

# Sample Habeas Petition – Board Denial

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8  
9 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES  
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11 LISA BUSTAMANTE,  
12  
Petitioner,  
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14 vs.

15 KIMBERLY HUGHES, Warden of the  
California Institution for Women  
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Respondent.  
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) Case No.:  
) Original Case No.: A081732)  
)  
) **PETITION FOR WRIT OF HABEAS  
CORPUS; MEMORANDUM OF POINTS  
AND AUTHORITIES**  
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1 **PETITION FOR WRIT OF HABEAS CORPUS**

2 **I. INTRODUCTION**

3 1. Petitioner Lisa Bustamante (hereinafter “Ms. Bustamante”) has served more than  
4 33 years in prison, well beyond her minimum eligible parole date of July 30, 1995, for killing  
5 Onyewuchi ChiChi Amaechi. (Ex. A, 2015 Parole Tr. and Decision, at 4.) Ms. Bustamante’s  
6 actions on the day of the commitment offense were the culmination of a difficult childhood,  
7 inability to deal with grief, and a long-term addiction to heroin. She has spent the past two  
8 decades participating extensively in self-help groups, seeking out mental health treatment,  
9 strengthening her twenty-year commitment to sobriety, and expressing remorse for her actions.

10 2. On May 5, 2015, the California Board of Parole Hearings (hereinafter referred to  
11 as “The Board”) denied Ms. Bustamante parole for three years. (*Id.* at 109.) The Board stated  
12 that Ms. Bustamante lacked insight into how drugs were a trigger for her commitment offense,  
13 that Ms. Bustamante could not identify dangerous situations, and that Ms. Bustamante needed to  
14 admit that her offense was gang related. (*Id.* at 116, 118.)

15 3. There is no evidence in the record to support the Board’s 2015 decision that Ms.  
16 Bustamante poses a current danger to society if released on parole. Ms. Bustamante has been a  
17 model inmate since 1997, having remained 115 disciplinary-free for nearly two decades and  
18 sober for twenty years. (*Id.* at 59-60, 62.) Ms. Bustamante has received significant supportive  
19 chronos for her release, including chronos from the Warden and Associate Warden of Valley  
20 State Prison for Women (hereinafter “VSPW”) (Ex. G, Support Letter from Warden Gloria  
21 Henry, at 459.) She was also the co-founder of the Crossroads Youth Intervention program at  
22 VSPW. (Ex. A at 66-67.) The Board’s decision denying parole was arbitrary and capricious, in  
23 violation of Ms. Bustamante’s due process rights under the California Constitution.

24 **II. PARTIES**

25 4. Petitioner Lisa Bustamante is a prisoner of the State of California, unlawfully  
26 confined at the California Institution for Women (“CIW”) in Corona, California. She is  
27 incarcerated at CIW, pursuant to her conviction in Los Angeles County Superior Court, Case No.  
28 A081732.

1           5.       Respondent Kimberly Hughes is the warden of CIW. Warden Hughes is the legal  
2 custodian of Ms. Bustamante.

3 **III.    STATEMENT OF THE CASE**

4           6.       Petitioner is unlawfully incarcerated by her custodian, Warden Kimberley  
5 Hughes, pursuant to convictions for murder in the second degree, in violation of California Penal  
6 Code §187; robbery, in violation of California Penal Code §211; and three counts of assault by  
7 means of force likely to produce great bodily injury, in violation of California Penal Code  
8 §245(a); in Los Angeles County Superior Court, Case No. A081732. Ms. Bustamante was  
9 sentenced to 19 years-to-life in 1982.

10          7.       Ms. Bustamante began serving her sentence on June 17, 1982. Ms. Bustamante  
11 became eligible for parole on July 30, 1995, over twenty years ago. The Board of Parole  
12 Hearings has denied Ms. Bustamante parole six times on June 30, 2003, January 31, 2005,  
13 December 20, 2007, February 25, 2009, February 23, 2012, and May 5, 2015.

14          8.       No administrative remedies are available to challenge the Board's decision.

15 **IV.    STATEMENT OF FACTS**

16 **A.    Background**

17          9.       Ms. Bustamante was born and raised in Los Angeles, California. (Ex. A at 26.)  
18 She is the youngest of five siblings and grew up surrounded by drug use and criminality. (*Id.* at  
19 26-27; Ex. B, 2015 Parole Tr., Confidential Portion, at 167-68.) Throughout her childhood, Ms.  
20 Bustamante recalls seeing her brothers coming home after fights with bloody cuts and wounds.  
21 (*Id.* at 174.) During her youth, both of her parents were arrested for drug sales. (Ex. D, 1985-  
22 2015 Psychological Evaluations, at 247.) All three of Ms. Bustamante's brothers and her mother  
23 were addicted to heroin. (Ex. C, 2014 Parole Tr., at 202.)

24          10.       Ms. Bustamante's brothers were all members of local street gangs in Venice,  
25 California. (*Id.* at 170.) Her family members were well known in the Los Angeles community  
26 for their leadership roles within the Mexican Mafia. (Ex. B at 141-42.) Ms. Bustamante grew up  
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1 surrounded by gang members and the gang culture. (*Id.*, Ex. C at 189-90.) She was taught to  
2 always look out for herself and to carry a knife for protection. (*Id.*, Ex. A at 43.)

3 11. When Ms. Bustamante was approximately eleven-years-old, her father began  
4 serving a prison term for second-degree murder. (Ex. A at 26-27.) Ms. Bustamante’s mother  
5 provided for the family alone by working late night shifts and selling drugs to pay the bills. (Ex.  
6 C at 168-69, 228.) Ms. Bustamante was very young at the time and was afraid of being home  
7 alone at night while her mother worked. (*Id.* at 228.) She often called her brothers late at night  
8 and they told her to take a taxi to their apartment. (*Id.*) At her brother’s apartment, she would  
9 see her brothers using and selling narcotics. (*Id.* at 228-29)

10 12. Ms. Bustamante’s brothers were constantly in and out of prison for various  
11 offenses. (Ex. D at 240.) Ms. Bustamante remembers visiting her brothers in prison throughout  
12 her childhood. (Ex. A at 31-32.) During these visits she would cry, ask them to stop their  
13 behavior, and express her desire for them to come home. (*Id.*)

14 13. Ms. Bustamante began experimenting with drugs between the ages of twelve and  
15 thirteen. (Ex. D at 247.) She began smoking marijuana, sniffing paint fumes, and using  
16 “downer” pills occasionally at this time. (*Id.*) She also tried PCP when she was sixteen, but did  
17 not use the drug very often. (*Id.*)

18 14. Ms. Bustamante also began skipping school in sixth grade and dropped out in  
19 seventh grade when she became pregnant. (Ex. D at 248, Ex. C at 172-73.) Ms. Bustamante  
20 began dating the father of her child, Oscar Casillas, when she was only thirteen and became  
21 pregnant at fourteen. (Ex. D at 248.) After learning of the pregnancy, Ms. Bustamante’s mother  
22 took the two of them to Mexico to get married. (*Id.*) At the age of fifteen, Ms. Bustamante gave  
23 birth to a son. (*Id.*)

24 15. After having her son, Ms. Bustamante and her husband began a life together in an  
25 apartment in Los Angeles, California. (Ex. C at 174, 229.) Later, Ms. Bustamante’s mother  
26 asked them to move into the family home. (*Id.* at 174.) After moving back home, Ms.  
27 Bustamante’s husband began using heroin and became addicted. (*Id.* at 229.) Ms. Bustamante  
28

1 first tried heroin at the age of sixteen out of curiosity, but her use was not yet habitual. (*Id.* at  
2 171, 174.) Ms. Bustamante blamed her family for her husband’s addiction. (*Id.*) Ms.  
3 Bustamante was only seventeen-years-old when her husband died of a heroin overdose. (Ex. D  
4 at 248.)

5 16. Ms. Bustamante cites her husband’s death as the beginning of a downward spiral  
6 that would eventually lead to her commitment offense. (Ex. C at 174.) To cope with her  
7 husband’s death, Ms. Bustamante buried herself in heroin. (*Id.* at 175.) In her 2014 Board  
8 hearing she stated, “I just said, heck with it, I don't care about anything. I didn't care if I lived or  
9 died.” (Ex. C at 175) Although she had tried various drugs, her use was never habitual until her  
10 husband passed away. (*Id.*)

11 17. Between the ages of eighteen to twenty-one, Ms. Bustamante associated with  
12 members of street gangs. (Ex. D at 249.) Her interactions with gang members included  
13 attending their social gatherings, drinking, and using narcotics. (Ex. A at 29.)

14 18. At the age of twenty-one, Ms. Bustamante moved in with her boyfriend, Barney  
15 Lopez. (Ex. D at 248.) Mr. Lopez was a heroin user and a member of a Venice street gang. (*Id.*,  
16 Ex. A at 45-46.) The commitment offense occurred shortly after Ms. Bustamante moved in with  
17 Mr. Lopez. (Ex. D at 248.)

18 **B. Commitment Offense**

19 19. On November 30, 1980, Ms. Bustamante and her boyfriend, Barney Lopez, drove  
20 to Venice, California. (Ex. A at 40.) He dropped Ms. Bustamante off at her friend’s house. (*Id.*)  
21 While he was gone, Ms. Bustamante and her friend, Nora Massie, began taking Valium, and  
22 drinking alcohol. (*Id.*) Mr. Lopez then returned and the three of them went to buy some heroin.  
23 (*Id.*)

24 20. On their way back from buying heroin, they stopped at McDonald’s. (*Id.*) Ms.  
25 Massie and Ms. Bustamante went into the McDonald’s restroom to use the heroin. (*Id.*)  
26 Katherine Metcalf, a customer at the McDonald’s, attempted to use the restroom and began  
27 knocking on the door. (*Id.*, Ex. D at 256.) Ms. Bustamante responding by yelling “just a  
28 minute,” but Ms. Metcalf knocked again a little louder. (Ex. A at 40.) Ms. Bustamante became



1 agitated, swung the door open, and said, “Can’t you see somebody’s in here?” (*Id.*) When Ms.  
2 Metcalf said she was going to get the manager, Ms. Bustamante then struck her in the face and  
3 the two fell to the ground. (*Id.*) A witness, Thomas Lamb, attempted to intervene but Mr. Lopez  
4 took a baseball bat from his trunk and struck Mr. Lamb in the head and face. (*Id.* at 41, Ex. C at  
5 185.) Ms. Bustamante, Mr. Lopez, and Ms. Massie left the scene. (Ex. A at 41.)

6 21. Ms. Bustamante and her codefendants purchased more heroin and stopped at a gas  
7 station so Ms. Bustamante could use it. (*Id.*) The group was also drinking throughout the night  
8 and eventually arrived at a 7-11 convenience store in the early morning hours of December 1,  
9 1980. (*Id.*, Ex. D at 256-57.) Leon Harris, the store clerk, and Chi-Chi Amaechi, the store  
10 security guard were inside the store. (Ex. E, *People v. Bustamante*, 2d Crim. No. 42698, slip. op.  
11 (Cal. Ct. App. June 20, 1985), at 306.) Mr. Harris noticed Mr. Lopez’s car pull up next to his  
12 and that Mr. Lopez’s car door appeared to be touching Mr. Harris’ car. (*Id.*) An argument  
13 erupted between Mr. Lopez and Mr. Harris. (*Id.* at 307.) Mr. Amaechi stepped outside to bring  
14 some calm to the situation. (*Id.*) Mr. Lopez then began arguing with Mr. Amaechi and the  
15 argument escalated into a physical fight. (*Id.*) The two of them ended up on the ground. (*Id.*)

16 22. Ms. Bustamante saw Mr. Amaechi on top of her boyfriend and became angry.  
17 (Ex. A at 42.) She rushed over to Mr. Lopez’s side and stabbed Mr. Amaechi twice in the chest.  
18 (*Id.*)

19 23. Mr. Harris and Mr. Amaechi retreated into the store where Ms. Bustamante, Ms.  
20 Massie, and Mr. Lopez followed. (Ex. E at 307.) Mr. Lopez brought his bat into the store and  
21 began breaking windows while Ms. Bustamante and Ms. Massie threw things off the shelves.  
22 (*Id.*) Ms. Bustamante and Ms. Massie threw the cash register on the floor and collected the  
23 money inside. (*Id.* at 308.)

