

**S277487**

**IN THE  
SUPREME COURT OF CALIFORNIA**

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**THE PEOPLE OF THE STATE OF CALIFORNIA,**  
*Plaintiff & Respondent,*

*v.*

**TONY HARDIN,**  
*Defendant & Appellant.*

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AFTER A DECISION BY THE COURT OF APPEAL  
SECOND APPELLATE DISTRICT, DIVISION SEVEN  
CASE NO. B315434

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**APPLICATION TO FILE AMICI CURIAE BRIEF &  
BRIEF OF AMICI CURIAE HUMAN RIGHTS WATCH,  
CALIFORNIA STATE SENATOR LONI HANCOCK  
(RET.), THE ANTI-RECIDIVISM COALITION, THE  
LWOP ALLIANCE GROUP, AND THE NATIONAL LIFE  
WITHOUT PAROLE LEADERSHIP COUNCIL IN  
SUPPORT OF DEFENDANT & APPELLANT TONY  
HARDIN**

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HANCOCK (RET.), THE ANTI-RECIDIVISM COALITION, THE LWOP  
ALLIANCE GROUP, AND THE NATIONAL LIFE WITHOUT PAROLE  
LEADERSHIP COUNCIL**

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**Application to File an Amici Curiae Brief in Support of  
Defendant and Appellant Tony Hardin**

---

Human Rights Watch, California State Senator Loni Hancock (ret.), the Anti-Recidivism Coalition, the LWOP Alliance Group at Calipatria State Prison, and the National Life Without Parole Leadership Council apply for leave to file the accompanying amici curiae brief in support of defendant and appellant Tony Hardin pursuant to rule 8.520(f) of the California Rules of Court.

Human Rights Watch (HRW) is an independent, international organization that conducts systematic investigations of human rights abuses around the world, researching, reporting, and advocating for change in some 100 countries. It has advocated for much of the pertinent youth justice reform in California in the last 15 years and was a sponsor of SB 260 (2013), SB 261 (2015), SB 394 (2017), and AB

Document received by the CA Supreme Court.

1308 (2017). Additionally, for more than 20 years HRW has conducted research on the sentence of life without parole and advocated against its use, particularly as applied to young people in the United States. Recently, HRW published “ ‘I Just Want to Give Back’ – The Reintegration of People Sentenced to Life Without Parole.”

California State Senator Loni Hancock (ret.) authored SB 260 (2013), which provides a specialized youth offender parole hearing for people who committed their crimes before the age of 18 years, were prosecuted as adults, and received lengthy sentences. She later authored SB 261 (2015), which extended the eligibility for a parole hearing to prisoners who committed their crimes before the age of 23 years.

The Anti-Recidivism Coalition (ARC) is a membership organization consisting of people who have returned home after incarceration and are seeking a community that will support their success. ARC members, some of whom were sentenced to life without parole, have access to a support network, comprehensive reentry services, and opportunities to advocate for policy change. ARC was a sponsor of SB 261 (2015) and a key advocate for SB 260 (2013), SB 394 (2017), and AB 1308 (2017).

The LWOP Alliance Group at Calipatria State Prison, Facility D, is a prisoner-led group whose members were sentenced to life without parole. It is a support group dedicated to personal growth, building a community that holds each other accountable, and creating ways to practice altruism and make

amends to their victims. Most of its members were between the ages of 18 and 25 years at the time of the crime.

The National Life Without Parole Leadership Council is comprised of 14 members from six states. All members were once sentenced to life in prison without the possibility of parole. The Council works to end the use of life without parole sentences through raising public awareness about the harms of the sentence, participating in campaigns to change laws, offering testimony, and providing training and tools for others who had life without parole but have been released. The Council is sponsored by Human Rights Watch.

Amici are familiar with the content of the parties' briefs and believe that additional argument and briefing on these points will be helpful to the court. As described more fully below, this brief will inform the court of research demonstrating the rehabilitative successes of people sentenced to life in prison without possibility of parole who regained their freedom.

Pursuant to California Rules of Court, rule 8.520(f)(4), no party or counsel for any party in the pending appeal authored the proposed amici brief in whole or in part, and no one other than amici, their members, or their counsel has made any monetary contribution intended to fund the preparation or submission of the brief.

Amici respectfully request that this court grant their application and allow them to appear as amici curiae.

August 30, 2023

Respectfully Submitted,

**Complex Appellate Litigation Group LLP**

By /s/ Greg Wolff  
Greg Wolff

*Attorneys for Amici Curiae  
Human Rights Watch, California  
State Senator Loni Hancock (ret.),  
the Anti-Recidivism Coalition, the  
LWOP Alliance Group, and the  
National Life Without Parole  
Leadership Council*

Document received by the CA Supreme Court.

