

IN THE SUPREME COURT OF THE STATE OF NEVADA

<p>MICHAEL P. ANSELMO,</p> <p><i>Petitioner,</i></p> <p>vs.</p> <p>CONNIE BISBEE, CHAIRMAN; SUSAN JACKSON; TONY CORDA; MICHAEL KEELER, COMMISSIONERS; AND THE STATE OF NEVADA BOARD OF PAROLE,</p> <p><i>Respondent.</i></p>	<p>Supreme Court No. 67619</p> <p>Electronically Filed Apr 16 2019 09:54 a.m. Elizabeth A. Brown Clerk of Supreme Court</p>
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RECORD ON APPEAL

PETITIONER'S APPENDIX

**VOLUME 2 OF 2**

<p>MICHAEL P. ANSELMO #10999 BROWNSTEIN HYATT FARBER SCHRECK, LLP 100 NORTH CITY PARKWAY, SUITE 1600 LAS VEGAS, NEVADA 89106</p> <p>ATTORNEYS FOR PETITIONER</p>	<p>ADAM PAUL LAXALT ATTORNEY GENERAL 100 NORTH CARSON STREET CARSON CITY, NV 89701-4717</p> <p>ATTORNEYS FOR RESPONDENT</p>
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**THE SUPREME COURT OF THE STATE OF NEVADA**

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THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL P. ANSELMO,

Petitioner-Appellant,

vs.

CONNIE BISBEE, CHAIRMAN;  
SUSAN JACKSON; TONY CORDA;  
ADAM ENDEL, COMMISSIONERS;  
AND THE STATE OF NEVADA  
BOARD OF PAROLE,

Respondents-Appellees.

Supreme Court No. 67619

District Court Case No. 19-0002518  
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**PETITION FOR *EN BANC* RECONSIDERATION**

ADAM PAUL LAXALT  
Attorney General

By: /s/ Jeffrey M. Conner  
JEFFREY M. CONNER (Bar No. 11543)  
Assistant Solicitor General  
State of Nevada  
Office of the Attorney General  
100 North Carson Street  
Carson City, Nevada 89701-4717  
(775) 684-1200  
(775) 684-1108  
JConner@ag.nv.gov

By: /s/ Kathleen Brady  
KATHLEEN BRADY (Bar No. 11525)  
Deputy Attorney General  
State of Nevada  
Office of the Attorney general  
555 Wright Way  
Carson City, NV 89711  
(775) 684-4605  
(775) 684-1601  
kbrady@ag.nv.gov

THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL P. ANSELMO,

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Supreme Court No. 67619

District Court Case No. 14EW000291B

**PETITION FOR *EN BANC* RECONSIDERATION**

This Court has always recognized that matters relating to parole release are a purely-discretionary executive function not subject to judicial review. *See, e.g., State, Bd. of Parole Comm'rs v. Morrow*, 127 Nev. 265, 270–72, 255 P.3d 224, 227–28 (2011). While the panel in this case endeavored to maintain this Court's line of cases holding that Nevada law does not create a liberty interest in being released on parole, it undercut the purpose of that line of authority by suggesting that the parole statutes give a parole applicant the right to parole *consideration* that includes a decision on their parole application that does not conflict with the Parole Board's standards. *Anselmo v. Bisbee*, 133 Nev. Adv. Op. 45, 396 P.3d 848 (2017). This nuance will undoubtedly be lost on most prisoners, who already see the *Anselmo* decision as a ticket to challenge Parole Board decisions denying

parole. In practical terms, this means that *Anselmo* eviscerates most of the reasons for making parole release a purely-discretionary executive function. Sure, petitioners will eventually lose most of their parole challenges, but there will be many more challenges, and they will last much longer, needlessly consuming an ever-larger share of state and judicial resources.

That would be fine if this seismic shift was required by Nevada law or the Nevada Legislature changing the parole standard. But it wasn't. The *Anselmo* decision is a result of a panel of this Court looking to a *South Carolina* Supreme Court opinion to give context to a phrase from a *Nevada parole statute* (NRS 213.140(1)), rather than considering that phrase in context with language from *other related Nevada statutes* (NRS 213.10705 and NRS 213.10885(7)) expressly recognizing that individual Parole Board decisions are not subject to judicial review and may conflict with the Parole Board's adopted standards. *Anselmo*, 133 Nev. Adv. Op. 45, 8–10, 396 P.3d at 852–53.

Michael Anselmo is obviously a sympathetic petitioner,<sup>1</sup> but the *Anselmo* opinion unnecessarily opens the door for *any inmate* that has been denied parole to file a petition challenging the parole denial that lower courts can no longer summarily dismiss without requiring closer consideration of whether the Parole

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<sup>1</sup> Undersigned counsel's review of Nevada Department of Corrections' records indicates Mr. Anselmo's most recent application for parole was granted effective February 1, 2018.

Board’s decision is inconsistent with the Parole Board’s standards. In establishing such a sea-change on parole consideration, the opinion creates serious conflicts with other opinions of this Court, making this case a prime candidate for *en banc* reconsideration. NRAP 40A(a).

In a general sense, the opinion conflicts with (1) this Court’s long-standing authority on statutory interpretation, which requires this Court—whenever possible—to read statutory provisions in harmony and avoid rendering any provision of a statute nugatory, *see, e.g., Williams v. State Dep’t of Corr.*, 133 Nev. Adv. Op. 75, 4, 402 P.3d 1260, 1262 (Oct. 5, 2017) (quoting Nevada authority on statutory interpretation); and (2) this Court’s cases addressing the availability of mandamus relief, which do not permit issuance of a writ of mandamus “to control discretionary action unless discretion is manifestly abused or is exercised arbitrarily or capriciously,” *see, e.g., Round Hill Gen. Improvement Dist. v. Newman*, 97 Nev. 601, 603–04, 637 P.2d 534, 536 (1981) (citations omitted). And in a more specific sense, the opinion conflicts with this Court’s express reliance on NRS 213.10705 in holding that Nevada inmates do not have due process rights in parole hearings. *See Morrow*, 127 Nev. at 270–72, 255 P.3d at 227–28 (2011). This Court should grant this petition.



## **I. Summary of Argument**

Michael Anselmo received all the due process the United States and Nevada Constitutions require for the State of Nevada to keep him in prison for the rest of his life when he was sentenced to life without possibility of parole in 1972. *Greenholtz v. Inmates of Neb. Penal & Corr. Complex*, 442 U.S. 1, 7 (1979) (noting that a valid “conviction, with all its procedural safeguards” extinguishes the defendant’s right to be free from incarceration for the entire term of his sentence); *Anselmo*, 133 Nev. Adv. Op. 45, 5, 396 P.3d at 850–51. That point remains true, even after the Pardons Board vacated Anselmo’s original sentence of life without the possibility of parole to life with a possibility of parole: as long as the maximum term of Anselmo’s sentence is life in prison, the significant positive changes that Mr. Anselmo has made during his incarceration, while impressive and comendable, do not change anything about the legality of his sentence or his continued incarceration for the 1971 murder of then twenty-two year-old Trudy Ann Hiller. *Id.* Nevada’s statutory and regulatory frame-work governing parole release is unequivocal: Nevada has not created a due process liberty interest in early release, nor does the establishment of standards for considering parole applications create such an interest, even if the Parole Board issues a decision that conflicts with those standards. NRS 213.10705; NRS 213.10885(7)(a); NAC 213.560(2).

Notwithstanding what this Court characterized as “firmly settled law” on the absence of a liberty interest under Nevada’s parole statutes, this Court then departed from its prior statement in *Morrow* that Nevada’s parole statute does not create due process rights in a parole hearing and turned to an opinion of the South Carolina Supreme Court to conclude that the phrase “the Board shall consider” in NRS 213.140(1) “clearly” means that Nevada’s parole applicants have a right to a decision on their parole application that is consistent with the factors the Legislature requires the Parole Board to adopt under NRS 213.10885(1). *Anselmo*, 133 Nev. Adv. Op. 45, 8–9, 396 P.3d at 852 (citing *Cooper v. South Carolina Dept. of Probation, Parole & Pardon Services*, 661 S. E. 2d 106 (S. C. 2008)). But this Court’s isolation of a single phrase within a statute, without looking at the entire statutory scheme to give that phrase appropriate contextual meaning, is in direct conflict with this Court’s cases on statutory interpretation. *Williams*, 133 Nev. Adv. Op. 75 at 4, 402 P.3d at 1262.

“The goal of statutory interpretation ‘is to give effect to the *Legislature’s intent.*’ To ascertain the Legislature’s intent, we look to the statute’s plain language. ‘[W]hen a statute’s language is clear and unambiguous, *the apparent intent must be given effect, as there is no room for construction.*’” *Id.* (citations omitted and emphasis added). If the People of Nevada are unhappy with the way their parole statutes are written and want to establish a liberty interest in parole

consideration that would allow for individualized judicial review, “such a policy decision is properly considered by the [L]egislature, rather than by this Court;” “the [L]egislature is perfectly capable of implementing such a policy.” *See, e.g., Goldstine v. Jensen Pre-Cast*, 102 Nev. 630, 631, 29 P.2d 1355, 1356 (1986).

Finally, because parole review is “purely discretionary,” the decision to grant extraordinary relief in the form of a writ of mandamus conflicts with this Court’s cases on the availability of mandamus to control an exercise of discretion. *see, e.g., Round Hill Gen. Improvement Dist. v. Newman*, 97 Nev. 601, 603–04, 637 P.2d 534, 536 (1981) (citations omitted). This Court granted mandamus relief without requiring Anselmo to establish that the Parole Board’s decision constitutes a manifest abuse, or arbitrary or capricious exercise, of discretion. *En banc* reconsideration is warranted.

## **II. Reasons for Granting the Petition**

This Court will grant *en banc* reconsideration if “(1) reconsideration by the full court is necessary to secure or maintain uniformity of decisions of the Supreme Court,” or “(2) the proceeding involves a substantial precedential, constitutional or public policy issue.” NRAP 40A(a). This case meets both requirements.

### **A. This proceeding involves a substantial issue under NRAP 40A(a)(2).**

The importance of the issue in this case cannot be overstated. At a minimum, the opinion opens the door for inmates to challenge a denial of parole in

any case where the Parole Board exercised its discretion to issue a decision that conflicts with its own standards, despite the Legislature recognizing it has granted the Parole Board discretion to issue such decisions. NRS 213.10885(7)(a); *see also* NAC 213.560(2). But this case also creates the distinct possibility of flooding the district courts with petitions from every inmate that has been denied parole and remains incarcerated.<sup>2</sup> The district courts are already beginning to receive, and serve the Attorney General’s Office with, petitions relying on the decision in this case to challenge the validity of a parole hearing by arguing that the Parole Board improperly considered factors not supported by the evidence presented during the hearing. Whether this Court intended for this case to permit such a challenge or not, the lower courts will be left to resolve them.

That point would not warrant *en banc* reconsideration *if*—like California—Nevada had made the choice to require the Parole Board to find specific conditions to be met before an application for parole may be denied. *Cf. Anselmo*, 133 Nev. Adv. Op. 45, 6, 396 P.3d at 851 (noting distinctions between Nevada and California on parole release). But Nevada’s statutes are clear: there is no liberty

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<sup>2</sup> A prime example of this sort of result: a footnote in the order denying *en banc* reconsideration that was designed to cabin the effect of an unpublished decision addressing the calculation of minimum parole eligibility under NRS 209.4465 has not stopped hundreds of inmates who do not meet the limitations of that footnote from filing habeas petitions that have required countless hours of work from both the Nevada Attorney General’s Office and court staff in resolving those petitions. Order Denying *En Banc* Reconsideration, *VonSeydwitz v. LeGrand*, Case No. 66159, 2015 WL 3936827 (Nev. 2015).

interest in early release *and* the establishment of standards for considering parole applications do not “create any such right or interest in liberty or property or establish a basis for a cause of action against the State, its political subdivisions, agencies, boards, commissions, departments, officers or employees.” NRS 213.10705. *En banc* reconsideration is warranted under NRAP 40A(a)(2).