24 24. Ms. Bustamante and her codefendants fled the scene. (*Id.*) Mr. Amaechi was  
25 pronounced dead by paramedics who arrived at the store minutes after the incident. (*Id.*) Police  
26 caught Ms. Bustamante, Mr. Lopez, and Ms. Massie within a few minutes of their escape. (*Id.*)  
27  
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1           **C.     Post-Commitment Rehabilitation and Programming**

2           25.     Although Ms. Bustamante had a poor post-conviction record when she began  
3 serving her sentence, in 1995, she made the decision to change her behavior and begin her road  
4 to recovery. (Ex. A at 62.) Her son, Oscar Casillas, came to visit her in prison in 1995, he was  
5 aware of her poor disciplinary record at the time and of her drug use. (*Id.*) He asked her, “When  
6 is it going to stop?” (*Id.*) Ms. Bustamante promised her son she was going to change her life  
7 and she kept that promise. (*Id.* at 62-63.) Ms. Bustamante was then transferred to a new prison,  
8 Valley State Prison for Women, and dramatically changed her life by becoming sober, staying  
9 disciplinary free, and meaningfully engaging in programming. (*Id.* at 62-63, 69-70.)

10           1.     Sobriety

11           26.     Ms. Bustamante has been sober for over two decades, using heroin for the last  
12 time in 1995. (Ex. C at 176.) This stands in stark contrast to Ms. Bustamante’s behavior prior to  
13 1995, which includes several 115’s for using heroin. (Ex. A at 60.) Ms. Bustamante was also  
14 found guilty of three in-prison convictions, one for possession of heroin, and two for possession  
15 of drug paraphernalia. (Ex. A at 32.) She also sold narcotics in the institution prior to 1995 to  
16 support her own drug habit. (Ex. C at 194-95.)

17           27.     Since 1995, Ms. Bustamante has not only remained sober but has also been  
18 actively involved in Narcotics Anonymous (“NA”) and Co-Dependents Anonymous (“CODA”).  
19 (Ex. C at 178.) Ms. Bustamante has consistently attended NA and CODA for the last twenty-one  
20 years and has been able to identify both her internal and external triggers of substance abuse.  
21 (Ex. A at 38.) Ms. Bustamante now understands her triggers for substance abuse to be her  
22 grieving, her family history, and negative associations. (Ex. D at 241, Ex. F, 2014 and 2015  
23 Parole Hr’g Exhibits, at 341.) She has put together a detailed relapse prevention plan to maintain  
24 her sobriety outside prison. (Ex. F.) Her relapse prevention plan identifies all of her substance  
25 abuse triggers, includes the use of an NA sponsor, staying away from other drug users, and  
26 contains several positive, pro-social contacts for Ms. Bustamante to maintain a healthy lifestyle.  
27 (*Id.* at 340-46.)

1           28.     In her most recent psychological evaluation, dated April 13, 2015, the evaluator  
2 stated that, “Ms. Bustamante described an understanding of the role drugs and alcohol played in  
3 the life crime and her problems while incarcerated, and stated that she realizes she must abstain  
4 from drugs and alcohol. (Ex. D at 241.) She described both internal and external triggers to  
5 relapse, such as ‘grief or losing someone,’ as well as, going back to her old neighborhood, seeing  
6 old friends or being around drugs.” (*Id.*) Ms. Bustamante further explained that the reason drugs  
7 helped her cope with the grief of losing her husband was because they allowed her to be numb.  
8 (*Id.*) Ms. Bustamante was able to explain her relapse prevention plan to the evaluator who  
9 wrote, “Her relapse prevention plan consists of calling her sponsor if she experiences a trigger,  
10 going to regular meetings, going to church and sharing her testimony.” (*Id.*)

11                     2.     *Behavior*

12           29.     Ms. Bustamante has been disciplinary-free for 18 years. (Ex. A 59-60.) Although  
13 Ms. Bustamante was given thirty-nine disciplinary CDCR 115’s over her first fifteen years in  
14 prison, her last 115 was in May of 1997. (*Id.*) In 2014, the Board commended Ms. Bustamante  
15 for transforming her behavior and remaining disciplinary free for nearly two decades. (Ex. C at  
16 221.)

17           30.     Ms. Bustamante has institutional support for her release from many correctional  
18 officers and even a support letter from the former Warden of Valley State Prison for Women.  
19 (Ex. A at 69-70.) Warden Gloria A. Henry described Ms. Bustamante’s behavior when she  
20 entered custody as being a long way from that of a model inmate. (Ex. G at 459.) Ms. Henry  
21 said that Ms. Bustamante has grown today, is a mature woman, has come to terms with her past,  
22 has been disciplinary and drug free since 1997, has participated in various self-help programs,  
23 has helped young lifers make a positive transition into prison, and concluded the letter by stating  
24 that Ms. Bustamante will pose a minimal risk to the community and should be granted parole.  
25 (*Id.*)

26           31.     Several correctional officers, lieutenants, and an Associate Warden have all  
27 commended Ms. Bustamante for being a model inmate in laudatory chronos. (*See* Ex. H,  
28

1 Laudatory Chronos.) Correctional Officer Sharp opined that he believes Ms. Bustamante  
2 stabilizes the housing unit with her positive and pleasant demeanor and shows respect and  
3 professionalism towards staff. (*Id.* at 476.) Correctional Lieutenant Tony Martinez commented  
4 on Ms. Bustamante’s leadership role in the institution, stating that some of her notable  
5 achievements as a member of the Woman’s Advisory Council (“WAC”) have been assisting in  
6 the implementation of Narcotic Anonymous, initiating the Long Termer’s Organization, assisting  
7 with the Self Help Program, funding raising for Victim Services of Madera County, and co-  
8 founding Crossroads, a youth intervention program. (*Id.* at 466.)

9 3. Youth Mentorship

10 32. Lieutenant Moreno described Ms. Bustamante’s initiative in founding the  
11 Crossroads program in a laudatory chrono. (*Id.* at 460.) He stated it was a pleasure working  
12 with Ms. Bustamante to put the project together and that she contributed a considerable amount  
13 of her personal time to research, type, and prepare the project proposal. (*Id.*) The program they  
14 created together brought troubled youth from local schools, juvenile facilities, recovery homes,  
15 and community groups to prison for presentations by inmate speakers. (*Id.*) The program aimed  
16 to prevent teens from being involved with criminal, gang, and substance abuse activities. (*Id.*)

17 33. Ms. Bustamante’s program was featured on an episode of A&E’s “Beyond Scared  
18 Straight.” (Ex. F at 380.) Ms. Bustamante has a letter of thanks from the show’s Producer,  
19 along with a thank you letter from a high school teacher who showed the program to her  
20 students. (*Id.* at 380-81.) Ms. Bustamante also presented the Board with letters from Wesley  
21 Davis Jr., a community counselor, and Manuel Reyes, an Officer with the Soledad Police  
22 Department, both of whom personally supported Ms. Bustamante’s release based on their  
23 interaction with her over the many years that she conducted the Crossroads program. (*Id.* at 378-  
24 79.)

25 4. Programming

26 34. Ms. Bustamante participates in numerous self-help groups and organizations  
27 specifically tailored to address her past difficulties with anger management, drug abuse, and  
28 negative associations. Ms. Bustamante has taken programs within the categories of Substance

1 Abuse, Choice Theory, Alternatives to Violence, insight programs, inmate leadership, and  
2 community service. (See Ex. F 397-420.) These programs include Narcotics Anonymous,  
3 Alcoholics Anonymous, Co-Dependents Anonymous, Choice Theory, Alternatives to Violence,  
4 A Place Called Self, Twelve Steps – A Spiritual Journey, Restorative Justice – Victim Impact,  
5 Relapse Prevention Seminar, the Victim Offender Education Group, Accountability Workshop  
6 and Restorative Education Program, the Long Termer’s Organization, Toastmasters, the  
7 Compass Class, and the Pathways to Hope Dog Training Program. (*Id.*)

8           5.       Education

9           35.       Despite having a TABE score of only 5.2, Ms. Bustamante has strived diligently  
10 to pass the GED. (Ex. A at 10, 61.) Ms. Bustamante’s GED instructor wrote to the Board on  
11 November 6, 2014, stating that Ms. Bustamante has been attending her GED class daily and puts  
12 forth her best effort to learn, but she experiences trouble with the math portion of the GED. (Ex.  
13 F at 373.) Ms. Bustamante has also passed three college courses she took with Coastline  
14 Community College in “Health 100”, “Business 100”, and “Succeeding in College.” (*Id.* at 433-  
15 36.)

16           6.       Employment and Skills

17           36.       Ms. Bustamante has fifteen years of work experience with PIA Optical. (Ex. A at  
18 63-64.) During that time, Ms. Bustamante has completed certificates of proficiency as an  
19 Ophthalmic Lab Technician, Ophthalmic Lens Inspector, Ophthalmic Laboratory Technician,  
20 Precision Lens Centerer, Edger and Polisher, General Inspector, and as an Optician. (*Id.* at 97-  
21 102.) She has favorable work evaluations and a letter of support from PIA Superintendent Nick  
22 Stanbury, explaining that Ms. Bustamante has the ability to work in any department within the  
23 Optical Lab and marketable job skills that will translate into a real world work environment.  
24 (Ex. D at 258-59, Ex. F at 457.)

25           7.       Psychological Evaluations

26           37.       Since 2000, Ms. Bustamante has participated in six psychological evaluations.  
27 (See Ex. D.) All six evaluations concluded that Ms. Bustamante would not pose an unreasonable  
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1 risk of harm in the free community and that her risk level is below average for the incarcerated  
2 population. (*Id.*)

3 38. In 2000, Dr. Melinda A. Hardy concluded that Ms. Bustamante’s violence  
4 potential in the free community would be less than average due to increased maturity, sobriety,  
5 lack of desire to use drugs, and Ms. Bustamante’s motivation to reestablish ties with her son and  
6 his family. (*Id.* at 289.) Dr. Hardy further stated that Ms. Bustamante appeared to have  
7 successfully dealt with many of the personality traits and substance abuse issues that led to her  
8 involvement in this crime. (*Id.* at 290.)

9 39. In 2004, Dr. Eric D. Kunkel found that Ms. Bustamante’s risk to the community  
10 was “very low,” and that her “risk to the community is well below average.” (*Id.* at 283.) In  
11 reaching this conclusion, Dr. Kunkel stated that he predicted a good parole outcome because Ms.  
12 Bustamante had remained sober for nearly ten years and her antisocial behavior had fallen away.  
13 (*Id.*) He stated that it is very unlikely that Ms. Bustamante will ever commit another crime and  
14 that she is an excellent candidate for parole. (*Id.*) Dr. Kunkel said, “When released she will  
15 reintegrate into the community and her family,” and “There is the highest probability of parole  
16 success.” (*Id.* at 284.) Dr. Kunkel concluded that because heroin addiction was the major  
17 determinate in Ms. Bustamante’s crime, her sobriety is predictive of a positive parole outcome.  
18 (*Id.* at 283.)

19 40. In 2006, Dr. Schulte concluded that Ms. Bustamante’s threat level is not only less  
20 than that of an ordinary inmate but also less than that of an ordinary citizen. (*Id.* at 280.) The  
21 evaluator noted the strong support Ms. Bustamante received from CDCR staff and Warden  
22 Gloria Henry. (*Id.*) Dr. Schulte stated that Ms. Bustamante had taken responsibility for her  
23 crime, was visibly troubled when discussing the victim, and had successfully ameliorated the  
24 issues that caused her substance abuse. (*Id.* at 281.) The report stated that Ms. Bustamante’s  
25 maturity and deliberate changes in her value system contributed to her ability to remain sober  
26 and disciplinary-free. (*Id.*) He also stated that Ms. Bustamante’s commitment to the Crossroad’s  
27 program demonstrated her ability to accomplish complicated goals. (*Id.*) Dr. Schulte found that  
28

1 Ms. Bustamante had replaced her self-destructive drug addiction with empathy for others and is  
2 committed to helping people in her environment. (*Id.*)

3 41. In 2008, Dr. Sara Bowerman found that Ms. Bustamante posed a low-moderate  
4 risk of reoffending. (*Id.* 276.) Primary considerations for this risk level were insight, positive  
5 work history, Ms. Bustamante’s commitment to self-help programming, detailed parole plans,  
6 and marketable job skills. (*Id.*) The evaluator noted that Ms. Bustamante’s score was elevated  
7 by historical factors like her history of substance abuse. (*Id.* at 274.) But the evaluator also  
8 noted that Ms. Bustamante had a track record of eleven years of good behavior at the time, which  
9 indicated that Ms. Bustamante was likely to abide by the terms of her parole if released. (*Id.*)  
10 Dr. Bowerman commended Ms. Bustamante on her drug-free and disciplinary-free behavior, but  
11 stated that this could not alter the impact of her history on the scoring instrument. (*Id.*) The  
12 evaluator stated that while Ms. Bustamante had identified how drugs played a role in her offense,  
13 she needed to develop insight into her personal triggers of substance abuse. (*Id.*)

14 42. In 2011, Dr. Line Brynjulfson opined that MS. Bustamante posed a low-moderate,  
15 or slightly elevated violence potential. (*Id.* at 261.) This assessment was once again based on  
16 historical factors including Ms. Bustamante’s juvenile convictions, disciplinary write-ups,  
17 contact with family members with a criminal history, and substance abuse. (*Id.* at 259-260.) Ms.  
18 Bustamante’s score was also moderately elevated because the evaluator believed she did not  
19 understand her internal triggers of substance abuse and needed to admit to her past proclivity for  
20 violence. (*Id.* at 261.) The evaluator also stated,

21 “In many ways, Ms. Bustamante presented with discernable insight and  
22 remorse. For instance, she was able to express an understanding of at least some of  
23 the contributing and consequent factors of her commitment of the life crime. She  
24 has engaged in years of self help and treatment activities to address her  
25 criminogenic needs and high risks. She accepted responsibility for the murder of  
26 the victim and verbalized contrition. Moreover, the inmate acknowledged a history  
27 of substance abuse problems, did not appear to minimize their extent, and was well  
28 able to list some of the external triggers of her substance use. She evidenced  
“insight” into her personality characteristics, strengths and weaknesses, and  
characterological and behavioral changes she has made over time.”

