

Avram Frey (SBN 347885) afrey@aclunc.org 2 AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF NORTHERN CALIFORNIA, INC. 39 Drumm Street San Francisco, CA 94111 Telephone: (415) 621-2493 MAR 24 2025 Facsimile: (415) 255-1478 David W. Slayton, Executive Officer/Clerk of Court Summer Lacey (SBN 308614) slacey@aclusocal.org Melissa Camacho (SBN 264024) mcamacho@aclusocal.org AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF SOUTHERN CALIFORNIA, INC. 1313 W 8th Street, Suite 200 10 Los Angeles, CA 90017 Telephone: (213) 977-5224 11 Steven M. Watt* (NY Bar No. 4383212) 12 swatt@aclu.org Allison Frankel* (NY Bar No. 5621834) afrankel@aclu.org AMERICAN CIVIL LIBERTIES UNION FOUNDATION 125 Broad Street, 18th Floor New York, NY 10004 Telephone: (212) 549-2500 Attorneys for Petitioner 18 19 SUPERIOR COURT OF THE STATE OF CALIFORNIA 20 FOR THE COUNTY OF LOS ANGELES 21 DAVID ADKINS, 22 Petitioner, 23 24 ٧.

Case No. 25CJHC00034-01

DECLARATION OF SARA COOKSEY IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS AND MEMORANDUM OF POINTS AND AUTHORITIES

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JAMES HILL, in his official capacity,

Respondent.

*Motion for permission to practice *pro hac vice* pursuant to Cal. Rules of Court, Rule 9.40 forthcoming.

DECLARATION ISO PETITION FOR WRIT OF HABEAS CORPUS & MEMO. OF POINTS AND AUTHORITIES

I, Sara Cooksey, declare:

- 1. I have personal knowledge of the facts set forth in this declaration, and if called to testify as a witness thereto, could do so competently under oath.
- 2. I am the Supervising Paralegal at the American Civil Liberties Union Foundation of Northern California ("ACLU NorCal"). ACLU NorCal is a nonprofit public interest law firm based in San Francisco, California that provides free legal services to people whose civil liberties have been threatened by government action. In addition to direct representation, ACLU NorCal advocates for policy changes and engages in impact litigation to ensure that Constitutional rights are protected.
- 3. I provide this declaration to summarize available public evidence regarding the Governor's exercise of the parole reversal power, both in general and with regard to people who were aged 25 or younger at the time of their controlling offense and with regard to those under age 18 at the time of their controlling offense.

Materials Reviewed

- 4. There are 14 Executive Reports on Parole issued by the California Governor's Office ("Parole Reports") published on the internet, corresponding to the years 2011-2024.
- 5. On February 12, 2025, I accessed the website of the California Governor's Office at https://www.gov.ca.gov/clemency/parole/ and reviewed and downloaded the following report:
 - a. Executive Report on Parole: Parole Reversal Decisions for the Period January 1, 2024 through December 31, 2024 ("2024 Parole Report") available at https://www.gov.ca.gov/wp-content/uploads/2025/02/Annual-Executive-Report-on-Parole-2024.pdf.
- 6. On January 24, 2024, I accessed the website of the California Governor's Office at https://www.gov.ca.gov/clemency/ and reviewed and downloaded the following report:
 - a. Executive Report on Parole: Parole Reversal Decisions for the Period January 1, 2023

¹ According to webpage captures on the Internet Archive (https://archive.org/), sometime between May 11, 2024 and May 24, 2024, links to the Parole Reports from 2019 and onward were relocated to this webpage on the website of the California Governor's Office. The Parole Reports were previously linked from the webpage https://www.gov.ca.gov/clemency/. Paragraphs 6, 7, and 8 reflect this previous webpage.

