Name: DAVID SCOTT HARRISON

Address: San Quentin State Prison

3-N-13

San Quentin, CA 94974

CDC or ID Number: E-62612

MC-275

IN THE SUPERIOR COURT OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

(Court)

| | |
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| DAVID SCOTT HARRISON,<br>Petitioner<br>vs.<br>RON DAVIS, Warden,<br>Respondent | **PETITION FOR WRIT OF HABEAS CORPUS**<br>No. ______<br>EVIDENTIARY HEARING REQUESTED<br>APPOINTMENT OF COUNSEL REQUESTED<br>EXHIBITS LODGED SEPARATELY |

## INSTRUCTIONS—READ CAREFULLY

- **If you are challenging an order of commitment or a criminal conviction and are filing this petition in the Superior Court, you should file it in the county that made the order.**
- **If you are challenging the conditions of your confinement and are filing this petition in the Superior Court, you should file it in the county in which you are confined.**

- Read the entire form *before* answering any questions.
- This petition must be clearly handwritten in ink or typed. You should exercise care to make sure all answers are true and correct. Because the petition includes a verification, the making of a statement that you know is false may result in a conviction for perjury.
- Answer all applicable questions in the proper spaces. If you need additional space, add an extra page and indicate that your answer is "continued on additional page."
- If you are filing this petition in the superior court, you only need to file the original unless local rules require additional copies. Many courts require more copies.
- If you are filing this petition in the Court of Appeal and you are an attorney, file the original and 4 copies of the petition and, if separately bound, 1 set of any supporting documents (unless the court orders otherwise by local rule or in a specific case). If you are filing this petition in the Court of Appeal and you are *not* represented by an attorney, file the original and one set of any supporting documents.
- If you are filing this petition in the California Supreme Court, file the original and 10 copies of the petition and, if separately bound, an original and 2 copies of any supporting documents.
- Notify the Clerk of the Court in writing if you change your address after filing your petition.

Approved by the Judicial Council of California for use under rule 8.380 of the California Rules of Court (as amended effective January 1, 2007). Subsequent amendments to rule 8.380 may change the number of copies to be furnished to the Supreme Court and Court of Appeal.

This petition concerns:

☐ A conviction ☒ Parole

☐ A sentence ☐ Credits

☐ Jail or prison conditions ☐ Prison discipline

☐ Other (specify):

1. Your name: David Scott Harrison.
2. Where are you incarcerated? San Quentin State Prison, San Quentin, California.
3. Why are you in custody? ☒ Criminal conviction ☐ Civil commitment

*Answer items a through i to the best of your ability.*

a. State reason for civil commitment or, if criminal conviction, state nature of offense and enhancements (for example, "robbery with use of a deadly weapon").

Murder, first degree; use of a weapon.

b. Penal or other code sections: Penal Code, § 187(a); and § 12022(d).

c. Name and location of sentencing or committing court: Superior Court, North County Division, Vista Regional Center, 325 S. Melrose Drive, Vista, California, 92081.

d. Case number: CNR-16848.

e. Date convicted or committed: March 16, 1990.

f. Date sentenced: May 3, 1990.

g. Length of sentence: Twenty-five years to life; and consecutive one year.

h. When do you expect to be released? Undetermined.

i. Were you represented by counsel in the trial court? ☒ Yes ☐ No *If yes, state the attorney's name and address:*

Alan May (deceased).

4. What was the LAST plea you entered? *(Check one):*

☒ Not guilty ☐ Guilty ☐ Nolo contendere ☐ Other:

5. If you pleaded not guilty, what kind of trial did you have?

☐ Jury ☒ Judge without a jury ☐ Submitted on transcript ☐ Awaiting trial

## INTRODUCTION

We were all taught as children to play fairly (nicely) with others. While "[t]he rules of fair play do not apply in love and war" (John Lyly, Euphues, 1578), rules of fair play do apply in matters of liberty.

This petition presents twelve grounds, each expressing the deliberate failures of the Board of Parole Hearings to play fairly; from the use of unreliable information and secret documents, to admittedly blanket policies and partiality against granting parole to life-term prisoners, including this petitioner.

There is no "some evidence" in this case to deny parole -- the Board of Parole Hearings instead denied parole on Harrison's termperament, his claim of actual innocence, and his litigation efforts to prove innocence; an unfair parole process that violated Harrison's liberty interests.

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6. GROUNDS FOR RELIEF

**Ground 1:** State briefly the ground on which you base your claim for relief. For example, "The trial court imposed an illegal enhancement." *(If you have additional grounds for relief, use a separate page for each ground. State ground 2 on page 4. For additional grounds, make copies of page 4 and number the additional grounds in order.)*

VIOLATION OF HARRISON'S DUE PROCESS RIGHTS UNDER THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION: THE BOARD OF PAROLE HEARINGS DENIED HARRISON PAROLE BY RELIANCE UPON THE COMPREHENSIVE RISK ASSESSMENT THAT HAD NO INDICIA OF RELIABILITY

a. Supporting facts:

Tell your story briefly without citing cases or law. If you are challenging the legality of your conviction, describe the facts on which your conviction is based. *If necessary, attach additional pages.* CAUTION: You must state facts, not conclusions. For example, if you are claiming incompetence of counsel, you must state facts specifically setting forth what your attorney did or failed to do and how that affected your trial. Failure to allege sufficient facts will result in the denial of your petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.) A rule of thumb to follow is, *who* did exactly *what* to violate your rights at what time *(when)* or place *(where)*. *(If available, attach declarations, relevant records, transcripts, or other documents supporting your claim.)*

1. On January 13, 2016, Harrison was interviewed by Karen Lippman, Psy.D., a psychologist for the Forensic Assessment Division ("FAD") of the Board of Parole Hearings ("BPH").

2. Harrison began by requesting that the interview be audio recorded. Ms. Lippman was hostile to, and openly angered by, the request for audio recording.

3. Ms. Lippman authored a Comprehensive Risk Assessment ("CRA"), approved on January 22, 2016, finding Harrison to be a "**High** risk for future violence." <u>See</u>, Exhibit <u>A</u>, Comprehensive Risk Assessment, at p. 14. (emphasis in original) **(Exhibits Lodged Separately)** Further, Ms. Lippman diagnosed Harrison with Narcissistic Personality Disorder and Adult Antisocial Behavior. (Exhibit <u>A</u>, at p. 8) The CRA is infected with name-calling and calumnies of all imaginable sorts. (Exhibit <u>A</u>, passim)

4. Harrison presented an informal Appeal Of And Objections To The CRA, listing more than 61 omissions, contradictions, errors, mistakes of fact and law, paraphrasing, fabrications and falsehoods contained in the CRA.

5. Chief Psychologist for the FAD, Cliff Kusaj, Psy.D., rubber-stamped the CRA as "reasonably supported." See, Exhibit _B_, Letter by Cliff Kusaj, Psy.D., Chief Psychologist, February 18, 2016, at p. 1.

6. On March 8, 2016, Harrison served on Mr. Kusaj a California Public Records Act request containing approximately 110 reasonably described, detailed and particular, requests for records supporting the findings, opinions, and diagnoses, made in the CRA. (Exhibit _C_)

7. On April 5, 2016, Philip Thomas, Legal Analyst in the Executive Analysis Unit for the BPH, stated the "Board has no documents that are responsive to your requests, apart from Dr. Lippman's notes, which are exempt ..."[1/] See, Exhibit _D_, Letter by Philip Thomas. Mr. Thomas' letter covered only requests ## 3-23. Requests ## 24-41 remained under review. (Id.)

8. On April 6, 2016, The Board Of Psychology opened an investigation into Ms. Lippman's conduct. (Exhibit _E_, Letter by The Board of Psychology, April 6, 2016)

1/ As Ms. Lippman's notes, scoring sheets, raw data, drafts, and such materials, are the only documents/records that, however impossibly, could be argued to support all the findings, opinions, and diagnoses, of the CRA, those notes, scoring sheets, raw data, drafts, and such materials, must be produced. There are no other documents/records to support the findings, opinions, and diagnoses, of the CRA.

9. On April 12, 2016, Harrison served on San Quentin State Prison, Litigation Coordinator - Public Records Act Officer, Ms. E. Cervantes, an identical CPRA request as he had previously served on the BPH/FAD. (see, e.g., ¶ 6, above, referencing Exhibit C ) Moreover, Harrison provided Cervantes unlimited access to his C-File, medical and mental health records. Harrison sought any records supporting the findings, opinions, and diagnoses, made in the CRA.

10. On May 2, 2016, Philip Thomas notified Harrison that the "Board's search has disclosed no responsive records[]" concerning CPRA requests ## 24-41. (Exhibit F , Letter by Philip Thomas, May 2, 2016)

11. On July 12, 2016, Harrison served on Jennifer Shaffer, Executive Officer for the BPH, his formal Appeal Pursuant To Johnson v. Shaffer, et al. (E.D. Cal. #2-12-cv-01059-KJM). (Exhibit G ) Harrison did provide Shaffer with evidence from Thomas that no evidence exists to support the CRA.

12. On July 22, 2016, Heather McCray, Senior Staff Attorney for the BPH, responded to Harrison's formal Appeal Pursuant To Johnson v. Shaffer, et al. McCray found a single factual error in the CRA, which she deemed immaterial. She otherwise rubber-stamped the CRA, failing to address the complete lack of any evidence to support the findings, opinions, and diagnoses, made in the CRA. (Exhibit H )

13. On or about July 22, 2016, Cervantes met with Harrison. Cervantes had obtained approximately 650 documents, which she

avowed to Harrison contained no records in support of the findings, opinions, and diagnoses, of the CRA. Despite greater access to Harrison's records than Lippman had, Cervantes found not a single record to support any finding, opinion, or diagnoses, of the CRA.

14. On July 23, 2016, Harrison notified Shaffer of Cervantes' findings that no records exist to support the CRA. (Exhibit I, Addendum To: Appeal Pursuant To Johnson v. Shaffer, et al. (E.D. Cal. #2-12-cv-01059-KJM))

15. On July 25, 2016, Harrison responded to McCray. Harrison provided McCray an identical copy of the March 8, 2016, CPRA request seeking records in support of the findings, opinions, and diagnoses, made in the CRA. (Exhibit J, Follow-Up To Appeal Pursuant To Johnson v. Shaffer, et al., with California Public Records Act Request; see also, ¶ 6, above, referencing Exhibit C)

16. As of the writing of this habeas petition, and despite Harrison's persistent efforts, neither the BPH, or Ms. McCray, have produced a single record or document to support the findings, opinions, or diagnoses, of the CRA.

17. California requires life-term prisoners to undergo a psychologicl evaluation for use at parole suitability hearings. A substantial and significant part of the evaluation is the PCL-R test scoring, which results in a risk assessment of future dangerousness. The PCL-R test score/risk assessment is a strong predictor of release decisions by the BPH.

18. Lippman's assessment of Harrison as a high risk of future dangerousness/violence, significantly founded on her

use of the PCL-R test, is irrelevant, as it is not based upon scientifically validated analysis, but instead on her unsupported subjective negative bias.

19. The PCL-R is by no means a reliable and valid tool for predicting future dangerousness.

20. The PCL-R has high false-positive rates (e.g., finding Harrison, a harmless person, a high risk of future violence), and should not be used where life and liberty decisions are at stake.