**B. This Court’s opinion conflicts with *Morrow*, cases addressing statutory interpretation, and cases addressing the availability of mandamus relief, making *en banc* reconsideration appropriate under NRAP 40A(a)(1).**

It is “firmly settled” that the United States and Nevada Constitutions do not recognize a right to early release from prison. *Anselmo*, 133 Nev. Adv. Op. 45, 5, 396 P.3d at 851. Rather, whether such a right exists is a matter of statutory interpretation. *Id.* As this Court recently reiterated, statutory provisions must be read in harmony to avoid rendering any statutory provisions meaningless or superfluous. *Williams*, 133 Nev. Adv. Op. 75, 4, 402 P.3d at 1262. But this Court’s analysis in this case (1) fails to address statutory language this Court previously quoted in finding that inmates do not have due process rights in parole hearings, and (2) renders statutory language recognizing the Parole Board’s discretion to issue decisions that conflict with the Parole Board’s standards entirely meaningless.

In this case, this Court determined that the phrase “the Board shall consider” from NRS 213.140(1) “clearly” imposes a requirement that the Parole Board

refrain from considering anything that is inconsistent with their “internal guidelines” in reviewing parole applications. *Anselmo*, 133 Nev. Adv. Op. 45, 8–10, 396 P.3d at 852–53. As a result, this Court issued a writ directing the Parole Board to give Anselmo a new parole hearing and instructing the Parole Board that it could not consider one of its standards in reviewing Anselmo’s parole application.

But this Court made no effort to reconcile its position with (1) this Court’s holding in *Morrow*, where this Court held that the “purely discretionary” nature of Nevada’s parole framework means parole applicants have no statutory rights *in a parole hearing*; (2) NRS 213.10705, which acknowledges that the creation of factors for considering parole applications does not create any rights for the applicant and was quoted by this Court in *Morrow* to support the holding in that case; or (3) NRS 213.10885(7)(a), which recognizes the Parole Board’s discretion to issue decisions that “conflict with the standards” that the Parole Board must adopt under NRS 213.10885(1) “to assist the Board in determining whether to grant or revoke parole.” *See also* NRS 213.107(7) (“‘Standards’ means the objective standards for granting or revoking parole or probation which are adopted by the Board or the Chief.”). Instead, this Court relied on a case from South Carolina, that obviously did not consider nuances of Nevada’s statutory framework that have previously led this Court to conclude that inmates do not have due

process rights in parole hearings or the express delegation of discretion to Nevada’s Parole Board to issue decisions that are in conflict with the standards adopted by the Parole Board. *Anselmo*, 133 Nev. Adv. Op. 45, 8–10, 396 P.3d at 852–53.

- 1. In *Morrow*, this Court reached the conclusion that inmates do not have due process rights in parole hearings based on the statutory language from NRS 213.10705 that this Court failed to consider in this case.**

Time and again, this Court has rejected the premise that Nevada’s statutes create a right to early release. *Morrow*, 127 Nev. at 270–72, 255 P.3d at 227–28. More recently, while quoting NRS 213.10705, this Court recognized that parole applicants do not have statutory rights in parole hearings. *Id.*

In *Morrow*, this Court set out to distinguish a challenge to a parole hearing from a “psych-panel” hearing for the very purpose of making the point that “[d]ue process rights do not apply to parole release hearings in Nevada Constitutional due process.” *Id.* at 270, 255 P.3d at 227 (emphasis in original). In particular, this Court noted that an inmate could state a justiciable claim for relief under Nevada Open Meeting Law when challenging his exclusion from portions of his psych-panel hearing because the inmate possessed enforceable statutory rights as a “person” under Nevada Open Meeting Law in that setting. *Id.* at 272–73, 255 P.3d 228–29; *see also Stockmeier v. State, Dept. of Corr.*, 122 Nev. 385, 135 P.3d 220 (2006), *abrogated on other grounds by Buzz Stew, LLC v. City of North Las Vegas*,

124 Nev. 224, 181 P.3d 670 (2008). But this Court, after quoting the same statutory language from NRS 213.10705 that Respondents assert this Court neglected to address in this case, concluded that the inmates in *Morrow* failed to state a claim for relief because “Nevada’s parole statute is purely discretionary” and does not vest a parole applicant with any rights that would trigger due process protections during a parole hearing. *Id.* at 271–72, 255 P.3d at 227–28. Nevertheless, the opinion in this case now suggests that it is “clear” that there are “statutory rights” in parole hearings without making any attempt to reconcile that conclusion with *Morrow*’s express holding to the contrary. *Compare id.* (“Accordingly, because Nevada’s parole release statute does not create a liberty interest, *we reiterate that inmates are not entitled to due process protections with respect to parole release hearings.*”) (emphasis added); *with Anselmo*, 133 Nev. Adv. Op. 45, 8–10, 396 P.3d at 852–53. *En banc* reconsideration is appropriate under NRAP 40A(a)(1).

**2. This Court’s opinion improperly renders various statutory provisions meaningless.**

If the conflict with *Morrow* is not enough to demonstrate the need for *en banc* reconsideration, the opinion in this case leaves the language of NRS 213.10705 that this Court quoted in *Morrow*, and NRS 213.10885(7)(a), meaningless or superfluous. Such a conclusion conflicts with this Court’s decisions on statutory interpretation, which require this Court to avoid interpreting



statutes in a way that will render other statutory language meaningless or superfluous. *Williams*, 133 Nev. Adv. Op. 75 at 4, 402 P.3d at 1262.

In 1989, when the Legislature required the Parole Board to adopt standards for reviewing parole applications, the Legislature also declared

that the release or continuation of a person on parole or probation is an act of grace of the state. No person has a right to parole or probation, and it is not intended that the establishment of standards relating thereto create any such right or interest in liberty or property or establish a basis for a cause of action against the State, its political subdivisions, agencies, boards, commissions, departments, officers or employees.

1989 Nev. Stat., ch. 790, §§ 5–9, at 1884–86 (originally codified at NRS 213.10989, but now found at NRS 213.10705). At that time, the Legislature also implemented a requirement for the Parole Board to inform the Legislature of “[t]he number and percentage of decisions regarding parole which conflicted with the standards. . . .” 1989 Nev. Stat., ch. 790, §§ 5, at 1885.

Rather than addressing Nevada’s statutory framework on the issue of parole, this Court turned to a South Carolina Supreme Court decision to give context to the phrase “the Board shall consider” from NRS 213.140(1). *Anselmo*, 133 Nev. Adv. Op. 45, 8–9, 396 P.3d at 852 (quoting *Cooper v. South Carolina Dept. of Probation, Parole & Pardon Services*, 661 S. E. 2d 106 (S. C. 2008)). In *Cooper*, the court concluded that deviating from “appropriate criteria” violated a parole applicant’s right to be “considered,” for parole because the court did not believe

that the South Carolina Legislature “established the Board and intended for it to render decisions without any means of accountability.” *Id.*

Just as the South Carolina Supreme Court suspects, Nevada’s Legislature did contemplate the need for the Parole Board to remain accountable. But the Legislature did not intend for that accountability to exist through judicial review. NRS 213.10705. Rather, the Parole Board reports to the *Legislature* on its decisions that conflict with the standards. NRS 213.10885(7)(a). Obviously, if the People of Nevada determine that the Parole Board has abused that discretion and find the need for judicial review of individual cases, the Legislature is free to rewrite Nevada law. But until that happens, the rationale of *Cooper*—keeping the Parole Board accountable—carries no force in explaining the need for judicial review of parole hearings in Nevada. If the phrase “the Board shall consider” requires the Parole Board to follow its guidelines in every case and subjects all Parole Board hearings to judicial review, then the language of NRS 213.10705 addressing the creation of standards for parole consideration is meaningless and all of NRS 213.10885(7)(a) is superfluous. But this Court’s decisions on statutory interpretation undeniably require this Court to avoid such a result. *Williams*, 133 Nev. Adv. Op. 75 at 4, 402 P.3d at 1262. *En banc* reconsideration is warranted under NRAP 40A(a)(1).

**3. This Court’s cases make mandamus relief unavailable here in the absence of a manifest abuse, or arbitrary or capricious exercise of discretion.<sup>3</sup>**

The absence of a liberty interest and the discretionary nature of parole consideration creates conflicts with this Court’s decisions on mandamus. Mandamus is an extraordinary remedy that lies within the discretion of this Court. *Hickey v. Eighth Judicial Dist. Court*, 105 Nev. 729, 731, 782 P.2d 1336, 1338 (1989). However, a court may only issue a writ of mandamus “to compel the performance of an act which the law especially enjoins as a duty resulting from an office, trust, or station,” or to control a manifest abuse, or an arbitrary or capricious exercise, of discretion. NRS 34.160; *Newman*, 97 Nev. at 603–04, 637 P.2d at 536. And mandamus may not issue “unless a clear, legal right to the relief sought is shown.” *Ex rel. Blake v. County Comm’rs.*, 48 Nev. 299, 304 (1924).

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<sup>3</sup> In opposing the petition for panel rehearing, Anselmo suggested that Respondents indicated that mandamus is an appropriate remedy. Answer to Petition for Panel Rehearing at 15–16, *Anselmo v. Bisbee*, 133 Nev. Adv. Op. 45, 396 P.3d 848 (2017). Anselmo’s argument misrepresents Respondents’ position. Respondents only conceded that mandamus relief would be available *if* the Parole Board has a duty to comply with its standards. Respondents’ argument here, and on rehearing, is that mandamus is not proper due to the *absence* of such a duty *unless* Anselmo can establish the Parole Board’s decision constitutes a manifest abuse, or arbitrary or capricious exercise, of discretion. And because Anselmo never sought mandamus relief in the district court, Respondents have never had an appropriate opportunity to address whether Anselmo can make that showing. *Newman*, 97 Nev. at 604, 637 P.2d at 536 (noting that the appropriate forum for seeking mandamus relief to challenge a discretionary action is in the district court).

Because NRS 213.10885(7)(a) recognizes that the Parole Board has authority to issue decisions that conflict with its own standards, Anselmo must show that the Parole Board issuing a decision that conflicts with the Parole Board's standards was a manifest abuse, or an arbitrary or capricious exercise of, that discretion. Anselmo and this Court have not identified anything about this case that makes the Parole Board's reliance on an "inapplicable" factor a manifest abuse, or an arbitrary or capricious exercise of, the Parole Board's discretion to issue decisions that conflict with its standards.<sup>4</sup> This Court's decision to issue a writ directing the Parole Board not to consider something that conflicts with the Parole Board's standards when reviewing Anselmo for parole, when the Legislature has granted the Parole Board discretion to issue decisions the conflict with the Parole Board's standards, conflicts with this Court's decisions on the availability of mandamus relief without requiring Anselmo to properly challenge

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<sup>4</sup> Simply pointing to the Parole Board's reliance on an "inapplicable" factor—as Anselmo did in responding to the petition for panel rehearing—misses the mark. Answer to Petition for Panel Rehearing at 18, *Anselmo v. Bisbee*, 133 Nev. Adv. Op. 45, 396 P.3d 848 (2017). Citing the Parole Board's application of an inapplicable standard to establish an abuse of the Parole Board's discretion to issue decisions that conflict with its own standards is circular logic. If the Parole Board's exercise of its discretion alone is evidence of a manifest abuse, or an arbitrary or capricious exercise of, discretion, then the Parole Board effectively has no discretion. Anselmo must point to something other than the Parole Board's reliance on an "inapplicable" factor to undermine the Parole Board's decision in a way that makes mandamus relief available.

the Parole Board's exercise of its discretion. *En banc* reconsideration is warranted under NRAP 40A(a)(1).

## CONCLUSION

For the reasons addressed above, the panel opinion in this case addresses a substantial issue and it conflicts with numerous prior decisions of this Court. *En banc* reconsideration is warranted.

RESPECTFULLY SUBMITTED this 1st day of December, 2017.

ADAM PAUL LAXALT  
Attorney General

By: /s/ Jeffrey M. Conner  
JEFFREY M. CONNER (Bar No. 11543)  
Assistant Solicitor General  
State of Nevada  
Office of the Attorney General  
100 North Carson Street  
Carson City, Nevada 89701-4717  
(775) 684-1200  
(775) 684-1108  
JConner@ag.nv.gov

By: /s/Kathleen Brady  
KATHLEEN BRADY (Bar No. 11525)  
Deputy Attorney General  
State of Nevada  
Office of the Attorney general  
555 Wright Way  
Carson City, NV 89711  
(775) 684-4605  
(775) 684-1601  
kbrady@ag.nv.gov

## **CERTIFICATE OF COMPLIANCE**

1. I hereby certify that this petition complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

This petition has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 14 point, Times New Roman.

