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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF LOS ANGELES**

12 SIRHAN BASHAR SIRHAN

13 Petitioner,

14 On Habeas Corpus

15 }
16 } Case No. A233421 _____
17 }
18 }

19 } PETITION FOR WRIT OF HABEAS
20 } CORPUS _____
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23 }

24 **TO: THE HONORABLE WILLIAM RYAN, JUDGE OF THE SUPERIOR COURT,**
25 **Department 56W, LOS ANGELES COUNTY:**

26 Petitioner, Sirhan B. Sirhan, hereby petitions this Court for a writ of habeas corpus, and
27 by this verified petition represents that:

28 **INTRODUCTION**

29 This petition challenges the Governor's reversal of a finding by his own appointees, the
30 Board of Parole Hearings ("Board"), that petitioner, Mr. Sirhan B. Sirhan is suitable for
31 parole. The purported rationale for the reversal demonstrates that the Governor, acting as an
32 elected official beholden to his voting constituents, acted arbitrarily and contrary to reason and
33 the facts as found by the independent and neutral Board, who is unaffected by the political
34 whims of a perceived public. The Governor's reversal falls on the judiciary to ensure that a

1 high-profile defendant, such as Mr. Sirhan, is judged by the same legal standard as other
2 defendants, even if the outcome is unpopular. That is the very essence of constitutional due
3 process.

4 More than 50 years ago at the age of 24, Mr. Sirhan was arrested, tried and convicted
5 for the shooting death of Robert Kennedy. He was originally sentenced to death, even though
6 the Los Angeles County District Attorney's Office in the midst of the trial believed a death
7 sentence was inappropriate.¹ After the United States Supreme Court declared death penalty
8 statutes such as the one used to sentence Sirhan to the gas chamber violated the Eighth
9 Amendment to the United States Constitution, Mr. Sirhan's sentence, as well as the death
10 sentence of 69 other condemned prisoners ([https://www.cdcr.ca.gov/capital-](https://www.cdcr.ca.gov/capital-punishment/history/)
11 [punishment/history/](https://www.cdcr.ca.gov/capital-punishment/history/)), was converted to life with the possibility of parole after the mandatory
12 minimum service of seven years. Fifty-three years later and after many denials, the Board of
13 Parole Hearings ("Board"), comprised of gubernatorial appointees whose members are career
14 law enforcement officials (e.g. former Deputy District Attorneys, parole and probation
15 officers, peace officers and wardens) granted Mr. Sirhan parole, finding him suitable for
16 release according to the laws and regulations of the State. But the Governor reversed the
17 decision. In so doing, the Governor's written decision of January 13, 2022 ("Indeterminate
18 Sentence Parole Release Review", hereinafter "Governor's Decision", submitted herewith as
19 Exhibit A) relies on shallow legal reasoning and a misconstrued record without providing a
20 nexus to Mr. Sirhan's current circumstances.

21 The Governor's written reversal emphasized the gravity of the offense but failed to duly
22 credit Mr. Sirhan's extensive rehabilitative programming and discipline-free prison record for
23 the last 50 years. Additionally, the Governor misconstrued the 2021 Comprehensive Risk
24 Assessment (CRA) and ignored other recent past CRAs; he cited inaccurate information
25 concerning the facts of the crime; and he failed to properly apply the youthful offender (Pen.
26

27 ¹ During the trial, the parties met off the record in chambers and thereafter, defense counsel
28 made the record and summarized the nature and content of that discussion. Defense counsel
explained that the prosecution, after receiving the full evaluation report of Dr. Pollack, agreed
that a life sentence was the appropriate punishment for Mr. Sirhan. The parties further sought
to resolve the case with an agreement that in exchange for his guilty plea to first degree
murder, Mr. Sirhan would receive a sentence of life in prison. The court rejected the
proposition, in substance believing that the case was of such public import that the jury should

1 Code §§ 3051 and 4801(c) and elderly prisoner (Pen. Code §3055) criteria. Moreover, the
2 Governor's oft-repeated affinity of the late Senator Robert Kennedy² and the Governor's
3 corresponding inability to impartially sit in judgment is apparent in his superficial reasoning
4 for his decision. The reversal and its flawed rationale proves there is nothing Mr. Sirhan can
5 do to earn parole, especially where, as here, the parole gatekeeper is an elected official tied to
6 voter approval and the crime involved a political candidate/presidential hopeful who is a
7 personal "political hero" of that gatekeeper.

8 9 PRELIMINARY REQUIREMENTS

10 1. Custody.

11 Petitioner is confined by the California Department of Corrections and Rehabilitation
12 ("CDCR") at R. J. Donovan Correctional Facility at San Diego, California, Raymond Madden,
13 Warden.

14 2. Jurisdiction and Venue.

15 Petitioner was prosecuted in Los Angeles County. This Court has original jurisdiction
16 to adjudicate the petition and issue the writ. (Cal. Const., Art. VI, § 10; Pen. Code § 1508.)

17 3. Administrative Remedy.

18 The Board provides no administrative remedy for alleged violations of law by its parole
19 hearing panels or Governor reversals of grants of parole.

20 4. Not a Successive Petition.

21 This is Petitioner's first and only filing challenging the Governor's January 13, 2022
22 reversal of the recommendation for parole.

23 24 PROCEDURAL HISTORY

25 In 1969, a jury convicted Mr. Sirhan of one count of first-degree murder and five
26 counts of assault with intent to commit murder for the injuries inflicted upon five by-standers
27 during the shooting. The trial court sentenced Mr. Sirhan to death. He had no prior criminal
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decide the punishment. (Trial Transcripts, pp. 8860-8861.)
² E.g.: on September 14, 2021, when asked about his relief in his successful defeat of his recall
from office, he stated he was "resolved in the spirit of [his] political hero Robert Kennedy".

1 convictions, nor has he committed any crimes in the intervening 53 years. His last Rules
2 Violations Write-up occurred 50 years ago.

3 In 1972, the death sentence was converted to life with the possibility of parole after
4 California's death penalty statute was repealed as a result of the U.S. Supreme Court's
5 decision in *Furman v. Georgia* (1972) 408 U.S. 238 where our highest court declared that
6 Georgia's and Texas' respective death penalty statutes, statutes similar to California's,
7 violated the Eighth Amendment to the U.S. Constitution. And in *People v. Anderson* (1972) 6
8 Cal. 3d 628, the California Supreme Court ruled that California's death penalty statute violated
9 California's Cruel and Unusual Punishment Clause.

10 Mr. Sirhan has been eligible for parole since May 30, 1975. He was denied parole
11 many times, despite receiving consistent positive (e.g. "low") risk assessments since the mid-
12 1980's. Mr. Sirhan was found suitable for release on August 27, 2021. (Transcript of August
13 27, 2021 Parole Hearing and Decision, hereinafter "Parole Hearing, attached as Exhibit B.)
14 Subsequent to the Board's recommendation for parole, the Governor made several public
15 statements indicating a preference towards reversing his Board's decision, including a
16 statement made days after the Board's decision and undoubtedly even before the transcripts of
17 the parole hearing were even prepared for the Governor's review.³ Governor Newsom
18 reversed his Board's decision on January 13, 2022. (Exhibit A.) This petition challenges the
19 Governor's reversal of parole on federal and state constitutional grounds and further
20 challenges the decision as an abuse of discretion under state law.

21 The discretion held by the Governor in assessing Mr. Sirhan's grant of parole "is not a
22 whimsical, uncontrolled power, but a legal discretion, which is subject to the limitations of
23 legal principles governing the subject of its action, and to reversal on appeal where no
24 reasonable basis for the action is shown." (*Sargon Enterprises, Inc. v. Univ. of So. Cal* (2012)
25 55 Cal.4th 747, 771, 773.) The exercise of discretion cannot be based on ancillary matters,
26 such as the Governor's personal enmity toward Sirhan, personal affinity toward the victim,
27

28 (NBC interview at [youtube.com/watch?v=0yhD2WiThQ](https://www.youtube.com/watch?v=0yhD2WiThQ).)

³ Indeed, in his October 24, 2021 interview on NBC's Meet the Press, the Governor
acknowledged that Mr. Sirhan's case had not yet been brought to him.

(<https://www.youtube.com/watch?v=IWTDHCd11k>.) See also

politico.com/states/California/story/2021/09/15/Newsom-rfk-admiration-shows-where-i-

1 and/or fearing the reaction of the voting public. The Governor's discretion is subject to the
2 limitations of the legal principles governing the subject of his actions and to reversal where no
3 reasonable basis for the action is shown. (*People v. Jacobs* (2007) 156 Cal.App.4th 728, 738.)

4 5 STATEMENT OF FACTS

6 A.

7 Facts of the Commitment Offenses

8 Mr. Sirhan was convicted of shooting Senator Kennedy and five other by-standers on
9 June 5, 1968 at the Ambassador Hotel, when at the very last moment the Senator was re-routed
10 to exit the venue through the pantry/kitchen where Sirhan and others were present. The
11 senator succumbed to his injuries the next day.

12 Sirhan was determined to have possessed a loaded .22 Iverson-Johnson cadet revolver
13 that had the capacity to carry 8 bullets. The senator took four bullets, and the other five
14 victims were each struck with one⁴. None of the victims' injuries were life threatening and the
15 Los Angeles District Attorney's Office has described their wounds as "superficial" in parole
16 hearings.

17 B.

18 Recent Comprehensive Risk Assessments and Past Parole Hearing Officers' Findings

19 Mr. Sirhan has had consistent positive (e.g. low⁵) risk assessments for many years.
20 Additionally, his records reflect the absence of any serious rules violations since 1972. And
21 Mr. Sirhan's minor conflicts in prison over the years have been deemed to be of little
22 significance. (e.g., see 2016 Parole Board, p. 200.)

23 Consistently, since the mid-1980's, CDCR psychologists have assessed Mr. Sirhan to
24 be at the lowest risk of dangerousness.⁶ For instance, in preparation for Mr. Sirhan's 1985
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26
27 might-be-leaning-on-Sirhan-parole-1391081.

28 ⁴ The "official" explanation for the obvious math miscalculation (an 8 bullet revolver; 6 victims total; 5 of whom were hit with one bullet each and one of whom was hit with 4) is that one bullet that struck the senator went through his jacket and then struck one of the other five victims.

⁵ Code of Regulations, Title 15, provides for five ratings: "low", "moderate", "high risk drugs", "high risk property", "high risk violence". Section 3768.1(b) (1)-(5).

⁶ In preparation for Parole Suitability hearings, CDCR has its licensed psychologists evaluate

1 Parole Hearing, Dr. Captain Thompson stated that there exists “[l]ittle evidence [Sirhan]
2 would ever again attempt to take a life in anger” and Mr. Sirhan was assessed a CRA Score of
3 “low”. In that same parole hearing, the Board recognized a second doctor’s opinion that since
4 Mr. Sirhan’s crime was politically motivated, the risk of choosing another victim was very
5 remote. A third doctor, Dr. Hicks, also expertly opined that Mr. Sirhan possessed “no
6 demonstrable predilection toward violence at this time.” (*Id.*, p. 145.)⁷

7 The Risk Assessment report for Mr. Sirhan’s 1986 parole hearing included the expert
8 opinion of Dr. Hicks, who stated:

9 “This individual [Sirhan] appears to be genuinely rehabilitated since
10 incarceration and demonstrates no evidence of current fanaticism or prone-
11 ness towards violence. He appears to be an excellent candidate for parole,
and there is no psychiatric contraindication to it.”

12 (The 1986 Parole Hearing, at p. 24.). Moreover, the Board recognized that Mr. Sirhan posed
13 no behavior problems, and that he was courteous and respectful to authority figures and other
14 prisoners. The Board further noted his steady, stable work and “exceptional work
15 performance.” (1986 Parole Hearing, at p. 20.)

16 In Mr. Sirhan’s 1987 Hearing, the Board quoted the mental health evaluator’s
17 professional assessment, where Dr. Drye stated:

18 “I believe that this man has made a considerable personal change as
19 well as getting out of the matrix of the Palestinian liberation type thinking;
20 if he can arrange some life of his own, including marriage, he would like

21 potential parolees. It describes the process thusly: “The Forensic Assessment Division (FAD)
22 provides the Board’s suitability hearing panels with Comprehensive Risk Assessments to
23 assist in understanding a long-term inmate’s potential for future violence and protective factors
24 that could minimize his or her risk if released to the community. FAD psychologists use
25 evidence-based risk assessment tools to present hearing panels with their structured
26 professional judgment, or expert opinion concerning each inmate’s potential risk for future
27 violence. FAD clinicians’ expert opinion include findings from a clinical interview of an
28 inmate and a review of his or her institutional record. Comprehensive Risk Assessments may
include but are not limited to, evaluation of the inmate’s commitment offense, institutional
programming, past and present mental state, and analysis of static and dynamic risk factors
based on the inmate’s behaviors and relationships, emotions and attitudes, and perceptions and
attributions.” (<https://www.cdcr.ca.gov/bnh/divisions/fad/>) Per Code of Regulations, Title 15,
a comprehensive risk assessment is “an actuarial tool that computes the likelihood to re-offend
(incur a felony arrest within a three-year period after release to parole), and uses static
indicators that do not change.” (Sec. 3768.1(c).)

⁷ Counsel for Mr. Sirhan has repeatedly requested copies of these psychological reports, but to
date, she has not received them. She therefore relies on the parole board officers’
representations of those doctor’s statements.

1 to do this. Since he has no other reason for killing, except political, and
2 this no longer interests him, I believe he is accurate in his assessment, his
3 violence potential is very low.”

4 “I would also comment that many of his outbursts - particularly when he
5 was at San Quentin, would seem much more normal if seen in the context
6 of an ordinary Arab behavior. There are very few Arabs in our prison system,
7 and what I think would be seen in an Arab community is only one more
8 form of excitement. It looks more bizarre to us.”

9 (1987 Parole Hearing, at pp. 95-96.)

10 In Mr. Sirhan’s Parole Hearing in 1994, the Board noted and quoted from Dr. Farr’s
11 1990 evaluation, where the doctor opined:

12 “I feel that there is not a single feature at this point which I wish to point
13 out as being pathological. I feel his paranoid component to his personality
14 has decreased as evidenced by less denial and the absence of angry outbursts during the
15 last year”.

16 (1990 Parole Hearing, at pp. 23-24.) The 1994 Board noted Dr. Martin’s evaluation, and
17 described it as the most comprehensive assessment since Mr. Sirhan’s inception into CDCR.
18 (*Id.*, at p. 22.) In his report, the Board noted, Dr. Martin opined that Mr. Sirhan’s potential for
19 violence (outside the institutional setting) was *less than that of the average inmate*. (*Id.*, at p.
20 22.) Moreover, the same Board noted Dr. Hix’ statement that “[Sirhan] made a considerable
21 personal change. *His potential for violence is very low.*” The doctor continued, as quoted by
22 the Board: “I would recommend that Mr. Sirhan be continued in his current program, but with
23 an early discharge being seriously considered after participation in the X program. (1994
24 Parole Hearing, p. 43.)⁸

25 Further evidence of Mr. Sirhan’s consistent “low risk for violence” assessments is in
26 2010, when Dr. Carrera opined that Mr. Sirhan presented a “**LOW RISK** for violence in the
27 free community.” (Dr. Carrera’s 2010 Evaluation Report, p. 20., emphasis and capital letters in
28 original.) Additionally, Dr. Steven Walker’s CRA rated Mr. Sirhan “within the very low
range of the clinical construction of psychopathy when compared to other adult offenders.”
(original emphasis.) (2010 CRA.)