21. Predictions of future dangerousness are exceedingly unreliable. Neither psychiatrists nor anyone else have demonstrated an ability to predict future violence or dangerousness; they predict acts of violence that will not in fact take palce (false-positives), thus branding as dangerous many persons who are in reality totally harmless.

22. A large body of research demonstrates that dangerousness and violence risk potential cannot be reliably predicted.

23. Two-thirds of predictions of future violence are incorrect, a level worse than chance must be deemed unreliable.

24. Psychiatrists and psychologists are accurate in no more than one out of three predictions of violent behavior.

25. With consistent findings of abysmal interrater reliability, the PCL-R's prejudicial impact against Harrison outweighs any probative value.

26. Findings of poor reliability of predictions of dangerousness/violence echo those of other studies in the United States, Canada, and Europe.

27. The PCL-R test is too inaccurate to be applied in situations where liberty, and public safety, are at stake.

28. Characterological traits such as manipulativeness, glibness and superficial charm are especially prone to error in forensic settings -- not objectively measurable, but are purely in the eye-of-the-beholder.

29. Lippman did not question Harrison, did not test Harrison, and gave no finding or opinion as to Harrison's own intentions or strategies for the future. Intent was of no consideration to Lippman whatsoever.

30. Harrison's assignment to Lippman, reputed to give only elevated risk assessments, was not random or accidental.

31. Lippman has not completed practice PCL-R assessments to achieve an acceptable level of interrater reliability.

32. Lippman's use of the PCL-R, and the other testing tools used by Lippman, contain deliberate scoring errors, misdiagnoses, internal inconsistencies, and biased ratings. Lippman cannot justify her scoring and interpretations of the PCL-R.

33. Lippman deliberately misused the PCL-R test to predict Harrison to be a high risk of future violence, and in disagnosing Harrison as Narcissistic Personality Disorder and Adult Antisocial Behavior. Lippman, however, confessed in the CRA that no evidence exists to support her findings, opinions, or diagnoses.

> "Mr. Harrison has no history of mental illness on record. There is no known history of treatment in the community. He is not currently, and never has been, a participant in the Mental Health Services Delivery System (MHSDS) within the CDCR."

See, Exhibit A, at p. 7.

34. At the parole suitability hearing of August 3, 2016, Attorney Stringer objected to use of the CRA. (Exhibit K, Initial Parole Consideration Hearing transcript, at p. 6 ln. 6 - p. 7 ln. 17) Additionally, Harrison put the Panel on notice that the BPH and CDC had determined that no evidence exists to support the CRA. (Exhibit K, at p. 9 ln. lns. 12-15, and p. 10 ln. 23 - p. 11 ln. 14)

35. Peck denied the objections as to the use of the CRA. "We're using it." See, Exhibit K, at p. 13 lns. 12-13.

36. Used by the Panel, the CRA was poisonous to Harrison.

> "PRESIDING COMMISSIONER PECK: ... So let's just start, as I'm sure you knew, let's just start with the Comprehensive Risk Assessment. That Risk Assessment, that's evidence that was presented to us, that's damning. That's damning, that shows -- damning is so draconian, let's not use damning. Let's use -- let's use, oh, my gosh.
>
> DEPUTY COMMISSIONER GROTTKAU: I like that.
>
> PRESIDING COMMISSIONER PECK: How did you get that kind of Risk Assessment; right? I'm not a clinician, but the doctor thinks you're a high risk for future violence. And the doctor said, I'm not going to read the whole thing, I'm just going to incorporate it by reference."

See, Exhibit K, at p. 192 lns. 3-15.[2/]

37. To achieve her high risk assessment of Harrison, Lippman diagnosed Harrison as having Narcissistic Personality Disorder and Adult Antisocial Behavior. To make such diagnoses, the Diagnostic Statistical Manual-5 ("DSM-5") requires that symptoms be evident in adolecence or early-adulthood. In the instant

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2/ The BPH has never granted parole to any prisoner who has been issued a risk assessment of high.

case, the BPH, CDC, and Lippman, have all stated that no historical evidence exists, indeed, no current evidence, that Harrison exhibited any symptoms in adolescence or early-adulthood to support Lippman's diagnoses. Moreover, such disorders must lead to distress or impairment in cognition and/or functioning. The BPH, CDC, and Lippman, have all stated that no such evidence, over the entire course of Harrison's incarceration, exists that Harrison suffers, or has ever suffered, distress or impairment (cognitive or functional).

38. There are nine criteria for Narcissistic Personality Disorder. Lippman opined that Harrison exhibits all nine criteria. The BPH, CDC, and Lippman, have determined that no evidence exists to support her diagnosis.

39. As to Adult Antisocial Behavior, Lippman conceded that Harrison could not be diagnosed as having Antisocial Personality Disorder because there is no evidence of any symptoms in Harrison's adolescence or early-adulthood. Lippman opined that Harrison exhibits all other necessary criteria. The BPH, CDC, and Lippman, have determined that no evidence exists to support her diagnosis.

40. Lippman's high risk assessment of Harrison was made without a single piece of evidence, past or present, in support.

41. Lippman relied upon invalid instruments in determining the outcome of Harrison's CRA, e.g., the PCL-R, which was developed for use on mental patients, not prisoners.

42. Lippman deliberately failed to credit Harrison's age of 59 years; prisoners serving 15 years or more in prison

re-offend at the lowest rate (Harrison has been continuously incarcerated since 1988); at 59 years of age, ricidivism rates are .05% - 1%; prisoners labeled as "serious/violent" re-offend at a lower rate than other prisones not so labeled; CDC has scored Harrison at the lowest risk. (COMPAS test, Exhibit, L )

43. At interview, Lippman was openly hostile and antagonistic towards Harrison, attacking: (1) Harrison's request that the interview be audio recorded; (2) Harrison's absolute innocence claims, and (3) his litigation to prove his innocence, as well as civil rights cases brought against the CDC.

44. The BPH and CDC have failed to provide Harrison the evidence of Lippman's notes, scoring sheets, drafts, raw data, and such materials, that may, or may not, support Lippman's findings, opinions, and diagnoses, specifically her high risk assessment of Harrison.

45. Failure of the BPH to provide Harrison those items at ¶ 44, above, denied Harrison the ability to be heard at the parole suitability hearing, just as Harrison was denied the ability to be heard at the psychological interview.

46. The CRA lacks any indicia of reliability where the BPH, CDC, and Lippman, all concede that no evidence, past or present, exists to support the findings, opinions, or diagnoses, of the CRA.

47. The BPH's reliance on the CRA (high risk of future violence) to deny Harrison parole, despite knowledge that no

evidence exists to support the CRA, was a predetermined outcome by Lippman, the BPH, and the Panel.

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5. Supporting cases, rules, or other authority (optional):
*(Briefly discuss, or list by name and citation, the cases or other authorities that you think are relevant to your claim. If necessary, attach an extra page.)*

Supporting cases, rules, and other authorities begins at Page 3(xxxvi) of 6, as they apply to all Grounds, and each Ground individually.

Ground 2.

THE BOARD OF PAROLE HEARINGS DENIED HARRISON PAROLE BY RELIANCE UPON THE COMPREHENSIVE RISK ASSESSMENT THAT ITSELF WAS FOUNDED ON CONFIDENTIAL MEMORANDA THAT WAS SUPPRESSED AND WITHHELD, IN TOTAL, FROM HARRISON: UNITED STATES CONSTITUTION, FIFTH AMENDMENT (DUE PROCESS), SIXTH AMENDMENT (CONFRONTATION CLAUSE), AND FOURTEENTH AMENDMENT

48. Harrison incorporates herein, in total, as if fully restated, paragraphs ## 1-47, above.

49. The BPH/CDC have determined that the findings, opinions, and diagnoses, of the CRA (e.g., Narcissism, Antisocial, and High risk of furture violence) are wholly, and without exception, unsupported by any evidence.

Ms. Lippman, however, offered:

> "Other factors not discussed were considered in reaching the above opinions. Specifically, this examiner reviewed and considered relevant information contained in the Confidential Memorandums and documents dated 02/03/2000, 02/08/2000, 02/11/2000, 02/18/2000, 3/06/2000, 03/18/2000. 04/21/2000, 12/15/2006, 03/19/3009 [sic], 04/06/2009, and 11/24/2015."

See, Exhibit A, at p. 15.

50. The adverse confidential memoranda have been suppressed and withheld, in total, from Harrison.

51. As a result of the suppression, withholding, of the adverse confidential memoranda Harrison lacked sufficient facts -- had no facts of any kind -- of the adverse information relied upon by Lippman and, ultimately, the Panel in denying parole[3/],

3/ Peck deemed the CRA "damning" (Exhibit K, at p. 192 lns. 3-13), incorporating the "whole thing ... by reference." See, Id., at p. 192 lns. 14-15.

thus Harrison was unable at the interview and, ultimately, at the parole suitability hearing, to respond to the secret adverse information, or to intelligently decide what subjects to discuss; Harrison had no opportunity to know of, or to challenge, the adverse confidential memoranda, thus denied any opportunity to be heard on the adverse confidential memoranda used by Lippman to assess Harrison as Narcissistic, Antisocial and a high risk of future violence, and used by the Panel to deny Harrison parole.

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Ground 3.

MARSY'S LAW VIOLATES HARRISON'S DUE PROCESS RIGHTS UNDER THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION BY PROVIDING THE VICTIM'S-NEXT-OF-KIN ACCESS TO HARRISON'S CONFIDENTIAL RECORDS

52. Attorney Stringer objected to so-called Marsy's Law. (Proposition 9; Penal Code § 3041.5) (Exhibit K, at p. 8 lns. 1-4)

53. Harrison clarified that his objection focused on Marsy's Law providing the victim's-next-of-kin ("VNOK") indirect access to Harrison's CDC Central File, and medical and mental health records. (Exhibit K, at p. 15 ln. 25 - p. 16 ln. 9 and lns. 12-14)

54. Peck denied the objections, opining that the law on Marsy's Law was settled. (Id., at p. 16 ln. 15 - p. 17 ln. 1)

55. Pursuant to Marsy's Law, VNOK may appear at the hearing to make an impact statement. Marsy's Law does not provide the VNOK anything more.

56. At the hearing, however, the Panel openly discussed, at length and in depth, Harrison's C-File, and medical and mental health records, e.g., the CRA. Harrison was unable to be fully heard on those matters because of (1) the confidential nature of the records/information, and (2) the presence of the VNOK, et al.

57. The courts have never, to Harrison's knowledge, addressed the due process, statutory and regulatory, violations of access to Harrison's C-File, and medical and mental health records,

as are being provided to the VNOK by the BPH under the supposed authority of Marsy's Law.[4/]

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4/ Harrison offers that the issue is appropriate for review, as it is significant, of first impression; never been the subject of a published opinion.

Ground 4.

THE BOARD OF PAROLE HEARINGS DENIED HARRISON PAROLE BY USE OF CONFIDENTIAL INFORMATION THAT WAS SUPPRESSED AND WITHHELD, IN TOTAL, FROM HARRISON: UNITED STATES CONSTITUTION, FIFTH AMENDMENT (DUE PROCESS), SIXTH AMENDMENT (CONFRONTATION CLAUSE), AND FOURTEENTH AMENDMENT

58. Beginning at Exhibit K, at p. 19 ln. 1, Attorney Stringer objected to the use of confidential information.

59. Peck danced around the issue, refusing to state whether, or not, he would be using confidential information. (Exhibit K, at p. 19 lns. 8-14 and 16-19)

> "INMATE HARRISON: Please. If I understand the law correctly, aren't we entitled to know prior to the hearing? I mean, at this point whether it's going to be used, and if so to --"

<u>See</u>, Exhibit K, at p. 20 lns. 3-6.

