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COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION FOUR

In Re RENE ENRIQUEZ On Habeas Corpus.	Case No.: B315914 Los Angeles County Superior Court The Honorable William C. Ryan Sup. Ct. Case No. BH013600 RESPONDENT'S BRIEF

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INTRODUCTION

For decades, Respondent Rene Enriquez has taken full responsibility for his grave commitment offenses. In a twenty-year effort to atone for these offenses, he has engaged in what local, state, and federal law enforcement officers describe as an unprecedented effort to assist with gang investigations and make the outside world a safer place. (See, e.g., Clerk's Transcript ("CT") at p. 192 [statement of former Chief of Police of Los Angeles Police Department: "In determining Rene Enriquez'[s] eligibility, I would ask that you consider his deeds over the past 13 years and the danger he has placed himself in to assist law enforcement. This is truly the act of a repentant man and indicative of the value he p[l]aces on life."].) Rather than point to evidence of Mr. Enriquez's current dangerousness, the Governor bases his reversal of Mr. Enriquez's fifth consecutive parole grant on resolved, historical risk factors that the Board psychologist clarified were not current, and on the motives that led Mr. Enriquez to put his life at risk to help law enforcement make the community safer. That one of Mr. Enriquez's initial motives for cooperating was to receive attention, however, does not diminish his decades of extraordinary dedication to improving the lives of others, nor does it support a rational inference that he is currently dangerous.

The superior court searched the record for evidence to support the Governor's finding that Mr. Enriquez would currently pose an unreasonable

risk to public safety if released on parole, and was unable to identify any such evidence. The superior court correctly found that the few pieces of evidence interpreted by the Governor to demonstrate current dangerousness either reflected (1) historical—not current—concerns about Mr. Enriquez, or (2) observations about Mr. Enriquez that were unrelated to dangerousness.

Contrary to the Governor's contention on appeal, the superior court did not reweigh the evidence. To the contrary, the superior court straightforwardly evaluated whether the record said what the Governor said it did, and properly limited its review to assessing whether any evidence in the record supported a finding of current dangerousness. As the superior court repeatedly recognized, the Governor is due deference in weighing parole suitability factors. But longstanding precedent makes clear that the deference extended to the Governor in weighing evidence of parole suitability does not license him to mischaracterize what the record says in order to reverse a parole grant, when the record does not support a finding that the would-be parolee is currently dangerous.

This Court should affirm the lower court's order.

STATEMENT OF THE CASE

I. The Commitment Offenses

On March 25, 1993, Mr. Enriquez was received into California Department of Corrections and Rehabilitation ("CDCR") custody for two

concurrent terms of life with the possibility of parole for each of two counts of second degree murder. (CT at p. 56.) Mr. Enriquez was also sentenced to a concurrent term of life for assault with a firearm. (*Ibid.*)

Mr. Enriquez joined the Mexican Mafia in 1985, during a previous term of incarceration. (*Id.* at p. 270.) In 1989, Mr. Enriquez suspected that Cynthia Galvadon, who was dealing drugs for the Mexican Mafia, was stealing drugs and keeping money. (*Id.* at p. 271.) He instructed a fellow Mexican Mafia member to kill her and gave him a gun. (*Id.* at p. 58.) Ms. Galvadon was killed on December 23, 1989. (*Id*. at p. 57.) On December 30, 1989, on the orders of superiors within the gang, Mr. Enriquez killed David Gallegos, a Mexican Mafia member who had fallen out of favor with the gang. (*Id.* at pp. 62-63, 305-06.) Mr. Enriquez and other gang associates injected Mr. Gallegos with heroin and cocaine, which incapacitated him. (*Id.* at p. 13.) They then drove Mr. Gallegos to an alley, where Mr. Enriquez shot him multiple times. (*Ibid.*)

Prior to his incarceration for the commitment offenses, Mr. Enriquez was arrested in 1990 for robbery. (*Id.* at p. 179.) On July 16, 1991, Mr. Enriquez and another Mexican Mafia member, Benjamin Peters, were handcuffed in the attorney room at the Los Angeles County Jail with Salvador Buenrostro, a Mexican Mafia member who had fallen out of favor with the gang. (*Id*. at p. 59.) On the orders of superiors within the

gang, Mr. Enriquez and Mr. Peters repeatedly stabbed Mr. Buenrostro, who survived the incident. (*Id.* at pp. 60, 308, 311.)

II. Mr. Enriquez's Post-Conviction Record

After his conviction for the commitment offenses, a series of changes within the Mexican Mafia and conversations with his family members convinced Mr. Enriquez that he could no longer be a gang member. (CT at pp. 274-76.) The changes within the gang included a new campaign threatening to kill civilians, which convinced Mr. Enriquez that the gang was not about brotherhood but about only "killing and power-grabbing." (*Id.* at p. 332.) Mr. Enriquez also spoke with his father, son, and wife, who confronted him with their disgust for his past actions, their desire for him to eradicate gang culture from his life, and their belief that dropping out of the gang would make his life better. (*Id.* at pp. 333-34, 422-23.)

Accordingly, Mr. Enriquez debriefed—or permanently disassociated—from the Mexican Mafia through confidential, tell-all conversations with law enforcement beginning on March 22, 2002, at the age of 39. (*Id.* at p. 273.) He physically removed a Mexican Mafia tattoo from his chest (*Id.* at p. 333), and refused to respond to "Boxer," his former gang nickname. (*Id.* at p. 430.) Subsequently, CDCR formally terminated Mr. Enriquez's validated status as a gang member. (Clerk's Transcript Supplemental ("CTS") at p. 45.) According to Ironwood State Prison ("ISP") gang investigation staff, "in the history of ISP, ENRIQUEZ is one

of only four inmates to ever have this pro[cess] granted and completed." (*Ibid*.) During this period, Mr. Enriquez commenced his unparalleled efforts to assist law enforcement with gang-related investigations and prosecution. (CT at p. 166.) His cooperation has, in the view of then-C.D. Cal. U.S. Attorney Andre Birotte, Jr. (now a U.S. District Court Judge), saved lives. (*Id.* at p. 187 [explaining that as "[a]s a result of Mr. Enriquez's efforts" in assisting with an investigation of a murder-for-hire plot involving his former cellmate, "[a] jailhouse murder plot was thwarted"].) Between 2002 and 2018, Mr. Enriquez received over 80 letters of support from law enforcement members. (*Id*. at pp. 186-96.)

