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18
19 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
20 **FOR THE COUNTY OF LOS ANGELES**

21 **DAVID ADKINS,**

22 Petitioner,

23 v.
24

25 **JAMES HILL**, in his official capacity,

26 Respondent.
27

Case No. **25CJHC00034-01**

**PETITION FOR WRIT OF
HABEAS CORPUS AND
MEMORANDUM OF POINTS
AND AUTHORITIES**

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

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<i>Caldwell v. Mississippi</i> , (1985) 472 U.S. 320	25
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<i>Diatchenko v. Dist. Atty. for Suffolk Dist.</i> , (Mass. 2015) 27 N.E.3d 349	22, 32
<i>Flores v. Stanford</i> , (S.D.N.Y., Sept. 20, 2019, No. 18 CV 2468 (VB)) 2019 WL 4572703	33
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<i>Gilman v. Brown</i> , (E.D. Cal. 2014) 110 F.Supp.3d 989	27, 28
<i>Graham v. Florida</i> , (2010) 560 U.S. 48	passim
<i>Greenholtz v. Inmates of Nebraska Penal and Correctional Complex</i> , (1979) 442 U.S. 1	33, 34
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1	<i>Hawkins v. New York State Dept. of Corr. & Cmty. Supervision,</i>	
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3	<i>Hayden v. Keller,</i>	
4	(E.D.N.C. 2015) 134 F.Supp.3d 1000.....	22
5	<i>Howard v. Coonrod,</i>	
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15	<i>In re Strick,</i>	
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27	<i>Mardesich v. California Youthful Offender Parole Bd.,</i>	
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3	<i>People v. Allen</i> ,	
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5	<i>People v. Caballero</i> ,	
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7	<i>People v. Contreras</i> ,	
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9	<i>People v. Dillon</i> ,	
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21	<i>People v. Ramirez</i> ,	
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25	<i>Robinson v. California</i> ,	
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1	<i>Woodson v. North Carolina,</i>	
2	(1976) 428 U.S. 280	25

3 Statutes

4	Cal. Const., art. I, § 7	11, 13, 17, 21
5	Cal. Const., art. I, § 17	17, 20, 21, 24
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8	Code Civ. Proc., § 1021.5	18, 34
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12	Pen. Code, § 3051	<i>passim</i>
13	Pen. Code, § 4801	<i>passim</i>
14	U.S. Const., 8th Amend.	<i>passim</i>
15	U.S. Const., 14th Amend.	<i>passim</i>
16		

17 Regulations

18	Cal. Code Regs., tit. 15, § 3312	37
----	--	----

19 Other Authorities

20	Arce, <i>Maryland Governor’s Involvement in the Parole Process Prevents Juvenile Lifers from Parole</i>	
21	<i>Approval</i> (2020) Am. Univ. J. of Gender, Social Pol’y, & the L.....	16
22	Baker, <i>Bush Made Willie Horton an Issue in 1988, and the Racial Scars Are Still Fresh,</i>	
23	N.Y. Times (Dec. 3, 2018)	26
24	Bell, <i>A Stone of Hope: Legal and Empirical Analysis of California Juvenile Lifer Parole Decisions</i>	
25	(2018) 54 Harv. Civ. Rights-Civ. Liberties L.Rev. 456.....	41
26	California Governor Blocks Parole for Manson Follower Leslie Van Houten,	
27	The Guardian (Mar. 30, 2022)	29
28	Campbell, <i>The Emergence of Penal Extremism in California: A Dynamic View of Institutional</i>	
	<i>Structures and Political Processes</i> (2014) 48 Law & Soc’y Rev. 377	14, 27

1	Egelko, <i>Brown Paroles More Lifers Than Did Predecessors</i> ,	
2	S.F. Gate (Apr. 28, 2011)	28, 29
3	Ewing, <i>Why So Few Violent Offenders Are Let Out on Parole</i> (interview with Marc Morjé Howard),	
4	The Atlantic (Aug. 29, 2017)	27
5	Glendenning, Opinion, <i>I Made a Serious Mistake As Maryland Governor. We Need Parole Reform</i> ,	
6	Wash. Post (Mar. 1, 2021).....	29
7	Governor’s Parole Review, CA Proposition 89 (1988)	29
8	Harrington, <i>The Constitutionalization of Parole: Fulfilling the Promise of Meaningful Review</i>	
9	(2021) 106 Cornell L.Rev. 1173	23
10	Hurst, <i>Prop. 89, Plan to Give Governor Parole Veto Power, Expected to Win</i> ,	
11	L.A. Times (Oct. 28, 1988)	14, 27
12	Jackman, <i>California Governor Newsom Denies Parole for Sirhan Sirhan, Convicted of Robert F.</i>	
13	<i>Kennedy Assassination</i> , Wash. Post (Jan. 13, 2022).....	15
14	Liotta, <i>Double Victims: Ending the Incarceration of California’s Battered Women</i>	
15	(2011) 26 Berkeley J. Gender L. & Justice 253	28
16	Sarosy, <i>Parole Denial Habeas Corpus Petitions: Why the California Supreme Court Needs to</i>	
17	<i>Provide More Clarity on the Scope of Judicial Review</i> (2014) 61 UCLA L.Rev. 1134	15, 28, 29
18	Saunders, Opinion, <i>Willie Horton’s Legacy</i> ,	
19	S.F. Gate (Dec. 12, 2002).....	26
20	Schwartzapfel & Keller, <i>Willie Horton Revisited</i> ,	
21	The Marshall Project (May 13, 2015)	26
22	Seidman, <i>Manson Follower Bruce Davis Denied Parole By Newsom</i> ,	
23	L.A. Times (June 21, 2021).....	29
24	Warren, <i>Davis’ Parole Policy Raises Questions</i> ,	
25	L.A. Times (July 30, 2002)	15
26	Weisberg et al., <i>Life in Limbo: An Examination of Parole Release for Prisoners Serving Life</i>	
27	<i>Sentences with the Possibility of Parole in California</i> (2011) Stanford Criminal Justice Ctr.	28
28	Wood, <i>Maryland Lawmakers Strip Governor’s Power to Block Parole</i> ,	
	Baltimore Sun (Dec. 8, 2021).....	16, 29

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1 people have reduced culpability for their conduct and greater capacity for change. (*People v. Caballero*
2 (2012) 55 Cal.4th 262, 272.)

3 (2) The Governor’s reversal power violates the right to a “meaningful opportunity to obtain
4 release” because there is an unacceptable likelihood that young people who “demonstrate[] [their]
5 maturity and rehabilitation”, (*id.* at p. 266), may nonetheless be denied release based not on any danger
6 they may pose to society but on the Governor’s political calculus.

7 (3) The risk of politicized decision-making is obvious, substantial, and intractable—only one
8 other state gives this authority to its Governor. The very nature of a veto over parole-grants by the
9 State’s directly elected chief executive means that it will be exercised in accordance with the Governor’s
10 perception of public opinion and personal predilections rather than any objective legal standard. And the
11 origin and historical use of this power in California demonstrates that it was explicitly intended, and has
12 been employed, for political ends. In the nearly 35 years since the veto power was enacted, governors
13 have reversed the Board only to block parole-grants, never to release someone. Moreover, the reversal
14 rates of individual governors are widely divergent, reflecting the idiosyncratic politics and proclivities of
15 different politicians. Finally, the risk of unlawful reversals is not diminished by judicial review under the
16 existing legal standard, as California courts review the Governor’s reversal decisions under an
17 “extremely deferential” “some evidence” standard that fails to correct arbitrary and politicized reversals.
18 (*In re Rosenkrantz* (2002) 29 Cal.4th 616, 665.)

19 (4) The Governor’s reversal authority also violates the due process rights of young people
20 under article I, section 7 of the California Constitution and the Fourteenth Amendment of the U.S.
21 Constitution. Young people’s constitutional and statutory rights to a meaningful opportunity for release
22 create a heightened due process liberty interest in the parole process. This heightened liberty interest is
23 undermined by the substantial risk of arbitrary and politicized decision-making inherent in the
24 Governor’s reversal authority.

25 (5) Mr. Adkins’ case is illustrative. At the time of his offense, committed more than 30 years
26 ago, Mr. Adkins was 16 years old and highly intoxicated. By the time the Parole Board considered his
27 suitability for release on November 14, 2019, Mr. Adkins had been sober for 20 years, with no
28 disciplinary issues. Nor did he pose any danger to society, as the Board recognized in its decision to

1 release him on parole. Nevertheless, the Governor reversed Mr. Adkins’ parole-grant. The Governor’s
2 reversal of Mr. Adkins’ parole-grant reflects a political calculation based on the egregious nature of Mr.
3 Adkins’ offense conduct. His reversal violates Mr. Adkins’ right to release based on his demonstrated
4 maturity and rehabilitation.

5 (6) As the Governor’s reversal power is incompatible with young people’s rights to release
6 upon demonstrating their maturity and rehabilitation, young people should be categorically exempted
7 from the Governor’s exercise of the reversal power. No lesser remedy can assure that young people
8 found suitable for parole by the Board will be promptly released. In the alternative, the Court should
9 hold that young people whose parole-grants are reversed by the Governor are entitled to judicial review
10 under an independent judgment standard with appointment of counsel. Such procedural safeguards are
11 the minimum necessary to assure that unlawful reversals are identified and vacated. The Court should
12 properly begin its analysis with these constitutional and statutory claims for prospective relief. (See
13 *Rosenkrantz, supra*, 29 Cal.4th at pp. 636-37 [beginning analysis with constitutional “threshold question
14 that logically precedes” other questions presented—“namely, whether it was constitutionally permissible
15 for the Governor to have exercised the review authority afforded by article V, section 8(b), in this case
16 *at all*”] [emphasis original].)

17 (7) There are presently 102 individuals incarcerated in California as a result of a parole
18 reversal decision by the Governor since 2011, the year the Governor’s office began publicizing reversal
19 decisions. Of those 102 individuals, 72 were 25 or younger at the time of their offense, and 16 were
20 under the age of 18. (See Declaration of Sara Cooksey in Support of Petition for Writ of Habeas Corpus
21 and Memorandum of Points and Authorities, dated March 19, 2025 (“Cooksey Decl.”) at ¶¶ 22-24)

22 (8) If the Court declines to grant prospective relief on Mr. Adkins’ constitutional and
23 statutory claims, Mr. Adkins challenges the Governor’s reversal of his parole-grant under the existing
24 legal standard. (See *In re Lawrence* (2008) 44 Cal.4th 1181, 1212 [review is for “some evidence [that]
25 supports the decision of the Board or the Governor that the inmate constitutes a current threat to public
26 safety”] [emphasis removed].) Mr. Adkins has demonstrated maturity and rehabilitation over his 34-
27 year-long imprisonment, and there is no record evidence to support the Governor’s reversal. The Court
28 should properly vacate the Governor’s reversal.