(*Id.* at 258.)

1           43.     In 2015, Dr. Larmer found that Ms. Bustamante had developed additional insight  
2 into the causal factors of the life crime. (*Id.* at 240.) In the evaluation, Ms. Bustamante  
3 demonstrated an understanding of the role drugs played in her life crime and her early behavior  
4 while incarcerated. (*Id.* at 241.) Importantly the clinician noted that, “She described both  
5 internal and external triggers to relapse, such as ‘grief or losing someone,’ as well as, going back  
6 to her old neighborhood, seeing old friends or being around drugs.” (*Id.*) Further, Ms.  
7 Bustamante told Dr. Larmer that her sister had recently passed away and Ms. Bustamante began  
8 using the Mental Health Services Delivery System as a way to cope with grief. (*Id.*) Ms.  
9 Bustamante stated that, “I have healthy friendships. I cry on their shoulders and they said ‘it’s  
10 OK to cry.’ Before I was a closed rock and didn’t show my feelings; I just stuffed them.” (*Id.*)  
11 Dr. Larmer concluded,

12                     “There have been some improvements in Ms. Bustamante’s psychological  
13 functioning and self- understanding since the 2011 CRA. She is reflective of the  
14 psychological, situational and environmental factors which contributed to the life  
15 crime. She continues to demonstrate remorse for her crime and other antisocial  
16 behaviors, and expressed empathy for the victim and his family. She demonstrated  
17 an understanding of the factors which contributed to her substance abuse problems,  
18 and has developed a relapse prevention plan.”

19 (*Id.*)

20           **D.     Ms. Bustamante’s May 5, 2015 Parole Hearing**

21           44.     Ms. Bustamante’s most recent parole consideration hearing was held on May 5,  
22 2015. (Ex. A.) The Board denied Ms. Bustamante parole for three years, reasoning that she  
23 lacked sufficient insight into the causative factors of her crime. (*Id.* at 116.) The Board stated,  
24 “she has yet to develop what we regard as an adequate understanding of what led to her  
25 involvement in the murder itself,” and went on to say that Ms. Bustamante needed to admit her  
26 life crime was narcotics-related, acknowledge her life crime was gang-related, learn how to  
27 identify situations that may draw her back into criminality, and recognize where danger lies. (*Id.*  
28 at 116-118.)

          45.     The Board concluded that Ms. Bustamante and her crime partners were collecting  
drug debts that morning; one of her crime partners was an active gang member; their behavior



1 that night was “gang-like,” and thus Ms. Bustamante’s failure to admit that her motive for the  
2 crime was gang-related rendered her a current danger. (*Id.* at 116-117.) The Board relied on Ms.  
3 Bustamante’s admission at the hearing that Lopez *may* have been collecting money earlier that  
4 day, “We went down to Venice because he was going to collect some money *or it was drugs* and  
5 he dropped me off at one of my friend's house.” (*Id.* at 40.)

6 46. Ms. Bustamante admitted and discussed her motives for participating in the crime.  
7 She stated she had learned violence and anti-social behavior from her family, she was high on  
8 heroin, and she was afraid of losing another man that she loved. (*Id.* at 43, 35, 71.)

9 47. In its decision, the Board stated, “The Panel is not necessarily suggesting that Ms.  
10 Bustamante is likely, when paroled, and we believe she will parole, become involved in a -- in a  
11 stabbing or something of that nature,” but that they felt Ms. Bustamante will be required to make  
12 difficult decisions and needs to understand when gangs or drugs are involved. (*Id.* at 117.)

13 48. The Board focused on three visits Ms. Bustamante had with a woman named  
14 Beatrice Jauregui, who was sent to visit Ms. Bustamante by Ms. Bustamante’s brother who is  
15 incarcerated in federal prison. (Ex. B at 140.) Ms. Bustamante testified that the reason Ms.  
16 Jauregui came to visit was because Ms. Bustamante had not been communicating with her  
17 brother. (*Id.* at 141.) At her hearing Ms. Bustamante stated that she told Ms. Jauregui to tell her  
18 brother,

19 “And I just told her, you know, ‘You let him know, if he's going to continue  
20 down that road, I want nothing to do with him. I love him, he's my family, but I  
21 can't -- I can't be around him. Not while he's still doing whatever he's doing.’ And  
22 the same thing with my father. My son and my grandchildren are my priority. That  
is number one in my life today.

23 (*Id.*)

24 The Board, in reaching its decision, relied on this visit as evidence that Ms. Bustamante could  
25 not identify situations likely to draw her back into criminality. (Ex. A at 118-119.)

26 49. Despite the Board stating that Ms. Bustamante does not regard the murder of Mr.  
27 Amaechi as being narcotics related, Ms. Bustamante in the hearing stated,  
28

1                    “Inmate Bustamante: **Because of me being on drugs that night, I took**  
2 **someone's life.** And I'm not going to go back to that. I refuse to.

3                    Deputy Commissioner Wagner: Excellent. I have nothing further. I would  
4 return to the Chair at this time.”

(*Id.* at 71) (emphasis added.)

5                    50.        The Board recommended that Ms. Bustamante remain disciplinary-free, continue  
6 her current positive programming, and take whatever steps she can to distance herself from gang-  
7 related criminality, even when she is not inviting it. (*Id.* at 121.)

8                    **CONTENTIONS**

9                    I.            The Board’s May 5, 2015 decision finding Ms. Bustamante unsuitable for parole  
10 violates the Due Process Clause of the California Constitution.

11                    **REQUEST FOR RELIEF**

12                    Ms. Bustamante is without a remedy save by writ of habeas corpus.

13                    WHEREFORE, Ms. Bustamante prays that this Court:

- 14                    1.        Issue an order to show cause directing Respondent to file a return within thirty  
15                    days;
- 16                    2.        Order Respondent to provide Ms. Bustamante with reasonable discovery;
- 17                    3.        Conduct an evidentiary hearing, including an order directing the Department of  
18                    Corrections to arrange for the presence of Petitioner at the hearing on this matter;
- 19                    4.        Issue a Writ of Habeas Corpus vacating the Board’s parole denial and order a new  
20                    suitability hearing to be held in a timely manner; and
- 21                    5.        Grant all other relief necessary to promote the ends of justice.

22                    Dated: May\_\_\_\_, 2016

Respectfully submitted,

23                    By: \_\_\_\_\_

24                    Michael J. Brennan  
25                    USC POST-CONVICTION JUSTICE PROJECT  
26                    Attorneys for Petitioner  
27                    Lisa Bustamante

28                    On the Petition:  
Prabhjyot Dhillon  
Certified Law Student Intern

1 **VERIFICATION**

2 I, Michael J. Brennan, declare as follows:

3 I am an attorney admitted to practice law in the State of California. I represent  
4 Ms. Lisa Bustamante, who is confined in the California Institution for Women in Corona,  
5 California.

6 I am authorized to file this Petition for Writ of Habeas Corpus on Ms.  
7 Bustamante's behalf. I make this verification because Ms. Bustamante is incarcerated in a  
8 county that is different from that of my law office. I have read the petition and know the  
9 contents to be true.

10 I certify under penalty of perjury that the foregoing is true and correct and that  
11 this declaration was executed on \_\_\_\_\_, 2016.

12  
13 \_\_\_\_\_  
14 Michael J. Brennan  
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 The decision of the Board of Parole Hearings to deny Ms. Bustamante parole is arbitrary  
4 and capricious because the Board failed to establish “some evidence” indicating that Ms.  
5 Bustamante currently poses an unreasonable risk of danger to society. California law requires  
6 “some evidence” that a parole applicant *currently* poses an unreasonable risk of danger to society  
7 to justify denying parole. *In re Lawrence*, 44 Cal. 4th 1181, 1207 (2008). Absent such evidence,  
8 parole must be granted. *See id.* at 1210. Because Ms. Bustamante’s record contains no such  
9 evidence, the Board’s denial of parole is arbitrary and capricious in violation of the due process  
10 clauses of the California Constitution.

11 The Board erred in concluding that Ms. Bustamante presents an unreasonable risk of  
12 danger to society for the following reasons: 1) the Board failed to consider the entire record  
13 when it concluded that Ms. Bustamante did not consider narcotics to be a causative factor in her  
14 commitment offense, 2) the Board arbitrarily rejected the causative factors Ms. Bustamante  
15 identified in her commitment offense and its finding of a lack of insight fails to provide “some  
16 evidence” of current dangerousness in light of the full record, and 3) there is no evidence to  
17 support the Board’s finding that Ms. Bustamante is currently dangerous based upon her visits  
18 with Beatrice Jauregui. Because the record does not contain the requisite “some evidence”  
19 demonstrating that Ms. Bustamante poses an unreasonable risk of danger to society, she is  
20 entitled to habeas relief under the due process clauses of the California Constitution.

21 **II. THE BOARD’S DENIAL OF PAROLE IS ARBITRARY AND CAPRICIOUS IN**  
22 **VIOLATION OF MS. BUSTAMANTE’S DUE PROCESS RIGHTS UNDER THE**  
23 **CALIFORNIA CONSTITUTION**

24 **A. California Statutes and Due Process Require Some Evidence of Current**  
25 **Dangerousness in Order to Support a Parole Denial.**

26 The Board violated Ms. Bustamante’s due process rights under the California  
27 Constitution when it denied Ms. Bustamante parole at her 2015 hearing. Article I, Section 7(a)  
28 of the California Constitution guarantees that every person shall be afforded due process of law.  
Cal. Const. art. I, § 7(a). The California Penal Code and the corresponding regulations that

1 govern the Board’s parole decision create a liberty interest that is protected by due process. *In re*  
2 *Rosenkrantz*, 29 Cal. 4th 616, 660 (2002); *In re Powell*, 45 Cal. 3d 894, 911 (1988). The  
3 California Supreme Court recognized that this liberty interest “cannot exist in any practical sense  
4 without a remedy against its abrogation.” *Lawrence*, 44 Cal. 4th at 1205 (quoting *Rosenkrantz*,  
5 29 Cal. 4th at 664). Parole applicants are entitled to “constitutionally adequate and meaningful  
6 review” of parole decisions for “some evidence” to support the conclusion that the inmate is  
7 unsuitable for parole because he or she is currently dangerous. *Lawrence*, 44 Cal. 4th at 1205.

8 The Board is required to set a release date for a parole applicant within one year of her  
9 minimum eligible parole date and may deny parole only if it determines that public safety  
10 requires a longer period of incarceration. Cal. Pen. Code § 3041(a)-(b) (2015). The California  
11 Code of Regulations sets forth the factors that the Board may consider in carrying out the  
12 mandate of the statute. Cal. Code Regs. tit. 15, § 2402 (2015). Under the statutes and  
13 regulations, the core consideration when assessing the inmate’s current dangerousness is “public  
14 safety.” *Lawrence*, 44 Cal. 4th at 1205 (quoting *Rosenkrantz*, 29 Cal. 4th at 655). The Board is  
15 limited to identifying and weighing the “factors relevant to predicting whether the inmate will be  
16 able to live in society without committing additional antisocial acts.” *Lawrence*, 44 Cal. 4th at  
17 1205-06 (citations omitted).

18 “[B]ecause the paramount consideration for both the Board and the Governor under the  
19 governing statutes is whether the inmate currently poses a threat to public safety, and because the  
20 inmate’s due process interest in parole mandates a meaningful review of a decision denying  
21 parole, the proper articulation of the standard of review is whether there exists ‘some evidence’  
22 demonstrating that an inmate poses a current threat to public safety, *rather than merely some*  
23 *evidence suggesting the existence of a statutory factor of unsuitability.*” *In re Prather*, 50 Cal.  
24 4th 238 (2010) (citing *Lawrence*, 44 Cal. 4th at 1219) (emphasis added).

