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

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| **LESLIE VAN HOUTEN,**<br><br>Defendant and Petitioner,<br><br>**JENNIFER CORE**, Warden of California California Institute for Women,<br><br>Respondent,<br><br>**ON HABEAS CORPUS**. | **Case No. B320098**<br><br>**LASC Case No. A253156**<br><br>**Related Cases**: **B278167, B291024** |

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**TRAVERSE TO RESPONDENT'S REPLY TO THE ORDER TO SHOW CAUSE**

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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**
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**TRAVERSE TO RESPONDENT'S RETURN TO THE ORDER TO SHOW CAUSE; MEMORANDUM OF POINTS AND AUTHORITIES**

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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, through counsel, realleges and incorporates by reference as if fully set out herein all of the allegations and exhibits in her petition for writ of habeas corpus. Ms. Van Houten offers the following matters to controvert the issues raised by respondent in the return to the order to show cause.

Ms. Van Houten incorporates and reaffirms the arguments made in her petition for writ of habeas corpus and supporting memorandum of points and authorities. In this memorandum of points and authorities, she addresses only those matters requiring further discussion, explanation, or amplification in light of respondent's return. This memorandum of points and authorities does not include matters Ms. Van Houten believes were adequately addressed in petition for writ of habeas corpus and supporting memorandum of points and authorities.

## I.
## EXCEPTION

Petitioner, Leslie Van Houten, contends that respondent failed to set forth sufficient facts or law to show cause why the relief requested in the petition for writ of habeas corpus should not be granted.

## II.
## DENIAL OF ALLEGATIONS IN THE RETURN TO THE ORDER TO SHOW CAUSE.

1. Ms. Van Houten admits the allegations in paragraph 1 of the return that she was convicted in 1971 of two counts of murder and one count of conspiracy to commit murder, together with codefendants Charles Manson, Patricia Krenwinkel and Susan Atkins, and that her convictions were for her role in the murders of Leno and Rosemary LaBianca on August 10, 1969.

Ms. Van Houten further admits that after the penalty phase of the trial, the jury imposed a sentence of death on all of the defendants, including Ms. Van Houten. (*People v. Van Houten* (1980) 113 Cal.App.3d 280, 283.)

Except as expressly admitted herein, petitioner denies all other allegations in paragraph 1 of the return.

2. Ms. Van Houten admits the allegations in paragraph 2 of the return that she and the codefendants filed an automatic appeal directly to the Supreme Court, and while the case was pending, the Supreme Court decided *People v. Anderson* (1972) 6 Cal.3d 628, invalidating the death penalty. (*People v. Van Houten, supra,* 113 Cal.App.3d at p. 283.)

3. Ms. Van Houten admits the allegations in paragraph 3 of the return that the appeal was transferred to this Court after the abolishment of the California death penalty. Ms. Van Houten admits this Court reversed the judgment of conviction as to Ms. Van Houten and affirmed the judgments of the other defendants. (*Ibid*.) Ms. Van Houten admits that the reversal arose from the fact her attorney appeared to have abandoned the case after the close of evidence. This Court found the absence of her attorney severely interrupted the continuity of her representation that was necessary to a fair trial. This Court found that her replacement attorney rendered ineffective legal representation because he was "incapable of arguing credibility" due to the fact his representation began with the closing argument. In arriving at this decision, this Court admonished, "[M]ore enduring values are challenged whenever there is reason to doubt that a notorious public trial has been conducted in a manner comporting with the

requirements of due process of law." (*People v. Manson* (1976) 61 Cal.App.3d 102, 198 [internal citations and quotations omitted].)

Except as expressly admitted herein, petitioner denies all other allegations of paragraph 3 of the return.

4. Ms. Van Houten admits the allegations in paragraph 4 of the return that after the 1976 reversal of her conviction, she was retried to a jury. Ms. Van Houten was the sole defendant at this trial. The jury was hopelessly deadlocked and a mistrial was declared. (*People v. Van Houten, supra*, 113 Cal.App.3d at p. 283.)

Ms. Van Houten admits she was retried a third time before a jury and found guilty of two counts of first degree murder and one count of conspiracy to commit first degree murder. The trial court imposed three indeterminate life sentences to run concurrently with each other. (*Id.* at p. 284.)

Ms. Van Houten denies she has been in the lawful custody of the California Department of Corrections and Rehabilitation ("CDCR") since August 17, 1978. Ms. Van Houten reasserts that she is in the *unlawful* custody of the CDCR. The Board of Parole Hearings ("Board") properly found her suitable for parole at the last five consecutive parole hearings, beginning in 2016. All five of the parole decisions were improperly reversed by the Governor.

As with his prior denials, the Governor's fourth denial, which is the subject of this proceeding, lacked a sufficient evidentiary basis because the evidence before the Governor failed to prove Ms. Van Houten currently poses an "unreasonable risk of danger to public safety." (*In re Lawrence* (2008) 44 Cal.4th 1181, 1221, 1229; see Pen. Code, § 3041; Cal. Code Regs., tit. 15, §

2402.)[1] Therefore, the Governor's reversal of the Board's fourth grant of parole violated Ms. Van Houten's due process rights under the Fifth and Fourteenth Amendments of the United States Constitution and turned her sentence of life with a realistic opportunity for parole into a de facto sentence of life in prison without the possibility of parole. (*Kentucky Dep't of Corrections v. Thompson* (1989) 490 U.S. 454, 459-460; *McQuillion v. Duncan* (2002) 306 F.3d 895, 900.)

Even if a modicum of evidence supported the Governor's individual findings of unsuitability, which petitioner expressly denies, the record fails to provide a rational nexus between the Governor's findings and the conclusion that Ms. Van Houten currently poses an unreasonable risk of danger if released. (*In re Lawrence,* supra, 44 Cal.4th at pp. 1221, 1229.)

Except as expressly admitted herein, petitioner denies all other allegations of paragraph 4 of the return.

5. Ms. Van Houten denies each and every allegation in paragraph 5 of the return. The sentencing transcript speaks for itself. (Exh. 4.) The selected excerpts quoted by respondent are taken out of context. Read in full, the sentencing transcript shows the trial court exercised its discretion to impose concurrent life sentences.[2] At that time, an indeterminate life sentence carried a minimum service term of seven years. Because the

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[1] Undesignated statutory references are to the Penal Code and undesignated references to regulations are to title 15 of the California Code of Regulations.

[2] Petitioner's reference to the "trial court" means the Los Angeles Superior Court.

court awarded Ms. Van Houten eight years and 120 days of presentence custody credits, the sentence imposed by the court made her eligible for parole on the day it imposed her sentence. (Exh. 4, at pp. 131-132.)

Ms. Van Houten admits the sentencing court acknowledged that Charles Manson and his cult made the murders "a special case" and one that "will burn in the public consciousness for a long time." Even so, the court said,

> I have given, as you know, Mr, Keith, *serious attention* to this application for probation. I don't know whether anybody convicted of first degree murder in the State of California has ever been granted probation, and I could care less. But I have seriously considered it. However, I deny it.

(Exh. 4, at pp. 131-132 [emphasis added].)

The court imposed three life sentences but ran them concurrently even though it had discretion to impose consecutive life sentences. This can only be read as the court considering probation, and exercising lenience by imposing concurrent sentences.

6. Ms. Van Houten denies each and every allegation in paragraph 6 of the return. The sentencing transcript speaks for itself.

7. Ms. Van Houten admits the accuracy of respondent's admissions in paragraph 7 of the return.

8. Ms. Van Houten cannot admit or deny the allegations in paragraph 8 of the return because it appears the first sentence contains a typographical error that changes the meaning of

respondent's contentions. Paragraph 8 of the return states, "Respondent admits the Board of Parole Hearings (Board) previously found Van Houten *unsuitable* for parole a number of times. . . . As every parole suitability determination is conducted de novo, prior decisions by the Board or Governor 'shall not be deemed to be binding upon subsequent hearings.' (Pen. Code, § 3041.5, subd. (c).)" It appears that respondent meant to say Ms. Van Houten was found *suitable* by the board rather than "unsuitable."