**Brief of Amici Curiae Human Rights Watch, etc. in  
Support of Defendant and Appellant Tony Hardin**

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**Introduction**

This court granted review to decide whether Penal Code section 3051 violates the equal protection clauses of the state and federal Constitutions by denying youth offender parole hearings to persons sentenced to life without the possibility of parole (LWOP) for crimes committed when they were 18 to 25 years of age. As Mr. Hardin demonstrated in his Answering Brief, there is no rational basis for excluding this group from California’s parole process when youth offender parole hearings are guaranteed to others who committed similarly serious or violent crimes while the same age, some of whom received sentences “that could be the functional equivalent of a life without parole sentence.” (*People v. Hardin* (2022) 84 Cal.App.5th 273, 278.)

As the court below recognized, section 3051 mandates youth parole hearings for persons who committed crimes when they were less than 26 years old because “the distinctive attributes of youth—transitory mental traits and environmental vulnerabilities—which . . . mitigate culpability and offer the possibility of growth and change, apply equally to young adults up to age 25.” (*People v. Hardin, supra*, 84 Cal.App.5th at pp. 278-279.) This is true regardless of the crime committed, the charges the district attorney chose to file, or the sentence imposed; it applies equally to persons sentenced to LWOP. As the high court recognized with regard to juveniles, none of these “distinctive (and transitory) mental traits and environmental

vulnerabilities . . . is crime-specific.” (*Miller v. Alabama* (2012) 567 U.S. 460, 473.)

The circumstances of a crime committed by a youthful offender and the sentence imposed do not provide a rational basis for denying the offender an opportunity to show that after decades of incarceration they have changed and deserve a chance to re-enter society. Youth offenders sentenced to LWOP can be rehabilitated.

Young persons sentenced to LWOP will not necessarily pose a threat to public safety for their entire lives. The stories that appear below of youth offenders who were sentenced to LWOP but were released on parole are remarkable. Far from posing a danger to society, they have reformed themselves and are a benefit to society.

Excluding youth offenders from parole hearings also is not necessary to protect public safety because Penal Code section 3051 does not mandate that anyone be released from custody; it provides only an *opportunity* for people to appear before the Board of Parole Hearings and attempt to show that after decades in prison they are rehabilitated and their release on parole would not pose an unreasonable risk of danger to the public. Nobody is released through California’s discretionary parole process unless they can demonstrate they have insight into their past tragic decisions and have a solid plan to safely navigate a return to the community.

People like Mr. Hardin who were sentenced to LWOP for crimes committed when they were 25 years old or younger have

the same capacity to be rehabilitated and transform their lives as other youthful offenders. There is empirical evidence that young people sentenced to LWOP can change and, if given the chance for parole, can safely be returned to society and prove to be a benefit to their communities.

Human Rights Watch interviewed 110 men and women who were freed following a sentence of LWOP. Some of their stories are detailed in the recent publication, “‘I Just Want to Give Back’ – The Reintegration of People Sentenced to Life Without Parole.” These accounts reveal that people who committed a crime described by a special circumstance before they turned 26 years old are often just as capable of rehabilitation as other 18 to 25-year-olds sentenced to parole-eligible life sentences. People change, especially young people, sometimes in astounding ways.

Many of these men and women have accomplished remarkable things since gaining their freedom. Nearly 80 percent were working at least 20 hours a week, 30 were taking college courses, 3 had earned an associate degree, 6 had completed a bachelor’s degree, several earned master’s degrees, and one has started a PhD program. What’s more, nearly all had embraced public service. Ninety-four percent had volunteered with charities, community groups, or nonprofit organizations following their release, some rising to leadership roles.

All of these people had been subjected to California’s discretionary parole gauntlet, which is designed to test a parole candidate’s growth and rehabilitation. The criteria for evaluating

parole candidates are well-developed and include considering the facts of the crime and receiving input from the victim(s) of the crime.

The personal stories that appear below demonstrate what the California Legislature realized in creating youth offender parole; the character and minds of young people are not fixed; they are malleable and immature and uniquely capable of change. This is true regardless of the circumstances of the crime or the sentence imposed. Even young people who have committed the most heinous of crimes are capable of extraordinary transformations.

In enacting section 3051, the Legislature chose to focus on rehabilitative transformation—not the crime. As a result, there is no rational basis for denying individuals who were sentenced to LWOP for crimes they committed when they were 18 to 25 years of age the opportunity to demonstrate that, after decades of incarceration, they have earned the right to be considered for release on parole.

## Discussion

- I. **The rationale for giving youth offenders an opportunity to earn parole applies equally to those sentenced to LWOP for crimes committed between the ages of 18 to 25 years.**
  - A. **Excluding youth offenders sentenced to LWOP does not protect public safety because the parole process can effectively evaluate whether a youth offender has been rehabilitated and can safely be returned to society.**