(9) This Court must address Mr. Adkins’ challenge to the Governor’s unlawful reversal on the merits notwithstanding that the Board, after the Governor reversed, found Mr. Adkins not suitable for parole at his next hearing. Subsequent Board action does not render a challenge to a Governor’s reversal moot because “the Board ha[s] no authority to conduct” a hearing after an unlawful reversal. (*In re Copley* (2011) 196 Cal.App.4th 427, 435; *accord Sargent, supra*, 2011 WL 2565311, at *7 [hearing after an improper reversal “should never have been held.”].) Courts have repeatedly vacated reversals by the Governor despite subsequent findings of unsuitability by the Board. (See, e.g. *Copley, supra*, 196 Cal.App.4th at p. 435; *Sargent, supra*, 2011 WL 2565311, at *7; see also *In re Shelton* (2020) 53 Cal.App.5th 650, 673 [petition challenging Board denial was not mooted by two subsequent Board denials; alternative would allow “legally unsound” decision to stand].)

PARTIES

(10) Petitioner David Adkins is in the custody of the State of California and incarcerated at the Richard J. Donovan Correctional Facility in San Diego, California. His California Department of Corrections and Rehabilitation (“CDCR”) Number is H70868.

(11) Respondent James Hill is the Warden of the Richard J. Donovan Correctional Facility and is the legal custodian of Mr. Adkins.

JURISDICTION AND VENUE

(12) This Court has jurisdiction over this habeas petition under article VI, section 10 of the California Constitution and Penal Code section 1473.

(13) Venue is proper in the Superior Court of California, County of Los Angeles because Mr. Adkins is unlawfully confined pursuant to his conviction and sentence by a superior court of this county.

(14) This habeas petition is necessary because Mr. Adkins has no other plain, speedy, or adequate remedy at law for the violations of his rights under article I, sections 7 and 17 of the California Constitution, the Eighth and Fourteenth Amendments to the U.S. Constitution, and Penal Code sections 3051 and 4801. Mr. Adkins is not required to perform any conditions precedent or exhaust any administrative remedies. (*In re Strick* (1983) 148 Cal.App.3d 906, 911.)

(15) This Petition is timely. Mr. Adkins is incarcerated because the Governor reversed his parole-grant. Mr. Adkins and others similarly situated initially filed a challenge to the Governor's

1 reversal in a putative habeas class action in Alameda County on June 6, 2022. That petition was
2 dismissed without prejudice to refiling as an individual challenge. (Petition for Writ of Habeas Corpus
3 filed in the Superior Court of Alameda County (Jun. 6, 2022) (Exhibit 1) at PA_007-31.); Order Striking
4 Noncomplaint [sic] Habeas Petition and Supporting Documents from the Superior Court of Alameda
5 County (Jun. 16, 2022) (Exhibit 4) at PA_088-9.) Mr. Adkins and others then filed a putative class
6 action habeas petition in Monterey County on December 22, 2022, which was rejected by the Clerk’s
7 Office by written Memorandum on February 14, 2023. (Petition for Writ of Habeas Corpus submitted
8 for filing in the Superior Court of Monterey County (Dec. 22, 2022) (Exhibit 2) at PA_033-56;
9 Memorandum from the Superior Court of Monterey County (Feb. 14, 2023) (Exhibit 5) at PA_091.) Mr.
10 Adkins and others thereafter filed a putative class action habeas petition in the First District Court of
11 Appeal on May 30, 2023. The Court of Appeal likewise dismissed and instructed Mr. Adkins and others
12 to file their claims separately. (Petition for Writ of Habeas Corpus filed in the California Court of
13 Appeal, First Appellate District (May 30, 2023) (Exhibit 3) at PA_058-86; Decision from the Court of
14 Appeal, First Appellate District (Jun. 13, 2023) (Exhibit 6) at PA_093-4) Mr. Adkins accordingly now
15 brings this matter individually seeking prospective relief. Together with counsel, he has worked
16 diligently to bring this case to court for decision on the merits. There is no “substantial delay,” no
17 “prejudice [to] the respondent’s ability to answer,” and no affront to the finality of judgments. (*In re*
18 *Clark* (1993) 5 Cal.4th 750, 787.)

19 **PROCEDURAL AND FACTUAL HISTORY**

20 **I. THE GOVERNOR’S REVERSAL AUTHORITY**

21 (16) The Governor’s reversal authority was created by ballot initiative in 1988 in response to
22 the release on parole of Archie Fain—a man convicted of multiple rapes and murder—which prompted
23 “widespread, unprecedented and extraordinary public outcry.” (*In re Fain* (1983) 139 Cal.App.3d 295,
24 299.) Then-Governor George Deukmejian, who had made crime-control central to his platform, initially
25 attempted to block Fain’s release, but when this failed, he proposed a ballot initiative to amend the
26 constitution. (See Hurst, *Prop. 89, Plan to Give Governor Parole Veto Power, Expected to Win*, L.A.
27 Times (Oct. 28, 1988) (Exhibit 17) at PA_316-20; see also Campbell, *The Emergence of Penal*
28 *Extremism in California: A Dynamic View of Institutional Structures and Political Processes* (2014) 48

1 Law & Soc’y Rev. 377, 395-96 (Exhibit 11) at PA_215-16.) The initiative, Prop. 89, allowed the
2 Governor to reverse parole decisions in either direction, but as “[t]he proposition’s supporters pointed
3 out[,] [] the Governor always had ‘the power to grant reprieves, pardons and commutations,’” making
4 the initiative’s purpose to give “‘the Governor, for the first time, . . . the power to block the parole of
5 convicted murderers.’” (*Rosenkrantz, supra*, 29 Cal.4th at p. 691 (dis. opn. of Chin, J.) (emphasis
6 removed) [quoting Ballot Pamp., Gen. Elec., at p. 46 (Nov. 8, 1988)].)

7 (17) Prop. 89 appeared on the ballot in 1988 and was enacted by the voters. (See Warren,
8 *Davis’ Parole Policy Raises Questions*, L.A. Times (July 30, 2002) (Exhibit 24) at PA_439-44.) Its
9 passage amended article V, section 8 of the California Constitution, which details the Governor’s pardon
10 and commutation powers in subsection (a), to include subsection (b), which states in pertinent part:

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

15 (Cal. Const., art. V, § 8, subd. (b).)

16 (18) Since its creation, the Governor’s reversal power has been exercised many hundreds of
17 times but only in one direction: to block parole-grants. Consistent with its purpose, it has never been
18 used to reverse a parole denial. (See Cooksey Decl. at ¶¶ 10-11, 16, 19 [Governor’s reports between
19 2011 and 2024 show 841 reversals of suitability findings, zero reversals of parole denials]; *Rosenkrantz*,
20 *supra*, 29 Cal.4th at p. 691 (dis. opn. of Chin, J.) [discussing one-directional use of reversal authority].)

21 (19) The rates of parole-reversal by Governor demonstrate wide, idiosyncratic variation.
22 Governor Pete Wilson reversed approximately 27% of parole-grants; Governor Gray Davis reversed
23 98%; Governor Arnold Schwarzenegger reversed 60%; and Governor Jerry Brown reversed 20%. (See
24 Sarosy, *Parole Denial Habeas Corpus Petitions: Why the California Supreme Court Needs to Provide*
25 *More Clarity on the Scope of Judicial Review* (2014) 61 UCLA L.Rev. 1134, 1145-47 (Exhibit 20) at
26 PA_373.) The reversal rate for Governor Gavin Newsom is not publicly available, but he reversed 201
27 findings of parole suitability between 2019 and 2024. One hundred and fourteen of those were in the
28 cases of young people. (Cooksey Decl. at ¶¶ 25-30; see also Jackman, *California Governor Newsom*

1 *Denies Parole for Sirhan Sirhan, Convicted of Robert F. Kennedy Assassination*, Wash. Post (Jan. 13,
2 2022) (Exhibit 18) at PA_323, 327) This extreme variability across Governors shows that the reversal
3 power reflects the political leanings and idiosyncrasies of particular Governors, not the fair application
4 of any legal standard.

5 (20) California is one of only two states that gives the Governor reversal authority over its
6 parole process; the other is Oklahoma. (Okla. Const., art. VI, § 10.)²

7 **II. MR. ADKINS' CASE**

8 (21) On August 14, 1992, Petitioner David Adkins was convicted for his role in the 1991
9 killing of three teenage girls when he was 16 years old. (Adkins Abstract of Judgment (Exhibit 30) at
10 PA_561.) In Case Number GA007013-01, a jury convicted him of three counts of first-degree murder
11 under Penal Code section 187, with enhancements for use of a firearm under Penal Code section 12022,
12 subdivision (a)(1) on one count, and Penal Code section 12022.5 on two counts. (*Id.*) The Superior
13 Court of Los Angeles County sentenced him to life without the possibility of parole on March 10, 1993.
14 (*Id.*) Mr. Adkins appealed his sentence in Case Number B076174, and the Court of Appeal, Second
15 Appellate District, affirmed on June 21, 1995. (Adkins Appellate Decision Excerpt (Exhibit 32) at
16 PA_565.) By operation of law, Mr. Adkins' sentence became parole-eligible in 2017 pursuant to Penal
17 Code section 3051, subdivision (b)(4).

18 (22) Mr. Adkins' minimum parole-eligibility date was January 2018. (Adkins Inmate Board
19 Actions, as of January 23, 2025 (Exhibit 31) at PA_563.) At his initial parole suitability hearing on
20 November 14, 2019, when Mr. Adkins was 45 years old, the Board found him suitable for release due to
21 his demonstrated "subsequent growth and increased maturity." (PA_537 at 55:18-19.)

22 (23) On April 1, 2020, Governor Newsom reversed Mr. Adkins' parole-grant. The Governor
23 "acknowledge[d] that Mr. Adkins has made efforts to improve himself in prison" and "commend[ed]
24 Mr. Adkins for his efforts and encourage[d] him to stay on this positive path." (Adkins Indeterminate
25

26 ² Maryland previously gave its Governor reversal authority but has since abolished the practice. (See
27 Arce, *Maryland Governor's Involvement in the Parole Process Prevents Juvenile Lifers from Parole*
28 *Approval* (2020) Am. Univ. J. of Gender, Social Pol'y, & the L. (Exhibit 7) at PA_096-100; see also
Wood, *Maryland Lawmakers Strip Governor's Power to Block Parole*, Baltimore Sun (Dec. 8, 2021)
(Exhibit 26) at PA_477-78.)

