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

21 In re:

22 **DAVID RUSSELL ADKINS,**
23
24 Petitioner,
25 on Habeas Corpus.

Case No. 25CJHC00034-01

**PETITIONER'S TRAVERSE IN
SUPPORT OF WRIT OF
HABEAS CORPUS AND
MEMORANDUM OF POINTS
AND AUTHORITIES**

Dept.: 100
Judge: Hon. William C. Ryan
Action Filed: March 24, 2025

TABLE OF CONTENTS

TABLE OF CONTENTS.....	2
TABLE OF AUTHORITIES	3
TRAVERSE IN SUPPORT OF WRIT OF HABEAS CORPUS	5
EXCEPTION	5
DENIAL.....	5
MEMORANDUM OF POINTS AND AUTHORITIES	9
INTRODUCTION	9
ARGUMENT.....	9
I. The Governor’s Reversal Violates Young People’s Right to a Meaningful Opportunity.....	9
II. Reversal of Mr. Adkins’ Parole-Grant Is Not Supported by “Some Evidence.”.....	13
A. Insight	14
B. Triggers.....	16
CONCLUSION.....	18
VERIFICATION.....	19
PROOF OF SERVICE.....	20

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Fox v. City of Los Angeles</i> , (1978) 22 Cal.3d 792.....	11
<i>Graham v. Florida</i> , (2010) 560 U.S. 48	6, 9, 11
<i>In re Anderson</i> , (1968) 69 Cal.2d 613.....	11
<i>In re Butler</i> , (2014) 231 Cal.App.4th 1521.....	13
<i>In re Juarez</i> , (2010) 182 Cal.App.4th 1316.....	14, 15, 16
<i>In re Lawrence</i> , (2008) 44 Cal.4th 1181.....	11, 14
<i>In re Lira</i> , (2014) 58 Cal.4th 573.....	7
<i>In re Morganti</i> , (2012) 204 Cal.App.4th 904.....	16
<i>In re Palmer</i> , (2021) 10 Cal.5th 959.....	13
<i>In re Perez</i> , (2016) 7 Cal.App.5th 65.....	13
<i>In re Poole</i> , (2018) 24 Cal.App.5th 965.....	13
<i>In re Rosenkrantz</i> , (2002) 29 Cal.4th 616.....	5, 11, 12, 13
<i>In re Ryner</i> , (2011) 196 Cal.App.4th 533.....	16
<i>In re Scott</i> , (2003) 29 Cal.4th 783.....	11
<i>In re Shaputis</i> , (2011) 53 Cal.4th 192.....	6, 13, 16

1	<i>In re Shippman</i> ,	
2	(2010) 185 Cal.App.4th 446.....	17
3	<i>In re Stoneroad</i> ,	
4	(2013) 215 Cal.App.4th 596.....	14, 15, 16
5	<i>In re Young</i> ,	
6	(2012) 204 Cal.App.4th 288.....	14, 15, 16
7	<i>Miller v. Alabama</i> ,	
8	(2012) 567 U.S. 460	12
9	<i>People v. Duvall</i> ,	
10	(1995) 9 Cal.4th 464.....	10
11	<i>People v. Franklin</i> ,	
12	(2016) 63 Cal.4th 261.....	12, 13
13	<i>People v. Super. Ct. (Pearson)</i> ,	
14	(2010) 48 Cal.4th 564.....	10
15	<i>Roper v. Simmons</i> ,	
16	(2005) 543 U.S. 551	12
17	<i>Wolfgram v. Wells Fargo Bank</i> ,	
18	(1997) 53 Cal.App.4th 43.....	12
19	Statutes	
20	Pen. Code, § 1484	11
21	Pen. Code, § 3051	12
22	Pen. Code, § 4801, subd. (c)	6, 12
23	Other Authorities	
24	Leshner, <i>Davis Takes Hard Line on Parole for Killers</i> , L.A. Times (Apr. 9, 1999).....	9

1 **TRAVERSE IN SUPPORT OF WRIT OF HABEAS CORPUS**

2 **EXCEPTION**

3 Respondent has failed to set forth sufficient facts or law to show cause why this Court should not
4 grant the relief requested in the Petition. Respondent presents only conclusory arguments in opposition
5 to Mr. Adkins' constitutional and statutory claims regarding the rights of young people to a meaningful
6 opportunity for release, relying only on *In re Rosenkrantz* (2002) 29 Cal.4th 616, which predates
7 establishment of the right in question and is inapposite. In support of the Governor's reversal in Mr.
8 Adkins' case, Respondent identifies only facts that cannot support the Governor's conclusion as a matter
9 of law. The law and facts establish that the Governor's reversal authority is inherently political and
10 violates the rights of young people. The record is also clear that no evidence supports the Governor's
11 reversal in Mr. Adkins' case. For these reasons, the Court should grant the writ.