California’s discretionary parole scheme contemplates that even those who committed murder may be paroled after serving a sufficiently long prison term if the parole board finds that evidence of postconviction rehabilitation indicates the person no longer poses an unreasonable risk of danger to society if released. (Cal. Code Regs., tit. 15, § 2402.) The board evaluates a person’s readiness for parole through a “structured decision-making framework” that relies on “research-supported factors,” including a multi-hour, wide-ranging interview of the parole candidate by a parole board commissioner and deputy commissioner, during which the candidate speaks on their own behalf. (California Department of Corrections & Rehabilitation – Board of Parole Hearings, *Training and Transparency* <<https://www.cdcr.ca.gov/bph/training-and-transparency/>> [as of Aug. 27, 2023].) The candidate is represented by an attorney to protect the candidate’s procedural rights, but the commissioners ask questions directly of the candidate. Also typically participating in the hearing is a

district attorney from the county where the crime occurred and any victim(s) or next of kin. (Pen. Code, §§ 3041.2, 3043.)<sup>1</sup>

Prior to the hearing, the candidate is assessed by a forensic psychologist to determine whether the candidate poses a risk of violence. (Cal. Code Regs., tit. 15, § 2240, subd. (a).) This risk assessment is considered by the commissioners along with submissions from the candidate, which could be letters of support from friends or family and letters from those offering jobs or housing upon release.

In making the suitability determination, the parole board considers “[a]ll relevant, reliable information,” including the nature of the commitment offense; behavior before, during, and after the crime; the inmate's social history; mental state; criminal record; attitude towards the crime; and parole plans. (Cal. Code Regs., tit. 15, § 2402, subd. (b).) The board considers aggravating, neutral, and mitigating factors.<sup>2</sup> Mitigating factors include a person’s vocational and educational achievements, including evidence of personal insight and remorse. Serious institutional misconduct is an aggravating factor which may indicate an unreasonable risk to the public. If the candidate remains a danger, the board “can, and must, decline to set a parole date.” (*In re Lawrence* (2008) 44 Cal.4th 1181, 1227; Cal. Code Regs., tit. 15, § 2281, subd. (a) [“Regardless of the length of

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<sup>1</sup> Further undesignated statutory references are to the Penal Code.

<sup>2</sup> California Department of Corrections & Rehabilitation – Board of Parole Hearings, *Appendix D: Structured Decision-Making Framework* <<https://www.cdcr.ca.gov/bph/appendix-d/>> [as of Aug. 23, 2023].

time served, a life prisoner shall be found unsuitable for and denied parole if in the judgment of the panel the prisoner will pose an unreasonable risk of danger to society if released from prison.”].)

The candidate will either be found “suitable” for release or parole will be denied. If parole is denied, the next hearing is scheduled 3, 5, 7, 10, or 15 years into the future. (§ 3041.5, subd. (b)(3).) The decision of the board is reviewed by the board’s legal office.<sup>3</sup>

In murder cases, when the board finds the person suitable for parole, the Governor may still prevent the person’s release if the Governor finds the board’s decision is not supported by “some evidence.” (*In re Lawrence, supra*, 44 Cal.4th at p. 1191; Cal. Const., art. V, § 8, subd. (b).)

Most people have more than one parole hearing before they are found suitable, and some never are. In 2022, 3,837 parole hearings were scheduled for people who were 18 to 25 years of age at the time of the crime and 1802 of those hearings were held. Just 611 resulted in grants of parole, which represents 15.92 percent of the hearings that were scheduled.<sup>4</sup> Many

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<sup>3</sup> California Department of Corrections & Rehabilitation – Board of Parole Hearings, *What to Expect at a Parole Suitability Hearing* <<https://www.cdcr.ca.gov/bph/parole-suitability-hearings-overview/what-to-expect-at-a-parole-suitability-hearing/>> [as of Aug. 27, 2023].

<sup>4</sup> California Department of Corrections & Rehabilitation – Board of Parole Hearings, *2022 Report of Significant Events* (April 10, 2023) <[https://www.cdcr.ca.gov/bph/wp-content/uploads/sites/161/2023/04/2022\\_Significant\\_Events.pdf](https://www.cdcr.ca.gov/bph/wp-content/uploads/sites/161/2023/04/2022_Significant_Events.pdf)> [as of Aug. 27, 2023] at pp. 19-20.)

candidates postpone their hearing to have more time to complete educational or other self-help programs, secure solid release plans, and serve additional discipline-free time to avoid a possible denial of parole.

The recidivism rate for people sentenced to life terms and released on parole is extremely low. Less than one percent of people released on parole after being sentenced to a term of life in prison are convicted of a new felony crime against a person within three years of release (the time period in which people are most likely to recidivate).<sup>5</sup>

**B. The parole board must give “great weight” to the diminished culpability of youth in considering parole for people who committed crimes while 18 to 25 years of age.**

At parole hearings for people who committed their crimes before reaching age 26, there are additional statutory criteria the commissioners have to consider. In 2014, the Legislature passed Penal Code section 3051, which established youth offender parole hearings for people who committed crimes when they were younger than 26 years old. These hearing are required at a staggered time schedule, after 15 years, 20 years, or 25 years of incarceration, depending on the length of the person’s underlying sentence. (§ 3051, subd. (a), (b).) At the hearing, which is conducted in the same manner as a traditional parole hearing as described above, the board must give each youthful offender “a meaningful opportunity to obtain release.” (§ 3051, subd. (e).)