Mr. Enriquez has remained disciplinary-free since 2004. (*Id.* at p. 444.) His exemplary behavior has been recognized in numerous laudatory certificates (also known as "chronos") authored by correctional staff, including many CDCR staff who comment on the rarity of their authoring laudatory certificates of this nature. (*Id.* at pp. 65-114.). In addition to his lengthy history of making amends by assisting law enforcement, Mr. Enriquez has been involved in extensive self-help programming, independent studies on psychology, book report- and essay-writing, and relapse prevention plan creation during his incarceration and particularly since debriefing in 2002. (See generally *id.* at pp. 18-19.) He has also played a critical role as a mentor to young incarcerated men in the Youth Offender Program. (See, e.g., *id.* at pp. 104-105, 188, 268.) Those who

have spent time with Mr. Enriquez and have mentored youth alongside him—including Mr. Enriquez's former enemies—attest to "[h]ow much Rene ha[s] changed." (*Id.* at p. 263 [Letter from Edward A. Luna, formerly incarcerated individual, written the same morning that Mr. Luna was released from prison after 39 years].)

III. Parole Proceedings

On May 6, 2020, for the fifth consecutive time, the Board of Parole Hearings found Enriquez, then 57 years old, suitable for parole. (CT at p. 409.) Mr. Enriquez had presented no ordinary parole packet to the Board, but one that included over eighty letters of support from law enforcement actors across the federal, state, and local spectrum, ranging from FBI agents to federal judges, from local prosecutors to multiple Chiefs of Police at the Los Angeles Police Department. (*Id.* at pp. 186-96.) Correctional staff of various ranks in CDCR advocated for his release, noting *inter alia* his "exceptional displays of change and positive behavior" and his readiness to become "a productive member of the community once released on parole." (*Id.* at pp. 73, 99.) The Board concluded that Mr. Enriquez did not pose an unreasonable risk to public safety. (*Id.* at p. 409.)

On September 18, 2020, the Governor for the fifth time reversed the Board's decision to grant parole. (*Id.* at pp. 657-59.) The Governor offered three reasons for the reversal. First, the Governor reasoned that Mr. Enriquez's criminal history "elevates his current risk level." (*Id.* at p. 658.)

Second, the Governor reasoned that Mr. Enriquez's past "manipulative behavior" and the Board psychologist's suggestion that "some of the prosocial changes [Mr. Enriquez] has made may not have been altruistic" showed that Mr. Enriquez had not yet shown "an authentic and enduring transformation in thought and conduct." (*Ibid.*) Finally, the Governor stated that Mr. Enriquez has "current risk factors," and selectively quoted a portion of the Comprehensive Risk Assessment ("CRA"), which had found Mr. Enriquez to represent a low risk to public safety. (*Ibid.*; *id.* at p. 446.) The Governor did not acknowledge that, for each of these risk factors, the Board of Parole Hearings' psychologist had emphasized that they represented past—not present—concerns. (*Id.* at pp. 427-46.)

IV. Superior Court Proceedings

On April 22, 2021, Mr. Enriquez filed a petition for a writ of habeas corpus in Los Angeles County Superior Court, challenging the Governor's reversal of the Board's grant of parole. (CT at p. 6.) On August 31, 2021, the Los Angeles County Superior Court issued a comprehensive Memorandum of Decision, granting Mr. Enriquez's petition for writ of habeas corpus. (*Id.* at pp. 681-94.) After recounting the facts of the case, the superior court began its analysis by recognizing its limited scope of review and the deference owed to the Governor in making parole suitability determinations. (*Id.* at pp. 683-84.) The superior court emphasized that it was Mr. Enriquez's burden to demonstrate that there was "no evidence" to

support the Governor's conclusion that he posed a current danger to public safety. (*Id.* at p. 684.)

The superior court then analyzed each piece of evidence relied on by the Governor as evidence of current dangerousness. First, the superior court discussed Mr. Enriquez's past crimes, including a history of violence prior to the life crimes and the commitment offenses themselves. (*Id.* at pp. 685-86.) The court discussed how, under governing law, "immutable factors such as criminal history and a prior record of violence may no longer indicate a current risk of danger to society in light of a lengthy period of positive rehabilitation." (*Id.* at p. 686 [quoting *In re Lawrence* (2008) 44 Cal.4th 1181, 1211].) The court acknowledged that only where other factors, "such as lack of credibility and insight or an elevated risk assessment," had a nexus to these immutable factors could these historical factors continue to provide some evidence of current dangerousness. (*Ibid.*)

Next, the superior court addressed the 2020 Comprehensive Risk Assessment. The court explained how the Board psychologist, Dr. Wendy Chan, had concluded that Mr. Enriquez "presented a low risk for violence with 'non-elevated risk relative to long-term parolees and well below average risk relative to shorter-term parolees released without discretion.'" (*Id.* at p. 687 (citations omitted).) The superior court noted that "Dr. Chan found that although a number of historical risk factors were present, 'the current relevance of all of these factors is low.'" (*Ibid.* (citations omitted).)

