyfriend ran away to San Francisco and she became

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pregnant. (Exh. 5, at p. 185.) When she returned home from San Francisco, Ms. Van Houten's mother forced her to undergo an illegal abortion. The fetus was placed in a can and buried in the backyard of Ms. Van Houten's family home. (Exh. 3, at pp. 49-55, 230; Exh. 5, at pp. 185-188.) First she lost her father, then she lost her baby. The first loss changed the structure of her world. The second loss left her brokenhearted and she was never the same. (Exh. 3; at p. 40.)

15. Ms. Van Houten graduated from business college as a certified secretary. (*In re Van Houten, supra,* 113 Cal.App.3d at p. 343.) After graduation, she traveled up and down the coast of California for five months. Shortly after her nineteenth birthday, Ms. Van Houten met Catherine Share, Bobby Beausoleil, and a friend of Bobby's named Gail, who were living at the Spahn Ranch. They described the Spahn Ranch (the "Ranch") as a commune run by a "Christlike" man named Charles Manson. Ms. Van Houten was attracted to the idea of communal living and agreed to visit the Ranch. (Exh. 3, at pp. 58, 107; Exh. 5, at p. 191-193.)

16. Manson started the Spahn Ranch commune after his release from prison in 1967. He named the members of his cult the "Family." Ms. Van Houten initially described her life at the Ranch as idyllic. In the beginning, Manson was very welcoming and treated his cult members with a lot of love, though she did notice he had a "strong personality." (*In re Van Houten, supra,* 113 Cal.App.3d at p. 344.) By the end of her time at the Ranch, she felt "nothing but fear and survival." (Exh. 3, at p. 47; Exh. 5, at pp. 200-202.) Manson dominated and manipulated the twenty

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or so permanent "Family" members through isolation, dependence, fear, drugs, sex, and indoctrination. His grip on the Family members became so intractable that, over time, they all accepted Manson's beliefs, including his insistence that acts of murder were required to start the revolution Manson envisioned. (*In re Van Houten, supra,* 113 Cal.App.3d at pp. 343-344.)

17. On August 10, 1969, Manson ordered Ms. Van Houten and five others cult members to find a change of clothes and get into a car. One of the cult members drove the car around Los Angeles as Manson looked for victims. Manson ordered the driver to stop near the home of Leno and Rosemary LaBianca.

18. Manson and Charles "Tex" Watson went inside the house. The rest of the people stayed behind in the car. Watson was armed with a bayonet. He and Manson tied up and blindfolded the LaBiancas. Manson exited the house and ordered Ms. Van Houten and Patricia Krenwinkel to enter the house "and do what Watson told them to do." (*Id.,* at p. 345.) They entered the house to find Watson holding the LaBiancas at bayonet point. Manson drove away.

19. Once inside the residence, Watson told Ms. Van Houten and Krenwinkel to take Mrs. LaBianca into her bedroom and kill her. Krenwinkel got knives from the kitchen. She gave a knife to Ms. Van Houten and kept one for herself. Ms. Van Houten put a pillowcase over Mrs. LaBianca's head and wrapped a lamp cord around her neck. The cord was still attached to the lamp. Mrs. LaBianca grabbed the lamp and swung it at Ms. Van Houten, who knocked it out Mrs. LaBianca's hand. Ms. Van Houten forced Mrs. LaBianca onto her bed and held her down as

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Krenwinkel stabbed Ms. LaBianca in the clavicle, bending the knife. (*Id.,* at p. 346.)

20. Ms. Van Houten called to Watson who entered the bedroom with a bayonet. Ms. Van Houten turned away as he stabbed Mrs. LaBianca eight times with the bayonet. Each stab wound delivered by Watson's bayonet inflicted a fatal blow. (*Ibid.*) Ms. Van Houten "stared off into a den" as Watson stabbed Mrs. LaBianca. Watson turned Ms. Van Houten around, handed her a knife, and told her to "do something." (Exh. 3, at p. 52; Exh. 5, at pp. 223, 225.) Ms. Van Houten "was having a hard time holding on to what was happening at that moment." In response to Watson's command that she take the knife and "do something," Ms. Van Houten stabbed Mrs. LaBianca as she lay on the floor. Ms. Van Houten "felt" Ms. LaBianca was dead at the time, but she did not know for certain if that was true. (*In re Van Houten, supra,* 113 Cal.App.3d at p. 346.) After it was over, Ms. Van Houten did not feel that what she had done was wrong and criticized herself for not being able to participate in the murder in the same way as Watson and Krenwinkel. (5, at pp. 77-78.)

B. <u>Manson's Control Over Family Cult Members</u>.

21. The courts, Board, and prosecutors alike have acknowledged Manson's complete control over his cult members, including Ms. Van Houten. In upholding Manson's murder convictions on direct appeal, Division One of the Second Appellate District found that Ms. Van Houten and the other defendants in the LaBianca murders were acting under the influence and

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orders of Charles Manson. (*People v. Manson, supra,* 61 Cal.App.3d at p. 205.) The court further found that "Manson's position of authority was firmly acknowledged. It was understood that membership in the Family required giving up everything to Manson and never disobeying him." (*Id.,* at p. 128.) The court described Manson's control over the lives of his cult members as including telling them where they could sleep, when they could eat, and what they could wear. (*Id.,* at p. 127.) According to the court, Manson's "establishment and retention of his position as the unquestioned leader was one of design" (*Id.,* at p. 128), and the willingness of Family members "to follow Manson's every direction was salient to the [prosecution's] case" against Manson, even though he was not the actual killer in any of the murders.

22. The Board also acknowledged Manson's control over the cult members, including Ms. Van Houten. (Exh. 3, at pp. 55, 63, 70, 88; Exh. 5, pp. 275-276.)

23. The Los Angeles District Attorney expressly agreed that Manson exerted complete power and control over his cult members, including Ms. Van Houten. (Exh. 9, *In re Houten*, Cal. Supreme Ct. number S230851 [District Attorney's brief].) The keystone of the District Attorney's case against Manson was that he orchestrated the conduct of cult members who engaged in the actual killings.

24. The evidence at Ms. Van Houten's recent youth offender hearing pursuant to *People v. Franklin* (2016) 63 Cal.4th 261 provided further evidence of Manson's control. The testimony of Catherine Share established that selected cult members were not permitted to leave the Ranch. These cult members were

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threatened with torture and death if they left the cult.[6] Ms. Van Houten was one of the cult members Manson forbade from leaving the ranch. (Exh. 7, pp. 372-374, 384-385.)

C. November 2018 Comprehensive Risk Assessment ("CRA").

25. The Board reviewed Ms. Van Houten's November 1, 2018, CRA in considering her suitability for parole. (Exh.1.) This is the CDCR's most recent psychological evaluation of Ms. Van Houten.

26. Forensic Psychologist Tasi Athans, Ph.D., conducted the evaluation and prepared the assessment. Dr. Athans began her report by summarizing Ms. Van Houten's development as a child, adolescent, and adult, including the impact of her parent's divorce and the abortion. (Exh. 1, at pp. 6-8.)[7] She described Ms. Van Houten's criminal history as having no juvenile arrests or adjudications. As an adult, Ms. Van Houten sustained three arrests for vehicle theft and one arrest for burglary. She was released without charges filed in any of the arrests. Her only convictions were for the life crimes, which also constituted her

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[6] The statements of former Family cult member Barbara Hoyt that cult members were "free to come and go as they chose" were proven false at Ms. Van Houten's *Franklin* hearing. Nevertheless, Ms. Hoyt's false statements were relied on by Governor Brown in his 2016 reversal of Ms. Van Houten's grant of parole. (Exh. 7, at pp. 372-377, 384-385.) Unlike Ms. Van Houten, Ms. Hoyt was not among the group of selected cult members whom Manson forbid from leaving the cult.

[7] The exhibit page numbers refer to the bate numbering at the center bottom of each page in the concurrently filed exhibits.

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only acts of violence. (Exh. 1, at pp. 11.)

27. Dr. Athans considered Ms. Van Houten's prior CRAs in assessing her current risk of violence. The doctor cited the CRAs of K. Kropf, Ph.D., which concluded in 2007 and 2016 that Ms. Van Houten represented a "low" risk of violence. Dr. Carrera prepared the 2010 CRA. She too found that Ms. Van Houten presented a low risk of violence. Dr. Larmer issued a Subsequent Risk Assessment ("SRA") on February 2, 2013, updating the 2010 CRA. The SRA did not assess Ms. Van Houten's risk of violence but found she maintained the gains noted in the 2010 CRA. (Exh. 1, pp 11-12.)

28. Dr. Athans's described Ms. Van Houten's mental status as normal. She noted Ms. Van Houten's claim that she tried alcohol at the age of 15, and used marijuana, LSD, Benzedrine, Mescaline and Methedrine. At the Spahn Ranch ("the Ranch"), she regularly used LSD and marijuana but was found not to be under the influence of LSD on the night of the killings. When asked about her prior substance abuse, Ms. Van Houten said she had remained sober for many years, and believed using drugs would be "extremely disrespectful to the family and the memory of my victims." She expressed her "love" of being sober, and that when she thinks of freedom "alcohol and drugs are the last thing on my mind." The absence of substance-abuse related RVRs supported this claim. Ms. Van Houten also has participated in substance-abuse treatment programs over the years. (Exh. 1, at pp. 11-13.)

28. Dr. Athans also found Ms. Van Houten to be free of any psychiatric disorders. The doctor considered Ms. Van Houten's

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participation in individual psychotherapy and group therapy to address past relationships, history of traumatic incidents, and how her past impacts her current decisions. Ms. Van Houten has continued to remain disciplinary free in prison, with a single counseling chrono in 1981,[8] and never engaged in any acts of violence. She has completed numerous self-help programs, work assignments, and volunteer positions. She also has earned Bachelor and Master degrees in prison. The doctor found Ms. Van Houten's parole plans to be "strong." (Exh. 1, 13-15.)

29. In assessing Ms. Van Houten's current risk of violence, Dr. Athans began by considering her historic behavioral factors from the divorce of Ms. Van Houten's parents at the age of 14 to her incarceration at the age of 19. The doctor described Ms. Van Houten's youthful mentality as including acts of violence and a violent attitude based on her participation in the LaBianca murders, other antisocial behavior, troubled relationships, traumatic experiences, and substance abuse problems. During this same time frame, Ms. Van Houten engaged in impulsive behavior, including drug use and promiscuity, and her involvement in the life crime evinced a callous lack of empathy for the victims. Even so, the doctor found no characteristics of a psychopathology. (Exh. 1, pp 15-16.)

Dr. Athans concluded her assessment of the historic behavioral factors by stating, "For nearly 50 years, she has exhibited prosocial behaviors and has sought positive

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[8]Dr. Athans' incorrectly stated in her report that this was a serious rules violation documented in an RVR. It was, instead, a minor rule violation handled with counseling. Ms. Van Houten has never received an RVR.

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relationships with others. She has not shown herself to be deceptive, conning, or to lack remorse. Her total PCL-R score was below the mean of North American female inmates and below the cutoff or threshold commonly used to identify dissocial or psychopathic personality." This conclusion drew a sharp distinction between Ms. Van Houten's mental state prior to the age of 19, and the rehabilitated woman she is today. (Exh. 1, at pp. 19-20.)

30. Dr. Athans' assessment of Ms. Van Houten's "clinical factors" covered the period of time from her prior CRA in 2016. She found Ms. Van Houten continued to demonstrate insight into the factors contributing to her involvement in the killings, including a description of the causative factors. This showed the benefit of Ms. Van Houten's extensive participation in self-help programs, including individual therapy. Dr. Athans found that Ms. Van Houten acknowledged her past susceptibility to the influence of Manson but took full responsibility for her own behavior without minimizing her role or externalizing blame. She was impressed by Ms. Van Houten's genuine remorse for the victims and concluded the "risk factor of a lack of insight" was "not present." (Exh. 1.)

31. In considering the impact of Ms. Van Houten's status as a youth offender, Dr. Athans found it "very likely" that Ms. Van Houten's involvement in the homicides "was significantly impacted by characteristics of youth, including impulsivity, the inability to adequately foresee the long-term consequences of her behavior, and the inability to manage her emotions that resulted from a forced abortion." These factors diminished her culpability

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in the killings. Dr. Athans found that Ms. Van Houten harbors "genuine regret" for her involvement in the life crime and "assumed full responsibility for her behavior, without externalizing blame." (Exh. 1, pp 19-20.)

32. Dr. Athans summarized Ms. Van Houten's suitability for parole as follows,

> [Ms. Van Houten] does not underestimate the impact of her crime, both with respect to the victims and their families, or to society and she appears to be genuinely remorseful for her role in the life crime. She appears to have benefitted from the natural maturation that comes with age, as well as from the many years of programming offered by the institution. Ms. Van Houten appears to have seized every opportunity provided to her to make positive changes in her life (with respect to education, vocation, and self-help). At present, her risk for violent reoffending is in the low range.

(Exh. 1, at p. 21.)

33. Based on her extensive analysis, the doctor concluded Ms. Van Houten to be a low risk for violence recidivism if released to parole. (Exh. 1, at p. 21.)

D. The Board's 2019 Parole Hearing and Decision.

34. On January 30, 2019, the Board rendered its third straight finding that Ms. Van Houten was suitable for parole. In arriving at this decision, the Board found that Ms. Van Houten

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accepted full responsibility for her actions and did not blame Manson. She testified in this regard as follows,

> There is nothing in that night of murder that I don't take responsibility for or all that came before. I went to the ranch. I became a participant in the group at the ranch. I wanted to be a part of the revolution and the murders that were going to spark it. There's no part of me that says it was [Manson's] fault that I did all that. I willingly sat and listened. I let myself let go of who I had been . . . . [¶] I don't minimize. I feel like if I minimized, I would find easy ways to live with the guilt of what happened because I'm passing the buck onto somebody else so my conscience doesn't have to deal with it. But that's not who I am and it's not what I do with my life. . . . [¶] "So I suppose it's always there to say I'm blaming [Manson]. . . .[¶] He was convicted for controlling us and we were convicted for doing what we did in the houses. I don't - - I don't let myself off from personal responsibility.

(Exh. 5, at pp. 241-242.)

35. The Board believed the sincerity of this testimony. The presiding commissioner stated, "I did want to put on the record that, you know, it doesn't show over the . . . microphones, but I do want to note the expression of remorse I saw on your face when you talked about the abortion and when you talked about the murders and the realization of . . . how horrific it was." (Exh. 5, at pp. 242-243.) He further acknowledged the genuineness of Ms. Van Houten's expressions of remorse for her participation in the murders and commended her extensive personal growth leading

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her to engage in positive behaviors aimed at making amends for her actions. He characterized her behavior in prison as "probably one of the most exemplary I've ever seen." (Exh. 5, at p. 311.)

E. The Board's 2020 Parole Hearing and Decision.

1. Factual evidence.

36. Ms. Van Houten's most recent parole hearing was held on July 23, 2020. The Board again granted Ms. Van Houten parole at the conclusion of the hearing.

37. Commissioner Grounds presided over the 2020 parole hearing. He began by summarizing Ms. Van Houten's teenage years, including the social stigma she experienced from the divorce of her parents and the way in which the divorce changed Ms. Van Houten's social support system. (Exh. 3, at p. 39.) The commissioner also noted Ms. Van Houten's pregnancy and the illegal abortion forced upon her by her mother. He recognized that, to this day, Ms. Van Houten morns the loss of the only child she will ever conceive, and was never the same after this loss. (Exh. 3, pp. 55-57, 103.)

38. The Board recognized that the abortion and divorce were the causative factors of Ms. Van Houten making her susceptible to becoming a member of the Manson cult. (Exh.3, at pp. 48-61.) Ms. Van Houten explained that Catherine Share recruited her to go to the ranch at a time when she "was at an all-time bottom low." Ms. Van Houten had no income or reliable housing when she met Share. She resented her parents, was

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grieving the loss of her baby, and felt "extreme guilt" that she allowed her mother to force her into aborting a baby she dearly wanted. The utopian image of an idyllic communal life containing people dedicated to interpersonal growth sounded to Ms. Van Houten like a perfect solution. She was 19 years of age and operating under the judicially recognized hallmarks of youth, including impulsiveness, gullibility, and susceptibility to the influence of a dominate adult. (Exh. 3, at pp. 37-39; see § 4801, subd. (c); *People v. Franklin, supra*, 63 Cal.4th at p. 268.)

39. Following two months of persistent coaxing, Share succeeded in convincing Ms. Van Houten to visit the Spahn Ranch. She believed Manson, through his teachings, could guide her into overcoming her guilt and low self esteem. (Exh. 3, at pp. 55-57, 59.) She admitted allowing the cult's teachings to become more important than her own sense of right and wrong. She explained she now understood how she sold out herself over and over again during her time as a member of the Manson cult. (Exh. 3, at. p. 29.) Ms. Van Houten wanted Manson's acceptance, whom she regarded as the living embodiment of Jesus Christ. She felt her survival depended on adhering to Manson's teachings. (Exh. 3, at pp. 42, 45, 56-58.)

In discussing her reasons for following Manson, Ms. Van Houten said she looked back at herself as a weak person who allowed someone else to take control of her life and she handed it over to him. (Exh. 3, at p. 56.) In addressing her involvement in the LaBianca killings, Ms. Van Houten explained it was based on her belief in Manson's apocalyptic prediction of the coming revolution and "felt obligated to participate" because "it was

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something that had to be done." (Exh. 3, at p. 64.)

40. Ms. Van Houten described a hierarchy of cult members at the Ranch. The closest people to Manson were Lynette "Squeaky" Fromme, Patricia Krenwinkle, Mary Brunner, Sandra Good, and Nancy Pitman. They were the first people Manson's recruited into the Family. The next level of the hierarchy included Dianne Lake, Ruthie Morehouse, and the younger women. Ms. Van Houten was in the third circle of cult members, which was the outer most layer. Cult members in this layer were free to come and go from the Ranch once Manson regarded them as no longer useful. Ms. Van Houten, however, was never allowed to leave because Manson used her to keep Bobby Beausoleil happy so he would stay at the Ranch for his musical talent. Manson also required Ms. Van Houten to entertain the "bikers" and clean out the barn. She complied with these orders in an effort to gain Manson's acceptance. (Exh. 3, at pp. 73-77.)