12 **DENIAL**

13 Petitioner, David Russell Adkins, submits this Traverse to Respondent's Return. Mr. Adkins
14 incorporates by reference the allegations of the Petition, the exhibits associated with the Petition, the
15 Declaration of Sara Cooksey, and the argument in the underlying Memorandum of Points and
16 Authorities accompanying the Petition. Here he adds the following admissions and denials, as well as
17 further argument in the adjoining Memorandum of Points and Authorities:

18 (1) Mr. Adkins denies the allegation in paragraph one of the Return that he is lawfully in the
19 custody of the California Department of Corrections. He admits the allegation in paragraph one of the
20 Return that he was convicted of three counts of first-degree murder and sentenced to life without the
21 possibility of parole in 1992.

22 (2) Mr. Adkins admits the allegation in paragraph two of the Return.

23 (3) Mr. Adkins admits the allegation in paragraph three of the Return that he appeared before
24 the Board of Parole Hearings ("Board") on November 14, 2019, and the Board found him suitable for
25 release on parole. Mr. Adkins admits the allegation in paragraph three that on April 1, 2020, the
26 Governor reversed the Board's decision, citing Mr. Adkins' alleged lack of credibility and insight into
27 the causative factors of the life crimes. Mr. Adkins also admits the allegation in paragraph three that the
28 Governor's reversal stated that Mr. Adkins "must do more to deepen his insight and develop the tools to

1 control his triggers before he can be safely released.” (Return Ex. 3 at p. 2.) Mr. Adkins denies the
2 allegation in paragraph three that the Governor considered all the parole suitability factors required by
3 law and, in particular, denies that the Governor gave “great weight” to “the diminished culpability
4 of youth as compared to adults, the hallmark features of youth, and any subsequent growth and increased
5 maturity of the prisoner in accordance with relevant case law.” (Pen. Code, § 4801, subd. (c).) Mr.
6 Adkins denies the allegation in paragraph three that any evidence before the Governor supports an
7 inference that he lacks credibility and insight into the causative factors of the life crimes, or that he must
8 do more to deepen his insight and develop the tools to control his triggers before he can be safely
9 released.

10 (4) Mr. Adkins denies the allegations in paragraph four of the Return.

11 (5) Mr. Adkins admits the allegation in paragraph five of the Return that the Governor’s
12 parole decision is entitled to deference from the Court, insofar as the California Supreme Court has held
13 that “the applicable standard of review is extremely deferential to the Governor’s decision[.]”
14 (*Rosenkrantz, supra*, 29 Cal. 4th at p. 679.) Mr. Adkins denies the allegation in paragraph five that the
15 Court must uphold the Governor’s reversal decision because it “is neither procedurally flawed nor
16 arbitrary.” (Return at ¶ 5.) Mr. Adkins admits the allegation in paragraph five that under the prevailing
17 standard of review, a parole decision will be upheld if “the whole record in the light most favorable to
18 the determination . . . discloses some evidence—a modicum of evidence—supporting the determination
19 that the inmate would pose a danger to the public if released on parole.” (*In re Shaputis* (2011) 53
20 Cal.4th 192, 214 (“*Shaputis II*”).) Mr. Adkins also admits the allegation in paragraph five that any
21 relevant evidence that supports the Governor’s decision is sufficient to satisfy the “some evidence”
22 standard. Mr. Adkins denies the allegation in paragraph five that the Governor’s decision in his case is
23 supported by any relevant evidence and meets the requirements of due process.

24 (6) Mr. Adkins denies the allegation in paragraph six of the Return that the Governor’s
25 authority to reverse parole-grants does not violate youth offenders’ due process rights or their
26 constitutional and statutory right to a meaningful opportunity to obtain release based on their
27 demonstrated maturity and rehabilitation as established in *Graham v. Florida* (2010) 560 U.S. 48, 74.

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1 (7) Mr. Adkins admits the allegation in paragraph seven of the Return that the Board found
2 him unsuitable for parole on April 14, 2022. Mr. Adkins also admits the allegation in paragraph seven
3 that this decision has no effect on this case.

4 (8) Mr. Adkins denies the allegation in paragraph eight of the Return that the petition for writ
5 of habeas corpus does not set forth any ground warranting habeas corpus relief. Mr. Adkins admits that
6 if the Court finds the Governor’s decision violates due process because there is no evidence to support
7 the decision, the appropriate remedy is an order that “vacates the Governor’s reversal, reinstates the
8 Board’s grant of parole, and directs the Board to conduct its usual proceedings for a release on parole.”
9 (*In re Lira* (2014) 58 Cal.4th 573, 582.) Mr. Adkins denies the allegation in paragraph eight that no
10 other remedy would be appropriate—in accordance with Mr. Adkins’ claims that the Governor’s
11 reversal authority violates the constitutional and statutory rights of young people to a meaningful
12 opportunity for release, the Court should hold the reversal authority unconstitutional as applied to all
13 youthful offenders.