The superior court also noted that the Governor had mischaracterized a line in the CRA which listed several "risk factors" for Mr. Enriquez. (*Id.* at p. 687-88 ["[T]he Governor incorrectly characterized these as 'current' risk factors, despite the fact that Dr. Chan listed them while discussing [Mr. Enriquez]'s historical factors." (citation omitted)].) The superior court reviewed each of these risk factors—such as substance abuse and psychological disorders—and explained how the CRA had, in fact, made explicitly clear that these were historical concerns, not present ones. (*Id.* at pp. 688-89.) Finally in this section, the superior court noted that the Governor had "ignored Dr. Chan's ultimate conclusion that, after considering all the evidence, including [Mr. Enriquez]'s current behavior and mental state, [Mr. Enriquez] 'displayed no predictive factors for recidivism.'" (*Id.* at pp. 689-90 [quoting 2020 CRA at p. 15].) The superior court concluded that with respect to the CRA, the Governor had "selectively cited portions" of it, "taking historical risk factors out of context and suggesting their current relevance despite the psychologist's clear findings to the contrary." (*Id.* at p. 690.)

Next, the superior court addressed the Governor's finding that Mr. Enriquez "must do more to demonstrate that his desistance from misconduct represents an authentic and enduring transformation in thought and conduct, and not merely an attempt to game the system for his needs." (*Id.* at pp. 690-691.) The superior court carefully explained how the

Governor had not cited any evidence that Mr. Enriquez was engaged in "an attempt to game the system for his needs." (*Id.* at p. 691.) The court described how the Governor had taken out of context Dr. Chan's statement that Mr. Enriquez's past rehabilitative efforts "may not have been altruistic" due to antisocial thinking. Specifically, the court explained that Dr. Chan had explicitly clarified that "*whatever [Mr. Enriquez's] motivations may be*, he has been capable of managing his behavior, taking in feedback from his hearings and the governor's denials of his parole grants, and addressing the issues adequately." (*Id.* at p. 691 (internal quotation marks omitted, italics in court's order).) The superior court emphasized that, "[i]n fact, the psychologist suggested that [Mr. Enriquez]'s desire for external affirmation is likely to manifest itself in the future in prosocial ways" (*ibid.*), given that, according to Dr. Chan, "the current group he seeks status from tend to be law-abiding and even law-enforcing individuals." (*Id.* at pp. 691-92 (quoting 2020 CRA at p. 18).) The superior court went on to discuss the ample evidence of Mr. Enriquez's insight and acceptance of responsibility, and concluded that there was no evidence that he lacked insight into the causative factors of his crimes. (*Id.* at p. 692.) The superior court additionally reviewed other circumstances relevant to Mr. Enriquez's suitability for parole, such as his extensive participation and mentorship in self-help and educational groups and his "numerous laudatory chronos and

letters of support from members of law enforcement for his efforts to assist with gang-related investigations and prosecutions." (*Ibid.*)

Having painstakingly reviewed the factual record, the superior court concluded that the Governor's reversal decision was not supported by "some evidence" that Mr. Enriquez currently poses an unreasonable risk of danger to society if released. (*Id.* at p. 693; *ibid.* ["Even when only a modicum of evidence is required, the Governor still must articulate a rational nexus between that factor 'and the necessary basis for the ultimate decision—the determination of dangerousness.' Here, the Governor's statement of decision fails to do so." (citation omitted)].) The superior court noted that it "does not reach this conclusion lightly," and acknowledged that the decision would have an impact on the victims' families and friends. (*Ibid.*) Notwithstanding these circumstances and the deference owed to the Governor, the court concluded that "there is no evidence demonstrating [Mr. Enriquez] currently poses an unreasonable risk of danger to society." (*Ibid.*) Accordingly, the superior court granted Mr. Enriquez's petition for writ of habeas corpus and ordered his release in accordance with the Board's usual procedures. (*Ibid.*) The Governor timely appealed.

LEGAL STANDARDS

I. Standards Regarding Parole Suitability

Under California's parole system, a parole date may be denied only if the individual "will pose an unreasonable risk of danger to society if

released from prison" (Cal. Code Regs., tit. 15, § 2402, subd. (a)), in other words, if the individual is "a continuing danger to the public." (*In re Dannenberg* (2005) 34 Cal.4th 1061, 1084). Because "[r]elease on parole is the rule, rather than the exception" (*In re Ryner* (2011) 196 Cal.App.4th 533, 544), the parole authority must grant parole unless it finds "some evidence" that the person poses a threat of current dangerousness to the public. (*In re Lawrence*, *supra*, 44 Cal.4th at p. 1212; *Rosenkrantz* (2012) 29 Cal.4th 616, 667.) "This standard is unquestionably deferential, but certainly is not toothless." (*In re Lawrence*, *supra*, 44 Cal.4th at p. 1210.) The Governor's interpretation of a documentary record must be reasonable. (See *In re Shaputis* (2008) 44 Cal. 4th 1241, 1258.)

II. Standard of Review

A reviewing court independently reviews the record if the superior court grants relief on a petition for writ of habeas corpus challenging a denial of parole based solely upon documentary evidence. (*In re Rosenkrantz*, *supra*, 29 Cal.4th at p. 677.)

ARGUMENT

On appeal, the Governor argues (1) that the record contains some evidence that Mr. Enriquez currently poses an unreasonable risk of danger to the public, and (2) that the superior court engaged in reweighing the evidence when it concluded otherwise. Neither argument survives a basic review of the record and the superior court's opinion. As set forth below,

(1) speculation about Mr. Enriquez's motives for engaging in rehabilitation and evidence of long resolved, historical risk do not demonstrate that Mr. Enriquez is currently dangerous, and (2) the superior court's identification of factual mischaracterizations made by the Governor did not constitute reweighing.

I. The Governor's Decision Was Not Supported By Some Evidence That Mr. Enriquez Currently Poses an Unreasonable Risk of Danger to Public Safety.

The Governor's reversal of Mr. Enriquez's parole grant—his fifth consecutive grant—was based (1) on Mr. Enriquez's decades-old criminal history, (2) on speculation that Mr. Enriquez's rehabilitative progress may not be genuine, and (3) on mischaracterized, stale "risk factors" from a psychologist's assessment, which found that Mr. Enriquez represents a low risk of violence. None of these were permissible bases upon which to reverse the Board's grant of parole. As the superior court carefully explained, there is simply no evidence in the record that Mr. Enriquez currently poses an unreasonable risk of danger to public safety.