2. I further certify that this petition complies with the type-volume limitations of NRAP 40A:

This petition for *en banc* reconsideration is proportionately spaced, has a typeface of 14 points or more, and contains 3,741 words.

RESPECTFULLY SUBMITTED this 1st day of December, 2017.

ADAM PAUL LAXALT  
Attorney General

By: /s/ Jeffrey M. Conner  
JEFFREY M. CONNER  
Assistant Solicitor General

## CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General and that on this 1st day of December, 2017, I served a copy of the foregoing **PETITION FOR *EN BANC* RECONSIDERATION**, by electronic filing to:

Kirk B. Lenhard, Esq.  
Emily A. Ellis, Esq.  
Brownstein Hyatt Farber Schreck, LLP  
50 W Liberty Street, #1030  
Reno, Nevada 89501

/s/ Amanda White

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL P. ANSELMO,  
Petitioner,

vs.

CONNIE BISBEE, CHAIRMAN; SUSAN  
JACKSON; TONY CORDA; ADAM  
ENDEL, COMMISSIONERS; AND THE  
STATE OF NEVADA BOARD OF  
PAROLE,  
Real Parties in Interest.

No. 67619

FILED

JAN 19 2018

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY [Signature]  
DEPUTY CLERK

*ORDER DENYING EN BANC RECONSIDERATION*

Having considered the petition on file herein, we have  
concluded that en banc reconsideration is not warranted. NRAP 40A.  
Accordingly, we

ORDER the petition DENIED.

[Signature], J.  
Cherry

[Signature], J.  
Pickering

[Signature], J.  
Parraguirre

[Signature], C.J.  
Douglas

[Signature], J.  
Gibbons

[Signature], J.  
Hardesty

[Signature], J.  
Stiglich



cc: Hon. James Todd Russell, District Judge  
Brownstein Hyatt Farber Schreck, LLP/Las Vegas  
Attorney General/Carson City  
Carson City Clerk

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

MICHAEL P. ANSELMO,  
Petitioner,

vs.

CONNIE BISBEE, CHAIRMAN; SUSAN  
JACKSON; TONY CORDA; ADAM ENDEL,  
COMMISSIONERS; AND THE STATE OF  
NEVADA BOARD OF PAROLE,  
Real Parties in Interest.

**Supreme Court No. 67619**  
District Court Case No. 14EW00029

**NOTICE IN LIEU OF REMITTITUR**

TO THE ABOVE-NAMED PARTIES:

The decision and Order of the court in this matter having been entered on June 29th, 2017, and the petition for rehearing having been denied, notice is hereby given that the Order and decision entered herein has, pursuant to the rules of this court, become effective.

DATE: February 13, 2018

Elizabeth A. Brown, Clerk of Court

By: Amanda Ingersoll  
Chief Deputy Clerk

cc: Hon. James Todd Russell, District Judge  
Attorney General/Carson City  
Brownstein Hyatt Farber Schreck, LLP/Las Vegas  
Susan Merriwether, Carson City Clerk



## Parole Eligibility Report for Hearings to be Conducted in Apr 2018

Total Offender Sentences: 669

List Exported: 02/20/2018 09:50 AM  
Report Generated: 02/20/2018 09:52 AM

Type	NDOC ID	Name	Inst.	County	Case	Offense	Terms	SentDate	JCr	FCrd	Crd	PED	NPED	MPR	PEXD	CS	SC
PAR	0001182884	ANDERSON, ANTHONY	HDSP	Clark	C-13-294035-1	CONSPIRACY VIOLENT CRIME	Mx:0Y:48M:0D Mn:0Y:14M:0D	08/08/2017	69	274	196	07/30/2018		01/10/2019	07/13/2019		
PAR	0001191519	ANDERSON, MARCUS	HDSP	Clark	C-17-325762-1	CONSP TO VIOLATE CONT SUBST ACT, 1ST OFF	Mx:0Y:30M:0D Mn:0Y:12M:0D	01/08/2018	47	99	76	06/04/2018			03/07/2019		
PAR	0001191902	ANDERSON, WADE	HDSP	Clark	C-15-311692-2	GRAND LARCENY	Mx:0Y:32M:0D Mn:0Y:12M:0D	01/11/2018	107	156	114	04/17/2018			02/18/2019		
PAR	0001160939	ANDREWS, ANDRE	CGTH	Clark	C305278-1	EX FELON/PROHIBITED PERSON POSS FIREARM	Mx:0Y:72M:0D Mn:0Y:28M:0D	06/01/2016	66	704	1,033	07/26/2018		07/26/2018	09/13/2018		
PAR	0001080725	ANDREWS, RYAN	HDSP	Washoe	CR16-0323	CRIME ON SCHL BUS ENHANMNT	Mx:0Y:30M:0D Mn:0Y:12M:0D	08/05/2016	0	228	179	07/24/2018			11/28/2018		
PAR	0001101515	ANICETO-TREJO, CANDIDO	TCC	Washoe	CR12-1530	RECKLESS DRIVING DEATH	Mx:0Y:180M:0D Mn:0Y:72M:0D	04/16/2013	266	2,046	2,476	07/23/2018		11/11/2018	04/18/2019		
PAR	0000010999	ANSELMO, MICHAEL	NNCC	Washoe	271359	MURDER 1ST DEGREE	Life Mn:0Y:60M:0D	05/26/1972	0	1,614	848	09/01/1977	02/01/2018			Y	
PAR	0001193065	ANTONUCCI, BRIAN	OSC	Carson	15 CR 00249 1B	POSSESSION OF STUN DEVICE	Mx:0Y:36M:0D Mn:0Y:12M:0D	09/18/2017	184	348	285	03/17/2018		04/18/2018	10/20/2018		
PAR	0001158630	AQUINO, JULIO	HDSP	Clark	C294254-1	COERCION SEXUALLY MOTIVATED	Mx:0Y:72M:0D Mn:0Y:28M:0D	04/19/2016	45	726	559	07/04/2018		11/28/2018	05/31/2019	Y	
PAR	0001192626	ARCHER, MATHEW	HDSP	Clark	C-17-328090-1	POSSESSION STOLEN VEHICLE	Mx:0Y:36M:0D Mn:0Y:12M:0D	01/22/2018	79	117	88	05/20/2018		11/20/2018	05/23/2019		
MPR	0000076041	AREVALO, EVER	LCC	Clark	C182544	KIDNAPPING I	Mx:0Y:180M:0D Mn:0Y:60M:0D	07/17/2008	0	2,424	2,460	07/11/2016		06/24/2018	12/26/2018	Y	
MPR	0001186242	ARMJO, ROSEMARIE	JCC	Clark	C-17-325398-1	POSSESSION STOLEN VEHICLE	Mx:0Y:36M:0D Mn:0Y:12M:0D	10/05/2017	87	234	207	01/28/2018		07/03/2018	12/09/2018		
PAR	0001192735	ARMSTRONG, WILLIAM	HDSP	Clark	C-17-321207-1	ATT BURGLARY	Mx:0Y:30M:0D Mn:0Y:12M:0D	01/29/2018	378	409	281	08/23/2017			06/20/2018		
PAR	0001192617	ARREDONDO, SALVADOR	OSC	Clark	C-17-327190-1	SALE/GIVE CONT SUBST, SCH 1&2, 1ST OFF	Mx:0Y:30M:0D Mn:0Y:12M:0D	01/22/2018	179	217	154	07/26/2018			11/29/2018		
PAR	0000095582	ARTIGA-MORALES, EDWIN	SDCC	Washoe	CR10-2270A	BATTERY W/ DEADLY WPN / SBH	Mx:0Y:180M:0D Mn:0Y:72M:0D	01/05/2012	0	2,061	1,431	07/08/2018		05/24/2020	11/25/2020		
PAR	0001177539	ATKINSON, CHRISTOPHER	WCC	Clark	C-17-320803-1	DOMESTIC BATTERY 3RD OFF	Mx:0Y:60M:0D Mn:0Y:19M:0D	04/19/2017	122	438	354	07/17/2018			05/21/2019		
PAR	0001185275	AVERY, DAVID	HDSP	Clark	C-16-319394-1	CONSPIRACY VIOLENT CRIME	Mx:0Y:36M:0D Mn:0Y:12M:0D	11/16/2017	136	241	169	07/02/2018		08/09/2018	02/10/2019		
PAR	0001022763	BACKOUS, DUANE	NNCC	Clark	243890	LEWDNESS W/ A MINOR	Life Mn:10Y:0M:0D	07/17/2008	105	3,529	0	07/16/2018				Y	
PAR	0000082423	BAENEN, ADAM	HDSP	Clark	C-15-308949-1	ATT VIOLATION OF LIFETIME * SUPERVISION	Mx:0Y:48M:0D Mn:0Y:12M:0D	09/12/2017	224	394	271	09/07/2017		10/03/2018	04/06/2019	Y	
PAR	0000062817	BAGLEY, ANTHONY	NNCC	Clark	153688	MURDER 1ST DEGREE	Life Mn:0Y:240M:0D	09/13/1999	418	7,162	0	07/21/2018				Y	

All dates and credit totals presented are accurate as of the time this report was generated and are subject to change.

Audio Transcription of State of Nevada Board of Appeals RPO Hearing

In re: Michael Anselmo v. State of Nevada, Board of Appeals

04/18/2018



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AUDIO TRANSCRIPTION OF STATE OF NEVADA

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BOARD OF APPEALS RPO HEARING

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IN RE: MICHAEL ANSELMO

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V.

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STATE OF NEVADA, BOARD OF APPEALS

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APRIL 18, 2018

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21 Proceedings recorded by electronic sound recording;

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transcript produced by transcription service.

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Transcribed by: Blanca I. Cano, CCR No. 861, RPR

1      Appearances:      Commissioner Tony Corda  
2                              Commissioner Susan Jackson  
3                              Chairwoman Connie Bisbee  
4                              Michael Anselmo  
5                              Unidentified Female Speaker  
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1 P R O C E E D I N G S

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4 COMMISSIONER CORDA: Hello. Good morning,  
5 Mr. Anselmo.

6 MR. ANSELMO: Good morning.

7 COMMISSIONER CORDA: How are you today?

8 MR. ANSELMO: Nervous.

9 COMMISSIONER CORDA: No need to be nervous.  
10 You've been through these before, haven't you?

11 MR. ANSELMO: Yes, sir.

12 COMMISSIONER CORDA: Okay.

13 MR. ANSELMO: (Indiscernible) review.

14 COMMISSIONER CORDA: Well, why don't you go  
15 ahead and give us your name and your prison number for  
16 the record and we'll just go ahead and proceed.

17 MR. ANSELMO: Mike Anselmo, 10999.

18 COMMISSIONER CORDA: Thank you.

19 I'm Commissioner Corda, along with Commissioner  
20 Jackson --

21 COMMISSIONER JACKSON: Good morning.

22 COMMISSIONER CORDA: -- and Chairman Bisbee.

23 CHAIRMAN BISBEE: Good morning.

24 COMMISSIONER CORDA: And today is an RPO  
25 hearing, review previous order hearing, on a hearing

1     that was conducted back in 2014 in November. And that  
2     is based upon a court order that's telling us to do that  
3     and not utilizing, in particular, aggravating factors  
4     that we used back in that hearing.

5             Is that how you understand it today?

6             MR. ANSELMO: Yes, but, Major Corda, I already  
7     got a parole on this case.

8             COMMISSIONER CORDA: You absolutely did, but  
9     let me explain a little further.

10            Before I do that, though, I just want to make  
11    sure that you were properly notified for this hearing.

12            MR. ANSELMO: (Indiscernible.)

13            COMMISSIONER CORDA: Let me get it up there.

14            MR. ANSELMO: That was --

15            COMMISSIONER CORDA: Is that your signature?

16            MR. ANSELMO: Yes, sir.

17            COMMISSIONER CORDA: All right. So what's  
18    happening, Mr. Anselmo, is because of that court order,  
19    the courts are telling us that we have to have another  
20    hearing without that particular aggravating factor, so  
21    that's what we're doing.