14 (9) Mr. Adkins denies the allegation in paragraph nine of the Return that the Governor’s
15 decision was not “in any way improper or that Adkins’ rights were violated in any way by the decision
16 denying him release to parole.” (Return at ¶ 9.) Mr. Adkins also denies the allegation in paragraph nine
17 that he is not “entitled to the relief requested or to any relief whatsoever.” (*Id.*)

18 Excepting any express admissions, above, Mr. Adkins denies, generally and specifically, each
19 allegation of the Return and realleges that violations of his constitutional and statutory rights entitle him
20 to relief.

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1 Dated: August 6, 2025

Respectfully submitted,

2
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OF NORTHERN CALIFORNIA, INC.

4
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **INTRODUCTION**

3 This Court issued an Order to Show Cause as to both issues raised by Mr. Adkins: (1) that the
4 Governor’s reversal power violates the rights of young people under the U.S. and California
5 Constitutions, and the California Penal Code, to a “meaningful opportunity to obtain release” based on
6 demonstrated rehabilitation, (*Graham v. Florida* (2010) 560 U.S. 48, 74), and (2) that the Governor’s
7 reversal in his case is not supported by any evidence. In its brief Return, Respondent offers only
8 conclusory arguments that Mr. Adkins has not met his burden and that the Court should affirm the status
9 quo. As detailed in Mr. Adkins’ underlying Petition and discussed below, Mr. Adkins has provided
10 compelling evidence on both issues, and the Court should grant relief.

11 **ARGUMENT**

12 **I. The Governor’s Reversal Violates Young People’s Right to a Meaningful Opportunity.**

13 The Governor’s reversal authority violates the constitutional and statutory rights of young people
14 to a “meaningful opportunity to obtain release,” and Respondent presents no evidence, and no
15 persuasive argument, to the contrary. In his underlying Memorandum, Mr. Adkins cited compelling
16 evidence showing a constitutionally impermissible risk that the Governor fails to release young people
17 who have demonstrated maturation and reform. (See MPA at pp. 25-30.) Assigning parole authority to
18 an elected official—let alone the State’s chief law enforcement officer—necessarily injects politics into
19 release decisions. (*Id.* at pp. 26-27.) The history of the reversal bears this out: Governor George
20 Deukmejian put the reversal power on the ballot as part of a “tough on crime” initiative in response to an
21 unpopular parole-release decision. (*Id.* at p. 27.) Since its enactment in 1988, California governors have
22 reversed nearly 1,000 grants of parole, yet no Governor has ever reversed a denial. (*Id.*) And individual
23 Governors have exhibited widely divergent reversal rates in keeping with their political circumstances,
24 from 20% by Jerry Brown, who was candid that he could use the reversal sparingly because he was not
25 seeking reelection, to Gray Davis, who made refusal to release people convicted of murder a tenet of his
26 political platform and reversed in 98% of cases. (*Id.* at pp. 27-29 [citing PA_230-31]; see also Leshner,
27 *Davis Takes Hard Line on Parole for Killers*, L.A. Times (Apr. 9, 1999) p. A-3 [Governor Davis stated,
28 “If you take someone else’s life, forget it. I just think people dismiss what I said in the campaign as

1 either political hyperbole or something that I would back away from. . . . We are doing exactly what we
2 said we were going to do.”.) Members of the executive branch have openly admitted to the role of
3 politics in parole release decisions, calling it “[p]art of a Governor’s job” to consider whether “a lot of
4 people would be upset if this person got out of prison[.]” (PA_344.) In recognition of the inherent
5 conflict between determinations of parole eligibility and political accountability, only one other state in
6 the nation gives its governor the reversal power. (MPA at pp. 29). The evidence thus confirms: the
7 Governor’s reversal decisions are inevitably, indelibly political. The reversal power therefore violates
8 the rights of young people because there is a significant likelihood that the Governor will deny release to
9 those young people who, like Mr. Adkins, have demonstrated their rehabilitation.

10 Respondent does not contest that young people are statutorily and constitutionally entitled to a
11 meaningful opportunity for release based on demonstrated rehabilitation, or that this right compels
12 release on parole for those who demonstrate they have been rehabilitated. Nor does Respondent contest
13 the evidence cited by Mr. Adkins regarding the nature, origins, and historical exercise of the reversal
14 power, or that this evidence shows the stain of politics on the reversal power. Instead, Respondent
15 summarily dismisses Mr. Adkins’ claim, arguing at a high level of generality that Mr. Adkins’ evidence
16 is insufficient, that the law in this area is settled, and that Mr. Adkins’ claims offer nothing new.
17 Respondent is wrong on all counts.