60. Peck continued to dance, suggesting the determination of use might be made at some later time.

> "INMATE HARRISON: At that point would you then provided [sic] a redacted copy or summary."

<u>See</u>, Exhibit K, at p. 20 lns. 24-25.

61. Peck responded: "No." <u>See</u>, Exhibit K, at p. 21 ln. 1.

62. Peck relied on California Code of Regulations, Title 15 (never citing to any section of Title 15) to suppress the confidential information, offering only that a "confidential tape" would be produced for court review.[5/] (Exhibit K, at p. 21 lns. 13-16) Peck made clear his intent to suppress/withhold

5/ Such tapes are produced for the court to review on the issue

from Harrison all confidential information used by the Panel to deny parole.

> "PRESIDING COMMISSIONER PECK; ... Because we don't allow redacted -- we don't give redacted information, we don't let in-camera reviews because we're not set up for that.... A judge has the ability to do that but I don't not per -- not per policy."

See, Exhibit K, at p. 21 lns. 13-25.

63. Blanket policy (hereinafter simply "policy") of the BPH: no in-camera review of confidential information; no redacted copy or summary; instead only suppression/withholding, in total, of the confidential information, which then is used against the prisoner -- as in this case.

64. Harrison persisted: "My understanding of the law of the State Supreme Court law and Appellate law --" See, Exhibit K, at p. 22 lns. 1-2.

65. Peck made his point that he was not subject to State Supreme Court law or, a fortiori, law of the Appellate Courts, but was bound only by CCR, Title 15.[6/] (Exhibit K, at p. 22 lns. 3-5) Fact is, Peck was holding to official "policy" of the BPH to suppress and withhold confidential information. Peck denied the objection.

(5/ continued)
of informant reliability. (e.g., CCR, Title 15, §§ 2235 and 3321) The issue here, however, is not focused on reliability of any informant, because Harrison has no information of that source. The issue presented here is that of adverse confidential information, suppressed and withheld, in total, from Harrison -- used by the Panel to deny parole.

6/ Inconsistent. On the Marsy's Law matter, Ground 3, above, Peck denied the objection by his steadfast reliance on settled law of the State Supreme Court. Here, however, Peck refused to abide by the holdings of the State Supreme Court, and appellate courts.

66. Harrison put "[Prewitt], Olson and Ochoa" (see, Exhibit K, at p. 24 lns. 11-15) on the record.

67. Peck: "We already area [sic] done with it." See, Exhibit K, at p. 24 lns. 16-17. "I've already ruled." See, Exhibit K, at p. 24 ln. 19.

68. Peck did use confidential information in his denial of parole. (Exhibit K, at p. 145 lns. 4-7, and p. 190 ln. 22)

69. Attorney Stringer again placed his objection to the use of confidential information on the record. (Exhibit K, at p. 146 lns. 2-3)

70. In using the confidential information, Peck, per BPH "policy", did not provide an in-camera review/hearing where the warden, or a designee, along with Harrison's attorney, could determine what portions of the confidential information could be released to Harrison's attorney. Peck did not provide any redacted copy or summary of the confidential information. Peck did suppress and withhold, in total, the confidential information from Harrison.

71. As a result of the suppression/withholding of the adverse confidential information, Harrison lacked sufficient facts -- had no facts of any kind -- of the adverse confidential information, thus was unable to respond or intelligently decide what subjects to discuss at the hearing; Harrison had no opportunity to know of, or to challenge, the adverse confidential information; Harrison was denied, as a matter of BPH "policy," any opportunity to be heard on the adverse confidential information used to deny parole.

Ground 5.

## THE BOARD OF PAROLE HEARINGS IS NOT IMPARTIAL: DUE PROCESS VIOLATION UNDER THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION

72. Harrison objected "that the California Parole Board is not impartial as a whole." See, Exhibit K, at p. 25 lns. 14-15.

73. California Governor, Jerry G. Brown, suffers the weight of a federal court order to reduce the prison population to 137.5 percent of design capacity. One way Brown uses to achieve the federal mandate of 137.5%, but not one prisoner less, is to control the flow of life-term prisoners granted parole and released. Brown has instructed the BPH to grant parole to 30% of life-term prisoners who appear before the BPH. Marching orders in-hand, Jennifer Shaffer, Executive Officer of the BPH, has instructed her commissioners and deputy commissioners to hold steady to the blanket policy -- predetermined denial rate of 70%.

74. As evidenced by the Board's Information Technology System (January 1, 2015 - December 31, 2015), the commissioners and deputy commissioners are one-and-all in lockstep, holding denials at an average rate of 70%. (Exhibit M, at p. 1) While Brown's control of the spigot serves to maintain the prisoner population at 137.5%, not a single prisoner less, his stream of 70% denials violates the law; parole is the rule, rather than the exception.[7]

7/ The percentage is all the worse once Brown's reversal rate of 20% of the grants is figured in.

75. Even if it is not Brown's hand clutching the spigot, perhaps a mere coincidence that every commissioner and deputy commissioner holds steady to a 70% denial rate, denials are the rule, rather than the exception.[8/]

76. Peck, an ex-cop, has a 2015 denial rate of, no surprise, 70.8% (271 hearings conducted, 192 denials). (Exhibit M, at p. 1) Peck's denial rate for March, 2016, and April, 2016, are holding steady. (Exhibit M, at pp. 2 and 3) For Peck, denials are the rule, grants the exception. The BPH as a whole is not impartial, the Panel was not impartial, as they both operate under a blanket policy of 70% denials.

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8/ The bias of the BPH is also evident in the make-up of Brown's selected commissioners -- 11 of 12 come to the position from law enforcement backgrounds, law and order advocates with predetermined attitudes to hold life-term prisoners to the life portion of their sentences.

Ground 6.

HARRISON WAS NOT HEARD ON HIS PAROLE PACKET, PAROLE PLANS, SUBSEQUENT PAROLE PACKET, NOR HIS SUBSEQUENT PAROLE PLANS: VIOLATION OF HIS RIGHTS UNDER THE UNITED STATES CONSTITUTION, FIFTH AND FOURTEENTH AMENDMENTS

77. On or about December 28, 2015, Harrison handed to Correctional Counselor, Ms. Howard, his Parole Packet (Exhibit N ) and his Parole Plans (Exhibit O ) for scanning into his C-File, specifically for parole consideration purposes.

78. On June 16, 2016, Harrison handed to Correctional Counselor, Ms. Garcia, his Supplemental Parole Packet (Exhibit P ) and Supplemental Parole Plans (Exhibit Q ) for scanning into his C-File, specifically for parole consideration purposes.9/

79. At the parole hearing it was apparent that the documents of ¶¶ 77 and 78, above, had not been scanned into Harrison's C-File, thus unavailable to the Panel.

> "**INMATE HARRISON:** Well, the question becomes, then, if of all the objections, if this -- my understanding was this was in my file but apparently not.
>
> **PRESIDING COMMISSIONER PECK:** Maybe it is.
>
> **ATTORNEY STRINGER:** It's not in the 65-Day. I think it's probably in the C File. I don't know if it's in ERMS or if --

See, Exhibit K , at p. 23 ln. 25 - p. 24 ln. 7.

80. On August 4, 2016, Harrison wrote to the San Quentin

9/ The actual scanning of the documents is a function of the Records Office. Counselors simply deliver the documents to the Records Office.

Records Office to inquire whether the Parole Packets and Parole Plans (4 sets of documents) had been scanned into Harrison's C-File. (Exhibit R, Inmate/Parolee Request For Interview, Item Or Service, at § A)

81. On August 10, 2016, the San Quentin Records Office informed Harrison that "None of these documents are in your C File at this time." See, Exhibit R, at § B.

82. Neither Harrison's Parole Packet, Parole Plans, nor his Supplemental Parole Packet or Supplemental Parole Plans, were in his C-File at the time of the August 3, 2016, parole suitability hearing, thus those documents, so very crucial to the Panel's ultimate decision, were not available for the Panel's consideration. As a result, Harrison was not heard on crucial matters, such as: District Attorney Suppresses Evidence Of Innocence In Decades-Old Murder Case!; Laudatory Chronos; Certificates; Insight, Remorse and Responsibility; Handling The Attack of 2005; Handling The Attack of 2008; Questions And Answers; and Killer Peyer Refused District Attorney's Offer To Test DNA (Hypocrite District Attorney Refuses Harrison's Every Effort For DNA Testing). Additionally, the Panel did not have available Harrison's Resume; Taking Care Of Self; Relapse Prevention Plan; and Entitlements, Choices And Perspectives.

83. Crucial evidence of Harrison's suitability for parole was not before the Panel because the CDCR failed to scan the provided documents into Harrison's C-File.

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Ground 7.

THE BAORD OF PAROLE HEARINGS FAILED TO GIVE DUE (INDIVIDUALIZED) CONSIDERATION TO ALL RELEVANT FACTORS: VIOLATION OF HARRISON'S RIGHTS UNDER THE UNITED STATES CONSTITUTION, FIFTH AND FOURTEENTH AMENDEMNTS

84. Nowhere in the decision denying parole did the Panel cite to any statutory or regulatory factors (unsuitability or suitability) in finding Harrison a current danger.

85. Nowhere in the decision denying parole did the Panel conduct any individualized inquiry into Harrison's suitability for parole. The Panel failed to draw answers from the entire record, either because documents were not available to the Panel (e.g., Ground 6, above), or because the Panel was uninterested.

86. In 1990, in the course of the prosecution of Harrison, then-prosecutor (now-federal judge), Larry A. Burns, boasted to defense counsel that he (Burns) was "morally certain" Harrison did not commit the murder but "bet" he could "win" a conviction. Harrison pleaded with defense counsel to tape record Burns making such comments. Defense counsel declined.

87. Not until 2016, did Burns walk-back his 1990 boasting. Deputy District Attorney, Richard Sachs, speaking in his closing statements at Harrison's August 3, 2016, parole suitability hearing, offered:

> "I've spoken to Judge Burns, that's not what was said but this is how he manipulates and twists things around. What he said is, Judge Burns said, I don't

know if he did it or he had someone else do it but I'm morally certain he's responsible."