1 Sentence Parole Release Review - Reversal, April 1, 2020 (Exhibit 27) at PA_480.) The Governor
2 nonetheless reversed.

3 (24) On April 14, 2022, the Board denied Mr. Adkins parole. His next parole-suitability
4 hearing is scheduled for April 2027, at which time he will be 53 years old and have spent 36 years in
5 prison. (PA_563.)

6 **REASONS CLAIMS WERE NOT RAISED ON DIRECT APPEAL**

7 (25) This Petition raises claims stemming from the Governor’s reversal of a finding of
8 suitability for parole by the Board that occurred many years after Mr. Adkins’ direct appeal. Mr. Adkins
9 could not have raised the challenge presented in this Petition on direct appeal from his conviction and
10 sentence. Mr. Adkins was not required to exhaust administrative remedies because “the subject matter of
11 the controversy lies outside the administrative agency’s jurisdiction” and “the administrative agency
12 cannot grant an adequate remedy.” (*Strick, supra*, 148 Cal.App.3d at p. 911 [citation and quotation
13 marks omitted].)

14 **SCOPE OF CLAIMS AND EVIDENTIARY BASES**

15 (26) Mr. Adkins avers that the available evidence adequately supports his claims and justifies
16 issuance of an Order to Show Cause. Nevertheless, to further demonstrate that the Governor’s reversal
17 authority is inextricably intertwined with political considerations, Mr. Adkins seeks discovery in support
18 of this Petition.

19 **CONTENTIONS**

20 (27) The Governor’s reversal authority denies Mr. Adkins and all other young people a
21 meaningful opportunity to obtain release based on their demonstrated maturity and rehabilitation in
22 violation of article 1, section 17 of the California Constitution; the Eighth and Fourteenth Amendments
23 to the U.S. Constitution; and Penal Code sections 3051 and 4801, because it creates an unacceptable
24 likelihood that a young person who demonstrates their maturity and rehabilitation will be denied release
25 for political or other arbitrary reasons.

26 (28) The Governor’s reversal authority denies Mr. Adkins and all other young people the right
27 to due process of law under the California Constitution, article 1, section 7, and the Eighth and
28 Fourteenth Amendments to the U.S. Constitution because the substantial risk of politicized decision-

1 making inherent in the Governor’s reversal authority fails to safeguard against the risk of erroneous
2 deprivation under the balancing test of *People v. Ramirez* (1979) 25 Cal.3d 260.

3 (29) The Governor’s reversal in Mr. Adkins’ case was not supported by any evidence in the
4 record and should be vacated under *In re Lawrence* (2008) 44 Cal.4th 1181.

5 **REQUEST FOR RELIEF**

6 For the foregoing reasons, Mr. Adkins respectfully asks this Court to:

- 7 1. Issue an Order to Show Cause;
- 8 2. Issue declaratory and injunctive relief prohibiting the Governor from exercising the
9 reversal power in the parole proceedings of young people (25 or younger at the time of offense), or at
10 least in the parole proceedings of juveniles (17 or younger at the time of offense);
- 11 3. In the alternative, issue declaratory and injunctive relief holding that challenges to the
12 Governor’s reversal in the cases of young people—or at least in the cases of juveniles—are subject to
13 the independent judgment standard of judicial review and that counsel must be appointed in all such
14 proceedings;
- 15 4. Vacate the Governor’s reversal in Mr. Adkins’ case as unsupported by any evidence in
16 the record;
- 17 5. Issue a Writ of Habeas Corpus requiring Mr. Adkins’ custodian to immediately release
18 him onto parole;
- 19 6. Award Mr. Adkins’ attorneys’ fees and costs under California Code of Civil Procedure
20 section 1021.5; and
- 21 7. Grant all other relief necessary to promote the ends of justice.

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1 Dated: March 20, 2025

Respectfully submitted,

2
3 AMERICAN CIVIL LIBERTIES UNION FOUNDATION
4 OF NORTHERN CALIFORNIA, INC.

5 
6 _____
Avram Frey (SBN 347885)

7 AMERICAN CIVIL LIBERTIES UNION FOUNDATION
8 OF SOUTHERN CALIFORNIA, INC
Summer Lacey (SBN 308614)
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **SUMMARY OF ARGUMENT**

3 “‘[C]hildren who commit even heinous crimes are capable of change.’” (*Contreras, supra*, 4
4 Cal.5th at p. 369 [citation omitted].) People incarcerated for offenses committed in their youth thus have
5 the right to a “‘meaningful opportunity to obtain release based on demonstrated maturity and
6 rehabilitation.’” (*Id.* at p. 360 [quoting *Graham, supra*, 560 U.S. at p. 75].) In California, this right
7 imposes requirements on the parole process: young people (age 25 and below at the time of the offense)
8 must be given an opportunity to demonstrate rehabilitation, and if they do so, they must be released. But
9 California allows the Governor to unilaterally reverse findings of parole suitability—one of only two
10 states to do so—permitting the Governor to deny release for political and other arbitrary reasons.

11 The Governor’s reversal power violates the rights of young people under statutory law, the
12 California Constitution, and the U.S. Constitution.³ The rights of young people to a meaningful
13 opportunity for release are guaranteed by Penal Code sections 3051(e) and 4801(c) (“Youth Offender
14 Parole Law”), article I, section 17 of the California Constitution, and the Eighth and Fourteenth
15 Amendments to the U.S. Constitution.⁴ The Governor’s reversal power violates these rights because
16 there is a “‘substantial risk,’” (*Lockett v. Ohio* (1978) 438 U.S. 586, 601), or “unacceptable likelihood,”
17 (*Roper v. Simmons* (2005) 543 U.S. 551, 573), that the Governor will deny young people release for
18 political reasons despite their demonstration of maturity and rehabilitation. (See, e.g., *Turner v. Murray*
19 (1986) 476 U.S. 28, 35-36 [“risk of racial prejudice infecting a capital sentencing proceeding”
20 compelled constitutional rule allowing voir dire about racial attitude]; *Ford v. Wainwright* (1986) 477
21 U.S. 399, 415-16 [method of determining incompetency to be executed violated Eighth Amendment
22

23 ³ While the Governor’s reversal authority derives from the State Constitution, the California Supreme
24 Court has made clear that it is nevertheless subject to constitutional and statutory constraints. (See
25 *Rosenkrantz, supra*, 29 Cal.4th at p. 660 [holding that “constitutional and statutory provisions [] set forth
26 standards and criteria that limit the Governor’s review of a parole decision” and analyzing the
27 constitutionality of the reversal power under the *Ex Post Facto* clause]; *Lawrence, supra*, 44 Cal.4th at
28 p. 1212 [“*Rosenkrantz* . . . recognized that [] a Governor’s parole decision [must] adhere[] to both
statutory and constitutional mandates”] [citations omitted].)

⁴ The right to a “‘meaningful opportunity” for release under the Eighth Amendment only applies to
juveniles, *i.e.*, people like Mr. Adkins who were under 18 at the time of their offense. Under Article I,
Section 17 and California statute, this right extends to all young people in California.

1 because of “significant possibility” of distorted or biased decision-making].) Young people also have a
2 heightened liberty interest in parole as a matter of due process under article I, section 7 of the California
3 Constitution and the Eighth and Fourteenth Amendments of the U.S. Constitution, and the same
4 unacceptable likelihood of arbitrary, politicized decision-making renders the reversal authority unlawful
5 under this provision.

6 Mr. Adkins’ case is illustrative. Mr. Adkins was only 16 years old when he committed an
7 impulsive offense while highly intoxicated. The Board granted Mr. Adkins parole, recognizing he had
8 no disciplinary write-ups since becoming sober 20 years ago, had demonstrated maturity and
9 rehabilitation during his more than 30 years in prison, and posed no present danger to anyone.
10 Nevertheless, the Governor reversed the Board’s finding of suitability.

11 The Governor’s reversal authority is incompatible with the rights of young people in the parole
12 process. There are 72 individuals currently in prison because of this violation of their rights as young
13 people, with more added on an ongoing basis. Accordingly, this Court should categorically exempt
14 young people from the exercise of that authority. Alternatively, the Court should order such reversals
15 subject to independent judgment review with appointment of counsel. But even if the Court declines to
16 provide such prospective, system-wide relief, it should vacate the reversal in Mr. Adkins’ case. There is
17 no record evidence to support the Governor’s reversal, and Mr. Adkins should be released.

18 ARGUMENT

19 I. CLAIMS FOR SYSTEM-WIDE, PROSPECTIVE RELIEF

20 A. *Young People Have the Right to a Meaningful Opportunity for Release.*

21 Young people in California have both a statutory and a constitutional right to be released on
22 parole if they demonstrate maturity and rehabilitation. These rights emanate from the Eighth
23 Amendment to the U.S. Constitution, Youth Offender Parole Law; and article I, section 17 of the
24 California Constitution.

25 1. *The Eighth Amendment*

26 The Eighth Amendment guarantees persons under 18 at the time of their offense (“juveniles”) a
27 meaningful opportunity to be released if they demonstrate rehabilitation. (*Contreras, supra*, 4 Cal.5th at
28 p. 367; *Caballero, supra*, 55 Cal.4th at p. 268.) As the California Supreme Court recognizes, “children

1 are, as a class, ‘constitutionally different from adults’ due to ‘distinctive attributes of youth’ that
2 ‘diminish the penological justifications for imposing the harshest sentences on juvenile offenders.’”
3 (*People v. Franklin* (2016) 63 Cal.4th 261, 283 [quoting *Miller v. Alabama* (2012) 567 U.S. 460, 471-72
4]; accord *People v. Hardin* (2024) 15 Cal.5th 834, 844.) These “‘hallmark features’ of youth” include
5 “‘immaturity, impetuosity, and failure to appreciate risks and consequences,’” (*Hardin, supra*, 15
6 Cal.5th at p. 844), “as well as the capacity for growth and change,” (*Franklin, supra*, 63 Cal.4th at p.
7 283) Thus, as the California Supreme Court recently re-affirmed, “young people — even young people
8 who have committed grave offenses — are capable of significant, sometimes transformative, change
9 over the course of their lifetimes.” (*Hardin, supra*, 15 Cal.5th at p. 864.) In light of “these ‘marked and
10 well understood’ differences between children and adults,” state and federal “law categorically prohibits
11 the imposition of certain penalties[.]” (*Franklin, supra*, 63 Cal.4th at p. 283 [citing *Roper, supra*, 543
12 U.S. at p. 572].)