18 On the facts, Respondent claims that the proof submitted by Mr. Adkins “fails to state a prima
19 facie case for relief,” “[does not] demonstrate that the law is invalid for youth offenders,” and fails to
20 “rebut the assumption that the Governor properly performed his official duties.” (Return at p. 11.) But
21 Respondent does not elaborate on these conclusions nor offer any support for them, and standing alone,
22 the Order to Show Cause refutes them. (See *People v. Super. Ct. (Pearson)* (2010) 48 Cal.4th 564, 572
23 [“A court issues an order to show cause in a habeas corpus matter only when the petitioner has stated a
24 prima facie case for relief[.]”]; *People v. Duvall* (1995) 9 Cal.4th 464, 475 [“Issuance of an OSC
25 signifies the court’s preliminary determination that the petitioner has pleaded sufficient facts that, if true,
26 would entitle him to relief.”]; see also *id.* at pp. 480-481 [noting court’s “disapproval of the practice of
27 filing returns that merely contain a general denial of a habeas corpus petitioner’s factual allegations”].)

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1 The only affirmative evidence cited by Respondent is the Governor’s reversal in Mr. Adkins’
2 case, which, according to Respondent, “shows . . . the Governor [gave] great weight to the youth
3 offender parole factors as is statutorily required.” (Return at p. 11.) But the Governor’s decision
4 discusses Mr. Adkins’ youth in just three sentences, two of which are conclusory statements of law.
5 Bare statements of law provide no evidence to support the Governor’s decision. (See *In re Lawrence*
6 (2008) 44 Cal.4th 1181, 1210 [“‘due consideration’ of the specified factors requires more than rote
7 recitation”].) The third sentence is a quotation from the examining psychiatrist that Mr. Adkins “was
8 compromised by his youthfulness and impulsivity” but nonetheless had “some level of understanding of
9 the ramifications [of his actions].” (Exh. 3 to Return at p. 1.) This hardly shows careful consideration of
10 Mr. Adkins’ youth and attendant mitigation, and certainly does not dispel the prospect that the
11 Governor’s decision was tainted by politics. (See *In re Rosenkrantz* (2002) 29 Cal. 4th 616, 665 [courts
12 may not affirm a reversal that merely “on its face, recited supposed facts corresponding to the specified
13 factors and appeared reasonable”].) If anything, the Governor’s threadbare discussion of Mr. Adkins’
14 youth and resulting reversal absent any proof of dangerousness, discussed below, suggests the likelihood
15 of extraneous concerns.¹

16 On the law, Respondent argues that the Governor’s reversal “has been in effect for decades” and
17 “has withstood various challenges . . . and has long been upheld[.]” (Return at p. 11.) But “mere
18 longevity of custom does not in itself insulate a practice from constitutional scrutiny.” (*Fox v. City of*
19 *Los Angeles* (1978) 22 Cal.3d 792, 805; *cf. In re Anderson* (1968) 69 Cal.2d 613, 642 [“The longevity of
20 an erroneous constitutional interpretation is no ground for its preservation.”].) And while the reversal
21 power is longstanding, recognition of the rights of young people in the parole process is not. The U.S.
22 Supreme Court first recognized the constitutional right to a “meaningful opportunity for release” in
23 2010, (see *Graham, supra*, 560 U.S. at p. 74), and youth offender parole in California became effective

24 ¹ If the Court concludes that Mr. Adkins’ proof, while demonstrating a prima facie case, is not sufficient
25 to sustain his ultimate burden, the court may order discovery. (Pen. Code, § 1484; see also *In re Scott*
26 (2003) 29 Cal.4th 783, 814 [“discovery is available once we have issued an order to show cause”].) Mr.
27 Adkins may identify additional proof in the policies and procedures surrounding exercise of the
28 Governor’s reversal power, as well as records and testimony concerning individual reversals. (See
Rosenkrantz, supra, 29 Cal. 4th at p. 684 [“Nothing prevents a court from reviewing the record and other
admissible evidence to ascertain whether the decision in a particular case has been made in accordance
with applicable legal standards”].)

1 in 2014 (Pen. Code, § 3051). Significantly, in *People v. Franklin*, the California Supreme Court
2 expressly reserved judgment on whether the Governor’s reversal power violates the rights of young
3 people to a meaningful opportunity for release, citing “the absence of a concrete controversy” before
4 deciding whether “suitability criteria, parole hearing procedures, or other practices must be revised to
5 conform to the dictates of applicable statutory and constitutional law.” ((2016) 63 Cal.4th 261, 285-286.)
6 Mr. Adkins presents a concrete controversy.