25 In Ms. Bustamante’s case, there is no evidence in the record to support the Board’s  
26 conclusion that Ms. Bustamante poses a current risk of danger to the public; instead, the Board’s  
27 decision is based on what *In re Prather* sought to prevent: using the alleged presence of  
28

1 unsuitability factors, in and of themselves, to deny parole. *In re Prather*, 50 Cal. 4th 238 (2010).  
2 Here, the Board denied parole to Ms. Bustamante due to (1) an alleged lack of insight, and (2) an  
3 alleged inability to foresee dangerous situations.

4 In its decision, when articulating that they believed Ms. Bustamante lacked insight and an  
5 ability to foresee danger, the Board stated, “The Panel is not necessarily suggesting that Ms.  
6 Bustamante is likely, when paroled, and we believe she will parole, become involved in a -- in a  
7 stabbing or something of that nature.” (Ex. A at 117.) Here the Board plainly violated the intent  
8 of *In re Prather*, as it denied Ms. Bustamante on these very same unsuitability factors while  
9 clearly articulating that it did not believe Ms. Bustamante posed a risk of danger in the free  
10 community. 50 Cal. 4th 238 (2010). *In re Prather* bars the Board from denying parole solely  
11 based on the presence of unsuitability factors in and of themselves, which is precisely what  
12 occurred in this case. *Id.*

13 **B. The Board Failed to Properly Consider Ms. Bustamante’s Record of Substance**  
14 **Abuse Programming, Psychological Evaluations, and Hearing Testimony when it**  
15 **determined that Ms. Bustamante did not consider her Commitment Offense to be**  
16 **Narcotics Related**

17 In making a decision to deny parole, the Board must meaningfully consider all factors  
18 tending to show suitability. *In re Stoneroad*, 215 Cal. App. 4th 596, 624 (2013). In *In re*  
19 *Stoneroad*, the court determined that even though the Board mentioned a prisoner’s rehabilitative  
20 programming, educational and vocational achievements, disciplinary-free time in prison, and  
21 honesty during his hearing, the Board did not adequately consider these relevant suitability  
22 factors when it denied parole. *Id.* Mere recitation of factors tending to show suitability is  
23 insufficient, and “represents not just a failure to undertake the ‘individualized consideration of all  
24 relevant factors’ mandated by the Supreme Court more than a decade ago, but offends [the  
25 Board’s] own regulations.” *Id.* at 624 (citing *In re Rosenkrantz*, 29 Cal. 4th 616, 655 (2002)).

26 In *In re Stoneroad*, the court rejected the Board’s finding that Stoneroad was unsuitable  
27 for parole because there was purportedly “some evidence” of current dangerousness. See *In re*  
28 *Stoneroad*, 215 Cal. App. 4th 596. Stoneroad’s most recent psychological evaluation noted “Mr.  
Stoneroad presents a low risk for violence in the free community.” *Id.* at 648. However, when

1 denying Stoneroad parole, the Board failed to mention any of his psychological evaluations. The  
2 court stated that “Psychological evaluations . . . discuss the application [to the prisoner] of many  
3 of the regulatory factors [showing suitability for parole]. These evaluations are required to be  
4 made by the Board’s own regulations, and are painstakingly prepared by licensed professionals  
5 designated and paid by the Board. The Board’s disregard of the regulatory factors and the  
6 psychological evaluations is unexplained, unjustified, and indeed disturbing.” *Id.* at 624, *See*  
7 Cal. Code Regs., tit. 15, § 2240 (2015).

8         Despite the great weight of the evidence demonstrating that Ms. Bustamante not only  
9 understood narcotics to be a causative factor in her crime, but also understood her internal and  
10 external triggers of substance abuse, the Board concluded that Ms. Bustamante did not  
11 understand what led to her involvement with the crime and specifically did not consider the  
12 crime to be narcotics related. (Ex. A at 116.) As in *In re Stoneroad*, the Board at Ms.  
13 Bustamante’s 2015 hearing merely mentioned Ms. Bustamante’s twenty-year sobriety, relapse  
14 prevention plan, two decades of comprehensive substance abuse programming, and supportive  
15 psychological evaluations but did not consider these factors in making its decision. 215 Cal.  
16 App. 4th 596. The Board’s statement that, “specifically Ms. Bustamante indicated today that she  
17 did not regard the murder of Mr. Amechie as being narcotics related,” stands in stark contrast to  
18 both what was contained in the record and what Ms. Bustamante testified to at the hearing. (Ex.  
19 A at 116.)

20         In an effort to justify the denial of parole, the Board ignored substantial evidence in the  
21 record. First and foremost, Ms. Bustamante acknowledged in her 2015 hearing that the offense  
22 was narcotics related,

23                 “Inmate Bustamante: My sobriety means a lot and I'm not going to, how do  
24 you say it, fall off the wagon. ***Because of me being on drugs that night, I took  
someone's life.*** And I'm not going to go back to that. I refuse to.

25                 Deputy Commissioner Wagner: Excellent. I have nothing further. I would  
26 return to the Chair at this time.”

27 (Ex. A at 71) (emphasis added).

28         Further, testimony at this hearing demonstrates her understanding of this trigger and

1 seeking out programming to address it. (*See* Ex. C, Ex. A.) At her 2015 hearing, Ms.  
2 Bustamante not only acknowledged that drug use was a causative factor of her commitment  
3 offense, but also described grief as an internal trigger for substance abuse. (Ex. A at 59.) Ms.  
4 Bustamante described the loss of her husband as the reason she began burying herself in drugs.  
5 (*Id.* at 30.) She stated, “I turned to that to cover up my pain and my hurt of losing him and I  
6 continued using when I came to prison.” (*Id.*) Ignoring evidence in the record constitutes a  
7 mistake of fact and law.

8 Ms. Bustamante’s 2012 Comprehensive Psychological Evaluation clearly states,

9 “Ms. Bustamante currently reported that she believes the contributing  
10 factors to her commission of the life crime included her long-standing drug  
11 addiction, being under the influence of substances at the time of the crime (‘I was  
12 not in my right state of mind.’)”

(Ex. D at 257.)

13 Further, Ms. Bustamante’s 2015 Subsequent Risk Assessment was conducted less than a  
14 month before her 2015 hearing. (*Id.* at 237.) The 2015 Risk Assessment stated that Ms.  
15 Bustamante had developed additional insight into the causal factors of the life crime since her  
16 2012 evaluation. (*Id.* at 240.) In the evaluation, Ms. Bustamante demonstrated an understanding  
17 of the role drugs played in her life crime and her early behavior while incarcerated. (*Id.* at 241.)  
18 Importantly, the clinician noted that, “She described both internal and external triggers to  
19 relapse, such as ‘grief or losing someone,’ as well as, going back to her old neighborhood, seeing  
20 old friends or being around drugs.” (*Id.*) The Boards failure to adequately consider Ms.  
21 Bustamante’s psychological evaluations is a clearly a violation of *In re Stoneroad*, and, as it was  
22 in that case, here it is unexplained, unjustified, and indeed disturbing. 215 Cal. App. 4th at 624.

23 The record at Ms. Bustamante’s 2015 hearing included, NA programming chronos  
24 spanning twenty years, a Relapse Prevention Plan with NA sponsors, an Insight Statement  
25 stating that drug abuse triggered this offense and describing Ms. Bustamante’s internal triggers  
26 for drug abuse such as unresolved grief, and psychological evaluations demonstrating Ms.  
27 Bustamante’s understanding of her drug abuse triggers. (Ex. F)

28 In reaching its conclusion that Ms. Bustamante does not regard her commitment offense



1 as being narcotics related, the Board appears to have relied on the following exchange,

2 “PRESIDING COMMISSIONER LABAHN: So when you think back to  
3 the murder of Mr. Amechie, do you believe it was in any way narcotics related? Do  
4 you believe narcotics played any role in that murder?”

5 INMATE BUSTAMANTE: I was on a lot of drugs and when I look back  
6 now it's very painful because I pray for -- I've prayed for my victim and I've worked  
7 on myself to really understand what happened that night. And I realize that I have  
8 caused a horrible crime that night and caused a lot of pain to a lot of people and to  
9 my community.”

10 (Ex. A at 56.)

11 While in this particular exchange, Ms. Bustamante did not affirmatively say her offense  
12 was narcotics related, she admitted to being under the influence of narcotics and later in her  
13 hearing directly stated that she took someone’s life because of being on drugs. (*Id.* at 71.) The  
14 Board seems to have considered this statement in a vacuum, as a denial that narcotics played a  
15 role in this offense without considering Ms. Bustamante’s later testimony, her psychological  
16 evaluations, her sobriety, and twenty-year history of substance abuse programming. The  
17 conclusion that Ms. Bustamante does not consider her offense to be narcotics related is belied by  
18 the record and demonstrates a failure by the Board to adequately consider all suitability factors,  
19 as is required by *In re Stoneroad*. 215 Cal. App. 4th at 624.

20 **C. The Board arbitrarily rejected the identified causative factors of Ms.  
21 Bustamante’s commitment offense in favor of its own theory.**

22 An inmate’s acceptance of responsibility and expressions of remorse are relevant  
23 to the inmate’s suitability for parole. Cal. Code Regs. Tit. 15 § 2402 (2015); *In re Shaputis I*, 44  
24 Cal. 4th 1241, 1246 (2008) [Shaputis I]. The California Supreme Court has emphasized that,  
25 “expressions of insight and remorse will vary from prisoner to prisoner and that there is no  
26 special formula for a prisoner to articulate in order to communicate that he or she  
27 has...commit[ted] to ending a previous pattern of violent behavior.” *Shaputis I*, 44 Cal 4th at  
28 1260, fn. 18. Likewise, the Board cannot base a finding of current dangerousness on the  
evidence when the inmate otherwise accepts full responsibility for the crime, expresses remorse,

1 programs, and is deemed by psychologists to present a low risk of danger to the public. *In re*  
2 *Pugh*, 205 Cal. App. 4th 260, 269 (2012) (citing *In re Palermo*, 171 Cal. App. 4th 1096, 1110-12  
3 (2009)). The petitioner in *Pugh* consistently maintained that he killed the victim in response to  
4 homosexual advances although the prosecution maintained that his motive was to confront the  
5 victim about theft allegations. *Id.* The only evidence supporting the government’s asserted  
6 motive was the testimony of another witness about petitioner’s statements. *Id.* In fact, the jury  
7 implicitly rejected the government’s theory of the case when it returned a verdict of second-  
8 degree murder. *Id.* Because the petitioner’s account of his motive was consistent with the  
9 evidence and was not “inherently improbably,” it did not demonstrate lack of insight or current  
10 dangerousness. *Id.*

11 Evidence cited by the Board to deny parole must support a finding of current  
12 dangerousness, not merely support the Board’s mischaracterization of the facts. *In re Pugh*, 205  
13 Cal. App. 4th at 271. Lack of insight supports a parole denial only when it is rationally  
14 indicative of the inmate’s current dangerousness. *Shaputis I*, 44 Cal. 4th at 1260; *In re Twinn*,  
15 190 Cal. App. 4th 447, 465 (2010); *In re Rodriguez*, 193 Cal. App. 4th 85, 99 (2011). “[T]he  
16 relevant inquiry for a reviewing court is whether the identified facts are probative to the central  
17 issue of current dangerousness when considered in light of the full record before the Board or the  
18 governor.” *Rodriguez*, 193 Cal. App. 4th at 99.

19 In *Twinn*, the Court held that the governor’s reversal violated due process where the  
20 governor failed to establish a rational nexus between Twinn’s alleged lack of insight and his  
21 current dangerousness. *Twinn*, 190 Cal. App. 4th at 468. Twinn was convicted of second-degree  
22 murder after he and a codefendant beat the victim to death. *Id.* at 453. Twinn had always denied  
23 that he intended to kill the victim, yet he consistently expressed remorse and accepted  
24 responsibility for the crime. *Id.* at 467-68. The Board found Twinn suitable for parole in 2009,  
25 but the governor reversed, claiming that Twinn’s denial of an intention to kill the victim was  
26 some evidence of a lack of insight and failure to accept full responsibility for his offense, making  
27 him a current, unreasonable risk to public safety. *Id.* at 459-60. The Court examined the entire  
28

1 record and concluded that the governor failed to articulate the required nexus between Twinn’s  
2 lack of insight and his current risk to public safety. *Id.* at 467. The Court held that although a  
3 modicum of evidence supported that Twinn lacked full insight, there is no “rational nexus”  
4 between Twinn’s present assessment of the nature of his role in the murder and any current threat  
5 to public safety. *Id.* at 471.

