

SUPERIOR COURT OF CALIFORNIA COUNTY OF LOS ANGELES	Reserved for Clerk's File Stamp CONFORMED COPY ORIGINAL FILED SUPERIOR COURT OF CALIFORNIA COUNTY OF LOS ANGELES OCT 25 2021 Sherri R. Carter, Executive Officer/Clerk BY <u>AS</u> Deputy
COURTHOUSE ADDRESS: Clara Shortridge Foltz Criminal Justice Center 210 West Temple Street Los Angeles, CA 90012	
RENE ENRIQUEZ	
CLERK'S CERTIFICATE OF MAILING CCP, § 1013(a) Cal. Rules of Court, rule 2(a)(1)	CASE NUMBER: BH013600 (Underlying Criminal Case No.: BA011487)

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that this date I served:

- | | |
|---------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------|
| <input type="checkbox"/> Assignment Order | <input type="checkbox"/> Transfer Order (Cal. Rules of Court, rule 4.552(b)(2)(B)) |
| <input type="checkbox"/> Order of Dismissal | <input checked="" type="checkbox"/> Order Re: Request to Stay the Court's August 31, 2021 Order Granting Petitioner's Petition for Writ of Habeas Corpus |

I certify that the following is true and correct: I am the clerk of the above-named court and not a party to the cause. I served this document by placing true copies in envelopes addressed as shown below and then by sealing and placing them for collection; stamping or metering with first-class, prepaid postage; and mailing on the date stated below, in the United States mail at Los Angeles County, California, following standard court practices.

Send a copy of this order to:
 Department of Justice, State of California
 Office of the Attorney General
 300 South Spring St., Suite 1702
 Los Angeles, CA 90013
 Attn: Jennifer O. Cano, Deputy Attorney General

Jacob J. Hutt, Esq.
 Prison Law Office
 1917 Fifth Street
 Berkeley, CA 94710

October 25, 2021
 DATED AND DEPOSITED

SHERRI R. CARTER, Executive Officer/Clerk
 By: Anthony Salinas, Clerk
 Anthony Salinas

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DEPT 100

Date: October 25, 2021
Honorable: WILLIAM C. RYAN
NONE

Judge B. PEREZ
Bailiff NONE

Deputy Clerk
Reporter

BH013600

(Underlying Criminal Case No.: BA011487)

(Parties and Counsel checked if present)

In re
RENE ENRIQUEZ,

Petitioner,

Counsel for Petitioner:

On Habeas Corpus

Counsel for Respondent:

**ORDER RE: REQUEST TO STAY THE COURT'S AUGUST 31, 2021 ORDER GRANTING
PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS**

IN CHAMBERS

Request to Stay the Court's August 31, 2021 Order Granting Petitioner's Petition for Writ of Habeas Corpus, by Respondent, the Governor of the State of California, represented by Deputy Attorney General Jennifer O. Cano. Jacob J. Hutt, Esq. for Petitioner Rene Enriquez. Denied.

BACKGROUND

In 1993, Petitioner was convicted of two counts of second degree murder (Pen. Code¹, § 187) and assault with a firearm (§ 245). He was sentenced to two concurrent terms of 15 years to life for each of the two second degree murder counts, plus a concurrent term of 20 years to life for assault with a firearm.

On May 6, 2020, the Board of Parole Hearings (Board) convened a subsequent parole suitability hearing for Petitioner. For the fifth consecutive time, the Board found Petitioner suitable for parole, this time based on his low risk for future violence, participation in self-help programming, lack of institutional misconduct for the past 15 years and lack of violent behavior for 23 years, insight, acceptance of responsibility, and concrete, realistic parole plans.

On September 18, 2020, the Governor reversed the Board's grant of parole based on Petitioner's criminal history and prior record of violence, lack of credibility and insight, and psychological assessment.

¹ All further statutory references are to the Penal Code unless otherwise indicated.

Minutes Entered
10-25-21
County Clerk

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DEPT 100

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Honorable: WILLIAM C. RYAN
NONE

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In re

RENE ENRIQUEZ,

Counsel for Petitioner:

Petitioner,

On Habeas Corpus

Counsel for Respondent:

On April 27, 2021, Petitioner filed a petition for writ of habeas corpus in this court, contending the Governor’s reversal violated Petitioner’s due process rights because no evidence in the record supported the Governor’s suitability determination.