7 Nor has any California court decided the matter since the time of *Franklin*. Respondent points to
8 *Rosenkrantz* as having upheld the Governor’s reversal power, (Return at p. 11), but that decision
9 preceded recognition of the right in question by at least eight years. Moreover, *Rosenkrantz* upheld the
10 reversal against an Ex Post Facto claim, (*supra*, 29 Cal.4th at pp. 637-652), and rejected a challenge
11 based on then-Governor Davis’ alleged “blanket policy” of denying release, (*id.* at pp. 684-86 [citing the
12 Governor’s release of two individuals].) *Rosenkrantz* thus has no bearing on Mr. Adkins’ claims, which
13 are rooted in the statutory and constitutional right to a meaningful opportunity for release. (See
14 *Wolfgram v. Wells Fargo Bank* (1997) 53 Cal.App.4th 43, 50 [“We are unaware of any doctrine which
15 insulates a statute from one constitutional attack, simply because it has survived a different
16 constitutional attack”].)

17 Respondent suggests that *Rosenkrantz* should nonetheless control because “enactment of the
18 youth offender parole scheme did not alter the fundamental consideration in parole decisions.” (Return
19 at p. 12.) But while dangerousness remains the ultimate issue for all parole release decisions—and while
20 a young person who demonstrates rehabilitation is, by definition, not dangerous—the right to a
21 meaningful opportunity for release changes the way decisionmakers must *assess the evidence* in the
22 cases of young people. Specifically, the Board and Governor must consider and give “great weight” to
23 the mitigating circumstances of youth. (Pen. Code, § 4801, subd. (c); *Miller v. Alabama* (2012) 567 U.S.
24 460, 477-478 [identifying the characteristics of youth which decision-makers must consider to provide
25 the requisite meaningful opportunity].) These characteristics—immaturity, impetuosity, vulnerability to
26 peer and familial influences, and transience of identity—mean that “it is less supportable to conclude
27 that even a heinous crime committed by a juvenile is evidence of irretrievably depraved character.”
28 (*Roper v. Simmons* (2005) 543 U.S. 551, 553.) They also mean that young people have a heightened

1 “capacity for growth and change.” (*Franklin, supra*, 63 Cal.4th at p. 283.) A youthful offender’s offense
2 conduct, and ability to explain it, must therefore be given less weight, and his subsequent institutional
3 record, much more. (See, e.g., *In re Poole* (2018) 24 Cal.App.5th 965, 981-983 [reversing Board denial
4 for failure to properly weigh the mitigating characteristics of youth]; *In re Perez* (2016) 7 Cal.App.5th
5 65, 95-101 [same].) As a result, while dangerousness remains the lodestar, how that is determined
6 differs for young people. The Governor’s reversal power, which, in practice, always incorporates
7 politics, encroaches on this special consideration due to young people.

8 Finally, perhaps in tacit recognition of the political nature of the Governor’s reversal,
9 Respondent argues that judicial review under the “some evidence” standard, or pursuant to a claim under
10 *In re Palmer* (2021) 10 Cal.5th 959, “remedy any purported defects or flaws in the law.” (Return at
11 p.12.) As noted in Mr. Adkins’ underlying Memorandum, however, (MPA at p. 30), the “some
12 evidence” standard is “extremely deferential,” (*Rosencrantz, supra*, 29 Cal.4th at p. 679), and requires
13 affirmance on “a modicum of evidence,” (*Shaputis II, supra*, 53 Cal.4th at p. 214), even where a
14 youthful offender’s proof of rehabilitation “far outweighs evidence demonstrating unsuitability” (*In re*
15 *Butler* (2014) 231 Cal.App.4th 1521, 1534.) A claim under *Palmer*, meanwhile, must allege that an
16 individual’s continued incarceration has become “grossly disproportionate” to the offense based on
17 analysis of the “the nature of the offense and the offender,” “comparison of the punishment with the
18 punishment California imposes for more serious offenses,” and “comparison . . . with that prescribed in
19 other jurisdictions for the same offense.” (*Palmer, supra*, 10 Cal.5th at pp. 971-973.) This is analytically
20 distinct from whether a youthful offender is now rehabilitated. Thus, neither “some evidence” review
21 nor the prospect of a *Palmer* claim is certain to remedy an unlawful reversal by the Governor.

22 In sum, Respondent presents no evidence or persuasive argument to rebut Mr. Adkins’ claims
23 regarding the rights of young people to a meaningful opportunity for release. The Court should find the
24 Governor’s reversal unconstitutional and contrary to law as applied to young people.