41. Commissioner Grounds asked Ms. Van Houten to describe the causative circumstances leading up to the killings. (Exh. 3, at p. 57-58.) He did so presumably in response to Governor Newsom's reliance on the gravity of the commitment offense in reversing the Board's third grant of parole. Ms. Van Houten responded that she and the other cult members tried to become a single mind. Manson lectured that they should let go of everything their parents taught them. Ms. Van Houten was vulnerable to this message because of her mother's insistence that she have the abortion and her father leaving the family for another woman. (Exh. 3, at pp. 55-57, 64-66, 103.)

42. As time went on, Manson escalated his self-proclaimed

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divinity. He ordered Ms. Van Houten to read aloud to him from the Book of Revelations to find symbolism matching his view of an apocalyptic race war, after which the family would emerge as the world's leaders. (Exh. 3, at p. 44; Exh. 5, at p. 208.) Manson believed the Beatles were talking to him through the White Album by referencing the "son of man," which he believed meant "Manson." In portraying himself as the reincarnation of Jesus Christ, Manson preached to them that he "died on the cross with forgiveness" but that he was not going to do that again during this "second coming." (Exh. 3, at pp. 44-45.) Ms. Van Houten and the other cult members strove to become "empty vessels" so they could serve Manson and reflect his ideas. (Exh. 3, at p. 53-55, 80.)

43. At one point, Ms. Van Houten became involved with a biker named Sammy. Manson became furious and evicted Sammy from the Ranch. Manson then told Charles "Tex" Watson "we're losing [Ms. Van Houten], you need to keep an eye on her." (Exh. 3, at p. 48, 108.) This confirmed Ms. Van Houten's suspicion that she was not free to leave the Ranch. A few days later Sammy returned to the Ranch to get Ms. Van Houten. She refused to go with him because she believed leaving the Ranch would expose her to "grave danger," both personally and because of the imminent race war Manson predicted. (Exh. 3, at p. 48.)

44. Manson ordered Ms. Van Houten to stay close to Patricia Krenwinkle shortly after Ms. Van Houten arrived at the Ranch. Krenwinkle was a part of Manson's inner cycle and Ms. Van Houten wanted the same. (Exh. 3, at p. 49.) She suspected there would be killings every night up to the race war but

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believed in Manson and assumed the killings were a necessary part of surviving the coming apocalypse. She told the Board she believed in Manson and what he saw coming. She was committed to it. (Exh. 3, at pp. 63-65.)

45. On the day after the Tate murders, Manson asked Ms. Van Houten if she was "crazy enough to believe in him." She said yes. That evening she got into a car with Manson, Watson, Krenwinkle, and three other cult members. The evening culminated with her participating in the LaBianca murders. (Exh. 3, at pp. 64-65.)

46. Ms. Van Houten concluded her factual description by excoriating herself for not possessing the humanity to refrain from her part in the killings. She said she asks herself every day how she could have committed this crime, and that she finds it "hard to live with." She now sees there was no justifying what she did, and that her actions were shameful. (Exh. 3, at pp. 64-66.)

2. Prior criminal history.

47. Ms. Van Houten was arrested several times prior to the LaBianca killings. She was not arraigned on any of the arrests. (Exh. 5, at pp. 263-264.) Ms. Van Houten later learned that a month before the murders there was a confidential informant residing at the Ranch. (Exh. 3, at p. 104-108.)

3. Prison achievements and conduct.

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48. Ms. Van Houten reviewed her accomplishments since the prior parole hearing. As expected, she had remained free of rule violations or counseling chronos. She continued her work as chairperson of the Inmate Advisory Committee. (Exh. 3, at pp. 79, 109.) This is a potentially volatile position for a prison inmate because it requires giving other inmates information they may not want to hear. Notwithstanding the challenges inherent in this position, Ms. Van Houten decided to serve as chairperson for another year because her 50 years of prison experience helped keep the prison administration and inmate population connected. Further, CIW is a "programing prison." Ms. Van Houten stated that she found value in helping to keep the beneficial prison programs operable. Also, she expressed her belief that staying in touch with the younger inmates reminded her of where she came from. She viewed her work as the chairperson of the Inmate Advisory Committee contributing to her ongoing process of making living amends for the damage she caused when she was young. (Exh. 3, at pp. 110-111.)

49. The Board described Ms. Van Houten's behavior in prison as "exceptional." They found her to be a dependable and efficient worker for many years without a single rule violation during her nearly five decades in prison. She has continually engaged in rehabilitative programming and made amends for her actions by facilitating many programs for other inmates. (Exh. 3, at pp. 79-84.)

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4. Board's consideration of the CRA's.

50. The Board considered Ms. Van Houten's most recent CRA in assessing her suitability for parole. The CRA was conducted by forensic psychologist Tesi Athans, Ph.D., on November 1, 2018. (Exh. 3.) The Board noted with favor Dr. Athans's comment that Ms. Van Houten "seized every opportunity provided to her to make positive changes in her life, with respect to education, vocation, and self-help." (Exh. 3, at p. 70, 99, 145.)

51. The Board also relied on Dr. Athans's overall conclusion that Ms. Van Houten presented a "low risk of violent recidivism." (Exh. 3, at pp. 100, 143.) Ms. Van Houten has been deemed a low risk of violence since 1978. Her psychological evaluation on August 22, 1978, did not use this same language but concluded, "There is nothing that would indicate [Ms. Van Houten's] violence potential is any greater than average." (R.L. Flanagan, M.D., Psych. Consultant, dated August 22, 1978.)

5. Additional assessments of Ms. Van Houten's behavior.

52. Cult expert, Patrick O'Reilly, Ph.D., regularly met and corresponded with Ms. Van Houten regarding the psychological control Manson exerted over her. Dr. O'Reilly opined that Ms. Van Houten had successfully broken free from Manson's influence. He concluded because she had, through therapy, purged herself of Manson's control, she no longer posed a risk of

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succumbing to the influence of a dominate personality. Ms. Van Houten told the Board she intended to continue her sessions with Dr. O'Reilly into the future. (Exh. 3, at pp. 87-88.)

53. John Lee, a former Associate Warden at CIW, had known Ms. Van Houten for 14-years. As the associate warden, he and Ms. Van Houten had numerous discussions, which gave him insight into Ms. Van Houten's personality. Mr. Lee testified that Ms. Van Houten expressed to him deep and sincere remorse for her involvement in the life crimes. In his opinion, she is "prosocial" and facilitates many rehabilitative programs inside the prison. (Exh. 3, at pp. 90-91.)

6. Victim representatives.

54. Debra Tate was allowed to testify at Ms Van Houten's hearing as the representative of a nephew of Mr. LaBianca. She has appeared at Ms. Van Houten's parole hearings since the early 2000's advocating against a grant of parole. Ms. Tate accused Ms. Van Houten of "not coming clean with everything," inferring there were secret facts that had not been disclosed. She accused Ms. Van Houten's attorney of "revictimizing us victims over and over again" by representing Ms. Van Houten at the parole hearings. (Exh. 3, at pp. 127-128.) Ms. Tate continued by accusing Commissioner Grounds of answering the questions posed to Ms. Van Houten at the last two parole hearings, which she claimed enabled Ms. Van Houten to "have all the right answers." (Exh. 3, at p. 129.) In addition to her personal disagreement that Ms. Van Houten is suitable for parole, Ms.

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Tate described the petition she initiated to "to keep Ms. Van Houten in prison until she dies." She claimed the petition garnered 170,000 signatures with 28,000 adding written comments. (Exh. 3, at p. 130.)

55. Louis Smaldino testified as the oldest nephew of Leno and Rosemary LaBianca. He claimed Ms. Van Houten "downplayed her role in the murders" and urged the court to disregard her latest ploy for sympathy involving claims of spousal abuse. (Exh. 3, at pp. 131-133; Exh. 5, at pp. 258, 301.) Ms. Van Houten has never made claims of spousal abuse at a parole hearing or otherwise. Mr. Smaldino made an emotional plea that Ms. Van Houten not be released on parole because of her participation in killing "all these innocent young people and even an unborn child." (Exh. 3, at p. 115; 131; Exh. 5, at p. 258.) This comment confused the Tate killings with the LaBianca murders. There is no evidence that Ms. Van Houten knew of the Tate murders until the day after those murders occurred. She did not participated in the Tate murders.

7. The Board's 2020 decision.

56. The Board again concluded that Ms. Van Houten "does not pose an unreasonable risk to public safety and is suitable for parole." (Exh. 3, at p. 109.) In explaining the Board's reasoning, the presiding commissioner stated that Ms. Van Houten "exhibited extreme immature thinking" in handling the traumatic events of her early teenage years. He identified the childhood traumas as including her forced abortion and the breakup of her

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family. (Exh. 3, at p. 138-139.) The Board found that Ms. Van Houten's "immature thinking" led to her associating with people she met "on the road" and "getting into drugs" at an early age, which proved her "diminished culpability" because of the hallmarks of her youth. The Board gave great weight to her age as a youthful offender and found that her young age made her "very vulnerable to negative influences." (Exh. 3, at pp. 138-139.)

57. The Board noted with favor Ms. Van Houten's participation in numerous rehabilitative programs and 50 years of positive institutional behavior. The Board found that her record of positive conduct supported the answers she gave at the hearing and showed "a life that's turned around." (Exh. 3, at pp. 139-140.) Commissioner Grounds summarized the Board's findings by stating,

> I've done over a thousand cases, done over a thousand hearings, and you're one of the best programming inmates I've seen. You've shown signs of remorse and accepting responsibility for your criminal actions as evidenced by your testimony. Your disciplinary-free behavior, your positive behavior, your words and your deeds agree with each other. There's no discrepancy, and I hold great weight to your behavior.

(Exh. 3, at p. 141.)

58. Commissioner Grounds also commended Ms. Van Houten on the way she had used her educational and rehabilitative accomplishments to positively impact other inmates. He described a school graduation he attended at the

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prison where “the great majority of [graduates] spoke to [sic] how you’d helped them. I could see that you were having a very positive affect on the culture at CIW.” (Exh. 3, at p. 142.) According to the commissioner, Ms. Van Houten created “a significant support system inside the prison for herself and others and also developed one for the outside to make her transition as smooth as possible.” (Exh. 3, at p. 143.)

F. Governor Newsom’s Reversals.

1. The Governor’s 2019 reversal.

59. Governor Newsom issued his first reversal in 2019. This reversal was in response to the Board’s third grant of parole. The decision began by describing Ms. Van Houten’s act of joining the Manson cult in 1968 at the age of 19, and Manson’s belief in a racially-motivated apocalypse he called “Helter Skelter.” The Governor continued by describing the murders of Sharon Tate, Steven Parent, Abigail Folger, Wojiciech Fryowski, and Jay Sebring, and that Ms. Tate was eight-months pregnant when she was stabbed 16 times, as well as the number of times each of the other “Tate” victims was stabbed. This lurid description of the Tate murders was irrelevant, as Ms. Van Houten was not involved in those murders and nor did she know of them until the day after they happened. (Exh. 6, at p. 320.)

60. Only after describing the Tate murders and Manson’s terrifying vison of “Helter Skelter” does the Governor summarize Ms. Van Houten’s involvement in the August 10, 1969, murders

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of Leno and Rosemary LaBianca, and her subsequent arrest on November 25, 1969. (Exh. 6, at pp. 320-321.)

61. In articulating the issues and governing legal standard, Governor Newsom stated the question he must decide is "whether Ms. Van Houten will pose a current danger to the public if released from prison." That is an incorrect statement of the law. The applicable legal standard is whether Ms. Van Houten currently pose an *"unreasonable risk"* of danger or threat to public safety. (*In re Lawrence* (2008) 44 Cal.4th 1181, 1208, 1214; *In re Shaputis* (2008) 44 Cal.4th 1241, 1254.) The risk must be "unreasonable" because every individual convicted of murder poses a risk of danger, no matter how low. (*Ibid.*)

62. The Governor further lessened his evidentiary burden by citing the statement in *Lawrence* that "In rare circumstances, the aggravated nature of the crime alone can provide a valid basis for denying parole, even when there is strong evidence of rehabilitation and no other evidence of current dangerousness." (Exh. 6, at p. 321 [citing *In re Lawrence, supra*, 44 Cal.4th at pp. 1211, 1214.) The cited passage is taken out of context and oversimplifies the legal standard. Though our Supreme Court in *Lawrence* acknowledged that in rare circumstances the aggravated nature of the crime alone can provide some evidence of current dangerousness, but only if there is a nexus between the crime and the inmate's current individualized circumstances. (*In re Lawrence, supra,* 44 Cal.4th at p. 1214.) Governor Newsom's contention that the gravity of Ms. Van Houten's commitment offense alone can sufficiently support a finding of current dangerousness is an incorrect interpretation of the legal

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standard.

63. After citing the facts of the case and his interpretation of the legal standard, Governor Newsom concludes Ms. Van Houten was not suitable for parole because she *and* the Manson Family committed "some of the most notorious and brutal killings in California's history," and that the "gruesome crimes perpetrated by Ms. Van Houten and other Manson Family members in an attempt to incite social chaos to continue to inspire fear to this day." The Governor continues, "Almost 50 years later, the magnitude of these crimes and their impact on society endure." This is not an analysis of Ms. Van Houten's current circumstances, nor does it establish the legally necessary nexus between the murders and her current circumstances. It, instead, focuses on the public's reaction to the Manson murders. (Exh. 6, at p. 323.)

64. The Governor next expressed "concern" over Ms. Van Houten's role in the killings and her "potential for future violence" because of her "eager participation" in the killings. He found her explanation of these aspects of the murders "insufficient." (Exh. 6, at p. 323.)

65. The Governor also faulted Ms. Van Houten for telling the Board she would have been a better daughter if she could redo the past. This, according to the Governor, showed a lack of understanding for the serious trauma she suffered from living in a dysfunctional family environment. Her comment about being a better daughter demonstrated to the Governor that Ms. Van Houten "still cannot adequately explain her destructive reaction to difficult external factors beyond her control." (Exh. 6, at p.

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323-324.)

66. The Governor was "troubled" by Ms. Van Houten's comment to the Board that Manson never forced himself on her sexually. The Governor ignored Ms. Van Houten's explanation that, though Manson did not force her to have sex with him, he regularly gave her high doses of mind-altering drugs and exerted violent control over all of his cult members, including Ms. Van Houten.

67. Setting aside the Governor's unnecessarily demeaning description of Manson's sexual acts, Ms. Van Houten's statement that Manson had not raped her had nothing to do with whether she had fully examined her "ongoing susceptibility to negative influences and manipulation." (Exh. 6, at p. 323-324.) She has addressed that issue extensively in therapy.

68. Governor Newsom concluded "the horrendous nature of these murders, and Ms. Van Houten's current related lack of insight," required that she "must take additional steps that demonstrate she will never return to this type of submission or violence again." He gave no indication of what these "additional steps" he considers necessary to make Ms. Van Houten suitable for parole. (Exh. 6, at pp. 323-324.)

2. The Governor's 2020 reversal.

69. The Governor's 2020 reversal adds little new to his 2019 reversal. He again begins with the same description of Ms. Van Houten's membership in the Manson cult, the Tate murders, and Manson apocalyptic vison of Helter Skelter. (Exh. 2, at p.

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24.) He again relies primarily on the gravity of the commitment offense and his misinterpretation of Dr. Athans's findings regarding Ms. Van Houten's mentality prior to her incarceration. Also like the 2019 decision, the Governor again contends Ms. Van Houten failed to adequately explain why she allowed herself to succumb to Manson's influence. As again emphasized the public's reaction to the crimes that he characterized as "among the most infamous and fear-inducing in California history." (Exh. 2, at p. 26.)

70. In addition to his recapitulation of the 2019 reversal, the Governor found that Ms. Van Houten gave conflicting testimony during the 2020 parole when she said she felt obligated to participate in the killings and called on Watson to kill Mrs. LaBianca when Krenwinkle's knife bent. She described the feeling of stabbing Ms. LaBianca as " horrible" and "predatory." (Exh. 2, at pp. 25-26.) According to the Governor, this conflicted with the purported comment she made after returning to the Ranch that the killings were "fun," and the fact she continued to follow Manson until her arrest. (Exh. 2, at p. 26.) The Governor found that these "inconsistencies" indicated "gaps" in her "insight or candor, or both, which bear on her current risk for dangerousness." (Exh. 2, at p. 27.)

71. A fair reading of the transcript proves Ms. Van Houten described the killings as "horrible" from her current perspective at the age of 72 looking back at her conduct at the age of 19. Her description of the killings as "fun" were from the perspective of a 19-year-old under the ongoing influence of LSD and a dangerous cult trying to attain the cult's approval. (Exh. 3.) The record does

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not support the Governor's conclusion that the differing perspectives showed a lack of insight. Unlike the Governor, the Board acknowledged that Ms. Van Houten's current description of the murder as "horrible" and "predatory" proved she had faced the harsh reality of her actions rather than minimizing her responsibility. (Exh. 3.)

72. The Governor again misinterpreted the record when he cited Dr. Athans' summary of the "historic factors" section of the 2018 CRA as proof of Ms. Van Houten's currently dangerousness. (Exh. 2, at p. 27.) Dr. Athans was crystal clear that her summary of the historic facts described Ms. Van Houten at the time of the murders and that those same factors "are not present today." (Exh. 1, at p. 15.)

73. In reversing the grant of parole, Governor Newsom concluded that Ms. Van Houten "must do more to develop her understanding of the factors that caused her to seek acceptance from such a negative, violent influence and perpetrate extreme acts of wanton violence." (Exh. 2, at p. 27.) As in the 2019 reversal, the Governor gave no guidance regarding what Ms. Van Houten "must do" in addition to the her exhaustive and ongoing rehabilitative programming and therapy.

G. <u>The Superior Court's Denial of the Writ of Habeas Corpus</u>.

74. On December 2, 2021, the Los Angeles Superior Court denied Ms. Van Houten's petition for writ of habeas corpus challenging the Governor's 2020 reversal of parole. The court

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upheld the Governor's reversal on the following grounds. (Exh. 25, at p. 1.) None of the findings establish a nexus between Ms. Van Houten historic conduct and her current unreasonable risk of danger to public safety.

1. "Nature of the Commitment Offense."

