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CASE #: B357895, Div: 1

No. _____

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA SECOND APPELLATE DISTRICT, DIVISION TWO

DAVID ADKINS,
Petitioner,

vs.

MARIO RAMIREZ, IN HIS OFFICIAL CAPACITY**,**
Respondent.

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

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TABLE OF CONTENTS

TABLE OF AUTHORITIES 5

PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION 13
PARTIES 18
JURISDICTION AND VENUE 19
PROCEDURAL AND FACTUAL HISTORY 21
I. The Governor's Reversal Power 21
II. Mr. Adkins' Case 23
A. Criminal Court Proceedings 23
B. Superior Court Habeas Proceedings 25
REASONS CLAIMS WERE NOT RAISED ON DIRECT APPEAL 26
SCOPE OF CLAIMS AND EVIDENTIARY BASES 27
CONTENTIONS 27
REQUEST FOR RELIEF 28

MEMORANDUM OF POINTS AND AUTHORITIES

SUMMARY OF ARGUMENT 31
ARGUMENT 34
I. Claims For System-Wide, Prospective Relief 34
A. Young People Have the Right to a Meaningful Opportunity for Release on Parole. 34
1. The Eighth Amendment. 34
2. Youth Offender Parole Law 38
3. Article I, Section 17. 38
4. The Governor's Reversal Power Violates the Rights of Young People to a Meaningful Opportunity for Release on Parole 40

a. The Constitution Prohibits Practices That Create a "Substantial Risk" or "Unacceptable Likelihood" of Excessive Punishment. 41

b. The Governor's Reversal Power Is Arbitrary and Political. 42

i. The nature of the Governor's reversal power 42

ii. The origin of the Governor's reversal authority 44

iii. Historical use of the Governor's reversal 45

iv. Evidence from other jurisdictions 48

c. "Some Evidence" Judicial Review Cannot Protect the Meaningful Opportunity for Release. 49

5. Young People Should Be Categorically Exempt from Reversal 51

6. Alternatively, the Court Should Require "Independent Judgment" Review with the Appointment of Counsel. 52

a. Independent Judgment Review 52

b. Appointment of Counsel 53

7. The Superior Court Entirely Ignored Mr. Adkins' Claim That the Governor's Reversal Power Violates the Rights of Young People to a Meaningful Opportunity for Release under Constitutional and Statutory Law. 54

B. The Governor's Reversal Power Violates the Rights of Young People to Due Process. 55

1. Young People's Liberty Interest in a Meaningful Opportunity for Release Requires Review under the "Independent Judgment" Standard with Appointment of Counsel. 55

2. The Superior Court Erred in Denying Relief on Mr. Adkins' Due Process Claim. 59

II. Mr. Adkins' Claim For Individual Relief Under The Deferential, "Some Evidence" Standard 63
A. The Record Unilaterally Demonstrates Mr. Adkins' Maturity and Rehabilitation 64
1. Family History 64
2. Commitment Offense 65
3. Acceptance of Responsibility and Remorse 67
4. Post-sentencing Conduct 67
5. Insight and Emotional Growth 70
6. Release Plan 71
B. The Governor's Reversal Is Not Supported by Any Record Evidence. 72
1. Offense Description 72
2. Insight 74
3. Recognition of Triggers and Development of Coping Strategies 76
C. The Superior Court's "Some Evidence" Analysis Is Contrary to Established Law 76
CONCLUSION 79
VERIFICATION 81
CERTIFICATE OF WORD COUNT 82

TABLE OF AUTHORITIES

Cases **Page(s)**

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(1971) 4 Cal.3d 130 ..... 16, 52

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(Iowa 2019) 930 N.W.2d 751 ..... 36, 56

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(2003) 106 Cal.App.4th 498 60

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(1999) 20 Cal.4th 327 55

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(1985) 472 U.S. 320 41

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(1977) 433 U.S. 584 37

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(S.D.N.Y., Sept. 20, 2019, No. 18 CV 2468 (VB))
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(1986) 477 U.S. 399 ..... 41, 43

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(1999) 20 Cal.4th 805 52

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(1973) 411 U.S. 778 54

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(E.D. Cal. 2014) 110 F.Supp.3d 989 ..... 45, 46

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(1979) 442 U.S. 1 .....56, 58

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(2014) 231 Cal.App.4th 1521 .....50, 59

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(1993) 5 Cal.4th 750 20

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(2011) 196 Cal.App.4th 427 17

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(1964) 228 Cal.App.2d 192 60

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(1983) 139 Cal.App.3d 295 .....21, 44

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(2010) 189 Cal.App.4th 1278 .....50, 59

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(2010) 182 Cal.App.4th 1316 .....*passim*

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(2012) 208 Cal.App.4th 149 50

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(2012) 204 Cal.App.4th 904 75

In re Nunez,
(2009) 173 Cal.App.4th 709 39

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(2019) 33 Cal.App.5th 1199 40

In re Reed,
(2009) 171 Cal.App.4th 1071 50

In re Roberts,
(2005) 36 Cal.4th 575 19

In re Roger S.,
(1977) 19 Cal.3d 921.....57

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(2002) 29 Cal.4th 616 .....*passim*

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(2011) 196 Cal.App.4th 533 75

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(Cal.Ct.App., June 29, 2011, No. C062982)
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(2003) 29 Cal.4th 783 62

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(2011) 53 Cal.4th 192 .....*passim*

In re Shelton,
(2020) 53 Cal.App.5th 650 .....17, 51

In re Stevenson,
(2013) 213 Cal.App.4th 841 50

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(2013) 215 Cal.App.4th 596 .....*passim*

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(1983) 148 Cal.App.3d 906.....19, 27

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(2025) 108 Cal.App.5th 1262 .....34, 54

In re Van Houten,
(2023) 92 Cal.App.5th 1 48

In re Walters,
(1975) 15 Cal.3d 738.....16

In re Young,
(2012) 204 Cal.App.4th 288 .....59, 72, 73, 77

Iraheta v. Super. Ct.,
(1999) 70 Cal.App.4th 1500 53

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(1981) 452 U.S. 18 53

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(1978) 438 U.S. 586 .....32, 41

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(1999) 69 Cal.App.4th 1361 53

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(D.Md., Feb. 3, 2017, No. CV ELH-16-1021)
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(1976) 424 U.S. 319 .....28, 55

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(2012) 567 U.S. 460 .....*passim*

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(2016) 577 U.S. 190 36

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(2015) 241 Cal.App.4th 173 60

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(2008) 44 Cal.4th 843 56

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(2012) 55 Cal.4th 262 .....14, 34, 35, 53

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(2018) 4 Cal.5th 349 .....*passim*

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(1983) 34 Cal.3d 441 39

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(2016) 63 Cal.4th 261 .....31, 34, 35, 39

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(2009) 174 Cal.App.4th 1080 38

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(2024) 15 Cal.5th 834 .....35, 38

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(1984) 160 Cal.App.3d 725 58

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(2010) 188 Cal.App.4th 47 39

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(2022) 987 N.W.2d 161 37

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(1979) 25 Cal.3d 260 .....28, 56, 58

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(1972) 8 Cal.3d 451 54

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(2005) 543 U.S. 551 .....32, 35, 41, 51

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(1976) 428 U.S. 280 41

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Okla. Const., art. VI, § 10 23

Pen. Code, § 1473 19

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PETITION FOR WRIT OF HABEAS CORPUS

INTRODUCTION

(1) Petitioner David Adkins brings this habeas corpus action to challenge the Governor's unlawful reversal of the Board of Parole Hearings' ("Board") finding that—based on his "subsequent growth and increased maturity" in the 33 years since his offense conduct at the age of 16—he is suitable for release. (Adkins Parole Hearing Transcript, November 14, 2019 (Exhibit 29) PA_507 at 55:18-19.) Mr. Adkins' case exemplifies why the Governor's veto power deprives people like him, who were convicted of crimes committed in their youth, of their constitutional and statutory rights to be released on parole upon demonstration of their rehabilitation. In any event, the Governor's veto in his case was not supported by even a modicum of evidence. Accordingly, this Court should grant the petition and order Mr. Adkins' release.

(2) In California, people who commit crimes when they are under 26 years old ("young people") have the right to a "'meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.'" (*People v. Contreras* (2018) 4 Cal.5th 349, 360 [quoting *Graham v. Florida* (2010) 560 U.S. 48, 75].) That right reflects scientific consensus—now enshrined in Penal Code sections 3051 and 4801, and protected under the Eighth and Fourteenth Amendments to the U.S. Constitution and article I, section 17 of the California Constitution—that compared to adults, young people have

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

(3) The Governor's reversal power violates the right to a "meaningful opportunity to obtain release" because there is an unacceptable likelihood that young people who "demonstrate[] [their] maturity and rehabilitation," (*Caballero, supra,* 55 Cal.4th at p. 266), may nonetheless be denied release based not on any danger they may pose to society, but on the Governor's political calculus.

(4) Assigning parole-release authority to an elected official—let alone the State's chief law enforcement officer—necessarily injects politics into release decisions. The history of the reversal authority bears this out: a former governor put Proposition 89 on the ballot as a "tough on crime" response to an unpopular parole-grant.[1] Available sources demonstrate that California governors have reversed 850 parole-grants since 2011—the first year for which the Governor's reversal decisions are available online—and many more since the authority was enshrined in 1988, yet no Governor has ever reversed a denial. Moreover, individual governors' reversal rates are widely divergent, reflecting their own idiosyncratic politics and proclivities. Given the inherent conflict between determinations of suitability for parole and gubernatorial politics, only one other state—Oklahoma—grants its governor the reversal power. Finally, judicial review under the existing legal standard does not

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[1] Mr. Adkins uses the terms "parole-grant" and "grant of parole" in reference to a Board finding of suitability for release on parole.

diminish the risk of unlawful reversals, as California courts review the Governor's reversal decisions under an "extremely deferential" "some evidence" standard that does not correct arbitrary and politicized reversals. (*In re Rosenkrantz* (2002) 29 Cal.4th 616, 665.)

(5) The Governor's reversal power also violates young people's due process rights under article I, section 7 of the California Constitution and the Fourteenth Amendment of the United States Constitution. Young people's constitutional and statutory rights to a meaningful opportunity for release create a liberty interest in the parole process that is stronger than the interest in a non-arbitrary decision held by all parole applicants in California. That stronger liberty interest requires heightened procedural protections to guard against arbitrary deprivation. The substantial risk of arbitrary and politicized decision-making inherent in the Governor's reversal power undermines young people's liberty interest in the parole process.

(6) Mr. Adkins' case is illustrative. At the time of his offense, more than 30 years ago, Mr. Adkins was 16 years old and highly intoxicated. By the time the Board considered his suitability for release in 2019, Mr. Adkins had been sober for 20 years, with no disciplinary issues. He had matured, was rehabilitated, and did not pose any danger to society, as the Board recognized in its decision to release him on parole. Nevertheless, the Governor reversed Mr. Adkins' parole-grant.[2]

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[2] The Board subsequently adopted the Governor's reasoning and found Mr. Adkins unsuitable at his next parole hearing on April

(7) As the Governor's reversal power is incompatible with young people's rights to release upon demonstrating their maturity and rehabilitation, young people should be categorically exempted from the Governor's exercise of the reversal power. (See *In re Walters* (1975) 15 Cal.3d 738, 744, fn.3 [habeas corpus "is an acceptable vehicle for a general declaration of [] rights" of similarly situated individuals].) Alternatively, this Court should impose heightened procedural protections for young people whose parole-grants are reversed by the Governor, namely judicial review under an "independent judgment" standard (see *Bixby v. Pierno* (1971) 4 Cal.3d 130, 143) and appointed counsel for that judicial review process; these are the minimum protections necessary to safeguard against politicized reversals.