25 **II. Reversal of Mr. Adkins’ Parole-Grant Is Not Supported by “Some Evidence.”**

26 Respondent identifies no evidence in the record to support the Governor’s reversal. Citing the
27 Governor’s decision, Respondent alleges that Mr. Adkins’ inability to recall “his decision to retrieve a
28 gun and commit multiple murders” shows a lack of insight, and that intoxication cannot explain this

lapse because Mr. Adkins “was able to remember many other details surrounding the crime.” (Return at p. 9.) This speaks to Mr. Adkins’ future dangerousness, Respondent argues, because, “without a deeper understanding of what triggered his violent behavior, Adkins may return to it.” (*Id.* at p. 10.) But the evidence cited by Respondent—gaps in Mr. Adkins’ memory—cannot, as a matter of law, establish lack of insight or credibility. Regardless, neither the Governor nor Respondent points to any evidence that Mr. Adkins cannot control his triggers, and the record is clear that he can. The Court should vacate the Governor’s reversal.

A. Insight

Mr. Adkins’ inability to remember portions of the offense while recalling others does not support an inference that he lacks insight or credibility. This follows from three published decisions of the Court of Appeal: *In re Stoneroad* (2013) 215 Cal.App.4th 596; *In re Young* (2012) 204 Cal.App.4th 288; and *In re Juarez* (2010) 182 Cal.App.4th 1316. In each case, a parole applicant was severely intoxicated at the time of the offense and unable to recall certain details; in each case, either the Board or Governor denied release on this basis, finding a lack of insight; in each case, the Court of Appeal reversed. (*Stoneroad, supra*, 215 Cal.App.4th at pp. 629-631; *Young, supra*, 204 Cal.App.4th at pp. 307-309; *Juarez, supra*, 182 Cal.App.4th at pp. 1339-1342.)

Two rules emerge from these decisions. First:

[A]n inmate’s lack of insight into the causes of his criminal conduct cannot rationally be inferred from his inability to remember the conduct where . . . he acknowledges his factual, legal and moral responsibility for the criminal act, and has expressed genuine remorse.

(*Stoneroad, supra*, 215 Cal.App.4th at p. 629.) This is because there is no legal or empirical support for “the proposition that a person cannot understand the causes of a violent act, including one for which he accepts personal responsibility, if he is unable to fully recall his commission of the act.” (*Id.* at p. 631.) Moreover, assertions of “what people should and can recall” are mere “guesswork” or “speculat[ion]” (*Young, supra*, 204 Cal.App.4th at p. 308), while the Governor’s decision “must be supported by some evidence, not merely by a hunch or intuition” (*Lawrence, supra*, 44 Cal.4th at p. 1213, original italics).

Second, where a person was intoxicated during the offense, a parole applicant’s ability to recall some details but not others will not support an adverse credibility finding to deny release if the applicant

1 “has taken responsibility for the commitment offense and the substance use that caused it[.]” (*Juarez*,
2 *supra*, 182 Cal.App.4th at p. 1339.) Dangerousness is what matters in the parole calculation, and “failure
3 to recall [certain] details of [the] commitment offense,” standing alone, “has no bearing on [petitioner’s]
4 current dangerousness.” (*Id.* at pp. 1339, 1341.)²

5 Mr. Adkins cited *Stoneroad*, *Young*, and *Juarez* in his underlying Memorandum, (see MPA iso
6 Pet. at p. 40), but Respondent does not address or attempt to distinguish these authorities. Gaps in Mr.
7 Adkins’ memory cannot support the Governor’s reversal if Mr. Adkins has taken responsibility for his
8 conduct, accounted for his substance use, and shown genuine remorse. He has done all three, and
9 Respondent has no counter.

10 Mr. Adkins took complete responsibility for his offense conduct, admitting that he escalated an
11 altercation by shooting and killing two teenage girls. (PA_495 at 13:2-24.) Of his inability to recall
12 retrieving the gun, he stated, “I know what happened. I’m not denying that it happened. I just have no
13 recollection[.]” (PA_493 at 11:12-14.) The Board found, “You took responsibility for your actions,”
14 (PA_534 at 52:18-19), and the examining psychiatrist concurred, (PA 553 [Mr. Adkins “accepts full
15 responsibility for his criminal behavior”].) Respondent does not contest this finding.

16 The record is also clear that Mr. Adkins was severely intoxicated at the time of the offense and
17 admits to a lengthy history of substance use. On the day of the shootings, he ingested LSD, alcohol,
18 marijuana, and cocaine, and was high “like . . . never . . . before.” (PA_494 at 12:9-14; see also PA_555
19 [Comprehensive Risk Assessment (CRA) noting “the significance of drugs and alcohol in the
20 commitment offense”].) He told the Board that he began using drugs and alcohol in early adolescence
21 because he was “looking for acceptance” and “numbing the pain” of a traumatic home life. (PA_500 at
22 18:3-13.) And he admitted to continued use upon arriving at prison, (PA_501 at 19:18-23), eventually
23