⁸ Mr. Sirhan completed the “X” Program later that same year Dr. Hix recommended his release. The “X” Program is n in prison program designed to specifically address psychological issues and treatment thereof.

1 Similarly, in 2016, Dr. Sahni's expert opinion was that Sirhan's "ongoing dynamic risk
2 relates squarely to the life crime itself. As such, ...at this time, he continues to represent a *low*
3 risk of future violence." (Dr. Sahni's 2016 Evaluation Report, p. 20, original emphasis.) And,
4 consistent with the others, in his most recent assessment in preparation for the 2021 Parole
5 hearing, it was determined that Mr. Sirhan "represents a Low risk for violence." (Dr. Crimele's
6 2021 Report, p. 10.)

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8 C.

9 The Board's 2021 Parole Hearing and Decision

10 On August 27, 2021, the Board rendered its finding that "[b]ased on the legal standards
11 and the evidence. . ." (Board Decision, p. 4, lines 16-17) Mr. Sirhan does not not pose a
12 current and unreasonable risk of danger and is thus suitable for parole. In arriving at this
13 decision, the Board properly considered the traditional parole suitability factors, as well as
14 youth offender factors (Pen. Code §§ 4801(c) and 3051), and elderly prisoner factors (Pen.
15 Code § 3055.)

16 At the hearing, Mr. Sirhan specifically addressed five categorical topics the Board
17 suggested would assist it in determining whether or not he posed a current unreasonable risk to
18 society: anger management; remorse; substance abuse abatement; the potential for future
19 violence as a result of the on-going Arab-Israeli conflict; and awareness of the causative
20 factors and character flaws that contributed to his crimes. Mr. Sirhan addressed each one to
21 the Board's satisfaction.

22 With respect to learning to cope with anger, the Board noted all the programming Mr.
23 Sirhan has done to assist in managing present and future anger. He explained to the Board that
24 he has learned that anger is on a continuum and discussed the different phases, from
25 recognizing the anger that is engendered from any given frustration to coping mechanisms,
26 such as removing himself from the unpleasant encounter, or going for a walk or cooking or
27 talking a friend on the phone. He explained that he now empathizes with the other person and
28 tries to consider that maybe they had something going on for them that caused their rude or
selfish behavior. He explained that he did not possess that ability to reflect years ago when he
committed his crimes at 24 years old, but now meditation, solitude and spiritual thinking are

1 part of his daily life and those things have adjusted his perceptions in a positive way so that he
2 can avoid letting his anger take control. (Parole Hearing, pp. 44-55.) The Board
3 acknowledged Mr. Sirhan's calm demeanor and attributed it to the "tremendous amount of
4 programming" Mr. Sirhan had engaged in. (Parole Hearing, p. 95.)

5 With respect to his feelings regarding the on-going Arab-Israeli conflict, Mr. Sirhan
6 admits to still being emotional about it. At the hearing, he cried a bit when asked about the
7 continued lack of peace. Mr. Sirhan explained that he would not cry if he didn't have
8 empathy. He now realizes, he explained, that conflict on a global level is a human condition.
9 When asked, he assured the Board that he has no interest in being involved in the conflict
10 what-so-ever because that is for the officials to do and he believes they are doing a good job of
11 it. When asked about whether he was concerned that he would be used as a lightning rod to
12 "ferment" violence, he expressed his desire to refrain from getting involved, but when pressed
13 to address the hypothetical, he guaranteed that he would counsel for a peaceful resolution; he
14 would advocate for peace. (Board Hearing, pp. 34-37.) He reiterated that he had no quarrel
15 with any human being; "I want to make my peace with life, with all human beings". "I will
16 denounce any tendency to violate that attitude that I have now." (Board Hearing, p. 94.)

17 The Board also inquired about substance abuse abatement since Mr. Sirhan admits that
18 alcohol was involved on the night of the shooting. Mr. Sirhan acknowledged that he ignored
19 the training he received as a military cadet in high school when he allowed himself on that
20 night to possess a gun when he had been drinking. The Board considered the plethora of
21 substance abuse counseling Mr. Sirhan has not only engaged in but been the group leader in.
22 (Ex. B, Parole Hearing, pp. 38-43.)⁹

23 Mr. Sirhan addressed his character flaws and the insight he has gained through his
24 extensive psychological counseling. He now understands how his experiences as a young
25 refugee shaped his flawed way of thinking and the causal relationship between that and the
26 crimes. He also understands how impulsivity, a sense of bravado, immaturity and failure to
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⁹ Further, a review of Mr. Sirhan's Central file, which is part of the record, will demonstrate an
absence of any write-ups for alcohol use during the 53 years of incarceration.

1 think through the consequences of his actions also contributed to his crime. (Ex. B, Parole
2 Hearing, pp. 65-67.) He told the Board: "I don't have it in me anymore." (*Id.*, at p.67.)

3 Finally, he addressed his remorse. He told the Board about how he now understands
4 the "ripple effect" his crime had on the victims, their next of kin and the world. He said that
5 Senator Kennedy was "the hope of the world as far as I can say" and that his own actions
6 harmed the families, the friends, the community, the staff of the Ambassador Hotel, the
7 country, and the world. (*Id.*, at p. 92.)

8 At the Board hearing, Mr. Paul Schrade, the only victim alive today, appeared with his
9 representatives¹⁰. They each made statements and supported Mr. Sirhan's release. Mr.
10 Schrade made a short statement at the hearing and further relied on his pre-recorded video-
11 statement. His victim advocate Jennifer Abreu spoke in detail of the rehabilitative work Mr.
12 Sirhan has done, and explained the empirical data about the programming, which
13 supplemented Mr. Schrade's plea for Mr. Sirhan's release. (*Id.*, at pp. 140-148.)

14 Robert F. Kennedy, III, appeared but declined to make a statement. (*Id.*, at p. 139.)
15 Douglas Kennedy, one of the Senator's children appeared and made a statement. Robert
16 Kennedy Jr. appeared via written statement, which was read into the record. Mr. Schrade,
17 Douglas Kennedy and Robert Kennedy Jr. all supported the release of Mr. Sirhan.

18 Douglas Kennedy, the 10th child of Ethel and Robert Kennedy, told the Board that he is
19 "grateful to ... see [Sirhan] ... as a human being worthy of compassion and love." (*Id.*, at p.
20 135, lines 4-6.) He told the Board that while he was listening to Mr. Sirhan express his
21 remorse, it brought tears to his eyes and it affected him deeply. (*Id.*, at p. 135.) He stated: "I
22 am grateful to, I – I'm looking at you, I'm looking at Mr. Sirhan, uh, right now. And, um, and,
23 uh, I – I do have some love for you, for him, and, um, and I – and I do wish him well in his,
24 uh, life and rehabilitation." (*Id.*, at p. 137, lines 12-16.) Douglas Kennedy ultimately
25 concluded that Mr. Sirhan should be released if he is no longer a danger to himself or others.
26 (*Id.*, at p. 135.)

27 _____
28 ¹⁰ Per law, victims and next of kin are permitted to make statements concerning release of life
prisoners. 95-year-old Paul Schrade appeared with the two victim representatives he chose.
They each made statements and supported Mr. Sirhan's release. Mr. Schrade had also
prepared a video-recorded statement in advance of the hearing that was submitted to the
Board, along with a transcript of it. Mr. Schrade created the video-recording during the height

1 Robert F. Kennedy, Jr., through his written statement, described his face-to-face
2 meeting he had with Mr. Sirhan; how Mr. Sirhan clenched Robert Kennedy Jr.'s hands and
3 asked for forgiveness from Robert Jr., his siblings and his mother. (*Id.*, at p. 154.) Robert Jr.
4 characterized Sirhan as a "gentle, humble, kindhearted, frail and harmless old man who poses
5 no threat to our community." (Board Hearing, p. 154, lines 17-18.) Robert Jr. continued:

6 [Sirhan's] release will be testimony to humanity, compassion and idealism
7 of our justice system to which my father devoted his life. While nobody can
8 speak definitively on my, on behalf of my father, I firmly believe that based
9 on his own consuming commitment to fairness and justice, that he would
10 strongly encourage this Board to release Mr. Sirhan because of Sirhan's
11 impressive record of rehabilitation. This action would be consistent with the
12 rule of law which requires Sirhan's release, absent evidence that he currently
13 poses a danger. Mr. Sirhan was sentenced to life with the possibility of parole.
14 Parole is the rule and denial is the exception only justified if the Board
15 determines that Mr. Sirhan will present a high risk of danger to the community.
16 I understand that Mr. Sirhan has more than rehabilitated himself. I further
17 understand that his most recent Risk Assessment performed by CDCR
18 psychologists has confirmed what the many prior Risk Assessments which
19 opine that Mr. Sirhan does not pose a high risk of danger to society. Should
20 he be released, I offer to be a guiding friend to him. I know that Paul Schrade
21 had made the same offer to Mr. Sirhan. Any opposition to Mr. Sirhan's
22 release simply based on the crime is contrary to the law and contrary to
23 concepts of redemption and forgiveness. I ask that you extend the same
24 consideration to Mr. Sirhan that you've given to other lifers who have been
25 convicted of murder of whom you have released."

26 (*Id.*, at pp. 154, line 19—p. 155, line 20.)

27 D.

28 Governor Newsom's Reversal

29 The Governor, contrary to the informed and unbiased decision of his trained appointed
30 officials, found that Mr. Sirhan poses a current unreasonable risk to society. He bases his
31 conclusion on an erroneous statement of facts; an unreasonable finding of lack of insight; a
32 misapplication of the elderly prisoner and youthful offender considerations; and an otherwise
33 unsubstantiated "hunch" that Mr. Sirhan is currently dangerous and not deserving of parole.

of Covid and the uncertainties it created.

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REQUEST FOR RELIEF

WHEREFORE, Petitioner respectfully asks this Court to:

- (1) Grant this Petition for Writ of Habeas Corpus on the finding that the Governor's reversal is not supported by the evidence or through a proper legal standard; or
- (2) Issue an order directing Respondent to show cause why the petition should not be granted; and
- (3) Find that Mr. Sirhan is suitable for parole and order his immediate placement on parole without remanding the matter to the Governor ; and
- (4) Grant any other such further relief as the Court deems just and proper.

Dated: September 13, 2022

1 VERIFICATION

2 I, Angela Berry, declare:

3 1. I am an attorney duly licensed to practice law before the courts of the State of
4 California, with a State Bar Number of 157379.

5 2. I make this verification because petitioner is incarcerated in a county different
6 from my business address of 75-5660 Kopiko Street, Suite C-7, #399 Kailua-Kona, HI 96740.
7 In addition, I am more familiar with the legal allegations in the petition and thus in a better
8 position to declare that the information in the petition is true on my information and belief. I
9 represented Mr. Sirhan for his "Franklin Proceedings" (*People v. Franklin* (2016) 63 Cal. 4th
10 261 and *In re Cook* (2019) 7 Cal. 5th 439; the development of youthful offender mitigation)
11 and at his August 27, 2021 Parole Board Hearing. Further I have read the records of the
12 Board's hearing and decision. I also have read all of the exhibits attached to the petition.

13 3. I believe the contents of the petition to be a true and accurate representation of
14 these records.

15 I declare under penalty of perjury under the laws of the State of California that the attested
16 allegations are true.

17 Executed on September 13, 2022, at Kailua-Kona, HI.

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20 Angela Berry
21 Attorney for Petitioner, Sirhan B. Sirhan
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MEMORANDUM OF POINTS AND AUTHORITIES

I. THE GOVERNOR'S REVERSAL VIOLATED PETITIONER'S STATE AND FEDERAL RIGHTS TO CONSTITUTIONAL DUE PROCESS

At the outset, it must be recalled that parole is the norm; denial of parole is the exception. The law presumes release on parole. *In re Lawrence* (2008) 44 Cal.4th 1181, 1204 (*Lawrence*). The presumption of parole can only be overcome if the record demonstrates current dangerousness; the prisoner need not prove he is not dangerous. 15 Calif. Code of Regs., Sec 2402(a); *In re Ross* (2009) 170 Cal. App. 4th 1490, 1502; *In re Lawrence, supra*.

A.

Procedural and Substantive Due Process Applies to Parole Decisions

California's parole scheme creates a cognizable liberty interest in an inmate's release on parole. This interest is protected by the procedural safeguards of the Due Process Clause of the United States Constitution. (U.S. Const., 5th & 14th amends.) Generally, federal due process is satisfied when the prisoner is given notice of the parole hearing and an opportunity to be heard. If parole is denied, due process further requires a statement of the reasons for the denial. (*Greenholtz v. Inmates of Neb. Pen. & Corr. Complex* (1979) 442 U.S. 1; see also *Morrissey v. Brewer* (1972) 408 U.S. 471, 481; accord *In re Rosenkrantz* (2002) 29 Cal.4th 616, 655.) An inmate's liberty interest in parole is likewise protected under the broader due process guarantees of the California Constitution. (Cal. Const, art. 1, § 7, subd, (a), 15; *People v. Ramirez* (1979) 25 Cal.3d 260, 266-269.) California law recognizes both a procedural due process interest (*Irons v. Carey*, 505 F.3d 846, 850 (9th Cir. 2007) [all California prisoners whose sentences provide for the possibility of parole are vested with a constitutionally protected liberty interest in the receipt of a parole release date, a liberty interest that is protected by the procedural safeguards of the Due Process Clause]) and a substantive due process interest. (*People v. Ramirez, Id.*, 25 Cal.3d at pp. 266-269). The *Ramirez* Court held "when an individual is subjected to deprivatory governmental action, he always has a due process liberty interest both in fair and unprejudiced decision-making and in being treated with respect and dignity." (*Ibid.*) Accordingly, the California Constitution recognizes both substantive and procedural due process interests in parole. (*In re Rosenkrantz, supra*, 29

1 Cal.4th at pp. 676-677; *People v. Ramirez*, *supra*, 25 Cal.3d at p. 268; *In re Powell* (1988) 45
2 Cal.3d 894, 904.)

3 Before an inmate may receive a parole date, the Board must find the inmate suitable for
4 parole. Here, the Board found Mr. Sirhan suitable on August 27, 2021. In murder cases, the
5 Governor has authority to reverse a grant of parole¹¹. Here, the Governor reversed his trained
6 appointees' decision on January 13, 2022. However, the Governor is equally bound by the
7 requirements of constitutional due process in making parole decisions. (Pen. Code, § 3041;
8 Cal. Code Regs. tit. 15, §§ 2401, 2281; *In re Rosenkrantz*, *supra*, 29 Cal.4th at p. 655.) And
9 due process is only satisfied if the assessment of the inmate's current risk of danger is
10 supported by "some evidence" in the record. (*In re Dannenberg*, *supra*, 34 Cal.4th at p. 1091;
11 see § 3041, subd. (b).) The Board in the instant case did not find evidence to support a finding
12 of current dangerousness, therefore it appropriately recommended Mr. Sirhan's release. The
13 Governor, however, came to a contrary decision. But the Governor's decision, as will be
14 shown, is not supported by the record.