See, Exhibit K, at p. 168 lns. 10-14. What Sachs did not know, however, was that an agent, or agents, in his own office had vouched for Harrison's innocence, just as Burns had boasted in 1990. After Sachs had finished, and Attorney Stringer had spoken, Harrison disclosed a declaration by private investigator, John Carman, from which Harrison read into the record:

> "INMATE HARRISON: At any rate, I'd like to read just a couple of paragraphs here. This is a declaration by John Carman (phonetic). It's a declaration but he did have it notarized. He says in a telephone with Mr. Desayzer (phonetic) who worked for the California Innocence Project in San Diego. In or about August or September of 2014, Mr. Desayzer discussed his contacts with an agent or agents of the San Diego office of the District Attorney. Mr. Desayzer stated that he had been informed by the agents that it was always believed by the prosecutor and the agents that David Scott Harrison had not committed the murder. The belief was that David Scott Harrison had prior knowledge of the murder and had been prosecuted as an expedient since David Scott Harrison would not cooperate with law enforcement. Mr. Desayzer commented that law enforcement had been unable to connect David Scott Harrison to the actual murder or perpetrators. Finally, Mr. Desayzer expressed to the client that law enforcement agents in pretrial investigations had contacted and interviewed other persons both inside and outside of California who the agents suspected may have committed the actual murder. In a telephone conversation in or about December 2014 or January 2015 with Ms. Burkshal (phonetic) agreed which what Mr. Desayzer had told the client in or about August or September 2014. Adding that the San Diego Innocence Project had abandoned its original research and investigations into the case because of the acceptance by the San Diego Innocence Project, founded on the opinions then conveyed by the San Diego Office of the District Attorney that while David Scott Harrison had not committed the actual murder, he had prior knowledge of it. Ms. Burkshal expressed that the San Diego Innocence Project will not assist in any matter where the defendant is not completely innocent of the involvement of the crime. Ms. Burkshal acknowledged that David Scott Harrison

appears to have been prosecuted and convicted for a murder that he has universally accepted he did not commit[.]"

See, Exhibit K, at p. 174 ln. 23 - p. 176 ln. 11; see also, Exhibit S, at p. 2 ¶¶ 10 and 11 - p. 3.[10/]

88. Nowhere in the decision denying parole did the Panel give consideration to Sach's unwitting support of Harrison's actual innocence; nowhere giving consideration to the prosecutor's statements of 1990, or his walked-back statements to Sachs, both supporting of Harrison's actual innocence; nowhere giving consideration to the declaratory statements of John Carman, by Mr. Desayzer and Ms. Burkshal, and agents of the San Diego Office of the District Attorney, supporting of Harrison's actual innocence, or of the prosecution of Harrison as an expedient.

89. Harrison incorporates herein, in total, as if fully restated, those ¶¶ 77-83, above.

90. Because the CDCR failed to scan into Harrison's C-File his Parole Packet, Parole Plans, Supplemental Parole Packet and Supplemental Parole Plans, the Panel was unable to give any consideration to the crucial information of Harrison's suitability for parole contained in those documents.

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10/ At the close of the parole suitability hearing Harrison caused to be delivered directly to Sachs, Harrison's Application For Conviction Review, founded on the declaratory statements of John Carman. (Exhibit T) That same afternoon Harrison caused to be mailed to the Conviction Review Unit, San Diego District Attorney's Office, an identical copy of the Application and evidence earlier provided to Sachs. (Id.) Upon receiving the parole hearing transcript of Sach's-Burns' exculpatory statements -- so closely mirroring the statements of the agents of the District Attorney's Office -- Harrison did supplement his Application to the Conviction Review Unit. (Exhibit U)

91. None of the statutory or regulatory factors suggesting unsuitability apply, while all of the factors suggesting suitability do apply (excepting ## 3 and 4, which deal with actual guilt, and # 5 (battered woman syndrome)). The Panel's failure to comment on applicable suitability factors, failures to consider such factors, represents a failure to undertake individualized consideration of all relevant factors; an offense to its own regulations.

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Ground 8.

PAROLE DENIAL OF TEN YEARS VIOLATED HARRISON'S
DUE PROCESS RIGHTS: FIFTH AND FOURTEENTH AMENDMENTS
TO THE UNITED STATES CONSTITUTION

92. The Panel denied Harrison parole for a period of ten years, ostensibly as a result of Harrison's "limited level of self-understanding[.]" See, Exhibit K, at p. 202 lns. 22-23.

93. Nowhere in the decision to deny parole for ten years does the Panel support her opinion that Harrison's self-understanding is limited, in what way his self-understanding is limited, to what degree his self-understanding is limited, or explain how any supposed limited self-understanding makes Harrison incapable of achieving parole in less than ten years. The Panel provides no "'clear and convincing evidence'" (see, Exhibit V, Letter by Philip Thomas, October 6, 2015) to support a ten year denial; no "reliable information" provided. (Id.)

94. The BPH suggests that the length of denials are set by way of "the wide discretion of each hearing panel, based on its consideration of the available and reliable information in the inmate's case." See, Id. That is BPH propaganda.

95. According to Jennifer Shaffer, the length of denials is not a matter of clear and convincing evidence or available reliable information in the inmate's case, but is a blanket policy (hereinafter "policy") driven by limitations of time and personnel.

> "Among the Board policies outlined by Ms. Shaffer was the theory behind long-term denials. According to the

information presented the Board's intention in handing down those lengthy denials is to concentrate available time and personnel on those individuals and cases that have the greatest possibility for parole. By imposing long denials on those inmates less suitable for parole the board is able to advance hearing dates for those who are more likely to be found suitable."

See, Exhibit W, California Lifer Newsletter, Mar./Apr., 2016.

96. In other words, BPH policy is this: If 300 prisoners would be likely for parole in three years, but "time and personnel" can only process 100 prisoners, then the other 200 prisoners are given more lengthy denials.

97. The Panel's specious opinion of limited self-understanding does not ligitimize the sinister reasons for how parole denial lengths are actually determined -- each Panel's discretion for the purpose of satisfying the BPH's policy of resources allocation.

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Ground 9.

EQUAL PROTECTION VIOLATION UNDER THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION: PSYCHOLOGICAL EVALUATIONS ARE NOT REQUIRED OF CALIFORNIA'S OUT-OF-STATE PAROLE-ELIGIBLE PRISONERS

98. The purpose of psychological evaluations (Comprehensive Risk Assessments) of parole-eligible prisoners is to predict the prisoner's risk of future violence, the danger the prisoner presents to society if released.

99. Parole-eligible California prisoners, housed inside of California, are required, as a matter of law, to submit to a psychological evaluation by a CDCR/BPH/FAD clinician.

100. Parole-eligible California prisoners, housed outside of California, are not required, as a matter of law, to submit to a psychological evaluation.

101. With the exception of the difference between those parole-eligible prisoners inside versus outside of California, as expressed at ¶¶ 99 and 100, above, all California parole-eligible prisoners are similarly situated, e.g., every prisoner must be granted parole by the BPH to gain release, the BPH evaluates the prisoner by use of historical and current factors to determine whether the prisoner is suitable for parole, the Govneror of California reviews any grant of parole; the BPH and Governor look to answer the ultimate question: Is the prisoner a current danger to society if released?

102. Had Harrison been housed outside of California, along with similarly situated parole-eligible prisoners, he would not have been subject to the arbitrary, capricious, and negative biased, psychological evaluation process.[11/]

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11/ If the psychological evaluation (Comprehensive Risk Assessment) is such a crucial component of the "current dangerousness" decision-making process, to wit, the protection of society, then to exempt a mass of prisoners from the process is to wantonly put society at grave risk. If not such a crucial component, then why the requirement that Harrison submit to the process?

Ground 10.

## THE BOARD OF PAROLE HEARINGS VIOLATED HARRISON'S RIGHTS UNDER THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION BY USE OF HARRISON'S CLAIM OF ACTUAL INNOCENCE TO DENY PAROLE

103. The Panel conceded that Harrison's claim of actual innocence was not implausible.[12/] (Exhibit K, at p. 191 lns. 16-24) The Panel then offered that Harrison's claim of actual innocence was not used as a reason to deny parole. (Id., at p. 191 ln. 24 - p. 192 ln. 2) The evidence shows it was used.

104. Any lack of responsibility, insight, or remorse, can not be used against Harrison's claim of actual innocence -- as his claim is not implausible. Harrison has no responsibility, insight, or remorse, for a murder he is innocence of. That said, Peck expressly found that Harrison lacks remorse. Exhibit K, at p. 202 lns. 7-9 ("the way you carry yourself really doesn't show any type of remorse").

105. Incorporating the CRA into its decision to deny parole, the Panel opined that Harrison failed to take full responsibility, that his expressions of remorse were superficial, and he lacked

12/ Curiously, having heard all of the evidence, Peck twice voiced his opinion that Harrison was "involved" in the life crime. In 1990 Burns said he was "morally certain" of Harrison's innocence, but in 2016 walked that back to not knowing if Harrison was guilty or innocent, but believed Harrison was somehow responsible. Agents of the District Attorney's Office have stated they "always believed" Harrison was innocent, but also believed he had information or knowledge. Peck's "involved" falls somewhere between responsible and knowledge -- but clearly outside of guilt for committing the murder.

empathy. (Exhibit K, at p. 193 ln. 13 - p. 194 ln. 20)

> "Even though he maintains innocence in the life crime it is still -- it still undermines the guilt regarding those crimes he actually did commit, admit committing ..."

See, Exhibit K, at p. 194 lns. 3-6.

106. The Panel explicitly used Harrison's claim of actual innocence of the life crime to find he lacked responsibility, insight, and remorse, for the federal crimes, from which Harrison paroled in 1999.[13/] [14/] The Panel engaged in a shell-game to do indirectly that which it is prohibited from doing directly -- denying parole based on a claim of actual innocence.

107. Whether the Panel used the claim of actual innocence against the state conviction, against the federal convictions, or a mix of both (difficult to determine from the indistinct reasons given for the denial), the use in any event is violative.

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13/ According to the BPH's own regulations, Harrison's federal convictions do not qualify as either a prior conviction (Exhibit X, California Code of Regulations, Title 15, Division 2, at p. 55, § 2322(a)(1)) or as violent. (Id., at p. 74, § 2402(c)(2))

14/ Moreover, the federal crimes are just shy of 30 years old, thus have no probative value today.

Ground 11.

## ADDITIONAL REASONS USED TO DENY PAROLE DID VIOLATE HARRISON'S RIGHTS UNDER THE UNITED STATES CONSTITUTION, FIRST, FIFTH AND FOURTEENTH AMENDMENTS

108. The CRA, incorporated by the Panel in denying parole, opined that Harrison's litigation efforts -- the exercise of his right to petition the government -- are evidence of revenge, retaliation, and retribution (Exhibit K, at p. 195 lns. 8-23), hence a high risk of future violence and danger to society.

109. Harrison's litigation efforts are evidence of how a person wrongfully convicted conducts himself, by prosocial means, to prove his innocence, and to correct oppressive conditions within the prison system; nothing more. No Dark Triad.

110. Using the litigation as a reason to deny parole repudiates Harrison's claim of innocence, as well as being retaliatory and chills Harrison's access to the courts.

111. Harrison objected to the BPH as not impartial. Peck took the objection as a personal affront against him and Deputy Commissioner, Mr. Grottkau. (Exhibit K, at p. 197 ln. 23 - p. 198 ln. 1) The objection was used as a reason to deny parole, thus proving the validity of the objection.

112. To deny parole, the Panel attacked Harrison's temperament -- much the same as Hillary Clinton attacks Donald Trump -- as unfit for parole, or for the Presidency, respectively. Indeed, Peck suggested Trumpian fault-lines within Harrison's strata:

"you don't show empathy" (Exhibit K, at p. 201 lns.