24 ² Mr. Adkins’ inability to recall or explain features of the offense is also credible considering both his
25 intoxication and his age when the offense occurred. “[I]t is credible that [an intoxicated person] is not
26 capable of having a memory of the crime,” as an intoxicated person may “‘carry out a relatively complex
27 series of behaviors, which may in fact result in serious disturbance to their’s and other’s lives, without
28 having an accurate memory of those events.’” (*Stoneroad*, *supra*, 215 Cal.App.4th at p. 630 n.17 [quoting
expert testimony].) And as the Board noted, being only 16 at the time of the offense, Mr. Adkins may
never “be able to explain [why he shot the victims] other than [he was] just very angry and immature. . . .
[I]t may be [his] youthfulness because [he was] doing things that were inexplicable.” (PA_536 at 54:18-
23; PA_537 at 55:3-4.)

1 becoming sober in 2002. (PA_511-12 at 29:11-30:11; see also PA_553 [CRA notes “a significant
2 history of problems with substance abuse that began in adolescence and worsened over time[,] . . .
3 persist[ing] into his incarceration[,] affect[ing] multiple areas of his life, . . . and play[ing] a role in
4 his criminal behavior and violent behavior in the commitment offense”].) Respondent does not contest
5 that Mr. Adkins has taken accountability for his substance use.

6 Finally, Mr. Adkins has shown genuine remorse. He told the Board, “I feel horrible. . . . [T]here
7 isn’t a day that goes by that I don’t regret what I did.” (PA_506 at 24:11-13.) He also “wept during parts
8 of [his] testimony,” which the Board found “very credible and genuine.” (PA_538 at 56:8-13.) Similarly,
9 the examining psychiatrist noted that Mr. Adkins “tearfully stated ‘It’s really hard for me to talk about—
10 the guilt and shame is extremely intense. . . . I’ve created a pain that will never go away for those
11 families and mine[.]’” (PA_554.) The psychiatrist concluded that Mr. Adkins’ “expressions of sorrow
12 and guilt appeared sincere.” (*Id.*) Respondent does not contest these findings, either.

13 Under *Stoneroad*, *Young*, and *Juarez*, the Governor was not permitted to rely on Mr. Adkins’
14 incomplete memory of the offense to find him lacking in insight or credibility where Mr. Adkins has
15 taken responsibility for the offense and his contributing substance, while also showing genuine remorse.
16 Because “the Governor’s mere refusal to accept [Petitioner’s insight] is not itself a rational or sufficient
17 basis upon which to conclude that the inmate lacks insight,” the Governor’s reversal is contrary to law
18 and must be vacated. (*In re Ryner* (2011) 196 Cal.App.4th 533, 549.)

19 ***B. Triggers***

20 Though Mr. Adkins is not lacking in insight, even supposing he were, the Governor’s reversal
21 would still be unjustified because Mr. Adkins has learned to control his triggers. “[L]ack of insight, like
22 any other parole unsuitability factor, supports a denial of parole only if it is rationally indicative of the
23 inmate’s current dangerousness.” (*Shaputis II, supra*, 53 Cal.4th at p. 219; accord, *In re Morganti* (2012)
24 204 Cal.App.4th 904, 925 [“[T]he decisive inquiry is not whether there is ‘some evidence’ [petitioner]
25 ‘lacks insight’ into his past criminal conduct or the cause thereof, but whether he constitutes a current
26 threat to public safety”].) Respondent claims that the relevant nexus lies in Mr. Adkins’ alleged inability
27 to “‘control his triggers,’” arguing, “without a deeper understanding of what triggered his violent
28 behavior, Adkins may return to it[.]” (Return at p. 10 (citing Gov.’s Decision, Exh. 3 at p. 2).)

Respondent relies on *In re Shippman* (2010) 185 Cal.App.4th 446, arguing generally that inability to control one's triggers may justify denial of parole. (Return at p. 9.) But neither the Governor nor Respondent cites *any* evidence that Mr. Adkins is unable to control his triggers, and the record refutes it.

Mr. Adkins told the Board that he became enraged and violent the night of the offense in response to feeling "belittled, bullied." (PA_507 at 25:3-9.) Having been bullied by his mother and brother growing up, he told the Board, he was hypersensitive to it and had "[n]o coping skills." (PA_507 at 25:10-15; PA_496 at 14:1-9.) Mr. Adkins also recognizes that extreme intoxication played a significant role in the offense, and he identified his reasons for using as "to feel accepted" and "numb[] the pain," (PA_500 at 18:3-7), and to cope with his "feelings of low self-worth, . . . guilt, [and] shame," (PA_512 at 30:12-15.) Mr. Adkins has thus identified his triggers.