15 1. The "Some Evidence" Standard

16 In *In re Rosenkrantz*, *supra*, 29 Cal.4th 616, the California Supreme Court for the first
17 time injected the requirement of the "some evidence" standard in parole suitability hearings.
18 In *In re Rosenkrantz*, *supra*, the Court began by acknowledging the Board's broad discretion
19 in rendering parole suitability decisions and the resultant deferential standard of review. (*Id.*,
20 at p. 679; *In re Dannenberg*, *supra*, 34 Cal.4th at p. 1082.) But while acknowledging this
21 deferential standard of review, the *Rosenkrantz* Court counseled that judicial review of
22 suitability decisions is not merely *pro forma*. In reviewing a decision that an inmate is
23 unsuitable for parole, "the judicial branch is authorized to review the factual basis of a
24 decision of the Board denying parole in order to ensure that the decision comports with the
25

26 ¹¹ In 1988, the California Constitution was amended, giving the Governor the ultimate
27 decision on parole release for prisoners serving life sentences for murder. (Proposition 89,
28 Cal. Const., Art. V, Sec. 8(b).) Historical Note: Mr. Sirhan had been granted parole in
1975, scheduled to be released in 1984. John Van De Kamp was the District Attorney of
Los Angeles County at the time. When running for Attorney General of California in
1982, Van de Kamp campaigned for a revocation of Mr. Sirhan's upcoming release date.
(The New York Times Archives, May 11, 1982, Section B, page 9.) Van de Kamp won his
election, and Prop. 89, which bestowed upon the governor the ultimate power to reverse
parole decisions, was passed while Van de Kamp was in office.

1 requirements of due process of law.” (*In re Rosenkrantz, supra*, 29 Cal.4th at p. 658.) The
2 decision comports with due process if there is “some evidence in the record before the
3 [decision maker] supporting the decision to deny parole, based on the factors specified by
4 statute and regulation.” (*Ibid.*) Courts also must ensure that the evidence meeting the “some
5 evidence” standard is both reliable and of a solid value. (*Id.*, at p. 655; see Cal. Code. Regs.,
6 Tit. 15, § 2402, subd. (b).) It is not sufficient to derive findings from a silent or misconstrued
7 record. Reviewing courts additionally must determine if the decision maker gave the inmate
8 “individualized consideration of all relevant factors,” and that the conclusion was neither
9 arbitrary nor capricious. (*In re Rosenkrantz, supra*, 29 Cal.4th at p. 655; *In re DeLuna* (2005)
10 126 Cal.App.4th 585; see U.S. Const., amends. V, XIV; Cal. Const., art. I, § 7, subd. (a).)

11 “As a result, parole applicants have a due process liberty interest in parole and an
12 expectation that they will be granted parole unless the Board finds, in the exercise of its
13 discretion, that they are unsuitable for parole in light of the circumstances specified by statute
14 and by regulation.” (*In re Lawrence* (2008) 44 Cal.4th 1181, 1191, 1204, quoting *In re*
15 *Rosenkrantz, supra*, 29 Cal.4th at p. 654; *In re Stoneroad* (2013) 215 Cal.App.4th 596, 615.)

16 2. The Governor’s Decision, like the Board’s, Must Comport with Substantive Due
17 Process and Must Be Supported by “Some Evidence”

18 The Governor, without question, has the legal authority to reverse his Board’s grant of
19 parole. However, his discretion to do so is not omnipotent; the decision to reverse his Board’s
20 decision must comply with due process and the controlling legal standards. But, it did not.

21 In his written decision, the Governor states that he relies on his broad discretion in
22 reversing his own appointees’ assessment. (Governor’s Decision, p. 1 Exhibit A.) But, the
23 Governor’s decision-making authority is not unrestricted. The decision must “reflect[] *due*
24 *consideration of the specified factors* as applied to the individual prisoner in accordance with
25 applicable legal standards.” (*In re Shaputis* (2011) 53 Cal.4th 192, 210 (*Shaputis II*); *In re*
26 *Lawrence, supra*, 44 Cal.4th at p. 1204; *In re Shaputis* (2008) 44 Cal.4th 1241, 1260–1261
27 (*Shaputis I*); *In re Rosenkrantz, supra*, 29 Cal.4th at p. 677; *In re Shelton* (2020) 52
28 Cal.App.5th 595, 607-608; *In re Stoneroad, supra*, 215 Cal.App.4th at p. 616.) His decision to
deny parole must be supported by some evidence of a current unreasonable risk of danger.
This is where the Governor fails.

B.
The Governor's Decision Deprives Mr. Sirhan of Due Process Because
it Improperly Relies on the Gravity of the Offense and Does not Provide a Nexus between
the Crime from 53 Years Ago and Current Dangerousness

The Governor's decision placed undue emphasis on the gravity of the crime (and added unsupported "facts"¹²), rather than assessing the entire circumstances in determining the ultimate question of whether Mr. Sirhan poses a current unreasonable risk of danger to public safety. In so doing, the Governor erred.

In his decision, the Governor asserts that the gravity of the crime alone can provide a "valid basis for denying parole" (Exhibit A, p. 2) and he cites *In re Lawrence* at p. 1214 for that proposition. However, the Governor misconstrues *In re Lawrence*. The California Supreme Court in *In re Lawrence* specifically explained:

"Indeed, it is not the circumstance that the crime is particularly egregious that makes a prisoner unsuitable for parole—it is the implication concerning future dangerousness that derives from the prisoner's having committed that crime. Because the parole decision represents a prospective view—essentially a prediction concerning the future—and reflects an uncertain conclusion, rarely (if ever) will the existence of a single isolated fact in the record, evaluated in a vacuum, suffice to support or refute that decision. Accordingly, we conclude that although the Board and the Governor may rely upon the aggravated circumstances of the commitment offense as a basis for a decision denying parole, *the aggravated nature of the crime does not in and of itself provide some evidence*

¹² When rationalizing his opinion of the gravity of the offense, the Governor makes an erroneous factual statement. He states: "Mr. Sirhan shot Senator Kennedy in front of news cameras, which subjected the Kennedy family and American public to a ubiquitous video loop of Senator Kennedy's violent death and his wife's anguish at his side." (Governor's Decision, p. 3) Contrary to this erroneous assertion, and based on all **factual** accounts, the shooting of the Senator was *not* captured on video. This fake fact is often repeated by the ill-informed and circulates in rumor mills. The governor's reliance on erroneous and extraneous inflammatory propaganda instead of the facts, as derived from the official record of conviction, demonstrate the Governor's bias and the corollary deprivation of Mr. Sirhan's due process right to a fair, factual, and impartial review.

1 of **current dangerousness to the public** unless the record also establishes that
2 something in the prisoner's pre- or post-incarceration history,
3 or his or her current demeanor and mental state, indicates that the implications
4 regarding the prisoner's dangerousness that derive from his or her commission
5 of the commitment offense remain probative of the statutory determination
6 of a continuing threat to public safety.”

7 (*In re Lawrence*, at 1213-1214, emphasis added.) Moreover, not a single case since *Lawrence*
8 has found that the facts of the crime alone can justify a denial of parole. (See, e.g.: *In re Ross*
9 (2009) 170 Cal.App.4th 1490: [There must a nexus between the facts of the crime and current
10 dangerousness]; *In re Dannenberg* (2009) 173 Cal.App.4th 237: [The governor conceded he relied
11 solely on nature of commitment offense; governor's reversal of parole was reversed and parole was reinstated.]

12 **C.**

13 **The Governor Violated Mr. Sirhan's Rights of Constitutional Due Process**
14 **by Reversing His Board's Grant of Parole Without Providing Mr. Sirhan**
15 **With a Meaningful Opportunity to Be Heard**

16 Mr. Sirhan was not allowed to appear before the Governor and personally demonstrate
17 his suitability. Instead, unlike the Board members who assessed Mr. Sirhan face-to-face¹³ and,
18 who recommended parole, the Governor relied on the reading of a cold record. When faced
19 with potential uncertainty with the interpretation of any answer given by Mr. Sirhan during his
20 live hearing and/or during his Risk Assessment Evaluation, the Governor did not seek
21 clarification. This violated the procedural due process guarantee of a meaningful opportunity
22 to be heard, contributed to whimsical conclusions regarding Mr. Sirhan's lack of suitability,
23 and led to an arbitrary reversal of the Board's well-reasoned and duly considered decision.

24 **D.**

25 **Mr. Sirhan was Deprived Due Process because the Governor Misconstrued**
26 **the Record and/or Relied on Incorrect and/or Outdated Information**

27 A fundamentally fair proceeding compels the governor to impartially consider all the
28 evidence and make a decision based on evidence accurately construed. (*Gagnon v. Scarpelli*,
(1973) 411 U.S. 778, at pp. 786-787.) The Governor failed to discharge this burden when he
relied on information and/or beliefs that are proven to be wrong from a review of all the
evidence.

¹³ Albeit through video-conferencing due to the Pandemic.

1 The Governor bases his decision for denying parole on what he labelled Mr. Sirhan's
2 "shifting narrative" about the crime and "current refusal to accept responsibility", that, the
3 Governor asserts, displays a lack of insight and a justification to deny parole. (Governor's
4 Decision, p. 3, Exh. A.) The Governor's rationale mis-construes evidence; it ignores
5 persistent statements by Mr. Sirhan expressing remorse; it omits the many conclusions of the
6 CDCR psychologists that Mr. Sirhan expressed remorse and has gained the appropriate
7 insight to reduce his propensity for future violence; it disregards the acknowledgements of
8 two of the late Senator's sons (Douglas and Robert, Jr.) of Mr. Sirhan's remorse, as well as
9 the acknowledgment of remorse of victim Paul Schrade; and it fails to link this perceived lack
10 of insight and acceptance of responsibility to current dangerousness.

11 *1. Admission of Guilt is Prohibited as a Prerequisite to a Finding of Suitability for*
12 *Release*

13 First of all, it must be stressed that an admission of guilt is expressly prohibited as a
14 pre-requisite to a grant of parole. (Pen. Code § 5011, subdiv. (b); Code of Reg., Title 15, Sec.
15 2236; *In re Palermo* (2009) 171 Cal.App.4th 1096, 1110 (*Palermo*), disapproved on another
16 point in *In re Prather* (2010) 50 Cal.4th 238, 252; *In re McDonald* (2010) 189 Cal. App. 4th
17 1008.) And, importantly, "an inmate's refusal to agree with the prosecution's version of the
18 crime does not support a finding of lack of insight." (*In re Palermo* [citations].) *In re Pugh*
19 (2012) 205 Cal.App.4th 260, 269.)

20 In *McDonald, supra*, 189 Cal. App. 4th 1008, the governor had rejected the
21 recommendation for parole due to the gravity of the offense and McDonald's complete denial
22 of involvement in the offense. On review, the court reversed the governor. Reiterating the
23 crucial principal that "lack of insight is not some evidence of current dangerousness unless it is
24 based on evidence in the record before the Governor" (*Id.*, at 1023), and citing Penal Code
25 section 5011, it ruled: "[T]he Governor cannot rely on the fact that the inmate insists on his
26 innocence; the express provisions of Penal Code section 5011 and section 2236 of title 15 of
27 the California Code of Regulations prohibit requiring an admission of guilt as a condition for
28 release on parole." (*Ibid.*)

In *Pugh, supra*, 205 Cal. App. 4th 260, the governor denied parole based on a perceived
shifting narrative that the governor believed justified a finding of lack of insight and then the
leap to a finding of current dangerousness. The governor, there, too, was reversed by the

1 courts. Pugh had asserted a different version of the particulars of the crime than that proved
2 at trial. But nevertheless, psychological reports recounted Pugh's remorse and understanding
3 of his involvement in the crime. Citing *Shaputis II*'s¹⁴ rule that only an inherently implausible
4 recitation of the crime by an inmate may suggest current dangerousness, it found Pugh's
5 version not inherently implausible and reinstated the Board's decision to grant parole.

6
7 2. *The Governor's Decision Makes Factually False Allegations, Misconstrues the*
8 *Record and Improperly Relies on Old Outdated Statements Attributed to Mr.*
9 *Sirhan when it Cites Examples of What it Deems a "shifting narrative"*

10 The Governor's decision purports to establish a nexus between what it considers a
11 "shifting narrative" of the crime and Mr. Sirhan's current dangerousness. However, in its
12 attempt to establish a "shifting narrative" the Governor makes assertions that are factually
13 wrong, misconstrues statements Mr. Sirhan made by taking them out of context, and appears
14 to improperly rely on very old CRAs and outdated statements attributed to Mr. Sirhan.

15 First, in making its case for a "shifting narrative", the Governor's decision cites "facts"
16 that are not facts at all – many are factually untrue, thus fatally destroying any causal
17 relationship to current dangerousness. For instance, the Governor's decision mistakenly
18 claims that Mr. Sirhan admitted to assassinating RFK in a recorded interview with the police.
19 (Gov. Decision, p. 3, Exhibit A.) This purported fact is simply untrue. While in police
20 custody, Mr. Sirhan never admitted to the police that he shot the Senator or anyone else. Quite
21 the contrary - he consistently claimed he did not remember the events of the evening.¹⁵

22 Next, the Governor's decision tries to make a case that even during the trial, Mr. Sirhan
23 took differing positions on his involvement in the crime. Here, the Governor erroneously
24 claims that at trial Mr. Sirhan testified that he could not remember his actions because he was
25 drunk. (Gov. Decision, p. 4, Exhibit A.) Contrary to the Governor's assertion, Sirhan never
26 said that. In fact, when asked by the prosecutor if alcohol was the reason for his failed
27 memory of the events, Mr. Sirhan said: "I don't know from the effects of what, sir. I was not
28

¹⁴ *Shaputis II, supra*, 53 Cal. 4th 192.

¹⁵ Counsel for Mr. Sirhan relies on 1) the representations of scholars and historians who are in possession of all the recorded statements Mr. Sirhan made while in police custody; and 2) the fact that he was never asked on direct or cross examination about any admissions he may have

1 myself, sir, as I am now.” (Trial Transcripts, Vol. 18, p. 5327, lines 14-15.). The Governor
2 then cites a statement Sirhan made about having 20 years of premeditation to kill the Senator.
3 (Gov. Decision, *Ibid.*) While the transcripts of the trial indicate that the statement was in fact
4 made, the Governor takes it completely out of context. The statement was not a confession.
5 Rather, the statement was made during a hearing that took place outside the presence of the
6 jury where Mr. Sirhan was verbalizing his discontent with the defense his attorneys were
7 presenting¹⁶. He asked that his attorneys be fired, and the court refused. Mr. Sirhan then
8 stated that he would rather plead guilty and accept the death penalty than have his attorneys
9 present the case they wanted to and against his wishes. The court informed him that that was
10 not permitted. Mr. Sirhan then asked to represent himself and the court would not allow it. It
11 was during that colloquy and with the ensuing frustration that Mr. Sirhan made his sarcastic
12 statement that he killed the senator with 20 years of premeditation. It is obvious that the
13 statement cannot be taken at face value: If true, Mr. Sirhan would have been a 4-year-old
14 Palestinian child living in Old Jerusalem in the Middle East. That would have been 13 years
15 before RFK even entered politics in 1961 as the U.S. Attorney General. The Governor’s
16 specious attempt to use that statement as a demonstration of a “shifting narrative” is
17 disingenuous and misleading and shows a complete lack of familiarity with the actual facts
18 surrounding this matter.

19 The Governor’s decision then cites statements Mr. Sirhan allegedly made in 1972,
20 1979, 1985, 1987 1989, 1990, 1997, 2001, 2011 to try and establish a link between those
21 statements and a finding of current dangerousness. Courts, when reversing the Board or
22 governor’s denial of parole, have consistently held that it is error to rely on old reports and
23 information, as historic facts do not necessarily equate to current dangerousness. (*In re*
24 *Lawrence* (2008) 44 Cal.4th 1181.)

25
26
27 made to the police.