22            Now, we understand that you have been granted  
23    parole to your consecutive sentence subsequent to that,  
24    but we are complying with the court order to -- to  
25    rehear the original 2014 hearing.



1           Now, what can happen as a result of this is we  
2           can maintain the previous grant that we had already  
3           granted you parole effective on the date that we granted  
4           you or we can grant you effective back when you were  
5           eligible on the 2014 hearing, which was in  
6           February 2015.

7           You understand?

8           MR. ANSELMO: Yes (indiscernible).

9           COMMISSIONER CORDA: So there's some different  
10          options that we can take.

11          MR. ANSELMO: Oh, I thought that -- my  
12          attorneys were under the impression that was already  
13          done. My parole was effective technically 2000 --

14          COMMISSIONER CORDA: That's absolutely not  
15          correct. No.

16          MR. ANSELMO: Yeah. That -- that was -- we  
17          thought that this was -- the last hearing was the  
18          rehearing.

19          COMMISSIONER CORDA: No. The last hearing was  
20          because you were eligible based upon that prior denial  
21          of parole for that point to 2007 -- basically  
22          February 2018. So that's when we granted you back in  
23          the November 2017 hearing.

24          So this --

25          MR. ANSELMO: Okay. Gotcha.

1 COMMISSIONER CORDA: -- this hearing is a  
2 review of previous order for that 2014 hearing is what  
3 the court order told us to do.

4 So you understand what's happening?

5 MR. ANSELMO: Yes.

6 COMMISSIONER CORDA: We did grant you parole.  
7 You have a grant effective February 2018, which would be  
8 when you would roll over to your next term; correct?  
9 Your --

10 MR. ANSELMO: Yes, sir.

11 COMMISSIONER CORDA: -- escapee term, that's  
12 happened already.

13 MR. ANSELMO: Yes, sir.

14 COMMISSIONER CORDA: What we -- we could decide  
15 is just to maintain that grant like we did or we could  
16 decide to give you the grant back when you were  
17 eligible, 2015.

18 MR. ANSELMO: Yes, sir.

19 COMMISSIONER CORDA: Okay. So could you tell  
20 us any reason why we should decide to give you the  
21 parole in 2015 versus when we granted in 2017?

22 MR. ANSELMO: Did --

23 COMMISSIONER CORDA: Other than the fact that  
24 we did remove your aggravating factor, made your crime  
25 more serious, we've done that, so...

1 MR. ANSELMO: No. I mean, I was the same in  
2 2014 or 2015 as I was in 2018. I mean, I've been  
3 programmed. The only thing different between then and  
4 now --

5 COMMISSIONER CORDA: Uh-huh.

6 MR. ANSELMO: -- was the time -- was the three  
7 years.

8 COMMISSIONER CORDA: All right. Okay.

9 All right. I'm going to go over your risk  
10 assessment real quick with you just to make sure that  
11 it's accurate, just get familiar with that. Just listen  
12 in real close and tell me if I need to make any changes.

13 You were 13 when you were first arrested for  
14 anything in your life. You have no revocations of  
15 parole or probation. You have a limited employment  
16 history prior to committing the crime. You are a  
17 property offender and a drug or alcohol abuser.

18 MR. ANSELMO: No, sir.

19 COMMISSIONER CORDA: At the time, were you?

20 MR. ANSELMO: No. I've never used drugs or  
21 alcohol.

22 COMMISSIONER CORDA: Well, I think we've  
23 covered that at your last hearing as well --

24 MR. ANSELMO: Yeah. You --

25 COMMISSIONER CORDA: -- where it talks about

1 your -- your PSI saying you smoked marijuana with LSD  
2 four times a week, used marijuana, LSD, mescaline since  
3 age 12.

4 MR. ANSELMO: Excuse me. I've never had a PSI.  
5 PSI didn't exist when I fell.

6 COMMISSIONER CORDA: Well, I see one right  
7 here --

8 MR. ANSELMO: They didn't --

9 COMMISSIONER CORDA: -- a full sentence report.

10 MR. ANSELMO: Yeah. Yeah, pre- -- those didn't  
11 start till 1986. I've never had a PSI done.

12 COMMISSIONER CORDA: Well, I'm looking at one  
13 right here dated August 10th --

14 MR. ANSELMO: I -- I know.

15 COMMISSIONER CORDA: -- 1970 -- 1972. Looks  
16 like that, so...

17 MR. ANSELMO: They didn't exist. Somebody made  
18 one up.

19 CHAIRMAN BISBEE: We have one here.

20 COMMISSIONER CORDA: Well, I don't know.

21 (Indiscernible) that's the one they used.

22 MR. ANSELMO: And I don't know (indiscernible).  
23 Yeah. They didn't even exist in 1972. No -- there was  
24 no such thing. I was sentenced by a jury. I was never  
25 sentenced by a -- you know, my jury sentenced me.

1 MS. BISBEE: Post-sentence report

2 (indiscernible).

3 COMMISSIONER CORDA: They -- they, you know,

4 call it a post-sentence report.

5 MS. BISBEE: It's a post-sentence report.

6 COMMISSIONER CORDA: But they did it.

7 MR. ANSELMO: And I don't know when they -- I  
8 was never interviewed for it or never talked to about  
9 it. But I -- I've never -- I -- I did -- I smoked grass  
10 one time. I went -- I was allergic to it, so I could  
11 never do it again.

12 COMMISSIONER CORDA: Uh-huh, yeah.

13 MR. ANSELMO: And what was the other drug?

14 COMMISSIONER CORDA: Well, it said --

15 MR. ANSELMO: I've never drank.

16 COMMISSIONER CORDA: It says here --

17 MR. ANSELMO: I've never drank in my life.

18 COMMISSIONER CORDA: -- in this section, "The  
19 subject indicated to this officer," so apparently he's  
20 saying you talked to him, "that he had used marijuana,  
21 LSD, mescaline since the age of 12 on weekends for about  
22 five years and more recently had smoked marijuana and  
23 combined with it LSD about three or four times a week."

24 MR. ANSELMO: No. No, sir. No way. No way  
25 did I do any of that.

1 COMMISSIONER CORDA: That's what we have in the  
2 records, Mr. Anselmo.

3 MR. ANSELMO: I under- -- I understand.

4 COMMISSIONER CORDA: That's why we're using  
5 that. Okay? So I -- that's why we're using it at this  
6 point. Okay?

7 MR. ANSELMO: Yes. I understand. Yes.

8 COMMISSIONER CORDA: All right.

9 MR. ANSELMO: And I -- I've never drank. I --  
10 I never did drink at all.

11 COMMISSIONER CORDA: Well, I mean, this says  
12 drugs or alcohol. Just that's one or the other. Okay?

13 MR. ANSELMO: Yeah.

14 COMMISSIONER CORDA: You're not a gang member.  
15 You did obtain your high school diploma, a couple of A-  
16 -- you know, degrees, so you get a point off on the  
17 assessment.

18 You have a -- your last disciplinary was back  
19 in 2007, so it's been more than a year, and you're  
20 currently in medium custody.

21 So all that sounds accurate to you?

22 MR. ANSELMO: Yes, sir.

23 COMMISSIONER CORDA: Okay. You've got five  
24 points. Same -- same points as you had during your last  
25 hearing.

1                   Guideline recommendation is to consider  
2                   factors. These aggravating factors: impact on your  
3                   victim and you did commit a crime while under  
4                   supervision or while in prison, those two escapes.  
5                   And --

6                   MR. ANSELMO: (Indiscernible.)

7                   COMMISSIONER CORDA: -- mitigation, you have an  
8                   infraction, for instance, in 2007, community support,  
9                   support letters in your file, paying the consecutive  
10                  sentence, participating in programs, which are helpful  
11                  to your situation.

12                 And those basically are the same mitigating  
13                 factors that were available to us back in the 2014  
14                 hearing.

15                 MR. ANSELMO: Yes, sir.

16                 COMMISSIONER CORDA: Okay. Are there any  
17                 questions?

18                 MS. BISBEE: No questions.

19                 COMMISSIONER CORDA: Is there anything else,  
20                 Mr. Anselmo, that could -- that you could help us out  
21                 with?

22                 MR. ANSELMO: All I can say is I -- I hope you  
23                 will grant it back to 2015 so I can, you know, go to a  
24                 parole board as soon as possible on my escape charge and  
25                 be able to spend some time with my family.

1           My mom's 96. She hasn't got much longer to go.  
2           Apparently, my brother's in bad health now. I'm not  
3           sure how bad that is.

4           I've done everything I can to improve myself.  
5           Sitting in prison is -- I'm working my program. I mean,  
6           I do everything I can in prison.

7           COMMISSIONER CORDA: Uh-huh.

8           MR. ANSELMO: But I'd like to be able to get  
9           out and do something worthwhile to make up for  
10          everything I've done.

11          COMMISSIONER CORDA: Uh-huh.

12          MR. ANSELMO: To work and become productive in  
13          society --

14          COMMISSIONER CORDA: Right.

15          MR. ANSELMO: -- and spend a little time with  
16          my family.

17          COMMISSIONER CORDA: Right.

18          So now, you know, you are currently on the  
19          escape offense, and are you getting ready? Are you  
20          taking reentry? Are you doing anything while you're --  
21          while you're there still?

22          MR. ANSELMO: I'm working, yes, sir. I've  
23          taken reentry before. I've taken, you know -- you know,  
24          those courses before on my other sentence, and right now  
25          they don't have -- I'm not eligible for reentry as it is



1 right now.

2 COMMISSIONER CORDA: Why not?

3 MR. ANSELMO: You have to be -- how many months  
4 with the --

5 FEMALE SPEAKER: 24.

6 MR. ANSELMO: Pardon me?

7 FEMALE SPEAKER: 24.

8 MR. ANSELMO: 24 months.

9 COMMISSIONER CORDA: You have to be within --

10 MR. ANSELMO: 24.

11 COMMISSIONER CORDA: -- 24 months?

12 MR. ANSELMO: Yes, sir.

13 COMMISSIONER CORDA: You have a parole  
14 eligibility date of October 2019 right now.

15 MR. ANSELMO: October 2019 -- nothing was  
16 calculate -- nothing was calculated until when?

17 FEMALE SPEAKER: Just recently.

18 MR. ANSELMO: Yeah, just recently.

19 COMMISSIONER CORDA: Okay.

20 MR. ANSELMO: Yeah. We were thinking 27 -- 27  
21 months --

22 COMMISSIONER CORDA: Well, just to let you  
23 know, it's within that time frame now, so they probably  
24 have different reentry programs from when you took it  
25 the last time. It might be something you'd be

1 interested in.

2 I mean, it's been a long time since you've been  
3 in the community; right?

4 MR. ANSELMO: Yes, sir. I -- and that's why I  
5 have a lot of help when I get out, you know. I've got  
6 support.

7 COMMISSIONER CORDA: Okay. Well, we don't have  
8 any other questions, Mr. Anselmo.

9 So what's going to happen now is we are going  
10 to discuss your case as usual, and you'll get the  
11 results of the decision of the Board after majority  
12 decides. Okay?

13 MR. ANSELMO: Okay. Now, I'm not at any risk  
14 of losing my parole, am I --

15 COMMISSIONER CORDA: Absolutely --

16 MR. ANSELMO: -- for 2008?

17 COMMISSIONER CORDA: Absolutely -- absolutely  
18 not. We're just -- we're just looking at you to either  
19 maintain your parole grant as is or to revert it back to  
20 when you were eligible in 2015.

21 MR. ANSELMO: Oh, okay.

22 COMMISSIONER CORDA: Okay?

23 MR. ANSELMO: Thank you very much.

24 COMMISSIONER CORDA: All right. Take care.

25 MR. ANSELMO: Thank you.

1	(End of recording.)
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## 1 REPORTER'S CERTIFICATE

2 STATE OF NEVADA )  
 ) ss:  
3 COUNTY OF CLARK )

4 I, Blanca I. Cano, CCR No. 861, RPR, do hereby  
declare:

5 That I well and truly reported from an audio  
recording the enclosed proceedings;

6  
7 That I thereafter transcribed my said shorthand  
notes into typewriting and that the typewritten  
transcript is a complete, true, and accurate  
8 transcription of my said shorthand notes to the best of  
my ability.