(8) Since 2011, 83 individuals have been found suitable by the Board but remain incarcerated because the Governor reversed. Fifty-seven of those individuals were 25 or younger at the time of their offense, and eight of those 57 were under the age of 18. (See Declaration of Sara Cooksey in Support of Petition for Writ of Habeas Corpus and Memorandum of Points and Authorities, dated October 7, 2026 ("Cooksey Decl.") at ¶¶ 23-25.)

(9) If the Court declines to grant prospective relief on Mr. Adkins' constitutional and statutory claims, it should vacate the Governor's reversal under even the most deferential standard, "some evidence" review. (See *In re Lawrence* (2008) 44 Cal.4th 1181, 1212 [review is for "some evidence [that] supports

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14, 2022. As the Government recognizes, that does not render Mr. Adkins' petition moot. See infra ¶ 10.

the decision of the Board or the Governor that the inmate constitutes a current threat to public safety"], emphasis omitted.) Mr. Adkins has demonstrated maturity and rehabilitation over his 33-year-long imprisonment, he is no longer a threat to public safety, and no record evidence supports the Governor's reversal. Accordingly, Mr. Adkins should be released on parole immediately.

(10) This Court must address Mr. Adkins' petition on the merits notwithstanding that the Board, after the Governor reversed, found Mr. Adkins not suitable for parole at his next hearing. The Government agrees that Mr. Adkins' petition "is not rendered moot by the subsequent parole hearing finding," a hearing that "would have not been held had the Governor not reversed Adkins' parole grant." (Return to Order to Show Cause, *In re Adkins* (Super. Ct. L.A. County, Jul. 10, 2025, No. 25CJHC00034-01) (Exhibit 2) PA_024 at 13:12-14.) Indeed, courts have repeatedly vacated Governors' reversals despite subsequent Board unsuitability findings 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; 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]; *In re Sargent* (Cal.Ct.App., June 29, 2011, No. C062982) 2011 WL 2565311, at *7 (nonpub. opn.) [hearing after an improper reversal "should never have been held"].)

(11) Mr. Adkins previously filed a petition for writ of habeas corpus raising the same claims in the superior court. That court entered an order to show cause on all claims but ultimately denied relief. This Court should not follow the lower court's analysis, as it erroneously: (1) ignored, in full, Mr. Adkins' claim that the Governor's reversal power violates the rights of young people to a meaningful opportunity for release under the Eighth Amendment, article I, section 17, and Penal Code sections 3501 and 4801; (2) with respect to due process, considered only the federal right, did not identify the liberty interest at issue, and cursorily concluded that the "extremely deferential" "some evidence" standard, together with the presumption of regularity under Evidence Code section 664, provide sufficient procedural protections for young people's liberty interests; and (3) held that "some evidence" supports the Governor's reversal here, despite the clear evidence of Mr. Adkins' rehabilitation and dearth of any evidence of dangerousness. This Court should reject the lower court's reasoning and reach the opposite conclusion.

PARTIES

(12) 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 CDCR Number is H70868.

(13) Respondent Mario Ramirez is the acting Warden of the Richard J. Donovan Correctional Facility and is the legal custodian of petitioner Adkins.

JURISDICTION AND VENUE

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

(15) Venue is proper in this appellate district because Petitioner Adkins is unlawfully confined pursuant to his conviction and sentence by a superior court within this Court's jurisdiction. (See Adkins Abstract of Judgment (Exhibit 31) at PA_531; *In re Roberts* (2005) 36 Cal.4th 575, 593.)

(16) 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 United States 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.)

(17) 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 reversal in a putative habeas class action in Alameda County on June 6, 2022. That petition was dismissed without prejudice to refiling as an individual challenge. (Order Striking Noncomplaint [*sic*] Habeas Petition and Supporting Documents, *In re Durst* (Super. Ct. Alameda County, Jun. 16, 2022, No. HC70927-1) (Exhibit 5) at PA_058.) Mr. Adkins and others then filed a putative class action habeas petition in Monterey County

on December 22, 2022, which was not processed and rejected by the Clerk's Office by written Memorandum on February 14, 2023. (Memorandum, *In re Velasquez* (Super. Ct. Monterey County, Feb. 14, 2023) (Exhibit 6) at PA_061.) Mr. Adkins and others thereafter filed a putative class action habeas petition in the First District Court of Appeal on May 30, 2023. The Court of Appeal dismissed and instructed Mr. Adkins and others to file their claims separately. (Decision, *In re Velasquez* (Cal. Ct. App. 1st Dist., Jun. 13, 2023, No. A167909) (Exhibit 7) at PA_063-64).

(18) On March 24, 2025, Mr. Adkins brought an individual habeas petition in the Superior Court of Los Angeles County, where he was convicted and sentenced. (Exhibit 31 at PA_531.) On May 19, 2025, the court issued an Order to Show Cause why relief should not be granted. (Order to Show Cause, *In re Adkins* (Super. Ct. L.A. County, May 19, 2025, No. 25CJHC00034-01) (Exhibit 1) at PA_008-9.) Following briefing, on August 28, 2025, the court denied the habeas petition. (Order, *In re Adkins* (Super. Ct. L.A. County, Aug. 28, 2025, No. 25CJHC00034-01) (Exhibit 4) at PA_048-55.) Mr. Adkins now seeks relief in this Court.

(19) Together with counsel, Mr. Adkins has worked diligently to bring this case to court for a decision on the merits. There is no "substantial delay," no "prejudice [to] the respondent's ability to answer," and no affront to the finality of judgments. (*In re Clark* (1993) 5 Cal.4th 750, 787.)

PROCEDURAL AND FACTUAL HISTORY

I. THE GOVERNOR'S REVERSAL POWER

(20) The Governor's reversal power was created by ballot initiative in 1988 in response to the case of Archie Fain—a man convicted of multiple rapes and murder—which prompted "widespread, unprecedented and extraordinary public outcry." (*In re Fain* (1983) 139 Cal.App.3d 295, 299.) Then-Governor George Deukmejian, who had made crime-control central to his platform, initially attempted to block Fain's release, but when this failed, he proposed a ballot initiative to amend the constitution. (See Hurst, *Prop. 89, Plan to Give Governor Parole Veto Power, Expected to Win,* L.A. Times (Oct. 28, 1988) (Exhibit 18) at PA_286-90; see also Campbell, *The Emergence of Penal Extremism in California: A Dynamic View of Institutional Structures and Political Processes* (2014) 48 Law & Soc'y Rev. 377, 395-396 (Exhibit 12) at PA_185-86.) The initiative, Proposition 89, allowed the Governor to reverse parole decisions in either direction, but as "[t]he proposition's supporters pointed out[,] [] the Governor always had 'the power to grant reprieves, pardons and commutations,'" making the initiative's purpose to give "'the Governor, for the first time, . . . the power to *block the parole* of convicted murderers.'" (*Rosenkrantz*, *supra,* 29 Cal.4th at p. 691 (dis. opn. of Chin, J.), quoting Ballot Pamp., Gen. Elec. (Nov. 8, 1988) argument in favor of Prop. 89, p. 46, italics added in *Rosenkrantz*.)

(21) Proposition 89 appeared on the ballot in 1988 and was enacted by the voters. (See Warren, *Davis' Parole Policy*

Raises Questions, L.A. Times (July 30, 2002) (Exhibit 25) at PA_409-13.) Its passage amended article V, section 8 of the California Constitution, which details the Governor's pardon and commutation powers in subsection (a), to include subsection (b), which states in pertinent part:

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

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

(22) According to publicly available sources, the Governor's reversal power has been exercised many hundreds of times but only in one direction: to block grants of parole. Consistent with its purpose, it has never been used to reverse a parole denial. (See Cooksey Decl. at ¶¶ 11-12, 17, 20 [Governor's reports between 2011 and 2025 show 850 reversals of suitability findings, zero reversals of parole denials]; *Rosenkrantz, supra*, 29 Cal.4th at p. 691 (dis. opn. of Chin, J.) [discussing one-directional use of reversal authority].)

(23) The rates of parole-reversal by individual Governors demonstrate wide variation and idiosyncratic practices. Governor Pete Wilson reversed approximately 27% of parole-grants; Governor Gray Davis reversed 98%; Governor Arnold Schwarzenegger reversed 60%; and Governor Jerry Brown reversed 20%. (See Sarosy, *Parole Denial Habeas Corpus*

Petitions: Why the California Supreme Court Needs to Provide More Clarity on the Scope of Judicial Review (2014) 61 UCLA L.Rev. 1134, 1145-1147 (Exhibit 21) at PA_343.) The reversal rate for Governor Gavin Newsom is not publicly available, but he reversed 210 findings of parole suitability between 2019 and 2025. One hundred and twenty of those were in the cases of young people. (Cooksey Decl. at ¶¶ 26-32; see also Jackman, *California Governor Newsom Denies Parole for Sirhan Sirhan, Convicted of Robert F. Kennedy Assassination,* Wash. Post (Jan. 13, 2022) (Exhibit 19) at PA_293, 297.) This extreme variability across Governors shows that the reversal power reflects the political leanings and idiosyncrasies of particular Governors, not objective application of any legal standard.

(24) California is one of only two states that gives the Governor reversal authority over its parole process; the other is Oklahoma. (Okla. Const., art. VI, § 10.)[3]

II. MR. ADKINS' CASE

A. Criminal Court Proceedings

(25) On August 14, 1992, Petitioner David Adkins was convicted for his role in the 1991 killing of three teenage girls when he was 16 years old. (Exhibit 31 at PA_531.) In Case

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[3] Maryland previously gave its Governor reversal authority but has since abolished the practice. (See Arce, *Maryland Governor's Involvement in the Parole Process Prevents Juvenile Lifers from Parole Approval* (2020) Am. Univ. J. of Gender, Social Pol'y, & the L. (Exhibit 8) at PA_066-068; see also Wood, *Maryland Lawmakers Strip Governor's Power to Block Parole*, Baltimore Sun (Dec. 8, 2021) (Exhibit 27) at PA_447-48.)

Number GA007013-01, a jury convicted him of three counts of first-degree murder under Penal Code section 187, with enhancements for use of a firearm under Penal Code section 12022, subdivision (a)(1) on one count, and Penal Code section 12022.5 on two counts. (*Ibid*.) The Superior Court of Los Angeles County sentenced him to life without the possibility of parole on March 10, 1993. (*Ibid*.) Mr. Adkins appealed his sentence in Case Number B076174, and the Court of Appeal, Second Appellate District, affirmed on June 21, 1995. (Adkins Appellate Decision Excerpt (Exhibit 33) at PA_535.) By operation of law, Mr. Adkins' sentence became parole-eligible in 2017 pursuant to Penal Code section 3051, subdivision (b)(4).

(26) Mr. Adkins' minimum parole-eligibility date was January 2018. (Adkins Inmate Board Actions, as of August 20, 2026 (Exhibit 32) at PA_533.) At his initial parole suitability hearing on November 14, 2019, when Mr. Adkins was 45 years old, the Board found him suitable for release due to his demonstrated "subsequent growth and increased maturity." (Exhibit 29 at PA_507 at 55:18-19.)