75. Like the Governor, the court relied primarily on the gravity of the commitment offense in upholding the Governor's decision. (Exh. 25, at pp. 5-7, 9-11.) The court concluded that the gravity of the commitment offense alone was enough to uphold the Governor's reversal, and characterized Ms. Van Houten's involvement in the LaBianca murders as "especially heinous, atrocious, and cruel" and that the "manner of and the motive for petitioner's crimes are some evidence supporting the Governor's decision that if paroled at this time, Petitioner would pose an unreasonable risk of danger to society." (Exh. 25, at p. 11.)

76. In support for this finding, the court "notes for the record and takes judicial notice of the Court of Appeals finding in *In re Van Houten* (2004) 116 Cal.App.4th 339, 353 that '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." (Exh. 25, at p. 11.) The decision relied on by the court was issued in 2004. The controlling California Supreme Court case of *In re Lawrence* (2008) 44 Cal.4th 1181 was decided four years later.

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77. The court in *Lawrence* overturned the Governor's parole reversal because his reliance on the gravity of the commitment offenses failed to provide some evidence demonstrating that the petitioner remained a current threat to public safety, rather than merely some evidence supporting the Governor's characterization of the commitment offense as particularly egregious. The court concluded that,

> [B]ecause the core statutory determination entrusted to the Board and the Governor is whether the inmate poses a current threat to public safety, the standard of review properly is characterized as whether "some evidence" supports the conclusion that the inmate is unsuitable for parole because he or she currently is dangerous.

(*In re Lawrence, supra,* 44 Cal.4th at p. 1191.)

78. *Lawrence* clarified that any implication in earlier cases suggesting a particularly egregious commitment offense always will provide the requisite modicum of evidence supporting a denial of parole is misplaced because it is inconsistent with the statutory mandate that the Board and Governor must consider all relevant statutory factors when evaluating an inmate's suitability for parole. It also is inconsistent with the inmate's due process liberty interest in parole that the California Supreme Court recognized in *In re Rosenkrantz* (2002) 29 Cal.4th 616, 664.)

79. The court stated the rule as follows,

> In some cases, such as this one, in which evidence of

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> the inmate's rehabilitation and suitability for parole under the governing statutes and regulations is overwhelming, the only evidence related to unsuitability is the gravity of the commitment offense, and that offense is both temporally remote and mitigated by circumstances indicating the conduct is unlikely to recur, the immutable circumstance that the commitment offense involved aggravated conduct does not provide "some evidence" inevitably supporting the ultimate decision that the inmate remains a threat to public safety.

(*In re Lawrence, supra,* 44 Cal.4th at p. 1191.)

80. The trial court's reliance of the commitment offense in this case violates *Lawrence.* The court spent many pages describing the details of both the Tate and LaBianca murder, then concluded the egregious nature of the commitment offense was enough to justify the Governor's denial of parole, based on the authority of a decision predating *Lawrence.* The court entirely failed to consider Ms. Van Houten's remarkable record of rehabilitation and near perfect prison behavior during her many decades in prison. The trial court certainly cited some evidence providing its conclusion that the commitment offense was "especially heinous, atrocious, and cruel," but failed to cite "some evidence" supporting the conclusion that Ms. Van Houten remains a threat to public safety 52 years later.

2. "Unsupportive Psychological Assessment."

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81. The trial court characterized the Comprehensive Risk Assessment CRA as "unsupportive." It is hard to understand how the assessment could be construed as unsupportive when the conclusion reached by the evaluating psychologist was that Ms. Van Houten presented a low risk for violence recidivism if released to parole. (Exh. 1, at p. 21.)

82. The court echoed the Governor's misinterpretation of the historic factors as current risk factors, when Dr. Athans found that none of the historic factors are currently present. It also recited the legal adage that the Governor is not bound by the psychologist's conclusion that Ms. Van Houten presently represents a low risk of violence. (Exh. 25, at p. 12.) It ignored the countervailing law that, in cases where psychological evaluations consistently indicate that an inmate poses a low risk of danger to society, a contrary conclusion by the Governor must be based on more than a hunch or mere belief that the inmate should gain more insight into his past behavior. The Governor must point to evidence from which it is reasonable to infer that the inmate's lack of insight reveals a danger that was undetected or underestimated in the psychological reports. (See *In re Roderick* (2007) 154 Cal.App.4th 242, 271-272; see *In re Lawrence, supra,* 44 Cal.4th at pp. 1226-1227 [invalidating parole denial because Governor failed to articulate how cited reason was probative of current dangerousness given overwhelming evidence of the inmate's rehabilitation].)

83. Certainly, the Governor can interpret the evidence differently from the Board or the CRA. The law is equally clear that he cannot simply ignore the conclusions drawn from this

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evidence without articulating reasons for arriving at a different conclusion. (*In re Elkins* (2006) 144 Cal.App.4th 475, 495.)

3. "Lack of Insight" and Minimization."

84. In assessing the Governor's conclusion that Ms. Van Houten continued to lack insight into what allowed her to be vulnerable to Manson's influence, the court agreed that her explanations of wanting to be accepted and chosen by Manson, and accepting that people had to be killed at the beginning of the revolution was an insufficient explanation for her participation in the brutal murders. (Exh. 25, at pp. 13-15.) This ignores the lengthy discussion at the hearing delving into Ms. Van Houten's motivations.

85. The court also found some evidence supporting the Governor's finding that Ms. Van Houten continued to minimize her role in the murder because she thought Ms. LaBianca may have been dead when she stabbed her. This ignores her emotional testimony accepting full responsibility for the LaBianca murders, as well as admitting she would have stabbed Ms. LaBianca whether she was dead or alive.

86. More importantly, the trial court did not once mention the many programs Ms. Van Houten has completed and years of therapy focused on insight, remorse, responsibility, and making amends. Once again, the court erred by concentrating on "some evidence" supporting unsuitability factors while ignoring the overall question of Ms. Van Houten's current unreasonable risk of danger to public safety.

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4. “Successive Petitions.”

87. The court did not reach the merits of Ms. Van Houten’s assertion that the Governor is equitably estopped from relying on the gravity of the commitment offense as a reason for denying parole in 2020, when he did not cite this as a reason for his reversal in 2016. It also did not address Ms. Van Houten’s entitlement to the exculpatory evidence contained in the audio recordings of the Charles “Tex” Watson. (Exh. 25, at pp. 18-19.) According to the trial court, these issues “are procedurally barred as successive.” The court has misconstrued the law governing successive petitions and the res judicata effect of a prior ruling in a habeas proceeding.

“The summary denial of a habeas corpus petition does not establish law of the case and does not have a res judicata effect in future proceedings.” (*Gomez v. Superior Court* (2012) 54 Cal.4th 293, 305, fn. 6.) Similarly, where there is a new judgment intervening between the two habeas petitions, a habeas petition challenging the new judgment is not successive. (*Magwood v. Patterson* (2010) 561 U.S. 320, 332 [decided in context of second death sentence imposed after a resentencing hearing in the same case].)

88. The fact Ms. Van Houten raised the issues of her entitlement to the Watson tapes and constitutional error from the serial denial of parole in prior parole denials by the Governor does not preclude her from raising these same issues in the Governor’s 2020 parole denial because it constitutes a new judgment with a different set of facts. The trial court erred by not

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reaching the merits of these judiciable claims.

5. "Eighth Amendment Claim."

89. In rejecting Ms. Van Houten's claim that the Governor's serial denial of parole has turned her indeterminate life sentence into a de facto sentence of life without the possibility of parole, the court accused her of "ignoring" the that she was sentenced to an "*indeterminate* term of life in prison" with a statutory maximum of life. (Exh. 25, at p. 17-18 [emphasis in original].) The court, therefore, found that "spending 50 years in prison for a brutal murder does not amount to a violation of Petitioner's liberty interest." (Exh. 25, at p. 17-18.)

90. This reasoning ignores the fact that Ms. Van Houten has met the legal standard for parole, as recognized five times by the Board.[9] The Governor has repeatedly reversed the Board for reasons that are not supported with some evidence in the record. The fact the trial court believes that serving 50 years in prison is a just punishment does not negate Ms. Van Houten's liberty interest in achieving parole after meeting the legal standard. The legal standard is not based on the court's personal "belief" of justice.

[9] The Board found Ms. Van Houten suitable for parole for the fifth time in 2021.

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6. "Equal Protection Claim."

91. In evaluating the equal protection claim, the trial court found that Ms. Van Houten failed to identify two classes of similarly situated people who are treated differently under the law because she referred to "notorious crimes" as receiving different treatment by the Governor in assessing grants of parole. (Exh. 25, at pp. 15-16.) The court cites *People v. Doyle* (2014) 220 Cal.App.4th 1251, 1266 in support of this conclusion. The court's reliance on *Doyle* is misplaced.

92. *Doyle* involved the dual use of a prior DUI manslaughter conviction to (1) elevate his current DUI to a felony and (2) impose serve as a strike for a three strikes sentence. (*Id.,* at p. 1257.) In assessing the defendant's equal protection claim, the court held "generally offenders who commit different crimes are not similarly situated" for purposes of equal protection claims. (*Id.,* at p. 1266.) In the very next paragraph, the court recognized "there may be times when the general rule does not apply, when offenders who commit different crimes are similarly situated." *Ibid.*, citing *People v. Hofsheier* (2006) 37 Cal.4th 1185, 1199–1200.)

93. In *Hofsheier*, the court considered an equal protection claim regarding the mandatory sex offender registration, where defendants convicted of voluntary oral copulation with a minor 16 years or older had to register as a sex offender; yet, courts had discretion not to require sex registration of defendants convicted of voluntary sexual intercourse with a minor 16 years or older. (*Id.,* at p. 1198.) The court found this circumstance was covered

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by the Equal Protection Clause because the clause "imposes a requirement of some rationality in the nature of the class singled out.' Otherwise, the state could arbitrarily discriminate between similarly situated persons simply by classifying their conduct under different criminal statutes." (*Ibid*.)

94. The exception noted in *Doyle* applies here. The Equal Protection Clause prohibits the Governor from reversing parole in cases where an individual is serving an indeterminate life sentence for an infamous crime, where failing to reverse a grant of parole would be unpopular with the California voters. The trial court erred by failing to rule on the equal protection issue by improperly defining the class.

95. Moreover, Ms. Van Houten does define the class as similarly situated inmates convicted of murder in the body of the argument.

REQUEST FOR RELIEF

WHEREFORE, Petitioner respectfully asks this Court to:

(1) Grant this Petition for Writ of Habeas Corpus on the finding that the Governor's reversal is not supported by the evidence or legal standard; or

(2) Issue an order directing Respondent to show cause why the petition should not be granted; and

(3) Find the Governor is equitably estopped from asserting reasons to deny parole that were not raised in the 2016 reversal; and

(4) Order the immediate release of the Charles "Tex" Watson tapes to counsel for Ms. Van Houten; and

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(4) Find that Ms. Van Houten is suitable for parole and order her immediate placement on parole without remanding the matter to the Governor (*In re Masoner* (2009) 179 Cal.App.4th 1531, 1538), and

(5) Grant any other such further relief as the Court deems just and proper.

Dated: May 6, 2022

Respectfully submitted,

____

Nancy Tetreault
Attorney for Petitioner
Leslie Van Houten

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VERIFICATION

I, Nancy Tetreault, declare:

1. I am an attorney licensed to practice law before the courts of the State of California, with a State Bar Number of 150352.
2. I make this verification because petitioner is incarcerated in a county different from my business address of 346 N. Larchmont Blvd., Los Angeles, CA 90004. In addition, I am more familiar with the legal allegations in the petition and thus in a better position to declare that the information in the petition is true on my information and belief.
3. I have read the records of the Board's hearing and decision. I also have read all of the exhibits attached to the petition. I believe the contents of the petition to be a true and accurate representation of these records.

I declare under penalty of perjury under the laws of the State of California that the attested allegations are true. Executed on May 6, 2022, at Los Angeles, California.

____

Nancy Tetreault
Attorney for Petitioner,
Leslie Van Houten

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MEMORANDUM OF POINTS AND AUTHORITIES

I.

THE GOVERNOR'S REVERSAL VIOLATED MS. VAN HOUTEN'S STATE AND FEDERAL RIGHTS OF CONSTITUTIONAL DUE PROCESS.

A. Procedural and Substantive Due Process Applies to Parole Decisions.

California's parole scheme creates a cognizable liberty interest in an inmate's release on parole. This interest is protected by the procedural safeguards of the Due Process Clause of the United States Constitution. (U.S. Const., 5th & 14th amends.) Generally, federal due process is satisfied when the prisoner is given notice of the parole hearing and an opportunity to be heard. If parole is denied, due process further requires a statement of the reasons for the denial. (*Greenholtz v. Inmates of Neb. Pen. & Corr. Complex (*1979) 442 U.S. 1; see also *Morrissey v. Brewer* (1972) 408 U.S. 471, 481; accord *In re Rosencrantz* (2002) 29 Cal.4th 616, 655.)

An inmate's liberty interest in parole is likewise protected under the broader due process guarantees of the California constitution. (Cal. Const, art. I,§ 7, subd, (a), 15; *People v. Ramirez* (1979) 25 Cal.3d 260, 266-269.) 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, supra,* 25

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Cal.3d at pp. 266-269.) In criticizing and rejecting the restrictive federal approach, which conditions due process protections on statutorily created interests, 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*.) Accordingly, the California Constitution recognizes both substantive and procedural due process interests in parole. (*In re Rosenkrantz, supra*, 29 Cal.4th at pp. 676-677; *People v. Ramirez, supra,* 25 Cal.3d at p. 268; *In re Powell* (1988) 45 Cal.3d 894, 904.)

Before an inmate may receive a parole date, the Board must find the inmate suitable for parole. In murder cases, the Governor has authority to reverse a grant of parole. The Board and Governor are equally bound by the requirements of constitutional due process in making parole decisions. (Pen. Code, § 3041; Cal. Code Regs. tit. 15, §§ 2401, 2281; *In re Rosenkrantz, supra,* 29 Cal.4th at p. 655.) Due process is satisfied if the assessment of the inmate's current risk of danger is supported by "some evidence" in the record. (*In re Dannenberg, supra,* 34 Cal.4th at p. 1091; see § 3041, subd. (b).)

The "some evidence" standard derives from the United States Supreme Court's decision in *Walpole v. Hill* (1985) 472 U.S. 445, in which the high Court addressed judicial review of a prison disciplinary proceeding. In balancing the prisoner's due process right to a decision that is neither arbitrary nor capricious against the institution's interest in running a safe prison, due process minimally requires that the disciplinary board's findings

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be supported by "some evidence" in the record. (*Id.,* at p. 454.)

Two years after the United States Supreme Court established the "some evidence" standard, the California Supreme Court imported the standard into parole decisions. In *In re Powell*, *supra,* 45 Cal.3d 894, the California Supreme Court held for the first time that parole decisions must comport with due process, and that due process is met if there is "some evidence in the record" supporting the decision. (*Id.,* at p. 904.)

In 2002, the California Supreme Court applied the "some evidence" standard to parole suitability hearings. In *In re Rosenkrantz, supra,* 29 Cal.4th 616, the court began by acknowledging the Board's broad discretion in rendering parole suitability decisions, and that appellate courts cannot apply a *de novo* standard of review to such decisions. (*Id.,* at p. 679; *In re Dannenberg, supra,* 34 Cal.4th at p. 1082.) While acknowledging this deferential standard of review, the *Rosenkrantz* court admonished that judicial review of suitability decisions is not merely pro forma. In reviewing a decision that an inmate is unsuitable for parole, "the judicial branch is authorized to review the factual basis of a decision of the Board denying parole in order to ensure that the decision comports with the requirements of due process of law." (*In re Rosenkrantz, supra,* 29 Cal.4th at p. 658.) The decision comports with due process if there is "some evidence in the record before the [decision maker] supporting the decision to deny parole, based on the factors specified by statute and regulation." (*Id.,* at p. 658.)

Courts also must ensure that the evidence meeting the "some evidence" standard is both reliable and of a solid value.

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(*Id.,* at p. 655; see Cal. Code. Regs., tit. 15, § 2402, subd. (b).) It is not sufficient to derive findings from a silent or misconstrued record. Reviewing courts additionally must determine if the decision maker gave the inmate "individualized consideration of all relevant factors," and that the conclusion was neither arbitrary nor capricious. (*In re Rosenkrantz, supra*, 29 Cal.4th at p. 655; *In re DeLuna* (2005) 126 Cal.App.4th 585; see U.S. Const., amends. V, XIV; Cal. Const., art. I, § 7, subd. (a).)

Applying this standard to the process for assessing a life prisoner's suitability for parole, section 3041, subdivision (b)(1) provides that the parole decision maker "shall grant parole to an inmate unless it determines that the gravity of the current convicted offense or offenses, or the timing and gravity of current or past convicted offense or offenses, is such that consideration of the public safety requires a more lengthy period of incarceration for this individual." (§ 3041, subd. (b)(1).) "As a result, parole applicants have a due process liberty interest in parole and an expectation that they will be granted parole unless the Board finds, in the exercise of its discretion, that they are unsuitable for parole in light of the circumstances specified by statute and by regulation." (*In re Lawrence* (2008) 44 Cal.4th 1181, 1191, 1204, quoting *In re Rosenkrantz, supra,* 29 Cal.4th at p. 654; *In re Stoneroad* (2013) 215 Cal.App.4th 596, 615.)

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B. <u>The Governor Violated Ms. Van Houten's Rights of Constitutional Due Process by Reversing the Board's Fourth Grant of Parole Without Providing Her With a Meaningful Opportunity to Be Heard, and by Basing His Decision on a Misconstrued Record</u>.

The Governor, without question, had the legal authority to reverse the Board's fourth grant of parole, provided the decision complied with due process and the controlling legal standard. It did not. Ms. Van Houten was not allowed to appear before the Governor and personally demonstrate her suitability. This violated the procedural due process guarantee of a meaningful opportunity to be heard.

The Governor's grant of discretion under state statutory law allowed him to reverse Ms. Van Houten's grant of parole if he found her currently unsuitable. The substantive due process requirement of a fundamentally fair proceeding compelled the Governor to impartially consider *all* of the evidence and make a decision based on evidence accurately construed. (*Gagnon v. Scarpelli, supra,* 411 U.S. at pp. 786-787.) The Governor failed to discharge this burden my focusing nearly exclusively on the gravity of the commitment murders without articulating a nexus between the murder and Ms. Van Houten's current circumstances. He also misconstrued significant portions of the evidence he relied on as supporting his finding of current danger.

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1. Differing descriptions of the stabbing.