13 Accordingly, states may not sentence juveniles who are capable of reform to life in prison
14 without the possibility of parole but must instead provide some “‘meaningful opportunity to obtain
15 release based on demonstrated maturity and rehabilitation.’” (*Caballero, supra*, 55 Cal.4th at pp. 266-67
16 [quoting *Graham, supra*, 560 U.S. at p. 75].) This right to a “meaningful opportunity” imposes
17 constitutional requirements on the parole process.⁵ A chance at parole can provide a “meaningful
18 opportunity” for release only if it “ensures that juveniles whose crimes reflected only transient
19 immaturity—and who have since matured—will [be released.]” *Montgomery v. Louisiana* (2016) 577
20 U.S. 190, 212 [emphasis added]; see also *Bonilla, supra*, 930 N.W.2d at p. 777 [“If the Board
21 determines that a juvenile offender has demonstrated maturity and rehabilitation, parole or work release
22

23 ⁵ See also *Bonilla v. Iowa Bd. of Parole* (Iowa 2019) 930 N.W.2d 751, 772 [under *Graham-Miller*, parole
24 authorities must make “an individualized determination of whether the juvenile offender has
25 ‘demonstrated maturity and rehabilitation’” (citation omitted)]; *Greiman v. Hodges* (S.D. Iowa 2015) 79
26 F.Supp.3d 933, 943 [“[T]he responsibility for ensuring that Plaintiff receives his constitutionally
27 mandated ‘meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation’
28 lies squarely with [the Board of Parole][.]”]; see also *Hayden v. Keller* (E.D.N.C. 2015) 134 F.Supp.3d
1000, 1009; *Maryland Restorative Justice Initiative v. Hogan* (D. Md., Feb. 3, 2017, No. CV ELH-16-
1021) 2017 WL 467731, at *21; *Diatchenko v. Dist. Atty. for Suffolk Dist.* (Mass. 2015) 27 N.E.3d 349,
365; *Hawkins v. New York State Dept. of Corr. & Cmty. Supervision* (N.Y. App. Div. 2016) 140 A.D.3d
34, 39.

1 is required as a matter of law.”]; Harrington, *The Constitutionalization of Parole: Fulfilling the Promise*
2 *of Meaningful Review* (2021) 106 Cornell L.Rev. 1173, 1204 (Exhibit 16) at PA_262 [“Only release . . .
3 upon demonstration of subsequent maturity and reform would satisfy the Court’s promise that parole can
4 cure the unconstitutionality of a life sentence”].) Because release must be “realistic” to be meaningful,
5 the U.S. Supreme Court has held that executive clemency is too “remote” to provide a meaningful
6 opportunity. (*Graham, supra*, 560 U.S. at pp. 70, 82.)⁶

7 The doctrinal grounding of this requirement—of release upon proof of rehabilitation—lies in the
8 Eighth Amendment rule that “a punishment is ‘excessive’ and unconstitutional if it [] makes no
9 measurable contribution to acceptable goals of punishment[.]” (*Coker v. Georgia* (1977) 433 U.S. 584,
10 592.) No penological rationale justifies continued incarceration of a juvenile who is rehabilitated: the
11 retribution and deterrence rationales are undercut by “the distinctive attributes of youth,” (*Miller, supra*,
12 567 U.S. at p. 472; accord *Contreras, supra*, 4 Cal.5th at p. 367),⁷ and the rationales of incapacitation
13 and rehabilitation, as a definitional matter, do not apply to someone who has been rehabilitated. Thus,
14 juveniles who prove their rehabilitation in parole proceedings must be released under the Eighth
15 Amendment.

16 **2. Youth Offender Parole Law.**

17 California statutory law guarantees young people, age 25 and under at the time of offense, the
18 same “meaningful opportunity” afforded to juveniles under the Eighth Amendment. Senate Bill 260 and
19 subsequent amendments require the Board to conduct “youth offender parole hearing[s],” (Pen. Code, §
20 3051, subd. (b)), that “provide for a meaningful opportunity to obtain release . . . consistent with
21 relevant case law,” (*id.* at § 3051, subd. (e)).⁸ In such hearings, the Board must “give great weight to the
22 diminished culpability of youth as compared to adults, the hallmark features of youth, and any

24 ⁶ See also *Bonilla, supra*, 930 N.W.2d at p. 772 [“Parole authorities cannot require the camel to pass
25 through the needle’s eye. . . . [O]therwise, a recalcitrant parole authority could convert a potentially valid
sentence into the functional equivalent of an unconstitutional life without possibility of parole.”].

26 ⁷ See *State v. Comer* (N.J. 2022) 266 A.3d 374, 397-98 [retribution and deterrence do not justify even
mandatory term of 30 years without parole for juveniles].

27 ⁸ The Youth Offender Parole Law exempts young people convicted of certain crimes, such as “special
28 circumstance” murder, from a youth offender parole opportunity. (See *Hardin, supra*, 15 Cal.5th at pp.
842-43); (Pen. Code, § 3051, subd. (h)). Mr. Adkins was not convicted of any exempted offense and such
individuals are not the subject of this claim.

subsequent growth and increased maturity of the prisoner in accordance with relevant case law.” (*Id.* at § 4801, subd. (c).) Thus, Youth Offender Parole Law incorporates the Eighth Amendment requirement of release upon proof of rehabilitation in parole proceedings and applies to those 25 and under at the time of offense. (See *Hardin, supra*, 15 Cal.5th at p. 838.)

3. Article I, Section 17.

California’s Cruel or Unusual Punishment Clause (Cal. Const., art. I, § 17), guarantees the same right. Like the Eighth Amendment, article I, section 17 prohibits punishment that “is so disproportionate to the crime for which it is inflicted that it shocks the conscience and offends fundamental notions of human dignity.” (*In re Lynch* (1972) 8 Cal.3d 410, 424.) Indeed, article I, section 17 is more protective than the Eighth Amendment. (See *People v. Haller* (2009) 174 Cal.App.4th 1080, 1092 [“California affords greater protection to criminal defendants by prohibiting cruel ‘or’ unusual punishment”].) And under the California Constitution, state courts prohibited juvenile life-without-parole sentences for a non-homicide offense before *Graham* (*In re Nunez* (2009) 173 Cal.App.4th 709, 730-31; see also *People v. Mendez* (2010) 188 Cal.App.4th 47, 65), and afforded special consideration in sentencing to youth convicted of homicide before *Miller* (see *People v. Dillon* (1983) 34 Cal.3d 441, 487-88 [vacating juvenile’s life sentence for felony murder as constitutionally excessive because he was an “immature youth”]). Since those early decisions, California courts have consistently expanded the scope of protection against excessive sentencing of young people beyond federal requirements. (See, e.g., *Contreras, supra*, 4 Cal.5th at p. 372 [50-year sentence is functional equivalent of life without parole].) The right to a meaningful opportunity for release must therefore also be recognized under article I, section 17.

This guarantee should properly extend to anyone who was 25 or younger at the time of the offense. As the California Legislature has recognized, “scientific evidence [shows] that brain development continues beyond age 18—specifically, that ‘the prefrontal cortex doesn’t have nearly the functional capacity at age 18 as it does at age 25.’” (*In re Palmer* (2019) 33 Cal.App.5th 1199, 1209-10 [citation omitted], revd. on other grounds (2021) 10 Cal.5th 959; see also *Hardin, supra*, 15 Cal. 5th at p. 846.) The ideological underpinning of the right to a meaningful opportunity—young people’s reduced culpability and heightened capacity for change—thus extends up to the age of 25. Accordingly, article I,

1 section 17 must likewise provide individuals within this age group release on parole if they prove their
2 rehabilitation.

3 **4. The Governor’s Reversal Power Violates the Rights of Young People to a**
4 **Meaningful Opportunity for Release.**

5 The Governor’s reversal power creates a substantial risk, or unacceptable likelihood, that the
6 Governor will deny release to young people for political or other arbitrary reasons. The Governor’s
7 reversal authority is thus fundamentally incompatible with young people’s right to a meaningful
8 opportunity for release under the U.S. and California Constitutions and Youth Offender Parole Law.

9 **a. The Constitution Prohibits Practices That Create a “Substantial**
10 **Risk” or “Unacceptable Likelihood” of Excessive Punishment.**

11 Procedures used to determine the harshest penalties entail a “heightened ‘need for reliability.’”
12 (*Caldwell v. Mississippi* (1985) 472 U.S. 320, 323 [citation omitted]; see, e.g., *Woodson v. North*
13 *Carolina* (1976) 428 U.S. 280, 305 “[T]here is a [] difference in the need for reliability in the
14 determination that death is the appropriate punishment in a specific case”].) Practices that create a
15 “substantial risk,” (*Lockett, supra*, 438 U.S. at p. 601), or “unacceptable likelihood” (*Roper, supra*, 543
16 U.S. at p. 573), that the most severe penalties will be imposed erroneously—because some inherent,
17 intractable feature biases them towards over-punishment—violate the right against excessive
18 punishment. (See, e.g., *Roper, supra*, 543 U.S. at p. 573 [facts of capitally-charged homicide might
19 “overpower mitigating arguments based on youth as a matter of course”].) This heightened safeguard
20 applies to lengthy sentences imposed on young people. (See *Graham, supra*, 560 U.S. at p. 69 [life-
21 without-parole for young people “share[s] some characteristics with death sentences that are shared by
22 no other sentences”]; see also *Miller, supra*, 567 U.S. at p. 481 “[I]f . . . ‘death is different,’ children are
23 different too”] [citation omitted].)

24 **b. The Governor’s Reversal Authority Is Arbitrary and Political.**

25 The Governor’s reversal power is fundamentally arbitrary and inherently political, creating a
26 substantial risk that the Governor will deny release to young people despite proof of their rehabilitation.
27 The inseparability of politics from the reversal power is evident from myriad sources, including the
28 nature of the power, its origins in California, the history of its use, and examples from other

jurisdictions. The risk of politicized reversals is not mitigated by judicial review. California courts apply an “extremely deferential” “some evidence” standard that fails to assure release for young people who have been rehabilitated. (*Rosenkrantz, supra*, 29 Cal.4th at p. 665.) Consequently, the reversal power creates an unacceptable likelihood that young people will be punished in violation of their constitutional and statutory rights.

i. The nature of the Governor’s reversal power

The Governor’s reversal authority gives the state’s directly-elected chief executive a unilateral veto over prison releases. It is the mirror image of clemency, which the U.S. Supreme Court has already held does not satisfy the right to a meaningful opportunity. (See *Graham, supra*, 560 U.S. at pp. 69-70.) Indeed, the reversal power was enacted as an amendment to article V, section 8 of the California Constitution, which details the Governor’s pardon and commutation powers.