20-21;

"facial expressions" (Id., at p. 201 ln. 21);

"the way you carry yourself" (Id., at p. 201 lns. 21-22);

"you smirk, you smile, you laugh at inappropriate times"[15/] (Id., at p. 202 lns. 1-2);

"communication" (Id., at p. 202 lns. 3-5); and

"your mannerisms are horrible." See, Id., at p. 202 lns. 5-6.[16/]

The Panel also suggested that Harrison does not understand himself or how he comes across. (Id., at p. 197 lns. 19-20) To the contrary, it is the Panel that showed herself to be incapable, or unwilling, to understand that Harrison is actually innocent of the life crime. Harrison understands all too well how the injustice and loss of decades he has suffered have affected him, his family, friends, and supporters, as well as how he comes across to those who, while conceding his innocence, perpetuate his wrongful conviction and incarceration.[17/]

15/ To smother laughter at a funeral, or to weep at weddings, may suggest a failing of temperament to be President, but it evinces no danger to society nor is it a valid reason to deny parole.

16/ "I submit, your Honor, that the dangers the [Panel] has waived before the court like so many red flags are in reality that many red herrings." See, Reasonable Doubt, by Philip Friedman, at p. 93.

17/ "And now it seemed immoral for the state, knowing the plain facts of his innocence, to keep him incarcerated instead of moving heaven and earth to set him free." See, Convicting The Innocent, by Donald S. Connery, at p. x.

Ground 12.

NO SOME EVIDENCE, NO NEXUS, FOR THE DENIAL OF PAROLE:
UNITED STATES CONSTITUTION, FIFTH AND FOURTEENTH AMENDMENTS

113. In denying parole, the Panel failed to cite to a single statutory or regulatory unsuitability factor, thus the Panel was unable to, and did not, provide any discussion on any interrelationship between the reasons for denial of parole and the ultimate determination of dangerousness.

114. In denying parole, the Panel did not identify a single behavior, or conduct, or action, by Harrison over the past 27 years to suggest he is a current, or future, threat to any person or persons. The CRA is not some evidence, as discussed in Grounds 1 and 2, above; no indicia of reliability, conceding that Harrison has no record of mental health treatments or impairments, finding Harrison dangerous because of his litigation efforts, etc. As the BPH and CDCR have determined, there is no evidence of any kind to support the CRA's findings, opinions, and diagnoses, of Harrison as a future risk of danger (violence) to society; no evidence of behavior, personality, conduct, thought ideation, or other mental health impairment (cognitive or functional), to suggest dangerousness.[18/]

18/ Deputy District Attorney, Sachs, gave a rabid closing statement at the parole hearing, a litiny of the horrors Harrison represents to the survival of the human race. (Exhibit K, at p. 157 ln. 5 - p. 170 ln. 18) Harrison presented a California Public Records Act request to the Office of the District Attorney,

115. There is no evidence in the record -- over the past 27 years -- of any behavior suggesting Harrison is a danger to anyone; there is no some evidence in the CRA, none identified by the Panel that denied parole. Sachs has failed to provide a single original source record in support of his accuations and claims. The BPH and CDC concede they have no such records.

116. What the record proves is that Harrison has -- over the past 27 years -- handled the extreme stress of his false conviction and wrongful incarceration, as well as the stressors and violence of daily prison life, appropriately. There is no evidence in the record that Harrison would not appropriately deal with the stress of life outside of prison.

117. There is no evidence of current dangerousness. No nexus between any supposed reasons for denial (smiles, the way Harrison carries himself) and current dangerousness.

118. The Panel provided no evidence, only rote recitation that Harrison presents a danger to society if released; being there was no reliable, or supporting, evidence in the record to support the denial, the Panel did not, could not, provide any rational nexus between any supposed current behavior and the ultimate conclusion of dangerousness.

(18/ continued)
dated August 29, 2016, seeking the public records supporting Sachs' accusations and claims. (Exhibit Y, California Public Records Act request) Petitioner requested "the original source records." As of the writing of this habeas petition, the Office of the District Attorney has provided nothing but the opinion of the Court of Appeal of Petitioner's direct appeal. No original source records have been produced, no pertinent records of any kind have been produced to support Sachs' accusations and claims.

## ADDITIONAL FACTS APPLICABLE TO ALL GROUNDS

119. Harrison is unlawfully imprisoned or restrained of his liberty.

120. Harrison is unrepresented and desires to have an attorney, but cannot afford one.

121. The facts herein duly alleged are verified under the penalty of perjury.

122. Harrison has, to the best of his ability, stated fully and with particularity the facts on which the relief requested is sought, as well as having included copies of reasonably available documentary evidence supporting his claims.

123. To such extent relief hinges on the resolution of factual disputes, then an evidentiary hearing is warranted, and requested.

124. The denial of parole violated Harrison's rights under the United States Constitution (e.g., the First, Fifth, Sixth, and Fourteenth Amendments).

125. The denial of parole was arbitrary and capricious.

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SUPPORTING CASES, RULES, AND OTHER AUTHORITY

Across All Grounds, 1-12

Under In re Lawrence (Cal. 2008) 44 Cal.4th 1181, the State High Court adopted the "current dangerousness model," which requires that the BPH's, or Governor's, denial establish a rational nexus between the evidence and a conclusion that the inmate presents a current danger to the public.

> "[U]nder the statute and the governing regulations, the circumstances of the commitment offense (or any of the other factors related to unsuitability) establish unsuitability if, and only if, those circumstances are probative to the determination that a prisoner remains a danger to the public. It is not the existence or nonexistence of suitability or unsuitability factors that forms the crux of the parole decision; the significant circumstance is how those factors interrelate to support a conclusion of current dangerousness to the public."

See, Id., 44 Cal.4th at p. 1212.

> "[T]he proper articulation ... is whether there exists 'some evidence' demonstrating that an inmate poses a current threat to public safety, rather than merely some evidence suggesting the existence of a statutory factor of unsuitability."

See, In re Shaputis (Shaputis II) (Cal. 2011) 53 Cal.4th 192, 209, referencing Lawrence, supra, 44 Cal.4th at p. 1191.

"All relevant, reliable information available to the [Board] shall be considered in determining suitability for parole."
See, California Code of Regulations, Title 15, § 2402(b).

Circumstances tending to establish unsuitability for parole are that the inmate: (1) committed the offense in an especially heinous, atrocious, or cruel manner; (2) has a previous record of violence; (3) has an unstable social history; (4) has sexually assaulted another individual in a sadistic manner; (5) has a lengthy history of severe mental problems related to the offense; and (6) has engaged in serious misconduct while in prison. (CCR, Title 15, § 2402(c); Lawrence, supra, 44 Cal.4th at p. 1202 n. 7; In re Aguilar (Cal.App. 2 Dist. Div. 3 2008) 168 Cal.App.4th 1479, 1486-1487)

Circumstances tending to show suitability for parole include that the inmate: (1) does not possess a record of violent crime committed while a juvenile; (2) has a stable social history; (3) has shown signs of remorse; (4) committed the crime as the result of significant stress in his or her life, especially if the stress had built over a long perior of time; (5) committed the crime as a result of battered woman syndrome; (6) lacks any significant history of violent crime; (7) is of an age that reduces the probability of recidivism; (8) has made realistic plans for release or has developed marketable skills that can be put to use upon release; and (9) has engaged in institutional activities that suggest an enhanced ability to function within the law upon release. (CCR, Title 15, § 2402(d); In re Rosenkrantz (Cal. (2009) 29 Cal.4th 616, 654; Aguilar, supra 168 Cal.App.4th at p. 1487.

In order to support a decision to deny parole, there must be something more than rote recitation of the relevant factors with no reasoning establishing a rational nexus between those factors and the necessary basis for the ultimate decision -- the determination of current dangerousness. (Lawrence, supra, 44 Cal.4th at p. 1210; In re Martinez (Cal.App. 4 Dist. Div. 1 2012) 210 Cal.App.4th 800, 817)

The BPH, in its decision denying parole, must articulate reasons that are grounded in evidence and rationally related to the statutory basis for denial. (In re Roderick (Cal.App. 1 Dist. Div. 4 2007) 154 Cal.App.4th 242, 264, modified on denial of rehearing.

In re Scott (Cal.App. 1 Dist. Div. 2 2004) 119 Cal.App.4th 871, 899, rehearing denied, review denied, (not only must the denial of parole be based on "some evidence" but such evidence must have some indicia of reliability)

In re Tripp (Cal.App. 6 Dist. 2007) 150 Cal.App.4th 306, 313, as modified, review denied, (denial of parole violates due process when the Board attaches significance to evidence that forewarns no danger to the public or relies on an unsupported conclusion)

A decision denying parole cannot stand when findings of

important factors lack evidentiary support and it is not clear that the Board would have reached the same conclusion based on the supported factors. (In re DeLuna (Cal.App. 6 Dist. 2005) 126 Cal.App.4th 585, 598, as modified, modified on denial of rehearing.

Because an inmate's due process right cannot exist in any practical sense without a remedy against its abrogation, a decision of the Board is subject to judicial review to ensure that the decision reflects an individualized consideration of the specified criteria, and is not arbitrary and capricious. (Lawrence, supra, 44 Cal.4th at p. 1205; Board of Parole Hearings v. Superior Court (Cal.App. 6 Dist. 2008) 170 Cal.App.4th 104, 110)

It is the judiciary's obligation to not simply rubber-stamp the Board's determination, but to make an independent finding whether "some [relevant and reliable] evidence" was presented that Petitioner should be denied parole and that there is a rational nexus between that evidence and Petitioner's current dangerousness, if any. (Lawrence, supra, 44 Cal.4th at p. 1210)

Ground 1.

Harrison incorporates herein, in full, all supporting cases, rules, and other authority, as cited above at Pages 3(xxxvi)-3(xxxix) of 6.

The State may not deprive any person of life, liberty, or property without due process of law. (United States Constitution, Fifth and Fourteenth Amendments; California Constitution, Art. I, § 7(a))

> "'[I]t is clear that the board relied on Stuckey's flawed evaluation,' the Court wrote. However, it is not clear that the board would have reached the same conclusion in the absence of its reliance on the flawed report."

<u>See</u>, Prison Legal News, August 8, 2014, citing <u>Dam v. Board of Parole & Post-Prison Supervision</u> (Or. Ct. App. 2013) 258 Ore.App. 39.

> "It is worth noting, as has our Supreme Court (People v. Murtishaw (1981) 29 Cal.3d 733, 768 [175 Cal.Rptr. 738, 631 P.2d 446], disapproved on other grounds in People v. Boyd (1985) 38 Cal.3d 762 [215 Cal.Rptr. 1, 700 P.2d 782]), that a large number of legal and scientific authorities believe that, even where the passage of time is not a factor and the assessment is made by an expert, predictions of future dangerousness are exceedingly unreliable. (See, e.g., Monahan, Violence Risk Assessment: Scientific Validity and Evidentiary Admissibility, 57 Wash. & Lee L. Rev. 901 (2000); Otto, On the Ability of Mental Health Professionals to 'Predict Dangerousness,' 18 Law & Psychol. Rev. 43 (1994); Lidz et al., The Accuracy of Predictions of Violence to Others, 269 J.Am.Med.-Assn. 1007 (1993); Diamond, The Psychiatric Prediction of Dangerousness, 123 U.Pa.L.Rev. 439 (1974); Dershowitz, The Law of Dangerousness: Some Fictions About Predictions (1970) 23 L.LegalEd. According to a Task Force of the American Psychiatric Association, '[n]either psychiatrists nor anyone else have demonstrated an ability to predict future violence or dangerousness.' (Am.Psych.Assn., Task Force Rep. 8, Clinical Aspect of the Violent Individual (1974) at p. 28) As our Supreme Court has also noted, 'the same studies which proved the inaccuracies of psychiatric predictions [of dangerousness] have demonstrated beyond dispute the no less distrubing

> manner in which such prophecies consistently err: they predict acts of violence that will not in fact take place ('false positives'), thus branding as 'dangerous' many persons who are in reality totally harmless. [Citation.]' (People v. Burnick (1975) 14 Cal.3d 306, 327 [121 Cal.Rptr. 488, 535 P.2d 352].)"