During the 2020 parole hearing, the commissioners asked Ms. Van Houten to describe how it felt to stab Mrs. LaBianca. She responded that, “It was a horrible, predatory feeling.” The Governor found this description inconsistent with Ms. Van Houten’s conduct immediately after the murders, when she told another cult member the murders were “fun,” and continued to follow Manson until her arrest. (Exh. 2, p. 27.) This, according to the Governor, indicated gaps in her “insight or candor, or both, which bear on her current risk for dangerousness.” (Exh. 2, p. 27.) In other words, the Governor found no difference between Ms. Van Houten’s view of the murders 50 years ago at the age of 19 while under the control of a dangerous cult, and her perspective of the murders as a 70-year-old woman looking back.

Ms. Van Houten’s statement that stabbing Ms. LaBianca was a “horrible and predatory feeling” represented her current recollection of the murders after 50 years of intensive psychotherapy and rehabilitative programming. The Board correctly interpreted this recollection as proving Ms. Van Houten has gained insight into her conduct and had faced the harsh realities of her actions rather than minimizing her responsibility. It is a measure of her growth rather than a lifelong brand of undue danger.

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2. Improper interpretation of the "Analysis of Historic Factors" in the CRA.

The Governor also misconstrued Dr. Athans' analysis of Ms. Van Houten's historic factors in citing these factors as evidence of Ms. Van Houten's current danger.

The "Historic Factors" section of Dr. Athans' CRA listed several pre-conviction attributes of Ms. Van Houten, including "prior violence, violent attitude, other antisocial behavior, troubled relationships, traumatic experiences, and substance abuse problems." (Exh. 1, p. 15.) The Governor found these factors to "remain salient despite Ms. Van Houten's advanced age and remain cause for concern should she be released into the community." (Exh. 2, p. 27.) This conclusion is not supported by Dr. Athans' analysis.

The Governor's citation to the historic factors listed in the CRA errs by presuming a person cannot change between the age of 19 and the age of 70. It also ignores the large body of law describing the impact of a youth offender's immature brain and their remarkable ability to reform. (Pen. Code, § 4801, subd. (c); *People v. Franklin, supra*, 63 Cal.4th at p. 268.) More importantly, the Governor misconstrues Dr. Athans's evaluation and conclusion.

The Governor cites Dr. Athans's summary of the historic factors as follows,

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> The evaluating psychologist noted that several historical factors including "prior violence, violent attitude, other antisocial behavior, troubled relationships, traumatic experiences, and substance abuse problems are present and relevant to future risk of violent recidivism." These factors remain salient despite Ms. Van Houten's advanced age and remain cause for concern should she be released into the community.

(Exh. 2, at p. 27.)

The portion of the CRA referred to by the Governor is contained in a subsection entitled "Analysis of Historic Factors," under the "Assessment of Risk For Violence; HCR-20-V3." (Exh. 1, at p. 15.) The footnote to this section cautions, "HCR-20-V3 administration and decision making requires specific knowledge, skills, and abilities established through licensure and training and experience in forensic assessment of violence risk." (Exh. 1, at p. 15, fn. 2.)

Dr. Athans assessed the current reliance of Ms. Van Houten's "Historic Factors" as follows,

> Ms. Van Houten displayed the presence of predictive factors for future dangerous behavior within this domain, including prior violence, violent attitude, other antisocial behavior, troubled relationships, substance abuse problems, and traumatic experiences. *The risk factors, major mental disorder, personality disorder, employment problems, and treatment and supervisions [sic] response, are not currently present or relevant to violence risk.*

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(Exh. 1, p. 15 [emphasis added].)

Dr. Athans acknowledged that the risk factors of "prior violence, violent attitude, other antisocial behavior, troubled relationships, traumatic experiences, and substance abuse problems" were present in Ms. Van Houten's prior behavior. The behaviors can be predictive of future danger if vestiges of them exist in Ms. Van Houten's current mind set. (Exh. 1, p. 15.) The doctor firmly concluded they do not. She reasoned as follows,

> Ms. Van Houten has a history of engaging in impulsive behavior, including drug use and promiscuity, and her involvement in the life crime reflected a callous lack of empathy for the victims. Nonetheless, absent are a number of characteristics commonly seen in psychopathic individuals. *For nearly 50 years, she has exhibited prosocial behaviors and has sought positive relationships with others. She has not shown herself to be deceptive, conning, or to lack remorse. Her total PCL-R score was below the mean of North American female inmates and below the cutoff or threshold commonly used to identify dissocial or psychopathic personality***.**

(Exh. 1, pp. 15-16 [emphasis added].)

Dr. Athans's continues by addressing the clinical factors present in Ms. Van Houten's mentality as follows,

> Ms. Van Houten demonstrated insight into the contributing factors of the life crime and was able to adequately discuss the causative factors involved.

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> Over the years, she has participated extensively in self-help programs, including individual therapy, which have helped her understand the pertinent factors that allowed her to become involved in the life crime. *Although she spoke of her susceptibility to the influence of Manson, she also wished to take full responsibility for her behavior without minimizing her role or externalizing blame. Ms. Van Houten's expressions of remorse for the victims appeared genuine. At present, the risk factor, lack of insight, is not present.*

(Exh. 1, at p. 16 [emphasis added].)

Under the subtitle. "Risk of Future Violence: Case Formulation and Opinions" Dr. Athans concluded,

> Ms. Van Houten is nearly 70-years old and has been incarcerated for almost 50 years. During that time period, she has not engaged in violence, she has largely abided by the rules of the institution having been issued one 115 in 1981, and she has participated in numerous hours of therapy, treatment groups, and self-help programs. She has addressed issues of sobriety and has made a concerted effort to understand what prompted her to engage in the life crime. She accepted responsibility for her behavior without minimizing her role or externalizing blame and although she recognized the impact of her emotional functioning on her behavior, she wished to clarify that she alone was responsible for her involvement in the crime. At present, she appears to represent a low risk for violent recidivism.

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(Exh. 1, at pp. 15-16.)

When read in context, it is not possible to interpret Dr. Athans's evaluation as concluding Ms. Van Houten currently poses an unreasonable risk of violence because of historic factors that have not been present in Ms. Van Houten's behavior or mentality for over 50 years.. The doctor contrasted the 19-year-old girl prior to her incarceration to the rehabilitated 71-year-old woman she is today. The doctor unequivocally concluded that Ms. Van Houten is fully rehabilitated and does not present an unreasonable risk of danger to the public if released on parole. (Exh. 1.)

The Governor violated Ms. Van Houten's rights of substantive due process by misconstruing Ms. Van Houten's testimony at the parole hearing, as well as Dr. Athans's psychological evaluation. The Governor placed undue emphasis on isolated and unsupported "facts" tending to show unsuitability, rather than assessing Ms. Van Houten's entire circumstances as a whole in determining if she met the overall question of whether she currently poses an unreasonable risk of danger to public safety. It is well established that the Governor's decision must "reflect[ ] due consideration of the specified factors as applied to the individual prisoner in accordance with applicable legal standards." (*In re Shaputis* (2011) 53 Cal.4th 192, 210 (*Shaputis II*); *In re Lawrence, supra,* 44 Cal.4th at p. 1204; *In re Shaputis* (2008) 44 Cal.4th 1241, 1260–1261 (*Shaputis I*); *In re Rosenkrantz, supra,* 29 Cal.4th at p. 677; *In re Shelton* (2020) 52 Cal.App.5th 595, 607-608; *In re Stoneroad, supra,* 215 Cal.App.4th at p. 616.) He violated this legal mandate.

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"[I]n cases where psychological evaluations consistently indicate that an inmate poses a low risk of danger to society, a contrary conclusion must be based on more than a hunch or mere belief that he should gain more insight into his past behavior." In citing the historic factors from the CRA and concluding they remain "salient" and a "cause for concern" today, the Governor was required to support his disagreement with Dr. Athans analysis with citations to evidence from which it is reasonable to infer Ms. Van Houten's current mentality revealed a danger undetected or underestimated by Dr. Athans in the 2018 CRA. (*Shaputis II, supra,* 53 Cal.4th at p. 228 (conc. opn. of Liu J.); *In re Young* (2012) 204 Cal.App.4th 288, 312; *In re Roderick* (2007) 154 Cal.App.4th 242, 271–272.) The Governor did not meet this requirement.

"[A]ll exercises of legal discretion must be grounded in reasoned judgment and guided by legal principles and policies appropriate to the particular matter at issue." (*People v. Russel* (1968) 69 Cal.2d 187, 195.) " To exercise the power of judicial discretion all the material facts in evidence must be known and considered, together also with the legal principles essential to an informed, intelligent and just decision." (*Estate of Gilkison* (1998) 65 Cal.App.4th 1443, 1448, quoting *In re Cortez* (1971) 6 Cal.3d 78, 85–86.)

The Governor's decision in this case is based on findings from a misconstrued record. The Governor's conclusion that Ms. Van Houten "must do more" to prove her suitability neglects to give any guidance as to what more she can do, given that she has done virtually everything possible, and has been doing it for five

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decades. It is evident there is nothing more Ms. Van Houten can do to overcome the taint of the commitment offense and its connection to Charles Manson. While this may be appropriate for a sentence of life *without* the possibility of parole, it is a violation of the legal standard for an indeterminate life term. Our Supreme Court long ago denounced the blanket denial of parole as a violation of constitutional due process. (*In re Rosencrantz* (2000) 29 Cal.4th 616, 655, 682; *In re DeLuna* (2005) 126 Cal.App.4th 585; see U.S. Const.,5, 14 Amends.; Cal. Const., art. I, § 7, subd. (a).) The Governor's flawed decision should be reversed and Ms. Van Houten's grant of parole reinstated.

II.
THE GOVERNOR FAILED TO ASSESS MS. VAN HOUTEN'S OVERALL CIRCUMSTANCES UNDER THE APPLICABLE LEGAL STANDARD.

A. <u>The Standard of Review</u>.

A parole decision by the Governor must be based on the same factors the Board is required to consider. Constitutional due process requires that the decision be supported by "some evidence" in the record. (*In re Shaputis* (2011) 53 Cal.4th 192, 221 (*Shaputis II*); *In re Rosenkrantz*, *supra,* 29 Cal.4th at pp. at pp. 676–677.) Although the precise manner in which the Governor balances the relevant factors lies within the Governor's discretion, "the decision must reflect an individualized consideration of the specified criteria and cannot be arbitrary or

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capricious." (*Ibid.)* "[T]he aggravated nature of the crime does not in and of itself provide some evidence of *current* dangerousness to the public unless the record also establishes that something in the prisoner's pre or post incarceration history, or his or her current demeanor and mental state, indicates that the implications regarding the prisoner's dangerousness that derive from his or her commission of the commitment offense remain probative to the statutory determination of a continuing threat to public safety." (*In re Lawrence*, *supra,* 44 Cal.4th at p. 1214, italics in original.)

Appellate courts independently review the entire record to determine "whether the identified facts are probative to the central issue of current dangerousness when considered in light of the full record before . . . the Governor." (*In re Lawrence*, at p. 1221.) To meet this standard of review, the Governor's decision must establish a nexus between the suitability factor and the finding of currently dangerous that is based on an application of the proper legal standard to an accurate interpretation of the material facts. (*In re Rosenkrantz, supra,* 29 Cal.4th at p. 677; *In re Lawrence, supra*, 44 Cal.4th at p. 1204; *In re Shaputis* (2008) 44 Cal.4th 1241, 1260–1261 (*Shaputis I*); *In re Stoneroad, supra,* 215 Cal.App.4th at p. 616.) Thus, "[t]he proper articulation of the standard of review is whether there exists 'some evidence' demonstrating that an inmate poses a current threat to public safety, rather than merely some evidence suggesting the existence of a statutory factor of unsuitability." (*In re Lawrence, supra*, 44 Cal.4th at p. 1191; *Shaputis II, supra*, 53 Cal.4th at p. 209.)

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The Governor's decision is subject to a reversal if it "does not reflect due consideration of all relevant statutory and regulatory factors or is not supported by a modicum of evidence in the record rationally indicative of current dangerousness, not mere guesswork." (*Ibid*.) The some evidence standard is violated if the Governor merely proves the existence of a statutory factor of unsuitability without balancing that factor against the conclusion of a current unreasonable risk of danger.

B. <u>The Governing Legal Framework</u>.

The California Supreme Court's 2008 decision in *In re Lawrence, supra,* 44 Cal.4th 1181, provides the foundational legal framework for the standard of proof in parole decisions. The high court in *Lawrence* reversed the Governor's finding that Ms. Lawrence was not suitable for parole on the ground that "some evidence" did not support the Governor's determination that Ms. Lawrence currently posed an unreasonable risk of danger to public safety. (*In re Lawrence, supra,* 44 Cal.4th at p. 1191.) The defendant in *Lawrence* shot her lover's wife four times then stabbed the wife to death with a potato peeler after becoming enraged when the husband ended his extra martial affair with the defendant. After committing the murder the defendant told her family the murder was a birthday present to herself then fled the state. (*Id.,* at p. 1193.) Eleven years later, the defendant voluntarily returned to California and surrendered herself to the authorities, but denied involvement in the murder. In 1983, she was convicted of first degree murder and sentenced to an

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indeterminate life sentence. (*Id.,* at p. 1190.)

Like Ms. Van Houten, Ms. Lawrence received positive psychological evaluations during the last decade of her incarceration. (*Id.,* at p. 1195.) Also like Ms. Van Houten, Ms. Lawrence remained free of serious discipline violations throughout her incarceration and contributed to the prison community in a variety of ways. She participated in many educational groups and earned Bachelor and Master degrees in prison. (*Id.,* at p. 1194.) Again like Ms. Van Houten, the Governor reversed Ms. Lawrence's fourth consecutive grant of parole. In reinstating the Board's decision, the Supreme Court in *Lawrence* found the Governor's decision unsupported by the evidence or proper legal standard.

The Governor in *Lawrence* based his decision primarily on the gravity of the commitment evidence, with the contributing factors of Ms. Lawrence's initial lack of remorse, early negative psychological evaluations, and eight counseling "chronos" for minor prison violations. (*Id.,* at p. 1199) In analyzing these factors, the Supreme Court found that, though each factor was historically true, none of the factors applied to Ms. Lawrence's current behavior, nor had the Governor cited a nexus between the historic factors and Ms. Lawrence's current circumstances. The Supreme Court held that a finding of parole unsuitability requires proof that the inmate *currently* poses an *unreasonable* risk of danger to public safety. (*Id.,* at p. 1191.) *Lawrence* established that the relevant inquiry in parole decisions is, "whether the circumstances of the commitment offense, when considered in light of other facts in the record, are such that they

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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 with a vegetable peeler, after which she characterized the murder as a birthday present to herself. Psychological evaluations found her to be mildly psychotic, and that she initially showed no remorse for the murder. (*Id.,* at p. 1199.) The court found that the factors relied upon by the Governor in denying parole were overcome by Ms. Lawrence's record of rehabilitation in prison. (*Ibid.*) The legal standard applied to Ms. Lawrence proves Ms. Van Houten too is suitable for parole because she currently does not pose an unreasonable risk of danger to public safety. The Governor erred by failing to establish a nexus between Ms. Van Houten's extensive rehabilitative programming and therapy specially targeting the development of insight, responsibility and remorse, and her current unreasonable risk of danger to public safety based on a "lack of insight."

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III.
THE GOVERNOR'S RELIANCE ON THE GRAVITY OF THE TATE AND LABIANCA MURDERS IS NOT PREDICTIVE OF MS. VAN HOUTEN'S CURRENT UNREASONABLE RISK OF DANGER TO PUBLIC SAFETY.

In assessing Ms. Van Houten's suitability for parole, the Governor was required to go beyond the question of whether some evidence supported the unsuitability factors he cited. The governing legal standard compelled him to decide if some evidence supported the core determination of whether Ms. Van Houten's release to parole would unreasonably endanger public safety. (*In re Lawrence, supra,* at p. 1209, italics added.) The Governor's decision failed to meet this standard.

The Governor's primary reason for reversing Ms. Van Houten's grant of parole is the gravity of the commitment offense and her membership in the Manson cult. (Exh. 2, at pp. 26-27.) Immutable historic facts, such as egregious details of the commitment offense, lose their predictive value over time because they do not account for the inmate's intervening reform. (*In re Lawrence, supra,* 44 Cal.4th at p. 1191.) Where the record is replete with evidence establishing an inmate's rehabilitation, remorse, and current psychological health, balanced against a record devoid of evidence that the inmate currently poses a threat to public safety, the inmate's due process rights are violated by relying on immutable and unchangeable circumstances in denying a grant of parole. (*Id.* at p. 1227.)

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The parole decision does not depend upon whether the commitment offense was an exceptionally brutal murder. The Supreme Court has repeatedly established that "the determination of whether an inmate poses a current danger is not dependent upon whether his or her commitment offense is more or less egregious than other, similar crimes. (*Id.,* at p. 1221; *In re Dannenberg, supra,* 34 Cal.4th at pp. 1083–1084, 1095; see *In re Shaputis, supra,* 44 Cal.4th at p. 1254.) "Focus upon whether a petitioner's crime was 'particularly egregious' in comparison to other murders in other cases is not called for by the statutes, which contemplate an individualized assessment of an inmate's suitability for parole . . . .' " (*In re Lawrence, supra,* 44 Cal.4th at p. 1217.) The determination of current dangerousness does not depend "upon whether the circumstances of the offense exhibit viciousness above the minimum elements required for conviction of that offense." (*In re Shaputis, supra,* 44 Cal.4th at p. 1254.)

All murders are egregious crimes involving extreme violence. This does not preclude parole where the defendant is sentenced to an indeterminate life term. Many individuals convicted of egregious murders have been found suitable under the legal standard that they no longer pose an unreasonable risk of danger to public safety. (See, e.g., (*In re Dannenberg* (2005) 34 Cal.4th 1061, 1069; *In re Dannenberg* (2009) 173 Cal.App.4th 237, 241; *In re MacDonald* (2010) 189 Cal.App.4th 1008, 1013-1017*; In re Moses* (2010) 182 Cal.App.4th 1279, 1285-1286; *In re Twinn* (2010) 190 Cal.App.4th 447, 452.)