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<sup>5</sup> *2022 Report of Significant Events, supra*, at pp. 9-10.

Penal Code section 4801, subdivision (c), which was enacted in conjunction with section 3051, mandates that at a youth offender parole hearing, the board “shall give great weight to the diminished culpability of youth as compared to adults, the hallmark features of youth, and any subsequent growth and increased maturity of the prisoner in accordance with relevant case law.” (§ 4801, subd. (c).)

The text of sections 3051 and 4801 echo language in decisions of the high court and this court regarding youth and lifetime consequences for criminal behavior. (See *Miller v. Alabama, supra*, 567 U.S. at p. 477 [“chronological age and its hallmark features”]; *Graham v. Florida* (2010) 560 U.S. 48, 75 [“meaningful opportunity to obtain release”]; *Roper v. Simmons* (2005) 543 U.S. 551, 571 [“diminished culpability of juveniles”]; accord, *People v. Caballero* (2102) 55 Cal.4th 262, 268, fn. 4.) The core recognition underlying this body of case law is that children are, as a class, “constitutionally different from adults” due to “distinctive attributes of youth” that “diminish the penological justifications for imposing the harshest sentences on juvenile offenders.” (*Miller*, at p. 471.) Among these “hallmark features” of youth are “immaturity, impetuosity, and failure to appreciate risks and consequences,” as well as the capacity for growth and change. (*Id.* at p. 477.)

The youth offender parole statutes were created by SB 260, which took effect in January of 2014 and benefited people who committed their controlling offense before the age of 18 years. Two years later, SB 261 expanded the right to a youth offender

parole hearing to include those under the age of 23 years and then in 2018, SB 1308 advanced the age to under 26 years, where it currently stands.

Senator Loni Hancock (ret.), the author of SB 260 and 261, explained why expanding youth offender parole hearings to include young adults was important:

Recent neurological research shows that cognitive brain development continues well beyond age 18 and into early adulthood. For boys and young men in particular, this process continues into the mid-20s. The parts of the brain that are still developing during this process affect judgment and decision-making, and are highly relevant to criminal behavior and culpability. Recent United States Supreme Court cases including *Roper v. Simmons*, *Graham v. Florida*, and *Miller v. Alabama* recognize the neurological difference between youth and adults. The fact that youth are still developing makes them especially capable of personal development and growth.

(Assem. Floor Analysis, Senate Third Reading, Sen. Bill 261 (2015-2016 Reg. Sess.) Aug. 31, 2015, p. 2.)

In the same analysis, Senator Hancock observed: “To be clear: SB 261 is by no means a ‘free ticket’ for release. . . there is no guarantee for a grant of parole. The Board still has to examine each inmate’s suitability for parole, the criteria for which this bill does not change.” (Assem. Floor Analysis, Senate Third Reading, Sen. Bill 261 (2015-2016 Reg. Sess.) Aug.31, 2015, p. 3.)

Providing youth offender parole hearings gives people in prison hope of release someday, which encourages better in-prison behavior and efforts at rehabilitation. The author of the

bill that extended the protections of section 3051 to persons who committed their crimes when they were 25 years of age or younger noted: “‘An offender is more likely to enroll in school, drop out of a gang, or participate in positive programs if they can sit before a parole board sooner, if at all, and have a chance of being released.’” (Sen. Com. Public Safety, Assembly Third Reading of AB 1308 (2017-2018 Reg. Sess.) as amended Mar. 30, 2017.) For the same reasons, expanding discretionary parole to all young people sentenced to LWOP would give people hope that they could be released someday and would encourage rehabilitation and engagement with parole-board-approved programs.

**II. Experience confirms that people who were sentenced to LWOP for crimes committed when they were 18 to 25 years of age can be rehabilitated and transform their lives.**

Human Rights Watch interviewed 110 people in California who, despite being sentenced to LWOP, had been freed.<sup>6</sup> Most of the interviewees were between the ages of 18 and 25 years at the time of the crime that resulted in an LWOP sentence and received rare gubernatorial commutations of their sentences, making them eligible for youth offender parole hearings. They are the lucky few; in the last ten years, less than 200 of the over 5,000 people sentenced to LWOP have had their sentences commuted, and even fewer have been released on parole.

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<sup>6</sup> At the time of the interviews, the 110 people represented approximately 77 percent of all people who had been released after being sentenced to LWOP.

(“LWOP Data – JLWOP and Commutations,” unpublished data on file with Human Rights Watch, November 2021.) Human Rights Watch researchers examined their post-release lives, looking at how they are taking advantage of their second chances.<sup>7</sup>

Of the 110 interviewed, 90 percent were employed, with the vast majority working 40 or more hours a week. Ninety-four percent had volunteered with charities, community groups, or nonprofit organizations following their release, some rising to leadership roles. Seventy percent said they had stepped into a healthy adult role in the life of a young person; 84 percent reported financially helping family and friends since being released from prison. (HRW report, pp. 26, 28, 34.)