See, In re Scott (Cal.App. 1 Dist. Div. 2 2005) 133 Cal.App.4th 573, 595 n. 9; see also, In re Elkins (Cal.App. 1 Dist. Div. 2 2006) 144 Cal.App.4th 475, 498 ("predictions of future dangerousness are exceedingly unreliable").

> "The findings of poor reliability echo those of other recent studies in the United States, Canada, and Europe, potentially heralding more admissibility challenges in court."

See, In The News, Forensic Psychology, Criminology & Psychology-Law, by Karen Franklin, Ph.D., at p. 1 (January 5, 2014).

> "Earlier this year, forensic psychologist Laura Guy and colleagues reported on its power in parole decision-making in California. The State now requires government evaluators to use the PCL-R in parole fitness evaluations for 'lifers.' ... Surveying several thosand cases, the researchers found that PCL-R scores were a strong predictor of release decisions by the Parole Board.... I was struck by the frightening fact -- alluded to by DeMatteo and colleagues -- that the chance assignment of an evaluator who typically gives high scores on the PCL-R 'might quite literally mean the difference between an offender remaining in prison versus being released back into the community.' ¶ Previous research has established that Factor 1 of the two-factor instrument -- the factor measuring characterological traits such as manipulativeness, glibness and superficial charm -- is especially prone to error in forensic settings. This is not surprising, as traits such 'glibness' are somewhat in the eye of the beholder and not objectively measurable. Yet, the authors assert, 'it is exactly these traits that seem to have the most impact' on judges and juries."

See, Id., at pp. 1-2.

"The evidence is in: The Psychopathy Checklist-Revised is too inaccurate in applied settings to be relied upon in legal decision-making. With consistent findings of abysmal interrater reliability, its prejudicial impact clearly outweighs any probative value. However, the gate keepers are not guarding the gates. So long as judges and attorneys ignore this growing body of emprical research, prejudicial opinions will continue to be cloaked in a false veneer of science, contributing to unjust outcomes."

See, Id., at p. 2 (bold omitted).

"'[P]sychiatrists and psychologists are accurate in no more than one out of three predictions of violent behavior over a several-year period among institutionalized populations that had both committed violence in the past (and thus had high base rates for it) and those who were diagnosed as 'mentally ill' (Monahan, 1981, p. 48-49)."

See, Archives of Forensic Psychology, 2014, Vol 1, No. 1, 49-59: Forensic Risk Assessment: A Beginner's Guide, by Jerrod Brown and Jay P. Singh, at p. 52.

"For an assessment of an inmate's potential risk to the community to be relevant it must be based upon scientifically validated analysis, rather than simply the opinion of a particular evaluator."

See, Revised Initial Statement of Reasons, Title 15. Crime Prevention and Corrections, Division 2, Board of Prison Terms, Chapter 3. Parole Release. Article 2. Information Considered (2011), at p. 6.

"A large body of research demonstrates that dangerousness and violence risk potential cannot be reliably predicted. Human behavior is complex and does not follow a formulaic equation. Moreover, predictions of low occurrence behaviors is difficult if not impossible to achieve. Violence is a low base rate behavior (less than 1%),

thus compounding problems in accurate predictions."

See, Id., at p. 7.

"Given its high false-positive rates, the PCL-R should not be used in forensic or clinical settings where life and liberty decisions are at stake (Freedman, 2001). The PCL-R is by no means a reliable and valid tool for predicting future dangerousness (Freedman, 2001).... ¶ The author suggests that there is enough evidence that the PCL-R is unreliable in the prediction of future violent behavior and recidivisim and that as a consequence all conclusions that are drawn with regards to treatability and outcome on basis of the scores of the PCL-R also will be unreliable."

See, Medicine and Law - July 2008: The Problem With Robert Hare's Psychopathy Checklist: Incorrect Conclusions, High Risk of Misuse, and Lack of Reliability, by Willem H. J. Martens, Director of W. Kahn Institute of Theoretical Psychiatry, at p. 453

"The author of the PCL(R), Professor Robert Hare, here highlights the fundamental flaw which leads to his test being widely misapplied, if not actually abused -- with dire consequences, not only for those 'tested.'"

See, An Analysis of Medical and Legal Flaws in the PCL-R, by Dr. Bob Johnson, November 10, 2006, at p. 1.

"This is an important consideration -- it will be obvious that all and every future decision will be based on two main factors -- the circumstances you then find yourself in, and the plans, intentions or strategies you wished to implement. It takes no great scientific insight to see that all future human activities represent a blend between these two -- circumstances and intentions. ¶ Now it may come as something as a surprise, especially to members of the legal profession, that the notion of intent currently carries no weight in conventional psychiatric or psychological circles. Certainly the PCL-R omits all mention of it. Nowhere are the intentions

of the person being tested given any consideration whatsoever."

See, Id., at p. 2.

"In fact, Monahan's (1984) claim that two thirds of all clinical predictions of violence are incorrect has been widely cited."

See, Europe's Journal of Psychology (Clinical Judgment In Violence Risk Assessment), at p. 128; see also, Monahan (1988) (clinicians perform at a level that is no more accurate than chance). (Id., at p. 134)

Benham v. Edwards, 501 F.Supp. 1050, 1072 (N.D. Cal. 1980) ("No psychiatrist can predict with certainty whether an individual will commit dangerous acts.")

"We have repeatedly stressed the uncertainties that surround psychiatric diagnoses and the concomitant risk that a person will be wrongly subjected to the loss of liberty and reputation in commitment proceedings. (Conservatorship of Roulet, supra, 23 Cal.3d 219, 230; People v. Burnick (1975) 14 Cal.3d 306, 327 [121 Cal.Rptr. 488, 535 P.2d 352].)"

See, Conservation of the Person and Estate of Susan T. Lake County Mental Health Department v. Susan T. (Cal. 1994) 8 Cal.4th 1005, 1025.

"Additionally, we note again the uncertainties in psychiatric diagnosis and the divergence of expert views ... which render the possibility of mistake significantly greater than in diagnosis of physical illness."

See, In re Rogers (Cal. 1977) 19 Cal.3d 921, 929.

In re Powell (Cal. 1988) 45 Cal.3d 894, 899 (CDCR staff psychiatrist, Dr. Wilson Yandell, "conceded that psychiatrists could not reliably predict an inmate's potential for violence after release").

> "Psychiatry is not, however, an exact science, and psychiatrists disagree widely and frequently on what constitutes mental illness, on the appropriate diagnosis to be attached to given behavior and symptoms, on cure and treatment, and on likelihood of future dangerousness."

See, Ake v. Oklahoma, 470 U.S. 68, 81 (1985).

> "The American Psychiatric Association (APA), participating in this case as amicus curiae, informs us that '[t]he unreliability of psychiatric predictions of long-term future dangerousness is by now an established fact within the profession.' Brief for American Psychiatric Association as Amicus Curiae 12 (APA Brief). The APA's best estimate is that two out of three predictions of long-term future violence made by psychiatrists are wrong. Id, at 9, 13. The Court does not dispute this proposition, see ante, at 899-901 n. 7, 77 L.Ed.2d, at 1108-1109, and indeed it could not do so; the evidence is overwhelming."

See, Barefoot v. Estelle, 463 U.S. 880, 920 (1983).

The CRA in this case is unsupported by any evidence, as conceded by the BPH, CDCR, and Ms. Lippman, thus violating the "basic principle that these summary risk ratings always require justification based on case facts." See, Routledge, Taylor & Francis Group (Historical-Clinical-Risk Management-20, Version 3 (HCR-$20^{V3}$): Development and Overview), by Kevin S. Douglas, Stephen D. Hart, Christopher D. Webster, Henrik Belfrage, Laura

S. Guy, and Catherine M. Wilson, at p. 105.

**Ground 2.**

Harrison incorporates herein, in full, all supporting cases, rules, and other authority, as cited above at Pages 3(xxxvi)-3(xxxxvi) of 6.

Petitioner has the right to be confronted with the adverse information used to restrain his liberty. (United States Constitution, Sixth and Fourteenth Amendments)

The core requirement of due process is a fair and unbiased decision-making process.

> "A fair trial in a fair tribunal is a basic requirement of due process. Fairness of course requires an absence of actual bias in the trial of cases. But our system of law has always endeavored to prevent even the probability of unfairness."

See, In re Murchison, 349 U.S. 133, 136 (1955); see also, Offutt v. United States, 348 U.S. 11, 14 (1954) ("justice must satisfy the appearance of justice"); Exxon Corp. v. Heinze, 32 F.3d 1399, 1403 (9th Cir.1994) (accord); People v. Superior Court (Cal. 2010) 48 Cal.4th 1, 12 (accord).

Denial of due process where defendant denied confidential information relied upon, at least in part, by the court/-authority; the Court expressed concern that "critical unverified information may be inaccurate and determinative in a particular

case." See, Gardner v. Florida, 430 U.S. 349, 360 n. 10 (1977).

The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner. (Armstrong v. Manzo, 380 U.S. 545, 552 (1965); Mathews v. Eldridge, 424 U.S. 319, 333 (1976)).

The right to be heard must include the opportunity to know and respond to adverse information on which an unfavorable decision ultimately rests. Denying an inmate that opportunity seems inconsistent with the most basic principles of fair process. (Swarthout v. Cooke, 562 U.S. 216, ___, 131 S.Ct. 859, 862-863 (2011); Greenholtz v. Inmates of Nebraska Penal and Correctional Complex, 442 U.S. 1, 16 (1979); Roberts v. Hartley, 640 F.3d 1042, 1045-1046 (9th Cir.2011); see also, Henry J. Friendly, Some Kind of Hearing, 123 U.Pa.L.Rev. 1267, 1282 (1975) ("There can likewise be no fair dispute over the right to know the nature of the evidence on which the administrator rules."); In re Stevenson (Cal.App. 6 Dist. 2013) 213 Cal.App.4th 841, 866 n. 8)

The Board of Parole Hearings, like courts, must release unprivileged information. (Pennsylvania v. Ritchie, 480 U.S. 39, 59-61 (1987);

To ensure due process, paties must have sufficient facts

to properly respond.

> "While the Authority's right to receive relevant information from the notified parties, including the investigative agencies, is beyond question [citation], doubt remains as to that body's right to keep such information secret from the prisoner who may suffer unjustifiably if inaccurate statements are relied upon by the Authority in making its determination."

See, In re Prewitt (Cal. 1972) 8 Cal.3d 470, 475.