Ms. Van Houten admits she was found unsuitable for parole 16 times before the Board first found her suitable for parole on April 14, 2016. Thereafter, the Board found her suitable for parole at the next four consecutive parole hearings on September 6, 2017, January 30, 2019, June 23, 2020 and November 9, 2021. Governor Brown reversed 2016 and 2017 grants of parole. Governor Newsom reversed the 2019, 2020, and 2021 grants of parole.[3] This appeal challenges the Governor's reversal of Ms. Van Houten's fourth grant of parole on June 23, 2020. Her petition for a writ of habeas corpus challenging the Governor's fifth reversal is presently pending in the Los Angeles Superior Court.

Ms. Van Houten denies respondent's characterization of section 3041.5, subdivision (c) as limiting this Court's assessment of the Governor's reversal to the four corners of the Governor's November 27, 2020 written decision. Section 3041.5 contains no such limitation. Subdivision (c) states:

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[3] https://inmatelocator.cdcr.ca.gov/Details.aspx?ID=W13378

> The board shall conduct a parole hearing pursuant to this section as a de novo hearing. Findings made and conclusions reached in a prior parole hearing shall be considered in but shall not be deemed to be binding upon subsequent parole hearings for an inmate, but shall be subject to reconsideration based upon changed facts and circumstances. When conducting a hearing, the board shall admit the prior recorded or memorialized testimony or statement of a victim or witness, upon request of the victim or if the victim or witness has died or become unavailable. At each hearing the board shall determine the appropriate action to be taken based on the criteria set forth in paragraph (1) of subdivision (b) of Section 3041.

Because section 3041.5 does not expressly include the Governor, a governor's right to review parole decisions in murder cases comes from the 1988 enactment of Senate Constitutional Amendment ("SCA") 9. The scope of the Governor's review is defined in the statutory and case law holding that the Governor's decision to affirm, modify, or reverse the parole decision of the Board rests on the same factors and materials that guided the Board's decision. (*In re Rosenkrantz* (2002) 29 Cal.4th 616, 660–661 ["Although these provisions contemplate that the Governor will undertake an independent, de novo review of the prisoner's suitability for parole, the Governor's review is limited to the same considerations that inform the Board's decision."]; *In re Gomez* (2010) 190 Cal.App.4th 1291, 1305.) Ms. Van Houten agrees Governor Newsom was permitted to draw his own conclusions from the same evidence and factors as were considered by the Board. This Court is entitled to review the entire record to ensure that some evidence supports the Governor's overall conclusion that Ms. Van Houten currently

poses an unreasonable risk of danger to public safety. (*People v. Lawrence, supra,* 44 Cal.4th at pp. 1221, 1229.)

Ms. Van Houten denies any suggestion that this Court's review cannot include consideration of the full record of Ms. Van Houten's overall circumstances, including prior decisions by the Board and Governor.

Except as expressly admitted herein, petitioner denies all other allegations of paragraph 8 of the return.

9. Ms. Van Houten admits the Board found Ms. Van Houten suitable for parole on April 14, 2016. She admits Governor Brown reversed the Board's parole decision on July 22, 2016. She further admits this Court affirmed the Governor's reversal on October 20, 2016, in case number B278167. The Supreme Court denied review on December 21, 2016, in case number S238110.

Except as expressly admitted herein, petitioner denies all other allegations of paragraph 9 of the return.

10. Ms. Van Houten admits the Board found her suitable for parole for a second time on September 6, 2017. She admits Governor Brown reversed the Board's parole decision on January 19, 2018. Ms. Van Houten admits a majority of this Court upheld the Governor's reversal in case number B291024, with a dissenting opinion by Justice Chaney.

Ms. Van Houten denies any inference by respondent that the courts' affirmation of the Governors' reversal "at every level" added weight to the basis of his decision. Review of a Governor's decision under the "some evidence" standard does not mean reviewing courts agree with the Governor. It merely means the

reviewing court found some evidence supporting the Governor's decision, whether the Court of Appeal agreed with the Governor or not. (*In re Rosenkrantz, supra,* 29 Cal.4th at p. 664.)

Except as expressly admitted herein, petitioner denies all other allegations of paragraph 10 of the return.

11. Ms. Van Houten admits the Board found her suitable for parole on January 30, 2019. She admits Governor Newsom reversed the Board's decision on June 3, 2019. Ms. Van Houten admits she filed a petition for writ of habeas corpus in this Court on June 29, 2018 in case number B304258. The Court limited respondent's opposition to the issue of the "Tex" Watson tapes and further ordered that respondent produce a transcript of the tapes filed under seal. Ms. Van Houten requested transmission of the sealed transcript, which the Court denied. The Court denied the petition, and the Supreme Court denied review.

Except as expressly admitted herein, petitioner denies all other allegations of paragraph 11 of the return.

12. Ms. Van Houten admits the Board found her suitable for parole on June 23, 2020, and that Governor Newsom reversed the Board's decision on November 27, 2020. Ms. Van Houten admits she filed a habeas corpus petition in this Court (B320098) challenging the Governor's 2020 reversal. This petition is at issue in the present proceeding.

Ms. Van Houten denies respondent's characterization of the basis for the Governor's reversal as expressing legitimate "ongoing concerns about the risks to public safety" her release from prison poses, and further denies any inference that Ms. Van Houten currently poses any an unreasonable risk of danger to the

public.

Ms. Van Houten admits that prior to filing the habeas corpus petition in this Court, she filed a habeas corpus petition in the Los Angeles County Superior Court. She also filed a discovery motion for the disclosure of records and information concerning the date the Board transmitted its parole decision to the Governor. She further admits the superior court denied the discovery motion and subsequently denied the habeas corpus petition.

Except as expressly admitted herein, petitioner denies all other allegations of paragraph 12 of the return.

13. Ms. Van Houten admits that during the pendency of her habeas corpus petition in the Los Angeles Superior Court challenging Governor Newsom's 2020 parole reversal, she filed a petition for a writ of mandate in this Court (B314316) challenging the superior court's denial of her discovery motion. Ms. Van Houten admits that respondent answered the petition on August 27, 2021, and Ms. Van Houten filed a reply on August 31, 2021, together with a motion to disqualify the Office of the Attorney General based on the conflict of interest created by the Attorney General representing the Board and the Governor in a proceeding with potentially divergent interests. Ms. Van Houten admits this Court requested briefing on the issue of whether the Governor's 30-day limit for affirming, modifying, or reversing a parole decision is a jurisdictional limit, and further requested that the real party in interest filed a declaration identifying the date the Board transmitted its final decision to the Governor. Ms. Van Houten admits this Court denied the writ after receiving the

declaration and sealed documents and denied the disqualification motion. The California Supreme Court denied review.

Except as expressly admitted herein, petitioner denies all other allegations of paragraph 13 of the return.

14. Ms. Van Houten admits the superior court denied her habeas corpus petition challenging Governor Newsom's 2020 parole reversal. She further admits that filing a habeas corpus petition in the superior court does not impact her ability to file an original petition in the Court challenging the same Governor parole reversal. (Cal. Const., Art. 6, § 10; § 3041.5, subd. (c); *In re Clark* (1993) 5 Cal.4th 750, 767, fn. 7.)

Except as expressly admitted herein, petitioner denies all other allegations of paragraph 14 of the return.

15. Ms. Van Houten agrees that her petition for a writ of mandate challenging the trial court's denial of her discovery motion and her motion to disqualify the Attorney General is unrelated to her habeas corpus petition in this proceeding.

Except as expressly admitted herein, petitioner denies all other allegations of paragraph 15 of the return.

16. Ms. Van Houten denies each and every allegation in paragraph 16 of the return. Respondent accuses Ms. Van Houten of "weaving into the factual assertions" of her habeas corpus petition "unsupported characterizations, inferences, and legal conclusions." Ms. Van Houten disputes this mischaracterization of the allegations in her habeas corpus petition. Further, respondent's blanket attempt to negate the detailed factual allegations in Ms. Van Houten's petition without stating which allegations respondent denies is procedurally improper.