28 ¹⁶ Mr. Sirhan did not agree with the approach the defense team was taking with certain
witnesses. But his attorneys essentially told Mr. Sirhan that since they were the attorneys they
had the prerogative to decide how the defense was presented. Under today’s law, the record
would support a reversal of Mr. Sirhan’s trial under the U.S. Supreme Court’s decision in
McCoy v. Louisiana (2018) 138 S.Ct. 1500, which held that a criminal defendant has a 6th
Amendment right to make fundamental choices about his/her own defense and failure to heed
to the defendant’s desire is structural error requiring reversal of the conviction.

1 The Governor's decision purports to further demonstrate a "shifting narrative" that it
2 claims demonstrates current dangerousness and points out that at Mr. Sirhan's 1989, 1990 and
3 2011 Board hearings, Mr. Sirhan maintained that he could not remember details, such as
4 shooting his gun. These statements do nothing but demonstrate a cohesive and consistent
5 narrative with what Mr. Sirhan told the police while in their custody and what he testified to at
6 trial. He has consistently maintained that he has no memory of the shooting.

7 The Governor's decision is flawed because of yet another misconstrued fact upon
8 which it asserts is a "shifting narrative" that somehow proves current dangerousness. The
9 Governor refers to a statement Mr. Sirhan made at his 2021 CRA, but takes it out of context,
10 and tries to portray it as Mr. Sirhan's complete denial of culpability. The Governor
11 disingenuously states in his decision: "In 2021, Mr. Sirhan told a Board psychologist that he
12 was innocent of the crimes and 'was in the wrong spot at the wrong time,' portraying himself
13 as the victim." (Governor's Decision, p. 5, Exhibit A.) Contrary to the Governor's
14 representation, Mr. Sirhan never stated he was innocent of the crimes in the 2021 CRA. (See
15 Exhibit C, attached.) Regarding the statement about being in the wrong place at the wrong
16 time, while traditionally an adage for the proposition that one got wrapped up into something
17 without intention, what Mr. Sirhan was in fact articulating is his belief that the forensic
18 evidence does not match the official narrative of the case. Mr. Sirhan's actual statement to the
19 evaluator is as follows:

20 "I was in front of him and the shots that hit him, were from behind him, and
21 that's what Robert Kennedy Jr. is going to tell the Parole Board, that I didn't
22 do it, because I was in the wrong spot at the wrong time."

23 (p. 7 CRA). It is clear in its true form and in its proper context, Mr. Sirhan was simply
24 relaying that given his physical positioning relative to the Senator's (they were face to face by
25 all eye-witness accounts), he could not have shot the bullets that struck the Senator in the back
26 and the back of the neck. The Governor next cites Dr. Crimele's opinion that Mr. Sirhan
27 "would not report his understanding of the facts of the crime, as he instead referenced others'
28 reports" as somehow a demonstration of current dangerousness. However, the Governor is
expecting Mr. Sirhan to remember facts he has consistently stated he cannot remember. Mr.
Sirhan relies on information others have gathered to fill in the gaps for his lack of memory.

1 Requiring Mr. Sirhan to suddenly “remember” the facts of the crime as a condition of release
2 is something that will never happen. It is an unrealistic and unconstitutional expectation.¹⁷
3 (Pen. Code § 5011; Code of Regs 2236.)

4 Finally, the Governor while using isolated statements from Dr. Crimele’s 2021 CRA
5 report, albeit taken out of context, to try and justify his decision to deny parole, he outright
6 ignores Dr. Crimele’s ultimate opinion that “Mr. Sirhan represents a Low risk for violence. He
7 presents with non-elevated risk relative to long-term parolees and well below average risk
8 relative to shorter-term parolees released without discretion.” (Exhibit C, 2021 CRA p. 10.)

9
10 3. The Governor’s Conclusion that Mr. Sirhan Lacks Insight is not Supported by the
11 Record

12 The record evidence demonstrates Mr. Sirhan’s insight, acceptance of responsibility
13 and showing of remorse. With respect to insight and remorse, it is important to recall how Dr.
14 Carrera, the psychologist who evaluated Mr. Sirhan in 2010 and rated him “low risk”,
15 described the concepts:

16 “Insight and remorse are abstract concepts, which do not readily lend
17 themselves to operationalized definition or reliable quantifiable measure-
18 ment. Therefore, any opinions regarding insight and remorse are subjective
19 in nature and should be interpreted with this caveat in mind.”

(Dr. Carrera’s 2010 psychological evaluation, p. 16.)

20 The Governor wrongly concludes that Mr. Sirhan lacks insight¹⁸, despite the consistent
21 record evidence to the contrary. For instance, as far back as the 1985 and 1996 Parole
22 Hearings, Mr. Sirhan expressed his remorse: He told the Board he learned from his crime and
23 lives with it everyday. He further explained that he was young when he committed his crime
24 and throughout the years, he had matured and has a lot of time to reflect on the value of human
25 life. (1985 Parole Hearing, pp. 59-65; 1986 Parole Hearing, p. 54.) Additionally, in his 1989

26
27 ¹⁷ The 2021 Parole Board, demonstrably familiar with the facts of the case, recognized this
28 fact when it stated that it was not expecting Mr. Sirhan’s, or anyone’s memory to improve
over time. In fact, the Board noted, it expected him to remember less with the passage of time.
(Ex. B, Board Hearing, p. 26.)

¹⁸ The Governor’s decision claims Mr. Sirhan lacks remorse, yet it cites and recognizes Mr.
Sirhan’s 1989 expression of remorse in an interview with Robert Frost.

1 parole hearing, Mr. Sirhan stated: "I have feelings of shame and inward guilt. . . .it is really a
2 haunting experience and I honestly feel the pain that they [the Kennedys] may have gone
3 through." (1989 Parole Hearing, pp. 130-131.)

4 Moreover, in his 1990 Parole Hearing, the Board recited Dr. B. Martin's 1989
5 professional opinion that Mr. Sirhan was "fairly clear on causative factors of his crime" and
6 that "[Sirhan] is likely to hold present gains." (1990 Parole Hearing, at p. 37.) It also noted
7 Dr. Farr's 1990 opinion that Mr. Sirhan is "open to giving causative reasons leading up to the
8 murder" (*Id.*, at p. 52) and that Mr. Sirhan has expressed extreme remorse. (*Id.*, at p. 53.)
9 Further, Robert Kennedy Jr. spoke of Sirhan's expressions of remorse in the letter he sent to
10 the 2021 Board. In his letter to the Board, Robert Kennedy Jr. explained that he had met face-
11 to-face with Mr. Sirhan. He told the Board: "Sirhan wept, clenched my hands and asked for
12 forgiveness from me, from my siblings, and from my mother for his part in that tragic
13 evening's events." (Ex. B, Parole Hearing, pp. 153-155.) Moreover, Douglas Kennedy spoke
14 of Mr. Sirhan's expressions of remorse that moved him deeply. (*Id.*, at p. 135.)

15 Mr. Sirhan's clear and unambiguous articulation of remorse continues throughout his
16 various parole board hearings and Mr. Newsom blatantly disregarded decades of statements of
17 remorse in order to support his political agenda of re-election.

18 *In re Pugh, supra*, is instructive here. In *Pugh*, the Board had granted parole, but it was
19 rejected by the governor. The governor's purported rationale was that Pugh lacked insight into
20 the offense, and that, in combination with the heinous nature of his crime, it caused Pugh to
21 pose a current risk of dangerousness. On habeas corpus, the trial court disagreed with the
22 governor's assessment and found no evidence in the record to establish Pugh currently lacked
23 insight. It reversed the governor's decision to deny parole. The warden appealed and the
24 appellate court again confirmed that the record lacked credible evidence that Pugh did not
25 possess insight. The appellate court first pointed out that Penal Code section 5011 prohibits a
26 parole board from requiring a prisoner to admit guilt as a condition of granting parole.¹⁹ It
27 then assigned error to the governor's reliance on older mental health examinations while
28 ignoring the more recent psychological reports indicating Pugh showed insight and remorse.

¹⁹ Pen. Code section 5011(b) reads: "The Board of Prison Terms shall not require, when

1 When ruling, the appellate court reiterated that “the nature of the offense is no longer an
2 accurate indicator of current dangerousness”. (*Id.*, at 263.) As such, it ruled that the
3 Governor’s decision to deny parole was properly reversed by the trial court.

4 Like in *Pugh*, the record in Mr. Sirhan’s case is replete with evidence of Mr. Sirhan’s
5 insight into the causative factors of his crimes and his repeated expressions of remorse. The
6 fact that he does not remember every detail of the crime should not be construed as lack of
7 insight and/or remorse; and requiring an admission by him of all details is expressly
8 prohibited. (Pen. Code §5011(b).) Thus, not only did Governor Newsom disregard the factual
9 record, but he acted in clear contravention of the law.

10 The Governor’s decision is further mistaken when it concludes that Mr. Sirhan has not
11 disavowed political violence and that makes him a current threat. The Governor misconstrues
12 the record. The Governor accuses Mr. Sirhan of not meaningfully disclaiming political
13 violence. In purported support for this outlandish accusation, the Governor’s decision cites a
14 1973 incident where terrorists took hostages, demanding Mr. Sirhan’s freedom. Mr. Sirhan
15 had no part in that violent event, but the Governor uses it against Mr. Sirhan. The Governor
16 draws his conclusion about a failure to disavow political violence by relying on Dr. Crimele’s
17 report concerning his interview with Mr. Sirhan. Dr. Crimele characterizes Mr. Sirhan’s
18 response to an inquiry into the 1973 event as “laughter”. (See Exhibit C, Dr. Crimele’s
19 Report.) The Governor wrongly interprets that response as a failure to denounce violence,
20 instead of interpreting it as a man who continues to deny any involvement in the violent ploy
21 and one who believes inquiry about an act he played no role in, that occurred decades ago,
22 should not rationally be considered for his suitability for parole 48 years later. Had the
23 Governor afforded Mr. Sirhan due process and a right to be heard, the Governor could have
24 understood Mr. Sirhan’s true position. (See Argument Part I C, *supra*.)

25 Moreover, the Board addressed this concern and the Governor appears to gloss over
26 that inquiry and the responses thereto. When asked by the 2021 Board about his feelings
27 regarding political actions by others in his name or others using him to “ferment more
28 violence”, Mr. Sirhan acknowledged the possibility but offered an equally possible alternative

setting parole dates, an admission of guilt to any crime for which an inmate was committed.”

1 – one where he could be an agent for peace. (Ex. B, Parole Hearing, pp. 35-36.) In his
2 decision, the Governor seemingly ignores Mr. Sirhan’s assurance to the Board that he would
3 advocate for peace.

4
5 4. The Governor’s Decision Fails to Demonstrate a Nexus Between What it Deems
6 Unsuitability Factors and Current Dangerousness

7 While the Governor’s decision is afforded deference, the court’s review “is not
8 toothless” and proper consideration of unsuitability factors requires more than rote recitation
9 of them. A legally binding denial of parole by the Governor requires reasoning “establishing
10 a rational nexus between those factors and the necessary basis for the ultimate decision—the
11 determination of current dangerousness.” (*Lawrence, supra*, 44 Cal.4th at p. 1210.) Here, not
12 only does the Governor rely on false, outdated and/or misconstrued facts, as discussed *supra*,
13 he does not illustrate how those facts equate to current dangerousness. For this reason, too, the
14 Governor’s decision must be reversed as a violation of due process.

15 The factors argued below demonstrate there is no nexus between those facts articulated
16 by Governor Newsom and current dangerousness.

17 **E.**

18 **The Governor Failed to Apply the Correct Law and Failed to**
19 **Properly Consider Elderly Prisoner Factors as Mandated by**
20 **Penal Code section 3055, Thus Depriving Mr. Sirhan of Due Process**

21 As a 77-year old, Mr. Sirhan qualifies as an Elderly Prisoner, requiring the governor to
22 give “special consideration” to Mr. Sirhan’s advancing age, his age-related health ailments,
23 and the comprehensive studies that prove a drastic reduction in the risk of future violence with
24 age. (Pen. Code § 3055.) The Board gave due consideration to this law and its components in
25 concluding that Mr. Sirhan is suitable for release on parole. The Governor, on the other hand,
26 claims to have considered the fact that Mr. Sirhan qualifies as an elderly prisoner, when he
27 wrote: “I have given special consideration to the Elderly Parole factors” (Exhibit A,
28 Governor’s Decision, page. 8), but he cites the wrong law and then draws conclusions that are
not supported by the record, thus violating Mr. Sirhan’s due process rights.

First of all, in his statement of the “Governing Law” (Exhibit A, pp. 1-3), the Governor
relies on the wrong law when referring to elderly parole consideration. He refers to two orders

1 issued in 2014 - *Coleman v. Brown* and *Plata v. Brown*, (Exhibit A, pp. 2-3), seemingly
2 unaware of the legislative enactment of Penal Code Section 3055 (signed by him, and effective
3 January 1, 2018; Assembly Bill No. 1440) that mandates the parole decision-maker to “give
4 special consideration to whether age, time served, and diminished physical condition, if any,
5 have reduced the elderly inmate’s risk for future violence.” (Pen. Code § 3055(c).) The
6 Governor relies on the *Coleman v. Brown* and *Plata v. Brown* orders and assumes that his
7 obligation requires him to give special consideration to “inmates who are *older than 60* and
8 who have served *more than 25 years* in prison”. (Exhibit A, Governor’s Decision, page 8,
9 emphasis added.) However, that is not the law. Amended Penal Code section 3055, signed by
10 the Governor and effective January 1, 2021 [Assembly Bill No. 3234], and thus effective at the
11 time of Mr. Sirhan’s parole hearing in August 2021, compels special consideration to an
12 inmate “50 years of age or older [who] has served a minimum of 20 years of continuous
13 incarceration on the [] current sentence”. (Pen. Code §3055(a).)

14 Mr. Sirhan has served 27 years as an elderly prisoner and has served 28 years more than
15 the triggering length of service for proper analysis under the elderly prisoner law. The
16 Governor failed to consider the law and as such violated Mr. Sirhan’s right to due process.

17 The fact that the Governor failed to consider the correct law violates Mr. Sirhan’s due
18 process rights in and of itself and requires reversal of the decision to deny parole. But
19 additionally, the Governor’s rationale in rejecting elderly prisoner considerations is flawed.
20 The Governor cites Dr. Crimele’s 2021 Risk Assessment Evaluation report as support for his
21 position²⁰ that Mr. Sirhan’s advancing age plays no role in the risk assessment. Through the
22 undue reliance on one line of Dr. Crimele’s report, the Governor casts aside the long litany of
23 health problems listed by his appointees at the parole hearing: atrial fibrillation and
24 bradycardia for which Mr. Sirhan takes two separate medications; anti-coagulation blood
25 issues; chronic kidney disease; chronic stiffness and pain in his neck and left shoulder due to
26 an injury he received when another inmate slashed his throat in 2019 and the repair shortened
27 the muscle connecting the neck to the shoulder. In fact, the Commissioner noted that during
28 the parole hearing, Mr. Sirhan sat slumped to the left to assist in alleviating some of the pain

²⁰ The Governor’s Decision refers to a line in Dr. Crimele’s report that Sirhan “has not had any

1 from his shoulder injury. (Parole Hearing, p. 14, pp. 98-100.) The Board found Mr. Sirhan
2 was “significantly incapacitated” to committing new crimes. (Board Hearing, p. 163.) But,
3 the Governor ignores that.