Despite juggling jobs and the obligations of mid-life, many of the 110 interviewees chose to enroll in higher education when paroled: 30 were taking college classes, six had completed a bachelor’s degree since their release, several were earning a master’s degree, and one starts this month in a Ph.D. program. (HRW report, p. 15.)

Nearly all interviewees reported contributing their time to volunteer with charities, but in addition, many people formerly sentenced to LWOP choose careers that are community-focused.

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<sup>7</sup> HRW published its findings in a June 2023 report, “*I Just Want to Give Back*”: *The Reintegration of People Sentenced to Life Without Parole* (hereafter, “HRW report”). The report is available electronically here to view and see more stories of others not featured in this brief: <https://www.hrw.org/report/2023/06/28/i-just-want-to-give-back/reintegration-of-people-sentenced-to-life-without-parole>.

Forty-three percent of interviewees reported working in the non-profit sector, most with organizations devoted to criminal legal system reform, youth, homelessness, and animal welfare. (HRW report, p. 26.)

A few individual stories make clear the depth of how young people who commit terrible crimes can change and are capable of rehabilitation and a safe return to the community.

#### **A. Laverne Taylor**

When Laverne Taylor was 25 years old, she robbed and killed a man who had hired her as a prostitute; the court sentenced her to LWOP.<sup>8</sup> This was her third time in prison and she may have appeared to some to be incorrigible. What Ms. Taylor did next, however, defied those expectations. Although she never expected to be released, she transformed herself while in prison, participating in self-improvement programs and completing trainings in occupational safety. She mentored others, encouraging people to renounce violence.

Her sentence was commuted to life with parole, making her eligible for a youth offender parole hearing. She was granted parole at her first hearing, after 24 years in prison.

As observed by Ms. Taylor:

When you are given [an LWOP] sentence, what they are saying is, you are irrelevant, you're irredeemable,

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<sup>8</sup> Governor's Commutation of Sentence: Laverne Sharon Dejohnette (Aug. 17, 2018), p. 48 <<https://www.ca.gov/archive/gov39/wp-content/uploads/2018/08/August-2018-Pardons-and-Commutations.pdf>> (as of Aug. 28, 2023). The article below uses her father's name, Shoemaker. Her married name is Taylor.

you're beyond redemption. And that's just not true. Look at me. I have 19 arrests, 16 convictions, three prior prison terms and the fourth was the life crime of murder. Sure it took over 10 years, but I did change. Now I'm a taxpaying citizen. We are all capable of transformation.

(Marcus Henderson, *A governor's commutation gives Laverne Shoemaker a second chance*, San Quentin News (Dec. 11, 2019) <<https://sanquentinnews.com/a-governors-commutation-gives-laverne-shoemaker-a-second-chance/>> [as of Aug. 28, 2023].)

When Ms. Taylor was released, she began working with the California Coalition for Women's Prisoners (CCWP) and also had a job as an operations supervisor for a non-profit fighting houselessness in San Francisco. She supervised a team that conducted wellness checks on people living on the streets, many of whom are affected by the drug overdose crisis. It was difficult and dangerous work. Ms. Taylor's team often encountered people who had overdosed and were "blue, stiff, foaming, or non-responsive." Trained in CPR and the use of Narcan to reverse the effects of drug overdoses, they would "try to get them back to consciousness" and "saved over 300 lives." "It's pretty scary," she told HRW, "but I'm really proud of it." (HRW report, p. 26.)

## **B. Thaisan Nguon**

Thaisan Nguon was born as his parents fled to a Thai refugee camp to escape the Cambodian genocide. They eventually came to the United States. Once in California, he joined the Crazy Brother Clan gang as a pre-teen to escape racism and find protection from constant bullying at school. At the age of 20, he and his 16-year-old brother Thailee participated

in a drive-by murder. Mr. Nguon pulled his car alongside the car of a rival gang member on Pacific Coast Highway and his brother fired at least three shots into the car. One person was killed and another injured. Both Mr. Nguon and his brother were sentenced to LWOP. (Governor’s Commutation of Sentence: Thaisan Ngoun (Dec. 24, 2018), p. 313 <<https://www.ca.gov/archive/gov39/wp-content/uploads/2018/12/December-2018-Pardons-and-Commutations-1.pdf>> [as of Aug. 28, 2023]; *People v. Mean* (2004) 2004 WL 2426257.)

In prison, Mr. Nguon clung to his identity as a gang member: “I had no hope of ever going home, so why would I want to change?” (HRW report, p. 25.) But one day, his younger brother, who had been granted a chance at parole because he was a juvenile at the time of the offense, brought him a college application. Mr. Nguon asked, “What am I going to do with a degree in prison?” but he applied to appease his little brother and a cascade of change began. “I started going to classes, and I was introduced to this whole other world,” he reflected. “I was able to step outside of the culture of violence and gangs . . . [and] into this arena of academia where I was introduced to history and different cultures.” (HRW report, p. 25.)

As Mr. Nguon began to mature and change, he started to question his behavior and turned to therapy to address his depression. He earned his A.A. and became part of the first B.A. program in a California prison. (HRW report, p. 25.)