9  
10 I further certify that I am not a relative or  
employee of counsel, of any of the parties, nor a  
relative or employee of the parties involved in said  
11 action, nor a person financially interested in the  
action.

12  
13 IN WITNESS WHEREOF, I have set my hand in my  
office in the County of Clark, State of Nevada, this  
1st day of October 2018.

14  
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16 \_\_\_\_\_  
Blanca I. Cano, CCR No. 861, RPR  
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1 ADAM PAUL LAXALT  
Attorney General  
2 JEFFREY M. CONNER (Bar. No. 11543)  
Assistant Solicitor General  
3 State of Nevada  
Office of the Attorney General  
4 100 North Carson Street  
Carson City, NV 89701-4717  
5 (775) 684-1200 (phone)  
(775) 684-1108 (fax)  
6 jconner@ag.nv.gov  
*Attorneys for Respondent*

7  
8 **IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
9 **IN AND FOR CARSON CITY**

10 MICHAEL P. ANSELMO,

11 Petitioner,

12 vs.

13 CONNIE BISBEE, TONY COROLA, SUSAN  
14 JACKSON, AND THE STATE OF NEVADA  
BOARD OF PAROLE,

15 Respondents.

Case No. 18 OC 00224 1B

Dept. No. 1

16 **ANSWER**

17 **I. Introduction**

18 Petitioner Michael Anselmo is serving life in prison for a 1972 murder. *Anselmo v. Bisbee*, 133  
19 Nev. \_\_\_, \_\_\_ 396 P.3d 848, 849 (2017). Although he was originally sentenced to life without a  
20 possibility of parole, the Pardons Board commuted that sentence, giving Anselmo the possibility for  
21 parole release. *Id.*

22 Anselmo recently filed a petition for writ of mandamus purportedly seeking enforcement of a writ  
23 the Nevada Supreme Court issued to the Nevada Board of Parole Commissioners (Parole Board) in  
24 *Anselmo*. However, what Anselmo actually seeks is a retroactive grant of parole effective February 1,  
25 2015. The Nevada Supreme Court's opinion and writ did not even require the Parole Board to  
26 retroactively reconsider the prior denial, let alone require a retroactive *grant* of parole. To the contrary,  
27 the original writ merely directed the Parole Board to vacate its November 2014 decision denying parole  
28 and conduct a new hearing without applying NAC 213.518(2)(k). Indeed, by holding a hearing to decide



1 whether it should retroactively grant Anselmo parole effective February 1, 2015—the date Anselmo  
2 would have been eligible for parole if the Parole Board had granted parole in November 2014—the Parole  
3 Board arguably exceeded its obligations under the writ. As a result, Anselmo received the consideration  
4 required by the Nevada Supreme Court’s writ. Accordingly, this Court should deny Anselmo’s petition.

## 5 **II. Factual Background**

6 After this Court previously denied Anselmo’s petition for writ of habeas corpus challenging the  
7 November 2014 denial of his application for parole, the Nevada Supreme Court transformed Anselmo’s  
8 appeal from this Court’s order into a writ proceeding and issued a writ of mandamus to the Parole Board.  
9 Exhibit 1; Exhibit 2. Although the court acknowledged that Nevada courts are not to second-guess a  
10 Parole Board decision granting or denying parole, *Anselmo*, 133 Nev. at \_\_\_, 396 P.3d at 850–51, the  
11 writ directed the Parole Board to vacate its prior decision denying Anselmo parole and give Anselmo a  
12 new hearing because the Parole Board deprived Anselmo of his right to be *considered* for parole when  
13 the Parole Board partially based its decision to deny parole on a factor that, on its face, indicated it was  
14 inapplicable to Anselmo’s case, *id.* at \_\_\_, 396 P.3d at 851–53.

15 While the court noted that it was ordering a new hearing because Anselmo’s case “was extremely  
16 close,” the Court’s opinion did not direct a certain result for the new hearing, let alone order that the  
17 Parole Board must retroactively grant parole effective February 1, 2015. *Id.* at \_\_\_ 396 P.3d at 853. The  
18 absence of such a directive is obviously the result of the first half of the opinion, where the court held  
19 that the severity of Anselmo’s offense alone could serve as a basis to deny parole under Nevada law. *Id.*  
20 at \_\_\_, 396 P.3d at 851.

21 The Parole Board subsequently conducted a hearing on November 16, 2017. Exhibit 3.<sup>1</sup> There,  
22 the Parole Board granted Anselmo parole on his murder sentence, effective February 1, 2018. Exhibit 4.  
23 Thereafter, on April 18, 2018, the Parole Board conducted a second hearing, which it called a review  
24 previous order (RPO) hearing. Exhibit 5 at 0:40-1:05.<sup>2</sup> The Parole Board explained to Anselmo that the  
25 reason for the second hearing was to address the writ from the Nevada Supreme Court and decide whether  
26 the Parole Board should make the recent grant of parole retroactive to February 1, 2015, based upon the

27 <sup>1</sup> Exhibit 3 is a video of the parole hearing, which is on a CD submitted with this answer.

28 <sup>2</sup> Exhibit 5 is a video of the RPO hearing, which is on the same CD referenced in footnote 1.

1 exclusion of NAC 213.518(2)(k) from its reconsideration of the November 2014 denial. Exhibit 5 at  
2 1:30-2:05.

3 In explaining the purpose of the April 2018 hearing to Anselmo, the Parole Board indicated it had  
4 two options at its disposal: (1) reinstating the recent decision to grant parole effective February 1, 2018,  
5 or (2) retroactively granting Anselmo parole with an effective date of February 1, 2015. Exhibit 5 at  
6 2:05-3:50. The Board elected to reinstate the recent grant of parole effective February 1, 2018, rather  
7 than making the parole grant retroactively effective February 1, 2015. Exhibit 6.

8 Anselmo twice sought reconsideration of the Parole Board's decision not to retroactively grant  
9 parole effective February 1, 2015. Exhibit 7; Exhibit 8. But the Parole Board denied reconsideration in  
10 writing both times. Exhibit 7; Exhibit 8. In the first written denial, the Parole Board recounted that it  
11 had explained "the different actions that the Board could take" during the April 2018 hearing and then  
12 noted that the Parole Board "determined that there would be no change to the denial period determined  
13 at your 11-17-2014 hearing and your subsequent grant effective date." Exhibit 7. And in response to the  
14 second appeal, the Parole Board reiterated that "the Boards [sic] decision was to maintain the denial  
15 period of three years." Exhibit 8.

16 Anselmo has filed a petition with this Court challenging the Parole Board's decision to make his  
17 parole effective February 1, 2018. In particular, he complains that the Parole Board, by refusing to  
18 retroactively grant parole to February 1, 2015, "did in fact keep in place the 2014 3 year [sic] denial,"  
19 Petition for Writ of Mandamus at 3.

20 This answer follows an order directing the Attorney General to respond to the petition.

### 21 **III. Argument**

22 Anselmo is not entitled to mandamus relief in the form of a writ directing the Parole Board to  
23 retroactively grant parole effective February 2015. The Nevada Supreme Court's opinion in *Anselmo*  
24 did not require the Parole Board to conduct a retroactive review of its prior decision, let alone require a  
25 retroactive *grant* of parole. *Anselmo*, 133 Nev. at \_\_\_, 396 P.3d at 850–53. Rather, the court only ordered  
26 the Parole Board to vacate its prior decision and conduct a new hearing without consideration of NAC  
27 213.518(2)(k). *Id.* 133 Nev. at \_\_\_, 396 P.3d at 853; *see also* Exhibit 2.

28 ///

1 But the court was unequivocal about Nevada courts lacking authority to question the Parole  
2 Board's exercise of its discretion to grant or deny parole; the court's grant of Anselmo's request for relief  
3 was limited to the issue of whether the Parole Board had deprived Anselmo of his right *to be considered*  
4 for parole, and did not address the issue of if (and when) Anselmo should be granted parole. *Id.* 133 Nev.  
5 at \_\_\_, 396 P.3d at 853. But even assuming there was authority requiring such retroactive review—there  
6 is not, according to the Nevada Supreme Court, *see, Williams v. State Dep't. of Corr.*, 133 Nev. \_\_\_, \_\_\_,  
7 402 P.3d 1260, 1265 n.7 (2017) (citing *Niergarth v. Warden*, 105 Nev. 26, 29, 768 P.2d 882, 883-84  
8 (1989)—the Parole Board conducted such a review and still declined to make its more recent grant of  
9 parole retroactive to February 1, 2015. Exhibit 5; Exhibit 6; Exhibit 7; Exhibit 8.

10 Anselmo has received the consideration he was entitled to; this Court should deny the petition.

11 **A. The mandamus standard**

12 A petition for writ of mandamus is governed by NRS 34.150-NRS 34.310, inclusive. A court  
13 may issue a writ of mandamus “to compel the performance of an act which the law especially enjoins as  
14 a duty resulting from an office, trust, or station,” or to control a manifest abuse of or arbitrary or capricious  
15 exercise of discretion. NRS 34.160; *Rugamas v. Eighth Jud. Dist. Ct.*, 129 Nev. 424, 430, 305 P.3d 887,  
16 892 (2013)(citing *Round Hill Gen. Improvement Dist. v. Newman*, 97 Nev. 601, 603-04, 637 P.2d 534,  
17 536 (1981)). The writ may not issue where the petitioner has a plain, speedy, and adequate remedy in  
18 the ordinary course of law. NRS 34.170. Mandamus is an extraordinary remedy, and the decision to  
19 entertain a petition lies within the discretion of the court. *Hickey v. District Court*, 105 Nev. 729, 731,  
20 782 P.2d 1336, 1338 (1989).

21 To justify the issuance of a writ of mandamus to enforce the performance of an act by a public  
22 officer, the act must be one the performance of which the law requires as a duty resulting from the office,  
23 and there must be an actual omission on the part of the officer to perform it. *Mineral County v. Dep't of*  
24 *Conserv. & Natural Res.*, 117 Nev. 235, 243, 20 P.3d 800 (2001); *Brewery Arts Center v. State Bd. Of*  
25 *Examiners*, 108 Nev. 1050, 1054, 843 P.2d 369 (1992); *Ex rel. Blake v. County Comm'rs*, 48 Nev. 299,  
26 231 P. 384 (1924). A writ of mandamus is never granted in anticipation of an omission of a duty, however  
27 strong the presumption may be that the officer will refuse to perform his duty when the time for  
28 performance arrives. *Brewery Arts Center v. State Bd. Of Examiners*, 108 Nev. 1050, 1054, 843 P.2d

1 369 (1992). An actual default or omission of duty is just as essential a prerequisite to the issuance of a  
2 writ of mandamus as is the lack of an adequate remedy in the ordinary course of the law. *State ex rel.*  
3 *Lawton v. Public Serv. Comm'n*, 44 Nev. 102, 108, 112, 190 P. 284 (1920).

4 Finally, mandamus will not issue unless the petitioner shows a clear legal right to the relief  
5 demanded. *Ex rel. Blake v. County Comm'rs*, 48 Nev. 299, 304, 231 P. 384 (1924). Mandamus will lie  
6 to compel an officer or tribunal exercising judicial functions to act, but never to review or correct such  
7 judicial acts, however, erroneous they may be. *State v. Eighth Judicial Dist. Court*, 116 Nev. 127, 133,  
8 994 P.2d 692 (2000); *York v. Board of County Comm'rs*, 89 Nev. 173, 174, 509 P.2d 967 (1973); *Hardin*  
9 *v. Guthrie*, 26 Nev. 246, 66 P.2d 744 (1901).