Ms. Van Houten's participation in the LaBianca murders and her membership in the Manson cult more than 50 years ago

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are immutable facts she can never change, regardless of the amount of rehabilitation or positive programming she has accomplished. The Supreme Court in *Lawrence* acknowledged that, "in rare circumstances, the aggravated nature of the crime alone can provide a valid basis for denying parole, even when there is strong evidence of rehabilitation and no other evidence of current dangerousness." (*Ibid.*) The court continued by limiting the reliance on the gravity of the commitment offense by requiring a demonstrable *nexus* between the elevated circumstances of the commitment murder and the inmate's current circumstances in order for it to support a conclusion that those same factors are present in the inmate's current behavior. (*In re Lawrence, supra,* at pp. 1181, 1221; *In re Stoneroad, supra,* 215 Cal.App.4th at pp. 614, 617.)

The result of *Lawrence* and its progeny is that the aggravating nature of a crime can no longer provide evidence of current dangerousness "unless there is also evidence that there is something about the commitment offense which suggests the inmate still presents a threat to public safety." (*In re Denham* (2012) 211 Cal.App.4th 702, 715, citing *In re Lawrence*, *supra,* at p. 1214; *In re Stoneroad, supra,* 215 Cal.App.4th at p. 621.) In other words, there must be proof in the record that an aspect of the commitment offense is still present in the inmate's current overall circumstances. Few cases will fit this requirement. Since *Lawrence*, no published case has found that a rehabilitated inmate remains unsuitable for parole based solely on the gravity of a commitment murder.

The presiding commissioner at Ms. Van Houten's 2020

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parole hearing addressed the current impact of the commitment murders by finding she no longer posed the risk factors present at the time of the murders. (Exh. 3, at pp. 137-138) The Board found no nexus between Ms. Van Houten's commitment offense and her current risk of danger. (Exh. 3, at pp. 144-145.) According to the Board, her many years of positive reform has purged those factors from the person she is today.

The Governor's reversal contradicted the legal standard requiring a nexus between the commitment offense and Ms. Van Houten's current circumstances. He began by describing Charles Manson, Manson's cult, Manson's apocalyptic vision of a race war called "Helter Skelter," and Ms. Van Houten's membership in the cult at the age of 19. (Exh. 2, at p. 24.) The Governor's second paragraph describes the Tate murders. He does not describe the LaBianca murders until the third paragraph. (Exh. 2, at pp. 24-25.) He described the Tate and LaBianca murders as "part of a series of crimes that rank among the most infamous and fear-inducing in California history." (Exh. 2, at p. 26.) He did so without acknowledging that the Tate murders are unrelated to Ms. Van Houten's culpability. Moreover, the fact the Tate and LaBianca murders were "infamous" and "fear-inducing" to the public do not provide a nexus to Ms. Van Houten's current unreasonable risk of danger to public safety. This finding by the Governor violates due process by interposing a politically-based parole factor that Ms. Van Houten can never attain. It violates equal protection by setting up a class of inmates treated differently for purposes of parole because their crimes are "infamous" and their release on parole is politically unpopular.

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(See, *infra,* argument V [Equal Protection Violation].)

The Governor concludes his decision by stating,

> Given the extreme nature of the crime in which she was involved, I do not believe she has sufficiently demonstrated that she has come to terms with the totality of the factors that led her to participate in the vicious Manson Family killings. Before she can be safely released, Ms. Van Houten must do more to develop her understanding of the factors that caused her to seek acceptance from such a negative, violent influence, and perpetrate extreme acts of wanton violence.

(Exh.2, at p. 4.) He gives no indication of what more Ms. Van Houten must do to prove her suitability.

The Governor's description of Manson and his vision of Helter Skelter, together with the more vicious Tate murders was a way of bolstering the gravity of Ms. Van Houten's involvement in the LaBianca killings. The LaBianca murders were egregious, as are all murders; however, the Governor's attempt to augment the facts of the LaBianca murders by portraying them as a continuation of the Tate murders improperly exaggerates Ms. Van Houten's culpability and must be disregarded.

Further, the Governor failed to cite a single circumstance from Ms. Van Houten's participation in the LaBianca murders or membership in the Manson cult that remains uncorrected today. She has engaged in over 50 years of psychological therapy and rehabilitative programming. The Governor placed primary emphasis on the gravity of the commitment murders and Ms. Van

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Houten's connection to Charles Manson, while failing to discuss how she remains an unreasonable risk of danger today after five decades of extensive rehabilitative programming, therapy, and impeccable prison conduct.

The Board found that Ms. Van Houten's commitment offenses were "heinous, cruel, and brutal." (Exh. 3, at p. 140.) It carefully assessed Ms. Van Houten's record of rehabilitation and found it was extensive and showed proven rehabilitation. It weighted the gravity of the commitment offenses against Ms. Van Houten's long record of reform, together with the hallmark features of her youth, and concluded that she no longer posed an unreasonable risk of danger to public safety. (Exh. 3, at pp. 144-146.) The Governor erred by placing undue weight on the murders, Manson, and the public's reaction to the murders, while failing to state the specific deficiencies in Ms. Van Houten's record of rehabilitation. The Governor also erred by not articulating his reasons for disregarding the favorable conclusions in the 2016 and 2018 CRAs, or explaining why the hallmark features of Ms. Van Houten's youth did not account for her actions.

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IV.
THE GOVERNOR'S FINDING THAT MS. VAN HOUTEN POSED A CURRENT UNREASONABLE RISK OF DANGER TO PUBLIC SAFETY BECAUSE OF A LACK OF INSIGHT IS NOT SUPPORTED BY THE RECORD.

A. Summary of the Governor's Findings.

The Governor found the description by Ms. Van Houten of her motivation for participating in the LaBianca murders continued to show a lack of insight. Specifically, the Governor found Ms. Van Houten's comments regarding the influence of Charles Manson exhibited a lack of responsibility. He concluded that Ms. Van Houten's explanation of why she allowed herself to become vulnerable to Manson "unsatisfying," and was concerned by her explanation that she participated in the murders out of a desperate need to be accepted by Manson and his cult. (Exh. 2, at p. 26.) He also characterized Ms. Van Houten's current description of the crimes as "horrible" and "predatory," and her comments to fellow cult members in 1969 as "fun," were inconsistent. He concluded the "inconsistency" and "gaps in Ms. Van Houten's insight or candor, or both, . . . bear on her current risk for dangerousness." (Exh. 2, at pp. 26-27.) These findings are not supported by the evidence.

There is no minimum number of courses or time requirement for the sincere acceptance of responsibility. The deciding factor is whether the inmate's acceptance of

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responsibility is genuine. (*In re Elkins, supra,* 144 Cal.App.4th at p. 495, quoting *In re Lee* (2006) 143 Cal.App.4th 1400, 1414.) The Board was correct in finding that Ms. Van Houten expressed genuine remorse and acceptance of responsibility for her crimes after decades of rehabilitation directed at gaining insight, remorse, and responsibility. (Exh. 3, at pp. 137-139, 144.) It found the hallmark features of her youth played a large role in explaining her behavior at the age of 19. (Exh. 3, at pp. 137-139.) The Governor's two scant pages of conclusory analysis did not establish a factual nexus with the overarching assessment of Ms. Van Houten's current risk of danger.

The California Supreme Court in *Lawrence* is instructive in illuminating the Governor's error in this case. *Lawrence* admonishes,

> If simply pointing to the existence of an unsuitability factor and then acknowledging the existence of suitability factors were sufficient to establish that a parole decision was not arbitrary, and that it was supported by 'some evidence,' a reviewing court would be forced to affirm any denial-of-parole decision linked to the mere existence of certain facts in the record, even if those facts have no bearing on the paramount statutory inquiry. Such a standard, because it would leave potentially arbitrary decisions of the Board or the Governor intact, would be incompatible with our recognition that an inmate's right to due process cannot exist in any practical sense without a remedy against its abrogation.

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(*In re Lawrence, supra,* 44 Cal.4th at p. 1211, quoting *In re Rosenkrantz, supra,* 29 Cal.4th at p. 664.) "[S]tated another way, not only must there be some evidence to support the Board's [or Governor's] factual findings, there must be some connection between the findings and the conclusion that the inmate is currently dangerous." (*In re Criscione* (2009) 180 Cal.App.4th 1446, 1458; see *In re Ryner* (2011) 196 Cal.App.4th 533, 545.)

The Governor's undue reliance on Ms. Van Houten's "lack of insight" and responsibility did not provide "some evidence" to support a finding of current dangerousness.

B. Legal Definition of a Lack of Insight in Parole Decisions.

The California Supreme Court's decision in *Shaputis I* first recognized a lack of insight as an unsuitability factor. (*Shaputis I, supra*, 44 Cal.4th at p. 1255.) In recognizing a lack of insight as an unsuitability factor, *Shaputis I* did not hold that some evidence of a lack of insight into past criminal behavior necessarily means there is some evidence of current dangerousness. Like with all parole decisions, the Board or Governor must provide "reasoning establishing a rational nexus" between identified unsuitability factors and current dangerousness. (*In re Lawrence, supra,* 44 Cal.4th at p. 1210.)

The Governor may rely on a lack of insight to establish parole unsuitability only if it is probative of the determination that the inmate remains a danger to the public. (See *Id.,* at p. 1212.) According "talismanic significance" to a lack of insight, or

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any other unsuitability factor, is "inconsistent with the statutory mandate that the Board and the Governor consider all relevant statutory factors when evaluating an inmate's suitability for parole." (*Id.,* at pp. 1191, 1212.) To pass constitutional muster, there must be the articulation of a "rational nexus between those facts and current dangerousness" in light of the inmate's rehabilitative gains. (*Id.* at p. 1227.) 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." (*Shaputis I, supra,* 53 Cal.4th at p. 219.)

A lack of insight becomes irrelevant to the determination of current dangerousness if the inmate has good prison conduct, displays sincere remorse, and accepts responsibility for his or her criminal conduct. (*In re Palermo* (2009) 171 Cal.App.4th 1096, 1112, disapproved on another ground in *In re Prather* (2010) 50 Cal.4th 238, 252-253); *In re Jackson* (2011) 193 Cal.App.4th 1376, 1391; *In re McDonald* (2010) 189 Cal.App.4th 1008, 1023.) Thus, a sufficient understanding of the causes of an inmate's criminal conduct is not a valid basis to deny parole if the lack of insight is overcome by a strong record of rehabilitation. (*In re Roderick* (2007) 154 Cal.App.4th 242, 248-251.) The dispositive question is the inmate's current risk of danger, not whether he or she can satisfactorily explain the causes of their long ago criminal behavior. (*Ibid.)*

Moreover, a lack of analytical depth in an inmate's description of his or her motives for the commitment offense does not necessarily equate into a lack of insight. The fact an inmate did not express insight using language the Governor finds

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appropriate does not create a nexus to the inmate's current danger. The inmate's level of understanding and sincerity is what matters, not the words he or she uses. (*In re Roderick, supra,* 154 Cal.App.4th at pp. 248-251; see *In re Ryner* (2011) 196 Cal.App.4th 533, 548-549 [no evidence of current dangerousness in model prisoner notwithstanding comment in the psychological report that his insight into his criminal behavior was "weak"].)

While a lack of insight into past criminal behavior is a judicially recognized factor that may be probative of current dangerousness, it must be considered in the context of the inmate's overall circumstances, with sound reasoning showing how it supports a prediction that the inmate currently poses an unreasonable risk of danger. A generalized finding of a lack of insight does not provide some evidence of current danger under the *Lawrence* standard. (*Shaputis II, supra,* 53 Cal.4th at p. 230 [J. Liu, concurring].)

The Governor's failure to articulate a rational nexus between his finding that Ms. Van Houten continues to lack sufficient insight violated the admonition against turning a "lack of insight" into a caught-all category justifying a denial of parole in virtually every case.

> Precisely because lack of insight is such a readily available diagnosis, its significance as an indicator of current dangerousness must be rationally articulated under the individual circumstances of each case—lest 'lack of insight' become, impermissibly, a new talisman with the potential to render almost all life inmates unsuitable for parole.

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(*Shaputis II, supra,* 53 Cal.4th at p. 230 [J. Liu, concurring].)

C. <u>The Governor's Finding That Ms. Van Houten Lacks Insight by Failing to Take Responsibility for Her Role in the Murders Is Not Supported by the Record</u>.

The Governor's devoted around one page of his written decision to explaining his conclusion that Ms. Van Houten posed a current risk of danger from a lack of insight. (Exh. 2, at pp. 25-26.) He stated as follows:

> Ms. Van Houten's explanation of what allowed her to be vulnerable to Mr. Manson's influence remains unsatisfying. At her parole hearing, Ms. Van Houten explained that she was turning her back on her parents following their divorce and after a forced abortion. She described herself at the time of her involvement in the Manson Family as a "very weak person that took advantage of someone that wanted to take control of my life and I handed it over." I am unconvinced that these factors adequately explain her eagerness to submit to a dangerous cult leader or her desire to please Mr. Manson, including engaging in the brutal actions of the life crime. [¶] I remain concerned by Ms. Van Houten's characterization of her participation in this gruesome double murder, part of a series of crimes that rank among the most infamous and fear-inducing in California history. Ms. Van Houten explained to the evaluating psychologist that she was "desperate to be accepted," was "chosen" by Mr. Manson, "had to kill them for the beginning of

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> the revolution," and wanted Mr. Manson to "know I was completely committed to him and his cause" . . . .

(Exh. 2, at pp. 25-26.)

These comments amount to a fraction of Ms. Van Houten's testimony regarding her participation in the killings and do not serve as an accurate summary of her extensive testimony. She described in frank detail her participation in the killings. (Exh. 3, at pp. 50-53.) The Board asked her to "look back knowing what you know today" and discuss the important turning points that caused Ms. Van Houten to get involved in the murders and Manson cult. (Exh. 3, at pp. 55-57.) Ms. Van Houten said when she first met Catherine Share, she was at an "all-time bottom low." She was broken from the abortion, had no income, and harbored bad feelings about both of her parents. The commune lifestyle Ms. Share described seemed "pretty good." (Exh. 3, at pp. 56-57.)

When she got to the Ranch, she did not know what she was doing or where she was going. She lived with people who took LSD, drink alcohol, and smoked Marijuana. (Exh. 3, at pp. 61-62.) She befriended cult members Robert "Bobby" Beausoleil and Catherine Share about the things that made her "weak and lost," which were used by Manson to manipulate her into believing she was a horrible person for allowing her mother to set up the abortion. (Exh. 3, at pp. 57-58.)

She made the group more important than her early teachings about right and wrong. She sold herself out to the group "over and over." She wanted to please Manson, and saw him as the second coming of Christ. She believed his rhetoric

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about the race war and surviving in a hole in the desert to prove her loyalty to him. She admitted taking large amounts of LSD at the time she was engaging in this thinking. (Exh. 3, at pp. 58-59.)

She defined what it meant to be a "false leader," and classified Manson as such a leader. (Exh. 3, at p. 58-59.) She described that after around a month at the Ranch, the atmosphere began to change. Manson had always been violent toward women, but he became more so as time went on. She described herself as a compliant, weak person, with no self preservation sense. She admitted it took her a long time before she "really started to understand." (Exh. 3, at pp. 63-64.)

When asked about other factors that led her to cooperate with a "delusional leader," Ms. Van Houten said she was a "very weak person" and handed herself over to Manson so he would take control of her life. She had no record of violence before or since the killings, but she believed in Manson and felt obligated to participate in the killings as something that hand to be done. (Exh. 3, at p. 59-60.) When she was in the LaBianca house, she knew she was "in over my head" and became critical of herself for not pulling her weight. (Exh. 3, at p. 65.) She finds her participation in the killing especially "hard to live with," now that she understands the falsity of the causative factors because "there's no justifying it." (Exh. 3, at p. 38.)

Ms. Van Houten also discussed the impact of her criminal behavior, from the family of the victims, to her own family and friends, as well as Los Angeles and the nation. She described specifically how she robbed the LaBianca's of their lives and the

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grandchildren they never knew. (Exh. 3, at p. 38-42) When asked in hindsight what she would have done differently, Ms. Van Houten said she would have been more supportive of her mother when her father left the family. She would not have become rebellious and more steadfast in the direction of her own life. She would have followed her intuition when things began changing at the Ranch and gone to the police. (Exh. 3, at p. 42-48.)

The Governor picked out a few isolated comments from the lengthy parole hearing to support his finding that Ms. Van Houten lacked insight. When viewed in the context of the hearing transcript, her discussion of the causative factors of her conduct was lengthy and showed that she has internalized what she learned through rehabilitative programming and therapy.

The Governor also failed to explain why Ms. Van Houten excellent prison conduct, extensive programming, sincere displays of remorse, and acceptance of responsibility for her criminal conduct is insufficient to outweigh any perceived lack of insight. (*In re Palermo, supra,* 171 Cal.App.4th at p. 1112; *In re Jackson, supra,* 193 Cal.App.4th at p. 1391; *In re McDonald, supra,* 189 Cal.App.4th at p. 1023.) The Board reviewed Ms. Van Houten's long vocational work history, educational history including BA and MA degrees, and no serious rule violations in her 52 years of incarceration. The Board also considered her participation in extensive programming groups, including AA. (Exh. 3, at pp. 50-52.) The Governor stated,

> I also acknowledge that Ms. Van Houten has made efforts to improve herself in prison. She has participated in and facilitated self-help programming,

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> including Narcotics Anonymous, Victim Offender Education Group, and the Actors' Gang Prison Project. She has earned her bachelor's and master's degree and completed vocational training. Additionally, Ms. Van Houten has served on the Inmate Advisory Council and has an exemplary disciplinary record.

(Exh. 2, at p. 26.)

Lacking from this summary are any of the numerous programs, classes, and therapy Ms. Van Houten has taken specifically addressing insight, remorse, victim awareness, and acceptance of responsibility. The record establishes she has taken the following programs addressing insight, remorse, and responsibility:[10]

- Her therapeutic intervention began in the early 1970's. She was tasked with compiling an album of photographs from her time before joining the Manson cult, which reconnected her to her parents, siblings, and values of her family of origin. She also was part of a doctoral program given by the University of California at Santa Cruz entitled the History of Consciousness, which introduced her to the ideas of feminism and debunked the behavior of female subservience to men.

- In 1981, Ms. Van Houten participated in weekly psychotherapy with Dr. R. Lovey focusing on family dynamics. She learned she could accept how deeply affected she was by the

[10] This is a partial list of her extensive self-help classes and rehabilitative programming. It is limited to matters addressing insight, remorse, and responsibility.