17. Ms. Van Houten denies each and every allegation in paragraph 17 of the return. The Governor's reversal of Ms. Van Houten's fourth grant of parole violates her state and federal constitutional rights of procedural due process by not providing her with an in-person hearing. The reversal further violates her state constitutional rights of substantive due process by rendering a decision that is arbitrary, capricious and devoid of sufficient evidence establishing a rational nexus between the unsuitability factors cited by the Governor and the core question of Ms. Van Houten's current unreasonable risk of danger to public safety. (*In re Lawrence, supra,* 44 Cal.4th at pp. 1212-1213.)

18. Ms. Van Houten denies each and every allegation in paragraph 18 of the return. The Governor's conclusory reversal of the Board's 2020 parole decision ignores Ms. Van Houten's exhaustive record of rehabilitative programming, therapy, self-help classes and substantial contribution to the prison community. It also ignores the insight, remorse, and acceptance of responsibility recognized by the Board and evaluating psychologists. This renders the decision arbitrary in violation of constitutional due process.

19. Ms. Van Houten denies each and every allegation in paragraph 19 of the return. The Governor cited no statutory factors supporting a finding of parole suitability or unsuitability. (See *In re Prather* (2010) 50 Cal.4th 238, 251 [the Board and Governor "must consider the statutory factors concerning parole suitability set forth in section 3041 as well as the Board regulations" in exercising their discretion to grant parole]; see Regs., §§ 2281, 2402.)

The Governor described the gravity of Ms. Van Houten's commitment murders as evidence of her current danger. A commitment offense can provide evidence of parole unsuitability under the statutory factors. (Regs., § 2281(c)(1).) The Governor relied on Ms. Van Houten's "lack of insight" to create a nexus between the gravity of the commitment murders and her current risk of danger. A lack of insight is a judicially recognized unsuitability factor. (*In re Calderon* (2010) 184 Cal.App.4th 670, 689; see *In re Shaputis* (2011) 53 Cal.4th 192, 218 [*Shaputis II*].) Like any other unsuitability factor, a lack of insight must have a rational nexus to the core question of Ms. Van Houten's current risk of danger. Some evidence does not support the Governor's finding that Ms. Van Houten lacks insight, and the finding itself does not have a rational nexus to the Governor's conclusion that Ms. Van Houten is currently dangerous.

20. Ms. Van Houten denies each and every allegation in paragraph 20 of the return. Deference to the Governor's findings on dispute evidence and the way in which he weighs the evidence does not mean this Court must ignore the Governor's failure to cite sufficient evidence supporting his unsuitabilty findings or the overall conclusion that Ms. Van Houten currently poses an unreasonable risk of danger. Where, as here, the Governor's unsuitability findings are not supported by any evidence, let alone some evidence, constitutional due process compels that his reversal of the Board's parole decision be vacated. (*In re Rosenkrantz, supra,* 29 Cal.4th at pp. 655, 658.)

Respondent is incorrect that Ms. Van Houten has failed to develop insight into her involvement in the murders and

susceptibility to Manson. It is impossible to draw such a conclusion after reviewing the record in her case. It also is incorrect to infer that Ms. Van Houten feels devotion for Charles Manson, and her supposed feelings of devotion provides a nexus to her current behavior.

21. Ms. Van Houten denies each and every allegation in paragraph 21 of the return. The Governor briefly cited to the weight the Board and Dr. Athans gave to the hallmark features of youth and diminished culpability of youth offenders, but failed to provide his own assessment of whether these factors where present for Ms. Van Houten and how they impacted her behavior. Giving great weight to the hallmark features of youth means more than merely listing the factors without any analysis.

22. Ms. Van Houten denies each and every allegation in paragraph 22 of the return. The record is devoid of "some evidence" supporting the Governor's finding that Ms. Van Houten currently poses any risk of danger, much less an unreasonable risk of danger. There is no rational nexus between her involvement in the commitment murders and her current risk of danger to public safety. There also is no evidence supporting a conclusion that Ms. Van Houten lacks insight and understanding into the causative factors of her crimes.

The Governor attempted to create a lack of insight by misconstruing Ms. Van Houten's comments to the Board and Dr. Athans that the stabbing felt "horrible" and "predatory," while telling a fellow cult member 54 years ago that it was "fun." According to the Governor, these comments are inconsistent and show gaps in Ms. Van Houten's insight, rendering a current risk

of danger. When read in context, the comments are consistent and do not support a conclusion of current dangerousness.

23. Ms. Van Houten denies each and every allegation in paragraph 23 of the return.

24. Ms. Van Houten denies each and every allegation in paragraph 24 of the return

25. Ms. Van Houten denies each and every allegation in paragraph 25 of the return.

26. Ms. Van Houten admits the Governor is entitled to de novo review the evidence and factors reviewed by the Board, and arrive at an independent conclusion on the evidence. The conclusion must comply with the statutory and decisional law, as well as constitutional due process.

Except as expressly admitted herein, petitioner denies all other allegations of paragraph 26 of the return.

27. Ms. Van Houten denies each and every allegation in paragraph 27 of the return. Respondent's description of the scope of the Governor's review exceeds the legal standard and would reduce this Court to merely ensuring that the Governor followed the requisite procedural process, rather than reviewing the substance of the basis of his reversal. The Governor cannot immunize himself from review by attempted to redefine the boundaries of judicial review.

28. Ms. Van Houten denies each and every allegation in paragraph 28 of the return. Respondent is incorrect that the gravity of the commitment offense alone can justify the denial of parole. The commitment offense is one factor in assessing the core question of Ms. Van Houten's current unreasonable risk of

danger to public safety. Like any other unsuitability factor, the Governor must establish a rational nexus between the gravity of the commitment murders and Ms. Van Houten's current unreasonable risk of danger to public safety. (*Lawrence, supra,* 44 Cal.4th at pp. 1211, 1214, 1221)

Respondent's citation to *In re Rozzo* (2009) 172 Cal.App.4th 40 does not compel a contrary conclusion. The inmate's record in *Rozzo* showed he acted out of racial animus in committing a brutal murder, then failed to address his racial animus in his rehabilitative efforts. He also refused to acknowledge at his parole hearing the role his racial animus played in the commitment murder. (*Id.* at pp. 62-63.) Thus, the record contained some evidence that the same personality traits leading to Mr. Rozzo's original crime remained operative at the time of his parole hearing. (*Ibid.*) *Rozzo* provides support for the conclusion that the gravity of the commitment offense alone does not support a finding of a current risk of danger. It reinforces the need for a rational nexus between some unremedied aspect of the commitment offense and the inmate's current behavior.

29. Ms. Van Houten denies that the sole remedy available to this Court if it vacates the Governor's reversal is to reinstate the Board's grant of parole and direct the Board to conduct its usual proceedings for a release on parole, as alleged in paragraph 30 of the return.

30. Except as expressly admitted herein, Ms. Van Houten denies each and every allegation of the return. Ms. Van Houten reasserts that the Governor's reversal of the Board's grant of parole violated state regulations and statutory law, case law, and

state and federal constitutional due process. The Governor's improper decision must be vacated.

31. This traverse is based upon the allegations in the petition for writ of habeas corpus and the traverse, the supporting memorandums of points and authorities, the exhibits attached to the petition for writ of habeas corpus, and any additional argument or supplemental briefing allowed by this Court.

Dated: May 6, 2022

Respectfully submitted,

/S/ Nancy Tetreault

Nancy Tetreault
Attorney for Petitioner
Leslie Van Houten

## MEMORANDUM OF POINTS AND AUTHORITIES

### I.

### THE GOVERNOR VIOLATED MS. VAN HOUTEN'S RIGHTS OF SUBSTANTIVE DUE PROCESS BY RENDERING A DECISION LACKING EVEN A MODICUM OF SUPPORTING EVIDENCE.