10 **B. The Nevada Supreme Court's writ did not require the Parole Board to retroactively**  
11 **grant Anselmo parole.**

12 Anselmo seeks relief in the form of writ of mandamus directing the Parole Board to retroactively  
13 grant him parole on his conviction for murder effective February 1, 2015. If that was the result that the  
14 Nevada Supreme Court intended, they would have ordered it. But the court was very careful not to reach  
15 that conclusions, limiting its opinion to requiring a new hearing because Anselmo's case "was extremely  
16 close," while (1) reaffirming that Nevada courts are not to second-guess the Parole Board's exercise of  
17 discretion in deciding whether to ultimately grant or deny parole, and (2) holding that the Parole Board  
18 may deny an offender parole based solely on the severity of their offense or any other relevant statutory  
19 factor. *Id.* 133 Nev. at \_\_\_, 396 P.3d at 850–53.

20 Thus, the effect of the Nevada Supreme Court's writ from Anselmo's prior proceeding was for the  
21 Parole Board to give Anselmo a new hearing that considered Anselmo for parole without applying NAC  
22 213.518(2)(k) as an aggravating factor. Exhibit 2. The Parole Board went beyond that directive when  
23 it held a hearing to determine whether, when excluding NAC 213.518(2)(k) from consideration, it should  
24 grant parole retroactively effective February 1, 2015. Exhibit 5. As a result, Anselmo received the  
25 consideration contemplated by the opinion in *Anselmo*. This Court should deny Anselmo's petition.

26 \\\

27 \\\

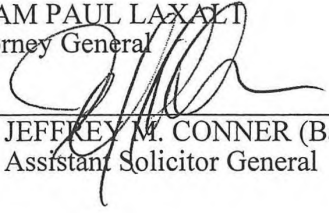
28 \\\

1 **IV. Conclusion**

2 For the foregoing reasons, this Court should deny Anselmo's petition.

3 RESPECTFULLY SUBMITTED this 13th day of November, 2018.

4  
5 ADAM PAUL LAXALT  
Attorney General

6 By:   
7 JEFFREY M. CONNER (Bar No. 11543)  
Assistant Solicitor General



**CERTIFICATE OF SERVICE**

I certify that I am an employee of the Office of the Attorney General and that on this 13th day of November, 2018, I caused to be deposited for mailing a true and correct copy of the foregoing, **ANSWER** to the following:

Kirk B. Lenhard, ESQ  
Emily A. Ellis, ESQ  
Brownstein Hyatt Farber Schreck, LLP  
100 North City Parkway, Suite 1600  
Las Vegas, NV 89106

  
Amanda White

## INDEX OF EXHIBITS

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# EXHIBIT 1

# EXHIBIT 1



IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL P. ANSELMO,  
Appellant,  
vs.  
CONNIE BISBEE, CHAIRMAN; SUSAN  
JACKSON; TONY CORDA; ADAM  
ENDEL, COMMISSIONERS; AND THE  
STATE OF NEVADA BOARD OF  
PAROLE,  
Respondents.

No. 67619

FILED

JUN 29 2017

ROZANETHA BROWN  
CLERK OF SUPREME COURT  
BY: *[Signature]*  
CHIEF DEPUTY CLERK

ORDER

This is an appeal from a district court order dismissing a pro se postconviction petition for a writ of habeas corpus. In its order of dismissal, the district court concluded that appellant Michael Anselmo primarily challenged the denial of parole, and that such a claim is not cognizable in a postconviction petition for a writ of habeas corpus.

Generally, this was a correct legal conclusion, as parole is an act of grace in Nevada, and no cause of action exists when parole is denied. See NRS 213.10705; *Weakland v. Bd. of Parole Comm'rs*, 100 Nev. 218, 220, 678 P.2d 1158, 1160 (1984). Further, these claims are not cognizable in a petition for a writ of habeas corpus because Anselmo is confined pursuant to a valid judgment conviction, and his claims related to parole do not demonstrate unlawful confinement. See NRS 34.360.

Anselmo filed a timely notice of appeal. This court entered an order referring Anselmo for the appointment of pro bono counsel. *Anselmo v. Bisbee*, Docket No. 67619 (Order Regarding Pro Bono Counsel, November 24, 2015). This court specifically requested briefing regarding the California case of *In re Lawrence*, 190 P.3d 535 (Cal. 2008).

SUPREME COURT  
OF  
NEVADA

(D) 1947A 

17-21697

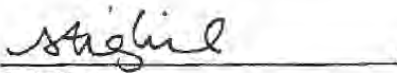
Pro bono counsel filed an opening brief and, in addition to Anselmo's claims related to *Lawrence*, counsel also argued that Anselmo was entitled to a new parole hearing on the basis that the Parole Board violated its own internal guidelines in assessing Anselmo's suitability for parole. This claim was not raised in the district court. Further, for the reasons discussed above, this claim and any claims related to *Lawrence* would be more properly raised in a petition for a writ of mandamus, rather than a petition for a writ of habeas corpus. See NRS 34.160; NRS 34.170 (noting that extraordinary relief may be available where there is no "plain, speedy and adequate remedy in the ordinary course of law"); NRS 34.360; *Int'l Game Tech., Inc. v. Second Judicial Dist. Court*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008) ("A writ of mandamus is available to compel the performance of an act that the law requires . . . or to control an arbitrary or capricious exercise of discretion.").

Therefore, given the late appointment of counsel, as well as the unique procedural posture of this case, and the nature of the relief requested, we direct the clerk of this court to convert Anselmo's appeal into an original petition for a writ of mandamus. Because the Parole Board is a named party to this appeal, no further service of the petition is required. NRS 34.200.

It is so ORDERED.

 J.  
Hardesty

 J.  
Parraguirre

 J.  
Stiglich

cc: Hon. James Todd Russell, District Judge  
Brownstein Hyatt Farber Schreck, LLP/Las Vegas  
Attorney General/Carson City  
Carson City Clerk

# EXHIBIT 2

# EXHIBIT 2

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL P. ANSELMO,  
Petitioner,  
vs.

No. 67619

CONNIE BISBEE, CHAIRMAN; SUSAN  
JACKSON; TONY CORDA; ADAM  
ENDEL, COMMISSIONERS; AND THE  
STATE OF NEVADA BOARD OF  
PAROLE,  
Real Parties in Interest.

WRIT OF MANDAMUS

TO: The State of Nevada Board of Parole:

WHEREAS, this Court having made and filed its written decision  
that a writ of mandamus issue,

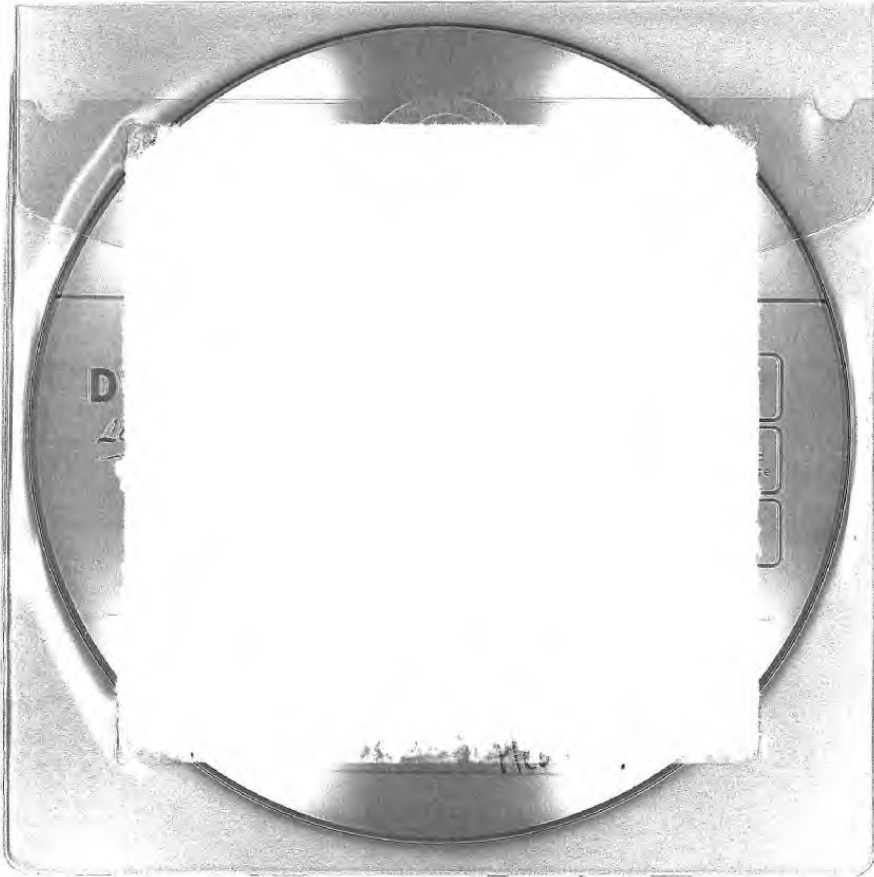
NOW, THEREFORE, you are instructed to vacate your November  
14, 2014, denial of parole and conduct a new parole hearing in which NAC  
213.518(2)(k) is not applied, in the case entitled Michael P. Anselmo vs.  
Connie Bisbee, Chairman; Susan Jackson, Tony Corda, Adam Endel,  
Commissioners; Nevada Board of Parole, case no. 14EW00029.

WITNESS The Honorables Lidia Stiglich, James W. Hardesty, and  
Ron Parraguirre, Associate Justices of the Supreme Court of the State of  
Nevada, and attested by my hand and seal this 29th day of June, 2017.



B. Mooneyhan  
Assistant Clerk

# EXHIBIT 3



# EXHIBIT 3

# EXHIBIT 4

# EXHIBIT 4

**STATE OF NEVADA  
CERTIFICATION OF  
BOARD OF PAROLE COMMISSIONERS ACTION  
ORDER GRANTING PAROLE**

ANSELMO, MICHAEL P	10999	010999	NNCC-U3-C-8-D	11/16/2017
Inmate Name	NDOC Number	Booking #	Location	Date

It is the Order of the Board that Parole is GRANTED. The effective date of parole is: 02/01/2018.

Release to the community or to a consecutive sentence is authorized on the above specified date. If "when eligible" is indicated, release is authorized on or after the date of this hearing upon attaining minimum eligibility, as determined by the Nevada Department of Corrections (NDOC). Release to the community may not occur until approval of release plans in accordance with NRS 213.140.

You are expected to program and/or work constructively regardless of institutional setting, and you are expected to abide by the rules of the NDOC. Failure to work and/or program constructively, or violation of the rules of the NDOC may result in the rescission of this order and denial of parole.

NOTE: A parolee who violates a condition of his or her parole forfeits all or part of the credits for good behavior earned by the parolee after release on parole at the discretion of the Board. A parolee whose parole is revoked for having violated a condition of parole forfeits all credits for good behavior previously earned to reduce his or her sentence pursuant to NRS 209. The Board may restore any forfeited credits at its discretion.

**THIS ACTION APPLIES TO THE FOLLOWING SENTENCE(S):**

*Controlling sentences denoted by \*, Case #: Court: Offense Description.*

271359,1,MURDER 1ST DEGREE

**Reason(s) for action:**

Grant Reason: The inmate has a positive institutional record.

Grant Reason: There is community and/or family support.

Grant Reason: The inmate must serve a consecutive sentence.

Grant Reason: The inmate has participated in programs specific to addressing behavior that led to incarceration.

**Recommendation of the panel who conducted the hearing: Grant Parole**

Commissioner Susan Jackson, Grant Parole

Commissioner Tony Corda, Grant Parole

Commissioner Christopher Dericco, Grant Parole

**The final action was ratified by the following Members of the Board of Parole Commissioners:**

Commissioner Christopher Dericco, Grant Parole

Commissioner Susan Jackson, Grant Parole

Commissioner Tony Corda, Grant Parole

Chairman Connie Bisbee, Grant Parole

  
\_\_\_\_\_  
FOR THE NEVADA BOARD OF PAROLE COMMISSIONERS

*This document was prepared by DEARNARD at 11/20/2017 1:24 PM*

*Z\_ord\_gntrev 12-14-2016*



STATE OF NEVADA  
BOARD OF PAROLE COMMISSIONERS  
CONDITIONS OF PAROLE SUPERVISION

ANSELMO, MICHAEL P	10999	010999	NNCC-U3-C-8-D	11/16/2017
Inmate Name	NDOC Number	Booking #	Location	Date

The following conditions apply to all active parole cases supervised in the community, including any previously granted sentences not specified on this Order of which these conditions replace and supersede.