(27) On April 1, 2020, Governor Newsom reversed Mr. Adkins' parole-grant. The Governor "acknowledge[d] that Mr. Adkins has made efforts to improve himself in prison" and "commend[ed] Mr. Adkins for his efforts and encourage[d] him to stay on this positive path." (Adkins Indeterminate Sentence Parole Release Review—Reversal, April 1, 2020 (Exhibit 28) at PA_450.) The Governor nonetheless reversed.

(28) On April 14, 2022, the Board denied Mr. Adkins parole. On November 4, 2024, Mr. Adkins voluntarily waived the right to a parole hearing for two years. (Exhibit 32 at PA_533.) His next parole-suitability hearing is scheduled for April 2027, at which time he will be 53 years old and have spent 34 years in prison. (*Ibid.*)

B. Superior Court Habeas Proceedings

(29) On March 24, 2025, Mr. Adkins brought an individual habeas petition in the Superior Court of Los Angeles County, contending that (1) the Governor's reversal power deprives young people of their constitutional and statutory rights to be released on parole upon demonstration of their rehabilitation, and thus young people (a) should be categorically exempted from the Governor's exercise of the reversal power or, alternatively, (b) should receive heightened procedural protections when the Governor reverses their parole-grants; (2) the reversal power violates young people's liberty interest in release on parole upon demonstration of maturation and rehabilitation, and thus heightened procedural protections are necessary to safeguard that liberty interest; and, in any event, (3) the Governor's reversal of Mr. Adkins' parole-grant is not supported by any evidence, and he should be released immediately. (Petition, *In re Adkins* (Super. Ct. L.A. County, Mar. 24, 2025, No. 25CJHC00034-01.))

(30) On May 19, 2025, the court issued an Order to Show Cause why relief should not be granted. (Exhibit 1 at PA_008-9.)

(31) The Government filed a return on July 10, 2025. (Exhibit 2 at PA_012-24.) Mr. Adkins filed a traverse on August 6, 2025. (Traverse, *In re Adkins* (Super. Ct. L.A. County, Aug. 6, 2025, No. 25CJHC00034-01) (Exhibit 3) at PA_026-45.)

(32) On August 28, 2025, the Superior Court of Los Angeles County denied the petition. (Exhibit 4 at PA_047-56.) The court did not address Mr. Adkins' claim that the reversal power violates young people's right to a meaningful opportunity for release under the Eighth Amendment, article I, section 17, and Penal Code sections 3501 and 4701. Under the federal Due Process Clause, the court held that the "some evidence" review standard "ensures that the Governor's decision is not arbitrary or procedurally flawed, while also not encroaching on the executive branch's broad authority," (Exhibit 4 at PA_050); that the "Governor is presumed to have properly performed his official duties" in giving "great weight" to the factors of youth under Evidence Code section 664; (Exhibit 4 at PA_050); and that there existed "some evidence to support the Governor's finding of current dangerousness due to Petitioner's lack of insight and credibility into the commitment offense and his associated triggers," (*id.* at PA_054.).

REASONS CLAIMS WERE NOT RAISED ON DIRECT APPEAL

(33) This Petition raises claims stemming from the Governor's reversal of a finding of suitability for parole by the Board that occurred many years after Mr. Adkins' direct appeal. Mr. Adkins could not have raised the challenge presented in this

Petition on direct appeal from his conviction and sentence. Mr. Adkins was not required to exhaust administrative remedies because "the subject matter of the controversy lies outside the administrative agency's jurisdiction" and "the administrative agency cannot grant an adequate remedy." (*Strick*, *supra*, 148 Cal.App.3d at p. 911, citation and quotation marks omitted.)

SCOPE OF CLAIMS AND EVIDENTIARY BASES

(34) Mr. Adkins avers that the available evidence adequately supports each claim for prospective relief on constitutional and statutory grounds and that he is therefore entitled to issuance of an Order to Show Cause and all other requested relief. In the event the Court considers further proof necessary, Mr. Adkins requests an Order to Show Cause directed to the superior court to allow for discovery.

CONTENTIONS

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

(36) The constitutional and statutory rights of young people to a meaningful opportunity for release based on

demonstrated maturity and rehabilitation create a liberty interest that is stronger than the interest in a non-arbitrary decision held by all parole applicants in California. That stronger liberty interest requires heightened procedural protections to guard against arbitrary deprivation. The Governor's reversal power denies Mr. Adkins and all other individuals 25 or younger at the time of offense the right to due process of law under the California Constitution, article 1, section 7, and the Eighth and Fourteenth Amendments to the United States Constitution because the substantial risk of politicized decision-making inherent in the Governor's reversal authority fails to safeguard against the risk of erroneous deprivation of young people's liberty interest under the balancing tests of *Mathews v. Eldridge* (1976) 424 U.S. 319 and *People v. Ramirez* (1979) 25 Cal.3d 260.

(37) The Governor's reversal in Mr. Adkins' case was not supported by any evidence in the record and thus does not comply with even the most deferential "some evidence" standard of review; accordingly, it should be vacated under *In re Lawrence* (2008) 44 Cal.4th 1181.

REQUEST FOR RELIEF

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

1. Issue an Order to Show Cause;
2. Issue declaratory and injunctive relief prohibiting the Governor from exercising the reversal power in the parole proceedings of young people (25 or younger at the time of

offense), or at least in the parole proceedings of juveniles (17 or younger at the time of offense);

3. In the alternative, issue declaratory and injunctive relief holding that challenges to the Governor's reversal in the cases of young people—or at least in the cases of those 17 or younger—are subject to the independent judgment standard of judicial review, and appointed counsel in such proceedings;
4. Vacate the Governor's reversal in Mr. Adkins' case as unsupported by any evidence in the record;
5. Issue a Writ of Habeas Corpus requiring Mr. Adkins' custodian to immediately release him on parole;
6. In the alternative, issue an Order to Show Cause directed to the superior court for factual development of Mr. Adkins' claims;
7. Award Mr. Adkins attorneys' fees and costs under California Code of Civil Procedure section 1021.5; and
8. Grant all other relief necessary to promote the ends of justice.

Dated: October 8, 2026

Respectfully submitted,



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MEMORANDUM OF POINTS AND AUTHORITIES

SUMMARY OF ARGUMENT

"'[C]hildren who commit even heinous crimes are capable of change.'" (*Contreras, supra*, 4 Cal.5th at p. 369, citation omitted.) "The core recognition underlying this body of case law is that children are, as a class, 'constitutionally different from adults' due to 'distinctive attributes of youth' that 'diminish the penological justifications for imposing the harshest sentences on juvenile offenders.'" (*People v. Franklin* (2016) 63 Cal.4th 261, 282, citations omitted.) People incarcerated for offenses committed in their youth thus have the right to a "'meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.'" (*Id*. at p. 284, quoting *Graham, supra*, 560 U.S. at p. 75.) In California, this right imposes requirements on the parole process: young people[4] (aged 25 and below at the time of the offense) must be given an opportunity to demonstrate rehabilitation, and if they do so, they must be released. But California allows the Governor to unilaterally reverse findings of parole suitability—one of only two states to do so—permitting the Governor to deny release for political and other arbitrary reasons.

The Governor's reversal power violates the rights of young people under statutory law, the California Constitution, and the

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[4] Petitioner uses the phrase "young people" to reference both "juveniles" age 17 or under at the time offense, *Franklin*, (*Franklin*, *supra*, 63 Cal.4th at p. 268) and "youth offenders" age 25 or younger at the time of offense, (Pen. Code § 3051, subd. (a)(1)).

United States Constitution.[5] Young peoples' rights to a meaningful opportunity for release are guaranteed by Penal Code sections 3051, subdivision (e) and 4801, subdivision (c) ("Youth Offender Parole Law"), article I, section 17 of the California Constitution, and the Eighth and Fourteenth Amendments to the United States Constitution.[6] The Governor's reversal power violates these rights because there is a "'substantial risk,'" (*Lockett v. Ohio* (1978) 438 U.S. 586, 601), or "unacceptable likelihood" (*Roper v. Simmons* (2005) 543 U.S. 551, 573), that the Governor will deny young people release despite their demonstration of maturity and rehabilitation. Young people also have a liberty interest in release on parole if they can demonstrate their maturity and rehabilitation, which must be protected by heightened procedural protections sufficient to

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

[6] The right to a "meaningful opportunity" to obtain their release (if they demonstrate their maturity and rehabilitation) 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, discussed *infra*, this right extends to all young people in California.

ensure the opportunity to obtain their release is meaningful under article I, section 7 of the California Constitution and the Eighth and Fourteenth Amendments of the United States Constitution. The significant likelihood of arbitrary, politicized reversals by the Governor undermines young people's strong liberty interest, in violation of due process.

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

The Governor's reversal authority is incompatible with young people's right to a meaningful opportunity for release on parole. Eighty-five people are currently imprisoned because of violations of this right, with more young people being added on an ongoing basis. Accordingly, this Court should categorically exempt young people from the exercise of the Governor's reversal power. Alternatively, the Court should order that reversals are subject to independent judgment review with appointment of counsel. But even if the Court declines to provide such prospective, system-wide relief, it should vacate the reversal in Mr. Adkins' case, as there is no record evidence to support the Governor's reversal. Finally, the superior court's decision denying habeas relief, below, erred with respect to each of Mr. Adkins'

claims, and while this Court's review is *de novo* in any event (*In re Tuilaepa* (2025) 108 Cal.App.5th 1262, 1274) it should discount the lower court's analysis entirely. Mr. Adkins should be released.

ARGUMENT

I. CLAIMS FOR SYSTEM-WIDE, PROSPECTIVE RELIEF

A. Young People Have the Right to a Meaningful Opportunity for Release on Parole.

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

1. The Eighth Amendment.

The Eighth Amendment guarantees people under 18 at the time of their offense ("juveniles") a meaningful opportunity to be released if they demonstrate rehabilitation. (*Contreras, supra,* 4 Cal.5th at p. 367; *Caballero, supra*, 55 Cal.4th at p. 268.) As the California Supreme Court recognizes, "children are, as a class, 'constitutionally different from adults' due to 'distinctive attributes of youth' that 'diminish the penological justifications for imposing the harshest sentences on juvenile offenders.'" (*Franklin*, *supra*, 63 Cal.4th at p. 283, quoting *Miller v. Alabama* (2012) 567 U.S. 460, 471-472.) These "'hallmark features' of youth" include "'immaturity, impetuosity, and failure to

appreciate risks and consequences'" (*People v. Hardin* (2024) 15 Cal.5th 834, 844), "as well as the capacity for growth and change" (*Franklin*, *supra*, 63 Cal.4th at p. 283). Thus, as the California Supreme Court recently re-affirmed, "young people—even young people who have committed grave offenses—are capable of significant, sometimes transformative, change over the course of their lifetimes." (*Hardin*, *supra*, 15 Cal.5th at p. 864.) In light of "these 'marked and well understood' differences between children and adults," state and federal "law categorically prohibits the imposition of certain penalties[.]" (*Franklin*, *supra*, 63 Cal.4th at p. 283, citing *Roper, supra,* 543 U.S. at p. 572.)