DECLARATION ISO PETITION FOR WRIT OF HABEAS CORPUS & MEMO. OF POINTS AND AUTHORITIES

- a. Executive Report on Parole Review Decisions: Decisions for the Period January 1, 2018 through December 31, 2018 ("2018 Parole Report") available at https://www.ca.gov/archive/gov39/wp-content/uploads/2019/01/2018-Executive-Report-on-Parole-Review-Decisions.pdf,
- b. Executive Report on Parole Review Decisions: Decisions for the Period January 1, 2017 through December 31, 2017 ("2017 Parole Report") available at https://www.ca.gov/archive/gov39/wp-content/uploads/2018/02/2017-Executive-Report-on-Parole-Review-Decisions.pdf,
- c. Executive Report on Parole Review Decisions: Decisions for the Period January 1,
 2016 through December 31, 2016 ("2016 Parole Report") available at
 https://archive.gov.ca.gov/archive/gov39/wp-content/uploads/2017/09/2016
 https://archive.gov.ca.gov/archive/gov39/wp-content/uploads/2017/09/2016
 https://archive.gov.ca.gov/archive/gov39/wp-content/uploads/2017/09/2016
 https://archive.gov.ca.gov/archive/gov39/wp-content/uploads/2017/09/2016
- d. Executive Report on Parole Review Decisions: Decisions for the Period January 1,
 2015 through December 31, 2015 ("2015 Parole Report") available at
 https://archive.gov.ca.gov/archive/gov39/wp-content/uploads/2017/09/2015
 Executive Report on Parole Review Decisions.pdf,
- e. Executive Report on Parole Review Decisions: Decisions for the Period January 1, 2014 through December 31, 2014 ("2014 Parole Report") available at https://archive.gov.ca.gov/archive/gov39/wp-content/uploads/2017/09/2014
 Executive Report on Parole Review Decisions.pdf,
- f. Executive Report on Parole Review Decisions: Decisions for the Period January 1, 2013 through December 31, 2013 ("2013 Parole Report") available at https://archive.gov.ca.gov/archive/gov39/wp-content/uploads/2017/09/2013
 Executive Report on Parole Review Decisions.pdf,
- g. Executive Report on Parole Review Decisions: Decisions for the Period January 1, 2012 through December 31, 2012 ("2012 Parole Report") available at https://archive.gov.ca.gov/archive/gov39/wp-content/uploads/2017/09/2012
 Executive Report on Parole Review Decisions.pdf, and

- h. Executive Report on Parole Review Decisions: Decisions for the Period January 3, 2011 through December 31, 2011 ("2011 Parole Report") available at https://archive.gov.ca.gov/archive/gov39/wp-content/uploads/2017/09/2011
 Executive Report on Parole Review Decisions.pdf.
- 10. Each of the 14 Parole Reports listed above is a compilation of that year's Indeterminate Sentence Parole Release Reviews ("Release Reviews") for incarcerated individuals granted parole by the California Department of Corrections and Rehabilitation's Board of Parole Hearings ("Parole Board"). The Parole Reports do not contain any reference to the Governor's review of Parole Board decisions denying release on parole. The Parole Reports also do not contain any reference to the Governor's review of Parole Board decisions granting release on parole in cases in which the Governor took no contrary action. Only the Governor's decisions contrary to Parole Board findings of suitability by the Parole Board are publicized.
- 11. There is no other publicly available reporting of the Governor's review of parole decisions for this 14-year time-period. Publicly available reporting provides no indication that the Governor reviewed Parole Board decisions denying release on parole over the time period examined by the undersigned.

Age-Determination Methodology

- 12. I examined each Release Review to determine whether the individual was 25 years of age or younger at the time of the controlling offense, and further, whether the individual was age 17 or younger. In making this determination, I relied on several methodologies described here:
 - a. First, I relied on the presence of language in the Release Reviews acknowledging the
 particular individual's "youth offender" status and corresponding rights under
 California Penal Code sections 3051 and 4801.

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- b. Second, I relied on any expressed indication in the Release Reviews of the individual's age at the time of the controlling offense; including statements that the individual was a "juvenile," "youth," "teenager", or was in high school the same year as the controlling offense.³
- c. Third, where the Release Review noted the individual's present age and period of incarceration, I subtracted the number of years of incarceration from the present age to approximate the individual's age at the time of offense.
- d. Fourth, where the Release Review noted the individual's present age and date of controlling offense, I subtracted the present age from the date the Release Review was signed by the Governor, approximating the individual's year of birth. I then subtracted the approximate year of birth from the year of the controlling offense to approximate the individual's age at the time of offense.
- e. Finally, I searched each individual's unique California Department of Corrections ("CDCR") Number⁴ identified on the Release Reviews using the CDCR California Incarcerated Records and Information Search ("CIRIS") portal.⁵ For individuals currently in CDCR custody, I subtracted the individual's listed age from the current year, to approximate the individual's year of birth. I then subtracted the approximate year of birth from the year of the controlling offense identified in the Release Review to approximate the individual's age at the time of offense.

years of age or younger at the time of their controlling offense in the data analysis at paragraphs 15 through 38. Five individuals identified as a "youth," "teenager," or stating they were in high school the same year as the controlling offense in their Release Reviews were not counted among individuals 17 years of age or younger in the data analysis herein, but were counted as youth offenders aged 25 or younger.