\* Participate in re-entry programming while serving consecutive sentence.

\* Disciplinary Conduct: You shall comply with NDOC Administrative Regulation 707 (Inmate Disciplinary Process) and conduct yourself accordingly during the period of institutional parole.

\* Intoxicants: You shall not possess or consume any alcohol beverages or other prison-made alcohol.

\* Controlled substances: You shall not possess or consume any illegal drugs, or any prescription drugs, unless first prescribed by a licensed medical professional.

\* Weapons: You shall not possess, have access to, or have under your control, any type of weapon, including any object that is determined to be a weapon by the NDOC.

\* Directives: You shall follow the directives of the Division of Parole and Probation and the Department of Corrections.

\* Laws: You shall comply with all institutional rules, municipal, county, state, and federal laws and ordinances.

\* Release: If applicable, four months prior to release to the community, contact the Division of Parole and Probation, Pre-release, and establish a viable release plan. The Board will impose any special conditions regarding community release at that time. You may not be released to the community on parole until any proposed release plans are investigated and approved by the Division of Parole and Probation.

\* Restitution: You shall make payments toward any restitution owed if it is determined that you have the ability to pay.

*This document was prepared by DBARNARD at 11/18/2017 1:24 PM*

**STATE OF NEVADA  
CERTIFICATION OF  
BOARD OF PAROLE COMMISSIONERS ACTION  
PAROLE RISK ASSESSMENT & GUIDELINE**

ANSELMO, MICHAEL P	10999	010999	NNCC-U3-C-8-D	11/16/2017
INMATE NAME	NDOC Number	BOOKING#	LOCATION	DATE

**Parole Risk Assessment:**

Questions	Responses / Scores
1. Age at 1st Arrest	19 years or younger (2): 2
2. Prior Revocations	(0) No Parole or Probation Revocations: 0
3. Employment History	(1) Employed less than full-time/full-time < one year: 1
4. Property Conviction	(2) Auto Theft, Burglary, Forgery, Robbery, Property Crime: 2
5. Drug/Alcohol Use/Abuse	(2) Frequent abuse, serious disruption of functioning: 2
6. Gender	(1) Male: 1
Static Risk Score	8
7. Current Age	(-1) 41 and above: -1
8. Gang Membership	(0) No or Suspect: 0
9. Programming (current term)	(-1) Yes (enter achievement name in comments): -1
10. Disciplinary Conduct	(-1) No disciplinarys: -1
11. Approved Custody Level	(0) Medium: 0
Dynamic Risk Score	-3
Total Score (Static+Dynamic)	5

Offense (used to determine crime severity for risk assessment)	Offense Category	Offense Severity
MURDER 1ST DEGREE	CAT A	Highest

Total Risk Score:	Guideline Risk	Guideline Recommendation
5	Low Risk	Consider Factors

**The Board determined the following Aggravating Factors are applicable in your case:**

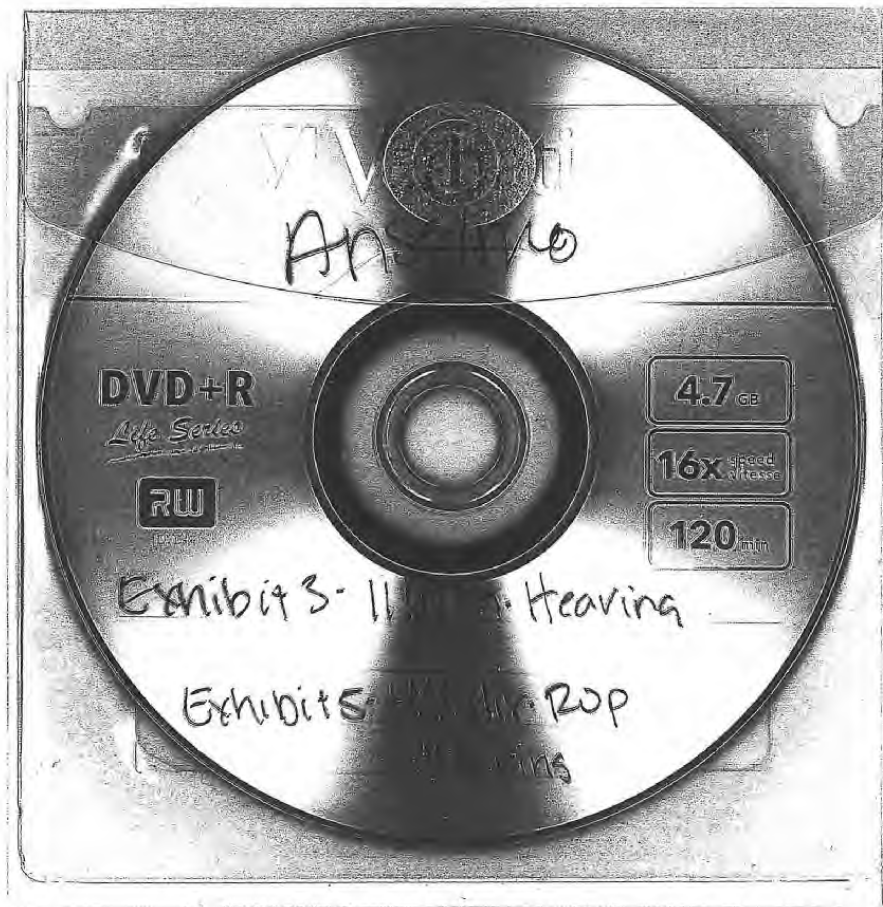
Commission of a crime while incarcerated, on bail, eluding, on escape status, or while under parole or probation supervision;  
Committed I/O while on probation. Committed 2 escapes while incarcerated.  
Impact on victim(s) and/or community: Death of victim. Victim was strangled and stabbed.

**The Board determined the following Mitigating Factors are applicable in your case:**

Community and or family support: Support letters have been received.  
Pending CS sentence or detainer lodged by other jurisdiction: Has a CS sentence.  
Infraction free for two years or more to hearing month and not in disciplinary segregation: Last OIC was in 2007.  
Participation in programs specific to addressing the behavior that led to their incarceration: Has programmed well throughout the years to include HSD, AA degree (general studies), Culinary Arts, Anger Management, BETA, and First Aid.

*This document was prepared by DBARNARD at 11/16/2017 1:24 PM*

# EXHIBIT 5



# EXHIBIT 5

# EXHIBIT 6

# EXHIBIT 6

**STATE OF NEVADA  
CERTIFICATION OF  
BOARD OF PAROLE COMMISSIONERS ACTION  
ORDER GRANTING PAROLE**

ANSELMO, MICHAEL P	10999	010999	NNCC-U3-C-5-A	04/18/2018
<i>Inmate Name</i>	<i>NDOC Number</i>	<i>Booking #</i>	<i>Location</i>	<i>Date</i>

It is the Order of the Board that Parole is GRANTED. The effective date of parole is: 02/01/2018.

Release to the community or to a consecutive sentence is authorized on the above specified date. If "when eligible" is indicated, release is authorized on or after the date of this hearing upon attaining minimum eligibility, as determined by the Nevada Department of Corrections (NDOC).

You are expected to program and/or work constructively regardless of institutional setting, and you are expected to abide by the rules of the NDOC. Failure to work and/or program constructively, or violation of the rules of the NDOC may result in the rescission of this order and denial of parole.

NOTE: A parolee who violates a condition of his or her parole forfeits all or part of the credits for good behavior earned by the parolee after release on parole at the discretion of the Board. A parolee whose parole is revoked for having violated a condition of parole forfeits all credits for good behavior previously earned to reduce his or her sentence pursuant to NRS 209. The Board may restore any forfeited credits at its discretion.

**THIS ACTION APPLIES TO THE FOLLOWING SENTENCE(S):**

*Controlling sentence denoted by \*, Case #: Count: Offense Description:*

271359;1;MURDER 1ST DEGREE

**Reason(s) for action:**

Grant Reason: The inmate has a positive institutional record.

Grant Reason: There is community and/or family support.

Grant Reason: The inmate must serve a consecutive sentence.

Grant Reason: The inmate has participated in programs specific to addressing behavior that led to incarceration.

**Recommendation of the panel who conducted the hearing:** Grant Parole

Commissioner Susan Jackson; Grant Parole

Chairman Connie Bisbee; Grant Parole

Commissioner Tony Corda; Grant Parole

**The final action was ratified by the following Members of the Board of Parole Commissioners:**

Commissioner Susan Jackson; Grant Parole

Chairman Connie Bisbee; Grant Parole

Commissioner Tony Corda; Grant Parole

Commissioner Michael Keeler; Grant Parole

  
\_\_\_\_\_  
FOR THE NEVADA BOARD OF PAROLE COMMISSIONERS

<sup>1</sup> Document was prepared by JMEADOR at 5/2/2018 9:43 AM

<sup>2</sup> Jntrev 12-14-2016

STATE OF NEVADA  
BOARD OF PAROLE COMMISSIONERS  
CONDITIONS OF PAROLE SUPERVISION

ANSELMO, MICHAEL P	10999	010999	NNCC-U3-C-5-A	04/18/2018
Inmate Name	NDOC Number	Booking #	Location	Date

**The following conditions apply to all active parole cases supervised in the community, including any previously granted sentences not specified on this Order of which these conditions replace and supersede.**

\* Participate in re-entry programming while serving last sentence.

\* Disciplinary Conduct: You shall comply with NDOC Administrative Regulation 707 (Inmate Disciplinary Process) and conduct yourself accordingly during the period of institutional parole.

\* Intoxicants: You shall not possess or consume any alcohol beverages or other prison-made alcohol.

\* Controlled substances: You shall not possess or consume any illegal drugs, or any prescription drugs, unless first prescribed by a licensed medical professional.

\* Weapons: You shall not possess, have access to, or have under your control, any type of weapon, including any object that is determined to be a weapon by the NDOC.

\* Directives: You shall follow the directives of the Division of Parole and Probation and the Department of Corrections.

\* Laws: You shall comply with all institutional rules, municipal, county, state, and federal laws and ordinances.

\* Release: If applicable, four months prior to release to the community, contact the Division of Parole and Probation, Pre-release, and establish a viable release plan. The Board will impose any special conditions regarding community release at that time. You may not be released to the community on parole until any proposed release plans are investigated and approved by the Division of Parole and Probation.

\* Restitution: You shall make payments toward any restitution owed if it is determined that you have the ability to pay.

*This document was prepared by JMEADOR at 5/3/2018 9:48 AM*

# STATE OF NEVADA CERTIFICATION OF BOARD OF PAROLE COMMISSIONERS ACTION

## PAROLE RISK ASSESSMENT & GUIDELINE

ANSELMO, MICHAEL P	10999	010999	NNCC-U3-C-5-A	04/18/2018
<b>INMATE NAME</b>	<b>NDOC Number</b>	<b>BOOKING#</b>	<b>LOCATION</b>	<b>DATE</b>

**Parole Risk Assessment:**

Questions	Responses / Scores
1. Age at 1st Arrest	19 years or younger (2): 2
2. Prior Revocations	(0) No Parole or Probation Revocations: 0
3. Employment History	(1) Employed less than full-time/full-time < one year: 1
4. Property Conviction	(2) Auto Theft, Burglary, Forgery, Robbery, Property Crime: 2
5. Drug/Alcohol Use/Abuse	(2) Frequent abuse, serious disruption of functioning: 2
6. Gender	(1) Male: 1
Static Risk Score	8
7. Current Age	(-1) 41 and above: -1
8. Gang Membership	(0) No or Suspect: 0
9. Programming (current term)	(-1) Yes (enter achievement name in comments): -1
10. Disciplinary Conduct	(-1) No disciplinarys: -1
11. Approved Custody Level	(0) Medium: 0
Dynamic Risk Score	-3
Total Score (Static+Dynamic)	5

Offense (used to determine crime severity for risk assessment)	Offense Category	Offense Severity
MURDER 1ST DEGREE	CAT_A	Highest

Total Risk Score:	Guideline Risk	Guideline Recommendation
5	Low Risk	Consider Factors

**The Board determined the following Aggravating Factors are applicable in your case:**

Commission of a crime while incarcerated, on bail, eluding, on escape status, or while under parole or probation supervision;  
Committed I/O while on probation. Committed 2 escapes while incarcerated.  
Impact on victim(s) and/or community: Death of victim.