States may not sentence juveniles who are capable of reform to life in prison without the possibility of parole but must instead provide them some "'meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.'" (*Caballero*, *supra*, 55 Cal.4th at pp. 266-267, quoting *Graham*, *supra*, 560 U.S. at p. 75.) This right to a "meaningful opportunity" imposes constitutional requirements on the parole process. (*Greiman v. Hodges* (S.D. Iowa 2015) 79 F.Supp.3d 933, 943 ["[T]he responsibility for ensuring that Plaintiff receives his constitutionally mandated 'meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation' lies squarely with [the Board of Parole]"]; see also *Diatchenko v. Dist. Atty. for Suffolk Dist.* (Mass. 2015) 27 N.E.3d 349, 365 ["[T]he parole hearing acquires a constitutional dimension for a juvenile homicide offender because the availability of a meaningful opportunity for release on parole is what makes the juvenile's

mandatory life sentence constitutionally proportionate"].)[7] A chance at parole can provide a "meaningful opportunity" for release only if it "*ensures* that juveniles whose crimes reflected only transient immaturity—and who have since matured—will [be released.]" *Montgomery v. Louisiana* (2016) 577 U.S. 190, 212, emphasis added; see also *Bonilla, supra*, 930 N.W.2d at p. 777 ["If the Board determines that a juvenile offender has demonstrated maturity and rehabilitation, parole or work release is required as a matter of law."]; Harrington, *The Constitutionalization of Parole: Fulfilling the Promise of Meaningful Review* (2021) 106 Cornell L.Rev. 1173, 1204 (Exhibit 17) at PA_232 ["Only release . . . upon demonstration of subsequent maturity and reform would satisfy the Court's promise that parole can cure the unconstitutionality of a life sentence"].) Because release must be "realistic" to be meaningful, the United States Supreme Court has held that executive clemency is too "remote" to provide a meaningful opportunity. (*Graham, supra*, 560 U.S. at pp. 70, 82.)[8]

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[7] See also *Bonilla v. Iowa Bd. of Parole* (Iowa 2019) 930 N.W.2d 751, 772 [under *Graham-Miller*, parole authorities must make "an individualized determination of whether the juvenile offender has 'demonstrated maturity and rehabilitation'"], citation omitted; ; 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; ; *Hawkins v. New York State Dept. of Corr. & Cmty. Supervision* (N.Y. App. Div. 2016) 140 A.D.3d 34, 39.

[8] See also *Bonilla, supra*, 930 N.W.2d at p. 772 ["Parole authorities cannot require the camel to pass through the needle's eye. . . . [O]therwise, a recalcitrant parole authority could convert

(38) The doctrinal grounding of this requirement—of release upon proof of rehabilitation—lies in the Eighth Amendment rule that "a punishment is 'excessive' and unconstitutional if it [] makes no measurable contribution to acceptable goals of punishment[.]" (*Coker v. Georgia* (1977) 433 U.S. 584, 592.) No penological rationale justifies continued incarceration of a person who committed crime as a juvenile and has since demonstrated rehabilitation: the retribution and deterrence rationales are undercut by "the distinctive attributes of youth," (*Miller, supra*, 567 U.S. at p. 472; accord *Contreras, supra*, 4 Cal.5th at p. 367),[9] and the rationales of incapacitation and rehabilitation necessarily have no application to someone who has been rehabilitated. (See, e.g., *State v. Lyle* (Iowa 2014) 854 N.W.2d 378, 400 ["After the juvenile's transient impetuosity ebbs and the juvenile matures and reforms, the incapacitation objective can no longer seriously be served, and [continued incarceration] becomes 'nothing more than the purposeless and needless imposition of pain and suffering'"], citation omitted; e.g. *People v. Parks* (2022) 987 N.W.2d 161, 181 ["[I]t cannot be disputed that the goal of rehabilitation is not accomplished by . . . [denying**]** hope of release"].) Those whose offense occurred when they were juveniles and have demonstrated rehabilitation in

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a potentially valid sentence into the functional equivalent of an unconstitutional life without possibility of parole"].

[9] See *State v. Comer* (N.J. 2022) 266 A.3d 374, 397-398 [retribution and deterrence do not justify even mandatory term of 30 years without parole for juveniles].

parole proceedings must therefore be released under the Eighth Amendment.

2. Youth Offender Parole Law

California statutory law guarantees young people, age 25 and under at the time of offense, the same "meaningful opportunity" afforded to juveniles under the Eighth Amendment. Senate Bill 260 and subsequent amendments require the Board to conduct "youth offender parole hearing[s]," (Pen. Code, § 3051, subd. (b)), that "provide for a meaningful opportunity to obtain release. . . . consistent with relevant case law," (*id.* at § 3051, subd. (e)). In such hearings, the Board must "give great weight to the diminished culpability of youth as compared to adults, the hallmark features of youth, and any subsequent growth and increased maturity of the prisoner in accordance with relevant case law." (*Id.* at § 4801, subd. (c).) Youth Offender Parole Law thus 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) likewise guarantees the right to a meaningful opportunity for release. 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"].)

Consistent with the state's broader Eighth Amendment analog, California courts have independently, and more expansively, prohibited excessive and disproportionate sentencing of young people. California case law predates the pertinent Eighth Amendment jurisprudence: 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, 730-731; 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, 487-488 [vacating juvenile's life sentence for felony murder as constitutionally excessive because he was an "immature youth"].) And since development of the parallel Eighth Amendment case law, California courts have consistently expanded the scope of federal protections against excessive sentencing of young people. (See, e.g., *Contreras*, *supra*, 4 Cal.5th at p. 372 [fifty-year sentence is functional equivalent of life without parole]; see also *Franklin*, *supra*, 63 Cal.4th at p. 283 [extending *Miller* to *de facto* life without parole].) The right to a meaningful opportunity for release is also protected under article I, section 7.

Further, this guarantee must extend to all those who were 25 or younger at the time of the offense and are not explicitly denied a youth offender parole hearing under Penal Code section 3051, subdivision (h). 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, 1209-1210, citation omitted, revd. on other grounds (2021) 10 Cal.5th 959.) The ideological underpinning of the right to a meaningful opportunity for release—young people's reduced culpability and heightened capacity for change—extends through the age of 25. Accordingly, article I, section 17 must likewise provide individuals within this age group release on parole if they prove rehabilitation.

4. The Governor's Reversal Power Violates the Rights of Young People to a Meaningful Opportunity for Release on Parole.

The Governor's reversal power creates a substantial risk, or unacceptable likelihood, that the Governor will deny release on parole to young people for political or other arbitrary reasons.[10] For the reasons explained below, the Governor's reversal authority is fundamentally incompatible with young people's right to a meaningful opportunity for release under the U.S. and California Constitutions and Youth Offender Parole Law.

[10] The Superior Court entirely ignored this claim. This Court's review, however, is *de novo*.

a. The Constitution Prohibits Practices That Create a "Substantial Risk" or "Unacceptable Likelihood" of Excessive Punishment.

Procedures used to determine the harshest penalties entail a "heightened 'need for reliability.'" (*Caldwell v. Mississippi* (1985) 472 U.S. 320, 323, citation omitted; see, e.g., *Woodson v. North Carolina* (1976) 428 U.S. 280, 305 ["[T]here is a [] difference in the need for reliability in the determination that death is the appropriate punishment in a specific case"].) Practices that create a "substantial risk" (*Lockett, supra*, 438 U.S. at p. 601) or "unacceptable likelihood" (*Roper, supra*, 543 U.S. at p. 573) that the most severe penalties will be imposed erroneously—because some inherent, intractable feature of such practices biases them towards over-punishment—violate the right against excessive punishment. (See, e.g., *Roper*, *supra*, 543 U.S. at p. 573 [circumstances of capital homicide might "overpower mitigating arguments based on youth as a matter of course"]; *Turner v. Murray* (1986) 476 U.S. 28, 35-36 ["risk of racial prejudice infecting a capital sentencing proceeding" compelled constitutional rule allowing voir dire about racial attitude]; *Ford v. Wainwright* (1986) 477 U.S. 399, 415-416 [method of determining incompetency to be executed violated Eighth Amendment because of "significant possibility" of distorted or biased decision-making].) This heightened safeguard applies to lengthy sentences imposed on young people. (See *Graham, supra*, 560 U.S. at p. 69 [life-without-parole for young people "share[s] some characteristics with death sentences that

are shared by no other sentences"]; see also *Miller, supra*, 567 U.S. at p. 481 ["[I]f . . . 'death is different,' children are different too"], citation omitted.)

b. The Governor's Reversal Power Is Arbitrary and Political.

The Governor's reversal power is fundamentally arbitrary and inherently political, creating a substantial risk that the Governor will deny release to young people despite proof of their rehabilitation. The inseparability of politics from the reversal power is evident from myriad sources, including the 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 ensure 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 parole board findings of suitability for parole.

Politics are infused in both the reversal authority's placement (the Governor's office) and its subject matter (parole-release). It is well-established that "placement of [a criminal

penalty] decision wholly within the executive branch" 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].)[11]

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 9) at PA_072.) The ad pegged Dukakis, who presided over the furlough program, as "insufficiently tough on crime," (*ibid.*), and Dukakis' subsequent defeat cemented the conventional wisdom "that any politician who innocently releases the wrong convict is toast." (Saunders, Opinion, *Willie Horton's*

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[11] Notably, the Governor's reversal—a judgment about the propriety of continued punishment placed wholly in the hands of the Executive—is the mirror image of clemency. 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. The United States Supreme Court has held clemency "too remote"—i.e. unlikely, given political realities—to uphold the rights of young people to a meaningful opportunity for release. (See *Graham*, *supra*, 560 U.S. at pp. 69-70.)

Legacy, S.F. Gate (Dec. 12, 2002) (Exhibit 22) at PA_385; see also Schwartzapfel & Keller, *Willie Horton Revisited*, The Marshall Project (May 13, 2015) (Exhibit 23) at PA_389 ["'[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 Morjé Howard), The Atlantic (Aug. 29, 2017) (Exhibit 14) at PA_205 [the Horton affair taught politicians that, "for violent offenders, [] release from prison [is] taboo"].) This lesson is particularly potent because there is no countervailing incentive; that is, there is no political liability for *blocking* an individual's release. The prospect of politicized reversals thus inheres in giving the Governor sole control over parole-release determinations.

ii. The origin of the Governor's reversal authority

The origin of the reversal authority in California demonstrates that it has been political from the start. 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* (Exhibit 18) at PA_286-90); see also Campbell, *supra, The Emergence of Penal Extremism* (Exhibit 12) at PA_185-86). 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. (Nov. 8, 1988) argument in favor of prop. 89, p. 46 (Nov. 8, 1988), italics added in *Rosenkrantz*.) In other words, the animating purpose of the reversal power has 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 exhibits 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 ¶¶ 16-17, 20 [between 2011 and 2025, the Governor reversed 850 parole grants and zero parole denials]; see also *Gilman, supra*, 110 F.Supp.3d at p. 1015 ["[Governors] appear to have no [] concern about decisions that deny parole"]; *Rosenkrantz, supra*, 29 Cal.4th at p. 691 (dis. opn. of Chin, J.) ["The record shows that the current Governor has

never exercised this power to reverse the denial of parole, but only to reverse the grant of parole"].) Indeed, "for the 21-year period from 1991 through 2011, the Governor reported *reviewing* only three decisions denying parole, affirming all three denials." (*Gilman, supra*, 110 F.Supp.3d at p. 1014, emphasis added.) That Governors are not even looking at over 99% of parole denials shows that the reversal is not a backstop to the Board—it is a political check on unpopular releases.