4 The governor then opines that elderly prisoner attributes are “not the most relevant
5 indication of [Sirhan’s] current risk level.” He cites his opinion of Mr. Sirhan’s lack of insight
6 and refusal to accept responsibility (debunked); his accusation that Mr. Sirhan has failed to
7 denounce political violence (untrue); and his opinion that Mr. Sirhan lacks requisite skills to
8 manage complex external triggers (contrary to the record evidence) as reasons to disregard the
9 elderly prisoner attributes. And, in order to make his argument, the Governor utterly
10 disregards Dr. Crimele’s ultimate opinion that Mr. Sirhan’s advancing age significantly lowers
11 his risk of recidivism and the CRA rating of “low”. Dr. Crimele opined:

12 “Generally speaking, the current recidivism rates for long term offenders
13 are lower than those of other prisoners released from shorter sentences.
14 *The board defines overall risk ratings relative to other life prisoners.* Based
15 upon an analysis of the presence and relevance of empirically supported risk factors,
16 case formulation of risk, and consideration of the inmate’s anticipated
17 risk management needs if granted parole supervision (i.e., intervention, monitoring),
18 *Mr. Sirhan represents a Low risk for violence.* He presents with
19 non-elevated risk relative to long-term parolees and well below average risk relative to
shorter-term parolees released without discretion. Low-risk long-
term parolees are expected to commit violence much less frequently than
other parolees.”

20 Dr. Crimele’s report, Exhibit C, p. 10, emphasis added.) Incidentally, the Board noted that Dr.
21 Carrera’s CRA Report from 2010, Dr. Sahni’s CRA Report from 2016, and Dr. Crimele’s
22 CRA report from 2021 all put Mr. Sirhan in the lowest rate of risk for violence - “at the low
23 end of a 1.5-2% recidivism rate.” (Ex. B, Parole Hearing, pp. 176-177.)

24 The Governor’s outright failure to apply Penal Code section 3055, his reliance on Dr.
25 Crimele’s statement that Mr. Sirhan has “not had any significant problems with his advancing
26 age” thereby disregarding Mr. Sirhan’s multiple physical ailments in the established record,
27 his disregard for Dr. Crimele’s professional assessment that Mr. Sirhan is a “low risk for
28 violence”, and his conclusion that Mr. Sirhan’s elderly prisoner factors are not relevant to a

significant problems with his advancing age.”

1 determination of current dangerousness violate due process and warrant reversal of the
2 Governor's decision.

3 F.

4 **The Governor Failed to Properly Assess Youthful Offender Mitigation,**
5 **Thus Depriving Mr. Sirhan of Due Process**

6 Mr. Sirhan qualifies as a youthful offender, obligating the Governor to give "great
7 weight" to the effect of the hallmark features of youth on his culpability and consider that
8 against Mr. Sirhan's subsequent growth and maturation. (§ 3051; § 4801(c); *People v.*
9 *Franklin* (2016) 63 Cal.4th 261.) The law requires the deciding body to not just *consider* but
10 to '*give great weight*' to the diminished culpability of juveniles as compared to adults. . . , the
11 hallmark features of youth, and any subsequent growth and increased maturity of the prisoner
12 in accordance with relevant case law. (§4801, subd. (c).) (emphasis added)." (*Franklin*, at
13 277.) Senate Bill 260, which enacted the youthful offender laws, was "designed to ensure
14 [youthful offenders] will have a meaningful opportunity for release"... ." (*Ibid.*)

15 The Governor's decision to reverse his Board's recommendation for parole, that is
16 partially based on the Governor's purported consideration of youthful offender mitigation,
17 cannot stand because it provides little if any rationale for its conclusion of Mr. Sirhan's current
18 dangerousness despite his status as a youthful offender; it fails to even acknowledge the
19 specific Youthful Offender mitigation evidence offered on Mr. Sirhan's behalf; and it
20 completely overlooks or inexplicably disregards the psychological evaluation specifically
21 addressing Mr. Sirhan's youth and his particular psyche and how these conditions impacted
22 his crime and his contrasting growth and maturity over the last 53 years. In his written
23 decision, the Governor states that youthful offender factors were considered as is required by
24 law, but then he concludes that despite that consideration, Mr. Sirhan is not suitable for release
25 due to lack of insight. (See Gov. Decision, Exhibit A, pp. 7-8.)

26 The Governor's assertion that he had given "great weight" to the youthful offender criteria
27 is followed by a hollow conclusion that fails to analyze how the hallmarks of youth might
28 have factored into Mr. Sirhan's level of culpability. Contrary to any indication by the

1 Governor, the record evidence contains a detailed packet entitled "Sentencing Memorandum
2 and Statement in Mitigation; Exhibits in Support Thereof" (youthful offender packet) that
3 presents the youthful offender mitigation that deserved the Governor's due consideration (e.g.
4 "great weight"). The Governor's decision does not even acknowledge the 52-page Youthful
5 Offender Packet or, equally importantly, the results of the psychological evaluation conducted
6 by Dr. Megan Williamson contained therein. (See Exhibit D.)

7 Fair rumination of youthful offender factors would have considered the extensive report
8 of Dr. Megan Williamson, the psychologist who evaluated Mr. Sirhan in the context of
9 youthful offender mitigation. Mr. Sirhan told Dr. Williamson that he is not the same person
10 who entered prison at 24 years old. He told the doctor: "It's hard to describe because I am a
11 different person, different collection with a different set of values." He told her he has
12 "maturity in [his] heart". (Ex. D, Dr. Williamson's Report, p. 14.) Pertaining specifically to
13 youth, Dr. Williamson explains that at the age Mr. Sirhan was when he committed his crime,
14 his brain, like all human brains, was not yet fully developed. Specifically, she explains:

15 "[t]he prefrontal cortex (PFC) has been identified as the last area to mature
16 in the human brain, reaching maturation at around 25 or 26 years old. The prefrontal
17 cortex is responsible for impulse control and organization of
18 emotional reactions, long-term and complex planning, focusing and
19 organizing attention, and reward response. In an individual with an underdeveloped
20 PFC, you are more likely to see an impulsive response
21 based upon emotion versus an intellectual response where the individual
22 can override emotion and think through his response. In addition, the
23 individual will have difficulty analyzing the possible consequences of the
24 actions."

25 (Ex. D, Dr. Williamson's Report, p. 16.) And despite this undisputed record evidence, the
26 Governor acknowledges, notably without elaboration, that Mr. Sirhan exhibited only "some of
27 the hallmark features of youth". (Gov. Decision, Ex. A, p. 7.) Dr. Williamson further states:

28 Mr. Sirhan has matured considerably since the offense. He is now a
77-year-old man who has spent more than fifty years behind bars.
During those fifty-plus years, Mr. Sirhan has only received two rule
violations. That last one was in 1972. He received multiple certificates,
graduated summa cum laude with an associate's degree, and earned almost
enough credits for a bachelor's degree. Through most of his incarceration,
he has maintained full-time employment. His CDCR record indicated a
CSRA [risk assessment] of 1, which suggests that Mr. Sirhan is at low risk

1 for future violence.

2 (Dr. Williamson Report, pp. 16-17.)

3 Despite this unrefuted evidence, the Governor concludes, again without factual support
4 in the record, that while Mr. Sirhan “has made some efforts to improve himself, ... the record
5 evidence shows that he has not internalized his rehabilitation programming sufficiently to
6 reduce his risk of dangerousness.” (Gov. Dec., Exh. A, p. 7.) There is nothing in the record
7 that supports the Governor’s claim. In fact, the record evidence demonstrates the opposite.
8 (See this Brief, pp. 5-8, pp. 21-22). For Mr. Newsom to ignore the factual record and draw
9 conclusions without accurate factual foundation is a violation of Mr. Sirhan’s due process.

10 The Governor states he duly considered Mr. Sirhan’s “subsequent growth and increased
11 maturity” as is required by California law (Pen. Code §§3051, 4801(c).) However, the
12 Governor’s decision not only entirely fails to consider Dr. Williamson’s opinion about Mr.
13 Sirhan’s growth and development as compared to the immature youthful offender he was 53
14 years ago, it ignores the repeated conclusions of CDCR psychologists who have concluded
15 that Mr. Sirhan has gained the appropriate insight into the causative factors contributing to his
16 crime – a demonstration of growth and maturity that must be considered. (Pen. Code §§3051
17 and 4801(c).) As our State Supreme Court reminds us:

18 “In cases where psychological evaluations consistently indicate that an
19 inmate poses a low risk of danger to society, a contrary conclusion must
20 be based on more than a hunch or mere belief that he should gain more
21 insight into his past behavior. The [deciding body] must point to evidence
22 from which it is reasonable to infer that the inmate’s lack of insight reveals
a danger undetected or underestimated in the psychological reports.”

23 (*In re Shaputis* (2011) 53 Cal.4th 192, 228 (*Shaputis II*) (conc. opn. of Liu, J.); see also *In re*
24 *Young* (2012) 204 Cal. App. 4th 288, 312; *In re Shelton* (2020) 53 Cal. App. 5th 650, 671.)
25 Penal Code section 4801(c) and 3051 require a comparison of youth-related traits to the person
26 the prisoner has become many years later. The Governor’s decision illustrates a hollow
27 conclusion without such analysis.

28 Moreover, in asserting that Mr. Sirhan has not done the work necessary to reduce his
risk of future danger, (See Gov. Dec., Exh. A, p. 7), the Governor erroneously and
impermissibly shifts the burden to Mr. Sirhan to prove he will not be a danger in the future.

1 However, that is an incorrect legal standard. Current dangerousness is the relevant inquiry (a
2 concept the Board properly understood when it stated that California is a presumptive state,
3 requiring a grant of parole unless the record evidence establishes current dangerousness. (Ex.
4 B, Parole Hearing, p. 159).). Statutory and case law dictate that parole shall be granted unless
5 the prisoner poses a current danger to public safety. (15 Cal. Code of Reg. §2402(a); *In re*
6 *Ross, supra*, 170 Cal. App. 4th 1490, 1502.) It must be emphasized again that parole is the
7 norm. Parole can only legally be denied if there is a finding of current dangerousness. (*In re*
8 *Lawrence, supra*, 1191.) And, such a finding must be supported by the factual record and the
9 opinions of experts and not upon conclusions lacking a factual basis. Assuming future
10 dangerousness and seeking support in the record to show the prisoner is *not* dangerous in order
11 to overcome a presumption of dangerousness is an impermissible application of the law, and
12 an impermissible burden shift onto the prisoner, and it violates due process.

13 The Governor similarly fails to acknowledge Mr. Sirhan's particular mental conditions
14 at the time of the crime, that together with his youth, made him even more susceptible to
15 committing his crime. Dr. Williamson diagnosed Mr. Sirhan with complex PTSD.
16 Symptoms include emotional regulation deficits and dissociative states. (Ex. D, Dr.
17 Williamson's Report, p. 15.) Dr. Williamson explains that Mr. Sirhan had not received mental
18 health treatment for his condition until his admission into CDCR.²¹ Dr. Williamson described
19 Mr. Sirhan's likely mental state at the time of the commission of his crime thusly:

20 "Although Mr. Sirhan was no longer living as a refugee in a war-torn
21 country, his trauma symptoms appeared to be triggered by viewing
22 newscasts on the Arab-Israeli war. His mother and brother recalled him
23 clenching his fists and staring off into space with an anguished facial
24 expression in the same manner he did in childhood during bombings."

24 (Ex. D, Dr. Williamson's Report, p. 15.) She opines that the news of the Jewish parade, which
25 was celebrating the outcome of the 6-day war with the Arabs²², combined with Robert

26
27 ²¹ While in the custody of CDCR, Mr. Sirhan has undergone extensive mental health treatment
28 and attended a myriad of self-help programs designed to assist in awareness and self-
regulation. The Governor failed to give due consideration to this "subsequent growth and
increased maturity" as he is required to do.

²² The June 5- 10, 1967 conflict resulted in the deaths of over 20,000 Arab troops and only less
than 1000 Israeli troops. (<https://en.m.wikipedia.org:Six-Day War>). Moreover, Mr. Sirhan, as a
young child, along with thousands of other Arabs, was physically run out of his home and
village in what the United Nations in 1971 called "the most serious violation of human rights

1 Kennedy's campaign pledge to further assist Israel militarily, could have triggered PTSD
2 response. She further explained:

3 Individuals with PTSD have been found to respond to perceived threats
4 more reactively than those without PTSD. In fact, structural changes
5 to the brain caused by long-term stress can cause a heightened response.
6 The most significant neurological impact of trauma can be seen in the considerably
7 decreased volume of the hippocampus. The hippocampus is
8 responsible for memory functions and aids in recording new memories
9 and retrieving them later in response to environmental stimuli. The hippo-
10 campus also assists in distinguishing between past and present memories. Therefore,
11 people with PTSD often lose the ability to discriminate between
12 past and present experiences or correctly interpret environmental contexts.
13 The involved neural mechanisms trigger extreme stress responses when confronted with
14 situations that simulate their traumatic past.
15 Meaning, an individual with PTSD can often misperceive interactions and mistakenly
16 interpret them as aggression. Additionally, individuals with
17 PTSD have been found to have a hyper-reactive amygdala and a less
18 activated prefrontal cortex (PFC). This means that people with PTSD
19 have less control, over-reactive anger, and impulsive behaviors when
20 emotionally triggered.

21 (Dr. Williamson's Report, p. 16.)

22 Dr. Williamson opined that the reaction Sirhan would have to hearing news about the
23 middle east conflict, as described by his mother and his brother, is a state of dissociation. She
24 declared that these states are associated with, of note, disruption of memory, awareness, sense
25 of identity and perception. In situations of chronic trauma, "the reliance on disassociation is
26 adaptive because it reduces the unbearable distress." (Dr. Williamson's Report, pp. 15-16.) Dr.
27 Williamson continues and opines that "[t]hese dissociative states may also be responsible for
28 Mr. Sirhan's notebook writings and his inability to recall specific facts of the case. The intense
arousal associated with trauma interferes with the ability to process and encode memory." (*Id.*,
p. 16.) Yet the Governor fails to consider this information when evaluating Mr. Sirhan's
subsequent growth and maturation. A fair consideration of the youthful offender mitigation
reveals the professional opinion that Mr. Sirhan's behavior at the time of the crime "is

that has come to its attention." (https://en.wikipedia.org/wiki/1967_Palestinian_exodus) In the
end, the Zionist occupation led to the demolition of over 400 Arab villages. (*Ibid.*)

1 consistent with an individual suffering from complex PTSD” whose dissociative states cause
2 memory and awareness deficits.

3 Because the Governor failed to appropriately consider youthful offender mitigation, not
4 only does it render the factors meaningless, but it denied due process for Mr. Sirhan, thus
5 requiring reversal of the Governor’s decision.