^{22 3} One individual identified as a "juvenile" in their Release Review was counted among individuals 17

⁴ Individuals are assigned a unique identification number by CDCR when admitted into a CDCR facility, commonly referred to as a "CDCR Number." Every Release Review contains the individual's CDCR Number.

⁵ CIRIS in an online tool to lookup individuals currently in CDCR custody. CIRIS can be searched using an individual's name or their CDCR Number. For individuals currently in CDCR custody, the CIRIS search portal details information about them including their full name, current age, and CDCR Number. CIRIS is available at https://ciris.mt.cdcr.ca.gov/.

- 13. Each of these methodologies, individually and collectively, likely resulted in an undercount of the total number of people 25 years old or under, and those 17 years old or under, at the time of offense who have been reversed by the Governor, for reasons discussed in the succeeding paragraphs. As a result, data in this Declaration concerning individuals who were aged 25 or younger and those aged 17 or younger at the time of offense reflects a minimum, and may significantly underrepresent the total in some instances.
- 14. The Governor's identification of individuals as "youth offenders" within the meaning of Penal Code sections 3051 and 4801 may reflect an undercount of individuals aged 25 or younger, and those aged 17 or younger, at the time of the controlling offense for two reasons. First, it is possible that the Governor did not acknowledge the rights of particular "youth offenders" under these statutes in individual Release Reviews. The Release Reviews do not consistently identify either the individual's age at the time of the controlling offense, present age, or period of incarceration. Second, the category of "youth offender" was created during the time period I examined and has expanded over time, as explained below:
 - a. Years 2011-2013: Prior to 2014, the Penal Code did not recognize "youth offenders," as presently defined, as entitled to "youth offender parole hearings." For the years 2011, 2012, and 2013, the Release Reviews do not contain reference to "youth offenders" at all.
 - b. Years 2014-2015: Senate Bill 260, effective January 1, 2014, created the "youth offender parole hearing" and originally defined "youth offender" as limited to individuals who were under 18 years of age at the time of the controlling offense.
 (Stats.2013, c. 312.) However, from my examination, it appears that the Release Reviews for the years 2014 and 2015, do not consistently identify those entitled to a "youth offender" parole hearing for individuals under 18 years of age at the time of the controlling offense.
 - c. **Years 2016-2017**: Senate Bill 261, effective January 1, 2016, amended the definition of "youth offender" to include individuals who were under 23 years of age at the time of the controlling offense. (Stats.2015, c. 471.) For the years 2016 and 2017, the

Release Reviews identification of "youth offender" captures individuals under 23 years of age at the time of the controlling offense.

d. Years 2018-2024: Senate Bill 394, effective January 1, 2018, amended the definition of "youth offender" again to include individuals who were 25 years old or younger at the time of the controlling offense. (Stats.2017, c. 684.) For the years 2018, 2019, 2020, 2021, 2022, 2023, and 2024 the Governor's identification within the Release Reviews of the given individual as a "youth offender" corresponds to individuals who were 25 years old or younger at the time of the controlling offense.

Comprehensive Data: 2011-2024

- 15. The 14 Parole Reports contained a total of 846 Release Reviews for 700 incarcerated individuals. The number of Release Reviews is higher than the number of individuals whose parolegrants were reviewed because the Governor reviewed the parole-grants of many individuals more than once during this 14-year time-period.
- 16. Of the 846 Release Reviews, 841 were parole reversals by the Governor of California.