Politics is also evident from the differential reversal rates across Governors. Governor Pete Wilson reversed approximately 27% of parole-grants;[12] Gray Davis reversed 98%; Arnold Schwarzenegger reversed 60%; and Jerry Brown reversed 20%.[13] (See Sarosy, *supra, Parole Denial Habeas Corpus Petitions* (Exhibit 21) at PA_340.) Variability this extreme—from 27% to 98%—is inconsistent with any objective standard across decisionmakers. Rather, it reflects "the individual policy orientation of the particular Governor in office." (Weisberg, *supra, Life in Limbo* (Exhibit 26) at PA_421.)

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[12] Though Governor Wilson reversed a relatively small percentage of cases, the Board only granted parole in "a handful of cases" over his tenure. (Weisberg et al., *Life in Limbo: An Examination of Parole Release for Prisoners Serving Life Sentences with the Possibility of Parole in California* (2011) Stanford Criminal Justice Ctr., 13 (Exhibit 26) at PA_430.) This renders the sample size too small to draw meaningful conclusions about Governor Wilson's practice.

[13] The reversal rate for Governor Newsom is not publicly available, but he reversed 210 findings of parole suitability between 2019 and 2025. One hundred and twenty of those were in the cases of young people. (Cooksey Decl. at ¶¶ 26-32.)

Contemporaneous statements across administrations confirm this. Governor Davis, who reversed all but two findings of suitability in his tenure, stated, "'if you take someone else's life, forget it.'" (Egelko, *Brown Paroles More Lifers Than Did Predecessors*, S.F. Gate (Apr. 28, 2011) (Exhibit 13) at PA_200.) The Legal Affairs Secretary for Governor Schwarzenegger, who reversed nearly two-thirds of all parole grants, was candid about the role of politics:

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

(Liotta, *Double Victims: Ending the Incarceration of California's Battered Women* (2011) 26 Berkeley J. Gender L. & Justice 253, 267, fn. 98, italics in original; citation omitted (Exhibit 20) at PA_314.) Meanwhile, Governor Brown—whose "age and lack of interest in pursuing further political office" made him less susceptible to public pressure (Sarosy, *supra, Parole Denial Habeas Corpus Petitions* (Exhibit 21) at PA_344), reversed only sparingly, explaining, "I'm obviously going to interfere less with the parole board than my predecessors . . . who are perhaps looking for further political pastures to wander in." (Egelko, *supra, Brown Paroles More Lifers* at (Exhibit 13) PA_200-01.) And Governor Newsom stated of the political backlash to one release decision, "I live the realities . . . It's not intellectual . . . It [] put me on my toes." (*America's Incarceration Epidemic* (interview with Gov. Gavin Newsom) *The Problem with Jon*

Stewart (Mar. 24, 2023) <https://youtu.be/DS1EMsVmoxo> at 3:52-4:02. [as of Oct. 8, 2026])

The influence of politics is also plain in individual cases. For example, Governors have unfailingly reversed parole-grants to members of the "Manson family," despite their exemplary records over decades in prison. (See, e.g., *California Governor Blocks Parole for Manson Follower Leslie Van Houten*, The Guardian (Mar. 30, 2022) (Exhibit 11) at PA_171-72 [Leslie Van Houten reversed five times, including as a septuagenarian]; *In re Van Houten* (2023) 92 Cal.App.5th 1, 28 [vacating Governor Newsom's fifth reversal of Van Houten, whom the Governor had identified as responsible for "among the most infamous and fear-inducing [crimes] in California history"]; Seidman, *Manson Follower Bruce Davis Denied Parole By Newsom*, L.A. Times (June 21, 2021) (Exhibit 24) at PA_405-07 [Bruce Davis was reversed seven times before dying in prison at age 83].) Tellingly, the Manson family were cited in literature promoting Proposition 89 as reasons to enact the Governor's reversal. (Governor's Parole Review, CA Proposition 89 (1988) (Exhibit 16) at PA_217.) In sum, use of the reversal power has confirmed what was plain all along—that the authority is inseparable from, and its use dictated by, politics.

iv. Evidence from other jurisdictions

Finally, evidence from outside of California is also probative. Oklahoma is the only other state with gubernatorial reversal power, evidencing near-universal consensus that prison-

release decisions cannot be entrusted to the state's elected chief executive. (Wood, *supra*, *Maryland Lawmakers* (Exhibit 27) at PA_447-78 [only California and Oklahoma remain after abolition of the reversal authority in Maryland].) As former Governor Parris Glendening argued in support of abolishing the practice in Maryland, "[h]ow can it not be political for a governor to hold all the power in the decision about whether to release someone who has been involved in a serious crime?" (Glendening, Opinion, *I Made a Serious Mistake as Maryland Governor. We Need Parole Reform*, Wash. Post (Mar. 1, 2021) (Exhibit 15) at PA_211.) "[P]eoples' [*sic*] freedom is being determined not on the merits of their rehabilitation," Glendening added, "but often on the political tides of the day." (*Ibid.*)[14]

c. "Some Evidence" Judicial Review Cannot Protect the Meaningful Opportunity for Release.

Contrary to the superior court's conclusion,[15] judicial review does not mitigate the influence of politics in reversal decisions. Under the "extremely deferential" "some evidence" standard of review (*Rosenkrantz, supra*, 29 Cal.4th at p. 679), if

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[14] That the California Governor's reversal power is an extreme outlier across the nation also suggests an additional reason for finding it in violation of article 1, section 17 as applied to young people: it is "unusual," and the California Constitution prohibits "cruel *or* unusual punishment." (Cal. Const., art. I, sec. 17, emphasis added.)

[15] The superior court discussed the "some evidence" standard in the context of due process. As noted, the superior court did not address the "meaningful opportunity for release" claim.

there is even "a modicum of evidence" of present dangerousness (*In re Shaputis* (2011) 53 Cal.4th 192, 214 (hereafter *Shaputis II*), citation omitted), whether or not cited by the Governor (see *In re Stevenson* (2013) 213 Cal.App.4th 841, 866-867), the reviewing court must uphold the reversal. As a result, courts routinely sustain reversals on the thinnest of reeds. (See, e.g., *In re Montgomery* (2012) 208 Cal.App.4th 149, 164 [possession of tobacco]; *In re Hare* (2010) 189 Cal.App.4th 1278, 1294-1295 [rule infraction seven years prior to reversal for fashioning toothbrush into cleaning device]; *In re Reed* (2009) 171 Cal.App.4th 1071, 1084-1085 [leaving work early without permission].) Whether "'evidence in the record tending to establish suitability for parole far outweighs evidence demonstrating unsuitability for parole'" is "'irrelevant'" under this standard. (*In re Butler* (2014) 231 Cal.App.4th 1521, 1534, citation omitted; see also *Hare*, *supra*, 189 Cal.App.4th at p. 1294 [upholding reversal though applicant was "a strong candidate for release," "the Board's decision to release him was certainly reasonable," and "were it our responsibility . . . , we might very well conclude that evidence in the record tending to establish his suitability for parole far outweighs any evidence demonstrating unsuitability for parole"].) Accordingly, though the record of a youthful offender may overwhelmingly demonstrate rehabilitation, a Governor's reversal must be upheld if a single piece of evidence, in isolation, might suggest dangerousness—with dangerousness identified to include even leaving work early (*Reed*, *supra*, 171 Cal.App.4th at pp. 1084-1085) or turning a toothbrush into a cleaning tool (*Hare*,

supra, 189 Cal.App.4th at pp. 1294-1295). Under this standard, judicial review cannot ensure that arbitrary and politicized reversals will be vacated for young people who are, in fact, rehabilitated.

5. Young People Should Be Categorically Exempt from Reversal

This Court should categorically exempt young people from the Governor's exercise of the reversal power. The United States Supreme Court has imposed a categorical ban where no lesser measure would safeguard against disproportionate punishment. (See, e.g., *Roper, supra*, 543 U.S. at pp. 572-573; *Graham, supra*, 560 U.S. at p. 68.) Here, because politicization is a defining feature of the reversal power in theory and in practice, the risk cannot be excised. While a stricter standard of judicial review might offer an after-the-fact corrective, this would permit release only after lengthy delay (see, e.g., *In re Shelton* (2020) 53 Cal.App.5th 650, 674 [ordering relief of new parole hearing after four years]), and young people who have proven their rehabilitation are entitled to release *immediately*. (See *Robinson v. California* (1962) 370 U.S. 660, 667 ["Even one day in prison would be a cruel and unusual punishment" if unjustified].) The only way to fully protect the legal rights of young people is to exclude them from the reach of the governor's reversal power.

6. Alternatively, the Court Should Require "Independent Judgment" Review with the Appointment of Counsel.

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

a. Independent Judgment Review

Judicial review under an independent judgment standard—de novo review of the facts and balancing of the evidence (see *Fukuda v. City of Angels* (1999) 20 Cal.4th 805, 817)—is necessary for two reasons. First, a less stringent standard cannot guarantee that young people who demonstrate rehabilitation will be released, as deference to the Governor would leave undisturbed the taint of politics.

Second, independent judgment review is proper as a matter of California administrative law. That standard is required for judicial review of executive decisions concerning rights that are "vested" and "fundamental." (See Code Civ. Proc., § 1094.5, subd. (c); *Bixby, supra.* 4 Cal.3d at p. 143.) A right is "vested" if already in the claimant's possession and "fundamental" depending on its "effect . . . in human terms and the importance of it to the individual in the life situation." (*Bixby, supra*, 4 Cal.3d at p. 144.)

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

b. Appointment of Counsel

Young people must also be afforded counsel to challenge gubernatorial reversals under the independent judgment standard. "[T]he defendant's interest in personal freedom . . . triggers the right to appointed counsel," and as noted, the liberty interest here is freedom from detention, the greatest possible. (*Lassiter v. Dept. of Soc. Servs. of Durham Cnty., N.C.* (1981) 452 U.S. 18, 25; see also *Iraheta v. Super. Ct.* (1999) 70 Cal.App.4th 1500, 1505.) Further, young people challenging gubernatorial reversals "will likely lack the skills and resources to gather, analyze, and present this evidence adequately." (*Diatchenko, supra*, 27 N.E.3d at p. 360.) "[A] parole hearing for a juvenile homicide offender . . . involves complex and multifaceted issues that require the potential marshalling, presentation, and rebuttal of information derived from many sources." (*Ibid.*; see also

Gagnon v. Scarpelli (1973) 411 U.S. 778, 786-787 [counsel necessary where "the presentation requires . . . offering or dissecting of complex documentary evidence"]; *People v. Vickers* (1972) 8 Cal.3d 451, 461 [layperson "too often lacks the training and poise to present . . . his [case] in a persuasive manner"].) At a minimum, young people must also be appointed counsel to challenge reversals by the Governor.

7. The Superior Court Entirely Ignored Mr. Adkins' Claim That the Governor's Reversal Power Violates the Rights of Young People to a Meaningful Opportunity for Release under Constitutional and Statutory Law.

Though the superior court issued an order to show cause on all claims in Mr. Adkins' petition, it ultimately denied relief without any reasoning or decision on his claims under the Eighth Amendment, California Constitution, article I, section 17, and Penal Code sections 3501 and 4801. This Court's review is *de novo* (*Tuilaepa*, *supra*, 108 Cal.App.5th at p. 1274) but to the extent the superior court's reasoning in denying relief on Mr. Adkins' due process claim might be applied to this claim, Mr. Adkins addresses that flawed analysis below.

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

1. Young People's Liberty Interest in a Meaningful Opportunity for Release Requires Review under the "Independent Judgment" Standard with Appointment of Counsel.

The Governor's reversal authority also violates young people's due process rights.