6
7 **G.**

8 **The Governor Deprived Mr. Sirhan of Federal and State Due Process**
9 **when he Failed to Recuse himself from the Decision in this Case**

10 The Governor additionally deprived Mr. Sirhan of a fundamentally fair hearing when
11 he failed to recuse himself from a matter on which he has repeatedly expressed an opinion
12 even before faced with the issue of Mr. Sirhan’s parole. He has often publicly referred to
13 Robert Kennedy as his “political hero”, and has described the “Robert Kennedy Shrine” he
14 had assembled in his home. Moreover, on September 15, 2021, he publicly announced that he
15 was “leaning against” parole; and on another occasion, he stated that while he believed in
16 redemption, Mr. Sirhan stole a lot of American dreams. He added that if Ethel Kennedy were
17 to contact him, that would weigh heavily on the decision.²³ These statements were made
18 prior to him even formally receiving Mr. Sirhan’s matter after the Board found him suitable
19 for release.²⁴

20 Due process required, given the Governor’s notorious affinity towards Mr. Sirhan’s
21 victim, that the Governor recuse himself from presiding over the decision on Mr. Sirhan’s
22 release. His failure to do so requires reversal of the Governor’s decision. “Impartiality”
23 entails the “absence of bias or prejudice in favor of, or against, particular parties or classes of
24 parties, as well as maintenance of an open mind.” (ABA Model Code Jud. Conduct (2007),
25 Terminology, at p. 4.) In the context of judicial recusal, “[p]otential bias and prejudice must

26
27 ²³ [https://apnews.com/article/sirhan-sirhan-middle-east-california-gavin-newsom-](https://apnews.com/article/sirhan-sirhan-middle-east-california-gavin-newsom-o8ab1b7dc92f58c78c2645c436311ba4)
28 [o8ab1b7dc92f58c78c2645c436311ba4](https://apnews.com/article/sirhan-sirhan-middle-east-california-gavin-newsom-o8ab1b7dc92f58c78c2645c436311ba4); and [https://news.yahoo.com/gov-newsom-ethel-](https://news.yahoo.com/gov-newsom-ethel-kennedv-opinion-181829284.html?guccounter=1&guce_referrer=aHR0cHM6Lv93d3cuZ29vZ2xlLmNvbS8&guce_referrer_sig=AOAAAGBtM67kc67XPnSJDtvYwGom6Y3SvHevYzfhz3GbvIZrRnUsOPBOVro55h9iGixaR5rO7J6fV1Li0av12BzO8Xb9K6HPAfZXiD7gipUecPuf-UZXQx7DypUuloi_v3eWwphrCaK2xAe2YCD0seK2CmYaqLb-J1dophYgaqw56WvX)
[kennedv-opinion-](https://news.yahoo.com/gov-newsom-ethel-kennedv-opinion-181829284.html?guccounter=1&guce_referrer=aHR0cHM6Lv93d3cuZ29vZ2xlLmNvbS8&guce_referrer_sig=AOAAAGBtM67kc67XPnSJDtvYwGom6Y3SvHevYzfhz3GbvIZrRnUsOPBOVro55h9iGixaR5rO7J6fV1Li0av12BzO8Xb9K6HPAfZXiD7gipUecPuf-UZXQx7DypUuloi_v3eWwphrCaK2xAe2YCD0seK2CmYaqLb-J1dophYgaqw56WvX)
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[UZXQx7DypUuloi_v3eWwphrCaK2xAe2YCD0seK2CmYaqLb-J1dophYgaqw56WvX](https://news.yahoo.com/gov-newsom-ethel-kennedv-opinion-181829284.html?guccounter=1&guce_referrer=aHR0cHM6Lv93d3cuZ29vZ2xlLmNvbS8&guce_referrer_sig=AOAAAGBtM67kc67XPnSJDtvYwGom6Y3SvHevYzfhz3GbvIZrRnUsOPBOVro55h9iGixaR5rO7J6fV1Li0av12BzO8Xb9K6HPAfZXiD7gipUecPuf-UZXQx7DypUuloi_v3eWwphrCaK2xAe2YCD0seK2CmYaqLb-J1dophYgaqw56WvX)

²⁴ See fn 3.

1 clearly be established by an objective standard.” (*People v. Chatman* (2006) 38 Cal.4th 344,
2 363, 42 Cal.Rptr.3d 621, 133 P.3d 534; see *In re Scott* (2003) 29 Cal.4th 783, 817, 129
3 Cal.Rptr.2d 605, 61 P.3d 402); *Haworth v. Superior Court of Los Angeles Cnty.*, (2010) 50
4 Cal. 4th 372.) Here, clearly, the Governor has a clear, articulated bias in favor of Robert
5 Kennedy, the victim.

6 Recusal of a decision maker in the context of any matter before a bench officer is
7 codified in Code of Civil Procedure section 170.1. Generally, recusal is based on the concept
8 of fundamental fairness a party should be able to remove a Judge if “[a] person aware of the
9 facts might reasonably entertain a doubt that the judge would be able to be impartial” (§ 170.1,
10 subd. (a)(6)(A)(iii)) involves sensitive considerations that strike at the “core” of our system of
11 justice — “the appearance of objectivity of the decision maker” — and require a careful
12 balancing of affected interests. (*United Farm Workers of America v. Superior Court* (1985)
13 170 Cal.App.3d 97, 100 (*United Farm Workers*.) These interests include “the public’s right to
14 be assured of the fair, but yet efficient, resolution of disputes” on one hand and “the parties’
15 right to a decision based upon the court’s objective evaluation of the facts and law” on the
16 other. (*Ibid.*)...” *United Farm Workers, Id.*)

17 While *United Farm Workers*, above, involved the disqualification of a trial judge, the
18 concepts articulated, to wit, “objectivity of the decision maker” and the “parties right to a
19 decision based upon the court’s objective evaluation of the facts and law” are equally – if not
20 more - applicable to the need for the Governor to be an objective arbiter regarding the
21 granting or denial of parole for a life prisoner.

22 Because Governor Newsom publicly stated his pre-disposition to reject the Board’s
23 recommendation of parole for Mr. Sirhan, stated that the victim was his childhood idol, and
24 because he made such statements about the outcome before even reading the Board record, he
25 evidenced a clear bias against Mr. Sirhan and in favor of the victim and / or his family. Due
26 process cannot stand for this.

27 ///

28 ///

1 II.
2 THE GOVERNOR ABUSED HIS DISCRETION UNDER STATE LAW
3 WHEN HE FOUND THAT MR. SIRHAN CURRENTLY POSES AN
4 UNREASONABLE RISK OF DANGER TO PUBLIC SAFETY BECAUSE HE
5 FAILED TO ASSESS MR. SIRHAN'S OVERALL
6 CIRCUMSTANCES UNDER THE PROPER LEGAL STANDARDS

7 A.
8 The Standard of Review: Independent Finding of
9 "Some Evidence" of Current Dangerousness

10 A parole decision by the Governor must be based on the same factors the Board is
11 required to consider. Constitutional due process requires that the decision be supported by
12 "some evidence" in the record. (*In re Shaputis, supra*, 53 Cal.4th at 221 (*Shaputis II*); *In re*
13 *Rosenkrantz, supra*, 29 Cal.4th at pp. 676–677.) Although the precise manner in which
14 the Governor balances the relevant factors lies within the Governor's discretion, "the decision
15 must reflect an individualized consideration of the specified criteria and cannot be arbitrary or
16 capricious." (*Ibid.*) "[T]he aggravated nature of the crime does not in and of itself provide
17 some evidence of current dangerousness to the public unless the record also establishes that
18 something in the prisoner's pre or post incarceration history, or his or her current demeanor
19 and mental state, indicates that the implications regarding the prisoner's dangerousness that
20 derive from his or her commission of the commitment offense remain probative to the
21 statutory determination of a continuing threat to public safety." (*In re Lawrence, supra*, 44
22 Cal.4th at p. 1214.) On review of a challenged reversal of the Board's recommendation for
23 release, courts independently review the entire record to determine "whether the identified
24 facts are probative to the central issue of current dangerousness when considered in light of the
25 full record before . . . the Governor." (*In re Lawrence*, at p. 1221.) To meet this standard of
26 review, the Governor's decision must establish a nexus between the suitability factor and the
27 finding of current dangerousness that is based on an application of the proper legal standard to
28 an accurate interpretation of the material facts. (*In re Rosenkrantz, supra*, 29 Cal.4th at p. 677;
In re Lawrence, supra, 44 Cal.4th at p. 1204; *In re Shaputis, supra*, 44 Cal.4th at 1260–1261
(*Shaputis I*); *In re Stoneroad, supra*, 215 Cal.App.4th at p. 616.) Thus, "[t]he proper

1 articulation of the standard of review is whether there exists ‘some evidence’ demonstrating
2 that an inmate poses a current threat to public safety, rather than merely some evidence
3 suggesting the existence of a statutory factor of unsuitability.” (*In re Lawrence, supra*, 44
4 Cal.4th at p. 1191; *Shaputis II, supra*, 53 Cal.4th at p. 209.) The Governor’s decision is
5 subject to reversal if it “does not reflect due consideration of all relevant statutory and
6 regulatory factors or is not supported by a modicum of evidence in the record rationally
7 indicative of current dangerousness, not mere guesswork.” (*Ibid.*) The “some evidence”
8 standard is violated if the Governor merely proves the existence of a statutory factor of
9 unsuitability without balancing that factor against the conclusion of a current unreasonable risk
10 of danger. *Ibid.*

11 In *In re Lawrence*, the California Supreme Court reversed the governor’s decision to
12 override his Board in its recommendation for parole because the governor had improperly
13 relied on the facts and circumstances of the crime itself to find that the prisoner/petitioner
14 remained a current danger to the public. Concluding that both the Board and the Governor are
15 bound by the confines of due process and statutory law, the California Supreme Court set aside
16 the governor’s decision because relying on the facts of the crime and simultaneously ignoring
17 evidence of the prisoner’s rehabilitation, insight, remorse and psychological health did not
18 comport with the due process and statutory rights to meaningful consideration for parole. It
19 explained that the “statutory and regulatory mandate to normally grant parole to life prisoners
20 who have committed murder means that, particularly after these prisoners have served their
21 suggested base terms, the underlying circumstances of the commitment offense alone rarely
22 will provide a valid basis for denying parole when there is strong evidence of rehabilitation
23 and no other evidence of current dangerousness.” (*Id.*, at 1211.)

24 Current dangerousness is the relevant inquiry by the Board. Statutory and case law
25 dictate that parole shall be granted *unless* the prisoner poses a *current* danger to public safety.
26 (15 Calif. Code of Regs., Sec 2402(a); *In re Ross* (2009) 170 Cal. App. 4th 1490, 1502.) And
27 due process is violated if parole is denied through simple identification of the existence or
28 non-existence of suitability or non-suitability factors. The California Supreme Court reminds
us: “It is not the existence or nonexistence of suitability or unsuitability factors that forms the

1 crux of the parole decision; the significant circumstance is how those factors interrelate to
2 support a conclusion of current dangerousness to the public.” (*Lawrence, supra*, at 1213.)

3 The Governor’s decision cites what it considered non-suitability factors (albeit, these
4 are wrongly construed or outright non-existent, see *supra*) but fails to provide the relationship
5 between those perceived factors and current dangerousness. Instead, the Governor simply
6 concludes these factors equate to unsuitability for release. But denying parole on a hunch that
7 non-suitability factors exist that equate to a finding of a current unreasonable risk to the public
8 violates due process. As our State Supreme Court reminds us:

9 “In cases where psychological evaluations consistently indicate that an
10 inmate poses a low risk of danger to society, a contrary conclusion must
11 be based on more than a hunch or mere belief that he should gain more
12 insight into his past behavior. The [deciding body] must point to evidence
13 from which it is reasonable to infer that the inmate’s lack of insight reveals
14 a danger undetected or underestimated in the psychological reports.”

15 (*In re Shaputis* (2011) 53 Cal.4th 192, 228 (*Shaputis II*) (conc. opn. of Liu, J.); see also *In re*
16 *Young* (2012) 204 Cal. App. 4th 288, 312; *In re Shelton* (2020) 53 Cal. App. 5th 650, 671.)

17 After 53 years in prison, with the last 49 years demonstrating an unblemished record of
18 institutional programming, rehabilitation, and psychological treatment, the Governor’s ill-
19 supported denial exceeded the limits of his legal discretion and must be reversed. It also
20 violated Mr. Sirhan’s rights of due process under the state and federal constitutions. (U.S.
21 Const., 5th & 14th Amends.; *Estelle v. McGuire* (1991) 502 U.S. 62; Cal. Const., art. 1, § 7,
22 subd. (a) *In re Lawrence* (2008) 44 Cal.4th 1181, 1192-1193.)

23 **B.**
24 **The Governing Legal Framework**

25 The California Supreme Court’s 2008 decision in *In re Lawrence, supra*, 44 Cal.4th
26 1181, provides the foundational legal framework for the standard of proof in parole decisions.
27 The high court in *Lawrence* reversed the Governor’s finding that Ms. Lawrence was not
28 suitable for parole on the ground that “some evidence” did not support the Governor’s
determination that Ms. Lawrence currently posed an unreasonable risk of danger to public
safety. (*In re Lawrence, supra*, 44 Cal.4th at p. 1191.) The defendant in *Lawrence* shot her

1 lover's wife four times then stabbed the wife to death with a potato peeler after becoming
2 enraged when the husband ended his extra martial affair with the defendant. After committing
3 the murder, the defendant told her family the murder was a birthday present to herself, then
4 fled the state. (*Id.*, at p. 1193.) Eleven years later, the defendant voluntarily returned to
5 California and surrendered herself to the authorities, but denied involvement in the murder. In
6 1983, she was convicted of first-degree murder and sentenced to an indeterminate life
7 sentence. (*Id.*, at p. 1190.) Like Mr. Sirhan, Ms. Lawrence received a number of positive
8 psychological evaluations. For her, it was during the last decade of her incarceration. (*Id.*, at
9 p. 1195.) For Mr. Sirhan it has been since the mid-1980's. Also like Mr. Sirhan, Ms.
10 Lawrence remained free of serious discipline violations throughout her incarceration and
11 contributed to the prison community in a variety of ways. She participated in many
12 educational groups and earned college degrees in prison. (*Id.*, at p. 1194.) Just as Mr. Sirhan
13 did. Mr. Sirhan obtained his AA degree, graduating *magna cum laud* with a 4.0 GPA; he
14 presided over self-help groups, including AA's; he consistently worked whenever work was
15 available. Moreover, to augment his decades-long record of positive programming, Mr. Sirhan
16 rigorously pursued Cognitive Behavior Therapy programs grounded in data that is verified to
17 reduce California's recidivism rate by half; thereby proving to the Board and Californians he is
18 prepared and eager to be a positive part of society.²⁵

19 In *Lawrence*, the Governor reversed Ms. Lawrence's grant of parole, just as in Sirhan's
20 case. In reinstating the Board's decision, the Supreme Court in *Lawrence* found the
21 Governor's decision was unsupported by the evidence or proper legal standard. The Governor
22 in *Lawrence* based his decision primarily on the gravity of the commitment evidence, with the

24 ²⁵ During the pandemic when correctional facilities essentially ceased all programming, Mr.
25 Sirhan pursued outside rehabilitative assistance through Redemption Row California. The
26 Executive Director and Chief Psychologist Jen Abreu and her partner Dr. Mohamed Elnakib,
27 Psy.D provided extraordinary rehabilitative programming for Mr. Sirhan that specifically
28 focused on insight, empathy, and self-awareness that was tailored specifically to his unique
long-term confinement. The Board appropriately recognized and commended Mr. Sirhan for
continuing with his rehabilitative work during the pandemic when many other prisoners used
the pandemic shut-down of programming as an excuse to take a break from self-improvement.
(Comm'r Barton's comment, 2021 Parole Hearing, p. 15.)