6 Lack of insight or minimization into the material aspects of the commitment offense or an  
7 inmate’s violent conduct can serve as a basis for denying parole. *In re Shaputis II*, 53 Cal. 4th  
8 192, 218 (2011). However, courts have recognized that the assertion of lack of insight can be  
9 “shorthand for subjective perceptions based on intuition or undefined criteria that are impossible  
10 to refute.” *In re Ryner*, 196 Cal. App. 4th 533, 548 (2011). Insight has become the “new  
11 talisman” for denying parole. *Id.* at 547; *In re Shippman*, 185 Cal. App. 4th 446, 481 (2010)  
12 [dis. opn. of Pollack, J.]. Therefore, in denying an inmate’s constitutional right to parole based  
13 on lack of insight, the Board must find a factually identifiable deficiency in perception and  
14 understanding of the criminal conduct or its causes that is probative of current dangerousness.  
15 *Ryner*, 196 Cal. App. 4th at 548-49. Moreover, where

16 ...undisputed evidence shows that the inmate has acknowledged the material  
17 aspects of his or her conduct and offense, shown an understanding of its causes,  
18 and demonstrated remorse, *the [Board’s] mere refusal to accept such evidence is*  
19 *not itself a rational or sufficient basis upon which to conclude that the inmate lacks*  
20 *insight, let alone that he or she remains currently dangerous.*

21 *Id.* at 549 (emphasis added).

22 The Board’s finding that Ms. Bustamante lacked insight relied on its own determination  
23 of Ms. Bustamante’s motive rather than Ms. Bustamante’s statement of her motive. Ms.  
24 Bustamante’s version of her motive is consistent with the evidence and not “inherently  
25 improbable.” It does not demonstrate a lack of insight or current dangerousness. Here, the  
26 Board’s declaration that Ms. Bustamante lacks insight into the causative factors of her life crime  
27 because she does not consider the murder to be gang-related is an instance of the Board  
28 substituting its own intuition-based determination in place of what Ms. Bustamante believes and  
understands to be the causative factors of her crime. This type of substitution and overreach by

1 the Board, that it understands better than Ms. Bustamante what her motivations were in that  
2 particular moment, is exactly what the *Ryner* court sought to prevent. 196 Cal. App. 4<sup>th</sup> at 548.

3 When the Board asked Ms. Bustamante if she considered her offense to be gang-related,  
4 she responded with, “No. I mean, I was just trying to protect my boyfriend. All I'd seen was Mr.  
5 Amechie on top of him.” (Ex. A at 56-57.) While Ms. Bustamante does not consider her crime  
6 to be gang related, in that it was not committed in furtherance of a gang objective or for a gang  
7 motive, she acknowledges that gangs were a part of her family background. Ms. Bustamante  
8 articulated the extent to which gangs played a role in her commitment offense, she demonstrated  
9 at her hearing that she believed her upbringing in a gang-integrated home to have been part of  
10 developing the thought processes of someone capable of committing such a crime. (Ex. A at 43,  
11 Ex. B 168-70.) Ms. Bustamante admitted to the Board that her codefendant was a gang member,  
12 and that gangs have been a negative influence in her life that contributed to her criminal thinking  
13 and willingness to engage in violence and commit this offense. (Ex. A at 29, 43, 46.) She even  
14 started Project Crossroads to counsel at risk youth to stay out of gangs. She stated, “I want to let  
15 them know by getting into gangs there's one or two things that will happen to them. One, they  
16 will end up in prison for life or dead somewhere. My goal is to share my past with these young  
17 kids.” (*Id.* at 108.) Ms. Bustamante has acknowledged gangs as a negative influence. But there  
18 were never any charges or allegations, much less evidence in the record, that her crime was  
19 directly related to furthering gang activities.

20 Ms. Bustamante was not convicted of a gang-enhancement and there is no evidence in the  
21 record that any particular gang motivated this crime nor that the crime benefited a particular  
22 gang. The Board’s insistence that Ms. Bustamante admit her crime was gang related amounts to  
23 an arbitrary rejection of the causative factors Ms. Bustamante identified. In reaching its  
24 conclusion that Ms. Bustamante’s offense was gang related the Board relied on Ms.  
25 Bustamante’s codefendant being a gang member, the attitude he expressed, the attitude Ms.  
26 Bustamante expressed, and “what they were doing that evening was all gang related.” (Ex. A at  
27 117.) The Board further referenced that Ms. Bustamante and her crime partners were collecting  
28

1 drug debts at the time of the commitment offense, which is not supported by any part of the  
2 record. (*Id.* at 116.)

3 At her hearing, Ms. Bustamante identified the causative factors of her commitment  
4 offense to be learning violence and anti-social behavior from her family, anger issues, being high  
5 on heroin, and being afraid of losing another man that she loved. (*Id.* at 35, 43, 71.) Ms.  
6 Bustamante’s discussion of these factors constitutes an understanding of the causative factors of  
7 her offense, when coupled with her acceptance of responsibility and demonstration of remorse  
8 satisfies the requirements of *Ryner*. The Board’s substitution of its own subjective judgments,  
9 mainly that gangs were a motivating force, in place of Ms. Bustamante’s own thought processes  
10 is not a sufficient basis upon which to find that she lacks insight or is currently dangerous.

11 The Board’s arbitrary rejection of Ms. Bustamante’s motive of her commitment offense  
12 in favor of their own led to a mistaken conclusion that Ms. Bustamante does not understand the  
13 causative factors underlying her commitment offense. Commissioner Labahn stated, “She  
14 indicated, no that she was just trying to protect her boyfriend. We understand what she's saying  
15 and certainly that may well have been an element given the life experience that she indicates that  
16 she had prior to that and the experience that she had with the father of her son. However, in the  
17 Panel's judgment clearly this is a gang-related murder.” (Ex. A at 116-117.) Not only did the  
18 Board misunderstand the motivating factor behind Ms. Bustamante’s commitment offense, but  
19 the Board ignored the motivation that Ms. Bustamante provided, that seeing a man on top of her  
20 boyfriend took her back to losing her husband and she feared losing a loved one.

21 The Board did find that Ms. Bustamante both took responsibility for her involvement in  
22 her commitment offense and also showed remorse. (Ex. A at 110, 113.) The Board stated, “Ms.  
23 Bustamante really acknowledges and accepts responsibility for her specific role in terms of the  
24 mechanics of this murder,” and “We believe that Ms. Bustamante experiences remorse and  
25 expressed it today. Her conduct and deportment during today's hearing were very positive.” (*Id.*  
26 at 110, 120.) Ms. Bustamante acknowledged the material aspects of her conduct and offense by  
27 taking full responsibility, identified the causative factors of her crime, and demonstrated remorse  
28

1 to the Board, satisfying *Ryner*'s requirements. 196 Cal. App. 4th at 548-49. Thus, the Board's  
2 refusal to accept this evidence is not a rational or sufficient basis upon which to conclude Ms.  
3 Bustamante lacks insight. *Id.*

4 **D. Ms. Bustamante's visits with a friend of her brother are not indicative of**  
5 **current dangerousness considering Ms. Bustamante's disciplinary record**  
6 **and significant number of pro-social contacts**

7 "[T]he relevant inquiry for a reviewing court is whether the identified facts are probative  
8 to the central issue of current dangerousness when considered in light of the full record before  
9 the Board or the governor." *Rodriguez*, 193 Cal. App. 4th at 99.

10 In an effort to cut off communications with her brother, Ms. Bustamante stopped writing  
11 to him. (Ex. B at 141.) As a result, Beatrice Jauregui, a friend of her brother, visited Ms.  
12 Bustamante to see how Ms. Bustamante was doing. (*Id.* at 140.) At Ms. Bustamante's hearing,  
13 Commissioner LaBahn concluded that Ms. Bustamante was unable to identify situations that  
14 would lead her back into criminality and reoffending. His conclusion is belied by the record.  
15 Despite these visits, Ms. Bustamante has not returned to gang association, has not engaged in any  
16 misconduct, and has in fact been commended for her exemplary behavior. For twenty years, Ms.  
17 Bustamante has successfully navigated her family relationships while rehabilitating herself and  
18 avoided gang activity with her family's blessing.

19 At her 2015 hearing, Ms. Bustamante stated regarding her brother,

20 "And I just told her, you know, 'You let him know, if he's going to continue  
21 down that road, I want nothing to do with him. I love him, he's my family, but I  
22 can't -- I can't be around him. Not while he's still doing whatever he's doing.' And  
23 the same thing with my father. My son and my grandchildren are my priority. That  
24 is number one in my life today.

25 (*Id.* at 141.)

26 Ms. Bustamante clearly understands the danger present in communicating with her  
27 brother. Her visits with Ms. Jauregui are a direct result of her decision to stop communicating  
28 with her brother. However, communication with Ms. Jauregui does not present those same  
dangers and a finding that such communication makes Ms. Bustamante a current danger is both a  
mistake of fact and law.

1 Ms. Bustamante’s disciplinary-free behavior, staff commendations, and wealth of pro-  
2 social contacts demonstrate that these visits are not probative of current dangerousness in light of  
3 her complete record. In 2014, the Board commended Ms. Bustamante for transforming her  
4 behavior and remaining disciplinary free for nearly two decades. (Ex. C at 221.) Ms.  
5 Bustamante further has significant staff support and many Correctional Officers, Lieutenants, an  
6 Associate Warden, and even a Warden have all personally recommended Ms. Bustamante for  
7 parole, attested to her behavioral transformation, and commented on her ability to contribute to  
8 the free community through sustaining that positive behavior. At her 2015 hearing, Commissioner  
9 Labahn stated,

10 “But it's rather unusual to have a letter of support from a Warden. So I will  
11 definitely reference it. It acknowledges the process of change that Ms. Henry  
12 believes has occurred or had occurred and she expresses her belief that Ms.  
13 Bustamante would pose a minimal risk to the community should she be granted  
14 parole. So this very unusual.”

15 (Ex. A at 83.)

16 Correctional Officer Dunn stated that, “Over the past 16 years I have observed her  
17 become a positive, conscience person assisting her fellow peers. I feel that I/M Bustamante, if  
18 released, would be a positive contribution and productive citizen in the community.” (Ex. H at  
19 465.) Lieutenant Martinez believes that Ms. Bustamante deserves an opportunity to return to  
20 society and will use her experiences to help youth avoid making her mistakes. (*Id.* at 466.) Ms.  
21 Bustamante’s central-file is rich with similar laudatory chronos commending her for her positive,  
22 mature attitude and expressing the belief that she will be a positive contributor to society.  
23 Further, Ms. Bustamante has a significant number of pro-social contacts, presenting the Board  
24 with twenty letters of support from individuals in the free community, including her son who  
25 offered Ms. Bustamante a permanent residence, inmates who have been successful on parole, a  
26 police officer, a community counselor, a narcotics anonymous sponsor, the Self-Determination  
27 Re-entry Initiative, and more. (Ex. F at 355-79.) At her last hearing the Board stated,

28 “But she does have a (inaudible) of associations that appear very pro-social  
and we believe that she does have a network of support which will stand her in good

1           stead when she is released, including certainly her son and her daughter-in-law and  
2           others as well.”

3 (Ex. A at 110.)

4           This long history of disciplinary-free behavior, numerous laudatory chronos, attesting to  
5 Ms. Bustamante’s positive behavior and a strong pro-social network, all prove that any visits Ms.  
6 Bustamante had with a friend of her brother are not probative of current dangerous when  
7 considered in light of the complete record.

8 **III. CONCLUSION**

9           The Board’s 2015 denial of Ms. Bustamante’s parole suitability is not supported by any  
10 evidence of current dangerousness. The Board failed to consider the entire record when  
11 determining if Ms. Bustamante had insight into the causative factors of her crime and arbitrarily  
12 ignored Ms. Bustamante’s identified causative factors in favor of it’s own theory, despite the fact  
13 that those identified factors were not inherently improbable. Next, the Board’s finding that Ms.  
14 Bustamante’s contact with a friend of her incarcerated brother was indicative of current  
15 dangerousness was inaccurate when considered in light of the entire record. The Board failed to  
16 provide any evidence of current dangerousness when it arbitrarily ignored Ms. Bustamante’s  
17 demonstrations of insight. The record taken as a whole indicates that there is not the requisite  
18 nexus between any alleged lack of insight and current dangerousness.

19 The Board’s unsupported, arbitrary denial of parole violates Ms. Bustamante’s due process rights  
20 under the California Constitution. Thus, Ms. Bustamante respectfully asks this Court to grant  
21 her petition, set aside the Board’s denial, and order a new timely suitability hearing be held.

22 .Dated: \_\_\_\_\_ Respectfully submitted,

23  
24 By: \_\_\_\_\_  
MICHAEL J. BRENNAN  
USC POST-CONVICTION JUSTICE PROJECT

25  
26 On the Petition:  
Prabhjot Dhillon  
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# Sample Habeas Petition – Governor Reversal

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9 **IN THE SUPERIOR COURT OF CALIFORNIA**  
10 **COUNTY OF SAN FRANCISCO**

11 **In re** ) Case No.:  
12 )  
13 ) **PETITION FOR WRIT OF**  
14 **RAMIN NIKOOSERESHT,** ) **HABEAS CORPUS; SUPPORTING**  
15 ) **MEMORANDUM OF POINTS AND**  
16 **On Habeas Corpus.** ) **AUTHORITIES**

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**I.**

**INTRODUCTION**

1. Petitioner challenges Governor Brown’s unlawful decision to block his release from prison. The Governor claims that Petitioner “has not yet adequately explained why” he committed the commitment offense, alleging that the explanations proffered “do not account for the extreme rage” and “unbridled anger” he displayed, even though Petitioner elaborated extensively as to the perceived loss of control over his girlfriend and the shattering of the fictional image he had created for himself. The Governor also alleges that Petitioner is “whitewashing the extent and severity of his abuse against the victim,” a claim that is patently false. Lastly, the Governor alleges that Petitioner has a superficial understanding of the causative factors of the commitment offense, a claim that directly contradicts the record. None of the Governor’s stated concerns supports a finding that Petitioner is currently dangerous.