Upon identifying a cognizable liberty or property interest, courts analyzing the federal right measure the process due to protect that interest from arbitrary government deprivation or infringement under the balancing test articulated in *Mathews, supra,* 424 U.S. at pp. 334-335. (*Today's Fresh Start, Inc. v. Los Angeles Cnty. Office of Educ.* (2013) 57 Cal.4th 197, 213.) In determining the procedural protections necessary to guarantee the interest at issue, *Mathews* requires consideration of "the private interest affected by the official action, the government's interest, and the risk of an erroneous deprivation of the private interest, including the probable value, if any, of additional or substitute procedural safeguards and the burdens such safeguards would entail." (*Cal. Teachers Assn. v. State of Cal.* (1999) 20 Cal.4th 327, 347, citing *Mathews, supra*, 424 U.S. at pp. 334-335.) Under the California Constitution, courts apply the same two-step process of identifying a qualifying interest and then balancing it against the government interest and risk of error, but courts also consider a fourth factor, "the dignitary interest in informing individuals of the nature, grounds, and consequences of the action and in enabling them to present their

side of the story before a responsible government official." (*People v. Allen* (2008) 44 Cal.4th 843, 862-863; accord *People v. Ramirez* (1979) 25 Cal.3d 260, 269.)

Young people have a liberty interest in release on parole upon demonstrating their maturity and rehabilitation; that liberty interest must be protected by sufficient procedural protections to safeguard against the risk of arbitrary deprivation. (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 parole applicants under the United States Constitution (see *Greenholtz v. Inmates of Nebraska Penal and Correctional Complex* (1979) 442 U.S. 1, 11). Young people's liberty interest in release on parole if they demonstrate their maturity and rehabilitation requires protection from arbitrary deprivation or infringement by distinct and robust procedural protections.

Specifically, due process balancing 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.)

Meanwhile, the government's interest 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 arbitrary and erroneous reversals. Provision of these additional procedural due process protections 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. (*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 ¶¶ 26-32 [showing total number of parole grants for those age 25 and under at the time of the offense reversed

during the tenure of Governor Newsom, between 2019 and 2025, is 120, and those age 17 and under reversed during the same time period is 31]), and attorneys are already entitled to fees in successful cases (Code Civ. Proc., § 1021.5).

Regardless, the modest fiscal cost of additional procedural safeguards pales in comparison to the unquantifiable dignitary interests at stake for young people whose parole decisions are reversed., The reversal process does not "recogniz[e] the dignity and worth" of young people, as they are not permitted to "present their side of the story." (*Ramirez*, *supra*, 25 Cal.3d at pp. 267, 269.) Instead, after earning their release from the Board, they receive a two-page letter offering cursory statements into why the Governor has denied their release. Young people reversed in this manner are unlikely to hold a "belief that the proceedings are fair," "which is the essence of the individual's dignitary interest." (*People v. Hernandez* (1984) 160 Cal.App.3d 725, 748; see also *Greenholtz, supra,* 442 U.S. at p. 35 (dis. opn. of Marshall, J.) ["For [o]ne can imagine nothing more cruel, inhuman, and frustrating than serving a prison term without knowledge of what will be measured and the rules determining whether one is ready for release"], citation and quotation marks omitted.) To ensure young people's liberty interest in a meaningful opportunity for release, due process requires that reversals be subject to independent judgment review with appointment of counsel.

2. The Superior Court Erred in Denying Relief on Mr. Adkins' Due Process Claim.

This Court's review is *de novo*, but the superior court's decision on Mr. Adkins' due process claim is nonetheless unpersuasive. The superior court did not identify the relevant liberty interest and determined that the Governor's reversal authority comports with due process on three bases: because (a) "[t]he Governor's decision is subject to judicial review . . . [for] 'some evidence' in the record"; (b) "[t]he Governor is presumed to have properly performed his official duties" under Evidence Code section 664; and (c) Mr. Adkins presented "no evidence . . . that the Governor failed to engage in an individualized consideration . . . or that the reversal reflects any 'blanket policy' of denying parole to all youth offenders[.]" (Exhibit 4 at PA_050-51, internal quotation marks omitted.) Each basis is fatally flawed.

First, as previously discussed, "some evidence" review is insufficient to ensure that young people who are, in fact, rehabilitated, will be released on parole. *Any evidence* in the record that *might* support an inference of dangerousness, even if overwhelmed by contrary proof, *requires* affirmance under the "some evidence" standard. (See *Shaputis II*, *supra*, 53 Cal.4th at p. 214 ["modicum of evidence" requires affirmance]; *Butler*, *supra*, 231 Cal.App.4th at p. 1534 [irrelevant that preponderance of proof supports release]; *Hare*, *supra*, 189 Cal.App.4th at p. 1294 [same].) Nor may a reviewing court reweigh the evidence under "some evidence" review (*In re Young* (2012) 204 Cal.App.4th 288, 303-304), despite the fact that section 4801 requires "great weight" be given to the mitigating circumstances of youth. For

judicial review to protect the liberty interest of young people in a meaningful opportunity for release, it must ensure release where the entirety of the record, on balance, demonstrates rehabilitation. Only independent judgment review satisfies this requirement.

Second, that the "[t]he Governor is presumed to have properly performed his official duties" under Evidence Code section 664 is not "unchallengeable." (*Najera v. Shiomoto* (2015) 241 Cal.App.4th 173, 183.) "[T]he effect of the rebuttable presumption created by section 664 is merely 'to impose upon the party against whom the presumption operates the burden of proof[.]'" (*Cal. Advocates for Nursing Home Reform v. Bonta* (2003) 106 Cal.App.4th 498, 505-506, citation omitted; *accord* Evid. Code, § 606.) That presumption "gives way to fact when irregularity is clearly shown." (*In re Elsholz* (1964) 228 Cal.App.2d 192, 197.)

Mr. Adkins has clearly shown irregularity. The following facts all demonstrate that the reversal authority is infused with politics, creating an unacceptable likelihood that reversals of young people like Mr. Adkins reflect a political or otherwise arbitrary calculus and not the requisite consideration of youth and its attendant factors: (1) that the Governor's reversal power was proposed in response to a politicized release decision; (2) that it saddles the state's chief elected official with ultimate responsibility for the notoriously politicized issue of release decisions; (3) that it has only ever been used to block and never to grant release from prison; (4) that it has been utilized at widely

disparate rates by different Governors in accordance with their openly expressed political predilections; (5) that it is consistently utilized in sensationalist cases; and (6) that it is near-uniformly rejected among the States, with only Oklahoma also maintaining the practice. The superior court ignored this evidence entirely.

Further, in Mr. Adkins' own case, the Governor discussed the relevance of youth in only three sentences, two of which were conclusory statements of law. (See *Lawrence*, *supra*, 44 Cal.4th at p. 1210 ["'due consideration' of the specified factors requires more than rote recitation"].) The third sentence, meanwhile, is a quotation from the examining psychiatrist that Mr. Adkins "was compromised by his youthfulness and impulsivity" but nonetheless had "some level of understanding of the ramifications [of his actions]." (Adkins Comprehensive Risk Assessment, July 26, 2019 (Exhibit 30) PA_526.) This hardly shows careful consideration of Mr. Adkins' youth and attendant mitigation and certainly does not dispel the prospect that the Governor's decision was tainted by politics. (See *Rosenkrantz, supra,* 29 Cal.4th at p. 665 [Governor may not merely "recite[] supposed facts corresponding to the specified factors"].) If anything, the Governor's threadbare discussion of Mr. Adkins' youth and resulting reversal absent any proof of dangerousness, as discussed in Section II. B., *infra*, suggests the likelihood of extraneous and politicized concerns.[16] In any event, Mr. Adkins

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[16] If the Court concludes that Mr. Adkins' proof, while demonstrating a prima facie case, is not sufficient to sustain his ultimate burden, the court may issue an Order to Show Cause

has plainly met his burden to defeat the presumption of regularity on which the superior court relied.

Third, and relatedly, the superior court wrongly identified Mr. Adkins' burden as proof that "the Governor 'failed to engage in an individualized consideration' . . . or that the reversal reflects any 'blanket policy' of denying parole to all youth offenders[.]'" (Exhibit 4 at PA_051.) The question is not whether the Governor considered Mr. Adkins' individual case—necessarily, he did, in issuing an individualized reversal. The question instead is whether the Governor considered, and gave the appropriate weight to, the requisite factors: Mr. Adkins' youth, attendant circumstances, and ultimate rehabilitation, as opposed to the Governor's political calculus. As Mr. Adkins' case has shown, and as discussed further below, the Governor did not.

Nor, finally, was Mr. Adkins required to demonstrate a "blanket policy" of reversing the parole-grants of young people. The superior court fundamentally misunderstood the nature of Mr. Adkins' claim: it is not that the Governor denies release to all young people, but that he denies relief to young people where

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directed to the superior court to allow for discovery. (Pen. Code, § 1484; see also *In re Scott* (2003) 29 Cal.4th 783, 814 ["discovery is available once we have issued an order to show cause"].) Mr. Adkins may identify additional proof in the policies and procedures surrounding exercise of the 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"].)

politics and other arbitrary considerations move him, regardless of whether they are rehabilitated. Due process requires the Governor to consider and give appropriate weight to the factors of youth; he may breach that duty regardless of whether he has a "blanket policy" of reversing in the cases of young people. Mr. Adkins need only show a "substantial likelihood," or "unacceptable risk" that the Governor does not give the proper consideration and great weight to youth in individual cases. Mr. Adkins has shown that the reversal process is politicized, in violation of due process, both through systemic evidence and through the specific example of Mr. Adkins' own case.

II. MR. ADKINS' CLAIM FOR INDIVIDUAL RELIEF UNDER THE DEFERENTIAL, "SOME EVIDENCE" STANDARD

Even if the Court were to apply the "some evidence" standard of review applicable to parole reversals not raising constitutional and statutory issues—Mr. Adkins is still entitled to relief. That is because "the evidence reflecting the inmate's present risk to public safety leads to but one conclusion," that he is fit for release. (*Shaputis II*, *supra*, 53 Cal.4th at p. 211.)

In evaluating the record, this court must assure provision of "great weight to the diminished culpability of youth as compared to adults, the hallmark features of youth, and any subsequent growth and increased maturity of the prisoner in accordance with relevant case law." (Pen. Code, § 4801, subd. (c).)

Here, the record demonstrates that Mr. Adkins' conduct reflected the shortcomings of youth but that he has long since been rehabilitated and poses no present danger to society. Mr.

Adkins was convicted of killing three teenage classmates when he was 16 and high on drugs. When the Governor reversed his parole-grant, Mr. Adkins was 50 years old, discipline-free since 2002, and completely rehabilitated. The Governor's reversal should be vacated.

A. The Record Unilaterally Demonstrates Mr. Adkins' Maturity and Rehabilitation.

1. Family History

David Adkins was born on April 29, 1974, in Glendale, California. (Exhibit 30 at PA_514-15.) His father left home when Mr. Adkins was two or three, after which his mother was forced to work 16 to 18 hours a day to support the family. (*Id*. at PA_515.) Mr. Adkins was left with his older brother, Daniel, who routinely "punch[ed] and hit[]" him and inflicted "emotional abuse." (*Ibid*.) Mr. Adkins felt "abandoned" by his father, "neglected" by his mother, and avoided home to escape abuse from his brother. (*Ibid*.)