A. No Evidence Supports the Governor's Conclusion That Mr. Enriquez's Criminal History Decades Ago Makes Him An Unreasonable Risk of Danger to Public Safety Today.

In his reversal decision, the Governor first described Mr. Enriquez's "extensive history of violent and sexually violent behavior both in and out of custody," and reasoned that this history "elevates his current risk level." (CT at pp. 657-58.) As the superior court explained, such immutable facts

can provide evidence of current dangerousness only when other factors—for example, "the inmate has failed to make efforts toward rehabilitation, has continued to engage in criminal conduct postincarceration, or has shown a lack of insight or remorse"—are present. (*In re Lawrence*, *supra*, 44 Cal.4th at p. 1228; CT at p. 686.) "The nexus to current dangerousness is critical." (*In re Perez* (2017) 7 Cal.App.5th 65, 84.)

Here, it is undisputed that Mr. Enriquez has not exhibited violent behavior since 2002, two decades ago. (CT at p. 438; see *In re Roderick* (2007) 154 Cal.App.4th 242, 277 [affirming grant of petition and noting the "diminishing predictive value for future conduct" of a petitioner's 19-year-old criminal history].) The Governor has never—either in his reversal decision or in his brief on appeal—pointed to evidence that Mr. Enriquez's immutable historical conduct had any "predictive value for future conduct." (*In re Roderick*, *supra*, 154 Cal.App.4th at p. 277.) Nor has the Governor identified anything in Mr. Enriquez's "current demeanor and mental state" to support such a conclusion. (*In re Lawrence*, *supra*, 44 Cal.4th at p. 1214.)

The Governor claims that Mr. Enriquez's violent behavior did not stop until he began assisting law enforcement, which resulted in favorable treatment. (AOB at p. 12.) The Governor's implication appears to be that Mr. Enriquez's desistance from violence two decades later is in a precarious state. If this is the argument, there is no evidence to support it.

The Governor identifies nothing in the record suggesting that Mr. Enriquez's commendable progress and low-risk assessment somehow hang on a thread of favorable treatment from law enforcement authorities. And there is none; the record shows no violence or disciplinary action of any kind since 2004, and instead shows staff uniformly testifying to the genuineness of Mr. Enriquez's change. The Governor's reasoning therefore is improperly based on "speculat[ion] about a possible 'what-if' scenario." (*In re Loresch* (2010) 183 Cal.App.4th 150, 163 [granting petition].)

B. No Evidence Supports the Governor's Base Speculation That Mr. Enriquez's Rehabilitative Progress May Not Be Genuine.

The Governor's second reason for reversing the Board's parole grant was that, in his estimation, it is possible that Mr. Enriquez's demonstrated rehabilitation and decades-long commitment to assisting law enforcement have all been a farce. Quoting the Board psychologist, the Governor remarked that "'some of the prosocial changes [Mr. Enriquez] has made may not have been altruistic.'" (CT at p. 658.) This rationale, repeated in the Governor's brief on appeal (AOB at pp. 12-13), fails to satisfy the some-evidence standard for two reasons. First, contrary to governing law, it constitutes impermissible speculation about whether or not Mr. Enriquez has engaged in genuine rehabilitation. A Governor's decisions "must be supported by some *evidence*, not merely by a hunch or intuition." (*In re Lawrence, supra,* 44 Cal.4th at p. 1213, emphasis in original; see also *In re*

Ryner, supra, 196 Cal.App.4th at p. 551 [granting petition and noting that Governor's decision was "based on no more than speculation"].) In order to deny parole based on a shortcoming of a would-be parolee's rehabilitative efforts, the Governor must point to specific evidence of inadequacy. (See *In re Ryner, supra*, 196 Cal.App.4th at p. 551 ["The Governor faulted Ryner for failure to take more anger management courses, but there is no evidence that more course[s] were available, or as demonstrated above that he needed more courses to deal with anger management issues."].)

Here, the Governor improperly "base[d] his findings on hunches, speculation, or intuition." (*Ibid.*) He relied on the Board psychologist's observation that because of Mr. Enriquez's historical personality disorder, some of Mr. Enriquez's "prosocial changes . . . may not have been altruistic." (CT at p. 441.) But the Governor identified no evidence in his reversal decision that Mr. Enriquez's dogged efforts at rehabilitation—regardless of whether they were initially motivated by altruism—have actually been unsuccessful, nor does he point to any in his brief on appeal. As discussed below, Mr. Enriquez fully acknowledges that, in the past, his willingness to provide assistance to law enforcement was driven, in part, by his desire for status and attention. This, however, does not support the Governor's sweeping conjecture that Mr. Enriquez's decades of diverse rehabilitative efforts since then "may not" be genuine, and that therefore Mr. Enriquez is not suitable for parole. The Governor points to no evidence

that being motivated, in part, by a desire for external recognition renders Mr. Enriquez's prosocial changes meaningless. As the Board psychologist found, "[Mr. Enriquez's] behavior indicates that whatever his motivations may be, he has been capable of managing his behavior, taking in feedback from his hearings and the governor's denials of his parole grants, and addressing the issues adequately." (*Ibid.*) It was improper for the Governor to base his reversal decision on the mere possibility that Mr. Enriquez could hypothetically be "gam[ing] the system for his needs." (*Id.* at p. 658.)

The second problem with the Governor's reasoning is that even if there were evidence supporting his speculation that Mr. Enriquez is motivated in part by recognition he receives for assisting law enforcement, no evidence links this to *current dangerousness*. In other words, even if evidence supported the Governor's belief that Mr. Enriquez is driven by a desire for attention, it would not support a finding that such desire makes him a threat to public safety. (See *In re Lee* (2006) 143 Cal.App.4th 1400, 1408 ["The test is not whether some evidence supports the reasons the Governor cites for denying parole, but whether some evidence indicates a parolee's release *unreasonably endangers public safety*."].)