1 Petitioner therefore seeks an order from this Court vacating the Governor's decision and  
2 reinstating the Board's grant of parole.

3 **II.**

4 **PARTIES**

5 2. Petitioner Ramin Nikooseresht (H-66070) is a prisoner of the State of California,  
6 unlawfully confined at the Correctional Training Facility in Soledad, California.

7 3. Respondent Edmund G. Brown Jr. is the Governor of the State of California, the  
8 office responsible for reversing Petitioner's parole grant.

9 4. Respondent Marion Spearman is the Warden of the Correctional Training  
10 Facility in Soledad, California where Petitioner remains unlawfully confined. Warden  
11 Spearman is Petitioner's legal custodian.

12 **III.**

13 **STATEMENT OF THE CASE**

14 5. On January 20, 1993, Petitioner was convicted of murder in the second degree.  
15 (Abstract of Judgment, dated February 16, 1993, attached hereto as Exhibit A.) Petitioner was  
16 sentenced to fifteen years to life in prison. (Ex. A.) He became eligible for parole on April 25,  
17 2002. (Transcript of Parole Consideration Hearing, May 8, 2013, attached hereto as Exhibit B,  
18 at 3.)

19 6. On May 8, 2013, at Petitioner's sixth parole suitability hearing, the Board of  
20 Parole Hearings denied him parole for three years, expressing doubt about his credibility and  
21 insight based on his previous statements about the crime. (See Ex. B, at 132.)

22 7. On June 25, 2014, the Board decided, on its own motion, that Petitioner's next  
23 hearing should actually be held earlier because of his educational advancements and self-help  
24 participation. (Miscellaneous Decision, dated June 25, 2014, attached hereto as Exhibit C.)

25 8. On March 5, 2015, at Petitioner's seventh parole consideration hearing, the  
26 Board found him suitable for parole because he no longer presents an unreasonable risk to  
27 public safety. (Transcript of Parole Consideration Hearing, March 5, 2015, attached hereto as  
28 Exhibit D, at 117.)





1           13.     Petitioner wanted to spend his last days with Ms. DeLeon. (*Id.*, at 53-54, 56).  
2     The next day, he picked her up and they drove to San Francisco. (*Id.*, at 53-54.) He wanted to  
3     separate her from her family, to be as isolated as possible, so they could spend time together  
4     and he could ensure she would remember him in the way he wanted to be remembered. (*Id.*, at  
5     53-54, 56.) The day after the two arrived in San Francisco, Petitioner revealed to Ms. DeLeon  
6     that he intended to commit suicide that night. (*Id.*, at 52.) Ms. DeLeon became afraid, locked  
7     herself in the bathroom, and cried. (*Id.*, at 52.) She was unresponsive to Petitioner’s attempts  
8     to calm her, which made him feel a loss of control over her. (*Id.*, at 52.) Petitioner went to the  
9     hotel bar, and returned to find Ms. DeLeon asleep in the room. (*Id.*, at 53, 57.) For three or  
10    four hours, Petitioner remained in the hotel room, contemplating what to do. (*Id.*, at 58-59.)

11           14.     After sitting in the room for hours while she slept, upset and angry that he had –  
12    for the first time – revealed weakness to Ms. DeLeon, Petitioner grabbed her by the neck and,  
13    when she began to wake up, bit her and tried to strangle her with his hands. (*Id.*, at 63.) He  
14    head-butted Ms. DeLeon, and when she stopped moving, Petitioner suffocated her with a  
15    pillow. (*Id.*, at 64-65.) He then put her head under the sink to ensure she was dead. (*Id.*, at  
16    65.) After he killed Ms. DeLeon, he bathed and dressed her. (*Id.*, at 67-68.)

17           15.     Petitioner then cut Ms. DeLeon’s wrist to determine how deep to cut into his  
18    own tendon to take his own life. (*Id.*, at 69.) He cut his wrists and soon lost consciousness.  
19    (*Id.*, at 69.) However, Petitioner panicked when he regained consciousness and realized he had  
20    not succeeded in committing suicide. (*Id.*, at 69-70.) He called a former coworker to tell him  
21    what had happened, and the coworker called Petitioner’s family, who then called police. (*Id.*,  
22    at 70-71.) Police went to the room and found Ms. DeLeon’s body and found Petitioner  
23    bleeding from self-inflicted wounds. (*Id.*, at 72.)

24           16.     At the time of sentencing, Judge Laurence Kay of this Court struck three alleged  
25    circumstances in aggravation because the crime did not involve great violence “as murders go”:  
26    “I think not to minimize what happened here in any fashion, but insofar as the statement that  
27    this crime involved great violence, there was in a perverse way a certain amount of tenderness  
28

1 in the mind of Mr. Nikooseresht at the time.” (Sentencing Transcript, dated February 10, 1993,  
2 attached hereto as Exhibit F, at 14.)

3 17. Up until the day of his May 5, 2010, parole hearing, Petitioner maintained that  
4 he and Ms. DeLeon had made a suicide pact and that his survival was not intended. He did not  
5 discuss the crime during his 2010 parole hearing; however, the commissioners at that hearing  
6 adopted his statements about a suicide pact from the Probation Officer’s Report and from prior  
7 reports in his prison file. (Decision Pages of 2010 Parole Hearing Transcript, attached hereto  
8 as Exhibit G, at Decision Page 1 through Decision Page 5.)

9 18. Immediately after his May 5, 2010, parole hearing, Petitioner admitted for the  
10 first time, in a letter to Ms. DeLeon’s mother that there was never a suicide pact and that he  
11 killed her daughter because of his distress over the thought of her discovering the truth about  
12 his many failings and lies. He wrote, “I could not bear the thought of Debbie finding out about  
13 my personal problems. Even though I was going to die, the thought of Debbie remembering  
14 me as a loser for the rest of her life was such disgrace to me that I decided to eliminate such  
15 possibility by taking her life.” (Letter to Ms. Gutierrez, dated May 5, 2010, attached hereto as  
16 Exhibit H, at 2.) He wrote a similar two-page letter to the victim’s sister in August of that year,  
17 admitting that he had been lying about having a suicide pact: “The shame and embarrassment  
18 on my part were too overwhelming. But again, after seeing your mother’s suffering, I realize  
19 telling the truth is the least I can do, and I truly apologize for not doing so sooner.”<sup>1</sup> (See  
20 Letter to Ms. Lisa DeLeon, dated August 26, 2010, attached hereto as Exhibit I, at 2.)

21 19. Petitioner’s description of his motivations during both his May 8, 2013, and  
22 March 5, 2015, hearings was consistent with his letters to Ms. DeLeon’s family back in 2010.  
23 (See Ex. B at 25-29 [admitting in 2013 that there was never a suicide pact and that he lied in  
24 order to avoid responsibility and to “lessen the impact of my crime”], 30 [“I killed Debbie  
25 because I didn’t want her to think of me as a loser for the rest of her life after I was dead.”]; see  
26 also Ex. D at 49-51 [admitting that the suicide pact was “the lie that I told for 17 years,” even

27 \_\_\_\_\_  
28 <sup>1</sup> The 2010 parole hearing was apparently the first time Petitioner saw Ms. DeLeon’s mother  
since his sentencing hearing seventeen years earlier.

1 “while knowing that nobody believes my lies, not the judge, not my own attorney at the trial,  
2 and obviously, surely, none of the Commissioners.”], 62 [So my killing her – it was about  
3 owning her. It was about controlling her for good. That was my motivation for taking Debbie  
4 DeLeon’s life.”].) Again, the 2013 hearing panel cited only *earlier* untruthful statements for its  
5 finding that Petitioner lacked credibility. The 2013 panel did not identify any untruthful  
6 statements Petitioner made during the 2013 hearing itself. Nor did the 2015 panel cite any  
7 untruthful statements made in that hearing.

8         20.     The issue of Petitioner’s credibility and the basis for the Board’s assertion that  
9 he lacked it are important for four reasons. First, a previous decision finding Petitioner suitable  
10 for parole was reversed by then-Governor Schwarzenegger on the grounds that he lacked  
11 credibility and needed further programming to understand the factors contributing to his crime.  
12 (Indeterminate Sentence Parole Release Review, dated March 24, 2009, attached hereto as  
13 Exhibit J, at 2 [asserting a need for programs dealing with relationships].) Second, Petitioner’s  
14 programming efforts in the years since Governor Schwarzenegger’s parole reversal have  
15 specifically helped him – to the Board’s ultimate satisfaction – admit the truth about his crime  
16 and understand all of its contributing factors. In addition to completing several formal self-  
17 help and therapeutic programs, Petitioner completed four separate book reports during this  
18 period, specifically targeting (1) the misunderstanding and mistreatment of co-dependence, (2)  
19 emotionally abusive relationships, (3) dealing with relationship breakups and (4) rage. (See  
20 Book Reports, attached hereto as Exhibit K.)

21         21.     Third, the Board’s *sua sponte* decision in June 2014 to conduct Petitioner’s  
22 subsequent hearing roughly 18 months early expressly acknowledged that the 2013 denial was  
23 based on Petitioner’s previous lies about the crime, which made it difficult for the 2013 panel  
24 to assess his insight into the crime. (Ex. C.) That *sua sponte* advancement was, in turn, based  
25 on Petitioner’s participation (subsequent to the 2013 hearing) in a variety of programs that  
26 helped him gain insight into the factors contributing to his crime. (*Id.* [citing Petitioner’s  
27 participation in the Alternatives to Violence Project, Criminals and Gangmembers Anonymous,  
28 Alternatives to Family Violence and Getting Out by Going In, as well as his college graduation

1 as “new information” indicating that “Mr. Nikooseresht meets the standard to advance his next  
2 hearing.”].)

3 22. Fourth and finally, as will be seen below, the panel at Petitioner’s next hearing,  
4 in 2014, confirmed that his substantial programming efforts and other gains had addressed the  
5 earlier credibility and insight issues.

6 **BACKGROUND**

7  
8 23. Petitioner grew up in a two-parent home with one younger sister in Tehran, Iran.  
9 (Ex. D, at 17.) His father was the director of a local television station, and his mother was the  
10 accountant for that business. (*Id.*) He reports his mother was controlling and critical, and  
11 taught Petitioner not to express feelings or talk about problems openly in order to protect the  
12 image of his family. (*Id.*, at 26.) He was constantly reminded he was the only son, and told  
13 never to disappoint the family. (*Id.*, at 35.) Petitioner was occasionally truant from school and  
14 would lie as a means to impress others. (*Id.*, at 17.) He sought to project an image of  
15 perfection at all times.

16 24. Petitioner was 14 years old when a revolution erupted in Iran, resulting in his  
17 parents both losing their jobs for political reasons. (*Id.*, at 17.) Petitioner’s father went into  
18 hiding, his whereabouts unknown to anyone in the family, returning to Iran only once in the  
19 following five years. (*Id.*) Authorities threatened his family regarding his father’s  
20 whereabouts, and once planted a bomb in his mother’s vehicle. (*Id.*) Petitioner’s family  
21 suffered severe financial difficulties as a result of the political unrest.

22 25. Because of the ongoing war with Iraq, Petitioner and his sister left Iran and  
23 moved to France when he was 17. (*Id.*, at 19.) Their mother remained in Iran to be closer to  
24 their father. (*Id.*, at 17-18.) Petitioner completed his senior year of high school in France and  
25 enrolled in the university upon completion of high school to pursue degrees in mathematics and  
26 physics. (*Id.*, at 20.) He attended three years of college, but learned he could not complete his  
27 degree because he was not a French citizen. (*Id.*) He worked as a hotel receptionist in France  
28

1 for some time, then moved to the United States at age 24 in the hopes of finally finishing his  
2 degree to become an aeronautical engineer. (*Id.*, at 20-21, 33.)

3 26. Petitioner found himself unable to complete his degree because of the high cost  
4 of a university education in the United States. (*Id.*, at 38.) Petitioner worked for a yogurt shop  
5 and for his uncle’s business to make ends meet.