1 contributing factors of Ms. Lawrence's initial lack of remorse, early negative psychological
2 evaluations, and eight counseling "chronos" for minor prison violations. (*Id.*, at p. 1199) In
3 analyzing these factors, the Supreme Court found that, though each factor was historically
4 true, none of the factors applied to Ms. Lawrence's current behavior, nor had the Governor
5 cited a nexus between the historic factors and Ms. Lawrence's current circumstances. The
6 Supreme Court held that a finding of parole unsuitability requires proof that the inmate
7 currently poses an unreasonable risk of danger to public safety. (*Id.*, at p. 1191.) *Lawrence*
8 established that the relevant inquiry in parole decisions is, "whether the circumstances of the
9 commitment offense, when considered in light of other facts in the record, are such that they
10 continue to be predictive of current dangerousness many years after the commission of the
11 offense." (*Id.*, at p. 1235.) This inquiry is an "individualized one, and cannot be undertaken
12 simply by examining the circumstances of the crime in isolation, without consideration of the
13 passage of time" or other mitigating factors. (*Ibid.*)

14 The *Lawrence* Court found Ms. Lawrence suitable for parole even though she
15 shot her lover's wife and stabbed her to death with a vegetable peeler, after which
16 she characterized the murder as a birthday present to herself. Psychological
17 evaluations found her to be mildly psychotic, and that she initially showed no
18 remorse for the murder. (*Id.*, at p. 1199.) The Court found that the factors relied
19 upon by the Governor in denying parole were overcome by Ms. Lawrence's record of
20 rehabilitation in prison. (*Ibid.*) The legal standard applied to Ms. Lawrence proves
21 Mr. Sirhan too is suitable for parole because he currently does not pose an
22 unreasonable risk of danger to public safety.

23
24 **C.**

25 **None of the Factors Cited by the Governor Prove Mr. Sirhan**
26 **Currently Poses an Unreasonable Risk of Danger**

27 In assessing Mr. Sirhan's suitability for parole, the Governor was
28 required to go beyond the question of whether some evidence supported the
unsuitability factors he cited. The governing legal standard compelled him to
decide if some evidence supported the core determination of whether Mr. Sirhan's release on
parole would unreasonably endanger public safety. (*In re Lawrence, supra*, at p. 1209, italics)

1 added.) Citing character flaws is not enough. There must be a stated and proven nexus
2 between perceived non-suitability factors and current dangerousness. Otherwise, the
3 dangerousness finding is arbitrary and capricious, a hunch. The Governor's decision fails to
4 meet the required standard.

5 1. Gravity of the commitment offense

6 A primary reason for reversing Mr. Sirhan's recommendation for parole is the gravity
7 of the commitment offense. (Governor's Decision, Exh. A.) However, immutable historic
8 facts, such as egregious details of the commitment offense, lose their predictive value over
9 time because they do not account for the inmate's intervening reform. (*In re Lawrence, supra*,
10 44 Cal.4th at p. 1191.) Where the record is replete with evidence establishing an inmate's
11 rehabilitation, remorse, and current psychological health, balanced against a record devoid of
12 evidence that the inmate currently poses a threat to public safety, the inmate's due process
13 rights are violated by relying on immutable and unchangeable circumstances in denying a
14 grant of parole. (*Id.* at p. 1227.) The parole decision does not depend upon whether the
15 commitment offense was an exceptionally brutal murder. The Supreme Court has repeatedly
16 established that "the determination of whether an inmate poses a current danger is not
17 dependent upon whether his or her commitment offense is more or less egregious than other,
18 similar crimes. (*Id.*, at p. 1221; *In re Dannenberg, supra*, 34 Cal.4th at pp. 1083-1084, 1095;
19 see *In re Shaputis, supra*, 44 Cal.4th at p. 1254.) "Focus upon whether a petitioner's crime was
20 'particularly egregious' in comparison to other murders in other cases is not called for by the
21 statutes, which contemplate an individualized assessment of an inmate's suitability for parole .
22 . . ." (*In re Lawrence, supra*, 44 Cal.4th at p. 1217.) The determination of current
23 dangerousness does not depend "upon whether the circumstances of the offense exhibit
24 viciousness above the minimum elements required for conviction of that offense." (*In re*
25 *Shaputis, supra*, 44 Cal.4th at p. 1254.) All murders are egregious crimes involving extreme
26 violence. This does not preclude parole where the defendant is sentenced to an indeterminate
27 life term. In fact, the law presumes release of prisoners sentenced to indeterminate life
28 sentences. The presumption of parole can only be overcome with a legal finding of current
dangerousness. And that is why many individuals convicted of egregious murders have been
found suitable under the legal standard that they no longer pose an unreasonable risk of danger

1 to public safety. (See, e.g., *In re Dannenberg* (2005) 34 Cal.4th 1061, 1069; *In re Dannenberg*
2 (2009) 173 Cal.App.4th 237, 241; *In re MacDonald* (2010) 189 Cal. App.4th 1008, 1013-
3 1017; *In re Moses* (2010) 182 Cal.App.4th 1279, 1285-1286; *In re Twinn* (2010) 190
4 Cal.App.4th 447, 452.)

5 Mr. Sirhan's conviction charge of the murder of Senator Kennedy more than 50 years
6 ago is an immutable fact he can never change, regardless of the amount of rehabilitation or
7 positive programming he has accomplished. The Supreme Court in *Lawrence* acknowledged
8 that, "in rare circumstances, the aggravated nature of the crime alone can provide a valid basis
9 for denying parole, even when there is strong evidence of rehabilitation and no other evidence
10 of current dangerousness." (*Ibid.*) But, the Court continued by explaining that the gravity of
11 the commitment offense, as an immutable and unchangeable circumstance, must have a nexus
12 between the elevated circumstances of the commitment murder and the inmate's current
13 circumstances in order for it to support a conclusion that those same factors are present in the
14 inmate's current behavior. (*In re Lawrence, supra*, at pp. 1181, 1221; *In re Stoneroad, supra*,
15 215 Cal.App.4th 596, 614, 617.) The result of *Lawrence* and its progeny is that the
16 aggravating nature of a crime can no longer provide evidence of current dangerousness "unless
17 there is also evidence that there is something about the commitment offense which suggests
18 the inmate still presents a threat to public safety." (*In re Denham* (2012) 211 Cal.App.4th 702,
19 715, citing *In re Lawrence, supra*, at p. 1214; *In re Stoneroad, supra*, 215 Cal.App.4th at p.
20 621.) Since *Lawrence*, no published case has found that a rehabilitated inmate remains
21 unsuitable for parole based solely on the gravity of a commitment murder. In the instant
22 matter, the Parole Board considered the enormous gravity of Mr. Sirhan's offenses, but still
23 concluded Mr. Sirhan was not a current danger because of the plethora of mitigation in his
24 record that included over 49 years of good behavior and positive programming, no prior or
25 subsequent criminal record, adequate treatment for substance abuse, impressive awareness of
26 causative factors (See Ex. B, Parole Hearing, p. 169) and "those things that show you've gone
27 beyond that. And the fact that you were willing to step in, assist an officer when he was in
28 potential danger and that officer wrote of that".²⁶ (*Id.*, p. 169, lines 8-10.) The Board noted

²⁶ In fact, what the correctional described in his letter to the Board is Mr. Sirhan and another

1 that even though this crime was atrocious and Mr. Sirhan's acceptance of responsibility is "not
2 perfect", those things were "overwhelmingly outweighed by the factors in mitigation." (*Id.*, p.
3 162.) In other words, the Board found no nexus between Mr. Sirhan's commitment offense
4 and his current risk of danger. According to the Board, Sirhan's many years of positive reform
5 purged his risk factors from the person he is today.

6
7 2. The Inaptly Described "Shifting Narrative" of the Crime and the Governor's
8 Conclusion it Demonstrates Lack of Insight; the Governor's Unsupported Conclusion that Mr.
9 Sirhan has Failed to Denounce Violence; and the Governor's Erroneous Conclusion that Mr.
Sirhan Does Not Possess Appropriate Coping Skills

10 The Governor abused his discretion in reversing his Board's recommendation for
11 release on parole. The so-called "shifting narrative", bolstered in the Governor's decision with
12 non-existent facts, is unsupported by the record evidence. (Discussed *supra*, Memorandum of
13 Points and Authorities, Part ID2, pp. 19-27.) Moreover, the Governor's conclusion that Mr.
14 Sirhan has failed to denounce violence is unsupported and contrary to the factual record.

15 Finally, the Governor's conclusion that Mr. Sirhan lacks appropriate insight and
16 remorse is not only unsupported in the record, but it contradicts numerous trained
17 professionals who personally evaluated Mr. Sirhan. (See Statement of Facts, this Brief, Parts B
18 and C , *supra*.) The irrefutable facts are that as early as 1985, Sirhan expressed he learned
19 from his crime and "lives with it every day". He explained he matured and had time to reflect
20 on the value of human life. In 1989, he said he had "feelings of shame and inward guilt...it is
21 really a haunting experience and I honestly feel the pain that they [the Kennedys] may have
22 gone through." In 1990 a Psychological evaluator stated that he expressed "extreme remorse".
23 In Parole hearings he showed sympathy, sadness, and humility and acknowledged he prays for
24 the Kennedys regularly. Further, the Governor discounts the recent deep remorse and
25 compassion he showed to Mr. Robert Kennedy Jr. and the Kennedy family during an in-person
26 meeting. Further, the Governor disregards the opinion of Paul Schrade, a direct victim of Mr.
27
28

inmate assisted him in restraining two other inmates who had been fighting each other. The
correctional officer wrote: "I feel that without the assistance of Inmate [X] and Inmate Sirhan
B-21014 holding Inmate [X] back, I would have been jeopardized physically."

1 Sirhan's crime, and the opinion of Douglas Kennedy who attended the 2021 parole hearing
2 (discussed *supra*.)

3
4 **D.**
Other Factors Leading to an Abuse of Discretion

5
6 The Governor's outright failure to consider Penal Code section 3055 (elderly prisoner
7 parole); his failure to properly consider youthful offender mitigation (Pen. Code §§ 3051 and
8 4801(c)); his recitation of and reliance on fake facts; his misconstruction of the record; and his
9 impermissible shifting of the burden to Mr. Sirhan *to prove lack of dangerousness* (see
10 Discussion of all, *supra*) all contribute to an abuse of discretion warranting reversal of the
11 Governor's decision to deny parole.

12
13 **E.**
The Record Evidence Does not Establish That Mr. Sirhan Poses a Current
14 **Unreasonable Risk of Danger; thus He Meets the Standard for Parole Suitability**

15 It is to be recalled, that parole is the norm and it is presumed. Parole will only be
16 denied if there is evidence of current dangerousness. The prisoner need not prove that he is
17 *not* dangerous; the record evidence must affirmatively establish that he *is* currently
18 dangerousness.

19 Since 1972, Mr. Sirhan has not received a single serious rules violation. He is
20 described by current correctional officers as a "prosocial individual who follows directions and
21 avoids problems and problem inmates and displays no anger or loss of temper." (Board
22 Hearing, p. 168.) He has continued to do everything expected of him.

23 For instance, in the 1985 denial of parole, the Board recommended that Mr. Sirhan
24 remain discipline-free, upgrade his vocational abilities and education; participate in self-help
25 therapy and cooperate with clinicians for a transfer to "Category X [psychiatric treatment]
26 Program". Mr. Sirhan has continued to remain discipline free; he has continued to engage in
27 self-help and educational training when it has been available to him; he has continued to have
28 exceptional work performance, being described as a "reliable, productive, excellent worker".
(1987 Parole Hearing, pp. 38-39.) Mr. Sirhan not only regularly attended AA meetings, he
facilitated the meetings as the group leader and was inspiration to the others in the group.

1 (1990 Parole Hearing, pp. 26-27.) He obtained his AA degree and graduated with the
2 distinguished honor of *magna cum laud*. He also completed the Category X Psychological
3 program as directed. Sirhan involves himself in pro-social, positive programming with his
4 peers as well as community groups in society. He has been involved with developing a
5 curriculum that will be used to assist Lifer's and LWOP community which has academic merit
6 through various professors in the University of California system and mental health
7 professionals. He has collaborated with other incarcerated individuals on written works that
8 are pending publishing which center around remorse and insight. Sirhan continues to be an
9 active participant in religious activities by attending church services and involving himself in
10 faith-based programming. Sirhan has often tutored other inmates in various subjects who are
11 trying to obtain their GED. He maintains frequent contact through letter writing and phone
12 calls to his brother and outside support system.

13 Despite Mr. Sirhan's compliance with Board recommendations and Mr. Sirhan's stellar
14 record of rehabilitation, the Governor denied parole, defying his Board's recommendation and
15 ignoring the numerous and repeated CRAs assessing Mr. Sirhan at the lowest risk for violence.
16 The emerging message is that there is nothing that will satisfy the Governor – not low risk
17 assessments time after time, not discipline-free behavior for decades, not programming and
18 education, not a positive work history where he is commended by prison staff for being an
19 excellent worker who is respectful to staff and other inmates²⁷, not opinions by the trained
20 professionals who have evaluated him and concluded that he has demonstrated remorse and
21 understands the causative precedents to his crime, and not even doing exactly what the Parole
22 Board had recommended.

23
24
25 ²⁷ Within the letters the Board received from current correctional officers were statements
26 from one that stated: "I found [Sirhan] to be very upright in his character and respectful in his
27 conduct with staff and with his peers, without any deviance. He is polite and well-spoken, and
28 he exemplifies the rare 'model inmate' description that staff wishes to see in the inmate
population." Additionally, this correctional officer opined that Sirhan "avoids conflict".
Another correctional officer who submitted a letter on Sirhan's behalf stated that Sirhan has a
"non-violent predisposition." In this correctional officer's opinion, "[Sirhan] has exhibited the
attributes of a rehabilitated individual." Yet another correctional officer submitted a letter to
the Board in support of Mr. Sirhan. This correctional officer stated: "I view this individual as
genuine in his conduct and in his attempts to rehabilitate himself. In my opinion, I believe this
inmate has demonstrated remorse and has dealt with his incarceration in a positive manner.
Mr. Sirhan has been a model inmate and I believe he would continue this if he should be

1 Given the ongoing discipline-free passage of time, the performance of positive
2 programming, and the participation in the Board's list of recommendations, it is becoming
3 clear that the real reason for the Governor's denial of parole is reliance on the crime itself – the
4 immutable and unchanging facts of the commitment offenses.

5 “[I]n some cases, indefinite detention based solely on an inmate's
6 commitment offense, regardless of the extent of his rehabilitation, will
7 at some point violate due process, given the liberty interest in parole that
8 flows from the relevant California statutes”.

8 (*Irons v. Carey* (9th Circ. 2007) 505 F.3d 846, at 854.) The Governor's denial of parole under
9 these particular circumstances results in an abuse of discretion and a denial of due process.
10 Mr. Sirhan's record does not support a genuine finding of unsuitability justifying denial of
11 parole. Accordingly, this Court should overrule that the Governor's decision to deny parole
12 and reinstate the Board's decision granting it.

13 14 III.

15 16 **THE GOVERNOR'S DENIAL OF PAROLE VIOLATES THE EIGHTH** 17 **AMENDMENT'S PROHIBITION AGAINST CRUEL AND UNUSUAL** 18 **PUNISHMENT BY TURNING MR. SIRHAN'S INDETERMINATE** 19 **LIFE SENTENCE INTO A DE FACTO SENTENCE OF** 20 **LIFE WITHOUT THE POSSIBILITY OF PAROLE**

21 The Governor's refusal to fairly apply the governing legal standard to Mr. Sirhan's
22 individualized circumstances constitutes the imposition of a de facto sentence of life without
23 the possibility of parole. The Governor lacks the authority to change Mr. Sirhan's
24 indeterminate life sentence, with a minimum service term of seven years, into a sentence
25 where he cannot satisfy the governor and obtain a meaningful chance at life outside of prison.
26 (See *In re Lynch* (1972) 8 Cal.3d 410, 414 [if claim of constitutionally excessive punishment
27 is properly presented, it is for the courts, “as coequal guardian[s] of the Constitution, to
28 condemn any violation of that prohibition”].)