Politics are infused in both the reversal authority’s placement (the Governor’s office) and its subject matter (release from prison). It is well-established that “placement of [a criminal penalty] decision wholly within the [e]xecutive [b]ranch” is a “striking [constitutional] defect,” as the executive is the chief law enforcement officer and publicly accountable for its function. (*Ford, supra*, 477 U.S. at p. 400 [placement of competency determination with executive created an unacceptable likelihood of excessive punishment].)

And parole-release decisions are notoriously politicized. Consider the infamous “Willie” Horton affair, in which Governor Michael Dukakis lost a 17-point lead in the 1988 presidential election after President George H.W. Bush’s campaign aired a racialized ad concerning Horton, “an African-American prisoner in Massachusetts who, while released on a furlough program, raped a white Maryland woman and bound and stabbed her boyfriend.” (Baker, *Bush Made Willie Horton an Issue in 1988, and the Racial Scars Are Still Fresh*, N.Y. Times (Dec. 3, 2018) (Exhibit 8) at PA_102.) The ad pegged Dukakis, who presided over the furlough program, as “insufficiently tough on crime,” (*id.*), and Dukakis’ subsequent defeat cemented the conventional wisdom “that any politician who innocently releases the wrong convict is toast.” (Saunders, Opinion, *Willie Horton’s Legacy*, S.F. Gate (Dec. 12, 2002) (Exhibit 21) at PA_415; see also Schwartzapfel & Keller, *Willie Horton Revisited*, The Marshall Project (May 13, 2015) (Exhibit 22) at PA_419 [“[Politicians] learned a bad lesson: not to go out on a

limb”]; accord Ewing, *Why So Few Violent Offenders Are Let Out on Parole* (interview with Marc Morje Howard), *The Atlantic* (Aug. 29, 2017) (Exhibit 13) at PA_235 [the Horton affair taught politicians that, “for violent offenders, [] release from prison [is] taboo”].) Meanwhile, politicians have no countervailing incentive—there is no political liability for blocking an individual’s release. Thus, giving the Governor control over parole release decisions creates an inherent risk of politicized reversals.

ii. The origin of the Governor’s reversal authority

The origin of the reversal authority in California demonstrates that it has been political from inception. Responding to “widespread, unprecedented and extraordinary public outcry” after the parole of Archie Fain, convicted of multiple rapes and murder (*Fain, supra*, 139 Cal.App.3d at p. 299), then-Governor George Deukmejian attempted to block Fain’s release in court. When that failed, he launched a “tough on crime” ballot initiative, Proposition 89, to create the reversal authority. (See Hurst, *supra*, *Prop. 89* at PA_316-20); see also Campbell, *supra*, *The Emergence of Penal Extremism* at PA_215-16). Though the initiative allowed the Governor to reverse parole decisions in either direction, “the Governor always had ‘the power to grant reprieves, pardons and commutations,’” making the proposition’s real purpose to give “‘the Governor, for the first time, . . . the power to *block the parole* of convicted murderers” in unpopular cases. (*Rosenkrantz, supra*, 29 Cal.4th at p. 691 (dis. opn. of Chin, J.) [quoting Ballot Pamp., Gen. Elec., at 46 (Nov. 8, 1988)].) The animating purpose of the reversal power has thus always been to provide an outlet for political outrage. (See *Gilman v. Brown* (E.D. Cal. 2014) 110 F.Supp.3d 989, 1016, revd. (9th Cir. 2016) 814 F.3d 1007 [Proposition 89 sent “an instruction that the Governor should put his finger on the scale” against release].)

iii. Historical use of the Governor’s reversal

Historical use of the reversal power evidences that it has served its intended purpose. Most probative is the one-sided nature of reversals over time. Though the Constitution authorizes reversal to either a grant or denial of parole, (Cal. Const., art. V, § 8, subd. (b)), no Governor has *ever* reversed a Board denial; Governors have only exercised the reversal power—and they have done so many hundreds of times—to keep someone in prison. (See Cooksey Decl. at ¶¶ 10-11, 16, 19 [between 2011 and 2024, the Governor reversed 841 parole grants and zero parole denials]; see also *Gilman, supra*, 110

1 F.Supp.3d at p. 1015 [“[Governors] appear to have no [] concern about decisions that deny parole”];
2 *Rosenkrantz, supra*, 29 Cal.4th at p. 691 (dis. opn. of Chin, J.) [“The record shows that the current
3 Governor has never exercised this power to reverse the denial of parole, but only to reverse the grant of
4 parole”].) Indeed, “for the 21-year period from 1991 through 2011, the Governor reported *reviewing*
5 only three decisions denying parole, affirming all three denials.” (*Gilman, supra*, 110 F.Supp.3d at p.
6 1014 [emphasis added].) That Governors are not even looking at most denials shows that the reversal is
7 not a backstop to the Board but a political check on unpopular releases.

8 Politics is also evident from the differential reversal rates across Governors. Governor Pete
9 Wilson reversed approximately 27% of parole-grants;⁹ Gray Davis reversed 98%; Arnold
10 Schwarzenegger reversed 60%; and Jerry Brown reversed 20%.¹⁰ (See Sarosy, *supra*, *Parole Denial*
11 *Habeas Corpus Petitions* at PA_373.) Variability this extreme—from 27% to 98%—is inconsistent with
12 any objective standard across decisionmakers. Rather, it reflects “the individual policy orientation of the
13 particular Governor in office.” (Weisberg, *supra*, *Life in Limbo* at PA_451.) Contemporary statements
14 confirm this. Governor Davis, who reversed all but two findings of suitability in his tenure, stated, ““if
15 you take someone else’s life, forget it.”” (Egelko, *Brown Paroles More Lifers Than Did Predecessors*,
16 S.F. Gate (Apr. 28, 2011) (Exhibit 12) at PA_230.) The Legal Affairs Secretary for Governor
17 Schwarzenegger, who reversed nearly two-thirds of all parole grants, was candid about the role of
18 politics:

19 Part of a Governor’s job is to be responsive to the constituents who elected him. The fact
20 that the Governor thinks a lot of people would be upset if this person got out of prison, it
21 *is [sic]* a Governor paying attention to the preference of a large constituency of
California. And that’s what Governors do.

22 (Liotta, *Double Victims: Ending the Incarceration of California’s Battered Women* (2011) 26 Berkeley
23 J. Gender L. & Justice 253, 267 fn. 98 [italics original; citation omitted] (Exhibit 19) at PA_344.)

24 ⁹ Though Governor Wilson reversed a relatively small percentage of cases, the Board only granted parole
25 in “a handful of cases” over his tenure. (Weisberg et al., *Life in Limbo: An Examination of Parole Release*
26 *for Prisoners Serving Life Sentences with the Possibility of Parole in California* (2011) Stanford Criminal
Justice Ctr., 13 (Exhibit 25) at PA_460.) This renders the sample size too small to draw meaningful
27 conclusions about Governor Wilson’s practice.

28 ¹⁰ The reversal rate for Governor Newsom is not publicly available, but he reversed 201 findings of parole
suitability between 2019 and 2024. One hundred and fourteen of those were in the cases of young people.
(Cooksey Decl. at ¶¶ 25-30.)

1 Meanwhile, Governor Brown—whose “age and lack of interest in pursuing further political office”
2 made him less susceptible to public pressure, (Sarosy, *supra*, *Parole Denial Habeas Corpus Petitions* at
3 PA_374)—reversed only sparingly, explaining, “I’m obviously going to interfere less with the parole
4 board than my predecessors . . . who are perhaps looking for further political pastures to wander in.”
5 (Egelko, *supra*, *Brown Paroles More Lifers* at PA_230-31.) Most recently, Governor Newsom said of
6 the political backlash to one release decision, “I live the realities . . . It’s not intellectual . . . It [] put me
7 on my toes.” (*The Problem with Jon Stewart*, interview with Gov. Gavin Newsom.)¹¹

8 The influence of politics is also plain in individual cases. For example, Governors have
9 unfaithfully reversed parole-grants to members of the “Manson family,” despite their exemplary records
10 over decades in prison. (See, e.g., *California Governor Blocks Parole for Manson Follower Leslie Van*
11 *Houten*, *The Guardian* (Mar. 30, 2022) (Exhibit 10) at PA_201-02 [Leslie Van Houten, now 75, reversed
12 five times]; Seidman, *Manson Follower Bruce Davis Denied Parole By Newsom*, *L.A. Times* (June 21,
13 2021) (Exhibit 23) at PA_435-37 [Bruce Davis, now 82, reversed seven times].) Tellingly, the Manson
14 family were cited in literature promoting Proposition 89 as reasons to enact the Governor’s reversal.
15 (Governor’s Parole Review, CA Proposition 89 (1988) (Exhibit 15) at PA_247.) In sum, use of the
16 reversal has confirmed what was plain all along—that the authority is rife with politics.

17 **iv. Evidence from other jurisdictions**

18 Finally, evidence from outside of California is also probative. Oklahoma is the only other state
19 with a gubernatorial reversal, evidencing near-universal consensus that prison-release decisions cannot
20 be entrusted to the state’s elected chief executive. (Wood, *supra*, *Maryland Lawmakers* at PA_477-78
21 [only California and Oklahoma remain after abolition of the reversal authority in Maryland,].) As former
22 Governor Parris Glendening argued in support of abolishing the practice in Maryland, “[h]ow can it not
23 be political for a governor to hold all the power in the decision about whether to release someone who
24 has been involved in a serious crime?” (Glendening, Opinion, *I Made a Serious Mistake As Maryland*
25 *Governor. We Need Parole Reform*, *Wash. Post* (Mar. 1, 2021) (Exhibit 14) at PA_241.) “[P]eoples’
26 [sic] freedom is being determined not on the merits of their rehabilitation,” Glendening added, “but
27 often on the political tides of the day.” (*Ibid.*)

28 ¹¹ Available at <https://youtu.be/DS1EMsVmoxo>, at 3:46-4:02.