Mr. Adkins sought security from "the older kids" in school, (Exhibit 29 at PA_468 at 16:7), and was "willing to follow [his older friends'] behavior in order to be appreciated and accepted." (Exhibit 30 at PA_515.) This led him into substance abuse and criminality. When he was 12 or 13, Mr. Adkins "started using drugs and alcohol to be accepted by his peers," (*id*. at PA_518-19; see also Exhibit 29 at PA_469-70 at 17:18-18:6), specifically marijuana, LSD, cocaine, methamphetamine and, occasionally, heroin, mushrooms, and PCP. (Exhibit 30 at PA_518.) Drugs also were "an escape from reality," enabling Mr. Adkins to avoid the

pain from his home life. (*Id.* at PA_519, see also Exhibit 29 at PA_470 at 18:6-7.)

Between the ages of 12 and 13, Mr. Adkins also began stealing and breaking curfew. (Exhibit 30 at PA_515) At 14, he was arrested for burglary, battery, and receiving stolen property. (*Id.* at PA_517.) In 1990, at 15 or 16, he was arrested for stealing money from his mother's bank account, truancy, and breaking curfew. (*Ibid.*) Also in 1990, he was arrested for defrauding an innkeeper and for another burglary the following year. (*Ibid.*) Mr. Adkins started cutting classes; he was suspended from school in 9th grade and dropped out in 10th grade. (*Id.* at PA_515.) He ran away from home about 10 times. A few months before the commitment offense, at 16, he left home and moved into his girlfriend's house. (*Id.* at PA_516.) He was unemployed, not in school, and using drugs and alcohol frequently and in large amounts.

2. Commitment Offense

On March 21, 1991, when Mr. Adkins was 16, he and his girlfriend, Katherine McCaulay, invited Heather Goodwin, Danae Palermo, Burton Vincent Hebrock, and Cayle Fielder over to McCaulay's house. (*Id.* at PA_517) For the prior two weeks, Mr. Adkins had been "partying" and regularly using drugs and alcohol. (*Id.* at PA_519, PA_524.) That day, he and his friends consumed LSD, cocaine, marijuana, and alcohol. (Exhibit 29 at PA_464 at 12:9-11.) Mr. Adkins was high "[l]ike [he] ha[d] never been before." (*Id.* at PA_464 at 12:12-14.)

An argument broke out between some of the guests, which turned physical. Mr. Adkins was not initially involved, but then Goodwin and Palermo turned on Mr. Adkins with disparaging remarks. Their words "triggered" Mr. Adkins and "brought [] stuff [up] from when [he] was growing up." (*Id.* at PA_461 at 9:11-18.) He was "in a rage . . . [and] just saw red." (*Id.* at PA_461 at 9:11, 18-19.)

Hebrock and Mr. Adkins retrieved a shotgun. (*Id.* at PA_462 at 10:12-14; Exhibit 30 at PA_524.) When they returned, Hebrock shot McCaulay in the head, killing her. Mr. Adkins then took the gun and shot Goodwin and Palermo, killing both. (Exhibit 29 at PA_465 at 13:13-24; Exhibit 30 at PA_524.)

Both the Board and Mr. Adkins' examining psychologist, Dr. J. Caoile, Ph.D., found that Mr. Adkins' offense, committed at age 16, reflected "nearly all the hallmark features [] of youthfulness," (Exhibit 29 at PA_506-07 at 54:8-55:9), namely "immaturity, impulsivity, imperviousness to punishment, susceptibility to peer influences, and, to some extent, [] inability to extricate himself from adverse circumstances in the home," (Exhibit 30 at PA_526). Dr. Caoile explained that the "abuse" and "neglect" that Mr. Adkins suffered growing up "undoubtedly interfered with . . . his ability to learn adaptive ways to express and cope with his emotions." (*Id.* at PA_522.) Drugs and alcohol were an outlet for Mr. Adkins to "escape his circumstances," but "undermine[d] his judgment and impulse control." (*Id.* at PA_527.) On the night of the offense, Mr. Adkins "readily and impulsively reacted to [] perceived conflict . . . with [] extreme

and nonsensical violence," (*ibid.*); "his ability to fully grasp the potential consequences of his actions was compromised by his youthfulness and impulsivity, and further weakened by the drugs and alcohol." (*Id.* at PA_526.) The Board adopted and echoed these findings. (Exhibit 29 at PA_506-07 at 54:14-55:16.)

3. Acceptance of Responsibility and Remorse

Though he cannot recall portions of the offense due to extreme intoxication, Mr. Adkins completely accepts the State's version of events and expresses deep remorse. (*Id.* at PA_465 at 13:19-24.) He told the Board, "I feel horrible . . . [T]here isn't a day that goes by that I don't regret what I did." (*Id.* at PA_476 at 24:11-14.) The Board found him "remorseful" and "apologetic," concluding that he "took responsibility for [his] actions." (*Id.* at PA_504 at 52:13-19.) Dr. Caoile, too, found that Mr. Adkins "accepts full responsibility for his criminal behavior and demonstrates remorse and empathy," which "has intensified over time as he continues to contemplate the depth and effects of his actions." (Exhibit 30 at PA_523-24; see also *id.* at PA_528.)

4. Post-sentencing Conduct

Between 1996 and 2002, while in his early twenties and struggling with addiction (*id.* at PA_519), Mr. Adkins received five substance use-related infractions (*ibid.*; *id.* at PA_551): a violation for failure to report to assignment (*ibid.*), a violation for mutual combat (*ibid.*; Exhibit 29 at PA_484 at 32:18-19), and

several chronos for minor misconduct (Exhibit 30 at PA_521).[17] In his own words, Mr. Adkins was "being defiant—but more importantly, . . . being a drug addict." (Exhibit 30 at PA_521.)

In 2002, Mr. Adkins became sober, studying an Alcoholics Anonymous book on his own and with help from a sponsor. (*Ibid.*; Exhibit 29 at PA_482 at 30:19.) At the time the Board found him suitable for parole, he had been sober for the last 20 years (Exhibit 30 at PA_519; Exhibit 29 at PA_481 at 29:12-15) and had received no disciplinary infractions since attaining sobriety. (*Id.* at PA_503 at 51:11; *id.* at PA_504 at 52:4-5.) Dr. Caoile noted that Mr. Adkins "has gained excellent impulse and behavioral control, and has learned more adaptive ways to manage his negative emotions and solve problems." (Exhibit 30 at PA_527.) The Board likewise found "demonstrated maturity in [his] judgment through impulse control." (Exhibit 29 at PA_507 at 55:22-23.)

The Board also recognized Mr. Adkins' "meaningful participation" in extensive programming, (Exhibit 29 at PA_502-03 at 50:14-51:9).[18] Mr. Adkins earned his GED and is currently

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[17] See Cal. Code Regs., tit. 15, § 3312.

[18] See also Exhibit 30 at PA_520-21; Adkins 2019 Initial Suitability Hearing Post-Conviction Report (Exhibit 34) at PA_538; Adkins Victims Awareness Chrono, February 2013 (Exhibit 40) at PA_552; Adkins Breast Cancer Walk Chrono, November 2018 (Exhibit 55) at PA_582; Adkins Anger Management Chrono, November 2015 (Exhibit 49) at PA_570; Adkins Criminal and Gang Members Anonymous Chronos from December 2014 and June 2015 (Exhibits 42 and 47) at PA_556 and PA_566; Adkins Youth Adult Awareness Program (YAAP)

working toward his associate's degree. (Exhibit 30 at PA_520, see also Adkins GED May 2009 (Exhibit 35) at PA_542.) Additionally, Mr. Adkins is a facilitator of Project Paint, an art program (Exhibit 29 at PA_482-83 at 30:20-31:1), and a founding member and volunteer in the Youth Adult Awareness Program, where his sponsor calls him "an asset to the program . . . demonstrat[ing] positive leadership" "by contributing and giving back . . . by . . . helping at risk youth discover how to change their bad habits[.]" (Exhibit 50 at PA_572; Adkins YAAP Certificate July 2015 (Exhibit 46) at PA_564.)

Mr. Adkins has worked throughout his imprisonment in numerous roles. His supervisors have commended him for his "responsible, reliable, trustworthy and mature behavior" and for "showing respect, integrity, and honesty towards staff and peers[.]" (Adkins Workchange Porter Chrono, May 7, 2009 (Exhibit 39) at PA_550; Exhibit 30 at PA_520; see also Adkins Workchange Porter Chronos, May 4, 2009 (Exhibits 36-38) at PA_544, 546, 548; Adkins Work Chrono, December 2013 (Exhibit 41) at PA_554; Adkins Watch Clerk Work Chrono, March 2017 (Exhibit 54) at PA_580.)

Further, it bears noting, as the Board found, that Mr. Adkins was sentenced to life *without* parole for "a great portion" of his sentence to date, a fact that lends "a lot of [] support to the genuineness of [his] change[.]" (Exhibit 29 at PA_508-09 at 56:19-57:4.) As the Governor acknowledged, "Adkins has made efforts

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Chronos (Exhibits 43-45, 48, and 50-53) at PA_558, 560, 562, 568, 572, 574, 576, and 578.

to improve himself in prison." (Exhibit 28 at PA_450.)

5. Insight and Emotional Growth

Mr. Adkins understands that childhood "feelings of abandonment and low self-esteem" "gave [him] a flawed belief system" and led to issues including "drinking and drugs." (Exhibit 30 at PA_525.) Likewise, "[b]eing slapped around . . . ignited anger in [him]" and "made [him] feel like [he] was being bullied[.]" (*Ibid.*) It was because of this background, Mr. Adkins understands, that the conflict he observed, and the verbal assaults he experienced on the night of the offense, "triggered his own anger and reminded him of [the abuse he had suffered] as a child, and the helplessness he felt." (*Id.* at PA_524; see also Exhibit 29 at PA_468 at 16:15-25.)

Both the Board and Dr. Caoile found that, though Mr. Adkins' memory is compromised by intoxication, Mr. Adkins has shown real insight. Dr. Caoile noted that "the significance of drugs and alcohol in the commitment offense" led to gaps in Mr. Adkins' memory, but that "Mr. Adkins recognizes the impact of his early life experiences, and how they contributed to his negative emotions and mindset." (Exhibit 30 at PA_525.) The Board, too, found that Mr. Adkins has "engaged in considered reflection" of "the reasons for [] and impact of [his] actions." (Exhibit 29 at PA_507 at 55:19-21.) The Board added, "you may work on insight forever" and never "be able to explain that just other than you were just very angry and immature. . . . [I]t may be your youthfulness because you were doing things that were inexplicable." (*Id.* at PA_506 at 54:18-23; *Id.* at PA_507 at 55:3-4.)

Mr. Adkins has also developed coping mechanisms to address his triggers, including "feelings of low self-worth," "guilt," and "shame." (*Id.* at PA_482 at 30:12-15.) He has worked on his feelings of neglect and abuse by "forg[ing] healthy relationships with his family," including his mother. (Exhibit 30 at PA_523; see also Exhibit 29 at PA_485 at 33:13-25; *Id.* at PA_504-05 at 52:24-53:3.) He has "extricate[d] himself from negative peer influences" (Exhibit 30 at PA_527) and instead "turned his attention towards prosocial peer influences in prison" (*id.* at PA_523). He has also learned to recognize the reasons for his anger and develop appropriate responses (Exhibit 29 at PA_486-87 at 34:21-35:4), including talking to his sponsor, positive self-talk, meditation, yoga, jogging, painting, and simply "walking away." (*Id.* at PA_482 at 30:19-20; *Id.* at PA_483 at 31:10-19; Exhibit 30 at PA_527.) Mr. Adkins has also worked to address his self-esteem, explaining, "I'm proud that I'm not the person that I thought I was." (Exhibit 29 at PA_473 at 21:17-20.) The Board praised Mr. Adkins' "enhanced self-recognition of human worth and potential." (*Id.* at PA_507-08 at 55:24-56:1.)