**A. Summary of Respondent's Argument and Ms. Van Houten's Reply**.

Respondent makes the following three overall arguments in opposition to Ms. Van Houten's petition. None of the arguments justify a conclusion that Ms. Van Houten currently poses an unreasonable risk of danger to public safety.

**1. Standard of review.**

Respondent first contends Ms. Van Houten is asking this court to "ignore the Governor's findings, ""independently review her parole suitability," "reweigh the evidence," and unilaterally adjudge Ms. Van Houten suitable for parole. (Return at p. 22.) The law, evidence, and Governor's written reversal support none of these claims. Ms. Van Houten is not asking this Court to "reweigh" the evidence. She instead is asking the Court to review

whether the Governor's identified facts provide some evidence of the central issue of Ms. Van Houten's current dangerousness when considered in light of the full record before the Governor. (*In re Lawrence, supra,* 44 Cal.4th at p. 1221.)

A petition for habeas relief is an original proceeding; therefore, courts independently review the record to determine whether there is some evidence to support the Governor's decision to reverse the Board's grant of parole. (*In re Scott* (2004) 119 Cal.App.4th 871, 884.) Although a reviewing court may not reweigh the evidence considered by the Governor, it is not limited to the evidence relied upon by the Governor in determining whether his decision is supported by some evidence. (*In re Shaputis II, supra,* 53 Cal.4th at p. 214, fn. 11.) The Supreme Court explained in *Lawrence,* "[I]n light of the constitutional liberty interest at stake, judicial review must be sufficiently robust to reveal and remedy any evident deprivation of constitutional rights." (*In re Lawrence, supra,* 44 Cal.4th at p. 1211.) Further, because the relevant inquiry is whether some evidence supports the Governor's decision, "not only must there be some evidence to support the [Governor's] factual findings, there must [also] 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.)

While the deferential standard of review requires this Court to credit a finding by the Governor supported by a modicum of evidence, it does not mean the finding supports the overall conclusion of current dangerousness. (*In re Lawrence, supra,* 44 Cal.4th at p 1226.) This Court is not only permitted, but

obligated to review Ms. Van Houten's record to determine if the passage of time and related changes in her mental attitude and demeanor render the evidence supporting the Governor's unsuitability factors insufficient to support the core determination of Ms. Van Houten's current dangerousness. Respondent's attempt to limit this court's review to ensuring that the Governor performed the required procedural steps without examining the evidentiary sufficiency of his findings and conclusion must be rejected.

**2. Gravity of the commitment murders as the sole basis for an unsuitabilty finding**.

Respondent next contends the gravity of Ms. Van Houten's commitment murders *alone* provides some evidence of her parole unsuitability. Respondent cites case law predating *Lawrence* in support of this contention. The Supreme Court's decision in *Lawrence* holds otherwise.

The determination of whether an inmate poses a current danger is not dependent solely upon whether the circumstances of the offense are egregious or unusually vicious. "Rather, the relevant inquiry is whether the circumstances of the commitment offense, when considered in light of other facts in the record, are such that they continue to be predictive of current dangerousness many years after commission of the offense." (*In re Lawrence, supra,* at p. 1221.)

> This inquiry is, by necessity and by statutory mandate, 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 the attendant changes in the inmate's psychological or mental attitude.

(*Ibid.*)

In distilling this standard, *Lawrence* held,

> In sum, the Board or the Governor may base a denial-of-parole decision upon the circumstances of the offense, or upon other immutable facts such as an inmate's criminal history, but some evidence will support such reliance only if those facts support the ultimate conclusion that an inmate continues to pose an unreasonable risk to public safety. (Regs., § 2281, subd. (a).) Accordingly, the relevant inquiry for a reviewing court is not merely whether an inmate's crime was especially callous, or shockingly vicious or lethal, but whether the identified facts are probative to the central issue of current dangerousness when considered in light of the full record before the Board or the Governor.

(*Ibid.*) The mere existence of a regulatory factor establishing unsuitability does not necessarily constitute "some evidence" that the parolee's release unreasonably endangers public safety. (*Id.* at p. 1225; see *In re Lee* (2006) 143 Cal.App.4th 1400, 1408.)

Even acknowledging some evidence in the record supported Governor Newsom's conclusion regarding the gravity of the La Bianca murders, there does not exist some evidence supporting the conclusion that Ms. Van Houten's continues to pose a threat of danger to public safety. Respondent's conclusion that the

commitment offense alone is sufficient to meet the "some evidence" standard lacks merit.

**3. Lack of insight**.

Respondent's third argument is that Ms. Van Houten's lack of understanding and insight provides a link between her involvement in the Manson cult and La Bianca murders, thus rendering her currently dangerousness. The evidence does not support this claim.

Ms. Van Houten has participated in many years of rehabilitative programming specifically tailored to addressing the circumstances causing her to remain in the Manson cult after it turned violent, and her participation in the La Bianca murders. These programs included extensive psychological counseling leading to substantial insight on her part into both the behavior that led to the murders and her own responsibility for the crimes. She has been adjudged by numerous psychologists and the Board as not representing any danger to public safety if released from prison.

Despite Ms. Van Houten's extraordinary rehabilitative efforts addressing the circumstances leading to her criminality, the numerous institutional reports justifying parole, and the favorable discretionary decisions of the Board at successive parole hearings, Governor Newsom continues to reverse Ms. Van Houten's grants of parole because of a lack of insight. This isolated finding is contrary to all of the information in Ms. Van Houten's post-conviction record supporting the Board's

determination that she is rehabilitated and no longer poses a danger to public safety.

The Governor does not dispute that Ms. Van Houten has rehabilitative gains, including the acquisition of insight, nor has he described how further rehabilitation might change his decision that she remains a current danger. The mere recitation that she lacks insight absent a clear articulation of a rational nexus between this finding and Ms. Van Houten's current dangerousness fails to provide the required modicum of evidence to support the Governor's reversal of the Board's decision.

The problem with the catch-all factor of an inmate's lack of insight is that the concept of insight is inherently vague. "[W]hether a person has or lacks insight is often in the eye of the beholder." (*In re Ryner* (2011) 196 Cal.App.4th 533, 548.) It is questionable whether any person "can ever fully comprehend the myriad circumstances, feelings, and current and historical forces that motivate conduct, let alone past misconduct." (*Ibid*.) It is further questionable whether any person "can ever adequately articulate the complexity and consequences of past misconduct and atone for it to the satisfaction of everyone," especially when the life crime was committed as a youthful offender. (*Ibid*.) Thus, "one always remains vulnerable to a charge that he [or she] lacks sufficient insight into some aspect of past misconduct even after meaningful self-reflection and expressions of remorse." (*Ibid*.)

Undoubtedly, Ms. Van Houten did not fully articulate every possible psychological factor leading to her participation in the La Bianca murders. Perfect insight into a person's actions looking

back 54 years is a near impossibility, and not the standard for a finding that Ms. Van Houten no longer poses a risk of danger. (*In re Ryner, supra,* 196 Cal.App.4th at p. 548.) Ms. Van Houten has spent decades developing insight through programming and therapy. She discussed the causative factors motivating her to join a nonviolent hippie commune and why she remained in it after the commune turned into a violent cult. She also reflected on the factors causing her to engage in the La Bianca murders. She has expressed full responsibility for both murders and genuine remorse over the pain and suffering his actions have caused the victim's family, own family, and society in general. A modicum of evidence does not support the Governor's finding that she "must do more" to prove her suitability to his satisfaction. (See Exh. 2, at p. 27.)

**B. <u>The Standard of Review Requires that the Court Consider the Entire Record to Determine if the Governor's Findings Provide Some Evidence of Ms. Van Houten Current Unreasonable Risk of Danger to Public Safety</u>.**

Respondent attempts to prevent this Court from engaging in vigorous review of the factual basis supporting the Governor's reversal by calling it "reweighing the evidence." This incorrectly interprets the "some evidence" standard.