On May 17, 2021, the court issued an order to show cause why the relief requested should not be granted. On July 28, 2021, Respondent filed a return, and on August 20, 2021, Petitioner filed a traverse.

On August 31, 2021, the court issued an order granting the petition, concluding that the Governor’s reversal of the Board’s parole grant was not supported by some evidence that Petitioner would pose an unreasonable risk of danger to society if released.

On October 22, 2021, Respondent filed the instant request to stay the court’s August 31, 2021 order pending appeal. Respondent contends a stay is necessary to maintain the status quo and to ensure the Governor’s right to meaningful appellate review, and because there is a likelihood the Governor will prevail on appeal.

DISCUSSION

Penal Code section 1506 “governs the appeal of a final order on a petition for writ of habeas corpus[.]” (*People v. Berg* (2019) 34 Cal.App.5th 856, 860.) Section 1506 provides in relevant part:

If the people appeal from an order granting the discharge or release of the defendant, or petition for hearing in either the court of appeal or the Supreme Court, the defendant shall be admitted to bail or released on his own recognizance or any other conditions which the court deems just and reasonable, subject to the same limitations, terms, and conditions which are applicable to, or may be imposed upon, a defendant who is awaiting trial. *If the order grants relief other than a discharge or release from custody, the trial court or the court in which the appeal or petition for hearing is pending may, upon application by the people, in its discretion, and upon such conditions as it deems just stay the execution of the order pending final determination of the matter.*

(Pen. Code, § 1506, italics added.)

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

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Counsel for Petitioner:

On Habeas Corpus

Counsel for Respondent:

Here, the court’s order granting Petitioner’s habeas petition is not an order granting his “discharge or release from custody” within the meaning of section 1506 because the order would have the effect of releasing Petitioner on parole, and “release on parole is *not* release from custody[.]” (*In re Stinnette* (1979) 94 Cal.App.3d 800, 807.) Rather, the court’s order is an order granting “relief other than a discharge or release from custody.” (*Ibid.*) Accordingly, pursuant to section 1506, the court may, “in its discretion, and upon such conditions as it deems just stay the execution of the order pending final determination of the matter.” (§ 1506.)

The court, however, declines to exercise its discretion to stay its August 31, 2021 order granting the petition. As detailed in the order, the records lacks some evidence to support the Governor’s decision that Petitioner poses an unreasonable risk of danger to society if released on parole. In the court’s view the Governor cherry-picked the CRA and other materials and listed historical factors as current factors, to reach his result. If Respondent disagrees with this court’s decision, Respondent may file an appeal in the Court of Appeal and request that Court grant a stay pending resolution of the appeal.

DISPOSITION

For the foregoing reasons, Respondent’s request to stay the court’s August 31, 2021 order is DENIED.

The Clerk is ordered to serve a copy of this decision upon Jacob J. Hutt, Esq., as counsel for Petitioner, and upon Deputy Attorney General Jennifer O. Cano as counsel for Respondent, the Governor of the State of California.

The court order is signed and filed this date.

A true copy of this minute order is sent via U.S. Mail to the following parties:

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DEPT 100

Date: October 25, 2021

Honorable: WILLIAM C. RYAN
NONE

Judge B. PEREZ
Bailiff NONE

Deputy Clerk
Reporter

BH013600

(Underlying Criminal Case No.: BA011487)

(Parties and Counsel checked if present)

In re

RENE ENRIQUEZ,

Counsel for Petitioner:

Petitioner,

On Habeas Corpus

Counsel for Respondent:

Send a copy of this order to:

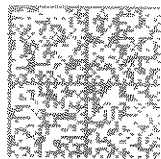
Department of Justice, State of California
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300 South Spring St., Suite 1702
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Attn: Jennifer O. Cano, Deputy Attorney General

Jacob J. Hutt, Esq.
Prison Law Office
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Berkeley, CA 94710

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES
CENTRAL DISTRICT-CLARA SHORTRIDGE FOLTZ
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