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abortion, while still loving her mother. (Exh. 10.)

● From 1981 to 1987, Ms. Van Houten participated in small group counseling with led by Dr. M. Jimakas focusing on self esteem and personal identity. Through these groups, Ms. Van Houten was able to break the patterns of behavior from Manson's abuse. (Exh. 11.)

● In 1986, Ms. Van Houten was removed from "close custody." This allowed her to attend AA and NA programs. Throughout the rest of her incarceration up to the present time, she has attended AA and NA programs, when they were available. The 12-step program has become her structure for solving issues and living her life in the best way possible. She lives a life of amends, ends each day with an inventory, and promptly admits when she believes she is wrong. (Exh. 12.)

● In 1987, Ms. Van Houten continued her participation in AA and NA. (Exh. 12.)

● In 1989, Ms Van Houten continued to address insight, remorse, or responsibility by serving as the Vice Chairperson for the AA/NA executive body. (Exh. 12.)

● In 1991,Ms Van Houten engaged in the following programming addressing insight, remorse, and responsibility (Exh. 13):

- Continued participation n AA/NA and 12-step study.
- Completed 12-week group psychotherapy with Dr. H. Parker.
- Completed "Life Plan for Recovery" addressing the long-term effects of various narcotics. This affirmed

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Ms. Van Houten's strong dedication to sobriety.

- Psychiatric therapy with R.N. Armstrong, M.D., on the issue of remorse. Ms. Van Houten sought treatment from Dr. Armstrong to learn how to live a productive life while experiencing crushing regret.

- Continued participation in AA and NA in 1991.

- Served as Vice Chair of the AA/NA executive body.

- In 1993, Ms Van Houten engaged in the following programming addressing insight, remorse, and responsibility (Exh. 14):

  - Continued her participation in AA/NA.

  - Participated in group therapy group led by Dr. Greenwald focusing on eating disorders.

  - Ms. Van Houten expressed an interest in participating in the California Institution for Women's Substance Abuse Program. She was screened out of the program due to her history indicating she had accomplished most of the recovery tasks in the program and progressed beyond the scope of the program.

- In 1996, Ms Van Houten engaged in the following programming addressing insight, remorse, and responsibility (Exh. 15):

  - Participated in a class lead by psychotherapist D. H. Parker on "abusive bonding." The class taught her how she overlooked negative behaviors by those with whom she wanted to bond. Through this class, she learned how to pay attention to red flags of negative

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behavior.

- Continued her participation in AA/NA.

- Engaged in one-on-one sessions with J. J. Ponath, Psy.D, who helped her put Manson into perspective, and to deal with the loss from the abortion.

- In 1998, Ms Van Houten engaged in the following programming addressing insight, remorse, and responsibility (Exh. 16):

  - In preparing for the 1997 Board hearing, Ms. Van Houten was evaluated by R. McDaniels, Psy.D, who found that she presented a low risk of danger. He, however, noted that, while she is gracious to others, he was not sure she was gracious to herself. Ms. Van Houten learned from this comment that she needed to be kind to herself to minimize negative thinking and self doubt.

  - Served as the Secretary for the AA/NA executive body.

  - Served as the Chairperson for the AA/NA executive body.

  - Continued her participation in the AA/NA 12-step program.

  - Acted as a co-facilitator of the 12-step CODA meetings in 1998.

In 1998, the lifer group therapy sessions was discontinued at CIW.

- In 1990, Ms Van Houten continued her participation in AA and NA. (Exh. 17)

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- In 2002, Ms Van Houten engaged in the following programming addressing insight, remorse, and responsibility(Exh. 18):

  - Participated in a victim awareness course on Domestic Abuse.

  - Participated in the Prisoner's Drug Awareness and Relapse Prevention Program.

  - Completed a seminar given by Victim Services on the subject of victim impact. She found the information difficult to hear, but caused her to confront the depth of the loss she caused by taking the lives of Mr. and Mrs. LaBianca.

- In 2006, Ms Van Houten engaged in the following programming addressing insight, remorse, and responsibility (Exh. 19):

  - Continued AA/NA participation.

  - Completed an eight-week course in conflict resolution.

  - Completed a nine-week course in conflict resolution.

  - Completed a course on Victim/Offender Reconciliation.

  - Completed an eight-week course entitled Living a Life of Guilt Versus Shame; Living with a Lack of Resolution.

  - Acted as a co-facilitator in the Inmate Assistance Substance Abuse Module.

- In 2010, Ms. Van Houten participated in the following programming addressing insight, remorse, and responsibility

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(Exh. 19):

- Continued her participation in a 12-step program entitled Emotions Anonymous.
- Participated in Introduction to Restoration Justice.

● In 2012, Ms. Van Houten earned a Master Degree in Humanities. The topic of her thesis was rehabilitation. (Exh. 20.)

● In 2013, Ms Van Houten engaged in the following programming addressing insight, remorse, and responsibility (Exh. 20):

- Participated in Emotions Anonymous.
- Completed a course entitled Advanced Restorative Justice.
- Completed another course on Victim Impact.
- Completed seminar entitled Relapse Prevention.
- Underwent 12 sessions of therapy focusing on developing boundaries and attachment patterns. This group therapy was for inmates who were not part of the prison's CCCMS program.
- Participated in the SMART program, addressing continued substance sobriety inside and outside of prison.

● In around 2015, Ms. Van Houten engaged in the following programming addressing insight, remorse, and responsibility (Exh. 21)

- Completed a one-year course offered by the Victim Offender Education Group (VOEG) addressing responsibility and victim impact. The course caused

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Ms. Van Houten to understand her personal responsibility in the murders and impact of her crime on those she harmed. The course ended with the program's participants describing their crimes to the victim's next of kin from unrelated murders. The participants also had to listen to people who lost loved ones in murders describe the impact the murder had on their lives.

- Participated in the Transformative Justice Symposium, which involved the next of kin of murder victims. The next of kin described the impact of murders on them and their families. This caused Ms. Van Houten to again confront the lifelong sorrow her crimes caused the LaBianca family.

- Completed 176 hours of the Victim Offender Education Group.

● In 2016, Ms Van Houten engaged in the following programming addressing insight, remorse, and responsibility (Exh. 22):

- Participated in the Actors' Gang Prison Project. The program using acting exercises to access strong emotions, like sadness, anger, fear, and happiness. This develops the ability to identify behavioral triggers and skills to defuse negative consequences.

- Participated in Emotions Anonymous.

- Served as a facilitator of the Victim Offender Education Group

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- Served as a facilitator of the Actors' Gang Prison Project.

- Participated in the White Bison Recovery Group.

● In 2017-2018, Ms Van Houten engaged in the following programming addressing insight, remorse, and responsibility (Exh. 1, at pp. 10-11; Exh. 23):

- Served as a facilitator of the Actors' Gang Prison Project.

- Served on the Suicide Prevention Committed.

- Served on the Transformative Justice Symposium planning committee.

- Served as a facilitator for Healing From Violence: Exploring Trauma and Resiliency.

- Continued her participation in NA meetings.

- Participated in the SMART prison group addressing addiction rehabilitation inside and outside of prison.

- Participated in group therapy addressing aging in prison.

● In 2019, Ms Van Houten engaged in the following programming addressing insight, remorse, or responsibility (Exh. 22; Exh. 24):

- Served as a facilitator in the Victim Offender Education group. This position involved 170 of group sessions.

- Completed five years of participation ion the Actors' Gang Prison Project.

- Completed the "If Project" intensive workshop.

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- Completed a five-week course entitled "Mindfulness.

- Participated in "This is Me." The program involved psycho-educational group therapy to identify and understand person triggers.

- Participated in the training for a program entitled Helping Women Recover.

- Completed an eight-week group counseling program entitled Advanced Trauma.

● In 2020, Ms Van Houten engaged in the following programming addressing insight, remorse, and responsibility (Exh. 22; Exh. 24):

- Received Peer Mentoring recognition for her involvement in Helping Women Recover.

- Served as a volunteer for Peer Mentoring in the course entitled Beyond Violence.

- Enrolled in the ISUDT Program (Integrated Substance Use Disorder Treatment). Began the program.

- Served as volunteer in the Peer Mentoring program entitled Healing Trauma.

- Served as a facilitator for the NA 12-step program.

- Received a certificate of participation in Understanding and Reducing Angry Feelings, as part of the ISUDT curriculum.

- Participated in the Mindful Kindness Program.

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- Ms. Van Houten's ongoing programs address insight, remorse, and responsibility are as follows (Exh. 22);[11]

  - Serving as a facilitator in the Helping Women Recover program.
  - On going work on the ISUDT Curriculum.
  - Participation in Peer Mentoring program entitled Forgiveness and Healing.
  - Participation in the Mindful Kindness program.

This remarkably extensive programming, coupled with Ms. Van Houten's sincere testimony at the parol hearing proving tat she has internalized this programming, negates the Governor's claim that Ms. Van Houten "needs to do more" to show insight, remorse, and responsibility. There simply is nothing more she can, or needs to do. She has achieved insight, responsibility and deep remorse through her tireless work.

The Governor was obligated to consider Ms. Van Houten's entire record of rehabilitation, as it comprises her overall circumstances, and analyze why this extensive record specifically addressing insight, responsibility, and remorse does not satisfy his concerns. His ill-supported conclusion that she needs to do more fails to provide even a modicum of evidence supporting a nexus to the overall conclusion of Ms. Van Houten's current dangerousness based on the totality of her circumstances. It simply is untrue that Ms. Van Houten lacks insight.

The Governor's repeated refusal to recognize the evidence of

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[11] Ms. Van Houten completed many of these program after her 2021 parole hearing because of mandatory COVID quarantines.

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Ms. Van Houten's insight, remorse, and responsibility raises to the level of a due process violation because it is clear from the Governor's denial that there is *nothing* Ms. Van Houten can do to earn parole from Governor Newsom. Our Supreme Court has denounced a blanket rule that automatically excludes parole for individuals convicted of a particular type of offense as a violation of constitutional due process. (*In re Rosencrantz, supra*, 29 Cal.4th at pp. 683-684.)

V.
THE GOVERNOR HAS CREATED A PAROLE STANDARD MS. VAN HOUTEN CAN NEVER ACHIEVE BY FAILING TO GIVE SERIOUS CONSIDERATION TO THE HALLMARK FEATURES OF YOUTH IN ASSESSING HER INSIGHT INTO THE CAUSATIVE FACTORS LEADING TO HER PARTICIPATION IN THE LABIANCA MURDERS.

A. Summary of the Governor's Error.

The Governor found Ms. Van Houten's statement to Dr. Athans that stabbing Ms. LaBianca was a "horrible, predatory feeling" to be inconsistent with telling a Manson follower at the age of 19 that the killings were "fun." The Governor found a further inconsistency in the fact Ms. Van Houten "continued to prepare for the revolution" until she was arrested. According to the Governor, the differences between Ms. Van Houten's current description of the stabbing and her conduct at the time of the

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murders showed inconsistent gaps in her "insight or candor, or both, which bear on her current risk for dangerousness." (Exh. 2, at p. 26-27.)

This misinterpreted Ms. Van Houten's testimony. Her description to Dr. Athans in 2018 that stabbing Ms. LaBianca was a "horrible, predatory feeling" was from the perspective of a 70-year-old woman after decades of programming and therapy. (Exh. 1, at p. 12.) Her comment to a cult member that the stabbing was "fun" was from the perspective of a 19-year-old youth. (Exh. 3, at p. 24.) The hallmark features of youth explain these differences. Rather than providing evidence of Ms. Van Houten's current dangerous, it is a vivid example of her rehabilitation. The Governor's failure to give these factors great weight constitutes reversible error.

B. <u>The Governor Did Not Give "Great Weight" to the Youth Offender Factors in Assessing Ms. Van Houten's Insight, Remorse, and Acceptance of Responsibility</u>.

Although the Governor claimed to give great weight to the hallmark features of Ms. Van Houten's youth and listed the youth factors, he failed to discuss any of these factors within the context of the record. The Governor paid lip service to the requirement that he consider the youth factors but the record gives no indication he actually did so, much less gave these factors "great weight" as he was statutorily obligated to do. (§ 4801, subd. (c).) The Governor rejected out of hand Ms. Van Houten's lengthy explanation to the Board of the "causative factors" for her

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involvement in the Manson cult and LaBianca murders. By restricting himself to logical, rational reasons for Ms. Van Houten's conduct from the perspective of an adult, the Governor failed to allow for, much less give great weight to, the mind set of a 19-year-old female immersed in the lifestyle of a violent cult and who regularly ingested mind altering drugs. (*People v. Poole* (2018) 24 Cal.App.5th 965, 982; *People v. Perez* (2016) 20167 Cal.App.5th 65, 92-93.)

In addition to the hallmark features of youth, section 4801, subdivision (c), also required the Governor to give great weight to "any subsequent growth and increased maturity of the prisoner in accordance with relevant case law." The Governor stated, "In making this decision, I carefully examined the record for evidence demonstrating Ms. Van Houten's increased maturity and rehabilitation, . . ." (Exh. 2, at p. 25.) This is the sum total of his consideration and does not explain why he rejected the contrary conclusion reached by Dr. Athans.

In considering the youth offender factors, Dr. Athans stated,

> "Ms. Van Houten expressed what appeared to be genuine regret for her involvement in the life crime and she assumed full responsibility for her behavior, without externalizing blame. It appears she has spent decades attempting to understand, or gain insight into, the factors that led her to become involved with Manson and to believe wholeheartedly what she was instructed to believe. Ms. Van Houten has not shown herself to be violent in the many years of her incarceration. She has followed the rules of the

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> institution, has participated in self-help programs and therapy extensively, has earned positive reports from supervisors and clinicians, and overall, she appears to have benefitted from the rehabilitation process."

Exh. 1, at p. 20.)

The Governor has the right to draw contrary conclusions from those of Dr. Athans, provided his disagreement is based on something more than a personal belief that Ms. Van Houten should gain more insight. The Governor erred by not stating reasons for rejecting Dr. Athans's finding that Ms. Van Houten has been fully rehabilitated in prison. (See *In re Roderick, supra,* 154 Cal.App.4th at pp. 271-272; cf. *In re Lawrence, supra,* 44 Cal.4th at pp. 1226-1227.)

The record establishes that Ms. Van Houten long ago disavowed the values of her youth that led to her joining the Mason cult and ultimately participating in the LaBianca murders. Her testimony at the Board hearing, conclusions of Dr. Athans, extensive record of rehabilitative programming, decades of therapy, educational achievements, extensive work in prison, and lack of prison discipline prove she has dedicated herself to developing the skills and internal resources needed to spend the rest of her life as a positive member of free society. She has expressed understanding of what caused her to commit a heinous crime at the age of 19-year-old, over 50 years ago, and remorse for taking innocent life and the resulting pain she inflicted on the victim's family. Ms. Van Houten's record provides no support for the Governor's finding that her lack of "insight or candor, or both"

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makes her a current risk for danger to public safety. (Exh. 2, at p. 26-27.)

Considering the contrast between the irrationality, impulsivity, and recklessness of Ms. Van Houten's offense as a 19-year-old, and the evidence of her subsequent development of maturity and changes in attitude and conduct, the Governor's decision shows he did not take seriously the directive of sections 3051 and 4801, subdivision (c), to provide Ms. Van Houten with a "meaningful opportunity to obtain release," with "great weight" given to "the diminished culpability of juveniles as compared to adults, the hallmark features of youth, and any subsequent growth and increased maturity of the prisoner in accordance with relevant case law."

C. Ms. Van Houten's Immature Cognitive Development Explains the Difference Between Her View of the Murders at the Age of 19 and Her Current Assessment at the Age of 72.

Ms. Van Houten was born on August 23, 1949. (Exh. 1, at p. 6.) She was 19 when she participated in the LaBianca murders. This placed her in the lower range of the definition of a youth offender, which extends through a defendant's 25th year. (§§ 3051, 4801.)

The record shows Ms. Van Houten's youth permeated every aspect of her involvement in the Mason cult and LaBianca murders. An adult might have appreciated that Manson was psychotic and his vision of the future delusional, Ms. Van Houten

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was making decisions with a still developmentally immature brain. Because of this, it was error for the Governor to evaluate her under the same parole standard as an adult without giving great weight to the hallmark features of youth and diminished culpability of a youth offender.

1. Impulsivity, Emotionally-Based Decision Making, and the Inability to Evaluate Consequences.

In *Miller v. Alabama*, the United States Supreme Court recognized the tendency of adolescents toward immaturity, impetuosity, and irresponsibility. (*Miller v. Alabama* (2012) 567 U.S. 460, 472.) The predisposition for sensation seeking, hypersensitivity to immediate rewards, and decision making that focuses on the present is highest in middle to late adolescence. The cognitive capacity for self-regulation does not stabilize until around the age of 25. (*White Paper on the Science of Late Adolescence A Guide for Judges, Attorneys, and Policy Makers* (2022) Harvard Medical School, at p. 10 [hereinafter *"White Paper*"].)[12]

New neuroscience research reveals that during emotionally charged situation, late adolescents, aged 18 to 21, responded more like younger adolescent than like younger adults. They

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[12] https://clbb.mgh.harvard.edu/white-paper-on-the-science-of-late-adolescence/

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regress to a younger emotional state in late adolescence. (*White Paper,* at p. 2.) They are more easily swayed by adult influence and coercion than their adult counterparts. This adds to a lessened ability to personally evaluate decision. (*Ibid*.)

Emotional cues diminish a youth's self-control into the mid-twenties. (*Id*. at p. 12.) The hypersensitivity to emotional stimulus and resulting lack of self control causes the adolescent mind to make emotionally driven decisions, as well as engage in impulsive behavior and poor judgment. (*Id*. at p. 13.)

Immature brain development also causes youths to evaluate risks and benefits differently than people in their late twenties and thirties. "While adults tend to integrate the potential consequences of decisions, middle and late adolescents exhibit less future-oriented decision-making." (*Id*. at p. 14.)

Ms. Van Houten made the impulsive decision to join what she thought was a harmless hippie commune. Her youth made her unequipped to appreciate that the commune was a cult run by a violent psychopath. Once her life at the commune began turning violent, she did not have the maturity to extricate herself from that environment. Ms. Van Houten's willingness to believe that Manson was Christ incarnate and join him as a catalyst for an achievable utopian future showed a "lack of maturity and an underdeveloped sense of responsibility, leading to recklessness, impulsivity, and heedless risk-taking." This is the very definition of the hallmark features of youth resulting from cognitive immaturity. (*People v. Franklin, supra,* 63 Cal.4th at pp. 274-275 [citing *Miller v. Alabama, supra*, 567 U.S. at pp. 471-472].)