It is without dispute that, in assessing a Board's parole decision, the Governor is permitted to engage in an "independent, de novo review of the inmate's suitability for parole." (*In re Rosenkrantz, supra,* 29 Cal.4th at p. 660.) The weight to be given

the evidence and the resolution of factual conflicts is within the Governor's authority. Although the Governor must consider the same evidence and factors as the Board, the Governor has discretion to be more stringent or caution in seeking to protect public safety. (*Id.* at p. 686.) Ms. Van Houten agrees it is irrelevant whether this Court finds the evidence in the record outweighs evidence demonstrating unsuitability for parole, provided the Governor's decision reflects due consideration of the specified factors as applied to her under the applicable legal standards and supported by some evidence of the overall finding that she poses a current risk of danger. (*Id.* at p. 677.) This Court reviews the entire record to ensure the Governor's decision meets this standard. (*Ibid.*)

The Supreme Court in *Rosenkrantz* rejected the Governor's attempt to narrow appellate review of parole decisions to ensuring that the procedural safeguards of due process are met, and not consider the merits of the decision. (*Id.* at p. 657.) *Rosenkrantz* specifically refused to endorse a standard of review permitting the Board or Governor to render a decision without a basis in fact, and unsupported by evidence in the record merely because "the decision, on its face, recited supposed facts corresponding to the specified factors and appeared reasonable." (*Id.* at p. 665.) Respondent's request in this case should be similarly rejected because a decision devoid of evidentiary support would violate constitutional due process by being both arbitrary and capricious in violation of due process. (*Ibid.*)

As with any decision impacting a defendant's substantial rights, Ms. Van Houten is entitled to constitutionally adequate

and meaningful review of the Governor's reversal because her due process right to the expectation of parole "cannot exist in any practical sense without a remedy against its abrogation." *(In re Rosenkrantz, supra*, 29 Cal.4th at p. 664.) Eight years after deciding *Rosencrantz,* the Supreme Court rendered its decision in *In re Lawrence* defining the balance between the deference to parole decisions and the meaningful review of those decisions to ensure they adhere to constitutional due process. In doing so, *Lawrence* rejected earlier decisions focusing strictly on the existence of unsuitabilty factors, or allowing a parole denial to be based solely on the gravity of the commitment murder. (*In re Lawrence, supra*, 44 Cal.4th at p. 1210.)

*Lawrence* defined the "some evidence" standard of review in parole cases as permitting review of the merits of the parole decision, and not confined to merely confirming that the Board or Governor adhered to all of the procedural safeguards. *Lawrence* agreed this standard is "unquestionably deferential, but certainly is not toothless," and "due consideration of the specified factors requires more than rote recitation of the relevant factors with no reasoning establishing a rational nexus between those factors and the necessary basis for the ultimate decision—the determination of current dangerousness." (*Id.* at p. 2010.) The court explained judicial review "must be sufficiently robust" to correct deprivations of an inmate's constitutional rights, rather than merely ensuring that the Board or Governor cited a statutory unsuitability factor that is supported by a modicum of evidence. (*Id.* at p. 1212.) Therefore, "When a court reviews a decision of the Board or the Governor, the relevant inquiry is whether some

evidence supports the decision of the Board or the Governor that the inmate constitutes a current threat to public safety, and not merely whether some evidence confirms the existence of certain factual findings." (*Ibid.*)

In applying this definition of the standard of review, the Supreme Court in *Lawrence* considered the facts of Ms. Lawrence's "especially cruel" murder of her lover's wife. It rejected the Governor's finding that Ms. Lawrence lacked remorse or insight based on facts the Governor took out of context from the Board's parole hearing. The court found it "evident from the full context of Ms. Lawrence's statements that she was attempting to explain her state of mind prior to and at the time of the murders and not justifying her behavior. (*Id.* at p. 1221.) The court acknowledged Ms. Lawrence's decades of positive psychological assessments and four grants of parole in which lauded her insight and expressions of remorse. Based on this evidence, the court found the Governor's conclusion that Ms. Lawrence lacked sufficient insight or remorse was not supported by any evidence and "clearly contradicted by abundant evidence in the record." (*In re Lawrence, supra,* 44 Cal.4th at pp. 1221-1223.)

The *Lawrence* court also rejected the Governor's implication that Ms. Lawrence had serious psychiatric problems which could resurface to pose a current risk of danger. The Governor based this on negative language in several *early* psychiatric evaluations. The court compared the early negative psychiatric reports with subsequent mental-health evaluations with favorable comments, including low risk assessments. The court concluded that the

Governor's reliance on Ms. Lawrence "stale psychological assessments" was overcome by positive psychological assessments in every evaluation conducted during the prior 15 years. (*Id.* at pp. 1223-1224.)

In addressing whether the Governor's conclusion that the gravity of the commitment murder supplied some evidence of Ms. Lawrence's current dangerousness, the court found the facts cited by the Governor supplied some evidence that the murder was especially heinous, atrocious and cruel. (*Id.* at p. 1225.) It, however, did not provide some evidence that she continued to pose a threat to public safety. In arriving at this decision, the court considered Ms. Lawrence's long-standing involvement in self-help, vocational, and educational programs. It also considered her insight into the circumstances of the offense, as evidenced by her acceptance of responsibility and expressions of remorse. Added to this was her lack of a prior criminal record or history of violent behavior before or after the murder. The court also considered Ms. Lawrence's lack of serious misconduct during her more than two decades of incarceration, and that the commitment offense occurred 36-years earlier when she was 24 and under significant emotional stress. (*Id.* at pp. 1224-1225.)

Following its review of this evidence, the court concluded, "under the circumstances of the present case—in which the record is replete with evidence establishing petitioner's rehabilitation, insight, remorse, and psychological health, and devoid of any evidence supporting a finding that she continues to pose a threat to public safety—petitioner's due process and statutory rights were violated by the Governor's reliance upon the

immutable and unchangeable circumstances of her commitment offense in reversing the Board's decision to grant parole." (*Id.* at p. 1227.)

Ms. Van Houten asks that this Court review her entire record under this same standard as the court in *Lawrence.*

**C. <u>The Gravity of the Commitment Offense Alone Does not Justify the Governor's Lack Evidence Creating a Rational Nexus Between the Facts of the Murders and Ms. Van Houten's Current Unreasonable Risk of Danger</u>.**

Respondent contends "if the Governor had based his decision on the murders alone, such a decision is not per se unlawful. " (Return, at p. 28.) According to respondent, "The nature of the prisoner's offense, alone, can constitute a sufficient basis for denying parole. *In re Rosenkrantz*, at p. 682, citing *In re Minnis* (1972) 7 Cal.3d 639, 347; *In re Ramirez* (2001) 94 Cal.App.4th 549, 569; *In re Seabock* (1983) 140 Cal.App.3d 29, 36-37.)" (Return, at p. 28.)

Respondent cites cases predating *Lawrence* in support of the claim that Ms. Van Houten's involvement in the La Bianca is sufficient to justify the Governor's reversal, including *In re Rosencrantz.* The Supreme Court in *Rosencrantz* resolved the threshold question of whether appellate courts are authorized to review the merits of a Governor's decision to reverse a grant of parole. In answering the question in the affirmative, *Rosencrantz* held that the Governor's parole decision is subject to judicial review to ensure compliance with the mandate of constitutional

due process that the factors relied on by the Governor are supported by some evidence in the record. (*In re Rosencrantz, supra,* 29 Cal.4th at p. 664.)

Eight years later, the Supreme Court in *Lawrence* accepted review to resolve a split of authority among the appellate courts about what constitutes "some evidence" and whether the gravity of a commitment murder alone can provide some evidence of current danger. *Lawrence* held the gravity of the commitment offense, like any other unsuitabilty factor, must establish a rational evidentiary nexus to the core determination of an inmate's current risk of danger to public safety to order to support a denial of parole. (*In re Lawrence, supra,* 44 Cal.4th at pp. 1210, 1227.)

In arriving at this holding, the court in *Lawrence* rejected the respondent's claim that the Governor's reversal in that case complied with the "some evidence" standard of *Rosencrantz* because it was based on a characterization of the commitment offense as particularly egregious. (*In re Lawrence, supra,* 44 Cal.4th at p. 1191.) The *Lawrence* court explained,

> [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.