In this case, there is no evidence that hypothetical, non-altruistic motives held by Mr. Enriquez would make him an unreasonable risk of danger. The only relevant evidence in the record is that, *two decades ago*, when Mr. Enriquez first began cooperating with law enforcement, he

enjoyed the external affirmation that he received from law enforcement for his assistance.[1] Yet even if there were any *current* evidence that Mr. Enriquez is *still* motivated to cooperate with law enforcement so that he can receive their accolades (which there is not), there is no evidence tying this to dangerousness. To the contrary, the Board psychologist has explained that, if anything, Mr. Enriquez's desire for affirmation now serves prosocial ends:

> In some ways, his narcissistic traits serve him well in this area as the current group he seeks status from tend to be law-abiding and even law-enforcing individuals. Thus, he is more likely to try and gain status and seek approval by engaging in prosocial behavior at this time in his life.

(CT at p. 444; see also *id.* at p. 446 [noting that Mr. Enriquez's cooperation with law enforcement "has been a prosocial substitute for his need for approval and status"].)

Furthermore, nowhere in the Board psychologist's risk assessment or anywhere else in the record is there evidence that, without recognition from law enforcement, Mr. Enriquez would somehow become an unreasonable risk to public safety. Mr. Enriquez's case is thus unlike those cited by the

[1] Mr. Enriquez openly acknowledged to the Board that, long ago, his cooperative efforts were linked in part to his desire for recognition. (See CT at pp. 335-36 ["[A]t first it fed my narcissism. . . . [A]t first, I really admit that it was all about my egocentricity, all about . . . receiving accolades, like feeding my own narcissism. But now, nothing could be further from the truth."].)

Governor in which there is psychological evidence that an individual's mental health disorder is directly linked to a current risk of violence, or that sustained psychotherapy is necessary to keep the individual from posing an unreasonable risk to public safety. (See, e.g., *In re Bettencourt* (2007) 156 Cal.App.4th 780, 806 [psychologist recommended psychotherapy for petitioner to "modif[y] . . . his character structure," found that he was prone to "angry/violent outbursts," and cautioned that he would have a reduced risk of violence "**only if** [he] received positive recognition and there were 'no significant threats to his narcissistic ego'"] [emphasis added] [cited in AOB at p. 15].)

At bottom, there is no evidence that Mr. Enriquez's past desire for attention—even if it *did* manifest itself at present—currently makes him an unreasonable risk to public safety, and the only relevant source of evidence (the psychologist's assessment) found the exact opposite.

C. No Evidence Supports the Governor's Mischaracterization of Stale "Risk Factors" as Reflective of Current Dangerousness.

The Governor's final reason for reversing the Board's fifth consecutive grant of parole to Mr. Enriquez was a series of historical risk factors described in the Board psychologist's assessment that the Governor mischaracterized as current. Specifically, the Governor quoted the psychologist's statement that Mr. Enriquez's "violence risk appears to be attributable to the following key risk factors: significant personality

disorder traits, substance abuse issues, extremely negative/violent attitudes, involvement with antisocial individuals, and limited insight into these issues" (CT at p. 446), as well as a "slightly inflated" risk of sexual reoffense. (*Id.* at p. 445.) While *the Governor* characterized these as Mr. Enriquez's "current" risk factors (CT at p. 658)—a mistake he repeats on appeal (AOB at pp. 9, 15)—the Board psychologist made these statements while "examining [Mr. Enriquez's] history" and summarizing the risk factors implicated by his decades-old misconduct. (*Id.* at p. 445.) As discussed below, the Board psychologist detailed how each risk factor was, in fact, a historical concern that no longer manifested itself at present, leading to an overall finding of "[l]ow risk for violence." (*Id.* at p. 446.)

1. "Substance Abuse Issues"

The psychologist observed that substance abuse was a risk factor for Mr. Enriquez, but found that his history of substance use ended in 2005. (CT at pp. 436, 445.) The Governor does not (and cannot) point to any evidence that Mr. Enriquez has ingested any drug or alcohol in over fifteen years. The law is clear that "the mere fact an inmate was a former substance abuser" "cannot of itself warrant the denial of parole." (*In re Morganti* (2012) 204 Cal.App.4th 904, 921 [affirming grant of petition].)

2. "Extremely Negative/Violent Attitudes"

The psychologist made clear that "extremely negative/violent attitudes" was a historical risk factor that had been superseded. (CT at p.

446.) Regarding Mr. Enriquez's *current* disposition, the psychologist's finding was unambiguous: "[Mr. Enriquez] has shown willingness to conform to supervision, with no evidence of aggression, impulsivity, or rebellion against authority for over a decade." (*Id.* at p. 441.)

3. "Involvement With Antisocial Individuals"

The psychologist's identification of Mr. Enriquez's "involvement with antisocial individuals" was—in the psychologist's own words—exclusively based on Mr. Enriquez's past conduct, in contrast to his present behavior. (*Id.* at p. 446.) According to the psychologist, "[Mr. Enriquez] disassociated from antisocial individuals and has worked to establish positive relationships with both peers, law enforcement officers, and staff." (*Id.* at p. 441; *id.* at p. 440 ["[H]e has moved as far away from gang participation as possible as he would not be welcome in any gang after debriefing and testifying against Mexican Mafia members."].)

4. "Limited Insight Into These Issues"

As with the aforementioned risk factors, the psychologist identified insight as a *historical* risk factor for Mr. Enriquez. In sharp contrast, the psychologist found that, at present, Mr. Enriquez "conveyed an understanding of the personal, interpersonal, and contextual factors that contributed to his antisocial and violent behavior." (*Id.* at pp. 441-42.) The psychologist further found that Mr. Enriquez "has shown an increasing appreciation of the causative factors of his **past** antisocial and violent

behavior." (*Id.* at p. 446 [emphasis added].) The Governor did not identify any evidence that Mr. Enriquez presently has "material deficiency in [his] understanding and acceptance of responsibility" for his criminal history. (*In re Ryner*, *supra*, 196 Cal.App.4th at p. 548.) Indeed, there is no evidence contradicting the psychologist's finding that Mr. Enriquez has adequate insight into his past behavior.