6 **EXEMPLARY PRISON CONDUCT**

7 27. The Board acknowledged that Petitioner has never received a serious rule  
8 violation report and received only one 128 (non-disciplinary memorandum), in 1993, during  
9 the entirety of his 22 years of incarceration. (Ex. D, at 91.) (*Id.*) Petitioner has also maintained  
10 the lowest possible classification (security) score. (*Id.*, at 79.)

11 28. Petitioner has worked several jobs in prison, including clerking, computer filing,  
12 and record-keeping positions. (*Id.*, at 79.) He was observed by supervisors as “skillful,  
13 dependable and had a good rapport with everyone [he] worked with.” (*Id.*)

14 29. The Board observed that Petitioner had attended a “multiplicity” of different  
15 programming. (*Id.*, at 80.) In just the two years between 2013 and 2015, Petitioner  
16 participated in more than a dozen violence prevention courses or workshops having to do with  
17 addressing domestic violence. (*Id.*, at 90.) Petitioner also taught GED classes and facilitated  
18 Alternatives to Family Violence groups for other inmates. (*Id.*, at 82.) Other programming  
19 included courses in anger management and family values. (*Id.*, at 83, 86.)

20 30. Petitioner worked with Dr. Hewchuck, a staff psychologist at the Correctional  
21 Training Facility, in reflective process groups for five years. (*Id.*, at 99; see also Letter from E.  
22 W. Hewchuck, Ph.D., dated August 6, 2010, attached hereto as Exhibit L.) He also had  
23 numerous letters from people pledging wide ranging support for Petitioner upon his release.

24 31. Petitioner completed a dual degree in Economics and Mathematics from the  
25 University of London in 2012. (Ex. B, at 135.)

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1 **PLANS FOR RELEASE ON PAROLE**

2 32. Petitioner plans to return to Iran upon his release from prison. (Ex. D, at 94-95.)  
3 He does have an Immigration and Customs Enforcement (ICE) hold, but still requires  
4 cooperation from ICE and the Pakistani Embassy for him to reenter that country.<sup>2</sup> (*Id.*) His  
5 mother plans to accompany him to Iran if he is permitted to return there. (*Id.*, at 95.)

6 33. If Petitioner is unable to return to Iran upon his release, he will live in  
7 transitional housing that offers self-help classes, anger management, and employment  
8 assistance. (*Id.*, at 95-96; Letter from Healthright360 dated October 8, 2014, attached hereto as  
9 Exhibit M.)

10 34. Petitioner has family support, including an offer of housing from his sister in the  
11 San Fernando Valley. (Ex. D, at 96.)

12 **PSYCHOLOGICAL EVALUATIONS**

13  
14 35. On July 30, 2012, Susan M. Hoyt, Psy.D. conducted a Comprehensive Risk  
15 Assessment of Petitioner. (Copy attached hereto as Exhibit N.) At that time, Dr. Hoyt found  
16 that Petitioner posed only a **low/moderate risk** of violence. (*Id.*, at 10.) Dr. Hoyt believed  
17 Petitioner could decrease his risk by “continuing to abide by the rules set forth by the  
18 institution, participation in additional self-help groups, and continuing to develop insight into  
19 the commitment offense.” (*Id.*, at 10.) Dr. Hoyt also reviewed five previous psychological  
20 evaluations –all of which concluded that Petitioner posed a below average or low risk of future  
21 violence. (See *id.* at 4 [citing such findings in 1996, 2001, 2004, 2006 and 2008].)

22 **2013 PAROLE DECISION**

23  
24 36. When the Board denied Petitioner parole in 2013, the considerations that  
25 weighed against suitability included the commitment offense and uncertainty about Petitioner’s  
26 credibility due to his *previous* false statements about the crime. (Ex. B, at 133-34.) The panel

27 \_\_\_\_\_  
28 <sup>2</sup> The Pakistani Embassy houses the “Interests Section of the Islamic Republic of Iran” and handles that country’s immigration dealings with the U.S. since the Iranian Embassy closed in 1980.

1 opined that those previous lies inhibited its ability to assess his insight into the crime. (*Id.*)  
2 However, Petitioner did not make any false statements during the 2013 hearing itself, nor did  
3 the hearing panel claim otherwise. (*Id.*)

4 **2015 PAROLE DECISION**

5  
6 37. At Petitioner’s next suitability hearing on March 5, 2015, the Board found him  
7 suitable for parole. (Ex. B, at 48, 103.) The Board noted a “long history of a lack of rule  
8 violations, positive work efforts, significant . . . relevant programming, self-help groups,” and  
9 commented that Petitioner’s description of the programming and “how [he] internalize[d] those  
10 in a specific and profound way appear that [he] internalized them, understood them.” (*Id.*, at  
11 122.) According to the Board, Petitioner’s understanding of the commitment offense is  
12 “frankly some of the most sophisticated that [they have] seen in some time.” (*Id.*, at 118.)

13 38. The commissioners added, “[Y]ou’re at the lowest classification, no mental  
14 health issues, no gang, no substance abuse ever, nothing like that in your history, no prior  
15 criminal history, never had probation or parole, no juvenile or adult history, no rules violations  
16 in prison.” (*Id.*, at 119.). The hearing panel conceded that there is “really nothing at this point  
17 [to] . . . link [Petitioner] to any current dangerousness.” (*Id.*, at 119.)

18 39. The Panel acknowledged that Petitioner was previously untruthful, and specified  
19 that “it is important to assess the credibility of any witness who is before us in determining  
20 whether the nature and description of the life crime is accurately reflected by the inmate and  
21 determine whether his current credibility is believable or not believable.” However, the Board  
22 discussed how Petitioner had addressed its previous concerns: “[S]ince then and since the last  
23 Risk Assessment, you’ve done a lot of work. And it’s been very specific. You’ve done a lot of  
24 work in the areas with Alternatives to Violence with domestic abuse. And you haven’t done it  
25 once. You’ve done it a number of times.” (*Id.*, at 120.) The Board specifically found evidence  
26 that Petitioner has “put a lot of time and effort . . . into understanding yourself and into  
27 understanding why this isn’t going to happen again.” (*Id.*, at 120.) The Panel concluded  
28



1 “[t]hings have changed. You’ve become more truthful. You’ve done more programming. It  
2 appears as if it’s more internalized that it has been before.” (*Id.*, at 121.)

3 40. The Board concluded that Petitioner poses no recidivism risk, has been a model  
4 inmate, programmed well, has taken advantage of rehabilitative programs available to him and  
5 should be released from prison. (*Id.*, at 120-22.)

## 6 **GOVERNOR’S REVERSAL**

7  
8 41. On July 10, 2015, Governor Brown reversed the Board’s parole grant. (Ex. E, at  
9 3.) Although he acknowledged Petitioner’s “efforts to improve himself while incarcerated,”  
10 the Governor reversed the Board’s decision because (1) the crime was “horrific and  
11 disturbing,” (2) the Governor found that Petitioner failed to explain why he committed this  
12 crime and failed to “account for the extreme rage and violence he perpetrated,” and (3) the  
13 Governor was “troubled” by alleged reports of Petitioner’s physical abuse of the victim. (*Id.*)

14 42. The Governor’s statement did not acknowledge Petitioner’s explanation of his  
15 behavior and did not consider the evidence demonstrating how Petitioner is “prepared to act  
16 differently in future relationships.” (*Id.*, at 2.)

17 43. The Governor also focused on Petitioner’s earlier statements about the crime  
18 while inexplicably discounting the fact that Petitioner has been telling a consistent and  
19 forthright version about his role in the crime for the past five years. (Ex. E.)

## 20 **V.**

### 21 **CONTENTIONS**

22 A. THE GOVERNOR VIOLATED PETITIONER’S DUE PROCESS RIGHTS BECAUSE  
23 NO EVIDENCE DEMONSTRATES THAT HE POSES A CURRENT THREAT TO  
24 PUBLIC SAFETY IF RELEASED ON PAROLE.

25 B. THE APPROPRIATE REMEDY FOR THESE DUE PROCESS VIOLATIONS IS AN  
26 ORDER VACATING THE GOVERNOR’S REVERSAL AND RE-INSTATING THE  
27 BOARD’S PAROLE GRANT.

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**VI.**

**PRAYER FOR RELIEF**

Petitioner is without a remedy save by writ of habeas corpus.

WHEREFORE, Petitioner prays that this Court:

1. Issue an Order to Show Cause requiring respondents to show cause why Petitioner is not entitled to relief;
2. Declare the rights of the parties;
3. Vacate the Governor’s decision and re-instate the Board’s grant of parole;
4. Order Petitioner’s immediate release from custody pursuant to the Board’s reinstated March 5, 2015, parole grant; and
5. Grant all other relief necessary to promote the ends of justice.

Dated: January 4, 2016

Respectfully submitted,  
UNCOMMON LAW

By: \_\_\_\_\_  
Keith Wattley  
Attorney for Petitioner

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**VERIFICATION**

I, Keith Wattley, state:

I represent the Petitioner in this action, Ramin Nikooseresht. I have read the foregoing Petition for Writ of Habeas Corpus and the facts stated therein are true of my own knowledge, except as to matters that are therein stated on my own information and belief, and as to those matters I believe them to be true.

I make this verification on behalf of Petitioner.

I declare under penalty of perjury that the foregoing is true and correct and that this verification was executed on January 4, 2016, at Oakland, California.

---

Keith Wattley  
Attorney for Petitioner

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **INTRODUCTION**

3 This Court should vacate the Governor’s reversal of Petitioner’s parole grant because it  
4 was unjustifiable and unlawful. Petitioner, who has been incarcerated for over 22 years on a  
5 fifteen-to-life sentence, has been eligible for parole for 13 years. The Board and its  
6 psychologists have found that he poses only a low public safety risk. Yet he remains in prison  
7 solely because of the Governor’s unfounded decision to block his release. The Governor’s  
8 findings cannot be reconciled with the record and do not establish that Petitioner is currently  
9 dangerous.

10 The Governor’s distorted use of the historical record is particularly troubling, since  
11 Petitioner has participated extensively in both individual and group therapy with a specific  
12 focus on his offense and its contributing factors, including anger management programs. In  
13 addition to his exemplary conduct in prison, the record shows that Petitioner has accepted full  
14 responsibility for his offense, expressed sincere remorse for his actions, and achieved insight  
15 into the causative factors of his offense. These are all factors that strongly militate toward his  
16 release on parole.

17 Under the governing laws and regulations, Petitioner *must* be released. The Governor  
18 has made arbitrary and capricious assertions that are contrary to the record. The Governor’s  
19 decision reversing Petitioner’s parole grant violates due process under the state and federal  
20 Constitutions because no reliable evidence in the record indicates that Petitioner is currently  
21 dangerous. Given the statutory mandate that parole must be granted absent evidence of current  
22 dangerousness, the Governor’s reversal of Petitioner’s parole grant must be vacated.

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1 He lied to her about his age, finances and education because of his insecurities and his distorted  
2 belief that she would reject him if he appeared less than perfect. (See *id.*, at 5.) His work on  
3 relationships and breaking up helped him understand the importance of healthy self-care during  
4 periods of pain, grief and depression resulting from a relationship separation, which contrasts  
5 with his previous method, which was avoidance and suppression. (See *id.*, at 7.) Lastly, through  
6 his efforts to understand the anger, rage and violence in his life, Petitioner came to realize that  
7 his “seething shame-based” rage stemmed from his belief that Ms. DeLeon would despise him  
8 and think of him as a loser for the rest of her life, and how his “seething impotent rage” stemmed  
9 from the perceived helplessness in his inability to control Ms. DeLeon after telling her of his  
10 suicidal intention. (*Id.*, at 9.)

11 In reviewing a parole decision, courts must consider “not only the evidence specified”  
12 therein “but the entire record” in discerning whether some evidence supports the decision and in  
13 seeking “a rational nexus between the evidence and the ultimate determination of current  
14 dangerousness.” (*In re Morganti* (2014) 204 Cal.App.4th 904, 917; *In re Shaputis* (2011) 53  
15 Cal. 4th 192, 221.) As the Supreme Court has made clear, where the record has developed over  
16 successive parole hearings – including components such as “CDCR reports, psychological  
17 evaluations, **and the inmate’s statements at the hearings**” – “the Board or the Governor may  
18 not arbitrarily dismiss more recent evidence in favor of older records” when assessing current  
19 dangerousness. (*Shaputis II, supra*, 53 Cal.4th at 211, emphasis added; *see also Lawrence*,  
20 *supra*, 44 Cal.4th at 1223-1244; *In re Gaul* (2009) 170 Cal.App.4th 20, 38-39; *In re Aguilar*  
21 (2008) 168 Cal.App.4th 1479, 1490.) Nor can the Governor take individual comments out of  
22 context; instead, he must review all evidence in the record as a whole. (*In re Ernest Smith*  
23 (2003) 114 Cal.App.4th 343.)