6. Release Plan

Dr. Caoile and the Board both recognized that Mr. Adkins "presented practical, feasible plans for his future." (Exhibit 30 at PA_526; see also Exhibit 29 at PA_504-05 at 52:23-53:23.) Mr. Adkins intends to live in transitional housing where he will receive job assistance and reentry support and mentoring. (Exhibit 30 at PA_521.) Two programs accepted him: Francisco Homes in Los Angeles and Delancey Street in San Francisco, and

he elected to pursue Francisco Homes. (*Ibid.*; Exhibit 29 at PA_484 at 32:20-23.) Mr. Adkins' family, including his mother, who visits regularly and has taken a parenting class to help support him, will also offer financial and emotional support. (*Id.* at PA_485 at 33:18-25; Exhibit 30 at PA_521.) To maintain his sobriety, Mr. Adkins will attend Alcoholics/Narcotics Anonymous meetings and find a new sponsor outside of prison. (*ibid.*; *id.* at PA_526; Exhibit 29 at PA_486 at 34:1-20.)

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

B. The Governor's Reversal Is Not Supported by Any Record Evidence.

Governor Newsom cited three rationales for reversing Mr. Adkins' parole-grant: an "inability or unwillingness to discuss the details of the crime and what led him to kill the victims"; that Mr. Adkins "'still lack[s] insight'" because he "does not know why he shot the two girls"; and that Mr. Adkins "must do more to . . . develop the tools to control his triggers[.]" (Exhibit 28 at PA_451.) Yet no evidence supports these findings.

1. Offense Description

Contrary to the Governor's reversal and the superior court's ruling, Mr. Adkins' inability to remember portions of the offense while remembering 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 candidate was severely intoxicated at the time of the offense and unable to recall certain details; in each case, either the Board or Governor cited a lack of insight as a basis for denying release; 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), and 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 parole applicant was intoxicated during the offense, their ability to recall some details but not others will not support an adverse credibility finding to deny release if the applicant "has taken responsibility for the commitment offense and the substance use that caused it[.]" (*Juarez*, *supra*, 182 Cal.App.4th at p. 1339.) Dangerousness is what matters in the

parole calculation, and "failure to recall [certain] details of [the] commitment offense," standing alone, "has no bearing on [petitioner's] current dangerousness." (*Id.* at pp. 1339, 1341.) Additionally, "'it is credible that [an intoxicated person] is not capable of having a memory of the crime,'" as an intoxicated person may "'carry out a relatively complex series of behaviors, which may in fact result in serious disturbance to their's and other's lives, without having an accurate memory of those events.'" (*Stoneroad, supra*, 215 Cal.App.4th at p. 630, fn.17 [quoting expert testimony].)

Under this authority, the Governor's reasoning on this point was error.

2. Insight

The Governor cited as a basis for reversal the Board's finding that Mr. Adkins "still lack[s] insight," and Dr. Caoile's finding that Mr. Adkins "is still in the process of fully understanding all of the causative and motivating factors that contributed to his violent behavior." (Exhibit 30 at PA_523.) But both the Board and Dr. Caoile found that Mr. Adkins has obtained significant insight that continues to grow. (Exhibit 29 at PA_502 at 50:4-6; see also Exhibit 30 at PA_524.)

Furthermore, as the Board and Dr. Caoile both noted, Mr. Adkins will always be somewhat hamstrung in understanding what happened due to his youth and intoxication at the time. (See Exhibit 29 at PA_506 at 54:19-23; *id.* at PA_507 at 55:3-4; Exhibit 30 at PA_526.) Research supports the notion that youthful conduct may allow only limited insight in adulthood.

The incomplete brain development of young people, like Mr. Adkins at the time of the offense, means their behavior "is more likely to be impulsive and thus less explicable." (See Bell, *A Stone of Hope: Legal and Empirical Analysis of California Juvenile Lifer Parole Decisions* (2018) 54 Harv. Civ. Rights-Civ. Liberties L.Rev. 456, 518 (Exhibit 10) at PA_139 ["To put it simply: for a child, a decent answer to the question, 'What were you thinking?' is often, 'Clearly I wasn't'"].) Indeed, 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." (Exhibit 29 at PA_506 at 54:18-23; *id.* at PA_507 at 55:3-4.)

Moreover, "lack of insight . . . supports a denial of parole only if it is rationally indicative of the inmate's current dangerousness." (*Shaputis II, supra*, 53 Cal.4th at p. 219; see also *In re Ryner* (2011) 196 Cal.App.4th 533, 548-549 & fn.2 [collecting cases].) Here, there is no evidence of current dangerousness. Dr. Caoile found Mr. Adkins a "low" risk of future violence (Exhibit 30 at PA_528), and the Board expressly found that any limits regarding insight did not "make[] [Mr. Adkins] a current danger or an unreasonable risk[.]" (Exhibit 29 at PA_501 at 49:17-18.) Indeed, the record demonstrates Mr. Adkins' rehabilitation. (See *In re Morganti* (2012) 204 Cal.App.4th 904, 925-927 [lack of insight insufficient basis to deny parole given record evidence of rehabilitation].) On this point, too, the Governor's reversal is unfounded.

3. Recognition of Triggers and Development of Coping Strategies

Finally, though the Governor cited an alleged inability to "control [] his triggers," Adkins has identified his triggers and taken concrete steps to address them. The Board specifically credited Adkins' work in this regard. (Exhibit 29 at PA_503 at 51:6-8; *Id.* at PA_505 at 53:15-17 ("[Y]ou did the programming . . . [and] you appear[] to have learned from it . . . [Y]ou have relapse prevention plans that addressed . . . the issues we're concerned about"]; *id.* at PA_508 at 56:6-7 ["you don't let it become personal anymore and let it flow off your back"]; *id.* at PA_510 at 58:6-7 ["You should be able to handle it"].) The Governor's finding on this point is unsupported.

The record thus "leads to but one conclusion," that Mr. Adkins poses no "present risk to public safety" (*Shaputis II, supra*, 53 Cal.4th at p. 211), and the Governor's reversal must be vacated.

C. The Superior Court's "Some Evidence" Analysis Is Contrary to Established Law.

The superior court found "some evidence" to support the Governor's reversal in the fact that Mr. Adkins was able to recall certain details of the offense but not others; specifically, the court found that Mr. Adkins' inability to recall retrieving the shotgun used in the offense supported the Governor's conclusion that Mr. Adkins lacks insight and credibility. (Exhibit 4 at PA_053-54.) Though *Stoneroad*, *Young*, and *Juarez*, discussed, *supra*, stand for the proposition that incomplete memory due to intoxication is no evidence of dangerousness and cannot support reversal, the

superior court attempted to distinguish these holdings on three bases: (a) the petitioners in those cases had "a total lack of recall," whereas Mr. Adkins recalled some details but not others; (b) at least in *Stoneroad*, there was "no evidence suggesting that the petitioner's inability to recall the commission of his crimes obstructed his understanding of the factors that caused him to commit them," whereas "here, both the clinician conducting Petitioner's risk assessment and the Board found that Petitioner lacked insight and had trouble understanding the factors that caused him to resort to such violence"; and (c) "in *Juarez*, the Court of Appeal indicated that the parole authority is 'certainly entitled' to rely on a finding that a prisoner lacks credibility to deny parole," which is "what the Governor did here." (*Id.* at PA_054.) None of these alleged distinctions withstand scrutiny.

First, it is factually incorrect that the petitioners in all three cases cited by Mr. Adkins had a complete lack of memory of their offenses. In *Juarez*, for example, the petitioner recalled smoking what he understood to be PCP before deciding to drive—the conduct pertinent to *mens rea*; he only claimed to black out thereafter, reporting no recollection of hitting the victim with his car. (*Juarez, supra*, 182 Cal.App.4th at pp. 1327-1328.) In *Young*, the petitioner recalled ingesting cocaine and alcohol, being attacked by the victim, and striking the victim with a hammer—he just could not remember killing the victim. (*Young, supra*, 204 Cal.App.4th at p. 307 [reversing Board decision as "arbitrary" in part because its "conclusion that petitioner recalled *nothing* about committing the crime is not supported by the evidence"].)

In any event, the superior court's purported distinction is irrelevant—what these cases forbid is denial of release based on "speculat[ion] about what people should and can recall when they commit extraordinarily violent acts." (*Id.* at p. 308.) That applies with the same force to a spotty recall as to a total blackout. There was no evidence in the record—and Mr. Adkins is aware of none, generally—to suggest that loss of memory due to intoxication must be total to be credible. The Governor thus committed exactly the error these decisions forbid, speculating about what Mr. Adkins should remember.

Second, it is also irrelevant whether, as the superior court found, the Board and examining clinician here connected Mr. Adkins' lack of recall to diminished insight. *Stoneroad* was explicit that lack of insight "cannot rationally be inferred from [a petitioner's] inability to remember the conduct where . . . he acknowledges his factual, legal and moral responsibility . . . and has expressed genuine remorse." (*Stoneroad, supra*, 215 Cal.App.4th at p. 629.) Thus, even if the Board and examining clinician did link Mr. Adkins' incomplete recall to lack of insight—as a matter of law, that linkage was arbitrary and provides no evidence in support of the Governor's reversal.

Third, that *Juarez* authorized denial of release based on a finding of lack of credibility under those circumstances is likewise beside the point. This holding is too general to support the more specific proposition that a finding of lack of credibility may be based on a claim of incomplete recall due to intoxication—the exact proposition that *Juarez*, *Stoneroad*, and *Young* negate. The

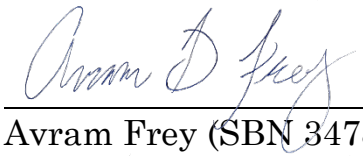
superior court's attempts to distinguish these cases thus fail, and the Governor's reversal is not supported by "some evidence" as a matter of law.

CONCLUSION

Young people who demonstrate rehabilitation are entitled to a second chance. The California Legislature, U.S. Constitution, and California Constitution guarantee this right, and people like Mr. Adkins must be released on youth-offender parole when they show that they have matured and rehabilitated. Yet the Governor maintains the unilateral authority to reverse young people's parole-grants, a power that injects arbitrary and political considerations into the process and deprives young people of the freedom they have earned through reform over long years in prison. This Court should grant system-wide, prospective relief to vindicate the rights of all young people to a meaningful opportunity to obtain release. And Mr. Adkins, now a rehabilitated man, should be given the chance for redemption in free society he is due.

Dated: October 8, 2026

Respectfully submitted,



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VERIFICATION

I, Avram Frey, declare:

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 Petitioner is entitled to the relief prayed for in this Petition.

EXECUTED this 8th day of October, 2026, under penalty of perjury by the laws of the State of California.



Avram Frey (SBN 347885)

CERTIFICATE OF WORD COUNT

I, the undersigned counsel for Petitioners, certify pursuant to California Rule of Court 8.204 that the foregoing Memorandum of Points and Authorities in Support of the Petition for Writ of Habeas Corpus contains 11,989 words, including footnotes, but excluding the words in the sections that California Rule of Court 8.204(c)(3) instructs counsel to exclude.

Dated: October 8, 2026

Avram Frey (SBN 347885)