> "From the inmate's point of view a policy of non-disclosure increases the potential for unfairness. Unless the prisoner learns what information is in the Authority's possession he cannot intelligently decide what subjects to discuss at his predisposition hearing.... Especially with respect to statements containing information which may be inaccurate and was not presented at trial -- either because the information was not sufficiently trustworthy, was not legally admissable or had not been obtained at that time -- the inmate may have no knowledge or even the fact of the lodging of false or inaccurate charges. In such a situation a refusal to apprise him of the source and nature of the information would effectively deny all reasonable opportunity to respond. '[T]he stakes are simply too high ... and the possibility for honest error or irritable misjudgment too great, to allow' submission of such potentially damaging remarks without at least an opportunity to challenge them. (Goldberg v. Kelly (1970) 397 U.S. 254, 266 [25 L.Ed.2d 287, 298, 90 S.Ct. 1011]."

See, Prewitt, supra, 8 Cal.4th at p. 476.

> "It is clear that in cases of term-fixing and parole-granting the private interest of an inmate in his liberty outweighs the public interest in preserving confidentiality."

See, Id.; see also, City and County of San Francisco v. Superior Court (Cal. 1951) 38 Cal.2d 156, 163; see also, Valdivia v. Schwarzenegger, 548 S.Fupp.2d 852, 1112 (E.D. Cal. 2008) ("Parolee and parolee's attorney must be informed that confidential information will be used prior to the use of the information."); Asker v. Schwarzenegger,

(N.D. Cal. 2009) 2009 U.S. Dist. LEXIS 25092 (disclosure in gang validation); Murphy v. Department of Corrections and Rehabilitation, (N.D. Cal. 2008) 2008 U.S. Dist. LEXIS 1691 (disclosure in prison disciplinary).

> "The views articulated in Prewitt make it clear that the burden is on the Department to show that it is necessary to maintain the confidentiality of a document, rather than on an inmate to prove its relevancy and need in a habeas corpus proceeding. Prewitt indicates that an inmate has a due process right to see the documents in the Authority's possession. (8 Cal.3d at p. 476.)"

See, In re Olson (Cal.App. 1 Dist. Div. 1 1974) 37 Cal.App.3d 783, 790.

> "But the Prewitt rationale does not apply if 'a disclosure will impose a risk of harm to some informant....' (Prewitt, supra, 8 Cal.3d at p. 475; see In re Love (1974) 11 Cal.3d 179, 185 [113 Cal.Rptr. 89, 520 P.2d 713] [no disclosure 'where an infomant would be endangered'].) In such a case the informant's identity must be withheld. (Prewitt, supra, at p. 475.) 475.) ... We observe that [Petitioner here does] not request disclosure of the informants' identities but only as much of the confidential information that could be disclosed to his counsel without a revelation of identities."

See, Ochoa v. Superior Court (Cal.App. 6 Dist. 2011) 199 Cal.App.4th 1274, 1282-1283.

The Court in Ochoa directed the superior court to:

> "set an in camera hearing date with the Warden for the purpose of thereafter disclosing -- only to [Petitioner's] counsel -- as much of the confidential information that can be disclosed without revealing informants' identities."

See, Ochoa, supra, 199 Cal.App.4th at p. 1284.

A Court, Authority, or Parole Board, must justify the withholding of confidential information by showing the need "to (1) protect individuals, including informants inside and outside of prison, (2) ensure institutional security, and (3) encourage candor and complete disclosure of information concerning inmates from both public officials and private citizens." See, Ochoa, supra, 199 Cal.App.4th at p. 1280; Olson, supra, 37 Cal.App.3d at p. 788 n. 5.

Ground 3.

Harrison incorporates herein, in full, all supporting cases, rules, and other authority, as cited above at Pages 3(xxxvi)-3(xxxix) of 6.

The State may not deprive any person of life, liberty, or property without due process of law. (United States Constitution, Fifth and Fourteenth Amendments; California Constitution, Art. I, § 7(a))

> "Including the limitations of (c) and (d) above, the only inmate or parolee data which can be released without a valid written authorization from the inmate/parolee to the media or to the public includes the inmate's or parolee's:
> (1) Name.
> (2) Age.
> (3) Birthplace.
> (4) Place of previous residence.
> (5) Commitment information obtained from their adult probation officer's report.
> (6) Facility assignments and behavior.
> (7) General state of health, given in short and non-medical terms such as good, poor, or stable.

(8) Cause of death.
(9) Sentencing and release actions."

See, California Code of Regulations, Title 15, § 3261.2(e).

"Records of mental health diagnosis, evaluation and treatment prepared or maintained by the department shall remain the property of the department and are subject to all applicable laws governing their confidentiality and disclosure."

See, Id., at § 3361(c).

"No case records file, unit health records, or component thereof shall be released to any agency or person outside the department, except for private attorneys hired to represent the department, the office of the attorney general, the Board of Parole Hearings, the Inspector General, and as provided by applicable federal and state law."

See, Id., at § 3370(e).

"Finally, writ review is appropriate because 'the petition presents a significant issue of first impression.' (Pugliese v. Superior Court (2007) 146 Cal.App.4th 1444, 1448 [53 Cal.Rptr.3d 681]; see Barrett, supra, 222 Cal.App.3d at p. 1183 [writ review proper where 'the issue presented ... has never been the subject of a published opinion'].)"

See, Noe v. Superior Court (Cal.App. 2 Dist. Div. 7 2015) 237 Cal.App.4th 316, 325.[19/]

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19/ If the Court will allow, In re Vicks (Cal. 2013) 56 Cal.4th 274, is not a published opinion on the issue presented in this habeas petition (Marsy's Law violates Harrison's right to keep his records confidential from the public). The Vicks Court addressed the entirely different issue of whether Marsy's Law violated ex post facto principles under § 9, Art. I, of the California Constitution.

Ground 4.

Harrison incorporates herein, in full, all supporting cases, rules, and other authority, as cited above at Pages 3(xxxvi)-3(xxxix) of 6.

The State may not deprive any person of life, liberty, or property without due process of law. (United States Constitution, Fifth and Fourteenth Amendments; California Constitution, Art. I, § 7(a))

Petitioner has the right to be confronted with the adverse information used to restrain his liberty. (United States Constitution, Sixth and Fourteenth Amendments)

Harrison incorporates herein, in full, all supporting cases, rules, and other authority, as cited above at Pages 3(xxxxvi)-3(l) of 6.

In re Rosenkrantz (Cal. 2002) 29 Cal.4th 616, 684 (admissible evidence that a parole decision was made in accordance with a blanket policy may properly be considered in determining whether due process was satisfied)

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Ground 5.

Harrison incorporates herein, in full, all supporting cases, rules, and other authority, as cited above at Pages 3(xxxvi)-3(xxxxvi) of 6.

The State may not deprive any person of life, liberty, or property without due process of law. (United States Constitution, Fifth and Fourteenth Amendments; California Constitution, Art. I, § 7(a))

Harrison incorporates herein, in full, from Page 3(xxxxvi) of 6, In re Murchison, Offutt v. United States, Exxon Corp. v. Heinze, and People v. Superior Court.

"No matter what the evidence was against him, he had the right to have an impartial judge." See, Tumey v. State of Ohio, 273 U.S. 510, 535 (1927); see also, CCR, Title 15, § 2250 ("A prisoner is entitled to a hearing by an impartial panel.")

Parole grants are the rule, rather than the exception. (Lawrence, supra, 44 Cal.4th at p. 1204; In re Vasquez (Cal.App. 4 Dist. Div. 1 2009) 170 Cal.App.4th 370, 383;

Harrison incorporates herein, in full, from Page 3(lii) of 6, In re Rosenkrantz.

Ground 6.

Harrison incorporates herein, in full, all supporting cases, rules, and other authority, as cited above at Pages 3(xxxvi)-3(xxxix) of 6.

Harrison incorporates herein, in full, all supporting cases, rules, and other authority, as cited above at Pages 3(xxxxvi)-3(xxxxvii) of 6.

> "A prisoner shall have the right to present relevant documents to the hearing panel. The documents should be brief, pertinent, and clearly written. They may cover any relevant matters such as mitigating circumstances, disputed facts or release planning. A copy of the documents may be placed in the prisoner's central file."

See, CCR, Title 15, § 2249.

Ground 7.

Harrison incorporates herein, in full, all supporting cases, rules, and other authority, as cited above at Pages 3(xxxvi)-3(xxxix) of 6.

> "All relevant, reliable information available to the panel shall be considered in determining suitability for parole."

See, CCR, Title 15, § 2281(b); § 2402(b) (accord).

The Board is required to give due consideration to the criteria referred to in Penal Code section 3041 and, more

specifically, in CCR, Title 15, § 2402, promulgated by the Board pursuant to legislative mandate. (In re Prather (Cal. 2010) 50 Cal.4th 238, 251 [Board "must consider the statutory factors concerning parole suitability set forth in section 3041 as well as the Board regulations."])

The Board's decision must reflect an individualized consideration of the specified statutory and regulatory criteria. (Lawrence, supra, 44 Cal.4th at p. 1205; Rosenkrantz, supra, 29 Cal.4th at p. 677). "Accordingly, the judiciary is empowered to review a decision by the Board or the Governor to ensure that the decision reflects 'an individulized consideration of the specific ctiteria' and is not 'arbitrary and capricious.'" See, Lawrence, supra, 44 Cal.4th at p. 1205; Rosenkrantz, supra, 29 Cal.4th at p. 677.

Ground 8.

Harrison incorporates herein, in full, all supporting cases, rules, and other authority, as cited above at Pages 3(xxxvi)-3(xxxix) of 6, Pages 3(liv)-3(lv) of 6, as well as In re Rosenkrantz, supra, at page 3(lii) of 6.

Ground 9.

Harrison incorporates herein, in full, all supporting cases, rules, and other authority, as cited above at Pages 3(xxxvi)-3(xxxix) of 6.

> "The Equal Protection Clause of the Fourteenth Amendment commands that no State shall 'deny to any person within its jurisdiction the equal protection of the laws,' which is essentially a direction that all persons similarly situated should be treated alike."

See, City of Cleburne v. Cleburne Living Center, 473 U.S. 432, 439 (1985) (quoting Plyler v. Doe, 457 U.S. 202, 216 (1982).

> "Prior to a life inmate's initial parole consideration hearing, a Comprehensive Risk Assessment will be performed by a licensed psychologist employed by the Board of Parole Hearings, except as provided in subsection (g)."

See, CCR, Title 15, § 2240(a).

> "Life inmates who reside in a state other than California, including those under the Interstate Compact Agreement, may not receive a Comprehensive Risk Assessment."

See, CCR, Title 15, § 2240(g).

**Ground 10.**

Harrison incorporates herein, in full, all supporting cases, rules, and other authority, as cited above at Page 3(xxxvi)-3(xxxix) of 6.

A conclusion that an inmate lacks insight, remorse, or fails to take responsibility, "is not some evidence of current dangerousness unless it is based on evidence in the record ..." (see, In re McDonald (Cal.App. 2 Dist. Div. 7 2010) 189 Cal.App.4th 1008, 1023) that legally may be relied upon. The Board:

"cannot rely on the fact that the inmate insists on his innocence; the express provisions of Penal Code section 5011 and sectoin 2236 of title 15 of the California Code of Regulations prohibit requiring an admission of guilt as a condition for release on parole."

See, Id.; In re Swanigan (Cal.App. 2 Dist. Div. 1 2015) 240 Cal.App.4th 1, 14 (accord).