1 **c. “Some Evidence” Judicial Review Cannot Protect the Meaningful**
2 **Opportunity for Release.**

3 Judicial review does not mitigate the influence of politics in reversal decisions. Under the
4 “extremely deferential” “some evidence” standard of review (*Rosenkrantz, supra*, 29 Cal.4th at p. 679),
5 if there is “a modicum of evidence” of present dangerousness (*In re Shaputis* (2011) 53 Cal.4th 192, 214
6 [hereinafter *Shaputis II*] [citation omitted]), whether or not cited by the Governor (see *In re Stevenson*
7 (2013) 213 Cal.App.4th 841, 866-67), the reviewing court must uphold the reversal. As a result, courts
8 routinely sustain reversals on the thinnest of reeds. (See, e.g., *In re Montgomery* (2012) 208 Cal.App.4th
9 149, 164 [possession of tobacco]; *In re Reed* (2009) 171 Cal.App.4th 1071, 1084-85 [leaving work early
10 without permission]; *In re Hare* (2010) 189 Cal.App.4th 1278, 1294-95 [seven-year-old rule infraction
11 for fashioning toothbrush into cleaning device].) The fact that ““evidence in the record tending to
12 establish suitability for parole far outweighs evidence demonstrating unsuitability for parole”” is
13 ““irrelevant”” under this standard. (*In re Butler* (2014) 231 Cal.App.4th 1521, 1534 [citation omitted];
14 see also *Hare, supra*, 189 Cal.App.4th at p. 1294 [upholding reversal though applicant was “a strong
15 candidate for release,” “the Board’s decision to release him was certainly reasonable,” and “were it our
16 responsibility . . . , we might very well conclude that evidence in the record tending to establish his
17 suitability for parole far outweighs any evidence demonstrating unsuitability for parole”].) Accordingly,
18 judicial review for “some evidence” cannot ensure that arbitrary and politicized reversals will be vacated
19 for young people who demonstrate rehabilitation.

20 **5. *Young People Should Be Categorically Exempt from Reversal***

21 This Court should categorically exempt young people from the Governor’s exercise of the veto
22 power. The Supreme Court has imposed such a categorical ban where no lesser measure would
23 safeguard against over-punishment. (See, e.g., *Roper, supra*, 543 U.S. at pp. 572-73; *Graham, supra*,
24 560 U.S. at p. 68.) Here, because politicization is a defining feature of the reversal power in theory and
25 in practice, the risk cannot be excised. And while a stricter standard of judicial review might offer an
26 after-the-fact corrective, this would permit release only after lengthy delay (see, e.g., *In re Shelton*
27 (2020) 53 Cal.App.5th 650, 674 [ordering relief of new parole hearing after four years]), and young
28 people who have proven their rehabilitation are entitled to *release immediately*. (See *Robinson v.*

1 *California* (1962) 370 U.S. 660, 667 [“Even one day in prison would be a cruel and unusual punishment
2 [if unjustified]”). Categorically exempting young people from the exercise of the reversal power is
3 therefore the only way to provide complete relief.

4 **6. Alternatively, the Court Should Require “Independent Judgment” Review with**
5 **the Appointment of Counsel.**

6 At a minimum, the Court should require procedural protections sufficient to ensure that young
7 people’s right to a meaningful opportunity for release is protected. (See, e.g., *Miller, supra*, 567 U.S. at
8 p. 479 [imposing procedural safeguards].) Two specific safeguards are required: independent judgment
9 review and appointment of counsel.

10 **a. Independent Judgment Review**

11 Judicial review under an independent judgment standard—de novo review of the facts and
12 balancing of the evidence (see *Fukuda v. City of Angels* (1999) 20 Cal.4th 805, 817)—is necessary for
13 two reasons. First, a less stringent standard cannot guarantee that young people who demonstrate
14 rehabilitation will be released, as deference to the Governor would leave undisturbed the taint of
15 politics. Second, independent judgment is the proper standard for executive decisions concerning rights
16 that are “vested” and “fundamental.” (See Code Civ. Proc., § 1094.5, subd. (c); *Bixby, supra*, 4 Cal.3d at
17 p. 143.) A right is “vested” if already in the claimant’s possession and “fundamental” depending on its
18 “effect . . . in human terms and the importance of it to the individual in the life situation.” (*Bixby, supra*,
19 4 Cal.3d at p. 144.)

20 The right to a “meaningful opportunity” is “vested” under *Graham, Miller, Caballero*,
21 *Contreras*, and the Youth Offender Parole Law, and it is “fundamental” because it concerns freedom
22 from confinement, “the most elemental of liberty interests.” (*Hamdi v. Rumsfeld* (2004) 542 U.S. 507,
23 529; see also *Mardesich v. California Youthful Offender Parole Bd.* (1999) 69 Cal.App.4th 1361, 1369
24 [transfer from juvenile system to adult prison held subject to independent judgment review because it
25 would “essentially extend[] [plaintiff’s] release date by many years”].) Thus, if young people are not
26 categorically exempted from the Governor’s exercise of the reversal power, such reversals must be
27 reviewed under the independent judgment standard.

28 ////

1 **b. Appointment of Counsel**

2 To pursue appellate review of reversals, young people must also be afforded counsel. “[T]he
3 defendant’s interest in personal freedom . . . triggers the right to appointed counsel,” and as noted, the
4 liberty interest here is freedom from detention, the greatest possible. (*Lassiter v. Dept. of Soc. Servs. of*
5 *Durham Cnty., N.C.* (1981) 452 U.S. 18, 25; see also *Iraheta v. Super. Ct.* (1999) 70 Cal.App.4th 1500,
6 1505.) Further, young people challenging gubernatorial reversals “will likely lack the skills and
7 resources to gather, analyze, and present this evidence adequately.” (*Diatchenko, supra*, 27 N.E.3d at p.
8 360.) “[A] parole hearing for a juvenile homicide offender . . . involves complex and multifaceted issues
9 that require the potential marshalling, presentation, and rebuttal of information derived from many
10 sources.” (*Ibid.*; see also *Gagnon v. Scarpelli* (1973) 411 U.S. 778, 786-87 [counsel necessary where
11 “the presentation requires . . . offering or dissecting of complex documentary evidence”]; *People v.*
12 *Vickers* (1972) 8 Cal.3d 451, 461 [layperson “too often lacks the training and poise to present . . . his
13 [case] in a persuasive manner”].) Thus, at a minimum, young people must be appointed counsel to
14 challenge reversals by the Governor.

15 **B. The Governor’s Reversal Power Violates the Rights of Young People to Due Process.**

16 The Governor’s reversal authority also violates young people’s due process rights. Upon
17 identifying a cognizable liberty or property interest, California courts measure the process due under the
18 balancing test articulated in *Mathews v. Eldridge* (1976) 424 U.S. 319, 334-35. (*Today’s Fresh Start,*
19 *Inc. v. Los Angeles Cnty. Office of Educ.* (2013) 57 Cal.4th 197, 213.) *Mathews* requires consideration of
20 “the private interest affected by the official action, the government’s interest, and the risk of an
21 erroneous deprivation of the private interest, including the probable value, if any, of additional or
22 substitute procedural safeguards and the burdens such safeguards would entail.” (*Cal. Teachers Assn. v.*
23 *State of Cal.* (1999) 20 Cal.4th 327, 347 [citing *Mathews, supra*, 424 U.S. at pp. 334-35].) Under the
24 California Constitution, courts also consider a fourth factor, “the dignitary interest in informing
25 individuals of the nature, grounds, and consequences of the action and in enabling them to present their
26 side of the story before a responsible government official.” (*People v. Allen* (2008) 44 Cal.4th 843, 862-
27 63.)

28 Young people have a due process liberty interest in release on parole. (See *Howard v. Coonrod*

(M.D. Fla. 2021) 546 F.Supp.3d 1121, 1132 “[J]uvenile offenders serving a maximum term of life have a cognizable liberty interest in obtaining parole upon demonstrating maturity and rehabilitation.”] [citation omitted]; *Bonilla, supra*, 930 N.W.2d at p. 777 [same]; *Flores v. Stanford* (S.D.N.Y., Sept. 20, 2019, No. 18 CV 2468 (VB)) 2019 WL 4572703, at *10 [same].) This is significantly stronger than the “‘limited’” liberty interest that all California parole applicants generally possess in a non-arbitrary decision (see *Rosenkrantz, supra*, 29 Cal.4th at p. 655 [citation omitted]), and the “mere hope” of release possessed by all parole applicants under the U.S. Constitution (see *Greenholtz v. Inmates of Nebraska Penal and Correctional Complex* (1979) 442 U.S. 1, 11). Young people’s right to a meaningful opportunity for release thus requires distinctly robust due process protections.

Accordingly, due process balancing is necessary, and this analysis compels the same procedural protections previously discussed—independent judgment review with appointed counsel. The private interest in freedom from confinement is “‘a fundamental interest, second only to life itself, as an interest protected under both the California and United States Constitutions.’” (*In re Roger S.* (1977) 19 Cal.3d 921, 927 [citation omitted].) A young person’s interest in freedom after decades of incarceration is particularly compelling, since it portends a “chance for fulfillment outside prison walls” and for “reconciliation with society.” (*Graham, supra*, 560 U.S. at p. 79.)

The government’s interest, meanwhile, is marginal. While the state has a significant interest in public safety, Governors have neither skill nor training in predicting dangerousness. Where the Board has already determined suitability for parole, the benefit to public safety of the Governor’s further review is negligible.

Furthermore, the risk that young people who have been rehabilitated will nevertheless be denied release is significant. As discussed, additional safeguards—independent judgment review with appointed counsel—are necessary to correct for the risk of erroneous reversals. These additional procedures would entail only moderate burdens for the state. Courts are already required to “consider the whole record” in reviewing reversals under the “some evidence” standard, so heightened scrutiny would not undermine judicial economy. (*Shaputis II, supra*, 53 Cal.4th at p. 214.) And while appointment of counsel would carry some cost, the number of reversals of young people per year is manageable (see Cooksey Decl. at ¶¶ 25-30 [showing total number of those age 25 and under reversed during the tenure of Governor

1 Newsom, between 2019 and 2024, is 114, and those age 17 and under reversed during the same time
2 period is 31]), and attorneys are already entitled to fees in successful cases (Code Civ. Proc., § 1021.5).

3 Finally, the reversal process does not “recogniz[e] the dignity and worth” of young people, as
4 they are not permitted to “present their side of the story.” (*Ramirez, supra*, 25 Cal.3d at pp. 267, 269.)
5 Instead, after earning their release from the Board, they receive a two-page letter offering cursory
6 statements into why the Governor has denied their release. Young people reversed in this manner are
7 unlikely to hold a “belief that the proceedings are fair,” “which is the essence of the individual’s
8 dignitary interest.” (*People v. Hernandez* (1984) 160 Cal.App.3d 725, 748; see also *Greenholtz, supra*,
9 442 U.S. at p. 35 (dis. opn. of Marshall, J.) [“For [o]ne can imagine nothing more cruel, inhuman, and
10 frustrating than serving a prison term without knowledge of what will be measured and the rules
11 determining whether one is ready for release”] [citation and quotation marks omitted].) Therefore, due
12 process balancing weighs in favor of additional safeguards. To ensure young people’s interest in a
13 meaningful opportunity for release, reversals should be subject to independent judgment review with
14 appointment of counsel.