5. Possibility of Sexual Reoffense

The Governor noted that the Board psychologist "categorized Mr. Enriquez as representing an above-average risk of sexual offense reconviction," and that in the psychologist's view, this categorization "slightly" overstates Mr. Enriquez's current risk level.'" (CT at p. 658.) In this case, it is worth reproducing, in full, how the psychologist qualified her description of what the Static-99R instrument calculated for Mr. Enriquez:

> It is important to note that this is a purely actuarial instrument based on the lifetime history of the individual. It is also notable that his score may not fairly represent his risk as his age at the time of release for the index offense was 21. He is currently 57 years old and there is no information to suggest he has sexually offended since 1986. As such, his score is likely slightly inflated.

(CT at p. 445.) Thus, the psychologist unambiguously found (1) that the "above average" risk calculated by the Static-99R captured Mr. Enriquez's risk at the age of 21, not his current risk 36 years later; and (2) that there is no present or recent evidence to support the theory that Mr. Enriquez poses an elevated risk of sexual reoffense. The psychologist did not suggest that

even "[a] dash of clinical judgment" went into the calculation of Mr. Enriquez's risk level. (*Cooley v. Superior Court* (2002) 29 Cal.4th 228, 238, as modified (Jan. 15, 2003) [alteration in original].) Instead, like his past criminal and substance abuse history, Mr. Enriquez's score on the Static-99R assessment was based solely on "immutable and unchangeable" facts from his past and cannot, without more, sustain a finding of current dangerousness. (*In re Lawrence*, *supra*, 44 Cal.4th at p. 1227.)

6. "Significant Personality Disorder Traits"

The final "risk factor" relied upon by the Governor was Mr. Enriquez's "significant personality disorder traits." (CT at p. 658.) Again, the Governor mischaracterized the psychologist's findings. In the psychologist's view, "[b]ased on a review of available records and clinical observations during the current evaluation, the most appropriate DSM-5 diagnostic impression at this time appears to be: Antisocial Personality Disorder with Narcissistic Features." (*Id.* at p. 438.) But the Board psychologist clearly split the assessment of Mr. Enriquez's risk for violence into two categories: "Historic Factors" and "Clinical Factors," and her discussion of Mr. Enriquez's diagnosis falls within the "Historic" section. (*Id.* at pp. 440-43.) The psychologist found "the current relevance of all of these [historic] factors is low." (*Id.* at p. 440.) By contrast, the "Clinical Factors" section, which "reflects current behavior and functioning," begins

with the unambiguous conclusion: Mr. Enriquez currently displays no predictive factors for recidivism. (*Id.* at p. 441.)

Furthermore, the psychologist made it abundantly clear throughout the assessment that Mr. Enriquez neither exhibited symptoms of antisocial personality disorder, nor did his diagnosis suggest that he represents a risk of violence. (See, e.g., *id.* at p. 436 ["No evidence of psychotic symptoms, mood issues, or other signs of major mental illness have been noted in available records. Similarly, during the current evaluation, no overt signs or symptoms of a severe mental disorder were observed."]; *id.* at p. 446 ["[H]e has shown an increasing appreciation of the causative factors of his **past** antisocial and violent behavior." (emphasis added)].) One will search the assessment in vain for any indication that there is a link between Mr. Enriquez's psychological diagnosis and a heightened risk of violence. Indeed, after considering Mr. Enriquez's diagnosis, the psychologist concluded that his risk of violence was "[l]ow." (*Id.* at p. 446.)

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In sum, the Board psychologist's Comprehensive Risk Assessment—the only source upon which the Governor relied in his reversal decision, besides Mr. Enriquez's commitment offenses—contains no evidence of current dangerousness. The psychologist found that Mr. Enriquez's risk factors were based on historical, not current, behavior, which has not recurred in decades. After considering all the evidence,

including Mr. Enriquez's current behavior and mental state, the psychologist concluded that Mr. Enriquez "represents a Low risk for violence." (*Id.* at p. 446.) Only by "tak[ing] entirely out of context" statements by the psychologist—characterizing them as current risk factors, when the psychologist made clear that they were not—did the Governor reach a contrary conclusion, violating Mr. Enriquez's right to due process. (*In re Twinn* (2010) 190 Cal.App.4th 447, 472 [granting petition]; see *In re Loresch*, *supra*, 183 Cal.App.4th at p. 160 [granting petition and faulting the Governor for having "omitted the qualifier" to a psychologist's statement about potential dangerousness].)

II. The Superior Court Did Not Reweigh Evidence When It Examined the Record and Concluded That There Was No Evidence of Dangerousness.

The Governor's second argument—that the superior court improperly reweighed the evidence in granting Mr. Enriquez's petition—reflects a fundamental misunderstanding of what reweighing is and is not. A court does not engage in reweighing when it identifies factual mischaracterizations of the record that the parole authority made. Nor does a court engage in reweighing when it concludes that the record lacks *any* evidence of current dangerousness and acknowledges that the record does contain parole suitability factors. As discussed below, the superior court's opinion reflects both due deference to the Governor and appropriate scrutiny of whether his characterization of the facts was reasonable.

A. The Superior Court Did Not Reweigh Evidence By Concluding That the Record Lacks Any Evidence of Current Dangerousness and Acknowledging That the Record Contains Parole Suitability Factors.