(*Ibid.*)

In addressing the aggravated circumstances of a

commitment offense, the *Lawrence* court limited the holdings of *Rosenkrantz* and *Dannenberg* as follows,

> [T]o the extent our decisions in *Rosenkrantz* and *Dannenberg* have been read to imply that a particularly egregious commitment offense always will provide the requisite modicum of evidence supporting the Board's or the Governor's decision, this assumption 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, and inconsistent with the inmate's due process liberty interest in parole that we recognized in Rosenkrantz.

(*In re Lawrence, supra,* at p. 1191.)

The court admonished that in cases where the evidence of the inmate's rehabilitation and suitability for parole under the governing statutes and regulations is overwhelming, and the only evidence related to unsuitability is the gravity of a commitment offense that is 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" supporting the ultimate decision that the inmate remains a threat to public safety. (*Ibid*.)

*Lawrence* further explained, though the "some evidence" standard is deferential, it "certainly is not toothless," and the requirement that the Governor give "due consideration" to the specified factors "requires more than rote recitation of the relevant factors with no reasoning establishing a rational nexus between those factors and the necessary basis for the ultimate

decision—the determination of current dangerousness." (*Id.* at p. 1213.)

In providing guidance on how to apply the "some evidence" standard to cases involving an egregious murder, the *Lawrence* held,

> Accordingly, we conclude that although the Board and the Governor may rely upon the aggravated circumstances of the commitment offense as a basis for a decision denying parole, the 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 of the statutory determination of a continuing threat to public safety.

(*Id.* at p. 1214.)

Applied here, the gravity of Ms. Van Houten's commitment offense, like any other unsuitability factor, requires evidence establishing a nexus to the core question of her current risk of danger. The fact she participated in egregious murders, without more, does not provide some evidence of her current risk of danger. In order for this unsuitability factor to be probative of her current danger, the Governor was required to establish an evidentiary link between some aspect of Ms. Van Houten's involvement in the commitment murders that remains present in her current demeanor or mental state. The overwhelming

evidence of her transformative rehabilitation, personal introspection and insight, deep remorse and acceptance of responsibility precludes the Governor from establishing such a link.

**D. <u>The Governor's Finding that Ms. Van Houten Lacks Insight into the Causative Factors of the Commitment Murders is Not Supported by Some Evidence</u>.**

Respondent claims the Governor cited "some evidence" establishing Ms. Van Houten's lack of insight into the causes of her vulnerability to Charles Manson and participation in the murders. (Return, at p. 29.) According to respondent, after 50 years in custody and countless self-help programs, "Ms. Van Houten still vacillates on whether she was willing to commit the murders or felt she had to participate." (Return at p. 30.) This is not a finding made by the Governor. Respondent's personal interpretation of the evidence is irrelevant and should be disregarded. Moreover, there is no evidence in the record that Ms. Van Houten "vacillates" in her denouncement of Charles Manson, his cause, and the murders. She also does not "vacillate" regarding her full acceptance of responsible for her conduct and deep feelings of remorse.

Respondent bases this unsupported finding on comments by Ms. Van Houten that she was "desperate to be accepted" and participated in the murders to show Manson "she was completely committed to him and his cause," as opposed to her comments

that she "felt obligated to participate" and "none of this was conscious." (Return, at pp. 29-30.) As noted, this was not a finding made by the Governor. It is newly asserted by respondent in the return. Even assuming such a conclusion could be inferred from the Governor's actual findings, the context of Ms. Van Houten's comments dispel this finding.

Ms. Van Houten was asked by Dr. Athans in the 2018 CRA She asked how she would describe herself at that time of the murders. She replied,

> I was desperate to be accepted. I was weak, I was incapable of having original thoughts by the time I was at the ranch, my intellect had been smushed, I'm bright, but it wasn't working for me, I don't mean it in an egotistical way, but I'm bright, and I was doing all I could to not be. Desperate to be accepted, that's what I see most, I had no sense of value. My value came in the eyes of other people.

(Exh. 1, at p. 18.)

Dr. Athans continued by asking Ms. Van Houten how she is different now, to which she replied,

> Now, I'm a person of independence, I understand I live in a very controlled environment, but who doesn't? I have my own sense of who I am. It's interesting being the chairperson of the IAC, I represent the women of the prison with the administration and it's been wonderful to check my sense of what I think is an issue that needs to be raised. Who I am, I really think I'm able to be challenged on my ethics, my morality, my conduct, how do I correct what I consider erroneous behavior?

> I see myself as quite independent. I believe I'm a socially conscious person. I don't run from my intellect. I like that I'm an academic, I'm proud that I've obtained a Master's degree from CSU Dominguez in Humanities . . . I feel it's very important that I not try to forget what happened. Learning to live with what I did is important.

(*Ibid.*)

This does not support a finding that Ms. Van Houten is "vacillating" about her feelings toward the murders or the person she has become since that time.

Dr. Athans asked Ms. Van Houten to discuss her motivations in engaging in the murder, to which she replied:

> My motivation was to let him know I was completely committed to him and his cause. Pat had gone the night before. I'd been living as her support. He told me early on, 'You need to stay with Pat, she knows what's going on, stay and be near her.' I felt I really needed to go . . . had to kill them for the beginning of the revolution.

(Exh. 1, at p. 16.)

When asked why she felt it was important to show her commitment to Manson, Ms. Van Houten said, "He always made me feel that I wasn't quite measuring up to what he had hoped for and I needed to have him believe that in me, the group, I needed to belong, it's an embarrassing thing to say at this age, how weak I was and how needy I was." (*Ibid.*) Once again, this does not show that Ms. Van Houten vacillates about her feelings regarding her involvement in the murders or the Manson cult.

The context of Ms. Van Houten's comment that she "felt obligated to participate" in the murders shows she was trying to describe her mindset at that time. She explained to the Board she had not intended to join a violent cult. She joined a hippie commune that turned violent over time. Commissioner Grounds asked Ms. Van Houten if there were additional comments she wished to add regarding the causes of her accepting the group's moving toward violence and killing people. She responded, "I believed in Manson. I believed in his belief system. I felt obligated to participate. I wanted to participate. I believed that it was something that had to be done." (Exh. 3, at pp. 65-65.) She later stated the murder are "hard to live with" and "there's no justifying it." (Exh. 3, at p. 65.)

Ms. Van Houten made the comment "none of this was conscious" while describing the facts of the murders to Dr. Athans. Ms. Van Houten described holding down Mrs. La Bianca as Patricia Krenwrinkle stabbed her with a kitchen knife. When the knife bent from hitting Mrs. La Bianca's collar bone, Ms. Van Houten ran to the door of the bedroom and shouted to Tex Watson "We can't do it. We can't kill her." Ms. Van Houten said she "stood at the doorway, none of this was conscious, I was running on fear." (Exh. 1, at p. 17.) Contrary to respondent's assertion, Ms. Van Houten was not trying to skirt responsibility. She was explaining that calling out to Tex Watson was an impulsive act stemming from fear after the knife bent.

The facts cited by the Governor supporting his finding that Ms. Van Houten lacked insight were equally insufficient. The Governor perceived differences between Ms. Van Houten's

statement to Dr. Athans in 2018 that the stabbing of Mrs. La Bianca felt "horrible and predatory" and her comment 54 years earlier to a fellow cult member on the day after the murders that they were "fun." (Exh. 2, at pp. 26-27.) According to the Governor, these contradictory statements showed gaps in Ms. Van Houten's insight, which established that she remained a current risk of danger. Some evidence does not support this finding, or its rational nexus to the overall conclusion of Ms. Van Houten's current risk of danger.

The Supreme Court in *Shaputis II* noted that "lack of insight has played an increasingly prominent part in parole decisions and the ensuing habeas corpus proceedings." (*Shaputis II, supra,* 53 Cal.4th at p. 200.) It has been described as the "new talisman" for denying parole. (*In re Ryner* (2011) 196 Cal.App.4th 533, 547.)