15 **II. MR. ADKINS’ CLAIM FOR INDIVIDUAL RELIEF UNDER THE EXISTING “SOME**
16 **EVIDENCE” STANDARD**

17 Mr. Adkins is entitled to relief under the existing “some evidence” standard of review because
18 “the evidence reflecting the inmate’s present risk to public safety leads to but one conclusion,” that he is
19 presently fit for release. (*Shaputis II, supra*, 53 Cal.4th at p. 211.) In evaluating the record, the reviewing
20 court must assign “great weight to the diminished culpability of youth as compared to adults, the
21 hallmark features of youth, and any subsequent growth and increased maturity of the prisoner in
22 accordance with relevant case law.” (Pen. Code, § 4801, subd. (c).) Here, the record demonstrates that
23 Mr. Adkins’ conduct reflected the shortcomings of youth, but that he has long since been rehabilitated
24 and poses no present danger to society. Mr. Adkins was convicted of killing three teenage classmates
25 when he was 16 and high on drugs. When the Governor reversed his parole-grant, Mr. Adkins was 50
26 years old, discipline-free since becoming sober in 2002 and completely rehabilitated. The Governor’s
27 reversal should be vacated.

28 ////

1 ***A. The record unilaterally demonstrates Mr. Adkins' maturity and rehabilitation.***

2 ***1. Family History***

3 David Adkins was born on April 29, 1974, in Glendale, California. (Adkins Comprehensive Risk
4 Assessment, July 26, 2019 (Exhibit 29) PA_544-45.) His father left home when Mr. Adkins was two or
5 three, after which his mother was forced to work 16 to 18 hours a day to support the family. (PA_545.)
6 Mr. Adkins was left with his older brother, Daniel, who routinely “punch[ed] and hit[.]” him and
7 inflicted “emotional abuse.” (*Id.*) Mr. Adkins felt “abandoned” by his father, “neglected” by his mother,
8 and avoided home to escape abuse from his brother. (*Id.*)

9 Mr. Adkins sought security from “the older kids” in school, (PA_498 at 16:7), and was “willing
10 to follow [his older friends'] behavior in order to be appreciated and accepted.” (PA_545.) This led him
11 into substance abuse and criminality. When he was 12 or 13, Mr. Adkins “started using drugs and
12 alcohol to be accepted by his peers,” (PA_548-49; see also PA_499-500 at 17:18-18:6), namely alcohol,
13 marijuana, LSD, cocaine, methamphetamine and, occasionally, heroin, mushrooms, and PCP. (PA_548.)
14 Drugs also were “an escape from reality,” enabling Mr. Adkins to avoid the pain from his home life.
15 (PA_549, see also PA_500 at 18:6-7.) At the same time, between the ages of 12 and 13, Mr. Adkins
16 began stealing and breaking curfew. (PA_545) At 14, he was arrested for burglary, battery, and
17 receiving stolen property. (PA_547.) In 1990, at 15 or 16, he was arrested for stealing money from his
18 mother’s bank account, truancy, and breaking curfew. (*Id.*) Also in 1990, he was arrested for defrauding
19 an innkeeper and for another burglary in the following year. (*Id.*) Around this time, Mr. Adkins started
20 cutting classes; he was suspended from school in 9th grade and dropped out in 10th grade. (PA_545.)
21 Mr. Adkins ran away from home about 10 times. A few months before the commitment offense, at 16,
22 he left home and moved into his girlfriend’s house. (PA_546.)

23 ***2. Commitment Offense***

24 On March 21, 1991, when Mr. Adkins was 16, he and his girlfriend, Katherine McCaulay,
25 invited Heather Goodwin, Danae Palermo, Burton Vincent Hebrock, and Cayle Fielder over to
26 McCaulay’s house. (PA_547) For the prior two weeks, Mr. Adkins had been “partying” and regularly
27 using drugs and alcohol. (PA_549; PA_554.) That day, he and his friends consumed LSD, cocaine,
28 marijuana, and alcohol. (PA_494 at 12:9-11.) Mr. Adkins was high “[l]ike [he] ha[d] never been

1 before.” (*Id.* at 12:12-14.)

2 An argument broke out between some of the guests, which turned physical—Mr. Adkins was not
3 initially involved, but then Goodwin and Palermo turned on Mr. Adkins with disparaging remarks. Their
4 words “triggered” Mr. Adkins and “brought [] stuff [up] from when [he] was growing up.” (PA_491 at
5 9:11-19.) He was “in a rage . . . [and] just saw red.” (*Id.* at 9:11, 18-19.)

6 Hebrock and Mr. Adkins retrieved a shotgun. (PA_492 at 10:12-14; PA_554.) When they
7 returned, Hebrock shot McCaulay in the head, killing her. Mr. Adkins then took the gun and shot
8 Goodwin and Palermo, killing both. (PA_495 at 13:13-24; PA_554.)

9 Both the Board and Mr., Adkins’ examining psychologist, Dr. J. Caoile, Ph.D., found that Mr.
10 Adkins’ offense, committed at age 16, reflected “nearly all the hallmark features [] of youthfulness,”
11 (PA_536 at 54:8-55:9), namely “immaturity, impulsivity, imperviousness to punishment, susceptibility
12 to peer influences, and, to some extent, [] inability to extricate himself from adverse circumstances in
13 the home,” (PA_556). Dr. Caoile explained that the “abuse” and “neglect” that Mr. Adkins suffered
14 growing up “undoubtedly interfered with . . . his ability to learn adaptive ways to express and cope with
15 his emotions.” (PA_552.) Drugs and alcohol were an outlet for Mr. Adkins to “escape his
16 circumstances,” but “undermine[d] his judgment and impulse control.” (PA_557.) On the night of the
17 offense, Mr. Adkins “readily and impulsively reacted to [] perceived conflict . . . with [] extreme and
18 nonsensical violence,” (*id.*); “his ability to fully grasp the potential consequences of his actions was
19 compromised by his youthfulness and impulsivity, and further weakened by the drugs and alcohol.”
20 (PA_556.) The Board adopted and echoed these findings. (PA_536-37 at 54:14-55:16.)

21 3. *Acceptance of Responsibility and Remorse*

22 Though he cannot recall portions of the offense due to extreme intoxication, Mr. Adkins
23 completely accepts the State’s version of events and expresses deep remorse. (PA_495 at 13:19-24.) He
24 told the Board, “I feel horrible . . . [T]here isn’t a day that goes by that I don’t regret what I did.”
25 (PA_506 at 24:11-14.) The Board found him “remorseful” and “apologetic,” concluding that he “took
26 responsibility for [his] actions.” (PA_534 at 52:13-19.) Dr. Caoile, too, found that Mr. Adkins “accepts
27 full responsibility for his criminal behavior and demonstrates remorse and empathy,” which “has
28 intensified over time as he continues to contemplate the depth and effects of his actions.” (PA_553-54;

1 see also PA_558.)

2 **4. Post-sentencing Conduct**

3 Between 1996 and 2002, while in his early twenties and struggling with addiction, (PA_549),
4 Mr. Adkins received five substance use-related infractions, (*id.*; PA_551): a violation for failure to
5 report to assignment, (*id.*), a violation for mutual combat, (*id.*; PA_514 at 32:18-19), and several
6 chronos for minor misconduct.¹² (PA_551.) In his own words, Mr. Adkins was “being defiant—but
7 more importantly, . . . being a drug addict.” (*Id.*)

8 In 2002, Mr. Adkins became sober studying an Alcoholics Anonymous book on his own and
9 with help from a sponsor. (PA_551; PA_512 at 30:19.) At the time the Board found him suitable for
10 parole, he had been sober for the last 20 years, (PA_549; PA_511 at 29:12-15), and had received no
11 disciplinary infractions since attaining sobriety. (PA_533 at 51:11; PA_534 at 52:4-5.) Dr. Caoile noted
12 that Mr. Adkins “has gained excellent impulse and behavioral control, and has learned more adaptive
13 ways to manage his negative emotions and solve problems.” (PA_557.) The Board likewise found
14 “demonstrated maturity in [his] judgment through impulse control.” (PA_537 at 55:22-23.)

15 The Board also recognized Mr. Adkins’ “meaningful participation” in extensive programming,
16 (PA_532-33 at 50:14-51:9).¹³ Mr. Adkins earned his GED and is currently working toward his
17 Associate’s degree. (PA_550, see also Adkins GED May 2009 (Exhibit 34) at PA_572.) Additionally,
18 Mr. Adkins is a facilitator of Project Paint, an art program, (PA_512-13 at 30:20-31:1), and a founding
19 member and volunteer in the Youth Adult Awareness Program, where his sponsor calls him “an asset to
20 the program . . . demonstrat[ing] positive leadership” “by contributing and giving back . . . by . . .
21 helping at risk youth discover how to change their bad habits[.]” (Adkins YAAP Chrono October 2015
22 (Exhibit 47) at PA_602; Adkins YAAP Certificate July 2015 (Exhibit 45) at PA_594.)

23 Mr. Adkins has worked throughout his imprisonment in numerous roles. His supervisors have

24 ¹² See Cal. Code Regs., tit. 15, § 3312.

25 ¹³ See also PA_550-51; Adkins 2019 Initial Suitability Hearing Post-Conviction Report (Exhibit 33) at
26 PA_568; Adkins Victims Awareness Chrono February 2013 (Exhibit 39) at PA_582; Adkins Breast
27 Cancer Walk Chrono November 2018 (Exhibit 54) at PA_612; Adkins Anger Management Chrono
28 November 2015 (Exhibit 48) at PA_600; Adkins Criminal and Gang Members Anonymous Chronos
from December 2014 and June 2015 (Exhibits 41 and 46) at PA_586 and PA_596; Adkins Youth Adult
Awareness Program (YAAP) Chronos (Exhibits 42-44, 47, and 49-52) at PA_588, 590, 592, 598, 602,
604, 606, and 608.

1 commended him for his “responsible, reliable, trustworthy and mature behavior” and for “showing
2 respect, integrity, and honesty towards staff and peers[.]” (Adkins Workchange Porter Chrono May 2009
3 (Exhibit 36) at PA_576; PA_550; see also Adkins Workchange Porter Chronos May 2009 (Exhibits 35,
4 37, and 38) at PA_574, 578, and 580; Adkins Work Chrono December 2013 (Exhibit 40) at PA_584;
5 Adkins Watch Clerk Work Chrono March 2017 (Exhibit 53) at PA_610.)