In 2018, Mr. Nguon was granted a gubernatorial commutation that made him eligible for parole and, following a

parole hearing, was released in 2021. He has since graduated *summa cum laude* with a bachelor's degree from California State University at Los Angeles. (HRW report, p. 25.)

### **C. Tobias Tubbs**

As a child, people told Tobias Tubbs that he was incorrigible: “They said I didn’t have any human good in me.” (HRW report, p. 2.) When he was 20 years old, Mr. Tubbs committed a robbery that resulted in two murders and was sentenced to LWOP. In prison, he did a dramatic turn-around, and dedicated himself to rehabilitation. He devoted himself to helping others and, as a trained peer educator, he interviewed and helped over 4,000 people in prison with medical and mental health issues. A warden recommended his commutation, as did others. His sentence was commuted after 26 years, and two years later he won release in a parole hearing. (Governor’s Commutation of Sentence: Tobias Tubbs (Dec. 23, 2017), p. 139 <[https://www.ca.gov/archive/gov39/wp-content/uploads/2017/12/December\\_2017\\_Pardons\\_and\\_Commutations\\_-\\_Attested.pdf](https://www.ca.gov/archive/gov39/wp-content/uploads/2017/12/December_2017_Pardons_and_Commutations_-_Attested.pdf)> [as of Aug. 28, 2023].) When he left prison, he cofounded the nonprofit Angel City Urban Farms, which works with community partners and offers opportunities to youth. (HRW report, p. 27.)

Mr. Tubbs compares who he was at the time of the crime to who he is now: “When I was arrested 33 years ago, me and my friends were using tools of destruction, destroying our communities.” (HRW report, p. 27.)

Now, through his nonprofit, he is building up the community instead of tearing it down, providing food, creating

beauty through landscaping, and through it all, mentoring youth. He uses a farming metaphor to describe the impact: “We’re really . . . cultivating community [and] . . . healing.” He sees himself as continuing to evolve: “My capacity is not limited, I’m growing and becoming a better person, human, friend, citizen, every day. I’m proud I’m making this world a better place.” (HRW report, p. 27.)

**D. And many others**

Wes Burleson was 18 years old when he robbed and killed a man and was sentenced to LWOP. (HRW report, p. 20.) During his 23 years in prison, he earned his GED and became an artist who helped others inside sell their artwork to support victims and charities. The warden of the prison in which he was housed recommended him for commutation. (Governor’s Commutation of Sentence: Wayne Weston Burleson (Aug. 17, 2018), p. 42 <<https://www.ca.gov/archive/gov39/wp-content/uploads/2018/08/August-2018-Pardons-and-Commutations.pdf>> [as of Aug. 28, 2023].)

Mr. Burleson said: “I’m doing the most I can with the life I’ve been given, especially after taking a life. . . . I believe that my second chance is not for my benefit alone; I believe it’s been given to me for a bigger purpose, and I want to do the best I can with that.” (HRW report, p. 20.)

Christian Branscombe was 19 years old when he committed the murder that resulted in his LWOP sentence. When he was paroled after his LWOP sentence was commuted, he worked as a project coordinator for an organization called Healing Dialogue

and Action which creates opportunities to heal for family members impacted by homicide, people who have been incarcerated, and communities affected by violent crime. Mr. Branscombe says that this work was “something that I consider as an amends [for the harm I caused] . . . I think it does great things for others.” (HRW report, p. 26.)

Thomas Wheelock committed his crime when he was 20 years old and was incarcerated for more than 21 years. With his fiancée, he made 300 meals and “handed them out to the homeless in L.A. We do that every couple of months.” (HRW report, p. 28.)

Kiilu Washington spent 32 years in prison for a crime he committed when he was 18 years old. He now volunteers at food banks. He says: “Now it’s my turn to give back. It’s not about me anymore. It’s about how can I express my gratitude. How can I be of service to others?” (HRW report, pp. 18-19.)

Robert Staedel spent 31 years in prison for a crime committed when he was 18 years old. He now volunteers at a nursing home and offers Bible study classes. (HRW report, p. 5.)

Abraham Preciado was 18 years old at the time of the crime and served 23 years of an LWOP sentence. After being released, he chose to work for non-profit organizations providing reentry services and policy advocacy. (HRW report, p. 7.)

Taewon Wison, who spent over 26 years in prison for a crime he committed when he was 20 years old, contributes ongoing financial assistance “to fellow LWOPers who [have been] released.” He makes sure they know “how to receive a social

security card, food stamps, driver's license, and anything they needed to function out here." Mr. Wilson explains that he "felt obligated to help." (HRW report, p. 30.)

After spending 32 years in prison for a crime she committed when she was 25 years old, Susan Bustamente volunteered with the California Coalition for Women's Prisoners and helped distribute food at a local church each month. She says: "I am not in the position to donate financially but try and give to those when I can." Ms. Bustamente also crochets blankets to donate to wheelchair-bound veterans. (HRW report, p. 41.)