A lack of insight can play a significant role in parole determinations, where there is evidence that the inmate has an "inability to recognize the circumstances that led to the commitment crime; and such an inability can imply that the inmate remains vulnerable to those circumstances and, if confronted by them again, would likely react in a similar way." (*In re Ryner, supra,* 196 Cal.App.4th at p. 547.) However, to support a finding of parole unsuitability, there must be a rational nexus between the inmate's dangerous past behavior and the threat the inmate currently poses to public safety. (*Shaputis II,* supra, at p. 218.)

In examining Ms. Van Houten's insight, Governor Newsom was required to conduct a "particularly individualized

consideration" because "expressions of insight and remorse will vary from prisoner to prisoner and . . . there is no special formula for a prisoner to articulate in order to communicate that he[,] she[, or they] has gained insight into, and formed a commitment to ending, a previous pattern of violent behavior.' " (*Shaputis II, supra,* 53 Cal.4th at p. 219, fn. 12.)

Evidence supporting the Governor's finding that Ms. Van Houten lacked insight could support a finding of current dangerousness *only* if it showed a *material* deficiency in her understanding and acceptance of responsibility for the murders. Thus, the Governor's finding that Ms. Van Houten lacked insight required a "factually identifiable deficiency in perception and understanding, a deficiency that involves an aspect of the criminal conduct or its causes that are significant, and the deficiency by itself or together with the commitment offense has some rational tendency to show that the inmate currently poses an unreasonable risk of danger." (*In re Ryner, supra*, 196 Cal.App.4th at pp. 548-549.)

Governor Newsom did not find that Ms. Van Houten had failed to develop insight into his crimes. He instead found "gaps" in her insight, and "[g]iven 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." (Exh 2, at p. 26.) According to the Governor, 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.) In other words, the Governor believed her insight was insufficient.

Courts have recognized that "the very concept of 'insight' to be inherently vague" and "whether a person has or lacks insight is often in the eye of the beholder." (*In re Ryner, supra,* 196 Cal.App.4th at p. 548.) Given the "myriad circumstances, feelings, and current and historical forces that motivate conduct" it is unlikely a person can ever gain full insight into a past misdeed, let alone articulate every aspect of its causes to the satisfaction of everyone. (*Ibid*.) This is especially true when the life crime was committed as a juvenile. (*Ibid*.) Because of this, an inmate "always remains vulnerable to a charge that he[,] she[, or they] lacks sufficient insight into some aspect of past misconduct even after meaningful self-reflection and expressions of remorse." (*Ibid*.)

Governor Newsom claimed Ms. Van Houten lacked sufficient insight because she made statements to Dr. Athans and the Board he believed to be inconsistent. Her comment that stabbing Ms. La Bianca felt horrible and predatory was made in 2018 in answer to a direct question from an evaluating psychologist. Her comment in 1969 to a fellow cult member that the stabbing was "fun" is not an expression of how Ms. Van Houten current regards her participation in the murders. To arrive at such a conclusion misconstrues the record.

As in virtually every case where a lack of insight is cited, there undoubtedly is some evidence in the record supporting a finding that Ms. Van Houten did not fully articulate all of the psychological factors, social pressures, and internal and external

circumstances leading to her participation in the commitment murders. It is doubtful this is even possible. In citing "gaps" in Ms. Van Houten's insight, the Governor ignored Dr. Athans' findings:

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

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

The Governor points to no evidence in the record to explain why he disagrees with Dr. Athans assessment, or how the supposed "gap" in Ms. Van Houten's insight is significant or leads to a conclusion that is has some rational tendency to show she currently poses an unreasonable risk of danger. The only evidence the Governor offers is the "extreme nature" of the murders. (Exh. 2, at p. 27.)

As the Supreme Court explained in *Lawrence*, the Governor's "due consideration" of a lack of insight "requires more than rote recitation of the relevant factors with no reasoning establishing a rational nexus between th[e] factor[ ] and the

necessary basis for the ultimate decision — the determination of current dangerousness." (*In re Lawrence, supra*, 44 Cal.4th at p. 1210.) Even assuming there is some evidence that Ms. Van Houten lacks complete insight, which she does not concede, "[s]ome evidence of the existence of a particular factor does not necessarily equate to some evidence the parolee's release unreasonably endangers public safety." (*In re Lee* (2006) 143 Cal.App.4th 1400, 1409.) The nexus to current dangerousness is critical, and missing from the Governor's reversal.

**E. <u>The Governor's Decision is Political</u>.**

In a footnote, respondent contends the voters of California expressly rejected Ms. Van Houten's contention that the Governor is motivated by his popularity among California voters in repeatedly rejecting her grants of parole by passing a proposition allowing the Governor the right to reverse grants of parole in cases where the inmate is convicted of murder. (Return, at p. 24, fn. 6.) The voters' enactment of a proposition taking away the Board's exclusive right to make parole decisions in murder cases and giving the final word to the Governor is exactly why the Governor is motivated by his popularity among California voters in reversing Ms. Van Houten's grants of parole an infamous murder case.

SCA 9 was passed in 1988. This predates the restrictions placed by the California Supreme Court on the Governor's authority under SCA 9 by making his parole decisions subject to constitutional due process (*In re Rosencrantz* (2000) 29 Cal.4th

616, 655, 682), and limiting the decision to a determination of whether the inmate currently poses an unreasonable risk of danger to public safety, with unsuitability factors supported by a rational evidentiary nexus to the Governor's conclusion of current dangerousness. (*In re Lawrence, supra*, 44 Cal.4th at p. 1212; accord, *Shaputis I, supra*, 44 Cal.4th at p. 1254.)

The California voters enacted SCA 9 because of "public consternation" over the Board's parole decision in another highly publicized murder case and the appellate court's decision affirming the grant of parole. (Exh. 8.) Thus, the motivation for enacting SCA 9 was "public outcry," and the public gave power to the Governor to carry out the voters' will to deny parole to a certain class of prisoners. There is no greater proof that Governor Newsom is motived by California voters in reversing the Board's grants of parole than SCA 9. (Exh. 8.)

## II.

## THE GOVERNOR VIOLATED MS. VAN HOUTEN'S RIGHTS OF CONSTITUTIONAL PROCEDURAL DUE PROCESS BY FAILING TO PROVIDE HER WITH A MEANINGFUL OPPORTUNITY TO BE HEARD AT AN IN PERSON HEARING.

Respondent contends the Governor provided Ms. Van Houten with all of the procedural due process rights to which she was entitled because she was allowed to appear before the *Board* assisted by counsel, present favorable testimony to the *Board* in a

recorded proceeding, and given a written decision by the Board after the in person hearing. (Return, at pp. 20-21.) According to respondent, the procedure before the *Board* made the Governor's paper review fully compliant with procedural due process. Ms. Van Houten disagrees.

Like a parole decision by the Board, the Governor's independent decision to reverse a parole decision must satisfy the requirements of procedural due process under California law. (*In re Scott* (2005) 133 Cal.App.4th 573, 590.) The process used by Governor Newsom in reversing Ms. Van Houten's grant of parole was limited to reviewing the relevant paperwork. She was not given an opportunity to appear before the Governor to answer questions and demonstrate the sincerity of her reform. This violated the most basic guaranties of procedural due process.

Infringements of procedural due process involving parole decisions are reviewed on a "case by case" basis in assessing the amount of process required for a particular set of circumstances. (*People v. Ramirez* (1979) 25 Cal.3d 260, 269; *In re Sturm* (1974) 11 Cal.3d 258, 266.) The amount of due process required varies according to the specific factual context. (*In re Minnis (*1972*)* 7 Cal.3d 639*,* 649.)

The factors courts must consider in determining a procedural due process violation are: (1) the private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; (3) the dignitary interest in informing individuals of the nature, grounds and consequences of the action; and (4) the

governmental interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. (*People v. Ramirez, supra,* 25 Cal.3d at p. 269.)