Over nearly 35 years in prison, Mr. Adkins has developed safe and effective ways to control and manage his triggers. He has also naturally outgrown his youthful immaturity, impetuosity, and vulnerability to external pressures and is a mature adult in middle age. He is now attuned to his body and recognizes from his breathing if he is anxious or prone to anger. (PA_508 at 26:16-17.) He responds by meditating and practicing positive self-talk. (PA_508 at 26:15-23; PA_514 at 32:9-15.) He has learned that he cannot control the behavior of others but only how he responds, and he strives to do so with respect and empathy. (PA_509-510 at 27:1-28:5.)

As the Board recognized, these skills are the result of intentional effort:

You've done NA, self-awareness groups, CGA, anger management, victim's awareness, the youth diversion programs. You've programmed in the targeted areas. These were our concerns. NA, and you've done self-study for AA. So these were your issues.

(PA_532 at 50:13-18.) The Board noted that Mr. Adkins' participation in programming was "meaningful" and that he "appeared to have learned from it" as "shown in [his] institutional behavior which was mitigating. No RVR [Rules Violation Report] since 2002" (PA_533 at 51:6-12.) This was especially remarkable, the Board observed, because Mr. Adkins had been under a sentence of life without parole for much of his confinement, showing his interest in rehabilitation to be genuine and not conditioned on prospective release. (PA_538 at 56:19-24.)

With regard to his substance use, Mr. Adkins became sober in 2002 and self-studies the twelve steps. (PA_513 at 31:2-19.) When he feels the urge to drink or use drugs, he responds with positive self-

1 talk and prosocial activities like talking to his sponsor, jogging, or painting. (PA_512 at 30:19-20.)
2 When he witnessed a friend violently assaulted, he was triggered and anxious, but he did not drink or
3 use—he sought professional help instead. (PA_507 at 25:22-23; PA_508 at 26:3.) He surrounds himself
4 with “people who are likeminded, people who are doing positive programming[.]” (PA_502 at 20:19-
5 20.) He has achieved a positive sense of self-worth through these efforts. The examining psychiatrist
6 concluded that Mr. Adkins “has learned more adaptive ways to cope with negative emotions and
7 experiences and demonstrated a commitment to forging a more positive path in his life.” (PA_558.) The
8 Board similarly concluded that Mr. Adkins is not the same person he was at age 16: he does not “let it
9 become personal anymore and let[s] it flow off his back.” (PA_538 at 56:6-7.) The Board expressed
10 confidence that Mr. Adkins “should be able to handle” the inevitable challenges upon release. (PA_540
11 at 58:6-7.) There is no contrary evidence in the record, and Respondent cites none.

12 In sum, there is no evidence to support the Governor’s findings that Mr. Adkins is deficient in
13 insight or credibility, and there is no evidence to suggest Mr. Adkins cannot control his triggers. The
14 Governor’s reversal is unsupported and should be vacated


15 CONCLUSION

16 For the foregoing reasons, the Court should grant the writ.

17 Dated: August 6, 2025

Respectfully submitted,

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

20 
21 _____
22 Avram Frey (SBN 347885)


23 AMERICAN CIVIL LIBERTIES UNION FOUNDATION
24 OF SOUTHERN CALIFORNIA, INC
Summer Lacey (SBN 308614)
25 Melissa Camacho (SBN 264024)

26 AMERICAN CIVIL LIBERTIES UNION FOUNDATION
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28 *Attorneys for Petitioner*

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


Avram Frey (SBN 347885)

1 **PROOF OF SERVICE**

2 I, Sara Cooksey, declare that I am over the age of eighteen and not a party to the above action. I
3 am employed by the American Civil Liberties Union Foundation of Northern California. My business
4 address is 39 Drumm Street, San Francisco, CA 94111. My electronic service address is
5 scooksey@aclunc.org. On August 6, 2025, I served the following:

6 **Petitioner's Traverse in Support of Writ of Habeas Corpus and**
7 **Memorandum of Points and Authorities**

8 BY E-MAIL OR ELECTRONIC TRANSMISSION: by transmitting via email or electronic
9 transmission a true and correct copy of the documents listed above to the entity at the email address set
10 forth below, and

11 BY U.S. MAIL: I enclosed a true and correct copy of the documents identified above in a sealed
12 envelope or package addressed to the persons or entities listed below and deposited the sealed envelope
13 or package with the U.S. Postal Service, with the postage fully prepaid.

14 ROB BONTA
15 Attorney General of California
16 JENNIFER O. CANO
17 Deputy Attorney General
18 300 South Spring Street, Suite 1702
19 Los Angeles, CA 90013
20 E-mail: Jennifer.Cano@doj.ca.gov

21 I declare under penalty of perjury under the laws of the State of California that the foregoing is
22 true and correct. Executed on August 6, 2025 in Fresno, CA.

23 
24 Sara Cooksey, Declarant