 One was a referral to the Parole Board for an en banc review, 6 and four were modifications of the grant of parole.
- 17. Of the 841 parole reversals between 2011 and 2024, at least 334 were 25 years old or younger at the time of the offense, or at least approximately 39%.
- 18. Of the 841 parole reversals between 2011 and 2024, at least 121 were under 18 years old at the time of the offence, or at least approximately 14%.
- 19. For the period between 2011 and 2024, the Governor did not reverse the denial of parole by the Parole Board in any case.
 - 20. Of the 700 individuals whose grant of parole was reversed by the Governor at least once

⁶ From my review of the Parole Board's En Banc Decisions, the Governor frequently refers individuals to the full Parole Board for en banc consideration under Penal Code section 3041.1 after their grant of parole, but prior to their release. Based on my experience, the Governor issues a Release Review for each en banc referral, but these en banc-referral Release Reviews are not available publicly and not typically included in the yearly Parole Reports. The inclusion of one en banc-referral Release Review in 2019 appears to be an anomaly. Parole Board En Banc decisions from 2019 onwards available here: https://www.cdcr.ca.gov/bph/executive-board-meetings-overview/enbanc/.

between 2011 and 2024, a minimum of 263 of those individuals were 25 years old or younger at the time of the offense, or at least approximately 37%.

- 21. Of the 700 individuals whose grant of parole was reversed by the Governor at least once between 2011 and 2024, a minimum of 92 of those individuals were 17 years old or younger at the time of the offense, or at least approximately 13%.
- 22. Based on review of CDCR's CIRIS portal, of the 700 individuals whose grant of parole was reversed by the Governor between 2011 and 2024, approximately 102 of these individuals are currently incarcerated by CDCR, as of the date of this Declaration.
- 23. Of these 102 currently incarcerated individuals, 72 were 25 years of age or younger at the time of their controlling offense, or at least approximately 70%.
- 24. Of these 102 currently incarcerated individuals, 16 were 17 years of age or younger at the time of their controlling offense, or at least approximately 15%.

Individual Parole Report Data

- 25. The 2024 Parole Report contained 11 Release Reviews. All 11 Release Reviews were parole reversals by the Governor. Of these 11 parole reversals, six were for individuals who were 25 years of age or younger at the time of the life-crime, which is over 54% of the parole reversals for 2024. One parole reversal was for an incarcerated individual who was 17 years of age or younger at the time of the life-crime, which is over 9% of the parole reversals for 2024.
- 26. The 2023 Parole Report contained eight Release Reviews. All eight Release Reviews were parole reversals by the Governor. Of these eight parole reversals, five were for individuals who were 25 years of age or younger at the time of the life-crime, which is over 62% of the parole reversals for 2023. One parole reversal was for an incarcerated individual who was 17 years of age or younger at the time of the life-crime, which is over 12% of the parole reversals for 2023.
- 27. The 2022 Parole Report contained 21 Release Reviews. All 21 Release Reviews were parole reversals by the Governor. Of these 21 parole reversals, 14 were for individuals who were 25 years of age or younger at the time of the life-crime, which is over 66% of the parole reversals for 2022. Three parole reversals were for incarcerated individuals who were 17 years of age or younger at the time of the life-crime, which is over 14% of the parole reversals for 2022.

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parole reversals by the Governor of California. Of these 33 parole reversals, 16 were for incarcerated individuals who were 25 years of age or younger at the time of the life-crime, which is over 48% of the parole reversals for 2021. Three parole reversals were for incarcerated individuals who were 17 years of age or younger at the time of the life-crime, which is over 9% of the parole reversals for 2021.

The 2021 Parole Report contained 33 Release Reviews. All 33 Release Reviews were

- 29. The 2020 Parole Report contained 33 Release Reviews. All 33 Release Reviews were parole reversals by the Governor of California. Of these 33 parole reversals, 21 were for incarcerated individuals who were 25 years of age or younger at the time of the life-crime, which is over 63% of the parole reversals for 2020. Six parole reversals were for incarcerated individuals who were 17 years of age or younger at the time of the life-crime, which is over 18% of the parole reversals for 2020.
- 30. The 2019 Parole Report contained 96 Release Reviews. Ninety-five Release Reviews were parole reversals by the Governor of California, and one was a referral to the Parole Board for an en banc review. Of the 95 parole reversals, 52 were for incarcerated individuals who were 25 years of age or younger at the time of the life-crime, which is over 54% of the parole reversals for 2019. Seventeen parole reversals were for incarcerated individuals who were 17 years of age or younger at the time of the life-crime, which is over 17% of the parole reversals for 2019.
- 31. The 2018 Parole Report contained 28 Release Reviews. All 28 Release Reviews were parole reversals by the Governor of California. Of these 28 parole reversals, 15 were for incarcerated individuals who were 25 years of age or younger at the time of the life-crime, which is over 53% of the parole reversals for 2018. Six⁷ parole reversals were for incarcerated individuals who were 17 years of age or younger at the time of the life-crime, which is over 21% of the parole reversals for 2018.
- 32. The 2017 Parole Report contained 25 Release Reviews. All 25 Release Reviews were parole reversals by the Governor of California. Of these 25 parole reversals, at least 15 were for incarcerated individuals who were 25 years of age or younger at the time of the life-crime, which is 60% of the parole reversals for 2017. Five parole reversals were for incarcerated individuals who were 17 years of age or younger at the time of the life-crime, which is 20% of the parole reversals for 2017.