Ms. Van Houten had a private interest in parole consideration that was infringed by the governor's paper review. (See *People v. Ramirez, supra,* 25 Cal.3d at p. 269; *In re Ilasa, supra,* 3 Cal.App.5th at p. 507.) This interest affords her a justified expectation that she will be granted parole upon the satisfaction of enumerated criteria. A state may create a constitutionally protected liberty interest in the expectation of parole if state law employs "mandatory language" stating that parole "shall" be granted after certain findings are made. (*Board of Pardons v. Allen* (1987) 482 U.S. 369, 374.) Under these circumstances, individuals have an "expectation of parole" protected by due process. (*Id.,* at p. 373.) The codification of the parole process under California law employs such mandatory language. (§ 3041, subd. (a)(2).)

The Governor's power to review the Board's decision to parole an inmate convicted of murder also confers a liberty interest by its codification in the California Constitution. Pursuant to article V, section 8, subdivision (b) of the California Constitution and section 3041.2, the Governor is required to consider the same factors considered by the Board and *shall* approve release if the Governor "finds the inmate does not pose a current, unreasonable risk of violence or a current, unreasonable risk of significant criminal activity." (Cal. Const., art. 5, § 8, subd. (b); § 3041.2; Regs., § 2449.4, subd. (f); *In re Lawrence,*

*supra*, 44 Cal.4th at p. 1204; accord § 3041, subd. (b)(1)) [the Board "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 the consideration of the public safety requires a more lengthy period of incarceration for this individual"].)

For more than three decades, the California Supreme Court has held that an inmate who is eligible for parole consideration has a right to have his or her parole application "duly considered." (*In re Sturm, supra,* 11 Cal.3d at p. 268; *In re Prewitt* (1972) 8 Cal.3d 470; *In re Minnis, supra,* 7 Cal.3d 639; *In re Schoengarth* (1967) 66 Cal.2d 295.) This includes the right to be free from arbitrary parole decisions, to secure information necessary to prepare for parole interviews, and to "something more than mere pro forma consideration." (*In re Sturm*, *supra*, 11 Cal.3d at p. 268; *In re Rosenkrantz, supra,* 29 Cal.4th at p. 655 ["our past decisions also make clear that the requirement of procedural due process embodied in the California Constitution (Cal. Const., art. 1, § 7, subd. (a)) places some limitations upon the broad discretionary authority of the Board"].)

The Supreme Court has found violations when procedures employed by the Governor have failed to satisfy the requirements of due process. (See *In re Lawrence, supra,* 44 Cal.4th at p. 1227 [petitioner's due process rights were violated by the Governor's reliance upon the immutable circumstances of her commitment offense in reversing the parole board's decision to grant parole without considering her overall circumstances]; *In re Sturm,*

*supra,* 11 Cal.3d at p. 272 [finding due process violation when parole authorities failed to provide an adequate written statement describing the reasons for a parole denial].) These same limitations applied to Governor Newsom in reviewing the Board's parole decision in Ms. Van Houten's case.

The mandatory language used in the statutory enactment of the Governor's review of parole decisions for inmates serving indeterminate life sentences created in Ms. Van Houten the legitimate interest in a parole process protected by due process. (Cal. Const., art. V, § 8; § 3041.2; Regs., § 2449.4, subd. (f); accord § 3041, subd. (b)(1); see *Board of Pardons v. Allen, supra,* 482 U.S. at pp. 373, 374.) She had a legitimate interest in applying for parole and that her application would be duly considered in a procedure that was more than "mere pro forma consideration" to protect her from an arbitrary parole decision. The Governor's paper review violated this protected liberty interest.

The paper review process used by Governor Newsom created a substantial risk of an erroneous deprivation of Ms. Van Houten's interests, which an in-person hearing would have minimized. Because parole decisions are based on the subjective assessment of the evaluator, an inmate's decision not to testify at a parole hearing creates a substantial disadvantage. (*Shaputis II, supra,* 53 Cal.4th at pp. 219, 220.) The paper review process used by the Governor in considering Ms. Van Houten's parole suitability incorporated this disadvantage. Without providing her the opportunity to appear at an in-person hearing, the Governor's paper review process compromised the accuracy of the parole decision and a court's ability to review it. A Governor who has a

negative view of a parole applicant after reviewing the C-file may change that view once the applicant has appeared at an in-person hearing and personally demonstrated their suitability by showing remorse, insight, and honest rehabilitation. (See Reamer, *On the Parole Board: Reflections on Crime, Punishment, Redemption, and Justice* (2017), at p. 62.) A 2015 survey of 40 states' parole authorities found "near unanimity" in the belief that parole decision-makers should be required to evaluate an inmate's demeanor during a parole hearing. (Bronnimann, *Remorse in Parole Hearings: An Elusive Concept with Concrete Consequences* (2020) 85 Mo. L.Rev. 321, 337.)

This is particularly apparent in Ms. Van Houten's case because of the Governor's emphasis on her purported "lack of insight." If Ms. Van Houten had been given the opportunity to appear before the Governor to testify about her insight, as she had before the Board, the Governor may well have reached the same conclusion as the Board.

The fiscal and administrative burdens of holding in person hearings for indeterminately sentenced inmates under article V, section 8 of the California Constitution do not justify the Governor's paper review of Ms. Van Houten's parole suitability. The fiscal and administrative burdens must be balanced against the savings from the release of inmates whom the Governor might have found suitable for parole after an in-person hearing. The federal courts have determined that overcrowding in California prisons is the "primary cause of the unconstitutional denial of adequate medical and mental health care to California's prisoners." (*Coleman v. Schwarzenegger* (E.D. Cal. 2009) 922

F.Supp.2d 882, 920.) In 2022, the annual cost of housing an inmate in California prisons had more than doubled, to $106,131 per inmate.[4] Thus, an accurate assessment of the fiscal impact of providing in-person parole hearings in front of the Governor must be balanced against the fiscal burden of housing an inmate in a California prison who would be found suitable for parole under an in-person parole-determination process.

Further, analyzing the government's interests in eliminating a procedure under a due process analysis is not confined to money. (*People v. Ramirez, supra,* 25 Cal.3d at p. 269.) The relevant government interest includes comparing the cost of the process against the fiscal and administrative burdens to the state. In addition to saving money, a procedurally fair parole determination provides the chance of restoring a prison inmate "to a normal and useful life within the law." (*Morrissey v. Brewer* (1972) 408 U.S. 471, 484.)

Respondent repeatedly stresses that Governor Newsom is allowed to consider the evidence of Ms. Van Houten's suitability for parole "de novo." Respondent concedes that the Board and Governor review the same evidence and are bound by the same legal principles. The Board conducted a lengthy in-person hearing in which Ms. Van Houten was allowed to discuss the insight she has gained from her long journey or reform and rehabilitation. The Board found her testimony compelling and genuine. In order for the Governor to review the same evidence,

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[4] Legislative Analyst's Office, How much does it cost to incarcerate an inmate? (Jan. 2022) <https://lao.ca.gov/policyareas/cj/6_cj_inmatecost> [as of June 15, 2022].

procedural due process required that he conduct an in person hearing where Ms. Van Houten was permitted to personally address any concerns the Governor had about her insight. His failure to do so violated Ms. Van Houten's rights of procedural due process. (U.S. Const., 5th & 14th Amends.; *Estelle v. McGuire* (1991) 502 U.S. 62; Cal. Const., art. 1, §§ 7, subd, (a), 15.)

## CONCLUSION

Based on the foregoing reasons, and those in Ms. Van Houten's petition, she respectfully requests that this Court issue a writ of habeas corpus vacating the Governor's reversal of her grant of parole.

Dated: February 17, 2023

Respectfully submitted,

/S/ Nancy Tetreault

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## CERTIFICATE OF WORD COUNT

The text of this brief consists of 12,095 words as counted by the Corel WordPerfect version 10 word processing program used to generate this brief.

Dated: February 17, 2023

By: /S/ Nancy Tetreault
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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 TRAVERSE** 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 February 17, 2023.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on February 17, 2023, at Los Angeles, California.

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