Kenneth Hartman was sentenced to LWOP for a crime he committed when he was 19 years old. Following his release, he works for political change to help those still in prison. He was taken aback when a state senator thanked him for the work he was doing. Mr. Hartman reflected that "at one point I was sentenced to die in prison, and now I'm being thanked by a state senator about how my work is helpful for currently incarcerated people and their families and for society." (HRW report, p. 39.)

Tin Nguyen recalls that "[g]rowing up, everyone [would say] I was dumb, don't have a brain, saying I was going to drop out of school sooner or later." (HRW report, p. 22.) Mr. Nguyen fulfilled this prophesy. He dropped out of school, joined a gang, and was sentenced to LWOP for a crime he committed when he was 24 years old.

Mr. Nguyen dramatically changed his life in prison and his sentence was commuted. Once he was released, he earned both his bachelor's degree and a master's degree. He says, "to be able

to graduate, and not only graduate but graduate summa cum laude, shattered anything those people said to me . . . and shattered my own belief [about who I could become] when I was growing up.” (HRW report, p. 22.)

**III. Among the more than 2000 youth offenders serving LWOP sentences, many are already on a path of rehabilitation and the possibility of a youth offender parole hearing would encourage and reward rehabilitation.**

In addition to the people described above who were released and have become a benefit to their communities, there are candidates for youth offender parole hearings still serving LWOP sentences who are transforming their lives. Their stories are further proof that there is no rational basis for excluding young offenders sentenced to LWOP from the reach of section 3051.

**A. John Winkleman**

John Winkleman is 48 years old and has been in prison for 28 years. He was 19 at the time of the drug deal-robbery that resulted in the death of Willie Yen. He was convicted of special circumstances robbery-murder and sentenced to LWOP.<sup>9</sup>

“When I came to prison, I was still on a terrible trajectory, and I probably got worse,” Mr. Winkleman said.<sup>10</sup> Twenty years ago, his last violent incident landed him in solitary confinement.

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<sup>9</sup> Case facts as stated by the Los Angeles District Attorney in a May 8, 2023 letter to the Governor, requesting a grant of clemency. Letter on file with Human Rights Watch.

<sup>10</sup> Quotes throughout are from Human Rights Watch telephone interviews with John Winkleman (August 8 and 10, 2023).

“I really started to think, is this who I want to be?” He decided to change and when released back to the general population, he started by attending self-help groups; there he began to learn to be “honest.” However, change for Mr. Winkleman took time. Eventually, he dropped out of his gang and went into protective custody. He stopped making alcohol and drinking. He began work as a porter in a housing unit for terminally ill prisoners and did it for nine years. Describing his work with one man in particular, he says: “I thought it was I who was helping him through kindness. Now, I realize I was the one who was receiving a gift from him—my heart has reopened.” He went 11 years without any rule violation until 2016, when he received a violation for possessing a cell phone.<sup>11</sup> “I realized I had used criminal thinking to justify my actions: ‘no one is hurt by this.’” He sought out programs to change his way of thinking and has been violation-free since.

Mr. Winkleman observes, “It took time to change. It took 19 years to get to a point I could commit a murder, and it took another 20 years to change.” He attributes learning empathy to his involvement in a Victim Offender Education Group. “Once I developed empathy for others, it changed me as a person,” he said. “I began unpacking my own childhood trauma. I believe I have become the person God means for me to be.”

Mr. Winkleman is now a student at University of California, Irvine in the first in-prison UC program. He has

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<sup>11</sup> Review by Human Rights Watch of John Winkleman’s C-file as provided to his counsel by CDCR. On file with Human Rights Watch.

maintained a 4.0 GPA and was named to the Dean's List as an honoree for all three quarters of the 2022-2023 academic year.<sup>12</sup> He trained service dogs for Guide Dogs of America, with a special focus on preparing dogs to help children with autism. He is a certified peer literacy mentor and worked with students through the Covid-19 pandemic. Mr. Winkleman is also an active member of the Alliance of LWOP Youth Offenders, a support and personal growth group at RJ Donovan State Prison that is similar to the amicus LWOP Alliance Group at Calipatria State Prison. His application for clemency has not been acted on, but includes letters of support from the L.A. District Attorney and representatives of UC Irvine, among others.

**B. Brett May**

Nineteen-year-old Brett May and a codefendant attempted to rob their drug dealer, Nathan Deutsch, in his home in 2001. Mr. May's codefendant shot and killed the victim. Mr. May was convicted of first-degree felony murder with a robbery special circumstance. (*People v. May* (2020) 2020 WL 2110417.)

He entered prison hopeless. Within six months, he had a rule violation for an inmate-made weapon and was sent to the Secure Housing Unit. He reports that he racked up ten other serious rule violations and his last one was a fight in 2016.<sup>13</sup>

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<sup>12</sup> July 26, 2023 letter from University of California, Irvine Keramet Reiter, Professor, Criminology, Law, and Society. On file with Human Rights Watch.

<sup>13</sup> Quotes throughout are from Human Rights Watch telephone interviews with Brett May (July 26 and August 11, 2023).