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2. Impact of Childhood Adversity and Trauma on Adolescent Behavior.

A growing body of research links an individual's childhood environment with brain development. Youth offenders have a substantially higher rate of childhood adversity and trauma than is present in the general population. (*"White Paper,"* at p. 17.) Research estimates that up to ninety percent of adolescents involved in the criminal justice system have experienced at least one adverse experience and more than twenty percent meet the criteria for post-traumatic stress disorder. (Carly Dierkhising, et al., *Trauma Histories Among Justice-involved Youth: Findings From the National Child Traumatic Stress Network* (2013) 4 Eur. J. Psychotraumatology 20274; Karen Abram, et al., *PTSD, Trauma, and Comorbid Psychiatric Disorders in Detained Youth* (2013) OJDP Juv. Just. Bulletin (U.S. Dept. Just. Off. Juv. Justice & Delinquency Prev., Washington, D.C.) This far exceeds the overall prevalence of PTSD, in which approximately five percent of adolescents meet the criteria for this condition. (Nat'l Inst. Health, *Post-Traumatic Stress Disorder* (2019), [https://perma.cc/M53J-QDD7].)

The types of childhood adversity most commonly resulting in criminal behavior include psychological trauma and general neglect. These negative experiences increase the risk for psychopathology in late adolescence. The extent of the impact on brain development depends on the number and severity of adverse events in an individual's early life. (Joan Luby et al, *Association Between Early Life Adversity and Risk for Poor*

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Emotional and Physical Health in Adolescence: A Putative Mechanistic Neurodevelopmental Pathway (2017) 171 JAMA Pediatrics 1168, 1168–1175; *White Paper*, at p. 18.)

Common behaviors found in people who have experienced childhood adversity or trauma include the inability to distinguish between actual threats and non threatening behavior, and to experience difficulty in regulating emotions, such as fear and anger. It also causes increased criminal or antisocial behavior and propensity for violence in the late adolescence. (*White Paper*, at p. 21; Bell, *A Stone of Hope: Legal and Empirical Analysis of Juvenile Lifer Parole Decisions* (2018) Harvard Civil Rights-Civil Liberties L.Rev., vol. 54.)

Ms Van Houten spent her first 14 years as the oldest daughter of a "typical middle class family." When she was 14, her father left the family "for a younger woman," and was married twice after the divorce from her mother. Her father was an alcoholic who became sober after joining AA when Ms. Van Houten was a toddler. The divorce was her first significant trauma because of her close relationship to her father. She also felt the stigma in the 1960's of being the child of divorced parents. Thereafter, she became rebellious and started using alcohol and drugs.

While still in high school, Ms. Van Houten became pregnant and "really really wanted the child." Her mother forced her into an illegal abortion that took place in the family home. (Exh. 1, at pp. 7-8, 14.) Ms. Van Houten described herself as "broken" and "deeply wounded" after the divorce. (Exh. 3, at p. 29.) After the abortion, Ms. Van Houten shut down emotionally.

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She lost touch with her feelings and felt numb. (Exh. 1, at p. 20.) She felt like a horrible person for allowing her mother to set up the abortion and blamed herself for allowing it to happen. (Exh. 3, at pp. 29, 94 .) This was her mental state when Catherine Share and Robert Beausoleil recruited her into the Manson cult. (Exh. 1, at pp. 8-9.) The abortion was the second major trauma in Ms. Van Houten's life. It changed the direction of her life. (Exh. 1, at p. 14; Exh. 3, at p. 12.)

The youthful trauma Ms. Van Houten experienced created an inability to distinguish between actual threats and non threatening behavior. It also interfered with her ability to regulate her emotions, like anger and fear, and increasing her likelihood for criminal or antisocial behavior as a youth. Ms. Van Houten described intense anger toward her mother, who she blamed for the divorce. It also is seen in her shutting down emotionally and not being able to distinguish between a benign "hippie commune" and dangerous cult.

3. Impact on Peer Influence and Resulting Adolescence Behavior.

Peer influence plays a significant role in adolescent conduct, including decision-making, impulse control, and risk-taking behaviors. Late adolescents are as susceptible to peer influence as early to middle adolescents. (*White Paper,* at p. 34.) Once again, they mirror the immaturity of younger adolescents rather than young adults because of their immature brain development. "Late adolescents are willing to compromise their

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own reputations and perhaps even their liberty to benefit their close friends despite negative personal consequences." (*Id.* at p. 34.)

It has been shown that people in late adolescence are more likely to take risks in the presence of peers than when they are alone. (F. E. Zimring, *American Youth Violence* (2020) Oxford University Press on Demand.) This explains why many of the crimes committed by adolescents involve peers. (*White Paper,* at p. 24.) Peer involvement is associated with changes in brain responses during adolescence (*Ibid.*) Specifically, peer presence enhances responses in a brain region that is important for motivation and reward processing. The effect of peer presence on reward-related activity in the immature brain directly relates to enhanced risk-taking in adolescents. This sensitivity to peer influence can cause a youth to imitate the negative behavior of a friendly peer, such as substance abuse, poor decision-making, and criminal conduct. (*White Paper*, at pp. 25-26.)

The influence of peer pressure on the immature adolescence brain had a marked impact on Ms. Van Houten's conduct. Once in the Manson cult, she lost herself in the group persona and became strongly influenced by dominate peers. Her conduct displayed a susceptibility to the influence of Manson. She also was strongly influenced by older, dominate peers. As a mature adult, she has internalize the skills she developed in therapy and programming classes to permanently break the cult mentality. (*Miller v. Alabama, supra,* 567 U.S. at p. 476.)

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4. **Greater capacity for rehabilitation**.

The study conducted in the *White Paper* also found that late adolescents are remarkably resilient. Their developing brains are poised for positive learning through interventions and rehabilitation. (*White Paper,* at p. 3.) This ability for rehabilitation once the adolescent brain matures accounts for the recognition in *Miller* that the hallmark features of youth must include consideration of a youth offender's diminished culpability. (*Miller v. Alabama, supra*, 567 U.S. at pp. 465, 471.)

The remarkable rehabilitation of Ms. Van Houten supports the neuroscience that an adolescent offender has a strong facility for positive learning and reform. (Section 3041.5.) The Governor failed to consider this factor.

C. **The Governor Violated Ms. Van Houten's Liberty Interest in Parole and State Statutory Law by Evaluating her Suitability Against a Parole Standard She can Never Achieve**.

The Governor's unsupported statement that he gave "great weight" to the hallmark features of youth was no more than lip service in the place of serious consideration of the youth offender factors. (*In re Perez, supra,* 7 Cal.App.5th at p. 93; see § 4801, subd. (c).) The Governor failed to discuss how he applied the constitutional, statutory, and scientific recognition of these factors in concluding that the inconsistency between Ms. Van Houten's current description of her involvement in the stabbing

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from her actions after the stabbing until her arrest shows "gaps," in her "insight" and "candor."

By neglecting to give serious consideration to the hallmark features of youth, the Governor has omitted the critical analytical tool needed to evaluate the differences between Ms. Van Houten's conduct and feelings as a 19 year old with immature brain development versus the rehabilitated elderly woman she is today. It also forecloses the ability to assess the dramatic cognitive growth Ms. Van Houten has experienced in the past 52 years.

This omission resulted in the Governor judging Ms. Van Houten's actions as a youth offender under the same standards as an adult, and erased her ability to prove how her mentality has changed so that she is no longer dangerous to society. In this way, the Governor has created a standard for assessing Ms. Van Houten's current dangerousness that she can never meet. The explanation for her conduct at the time of the stabbing is found in the hallmark features of her youth. Until the Governor gives serious consideration to these factors, he will never find her explanations insightful or satisfying. (U.S. Const, 5th and 14th Amends; Cal. Const., art. I, § 7, subd. (a); *Hewitt v. Helms* (1983) 459 U.S. 460, 466 (liberty interests protected by the Due Process Clause arise from two sources, the Due Process Clause itself and the laws of the States); *Ford v. Wainwright* (1986) 447 U.S. 399, 428 (conc. opn. of J. O'Connor); *People v. Rosencrantz, supra,* 29 Cal.4th 616, at p. 682.)

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VI.

MS. VAN HOUTEN'S OVERALL CIRCUMSTANCES MEET THE STANDARD FOR PAROLE SUITABILITY BY PROVING SHE DOES NOT CURRENTLY POSE AN UNREASONABLE RISK OF DANGER TO PUBLIC SAFETY.

As demonstrated, none of the factors relied on by the Governor, whether alone or collectively, provide some evidence of Ms. Van Houten's current dangerousness. To support his reversal of the Board's grant of parole, the Governor had to establish that Ms. Van Houten poses a current unreasonable risk of danger to public safety based on her overall circumstances. That is not possible when evaluated against Ms. Van Houten extensive rehabilitative programming, therapy, work history, prison conduct, self-help classes, and educational advancement.

The Board issued its fourth grant of parole after finding Ms. Van Houten's crimes and initial lack of remorse was overcome by her remarkable record of rehabilitation. She has undergone extensive psychological therapy. The success of her therapy can be seen in the 27 CRAs, and the unanimous conclusions beginning in 1978 that she was not violent and presented a low risk of violent recidivism if she was released on parole. (See Exh. 1, at pp.11-12, 21-22.)

Since 1976, Ms. Van Houten has been free of all drugs and alcohol and continues to participate in substance abuse rehabilitation programs. (Exh. 3, at pp. 56-58.) A sampling of the programs she has completed include Self-Management and

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Recovery Training (SMART); Inside out; Suicide Prevention Committee; Narcotics Anonymous (NA); Helping Women Recover; Advanced Trauma; Victim Offender Education Group (VOEG); Actor's Gang Prison Project; and Victim Offender Reconciliation Program. (See, e.g., Exh. 3, at pp. 56-58, 67.) Ms. Van Houten has also engaged in one-on-one counseling, which helped her develop a deeper understanding of her parents' divorce, the abortion, and her mind set at the time of the murders. (Exh. 3, at pp. 53, 116, 118.)

Ms. Van Houten has worked as a tutor for nearly 20 years. She has earned a Bachelor of Arts degree in English Literature, with a minor in psychology. She also earned a Master Degree in the humanities. The subject of her Master's thesis was sustainable rehabilitation and used to this day in clinical applications. (Exh. 3, at pp. 6-7, 115) She also has worked as a teaching assistant in the expanding Chaffey College prison program and UCLA's Merits of Change. She has repeatedly served as the chairperson of the Women's Advisory Council, which she counts as one of her hardest, yet most rewarding positions. (Exh. 3, at pp. 6, 98.) Her many laudatory chronos are too numerous to list. (Exh. 3, at p. 98.)

The Board recognized that Ms. Van Houten has spent the last 50- years agonizing over her criminal conduct and working tirelessly to overcome the damage she has caused. During the parole board hearing, she expressed wrenching remorse for her conduct and provided extensive testimony describing her personal culpability and participation in the Manson cult. Based on this evidence, the Parole Board concluded that Ms. Van Houten is not

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the same person as the young woman who entered prison 50-years-ago.

The Governor brushed over these accomplishments and gave little consideration of the way in which Ms. Van Houten's youth contributed to her behavior. By focusing on her past and ignoring the woman she is today, the Governor's reversal failed to establish the requisite evidentiary nexus between Ms. Van Houten's current circumstances and the factors he claimed proved that she remains unsuitable for release to parole. (*Shaputis II, supra,* 53 Cal.4th at p. 209; *In re Prather, supra*, 50 Cal.4th at pp. 251-252; *In re Lawrence, supra,* 44 Cal.4th at p. 1191.)

VII.
THE GOVERNOR'S SERIAL DENIALS OF PAROLE VIOLATE THE CALIFORNIA CONSTITUTION'S PROHIBITION AGAINST CRUEL AND UNUSUAL PUNISHMENT BY TURNING MS. VAN HOUTEN'S INDETERMINATE LIFE SENTENCE INTO A DE FACTO SENTENCE OF LIFE WITHOUT THE POSSIBILITY OF PAROLE LONG AFTER SHE HAS MET THE STANDARD FOR PAROLE SUITABILITY.

A. Summary of the Argument.

The Governor's refusal to fairly apply the governing legal standard to Ms. Van Houten's individualized circumstances constitutes the imposition of a de facto sentence of life without

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the possibility of parole. The Governor lacks the authority to change Ms. Van Houten's indeterminate life sentence with a minimum service term of seven years into a sentence without a meaningful chance at life outside of prison.

Ms. Van Houten's continued incarceration implicated the additional violation of the prohibition against cruel and usual punishment because her continued incarceration is excessive in view of her demonstrated parole suitability. (*In re Palmer* (2021) 10 Cal.5th 959, 855-956 (*Palmer II*); Cal. Const, art I, § 17.) This is particularly true because she qualifies as a youthful offender. (*Id.,* at p. 902 [concurring opn., Liu, J.]; § 3051.) The reversal of the Governor's decision is required for this additional reason.

B. <u>The Legal Standard for Claims of Cruel and Unusual Punishment Based on Excessive Incarceration</u>.

In general, fixing appropriate penalties for crimes falls within the exclusive province of the Legislature. (See, e.g., *People v. Ward* (2005) 36 Cal.4th 186, 218; *People v. Dillon* (1983) 34 Cal.3d 441, 478.) Sentences implicate sensitive questions of policy and values that "are in the first instance for the judgment of the Legislature alone." (*In re Lynch, supra,* 8 Cal.3d at p. 414.) However, the legislative power to craft punishments is subject to the constraints imposed by the state and federal Constitutions against sentences that constitute cruel and unusual punishment. (U.S. Const., 8th Amend.; Cal. Const., art. I, § 17.) Defendants may rely on these constitutional provisions to obtain relief from a sentence that was otherwise lawfully imposed. (See *Hutto v.*

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Davis (1982) 454 U.S. 370, 374; *In re Dannenberg, supra,* 34 Cal.4th at p. 1071.) "Life-top inmates may test, in court, whether their continued punishment violates the Constitution" based on the serial denial of parole. (*In re Palmer II, supra,* 10 Cal.5th at p. at 971.)

A claim of cruel or unusual punishment can arise from the statutory punishment for a crime. Such claims fall under the Eighth Amendment's prohibition against cruel and unusual punishment. The California Constitution provides greater protection by recognizing a claim of cruel and unusual punishment based on a sentence that has become excessive because of the actual number of years the prisoner has served. (*In re Palmer, supra,* 10 Cal.5th at pp. 970-971.)

Ms. Van Houten is not challenging the constitutionality of her indeterminate life sentence with a minimum service term of seven years for the crime of murder. She long ago served her minimum service term of seven years and recognizes that affixing a penalty to a crime lies with the Legislature. Only the rarest of cases will result in a finding that a sentence mandated by the Legislature is unconstitutionally excessive. (See *Harmelin v. Michigan* (1991) 501 U.S. 957, 998.) However, even if sentenced to a life-maximum term, no prisoner can be made to serve a prison term that is grossly excessive. Excessive confinement violates the cruel or unusual punishment clause of the California Constitution. (*In re Dannenberg, supra*, 34 Cal.4th at p. 1096; Cal. Const., art. I, § 17.) In Ms. Van Houten's case, her continued custody after five grants of parole and proven rehabilitation has become unconstitutionally excessive. (Cal. Const., art I, § 17; *In*

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re Palmer, supra, 10 Cal.5th at pp. 970-971; see *In re Dannenberg, supra,* 34 Cal.4th at p. 1096.)

The California Supreme Court in *In re Palmer* affirmed its decades old recognition that inmates serving indeterminate life sentences who are repeatedly denied release on parole may bring their challenges alleging cruel and unusual punishment directly to the courts in a petition for writ of habeas. (*In re Palmer, supra,* 10 Cal.5th at pp. 970, 974-975.) The court in *Palmer* explained, "It remains the judiciary's responsibility to decide whether a prison term has become excessive, and a court properly respects the Legislature's prerogative not by performing some ritualistic deference, but by analyzing the challenged punishment under the traditional, lenient legal standard" set forth in *In re Foss* (1974) 10 Cal.3d 910 and *In re Lynch* (1972) 8 Cal.3d 410. (*In re Palmer, supra,* 10 Cal. 5th at p. 971.) Such a claim does not infringe the Legislature's authority to decide the punishment for a crime, as the number of years an inmate serves on an indeterminate life sentence is determined by the Board or Governor's decision to grant or deny parole. The Legislative direction is only that the Board "shall normally grant parole" unless "consideration of the public safety requires a more lengthy period of incarceration for this individual." (§ 3041, subds. (a)(2) & (b)(1).) The Board or Governor decides whether to grant release on parole based on the determination of the prisoner's suitability for release. (§§ 3041, 3041.5; *People v. Lawrence, supra*, 44 Cal.4th at pp. 1221, 1227; *In re Dannenberg, supra,* 34 Cal.4th at pp. 1083-1084, 1095; *In re Stoneroad, supra,* 215 Cal.App.4th at p. 617.)

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C. Ms. Van Houten's Sentence has become Excessive, in Violation of the Prohibition Against Cruel and Unusual Punishment.

Ms. Van Houten is 72 years old. She has spent 52 years in prison. She participated in the commitment murder at the age of 19, qualifying her as a youthful offender. This writ involves the Board's fourth grant of parole. She received a fifth grant of parole in 2021. Added to this is her lack of any criminal history, any acts of violence before or after the commitment offense, decades of findings by evaluating psychologists that she does not present a risk of future violence, a perfect record of prison behavior, and an exhaustive list of self-help classes, prison programming and psychological theory addressing insight, remorse and responsibility. Her continued incarceration for more than 50 years based on a crime she committed as a youthful offender, in which the Board has found her suitable for parole in the last five consecutive parole hearings, is "shocking and offensive" within the definition of cruel and unusual punishment. (Cal. Const., art. I, § 17.)

The jury that convicted Ms. Van Houten did not have the benefit of the science regarding the hallmark features of youth or diminished culpability of youth offenders.[13] Even so, it convicted

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[13] The science regarding adolescent brain development was not available to Ms. Van Houten's jury. It only had been recognized in criminal law for around the last 15 years old. This science led to the United States Supreme Court changing how juveniles are sentenced in 2012 in the landmark case *Miller v. Alabama* (2012) 132 S.Ct. 2455. Subsequent United States and California Supreme Court cases have expanded and codified youth offender considerations.