It is undisputed that in reviewing a parole authority's suitability decision, courts are prohibited from determining that certain evidence speaks more to suitability than other evidence. (See *In re Rosenkrantz*, *supra*, 29 Cal.4th at p. 677 ["Resolution of any conflicts in the evidence and the weight to be given the evidence are matters within the authority of the Governor."].) For example, in *In re Shigemura* (2012) 210 Cal.App.4th 440, the superior court had held that the Board's denial of parole, based on a finding that the petitioner lacked insight, was "inconsistent with the weight of the evidence in the record," as "petitioner's insight was shown by the record and does not indicate current dangerousness." (*Id.* at p. 451.) In the *Shigemura* superior court's view, evidence of the petitioner's insight outweighed various unsuitability factors. The appellate court reversed the superior court's grant of habeas corpus, highlighting the superior court's improper consideration of "the *weight* of the evidence," which "reflects an erroneous view of the trial court's role in reviewing a board or gubernatorial decision." (*Id.* at p. 455; see also *In re Mims* (2012) 203 Cal.App.4th 478, 488 [reversing grant of habeas corpus where trial court had "reweigh[ed] the evidence" by focusing on a mitigating factor—"that abuse was a major causative factor in the murder"—over ample evidence in

the record, including in the psychologist's report, that the petitioner currently lacked insight].)

Here, by contrast, the superior court granted Mr. Enriquez's petition based not on weighing one factor over another, but on the utter absence of *any* evidence demonstrating current dangerousness. The fact that the superior court, in the course of discussing the absence of such evidence, acknowledged the existence of parole suitability factors (see CT at p. 707), did not involve weighing these factors over other factors. Merely acknowledging that such factors exist is plainly different from, as the Governor baselessly asserts, "fault[ing] the Governor for failing to properly consider these factors."[2] (AOB at p. 14.) Nowhere in the superior court's opinion did the court remotely suggest that the Governor erred by failing to consider parole suitability factors. The court's analysis of the Governor's decision was not, as the Governor suggests in citing *In re Tripp*, based on a "disagreement [] with the weight the Governor attached" to Mr. Enriquez's

[2] It bears noting that the Governor's insinuation that trial courts should keep their opinions free of reference to evidence of rehabilitation is also flatly contradicted by longstanding precedent. (*In re Lawrence*, *supra*, 44 Cal.4th at p. 1211 ["[T]he underlying circumstances of the commitment offense alone rarely will provide a valid basis for denying parole *when there is strong evidence of rehabilitation* and no other evidence of current dangerousness."] [emphasis added]; *In re Scott* (2004) 119 Cal.App.4th 871, 899 ["[T]he Board has inexplicably and unjustifiably ignored abundant undisputed evidence showing him suitable for release."].)

commitment offenses, balanced against "considerable rehabilitative efforts." (AOB at p. 17 [citing *In re Tripp* (2007) 150 Cal.App.4th 306, 314, 320].) Rather, as discussed *supra* Part I.B-C, the court's analysis was based on the Governor's mischaracterization of the only source besides the commitment offenses upon which he relied in his reversal decision, and the lack of any evidence of current dangerousness.

B. The Superior Court Did Not Reweigh Evidence By Identifying the Governor's Factual Mischaracterizations of the Psychological Risk Assessment.

The Governor next contends that the superior court's scrutiny of his use of the low-risk psychological assessment constituted reweighing. First, the Governor argues that the court should not have disallowed him from taking the psychologist's statements about risk factors out of context. (AOB at p. 14.) This argument is plainly foreclosed by governing law. For example, in *In re Twinn*, *supra*, 190 Cal.App.4th 447, the Governor's parole reversal had cited a psychological assessment's recommendation that the petitioner "continue to explore the circumstances of his crime" as proof of current dangerousness. (*Id.* at p. 472.) The reviewing court, however, vacated the Governor's reversal, explaining that the psychologist's comment was impermissibly "taken entirely out of context" by the Governor and "was not offered as a reason for Twinn to remain incarcerated or to show that Twinn posed a current danger." (*Ibid.*; see also *In re Loresch*, *supra*, 183 Cal.App.4th at p. 160 [granting petition and

faulting the Governor for having "omitted the qualifier" to a psychologist's statement about potential dangerousness]; *In re Morganti, supra*, 204 Cal.App.4th at 927 [parole board was not permitted to "distort[] and oversimplif[y]" petitioner's reliance on his faith as a means of avoiding substance abuse relapse].) Here, the Governor described the psychologist's assessment as setting forth "current" risk factors (CT at p. 658), despite the psychologist clearly finding that each of these factors represented non-current, historical concerns. Governing law prohibited the Governor from omitting such crucial, factual context.

Second, the Governor asserts that he "is not limited to considering only [Mr. Enriquez]'s current risk factors." (AOB at p. 15.) But historical risk factors must bear some nexus to current dangerousness in order to support a denial of parole. (*In re Poole* (2018) 24 Cal.App.5th 965, 970 (2018) [vacating Board's parole denial where petitioner had—in the view of a Board psychologist—"present[ed] with nearly every historical risk factor" but "all of them [we]re considered to be of low relevance to the current assessment of risk"]. For instance, if there were evidence that, in the past, Mr. Enriquez's violent behavior had been motivated by racial animus, and that Mr. Enriquez had not adequately addressed this animus while incarcerated, such as in *In re Rozzo* (2009) 172 Cal.App.4th 40, the historical risk factor (racial animus) would reasonably be linked to concerns about current dangerousness. (*Id.* at p. 63.) Here, by contrast, the Board

psychologist explicitly detailed how the historical risk factors have been severed from the present. (See, e.g., CT at p. 440 ["[H]e has moved as far away from gang participation as possible as he would not be welcome in any gang after debriefing and testifying against Mexican Mafia members."].)

Finally, the Governor asserts that he was not "bound" by the Board psychologist's assessment that Mr. Enriquez poses a low risk. (AOB at p. 15.) Mr. Enriquez agrees. Nowhere in the superior court's opinion did the court state that the Governor must draw the same conclusion as a Board psychologist about an individual's risk to public safety. To the contrary, the superior court made clear that "[a]n inmate's psychological evaluation of his risk of future violence directly bears on his suitability for parole, but such assessment does not dictate the Governor's parole decision." (CT at p. 686 [citation omitted].) What the superior court recognized, however—and what governing precedent unambiguously establishes—is that the parole authority may not ignore a psychologist's low risk assessment *while at the same time failing to identify any evidence of the individual's current dangerousness beyond statements in the psychological assessment taken out of context*. (See *In re Smith* (2003) 114 Cal.App.4th 343, 369 [vacating reversal of parole where Governor relied on "unsubstantiated speculation" and "the record provide[d] no reasonable grounds to reject, or even challenge, the findings and conclusions of the psychologist" who

determined that petitioner posed a low risk of violence]; *In re Shelton* (2020) 53 Cal.App.5th 650, 671 [granting petition where the Board panels announced their conclusions "without addressing how these conclusions took into account Shelton's consistently low risk assessments"].) A low-risk assessment is not binding on the Governor, but he is not free to deny parole without evidence of current dangerousness.