⁷ One of the individuals committed their life-crimes at 17 and 18 years old. That individual is counted among the six individuals identified as under 18 years of age.

- 33. The 2016 Parole Report contained 99 Release Reviews. All 99 Release Reviews were parole reversals by the Governor of California. Of these 99 parole reversals, at least 59 were for incarcerated individuals who were 25 years of age or younger at the time of the life-crime, which is over 59% of the parole reversals for 2016. Eighteen parole reversals were for incarcerated individuals who were 17 years of age or younger at the time of the life-crime, which is over 18% of the parole reversals for 2016.
- 34. The 2015 Parole Report contained 96 Release Reviews. Ninety-five Release Reviews were parole reversals by the Governor of California, and one was a modification adding additional conditions of parole. Of the 95 parole reversals, at least 27 were for incarcerated individuals who were 25 years of age or younger at the time of the life-crime, which is over 28% of the parole reversals for 2015. Fourteen parole reversals were for incarcerated individuals who were 17 years of age or younger at the time of the life-crime, which is over 14% of the parole reversals for 2015.
- 35. The 2014 Parole Report contained 132⁸ Release Reviews. All 132 Release Reviews were parole reversals by the Governor of California. Of these 132 parole reversals, at least 40 were for incarcerated individuals who were 25 years of age or younger at the time of the life-crime, which is over 30% of the parole reversals for 2014. Seventeen parole reversals were for incarcerated individuals who were 17 years of age or younger at the time of the life-crime, which is over 12% of the parole reversals for 2014.
- 36. The 2013 Parole Report contained 100 Release Reviews. All 100 Release Reviews were parole reversals by the Governor of California. Of these 100 parole reversals, at least 30 were for incarcerated individuals who were 25 years of age or younger at the time of the life-crime, which is 30% of the parole reversals for 2013. At least 14 parole reversals were for incarcerated individuals who were 17 years of age or younger at the time of the life-crime, which is 14% of the parole reversals for 2013.

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⁸ The 2014 Parole Report states there were 133 parole reversals, but two of the Release Reviews are duplicates of each other. That parole reversal is accordingly counted only once in this tally, yielding a total number of 132.

- 37. The 2012 Parole Report contained 92 Release Reviews. Ninety⁹ Release Reviews were parole reversals by the Governor of California, and two were modifications shortening the release date for parole. Of the 90 parole reversals, at least 21 were for incarcerated individuals who were 25 years of age or younger at the time of the life-crime, which is over 23% of the parole reversals for 2012. At least 11 parole reversals were for incarcerated individuals who were 17 years of age or younger at the time of the life-crime, which is over 12% of the parole reversals for 2012.
- 38. The 2011 Parole Report contained 72 Release Reviews. Seventy-one ¹⁰ Release Reviews were parole reversals by the Governor of California, and one was a modification shortening the release date for parole. Of the 70 individuals whose parole was reversed, at least 13 were for incarcerated individuals who were 25 years of age or younger at the time of the life-crime, which is over 18% of the parole reversals for 2011. At least five parole reversals were for incarcerated individuals who were 17 years of age or younger at the time of the life-crime, which is over 7% of the parole reversals for 2011.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this Declaration was executed at Fresno, California this 19th day of March, 2025.

Sara Cooksey

⁹ The 2012 Parole Report states there were 91 parole reversals in 2012, but in fact there are only 90 parole reversals.

¹⁰ One individual's grant of parole was reversed twice in 2011. Accordingly, that individual is only counted once in this tally. This individual was not apparently 25 years of age or younger at the time of their life-crime.