24 The Governor claims not to understand Petitioner’s explanation of his motivations in the  
25 crime, and concluded that Petitioner “has not yet adequately explained why he committed this  
26 heinous crime.” (Ex. E, at 2.) However, as discussed above, Petitioner has provided detailed  
27 explanations for his behavior. Throughout his childhood, he resorted to lies to create a façade of  
28 perfection and success and was obsessed with keeping up this image. His family impressed

1 upon him that he must be wealthy and successful in order to carry on the family name. In his  
2 relationship with Ms. DeLeon, he took great pains to make her see him exactly how he wanted to  
3 be seen; he became controlling, possessive and manipulative to ensure that she stayed with him  
4 and that his successful image remained intact. He explained that his relationship with Ms.  
5 DeLeon allowed him to escape the reality that he was broke, unable to complete his college  
6 degree in the United States, and struggling to get by. He often felt his life was purposeless, he  
7 was depressed, and contemplated committing suicide. He created excuses for his own hardship,  
8 blaming others, and was too proud to openly show weakness or anger. Petitioner told the Board  
9 that when he finally decided to take his own life, he selfishly wanted to spend his last days with  
10 Ms. DeLeon, without any distraction, and “leave a good impression” on her. Petitioner’s perfect  
11 image with Ms. DeLeon was threatened when he told her of his plans. He became angry and  
12 wanted to regain control over the situation; if he could not be with Ms. DeLeon, he wanted *no*  
13 *one* to be with her, and he feared she would think of him as a “weak loser” upon his suicide. To  
14 protect his own ego and image and maintain control, Petitioner attacked Ms. DeLeon and then  
15 tried to kill himself. (See Ex. K, at 3, 5, 7, 9.)

16 The Governor inexplicably ignored Petitioner’s explanation during his last two hearings  
17 and in his writings of the rage and his decisions to head-butt, bite and hit Ms. DeLeon in his  
18 efforts to control her as she fought back against him strangling her. (Ex. D, at 63-66; see also  
19 Ex. B, at 31-38.) The Governor claims that Petitioner’s explanations “do not account for the  
20 extreme rage and violence he perpetrated.” (Ex. E, at 2.) However, Petitioner has done  
21 extensive work to understand and explain the rage involved in this crime. Specifically, his book  
22 reports discuss how his “seething shame-based” rage stemmed from the knowledge that Ms.  
23 DeLeon would despise him and think of him as a loser for the rest of her life, and how his  
24 “seething impotent rage” stemmed from the perceived helplessness in his inability to control Ms.  
25 DeLeon after telling her of his suicidal intention. (See Ex. K, at 9.)

26 The Board’s review of Petitioner’s testimony in the 2015 hearing and the underlying  
27 record of his rehabilitation strongly endorsed his suitability for parole. As the Board, Petitioner  
28 has “taken a dozen or so Alternatives to Violence courses or workshops [. . .] [a]nd they have to



1 do with personal denial [and] defining domestic violence.” (Ex. D, at 90.) When asked by the  
2 Board if rage was “involved in the murder,” Petitioner answered “Absolutely,” and detailed how  
3 the thought of Ms. DeLeon seeing him as inadequate, “weak,” or anything except perfect, and  
4 her finding someone else to be with “culminated in [his] rage.” (*Id.*, at 97-98.) The Board  
5 remarked that Petitioner’s understanding of his control and anger issues is “specific” and  
6 “profound,” and he “internalized them, understood them.” (*Id.*, at 122.) The Board’s decision is  
7 supported by reference to Petitioner’s actual programming and other evidence in the record  
8 compiled since the 2010 parole hearing. By contract, the Governor’s decision completely  
9 overlooks *everything* since 2010.

10 The Governor’s dissatisfaction with Petitioner’s plausible explanations cannot substitute  
11 for *evidence* that Petitioner remains dangerous today, particularly in light of the entire record of  
12 his remorse, insight and acceptance of responsibility. Even the Board conceded that “however  
13 distasteful the murder is, some of [Petitioner’s] understanding of it is frankly some of the most  
14 sophisticated that I’ve seen in some time as far as being able to explain . . . your issues at the  
15 time.” (Ex C., at 118.) The Governor cannot arbitrarily dismiss the overwhelming evidence that  
16 Petitioner has explained and currently understands the causative factors of the life crime.

17 The Governor’s encouragement that Petitioner “provide an honest account of his actions  
18 and motivations at his next psychological evaluation” is based on a gross misrepresentation and  
19 ignoring the fact that Petitioner has acknowledged past lies openly and repeatedly, and offered  
20 extensive explanation for his behavior. (Ex. E, at 2; but see Ex. D, at 49, 50-51, 76, 111-112,  
21 115; Ex. B, at 26, 28-29, 40-41, 54-55, 57-59, 66-67.) Again, since immediately following his  
22 2010 hearing, Petitioner has consistently provided an accurate version of the facts that differs  
23 from the account he presented at trial, and he admitted to lying for 17 years up to that point.  
24 Though Dr. Hoyt’s 2012 psychological evaluation claimed “a lack of insight into his  
25 characterological [sic] problems leading to the commitment offense,” the Board acknowledged  
26 openly in 2013 that the Panel “couldn’t find a basis” for that conclusion. (Ex. B, at 137-138.)  
27 Further, the psychological evaluation adds that Petitioner participated in “self-help treatment  
28 groups that could assist in gaining insight into these problems,” and Petitioner has since

1 completed more than a dozen additional programs related to anger management and self-control.  
2 (Ex. E, at 10.)

3 Notably absent from the Governor’s decision reversing Petitioner’s parole grant is any  
4 explicit statement that his purportedly inadequate understanding correlates to a current  
5 unreasonable risk to public safety, even though such a nexus would be required to support the  
6 Governor’s decision. The Governor failed to even *allege*—much less show—how any supposed  
7 lack of insight makes Petitioner dangerous to the community. Though the Governor  
8 characterized Petitioner’s understanding of why he committed this crime as “bizarre,” such  
9 opinions do not indicate a lack of truthfulness or provide any basis to doubt Petitioner’s  
10 explanations. The Governor’s decontextualized finding is thus contradicted by a review of the  
11 full record.

12 Lastly, the Governor claims Petitioner must “demonstrate that he is prepared to act  
13 differently in future relationships.” (Ex. E, at 2.) Yet, Petitioner has already provided ample  
14 proof of his programming and understanding of how he may deal with relationship conflicts in  
15 the future. Petitioner explained that in future relationships, he will see the other person as an  
16 “independent individual,” who is “entitled to her or his own opinion, weaknesses, defects, and I  
17 have no right to control that. The only thing I can control is myself.” (Ex. D, at 100.) He  
18 offered that when anger is triggered in future relationships, he will “[t]alk, reach for help, do not  
19 stuff [his] disappointments, [his] anxiety, [his] anger inside,” that he will “create a support  
20 system” around him and use tools available to him “to be mindful of . . . feelings and emotions .  
21 . . in order to manage them before they become unmanageable.” (*Id.*, at 101.) His statements at  
22 the hearing are directly supported by his writings on relationships, breakups, co-dependency and  
23 rage. (See Ex. K.) The evidence thus completely contradicts the Governor’s finding that  
24 Petitioner has not yet shown how he will act differently going forward.

25 Reviewing courts have repeatedly observed, “[The Governor’s] ‘mere refusal to accept . .  
26 . evidence showing [understanding and remorse] is not itself a rational or sufficient basis upon  
27 which to conclude that the inmate lacks insight, let alone that he or she remains currently  
28 dangerous.’” (*In re Denham* (2012) 211 Cal.App.4<sup>th</sup> 702, 716, citing *In re Ryner* (2011) 196

1 Cal.App.4<sup>th</sup> 533, 549, and *In re Rodriguez* (2011) 193 Cal.App.4<sup>th</sup> 85, 95.) In this case, as in  
2 *Denham*, the Governor “cites no evidence establishing that “Petitioner’s] participation in the  
3 crime was anything other than what he described at the [2015] parole hearing. (*Denham, supra*,  
4 211 Cal.App.4<sup>th</sup> at 716.)

5 The Governor must consider the record in full, and that record simply does not support  
6 any finding that Petitioner lacks sufficient understanding into the causative factors of the life  
7 crime. (*Smith, supra*, 114 Cal.App.4<sup>th</sup> at 343.) A decision to deny parole cannot stand if, in the  
8 face of undisputed evidence of a prisoner’s suitability, it relies on evidence that forewarns no  
9 danger to the public.<sup>3</sup> (*Lawrence, supra*, 44 Cal.4<sup>th</sup> at 1227.) Therefore, the Governor’s  
10 decision must be vacated. (*Id.* at 1221.)

## 11 II.

### 12 **THE APPROPRIATE REMEDY FOR THESE DUE PROCESS** 13 **VIOLATIONS IS AN ORDER VACATING THE GOVERNOR’S** 14 **REVERSAL AND RE-INSTATING THE BOARD’S GRANT OF PAROLE.**

15 The record before the Governor demonstrates that Petitioner is suitable for parole and any  
16 conclusion to the contrary lacks evidentiary support. The appropriate remedy for the Governor’s  
17 due process violations is an order vacating the Governor’s decision and reinstating the Board’s  
18 grant of parole. (*Lawrence, supra*, 44 Cal.4<sup>th</sup> at 1200, 1229<sup>4</sup>; *In re Aguilar* (2008) 168  
19 Cal.App.4<sup>th</sup> 1479, 1491 [“Because we have reviewed the materials that were before the Board  
20

21  
22 <sup>3</sup> In reviewing a record of rehabilitation, increased maturity, insight and acceptance of  
23 responsibility spanning decades, it is always easy to point to some ancient document or evidence to  
24 allegedly support a denial of parole; however, “acceptance of responsibility works in favor of  
25 release’ [no] matter how longstanding or recent it is, so long as the inmate genuinely accepts  
responsibility.” (*In re Elkins* (2006) 144 Cal.App.4<sup>th</sup> 475, 495, quoting *In re Lee* (2006) 143  
Cal.App.4<sup>th</sup> 1400, 1414 [internal quotations omitted].)

26 <sup>4</sup> The Supreme Court in *Lawrence* did not discuss the remedy, but it affirmed the Court of  
27 Appeal’s judgment. (*Lawrence, supra*, 44 Cal.4<sup>th</sup> at 1229.) The lower Court had vacated the  
28 Governor’s decision, reinstated the Board’s order, and ordered that Ms. Lawrence “be released  
forthwith.” (*Lawrence, supra*, 150 Cal.App.4<sup>th</sup> at 1562 [decision superseded when Supreme Court  
reviewed and affirmed]; see also *Burdan, supra*, 169 Cal.App.4<sup>th</sup> at 39.)

1 and found no evidence to support a decision other than the one reached by the Board, a remand  
2 to the Governor would amount to an idle act. . . .”], internal citations omitted; see also *In re*  
3 *Burdan* (2008) 169 Cal.App.4th 18, 40 [“The Governor’s decision reversing the Board’s grant of  
4 parole is vacated and the Board’s decision is reinstated.”]; *In re Vasquez* (2009) 170 Cal.App.4th  
5 370, 386; *In re Dannenberg* (2009) 173 Cal.App.4th at 256-257; *In re Gray* (2007) 151  
6 Cal.App.4th 379, 410-411; *In re Lee* (2006) 143 Cal.App.4th 1400, 1414-1415; *In re Masoner*  
7 (2009) 179 Cal.App.4th 1531, 1541.)

8 **CONCLUSION**

9 For the reasons set forth above, the Court should issue an Order to Show Cause why  
10 Petitioner should not be granted the relief he requests.

11 Dated: January 4, 2016

Respectfully submitted,  
UNCOMMON LAW

12  
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14 By: \_\_\_\_\_  
15 Keith Wattley  
16 Attorney for Petitioner  
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**LIST OF EXHIBITS**

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- Exhibit A Abstract of Judgment, dated February 16, 1993
- Exhibit B Transcript of Parole Consideration Hearing, May 8, 2013
- Exhibit C Miscellaneous Decision, dated June 25, 2014
- Exhibit D Transcript of Parole Consideration Hearing, March 5, 2015
- Exhibit E Governor Brown’s July 10, 2015, Reversal Decision
- Exhibit F Sentencing Transcript, dated February 10, 1993
- Exhibit G Decision Pages of 2010 Parole Hearing Transcript
- Exhibit H Letter to Ms. Gutierrez, dated May 5, 2010
- Exhibit I Letter to Ms. Lisa DeLeon, dated August 26, 2010
- Exhibit J Governor Schwarzenegger’s March 24, 2009, Reversal Decision
- Exhibit K Book Reports on Co-Dependence – Misunderstood and Mistreated, The Emotionally Abusive Relationship, Getting Past Your Breakup, and Rage
- Exhibit L Letter from E. W. Hewchuck, Ph.D., dated August 6, 2010
- Exhibit M Letter from Healthright360 dated October 8, 2014
- Exhibit N Comprehensive Risk Assessment, July 30, 2012, by Susan M. Hoyt, Psy.D.