The cases cited by the Governor on this point—*Bettencourt*, *Lazor*, and *Rozzo*—do not contradict this well-established principle. *Bettencourt*, as discussed *supra* pp. 23-24, involved a psychological risk assessment that—in sharp contrast to the assessment in this case—detailed the individual's current, aggressive impulses and concluded that the individual would not pose an above-average risk of violence only if he received positive recognition and his narcissistic ego were not significantly threatened. (156 Cal.App.4th at p. 806.) The opinion did not uphold the Board's view of the psychologist's assessment "despite overall low risk of future violence" (AOB at p. 15); it relied directly on the assessment's own findings that indicated that the individual could pose a risk to public safety. As to *Lazor* and *Rozzo*, these cases restate the basic principle that the Governor may disagree with the Board psychologist's risk assessment (see *In re Lazor*, (2009) 172 Cal.App.4th 1185, 1202; *In re Rozzo*, *supra*, 172 Cal.App.4th at pp. 62-63), but that is not the issue in this case. The issue is whether the Governor may reject the psychologist's low-risk assessment

where no evidence in the case supports a contrary finding. Governing law, as discussed above, prohibits the Governor from doing so.

C. The Superior Court Accepted the Governor's Credibility Assessment and Explained That It Had No Nexus to Current Dangerousness.

The Governor's final reweighing-the-evidence argument is that the superior court "failed to give due deference to the Governor's credibility findings as required by law." (AOB at p. 17.) The plain text of the court's opinion reveals the error in this argument. The court first considered the Governor's reliance on the psychological assessment that Mr. Enriquez "tends to present as a 'smooth talker'" and that "because of [Mr. Enriquez]'s 'ingrained patterns of antisocial and narcissistic thinking and behavior . . . some of the prosocial changes he has made may not have been altruistic." (CT at p. 691.) Then, despite noting the lack of any evidence that Mr. Enriquez's rehabilitative efforts have been "an attempt to game the system for his needs," the court proceeded to "assum[e] the Governor is correct that [Mr. Enriquez]'s rehabilitative efforts and assistance to law enforcement have been motivated by [Mr. Enriquez]'s desire for external affirmation rather than altruism," an assumed fact that was not supported by the record. (See *id.* at p. 691.) That is, the superior court deferred to the Governor's credibility determination.

Even making this counterfactual assumption in the Governor's favor, however, the superior court explained that the Governor had failed to

"explain how this would increase [Mr. Enriquez]'s current risk of dangerousness." (*Ibid.*) Thus, in asserting that "the superior court disagreed with the Governor's [credibility] assessment by finding that the *psychologist* and the *Board* made contrary findings," the Governor has it backwards. (AOB at pp. 17-18.) The superior court noted that the psychologist and Board regarded Mr. Enriquez as insightful (CT at p. 692), but still assumed that the Governor's credibility assessment was correct. Even when assuming that this credibility assessment was accurate, the court rightly concluded that it did not bear a rational nexus to current dangerousness—the relevant legal standard.

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Far from reweighing the evidence, the superior court confined itself to a straightforward evaluation of whether the record said what the Governor said it did. Correcting factual mischaracterizations, assessing whether the proffered facts were rationally related to current dangerousness, and acknowledging—without assigning weight to—parole suitability factors did not constitute reweighing. It showed only that the Governor's reversal was based on speculation, not actual evidence.

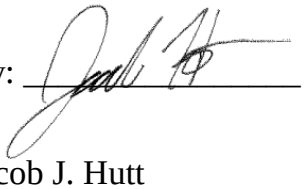
CONCLUSION

The deference owed to the Governor in the parole suitability context does not insulate his decisions from judicial scrutiny; as the California Supreme Court has put it, the some-evidence standard is not "toothless." (*In*

re Lawrence, *supra*, 44 Cal.4th at p. 1210.) The superior court meticulously searched through the record to see if it contained any evidence supporting the Governor's reversal of Mr. Enriquez's fifth consecutive parole grant, and determined that it did not. The Governor may believe, against all the evidence, that Mr. Enriquez is not suitable for parole, but no evidence—from the Board psychologist's assessment or anywhere else—supports this belief.

This Court should affirm the superior court's grant of Mr. Enriquez's petition, and order his release.

Respectfully submitted,

By: 

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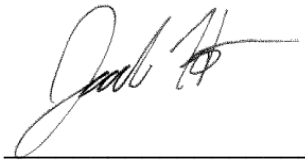
Dated: March 18, 2022

CERTIFICATE OF COMPLIANCE

I, Jacob J. Hutt, certify that the attached RESPONDENT'S BRIEF uses a 13-point Times New Roman font and contains 7,913 words.

Dated: March 18, 2022



Jacob J. Hutt

DECLARATION OF SERVICE

In re Rene Enriquez on Habeas Corpus
Second District Court of Appeal

I am employed in the County of Alameda, California. I am over the age of 18 years and not a party to the within entitled cause. My business address is Prison Law Office, 1917 Fifth Street, Berkeley, California 94710. I hereby certify that I electronically served the attached

RESPONDENT'S BRIEF

with the Second District Court of Appeal, by using, or causing to be used, the TrueFiling electronic filing service on March 18, 2022. The filing of this brief constitutes electronic service on the Office of the Attorney General. I further certify that I served the same by placing, or causing to be placed, a true copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Berkeley, California, to the following address:

The Honorable William C. Ryan
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed at Berkeley, California on March 18, 2022.

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