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her under the vicarious liability theory of felony murder and not the charged offenses of first degree premeditated murder.

In recognition of Ms. Van Houten's lesser culpability, the trial court imposed concurrent indeterminate life sentences. (*In re Van Houten supra,* 113 Cal.App.3d at p. 347.) At the sentencing hearing, the court gave "serious attention" to sentencing Ms. Van Houten to probation. It ultimately declined to do so because nobody convicted of a first degree murder in California had ever been granted probation. (Exh. 4.) The court awarded Ms. Van Houten eight years and 120 days of presentence custody credits, making her eligible for parole at the time of sentencing. (Exh.3, at pp. 3, 95.) Neither side appealed the sentence.

The purpose of parole is to help an inmate "reintegrate into society as constructive individuals as soon as they are able, without being confined for the full term of the sentence imposed." (*Morrissey v. Brewer* (1972) 408 U.S. 471, 477.) The Governor's serial parole reversals not only violates the prohibition against cruel and unusual punishment by requiring her to remain in prison long after she had met the standard for release, it also negates the importance of the vital role parole serves in our system of criminal justice. This violates the liberty interest in parole.

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VIII.

MS. VAN HOUTEN'S RIGHTS OF CONSTITUTIONAL DUE PROCESS WERE VIOLATED WHEN THE PROSECUTION WITHHELD EXCULPATORY EVIDENCE CONTAINED IN THE AUDIO RECORDINGS OF CHARLES "TEX" WATSON.

A. Summary of the Argument and Evidence.

Ms. Van Houten was denied access to the Watson Tapes at her 2017 *Franklin* hearing and all of her parole hearings. A *Franklin* hearing permits the introduction of evidence regarding the hallmarks of youth by a defendant who qualifies as a youthful offender. (*People v. Franklin* (2016) 63 Cal.4th at p. 284; § 3051.) The evidence admitted at a *Franklin* hearing can come from the defendant and prosecution, and is subject to the rules of evidence. (*Ibid.*)

Ms. Van Houten has been attempting to obtain the Watson Tapes since her parole hearing in 2017. At the beginning of each hearing, she objects to the Watson Tapes not being disclosed despite counsel having filed repeated discovery motions for the disclosure of the tapes. (Exh. 7.) At the 2017 hearing, Ms. Van Houten's counsel went so far as making a motion to disqualify the entire Office of the District Attorney due to the unfairness of the District Attorney having access to the Watson Tapes, but refusing to provide this discovery to the defense. The District Attorney's initial reason for not disclosing the tapes was that ongoing investigations would be jeopardized by the disclosure of the tapes. The superior court conducting Ms. Van Houten's 2017 *Franklin* hearing did not believe that any investigations could still be

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"ongoing" for a crime committed in 1969 and after the responsible parties had been tried and convicted. The court demanded that the prosecutor provide it with the transcripts of the tapes, which it reviewed in camera.

Prior to providing the court with the tapes, the prosecutor admitted that there were no ongoing investigations after 48 years and that there were four references to Ms. Van Houten in the tapes. The court ordered the prosecutor to flag the four references to Ms. Van Houten prior to providing the court with the tapes. The prosecutor then admitted there might be more than four references to Ms. Van Houten. To this day, neither Ms. Van Houten nor her counsel have been given access to the Watson Tapes notwithstanding the admitted references to Ms. Van Houten. The Watson Tapes are necessary to prove the truth of Ms. Van Houten's statement regarding Manson's conduct as the leader of his cult, and the violent control he exerted on his cult members, including Ms. Van Houten.

Penal Code section 1054.1 states in pertinent part,

> The prosecution "shall disclose to the defendant or his or her attorney all of the following materials and information, if it is in the possession of the prosecuting attorney or if the prosecution attorney knows it to be in the possession of the investigating agencies: . . . (b) Statements of all defendants . . . (c) All relevant real evidence seized or obtained as a part of the investigation of the offenses charged."

Charles "Tex" Watson was a co-defendant, but he and Ms. Van Houten were tried separately. Therefore, Ms. Van Houten

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had the statutory right to disclosure of the tapes under section 1054.1.

Further, Ms. Van Houten has the right to disclosure of the tapes as part of her *Franklin* evidence. A hearing under *Franklin* allows the defendant access to any evidence pursuant to the procedures set forth in section 1204 and rule 4.437 of the California Rules of Court limited only by the evidence code. The subject of the *Franklin* hearing is allowed to "place on the record any documents, evaluations, or testimony (subject to cross-examination) that may be relevant at his eventual youth offender parole hearing, and the prosecution likewise may put on the record any evidence that demonstrates the juvenile offender's culpability or cognitive maturity, or otherwise bears on the influence of youth-related factors." (*People v. Franklin, supra,* 63 Cal.4th at p. 284.) Therefore, any admissible, relevant evidence, including but not limited to evidence subject to disclosure under *Brady v. Maryland* (1963) 373 U.S. 83 material, should be given to the defendant for purposes of establishing the youthful offender evidence for use in obtaining parole. Ms. Van Houten has repeatedly been denied this opportunity. This is a direct violation of right under state statutory law, and Constitutional rights of confrontation under the Sixth Amendment.

B. <u>The Constitutional Right to Discovery Under *Brady v. Maryland*</u>.

There are three components of *Brady*: the evidence at issue must be favorable to the accused; that evidence must have been

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suppressed by the State, either willfully or inadvertently; and prejudice must have resulted. (*Strickler v. Greene* (1999) 527 U.S. 263, 281-282 (*Strickler*); *Edwards v. Ayers* (9th Cir. 2008) 542 F.3d 759, 768.) The terms "suppression," "withholding," and "failure to disclose" have the same meaning for *Brady* purposes. (See *Benn v. Lambert*, 283 F.3d 1040, 1053 (9th Cir.2002).) It does not matter that *Brady* material involves "the good faith or bad faith of the prosecution." (*Brady v. Maryland* (1963) 373 U.S. at p. 87.) *Brady* does not distinguish between pre and post conviction evidence held by the government. (*Ibid.*) Ms. Van Houten renews her request that the Court apply *Brady* in this case.

It cannot be disputed that the first component of *Brady* requiring that the evidence is favorable to the defendant exists in this case. The Court conducting the *Franklin* hearing found that Ms. Van Houten was mentioned eight times on the Watson Tapes, and that Watson repeatedly talked about Manson's control over the Manson cult members. (Exh. 7, at p. 330.) In Supreme Court case number S230851, the Attorney General conceded Manson's control over his cult members who acted on his behalf, as stated by Watson in the tapes. Therefore, the tapes unquestionably contain exculpatory evidence involving Ms. Van Houten. They also directly dispute the Governor's finding that Ms. Van Houten is attempting to shift blame to Manson.

The second element of *Brady* requires the evidence to be in the possession of the government who refuses to share it with the defense. (*Strickler v. Greene, supra,* 527 U.S. at pp. 281-282.) Again, there is no dispute about the government's possession of

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the Watson Tapes, and that it is withholding this evidence from Ms. Van Houten.

The final element of *Brady* is prejudice. Because the tapes contain evidence that Manson controlled his followers, Ms. Van Houten's participation in the LaBianca murders is mitigated by that control. The Governor's 2020 reversal dismissed Manson's control as a factor diminishing Ms. Van Houten's culpability. Evidence of this control in the words of Manson's "first lieutenant" directly contradicts the Governor's contrary findings.

"The *Brady* rule . . . is over 50 years old. It is alive, well, and, as we explain, it is self executing. There need be no motion, request, or objection to trigger disclosure. The prosecution has a sua sponte duty to provide *Brady* information." (*People v. Harrison* (2017) 16 Cal.App.5th 704, 706.) Ms. Van Houten has a right to the disclosure of the Watson Tapes. Alternatively, should the Court persist in refusing to order the disclosure of this evidence, the District Attorney and Governor should be precluded from arguing against Manson's violent control of Ms. Van Houten as a factor favoring parole.

Ms. Van Houten concedes that no case has held that *Brady* applies to a parole hearing. However, there is no authority whatsoever that states it does not apply to a parole hearing. Because Ms. Van Houten remains incarcerated, and the *Brady* material in this case could promote her release, fundamental fairness and due process require the tapes be released.

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IX.

ALLOWING THE GOVERNOR, AS AN ELECTED OFFICIAL, TO MAKE THE FINAL PAROLE DECISION IN MURDER CASES VIOLATES EQUAL PROTECTION BY CREATING A DIFFERENT STANDARD FOR PERSONS, LIKE MS. VAN HOUTEN, SERVING INDETERMINATE SENTENCES FOR INFAMOUS OR NOTORIOUS MURDERS.

A. Summary of the Argument.

Under the California Constitution, the Governor is given the authority to reverse grants of parole in murder cases. (Cal. Const., art. V, § 8, subd.(b).) The Governor, as an elected official, has an inherent conflict against approving parole for high profile defendants, such as Ms. Van Houten, whose grant of parole may be unpopular with the voting public. This results in an equal protection violation by creating a different parole standard for inmates whose murder convictions arise from celebrated or notorious crimes.

Governor Newsom's two parole reversals prove he did not act as an impartial factfinder who applied the same legal standard in Ms. Van Houten's case. In 2019, the Governor stated in his written parole reversal,

> Ms. Van Houten and the Manson Family committed some of the most notorious and brutal killings in California's history. The gruesome crimes perpetrated by Ms. Van Houten and other Manson

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Family members in an attempt to incite social chaos continue to inspire fear to this day. As acknowledged by the Board in Ms. Van Houten's parole hearing, the crimes were "heinous, cruel, and inexplicably disturbing and dispassionate. Almost 50 years later, the magnitude of these crimes and their impact on society endure.

(Exh. 6; at p. 322.)

In his 2020 reversal Governor Newsom similarly states,

> I remain concerned by Ms. Van Houten's characterization of her participation in this gruesome double murder, part of a series of crimes that rank among the most infamous and fear-inducing in California history.

(Exh. 2, at p. 26.) The Governor continues,

> Given the extreme nature of the crime in which she was involved, I do not believe she has sufficiently demonstrated that she has come to terms with the totality of the factors that led her to participate in the vicious Manson Family killings. Before she can be safely released, Ms. Van Houten must do more to develop her understanding of the factors that caused her to seek acceptance from such a negative, violent influence, and perpetrate extreme acts of wanton violence.

(Exh. 2, at p. 27.)

The Governor's characterization of the LaBianca murders

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as "the most infamous and fear-inducing in California history," coupled with his finding that "Before she can be safely released, Ms. Van Houten must do more to develop her understanding of the factors that caused her to seek acceptance from such a negative, violent influence, and perpetrate extreme acts of wanton violence" without citing what more she must do before the Governor will find her suitable for parole shows there is nothing Ms. Van Houten can do to obtain parole from this Governor. Accordingly, Ms. Van Houten and similarly situated inmates serving indeterminate life sentences for infamous murders are evaluated by a different parole legal standard than other inmates convicted of murder.

B. The Governor Violated Equal Protection by Evaluating Ms. Van Houten Under a Different, Harsher, Standard for Granting Parole.

Article V, section 8, subdivision (b) of the California Constitution states,

> No decision of the parole authority of this State with respect to the granting, denial, revocation, or suspension of parole of a person sentenced to an indeterminate term upon conviction of murder shall become effective for a period of 30 days, during which the Governor may review the decision subject to procedures provided by statute. The Governor may only affirm, modify, or reverse the decision of the parole authority on the basis of the same factors which the parole authority is required to consider.

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The Governor shall report to the Legislature each parole decision affirmed, modified, or reversed, stating the pertinent facts and reasons for the action.

The statutory procedures for the Governor's review of a parole decision are set forth in section 3041.2, which states:

(a) During the 30 days following the granting, denial, revocation, or suspension by a parole authority of the parole of a person sentenced to an indeterminate prison term based upon a conviction of murder, the Governor, when reviewing the authority's decision pursuant to subdivision (b) of Section 8 of Article V of the Constitution, shall review materials provided by the parole authority.

(b) If the Governor decides to reverse or modify a parole decision of a parole authority pursuant to subdivision (b) of Section 8 of Article V of the Constitution, he or she shall send a written statement to the inmate specifying the reasons for his or her decision."

Prior to the addition of subdivision (b) to section 8 of article V, the power to grant or deny parole was statutory and committed exclusively to the judgment and discretion of the Board. (*In re Rosenkrantz, supra,* 29 Cal.4th at pp. 658–659; *In re Fain* (1983) 145 Cal.App.3d 540, 548–550.) The Governor had no direct role in deciding whether to grant or deny parole to an incarcerated individual, other than to request that the full Board sitting in bank review a parole decision (§ 3041.1) or revoke parole (§ 3062).

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The constitutional authority of the Governor to reverse a grant of parole by the Board was limited to the fundamentally distinct power to grant a reprieve, pardon, or commutation. (*In re Fain, supra,* 145 Cal.App.3d at p. 548; see Cal. Const., art. V., § 8, subd. (a).) By adding subdivision (b) to section 8 of article V, the California voters conferred upon the Governor constitutional authority to review the Board's decisions concerning the parole of individuals who have been convicted of murder and serving indeterminate sentences for that offense.

Prior to the addition of subdivision (b), the American Civil Liberties Union ("ACLU") opposed this expansion of the Governor's role in parole decisions because it raised "serious questions of due process and equal protection by attempting to create a different standard for persons convicted of celebrated or notorious crimes." (Exh. 8, [arguments in opposition to SCA 9].)

The ACLU further opposed the proposal as adding a supplemental level of executive authority not in existence at the time the individual committed and subsequently convicted of a criminal offense and argued against expanding the Governor's role in this way because it "improperly attempts to override the neutrality and expertise of the parole authority." As relevant here, the ACLU further argued,

> Decisions made by the granting authority would be provisional for the 30-day term during which the state executive may find it expedient to unilaterally disregard or disaffirm the initial decision. Such revisions by a Governor could easily result from political or popular influences that, properly, are not

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> considered by the parole authority. This factor alone would allow subjective and often irrelevant or irrational concerns to override carefully considered factual judgments.

(Exh. 8, [arguments in opposition to SCA].)

This prescient concern has materialized in Ms. Van Houten's case. The Governor's four parole reversals in Ms. Van Houten's case that were based on a lack of evidence and improper application of the relevant law, violated equal protection by creating a class of inmates convicted of infamous murders who are judged more harshly by the Governor.

The Fourteenth Amendment to the United States Constitution and article I, section 7 of the California Constitution guarantee all persons the equal protection of the laws. (*In re Williams* (2020) 57 Cal.App.5th 427, 433.) Persons who are similarly situated with respect to a law's legitimate purposes must be treated equally. (*People v. Brown* (2012) 54 Cal.4th 314, 328.) Equal protection of the law is denied only where no rational relationship exists between the disparity of treatment and a legitimate governmental purpose. (*People v. Turnage* (2012) 55 Cal.4th 62, 74.)

In evaluating a claimed equal protection violation, courts undertake de novo review in answering two questions to decide whether a statutory distinction is so devoid of even minimal rationality that it violates equal protection. (See *People v. Laird* (2018) 27 Cal.App.5th 458, 469.) First, it must be determined if the state has adopted a classification affecting two or more groups that are similarly situated in an unequal manner. (*People v.*

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Chatman (2018) 4 Cal.5th 277, 289.) Here, article V, section 8, subdivision (b) of the California Constitution has resulted in the creation of a class of inmates convicted of high profile, notorious murders whose grants of parole by the Board are reversed by the Governor as a result of political or popular influences that, properly, are not considered by the parole authority. This allows subjective and often irrelevant or irrational concerns to override carefully considered factual judgments by the Board. The first step of an equal protection argument is satisfied in this case.

Second, an equal protection claim is successfully stated if the challenged classification of a similarly situated group bears no relationship to a legitimate state purpose under "rational basis" scrutiny. (*People v. Love* (2020) 55 Cal.App.5th 273, 287–288.) This second element is met because there can be no legitimate purpose to disregard the applicable standard for assessing parole suitability based on the subjective and irrelevant concern over currying public favor by an elected official. Although "'rational basis scrutiny" is exceedingly deferential, it is met in this case because it is not possible to conceive of a rational reason for the resulting differential treatment between rehabilitated inmates who qualify for release to parole under the governing legal standard, but who are denied parole because a contrary finding would be unpopular with the voting citizenry.

At the parole suitability hearing, Debra Tate described the petition she initiated to "to keep Ms. Van Houten in prison until she dies." She claimed the petition garnered 170,000 signatures

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with 28,000 adding written comments. (Exh. 3, at p. 102.)[14] It is reasonable to infer that this great number of voters opposing parole influenced Governor Newsom's decision to reverse Ms. Van Houten's parole despite no evidence of a current risk to public safety.

Governor Newsom's reversal of parole in this case must be reversed for the additional reason that it violated Ms. Van Houten's rights of equal protection under the law.

CONCLUSION

The real reason for the Governor's reversal is the name Charles Manson. Although Manson has since passed away, Ms. Van Houten continues to carry the brand of a despicable criminal who deceived her and so many others.

Because all of the evidence indicates Ms. Van Houten is not currently an unreasonable risk to public safety if placed on supervised parole, no matter what standard is applied, it is respectfully requested this Honorable Court grant the requested relief.

Dated: May 6, 2022

Respectfully submitted,

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

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CERTIFICATE OF WORD COUNT

The text of this brief consists of 30,147 words as counted by the Corel WordPerfect version 10 word processing program used to generate this brief.

Dated: May 6, 2022

By: ______________________
Nancy Tetreault
Richard Pfeiffer
Attorneys for Petitioner
Leslie Van Houten

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DECLARATION OF SERVICE

I, the undersigned, declare: I am over the age of eighteen years and not a party to the cause; I am employed in the County of Los Angeles, California, and my business address is 346 N. Larchmont Boulevard, Los Angeles, . I caused to be served the **PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS** by placing copies thereof in a separate envelope addressed to each addressee in the attached service list.

I then sealed each envelope and with the postage thereon fully prepaid, I placed each for deposit in the United States mail, at Los Angeles, California, on May 6, 2022.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on May 6, 2022, at Los Angeles, California.

____
NANCY TETREAULT

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