6 Further, it bears noting, as the Board found, that Mr. Adkins was sentenced to life *without* parole
7 for “a great portion” of his sentence to date, a fact that lends “a lot of [] support to the genuineness of
8 [his] change[.]” (PA_538-39 at 56:19-57:4.) As the Governor acknowledged, “Adkins has made efforts
9 to improve himself in prison.” (PA_480.)

10 **5. *Insight and Emotional Growth***

11 Mr. Adkins understands that childhood “feelings of abandonment and low self-esteem” “gave
12 [him] a flawed belief system” and led to issues including “drinking and drugs.” (PA_555.) Likewise,
13 “[b]eing slapped around . . . ignited anger in [him]” and “made [him] feel like [he] was being bullied[.]”
14 (*Id.*) It was because of this background, Mr. Adkins understands, that the conflict he observed, and the
15 verbal assaults he experienced on the night of the offense, “triggered his own anger and reminded him of
16 [the abuse he had suffered] as a child, and the helplessness he felt.” (PA_554; see also PA_498 at 16:15-
17 25.)

18 Both the Board and Dr. Caoile found that, though Mr. Adkins’ memory is compromised by
19 intoxication, Mr. Adkins has shown real insight. Dr. Caoile noted that “the significance of drugs and
20 alcohol in the commitment offense” led to gaps in Mr. Adkins’ memory, but that “Mr. Adkins
21 recognizes the impact of his early life experiences, and how they contributed to his negative emotions
22 and mindset.” (PA_555.) The Board, too, found that Mr. Adkins has “engaged in considered reflection”
23 of “the reasons for [] and impact of [his] actions.” (PA_537 at 55:19-21.) The Board added, “you may
24 work on insight forever” and never “be able to explain that just other than you were just very angry and
25 immature. . . . [I]t may be your youthfulness because you were doing things that were inexplicable.”
26 (PA_536 at 54:18-23; PA_537 at 55:3-4.)

27 Mr. Adkins has also developed coping mechanisms to address his triggers, including “feelings of
28 low self-worth,” “guilt,” and “shame.” (PA_512 at 30:12-15.) He has worked on his feelings of neglect

1 and abuse by “forg[ing] healthy relationships with his family,” including his mother. (PA_553; see also
2 PA_515 at 33:13-25; PA_534-35 at 52:24-53:3.) He has “extricate[d] himself from negative peer
3 influences,” (PA_557), and instead “turned his attention towards prosocial peer influences in prison,”
4 (PA_553). He has also learned to recognize the reasons for his anger and develop appropriate responses,
5 (PA_516-17 at 34:21-35:4), including talking to his sponsor, positive self-talk, meditation, yoga,
6 jogging, painting, and walking away. (PA_512 at 30:19-20; PA_513 at 31:10-19; PA_557.) Mr. Adkins
7 has also worked to address his self-esteem, explaining, “I’m proud that I’m not the person that I thought
8 I was.” (PA_503 at 21:17-20.) The Board praised this, crediting Mr. Adkins’ “enhanced self-recognition
9 of human worth and potential.” (PA_537-38 at 55:24-56:1.)

10 **6. Release Plan**

11 Dr. Caoile and the Board both recognized that Mr. Adkins “presented practical, feasible plans for
12 his future.” (PA_556; see also PA_534-35 at 52:23-53:23.) Mr. Adkins intends to live in transitional
13 housing where he will receive job assistance and reentry support and mentoring. (PA_551.) Two
14 programs have accepted him: Francisco Homes in Los Angeles and Delancey Street in San Francisco,
15 and he has elected to pursue Francisco Homes. (*Id.*; PA_514 at 32:20-23.) Mr. Adkins’ family, including
16 his mother, who visits regularly and has taken a parenting class to help support him, will also offer
17 financial and emotional support. (PA_515 at 33:18-25; PA_551.) To maintain his sobriety, Mr. Adkins
18 will attend Alcoholics/Narcotics Anonymous meetings and find a new sponsor outside of prison. (*id.*;
19 PA_556; PA_516 at 34:1-20.)

20 In sum, the record shows that Mr. Adkins has been rehabilitated and is safe for immediate
21 release.

22 **B. The Governor’s reversal is not supported by any record evidence.**

23 Governor Newsom cited three rationales for reversing Mr. Adkins’ parole-grant: an “inability or
24 unwillingness to discuss the details of the crime and what led him to kill the victims”; that Mr. Adkins
25 “‘still lack[s] insight’” because he “does not know why he shot the two girls”; and that Mr. Adkins
26 “must do more to . . . develop the tools to control his triggers[.]” (PA_481.) No evidence supports these
27 findings.

28 ////

1 **1. Offense Description**

2 Although the Governor fixated on Mr. Adkins’ inability to recall retrieving a gun and shooting
3 the victims, (*id.*), Mr. Adkins did not deny doing this—he simply could not remember due to his
4 extreme intoxication, as the Governor was aware. (*Id.*; see also PA_493-94 at 11:6-12:6; PA_519 at
5 37:6-16.) Courts have repeatedly recognized that under conditions of extreme intoxication, “it is
6 possible for someone to carry out a relatively complex series of behaviors, which may in fact result in
7 serious disturbance to their’s and other’s lives, without having an accurate memory of those events.” (*In*
8 *re Stoneroad* (2013) 215 Cal.App.4th 596, 630, fn.17.) The Governor’s “speculat[ion] about what
9 people should and can recall when they commit extraordinarily violent acts” while intoxicated is
10 “guesswork” that is improper as a matter of law. (*In re Young* (2012) 204 Cal.App.4th 288, 307-08.)
11 Under precisely these circumstances, in *In re Juarez*, the Court reversed a denial of parole; the Court
12 found it irrelevant to the parole determination that the applicant could not “recall the details of his
13 commitment offense,” finding “no evidence to contradict” that he “blackened out” due to substance use.
14 (*In re Juarez* (2010) 182 Cal.App.4th 1316, 1339-41.) Under this authority, the Governor’s reasoning on
15 this point was error.

16 **2. Insight**

17 The Governor cited as a basis for reversal the Board’s finding that Mr. Adkins “still lack[s]
18 insight,” and Dr. Caoile’s finding that Mr. Adkins “is still in the process of fully understanding all of the
19 causative and motivating factors that contributed to his violent behavior.” (PA_553.) But both the Board
20 and Dr. Caoile in fact found that Mr. Adkins has obtained significant insight that continues to grow.
21 (PA_532 at 50:4-6; see also PA_554.)

22 Furthermore, as the Board and Dr. Caoile both noted, Mr. Adkins will always be somewhat
23 hamstrung in understanding what happened due to his youth and intoxication at the time. (See PA_536
24 at 54:19-23; PA_537 at 55:3-4; PA_556.) Research supports the notion that youthful conduct may lead
25 to limited insight in adulthood. The incomplete brain development of young people, like Mr. Adkins at
26 the time of the offense, means their behavior “is more likely to be impulsive and thus less explicable.”
27 (See Bell, *A Stone of Hope: Legal and Empirical Analysis of California Juvenile Lifer Parole Decisions*
28 (2018) 54 Harv. Civ. Rights-Civ. Liberties L.Rev. 456, 518 (Exhibit 9) at PA_169 [“To put it simply:

1 for a child, a decent answer to the question, ‘What were you thinking?’ is often, ‘Clearly I wasn’t.’”.)

2 Moreover, “lack of insight . . . supports a denial of parole only if it is rationally indicative of the
3 inmate’s current dangerousness.” (*Shaputis II, supra*, 53 Cal. 4th at p. 219; see also *In re Ryner* (2011)
4 196 Cal.App.4th 533, 548-49 & n.2 [collecting cases].) Here, there is no evidence of current
5 dangerousness. Dr. Caoile found Mr. Adkins a “low” risk of future violence, (PA_558), and the Board
6 expressly found that any limits regarding insight did not “make[] [Mr. Adkins] a current danger or an
7 unreasonable risk[.]” (PA_531 at 49:17-18.) Indeed, the record demonstrates Mr. Adkins’ rehabilitation.
8 (See *In re Morganti* (2012) 204 Cal.App.4th 904, 925-27 [lack of insight insufficient basis to deny
9 parole given record evidence of rehabilitation].) On this point, too, the Governor’s reversal is
10 unfounded.

11 **3. Recognition of Triggers and Development of Coping Strategies**

12 Finally, though the Governor cited an alleged inability to “control [] his triggers,” Adkins has
13 identified his triggers and taken concrete steps to address them. The Board specifically credited Adkins’
14 work in this regard. (PA_533 at 51:6-8; PA_535 at 53:15-17 (“[Y]ou did the programming . . . [and]
15 you appear[] to have learned from it . . . [Y]ou have relapse prevention plans that addressed . . . the
16 issues we’re concerned about”]; PA_538 at 56:6-7 [“you don’t let it become personal anymore and let it
17 flow off your back”]; PA_540 at 58:6-7 [“You should be able to handle it.”].) The Governor’s finding
18 on this point is unsupported.

19 The record thus “leads to but one conclusion,” (*Shaputis II, supra*, 53 Cal.4th at p. 211), that
20 Adkins has been rehabilitated, and the Governor’s reversal must be vacated.

21 **CONCLUSION**


22 Young people who demonstrate rehabilitation are entitled to a second chance. The California
23 Legislature, U.S. Constitution, and California Constitution guarantee this right, and individuals like Mr.
24 Adkins must accordingly be released on youth offender parole when they show that they have matured
25 and no longer pose any danger to society. Yet the Governor maintains the unilateral authority to reverse
26 parole-grants in the cases of young people, a power that injects arbitrary and political considerations into
27 the process and deprives young people of the freedom they have earned through reform over many years
28 in prison. This Court should grant system-wide, prospective relief to vindicate the rights of young

1 people to a meaningful opportunity to obtain release, and Mr. Adkins, now a rehabilitated man, should
2 be given the chance for redemption in free society he is due.

3
4 Dated: March 20, 2025

Respectfully submitted,

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6 AMERICAN CIVIL LIBERTIES UNION FOUNDATION
OF NORTHERN CALIFORNIA, INC.

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8 
9 Avram Frey (SBN 347885)

10 AMERICAN CIVIL LIBERTIES UNION FOUNDATION
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- 1) I am an attorney representing Petitioner David Adkins;
- 2) I prepared this Petition on his behalf and verify that the contents of it are true and correct;
- 3) This Petition is brought in good faith as to the merits, and Mr. Adkins is entitled to the relief prayed for in this Petition.


Avram Frey (SBN 347885)