Mr. May chose a different path as he matured and began reading books. He explained that “dissonance was created between who I was, and who I always thought I had the potential to be. I could see I was making myself smaller to conform to the standards being set by my environment.”

“I was living under a false belief system, and when I decided I wanted to leave it, at first I didn’t know what to fall back on.” He turned to Bible study, and guidance from a volunteer at the prison helped fill that void. He now meets by phone for Bible study every morning at 6 a.m. “Now I am a community builder, I am a servant leader, both for our micro-community of people serving LWOP, and the broader community of incarcerated people.” He is taking classes from three colleges, including a statistics class. He is a few classes shy of associate degrees in sociology and history. He works as a captain’s clerk and has held that job long enough to serve four captains over time. He is involved in many groups and classes and focuses on helping others. Mr. May was a founding member and is a current leader of the LWOP Alliance Group at Calipatria State Prison on C facility, a support and personal growth similar to amicus LWOP Alliance Group D facility. He worked on the group’s extensive curriculum for members to gain insight into their behavior and pathways to becoming the person they “were meant to be.”

### **C. Kenneth Smith**

In September 2008, Kenneth Smith was a 22-year-old member of a gang. After a friend was killed, he was a passenger

in a car with fellow gang members seeking revenge. When they parked in rival gang territory, he stayed in the car as others got out. He heard shots, and the others returned, and they drove away. Someone was killed and Mr. Smith was convicted of first-degree murder with firearm use and a gang special circumstance. He was sentenced to LWOP. (*People v. Smith* (2013) 2013 WL 52135.)

Now 37 years old, he looks back at the harm his 22-year-old self caused and says, “I am disgusted. No matter how minor my actions were, I was a part of taking a son, a brother.”<sup>14</sup>

As is the case for many young people, Mr. Smith did not enter prison with that insight and perspective; he was angry that he was convicted of a murder when he was not the shooter. For the first few years of his sentence, he stayed involved with his gang in prison. In 2014, he watched two men being stabbed and another shot from the watch tower and realized that he did not want to die that way. Around the same time, he was devastated when his six-year-old daughter asked when he would arrive for her birthday party, and later asked “why doesn’t my Daddy ever want to see me?”

Realizing he needed to change, Mr. Smith went to church, got a job in the library, and found he liked helping others. He was chosen to be housed at the Progressive Programming Facility at Lancaster State Prison where he committed himself to rehabilitative programming. He served as a dog trainer and

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<sup>14</sup> Quotes throughout are from a Human Rights Watch telephone interview with Kenneth Smith (July 23, 2023).

volunteered for duties during the Covid-19 pandemic that put him at higher risk.<sup>15</sup> He earned an associate degree in theology from Channel Islands Bible & Seminary College and is now pursuing an associate degree in communications through Bakersfield College. He is in training to become an electrician. He facilitates victim impact groups. “I am teaching people how to have empathy for others,” he said. Mr. Smith has been a long-time leader in support groups for people sentenced to LWOP, including currently at the California Substance Abuse Treatment Facility and State Prison.

Mr. Smith has never had a violent rule violation or even a single incident of “minor misconduct.” (Cal. Code Regs., tit. 15, § 3312, subd. (a)(2).)<sup>16</sup> He has 18 laudatory citations from CDCR staff and volunteers, including from two associate wardens.<sup>17</sup> They recognize Mr. Smith’s intention to do good: “I want to be a beacon of light wherever I am.”

These accounts of remarkable transformations of people who committed crimes as young adults demonstrate that there is no rational basis for denying individuals who were sentenced to

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<sup>15</sup> Laudatory Chrono by Captain R. Johnson, California State Prison-Los Angeles (July 8, 2020). On file with Human Rights Watch.

<sup>16</sup> Review by Human Rights Watch of Kenneth Smith’s C-file as provided to Mr. Smith’s counsel by CDCR. Relevant documents on file with Human Rights Watch. His only rule violation was for possession of a cell phone in 2021, after a devastating family death due to Covid. He says that mistake has become a lesson for him, and he uses himself as an example to help others in his role as a facilitator for self-help groups.

<sup>17</sup> *Id.*

LWOP for crimes they committed when they were 18 to 25 years of age the opportunity to be considered for release on parole.

### **Conclusion**

Tony Hardin does not seek his immediate release from custody, only that he be given the opportunity, at the appropriate time, to demonstrate that he, like the former “lifers” described above, has reformed his character and earned his release on parole. This court should affirm the lower court’s ruling and allow Mr. Hardin to develop evidence pursuant to *People v. Franklin* (2016) 63 Cal.4th 261, for use at a youth offender parole hearing.

Respectfully Submitted,

August 30, 2023

**Complex Appellate Litigation Group LLP**

By /s/ Greg Wolff

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***Human Rights Watch, California State Senator Loni Hancock (ret.), the Anti-Recidivism Coalition, the LWOP Alliance Group, and the National Life Without Parole Leadership Council***

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Dated: August 30, 2023

/s/ Greg Wolff  
Greg Wolff

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