28 In general, fixing appropriate penalties for crimes falls within the exclusive
province of the Legislature. (See, e.g., *People v. Ward* (2005) 36 Cal.4th 186, 218;

released from prison.”

1 *People v. Dillon* (1983) 34 Cal.3d 441, 478.) Sentences implicate sensitive questions
2 of policy and values that “are in the first instance for the judgment of the Legislature [or the
3 people] alone.” (*In re Lynch, supra*, 8 Cal.3d at p. 414.) However, the legislative power to
4 craft punishments is subject to the constraints imposed by the state and federal Constitutions
5 against sentences that constitute cruel and unusual punishment. Defendants may rely on these
6 constitutional provisions to obtain relief from a sentence that was otherwise lawfully imposed.
7 (See *Hutto v. Davis* (1982) 454 U.S. 370, 374; *In re Dannenberg, supra*, 34 Cal.4th at p.
8 1071.) An inmate may challenge the minimum term established by a statute, “without regard
9 to the constitutionality vel non of the maximum.” (*In re Lynch, supra*, 8 Cal.3d at p. 419, fn.
10 9.) Inmates also may challenge the constitutionality of the long years of imprisonment the
11 inmate has served. “Life-top inmates may test, in court, whether their continued punishment
12 violates the Constitution” based on the serial denial of parole. (*In re Palmer II, supra*, 10
13 Cal.5th at p. at 971.)

14 Mr. Sirhan’s continued incarceration for more than 50 years based on a crime he
15 committed as a youthful offender, in which the Board has found him suitable for parole is
16 “shocking and offensive” within the meaning of the state and federal Constitutions. (U.S.
17 Const., 8th Amend; Cal. Const., art. I, § 17.)

18 The purpose of parole is to help inmates “reintegrate into society as
19 constructive individuals as soon as they are able, without being confined for the full
20 term of the sentence imposed.” (*Morrissey v. Brewer* (1972) 408 U.S. 471, 477.) Mr. Sirhan
21 was sentenced to life with the possibility of parole after service of seven years. He has served
22 more than 53 years and has been found suitable for parole by the Governor’s appointees. The
23 Governor’s refusal to allow parole in Mr. Sirhan’s case not only violates constitutional due
24 process and is an abuse of discretion, but it negates the importance of the vital role parole
25 serves in our system of criminal justice.

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IV.

**ALLOWING THE GOVERNOR, AS AN ELECTED OFFICIAL,
TO MAKE THE FINAL PAROLE DECISION IN MURDER CASES
VIOLATES EQUAL PROTECTION BY CREATING A DIFFERENT STANDARD
FOR PERSONS, LIKE MR. SIRHAN, WHO HAVE BEEN CONVICTED OF
CELEBRATED OR NOTORIOUS CRIMES**

A.

Summary of Argument

Since 1989, the California Constitution has given the Governor the authority to reverse grants of parole in murders cases. (Cal. Const., art. V, subd.(b), § 8.). The Governor, as an elected official, has an inherent conflict against approving parole for high profile defendants, such as Mr. Sirhan, whose grant of parole may be unpopular with the voting public. This results in an equal protection violation by creating a different parole standard for inmates whose murder convictions arise from celebrated or notorious crimes.

Governor Newsom's parole reversal in Mr. Sirhan's case proves he did not act as an impartial factfinder who applied the same legal standard in Mr. Sirhan's case. In his decision, the Governor stated:

"Mr. Sirhan's assassination of Senator Kennedy is among the most notorious crimes in American history. Senator Kennedy's murder caused his family immeasurable suffering, including his pregnant wife, their ten children, and the extended Kennedy family. Mr. Sirhan shot Senator Kennedy in front of news cameras²⁸, which subjected the Kennedy family and American public to a ubiquitous video loop of Senator Kennedy's violent death and his wife's anguish at his side.

Mr. Sirhan's crimes also caused great harm to the American people. Senator Kennedy's assassination upended the 1968 presidential election, leaving millions in the United States and beyond mourning the promise of his candidacy. Compounding the grief of the Kennedy family and the American public, Mr. Sirhan killed Senator Kennedy during a dark season of political assassinations, just nine weeks after Dr. Martin Luther King, Jr.'s murder and four and a half years after the murder of Senator Kennedy's brother, President John F. Kennedy.

(Governor's Decision, Exh. A, at p. 3.)

²⁸ See fn 12.

1 The Governor's characterization of the crime as "among the most notorious crimes in
2 American history", coupled with his recurrent public statement that Sirhan's victim is his hero
3 for whom he even dedicated a shrine of some sort in his home, and his conclusory statement
4 that despite Mr. Sirhan's record of rehabilitation, good behavior and programming, he "has
5 failed to develop the insight necessary to mitigate his current dangerousness" (Governor's
6 Decision, p. 10, Exhibit A) demonstrates that there is nothing Mr. Sirhan can do to obtain
7 parole from this governor. Accordingly, Mr. Sirhan and similarly situated inmates are
8 evaluated by a different parole legal standard than other inmates convicted of murder.

9
10 **B.**

11 **The Governor Violated Equal Protection by Evaluating Mr. Sirhan**
12 **Under a Different, Harsher, Standard for Granting Parole.**

13 Article V, section 8, subdivision (b) of the California Constitution states,

14 No decision of the parole authority of this State with
15 respect to the granting, denial, revocation, or suspension of
16 parole of a person sentenced to an indeterminate term upon
17 conviction of murder shall become effective for a period of
18 30 days, during which the Governor may review the
19 decision subject to procedures provided by statute. The
20 Governor may only affirm, modify, or reverse the decision
21 of the parole authority on the basis of the same factors which
22 the parole authority is required to consider. The Governor
23 shall report to the Legislature each parole decision
24 affirmed, modified, or reversed, stating the pertinent facts
25 and reasons for the action.

26 The statutory procedures for the Governor's review of a parole decision are
27 set forth in section 3041.2, which states:

- 28 (a) During the 30 days following the granting, denial,
revocation, or suspension by a parole authority of the parole
of a person sentenced to an indeterminate prison term
based upon a conviction of murder, the Governor, when
reviewing the authority's decision pursuant to subdivision
(b) of Section 8 of Article V of the Constitution, shall review
materials provided by the parole authority.
(b) If the Governor decides to reverse or modify a parole
decision of a parole authority pursuant to subdivision (b) of

1 Section 8 of Article V of the Constitution, he or she shall
2 send a written statement to the inmate specifying the
3 reasons for his or her decision.”

4 Prior to the addition of subdivision (b) to section 8 of article V, the power to
5 grant or deny parole was statutory and committed exclusively to the judgment and
6 discretion of the Board. (*In re Rosenkrantz, supra*, 29 Cal.4th at pp. 658–659; *In re*
7 *Fain* (1983) 145 Cal.App.3d 540, 548–550.) The Governor had no direct role in
8 decisions whether to grant or deny parole to an incarcerated individual, other than
9 to request that the full Board sitting en banc review a parole decision (Pen. Code §
10 3041.1) or revoke parole (Pen. Code § 3062). The constitutional authority of the Governor to
11 reverse a grant of parole by the Board was limited to the fundamentally distinct power to grant
12 a reprieve, pardon, or commutation. (*In re Fain, supra*, 145 Cal.App.3d at p. 548; see Cal.
13 Const., Art. V., § 8, subd. (a).) By adding subdivision (b) to section 8 of Article V, the
14 California voters conferred upon the Governor constitutional authority to review the Board’s
15 decisions concerning the parole of individuals who have been convicted of murder and serving
16 indeterminate sentences for that offense.

17 Prior to the addition of subdivision (b), the American Civil Liberties Union (“ACLU”)
18 opposed this expansion of the Governor’s role in parole decisions because it raised “serious
19 questions of due process and equal protection by attempting to create a different standard for
20 persons convicted of celebrated or notorious crimes.” (Exh. E, [arguments in opposition to
21 SCA 9].)

22 The ACLU further opposed the proposal as adding a supplemental level of executive
23 authority not in existence at the time the individual committed and was subsequently convicted
24 of a criminal offense and argued against expanding the Governor’s role in this way because it
25 “improperly attempts to override the neutrality and expertise of the parole authority.” As
26 relevant here, the ACLU further argued,

27 Decisions made by the granting authority would be provisional for
28 the 30-day term during which the state executive may find it expedient
to unilaterally disregard or disaffirm the initial decision. Such revisions
by a Governor could easily result from political or popular influences
that, properly, are not considered by the parole authority. This factor
alone would allow subjective and often irrelevant or irrational concerns

1 to override carefully considered factual judgments.

2 (*Id.*, Exh. E, [arguments in opposition to SCA].)

3
4 This prescient concern has materialized in Mr. Sirhan’s case. The Governor’s parole
5 reversal that is based on a lack of evidence and an improper application of the relevant law,
6 violated equal protection by creating a class of inmates convicted of infamous murders who
7 are judged more harshly by the Governor.

8 The Fourteenth Amendment to the United States Constitution and article I, section 7 of
9 the California Constitution guarantee all persons the equal protection of the laws. (*In re*
10 *Williams* (2020) 57 Cal.App.5th 427, 433.) Persons who are similarly situated with respect to a
11 law’s legitimate purposes must be treated equally. (*People v. Brown* (2012) 54 Cal.4th 314,
12 328.) Equal protection of the law is denied where no rational relationship exists between the
13 disparity of treatment and a legitimate governmental purpose. (*People v. Turnage* (2012) 55
14 Cal.4th 62, 74.)

15 In evaluating a claimed equal protection violation, courts undertake *de novo* review in
16 answering two questions to decide whether a statutory distinction is so devoid of even minimal
17 rationality that it violates equal protection. (See *People v. Laird* (2018) 27 Cal.App.5th 458,
18 469.) First, it must be determined if the state has adopted a classification affecting two or more
19 groups that are similarly situated in an unequal manner. (*People v. Chatman* (2018) 4 Cal.5th
20 277, 289.) Here, article V, section 8, subdivision (b) of the California Constitution has
21 resulted in the creation of a class of inmates convicted of high profile, notorious murders
22 whose grants of parole by the Board are reversed by the Governor as a result of political or
23 popular influences that, properly, are not considered by the parole authority. This allows
24 subjective and often irrelevant or irrational concerns to override carefully considered factual
25 judgments by the Board. The first step of an equal protection argument is satisfied in this case.

26 Second, an equal protection claim is successfully stated if the challenged classification
27 of a similarly situated group bears no relationship to a legitimate state purpose under “rational
28 basis” scrutiny. (*People v. Love* (2020) 55 Cal.App.5th 273, 287–288.) This second element is
met because there can be no legitimate purpose to disregard the applicable standard for
assessing parole suitability based on the subjective and irrelevant concern over currying public

1 favor by an elected official. Although “rational basis scrutiny” is exceedingly deferential, it is
2 met in this case because it is not possible to conceive of a rational reason for the resulting
3 differential treatment between rehabilitated inmates who qualify for release to parole under the
4 governing legal standard, but who are denied parole because a contrary finding would be
5 unpopular with the voting citizenry. Nor can the Kennedy family’s influence be ignored,
6 which led to further improper political influence that should not properly be considered by the
7 gate-keeper. After the Board’s recommendation for Mr. Sirhan’s release and leading up to the
8 Governor’s decision, members of the Kennedy family published several Op Eds in various
9 publications and secured many public appearances condemning the Board’s recommendation
10 to release Mr. Sirhan and appealing to the Governor to reverse the decision. The Kennedy
11 family’s political influence over the last six decades cannot be ignored. Such influence in
12 combination with the political aspirations of the decision maker makes for an impermissible
13 classification for some lifers with the no legitimate basis for the disparate treatment.
14 Accordingly, Article V, section 8, subdivision (b) of the California Constitution violates the
15 Equal Protection Clause of both the U.S. and State Constitutions. (U.S. Const., Amend. 14,
16 Sec. 1; Cal. Const. Art. 1, Sec. 3(b)(4).)

17 18 CONCLUSION²⁹

19 The real reason for the Governor’s reversal is the victim’s identity, Robert Kennedy.
20 Not only is Robert Kennedy this Governor’s political hero, as the Governor publicly stated just
21 weeks before denying Mr. Sirhan’s parole, the Kennedy name remains a stalwart force in
22 American politics. The Governor’s decision was based on his personal affinity towards the
23 victim and his continued political ambitions, not on the requirements of due process.

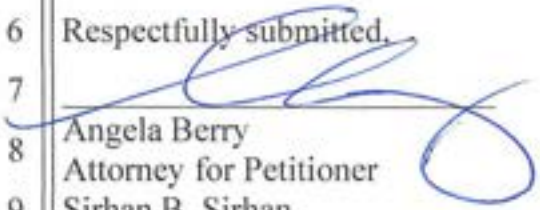
24 Because the record evidence fails to establish some evidence of current dangerousness,
25 the Governor deprived Mr. Sirhan of constitutional due process and violated state law by
26 abusing his executive discretion. Mr. Sirhan is not currently an unreasonable risk to public
27

28 _____
²⁹ Counsel for Mr. Sirhan gives special recognition and thanks to Denise F. Bohdan, CA attorney and RFK assassination researcher, for her invaluable assistance in the preparation of this legal filing. The unique combination of her knowledge of the facts of the assassination and her legal prowess have made her an indispensable companion in this journey.

1 safety if placed on supervised parole. Therefore, it is respectfully requested this Honorable
2 Court grant the requested relief.

3
4 DATED: September 25 2022

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6 Respectfully submitted,

7 
8 Angela Berry
9 Attorney for Petitioner
10 Sirhan B. Sirhan
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1 PROOF OF SERVICE
2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I, Angela Berry, declare:

4 I am employed in the City and County of Los Angeles, California. I am over the age of
5 18 years and not a party to the within action. My business address is 75-5660 Kopiko Street,
6 Suite C-7, #399 Kailua-Kona, HI 96740.

7 On September ___, 2022, I served the foregoing document described as PETITION
8 FOR WRIT OF HABEAS CORPUS upon the persons shown below:

9 Los Angeles County District Attorney's Office
10 211 W. Temple Street
11 Los Angeles, CA 90012

12 Attorney General, Rob Bonta
13 300 S Spring Street
14 Los Angeles, CA 90013

15 Mr. Sirhan Sirhan CDCR # B21014
16 R. J. Donovan Facility, CDCR
17 480 Alta Road, San Diego, CA 92179

18 _____ **(BY MAIL)** I am readily familiar with the firm's practice of collection and processing
19 of correspondence for mailing with United States Postal Service, and that the
20 correspondence shall be deposited with the United States Postal Service this same day
21 in the ordinary course of business pursuant to Code of Civil Procedure Sec. 1013(e).

22 _____ **(BY FACSIMILE)** In addition to service by mail as set forth above, a copy of said
23 document(s) also was/were delivered by facsimile transmission to the addressee
24 pursuant to Code of Civil Procedure Sec. 1013(e).

25 _____ **(BY PERSONAL SERVICE)** I hand-delivered said document(s) to the addressee
26 pursuant to Code of Civil Procedure Sec. 1011.

27 _____ **(BY EXPRESS MAIL)** I caused said document(s) to be deposited in a box or other
28 facility regularly maintained by the express service carrier providing overnight delivery
pursuant to Code of Civil Procedure Sec. 1013(c).

I declare under penalty of perjury under the laws of California that the foregoing is true
and correct.

Executed at Kailua-Kona, HI, on this ___ day of September, 2022.

Angela Berry