"As in this case, the Attorney General in Jackson contended that the Board did not deny Jackson parole because of his refusal to admit his guilt. Rather, the Board 'justifiably denied Jackson parole due to his lack of insight into the crime, his failure to take responsibility for it, and his lack of remorse.' ([In re Jackson (Cal.App. 2 Dist. Div. 2 2011) 193 Cal.App.4th 1376, 1389].) In granting the petition, the Court of Appeal concluded, however, that the Board's stated findings that Jackson lacked insight into the crime, failed to take responsibility for it, and did not have remorse, were based solely on Jackson's refusal to admit that he shot and killed Wade. Because basing a parole determination on that evidence is expressly prohibited by section 5011, subdivision (b) and section 2236 of title 15, the Board thus lacked any evidence to support its decision that Jackson was unsuitable for parole (Jackson, at p. 1391.)"

See, Swanigan, supra, 240 Cal.App.4th at p. 19.

**Ground 11.**

Harrison incorporates herein, in full, all supporting cases, rules, and other authority, as cited above at Pages 3(xxxvi)-3(lvii) of 6.

State agents may not retaliate against prisoners for using

the courts or trying to do so. The right of access to the courts is subsumed under the First Amendment right to petition the government for redress of grievances. (California Motor Transportation Company v. Trucking Unlimited, 404 U.S. 508, 510 (1972) Retaliation against prisoners for their exercise of this Constitutional right is itself a Constitutional violation, and prohibited as a matter of "clearly established law." See, Schroeder v. McDonald, 55 F.3d 454, 461 (9th Cir.1995); Pratt v. Rowland, 65 F.3d 802, 806 & n. 4 (9th Cir.1995).

The denial of parole was an adverse action taken against Petitioner by state actors because of his litigation to prove innocence and remedy prison oppression; adverse action that did chill his exercise of his First Amendment rights, and the adverse action did not advance any legitimate correctional goal. (Rhodes v. Robinson, 408 F.3d 559, 568 (9th Cir.2005). Additionally, the adverse actions caused Petitioner to suffer other harms, e.g., continued wrongful incarceration.

**Ground 12.**

Harrison incorporates herein, in full, all supporting cases, rules, and other authority, as cited above at Pages 3(xxxvi)-3(lviii) of 6.

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[omitted]

**Additional supporting cases, rules, and other authority; across all Grounds, 1-12.**

California's habeas corpus statute, Penal Code section 1473 provides that the writ is available when a person is "unlawfully imprisoned or restrained of his or her liberty." See, California Penal Code, § 1473(a).

California Rules of Court require courts to appoint an attorney for any unrepresented petitioner who desires to have an attorney, but cannot afford one. (Cal. Rules of Court, Rule 4.551(c)(2); see also, In re Clark (Cal. 1993) 5 Cal.4th 750, 780 ("This court has held, however, that if a petition attacking the validity of a judgment states a prima facie case leading to issuance of an order to show cause, the appointment of counsel is demanded by due process concerns."); Cal. Penal Code, § 987.2)

In ruling on the habeas petition, the court will determine whether the petition alleges facts that, if true, would entitle the petitioner to relief. (People v. Duvall (Cal. 1995) 9 Cal.4th 464, 474-475; see also, In re Lawler (Cal. 1979) 23 Cal.3d 190, 194 ("If, taking the facts alleged as true, the petitioner has established a prima facie case for relief on habeas corpus,

then an order to show cause should issue."); In re Hochberg (Cal. 1970) 2 Cal.3d 870, 875 n. 4)

> "It follows from our construction of this petition that if the allegations are taken as true, petitioner was denied due process of law. It may be that these allegations will turn out to be specious and unfounded. But they are sufficient under the rule ... if their verity is determined."

See, Williams v. Kaiser, 323 U.S. 471, 476-477 (1945).

For these purposes, the court assumes that the facts alleged in the petition -- verified by the oath of the petitioner -- are accurate, unless denied by the return or controlled by other evidence. (Kentucky v. Powers, 201 U.S. 1, 34 (1906); Cal. Rules of Court, Rule 4.551(c)(1); In re Clark, supra, 5 Cal.4th at p. 769 n. 9)

If the petition alleges sufficient facts, it is said to have made a prima facie case for relief. (In re Lawler, supra, 23 Cal.3d at p. 194)

The petition should both state fully and with particularity the facts on which relief is sought, as well as include copies of reasonably available documentary evidence supporting the claim, including pertinent portions of trial transcripts and affidavits or declarations. (Duvall, supra, 9 Cal.4th at p. 475)

> "Although the duty to conduct formal proceedings arises only if a petition states a prima facie basis for relief, unfortunately it is not difficult for the artful petitioner to do so."

See, Durdines v. Superior Court (Cal.App. 4 Dist. Div. 2 1999) 76 Cal.App.4th 247, 252 (fn. omitted)

After the denial is filed, or after the time to file it has expired, the court may choose to hold an evidentiary hearing. People v. Romero (Cal. 1994) 8 Cal.4th 728, 739 ("Once the issues have been joined in this way, the court must determine whether an evidentiary hearing is needed."); Cal. Rules of Court, Rule 4.551(f). An evidentiary hearing is appropriate when an important question hinges on the resolution of disputed facts. (Cal. Penal Code, § 1484; see also, Romero, supra, 8 Cal.4th at 739-740 ("[I]f the return and traverse reveal that petitioner's entitlement to relief hinges on the resolution of factual disputes, then the court should order an evidentiary hearing.").

> "An evidentiary hearing is required if, after considering the verified petition, the return, any denial, any affidavits or declarations under penalty of perjury, and matters of which judicial notice may be taken, the court finds there is a reasonable likelihood that the petitioner may be entitled to relief and the petitioner's entitlement to relief depends on the resolution of an issue of fact."

See, Cal. Rules of Court, Rule 4.551(f).

Where there are factual issues that cannot be resolved without an evidentiary hearing ... the district court ruled on

the merits of the pleadings rather than on the merits of the case. Sanders v. United States, 373 U.S. 1, 16 (1963) (evidentiary hearing required for decision on the merits); Cancino v. Craven, 467 F.3d 1243, 1246 (9th Cir.1972).

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## SUMMARY

Twelve grounds presented, twelve instances of the BPH not playing fairly in the parole process used to deny parole to Harrison. Twelve grounds that, individually and collectively, warrant a new parole process where the BPH, in reviewing Harrison's suitability for parole, will be required to play fairly.

## CONCLUSION

Accordingly, for the facts, evidence, and law, presented, Petitioner asks this Court to grant the following relief:

A. an Order To Show Cause directed to the Board of Parole Hearings why this habeas petition should not be granted;

B. the appointment of counsel for all purposes of these proceedings;

C. provide reasonable discovery and an evidentiary hearing on factually disputed matters; and upon the conclusion of the proceedings above, at A., B., and C., Petitioner seeks:

E. declare the rights of the parties;

F. an ORDER directing the Board of Parole Hearings to:

(1) vacate the Board of Parole Hearings' decision denying parole to Harrison;

(2) void and vacate, and expunge from all Board of Parole Hearings, California Department of Corrections and Rehabilitation, Forensic Assessment Division, records, as well as from all records kept on Petitioner including, but not limited

to, Central File, SOMS, ERMS, and all other storage mediums, the Comprehensive Risk Assessment of January 22, 2016, as authored by Ms. Lippman;

(3) provide Petitioner a new parole suitability hearing on the earliest possible docket;

(4) conduct the new parole suitability hearing in accordance with due process principles of law, specifically as this Court may find pursuant to each of the twelve grounds presented in this habeas petition;

G. grant all other relief necessary to promote the ends of justice (and fair play by the Board of Parole Hearings).

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7. **Ground 2 or Ground** _______ *(if appo...le):*

a. Supporting facts:

b. Supporting cases, rules, or other authority:

8. Did you appeal from the conviction, sentence, or commitment? [XX] Yes [ ] No If yes, give the following information:
   a. Name of court ("Court of Appeal" or "Appellate Division of Superior Court"):
   Court of Appeal, Fourth Appellate District, Division One.
   b. Result: Conviction affirmed. c. Date of decision: June 30, 1992.
   d. Case number or citation of opinion, if known: D012506.
   e. Issues raised: (1) Sufficiency of the evidence.
   (2) Ineffective assistance of counsel.
   (3) Motion to dismiss for pre-indictment delay.
   f. Were you represented by counsel on appeal? [XX] Yes [ ] No If yes, state the attorney's name and address, if known:
   William Fletcher (deceased).

9. Did you seek review in the California Supreme Court? [XX] Yes [ ] No If yes, give the following information:
   a. Result: Petition for review denied. b. Date of decision: September 24, 1992.
   c. Case number or citation of opinion, if known: S027988.
   d. Issues raised: (1) (Same as above?; records not available)
   (2)
   (3)

10. If your petition makes a claim regarding your conviction, sentence, or commitment that you or your attorney did not make on appeal, explain why the claim was not made on appeal:
   Parole matter, many years after the appeal.

11. Administrative review:
   a. If your petition concerns conditions of confinement or other claims for which there are administrative remedies, failure to exhaust administrative remedies may result in the denial of your petition, even if it is otherwise meritorious. (See *In re Muszalski* (1975) 52 Cal.App.3d 500.) Explain what administrative review you sought or explain why you did not seek such review:
   N/A.
   b. Did you seek the highest level of administrative review available? [ ] Yes [ ] No
   *Attach documents that show you have exhausted your administrative remedies.*

12. Other than direct appeal, have you filed any other petitions, applications, or motions with respect to this conviction, commitment, or issue in any court? [XX] Yes *If yes, continue with number 13.* [ ] No *If no, skip to number 15.*

13. a. (1) Name of court: Court of Appeal, Fourth Appellate District, Division One.

(2) Nature of proceeding (for example, "habeas corpus petition"): Habeas corpus petition.

(3) Issues raised: (a) Ineffective assistance of counsel.

(b)

(4) Result *(attach order or explain why unavailable)*: Petition denied. (Order inaccessible to Petitioner)

(5) Date of decision: November 23, 1994.

b. (1) Name of court: [No other records available.]

(2) Nature of proceeding:

(3) Issues raised: (a)

(b)

(4) Result *(attach order or explain why unavailable)*:

(5) Date of decision:

c. *For additional prior petitions, applications, or motions, provide the same information on a separate page.*

14. If any of the courts listed in number 13 held a hearing, state name of court, date of hearing, nature of hearing, and result:
N/A.

15. Explain any delay in the discovery of the claimed grounds for relief and in raising the claims in this petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.)
N/A.

16. Are you presently represented by counsel? [ ] Yes [XX] No *If yes, state the attorney's name and address, if known:*

17. Do you have any petition, appeal, or other matter pending in any court? [XX] Yes [ ] No If yes, explain:
Court of Appeal, Fourth Appellate District, Division One (Case No. D070162).
Withholding/suppression of records material to conviction.

18. If this petition might lawfully have been made to a lower court, state the circumstances justifying an application to this court:
N/A.

I, the undersigned, say: I am the petitioner in this action. I declare under penalty of perjury under the laws of the State of California that the foregoing allegations and statements are true and correct, except as to matters that are stated on my information and belief, and as to those matters, I believe them to be true.

Date: October 15, 2016.

(SIGNATURE OF PETITIONER)