**The Board determined the following Mitigating Factors are applicable in your case:**

Infraction free for two years or more to hearing month and not in disciplinary segregation: Last disciplinary was in 2007.  
Community and or family support: Support letters in file.  
Pending CS sentence or detainer lodged by other jurisdiction: Has a CS sentence.  
Participation in programs specific to addressing the behavior that led to their incarceration: Programming includes: HSD, AA degree (General Studies), Culinary Arts, Anger Management, BETA, and First Aid.

*This document was prepared by JMEADOR at 5/2/2018 9:48AM*



# EXHIBIT 7

# EXHIBIT 7



**CENTRAL OFFICE**

1677 Old Hot Springs Rd., Ste. A  
Carson City, Nevada 89706  
<http://parole.nv.gov>  
(775) 687-5049  
Fax (775) 687-6736

CHRISTOPHER DERICCO, *Acting Chairman*  
TONY CORDA, *Member*  
ADAM ENDEL, *Member*  
SUSAN JACKSON, *Member*

DARLA FOLEY, *Executive Secretary*

**STATE OF NEVADA**  
**BRIAN SANDOVAL**  
Governor



**LAS VEGAS OFFICE**

4000 S. Eastern Ave., Ste. 130  
Las Vegas, Nevada 89119  
<http://parole.nv.gov>  
(702) 486-4370  
FAX (702) 486-4376

ED GRAY, JR., *Member*  
MICHAEL KEELER, *Member*

**NEVADA BOARD OF PAROLE COMMISSIONERS**

June 27, 2018

Michael Anselmo, NDOC #10999  
Northern Nevada Correctional Center  
P.O. Box 7000  
Carson City, Nevada 89702

Re: Your letter received May 16, 2018.

Mr. Anselmo,

The Board has reviewed your letter requesting a reconsideration of the effective grant date set at your April 18, 2018, Parole Board hearing.

Commissioner Corda went over the different actions that the Board could take at the time of your 4-18-2018 hearing. They determined that there would be no change to the denial period determined at your 11-17-2014 hearing and your subsequent grant effective date.

There will be no change to the order granting parole.

Signed,

A handwritten signature in cursive script that reads "Darla Foley".

Darla Foley  
Executive Secretary

Michael P. Anselmo

# 10999

P.O. Box 7000

Carson City, NV

89702-7000

Connie Bisset Chairman

Nevada Board of Parole

1677 Old Hot Springs Road Suite A

Carson City, NV 89701

On April 18, 2018 I appeared before the board of parole as a court ordered hearing of 2014.

Today I received the paperwork granting parole. However, the effective date is wrong, you got 2-1-18 and the effective date and since, as the board made clear, this was a rehearing for a vacated parole board hearing of 2014, the effective date should be 2-1-15, which would mean I've a year past parole eligibility on my escape.

RECEIVED

MAY 16 2018

STATE OF NEVADA  
PAROLE BOARD

Because of this, I'm requesting that I be granted parole on my escape in Abolition effective A.S.A.P.

It is clear from the paperwork you granted parole at the releasing I understood it is all a paperwork mix up. Please correct.

Reason For Granting  
Parole to Start in  
Abolition.

I've done all I can in prison. Keeping me here serves no purpose. The only program I've not taken is the new start address and it is a rebuke of the programs I've taken. Those programs are designed to change the mind-set mine changed long ago, so it could not help me.

Also right now I have a lot of support and help, psychologically and financial. A lot, most of that comes from my mother who is in her 90's and not in good shape. Delays could strip me of that help.

I want to get out, stay out and become a productive part of society. Please allow that to happen.

Respectfully



# EXHIBIT 8

# EXHIBIT 8

**CENTRAL OFFICE**

1677 Old Hot Springs Rd., Ste. A  
Carson City, Nevada 89706  
<http://parole.nv.gov>  
(775) 687-5049  
Fax (775) 687-6736

CHRISTOPHER DERICCO, *Chairman*  
TONY CORDA, *Member*  
ADAM ENDEL, *Member*  
SUSAN JACKSON, *Member*

DARLA FOLEY, *Executive Secretary*

**STATE OF NEVADA**  
**BRIAN SANDOVAL**  
Governor



**LAS VEGAS OFFICE**

4000 S. Eastern Ave., Ste. 130  
Las Vegas, Nevada 89119  
<http://parole.nv.gov>  
(702) 486-4370  
FAX (702) 486-4376

CHRISTOPHER DERICCO, *Chairman*  
ED GRAY, JR., *Member*  
MICHAEL KEELER, *Member*  
ERIC CHRISTIANSEN, *Member*

**NEVADA BOARD OF PAROLE COMMISSIONERS**

July 31, 2018

Michael Anselmo, NDOC #10999  
Northern Nevada Correctional Center  
P.O. Box 7000  
Carson City, Nevada 89702

Re: Your letter received July 3, 2018.

Mr. Anselmo,

The Board has reviewed your letter requesting a reconsideration of your RPO hearing dated April 18, 2018. As stated in the Boards response dated June 27, 2018, the Boards decision was to maintain the denial period of three years.

Signed,

A handwritten signature in cursive script that reads "Darla Foley".

Darla Foley  
Executive Secretary

Michael P. Brinkman  
10999  
P.O. Box 7000  
Carson City NV  
81702-7000

Onnie. Risher.

On June 28, 2018, I received your denial to change the grant effective date of my April, 17, 2018, hearing which was a rehearing of my 11-14-2014. When the board granted my parole on my rehearing they, by law granted it effective 11-17-2014. That is what a rehearing is. The denial parole period of 11-14-2014 was vacated by the NV Supreme Court.

Check with your attorneys. Of course we will get an order from the court but why waste the states money. The law is the law. Please follow it. You've already proven you can get blood out of a rock with me. I'm 46 years enough for you.

RECEIVED

JUL 03 2018

STATE OF NEVADA  
PAROLE BOARD

Respectfully  
Mike Brinkman

CONNIE BIRLEE  
Nevada Board of Parole

I filed an appeal at my April 18, 2018  
parole board hearing and as of June 26, 2018  
you've not responded.

I was granted parole by all members on  
a 2014 court order rehearing. I should have  
started my last sentence on 2-1-15, because  
of the 2014 rehearing having granted parole.  
You've never changed my paperwork to reflect  
the new info.

Can you please do that.

Thank You

M. B. Birlee

This appeal is to correct the date error  
of my last sentence start date. You've got  
it 2-1-18, instead, it should be 2-1-15.

RECEIVED

JUN 28 2018

STATE OF NEVADA  
PAROLE BOARD

Michael P. Anselmo

10999

P.O. Box 2000

Carson City, NV 89702-2000



REC'D & FILED  
2018 SEP 10 PM 3:35  
SUSAN MERRIWETHER  
BY C. COO - CLERK  
DEPUTY

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR CARSON CITY

MICHAEL P. ANSELMO

PETITIONER,

VS

CONNIE BISBEE, TONY COCCA,  
SUSAN JACKSON, AND THE  
STATE OF NEVADA BOARD  
OF PAROLE

REAL PARTIES OF INTEREST.

CASE NO: 180C002241B

DEPT NO: I

WRIT OF MANDAMUS

This is a writ of mandamus against the Nevada Board of Parole seeking them to show cause as to why they flatly refuse to comply with the Nevada Supreme Court Order of June 29, 2017 (see exhibit A) also, (see exhibit B) and seeking them to show cause as to why they should not be held in contempt of court.

This writ of mandamus is also seeking an order from this honorable



COURT ORDERING THE NEVADA BOARD OF PAROLE  
TO FULLY COMPLY WITH THE NEVADA SUPREME  
COURT ORDER CONCERNING CASE 67619  
EXHIBIT A THAT WAS RULED ON JUNE 29, 2017.

### ISSUE AT HAND

ON JUNE 20, 2017, THE NEVADA SUPREME  
COURT ORDERED THE NEVADA BOARD OF PAROLE  
TO VACATE ITS NOVEMBER 17, 2014 DENIAL OF  
PAROLE AND CONDUCT A NEW HEARING IN  
WHICH NAC 213.518 (2) (K) IS NOT  
APPLIED. (SEE EXHIBIT A)

THE NEVADA BOARD OF PAROLE ON  
APRIL 18, 2018 HELD THE COURT ORDERED  
REHEARING AND GRANTED PAROLE.

HOWEVER AS EXHIBIT B SHOWS, THE  
BOARD OF PAROLE FAIL TO VACATE ITS NOVEMBER  
17, 2014 RULING OF DENIAL FOR 3 YEARS.

### ARGUMENT

VACATE IN LAW SIMPLE MEANS TO  
MAKE VOID. THE COURT ORDER WAS CLEAR,  
VACATE ITS HEARING OF NOVEMBER 17, 2014  
AND HOLD A NEW ONE.

WHEN THE NEVADA BOARD OF  
PAROLE HELD ITS COURT ORDERED REHEARING  
ON APRIL 18, 2018 TO REPLACE THE VACATED  
HEARING IT DECISION TO GRANT PAROLE

should have been made effective  
February 1, 2015 since it was a new  
hearing for November 2014.

The Nevada Board of Parole made  
their rehearing ruling and decision  
effective April 18, 2018. They did in  
fact keep in place the 2014 3 year  
denial. The Board never complied  
with the court order (see ex. B)

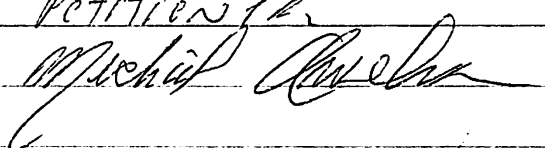
### Conclusion

There can be no doubt that the  
Nevada Board of Parole failed to  
comply, or at least, understand the  
Nevada Supreme Court order and  
intent. The Supreme Court order of  
a rehearing only has meaning if  
in fact the rehearing decision is effective  
November 17, 2014. The order from  
the Supreme Court is senseless unless  
it is treated as a true (new) 2015  
hearing.

The Nevada Board of Parole decision of April 18, 2018 must be applied effective November 17, 2014 since the April hearing was a new hearing for the vacated 2014 hearing.

When on April 18, 2018 the Nevada Board of Parole made it clear, this hearing is your (petitioner) new 2014 hearing the action taken must be effective just as if it was 2014. Petitioner should have started his final sentence February 1, 2015 not February 1, 2018.

Respectfully submitted this  
22 day of August 2018.

Petitioner  
  
Michael Anselmo

Declarational

Under the threat of perjury, the petitioner, Michael P. Anselmo, hereby declares, he has read the attached Writ of Mandamus, and swears all statements of fact are true, and all claims made herein he believe true and correct.

Dated this 22 day of August 2018.

*Michael P. Anselmo*  
Michael P. Anselmo

Certificate of Service

The petitioner, Michael P. Anselmo, hereby swears and declares on the 22 day of August 2018 he placed into the mail, with ample postage ~~at~~ a true and correct copy of his Writ of Mandamus addressed to;

Nevada Attorney General  
100 North Carson Street  
Carson City, NV 89201-4717

Respectfully

*Michael P. Anselmo*  
Michael P. Anselmo

criteria, we believe it essentially abrogates an inmate's right to parole eligibility and, thus, infringes on a state-created liberty interest.

Undoubtedly, the Parole Board is the sole authority with respect to decisions regarding the grant or denial of parole. However, the Legislature created this Board to operate within certain parameters. We do not believe the Legislature established the Board and intended for it to render decisions without any means of accountability. *Id.* at 111. Accordingly, the court determined the inmate was entitled to relief in the form of a new parole hearing. *Id.* at 112.

While not factually identical, *Cooper* indicates that while the decision to grant or deny parole is not generally reviewable, the Board is still obligated to act within established parameters. Notably, the error in this case is not related to the weight or sufficiency of the evidence underlying any of the criteria relevant to the decision to deny parole. Rather, the Board's internal guidelines clearly indicated that the aggravator set forth in NAC 213.518(2)(k) should not be used in those cases where the inmate is serving a life sentence for murder. Notably, the decision of the Board was extremely close, with the three members voting to grant parole. Under these limited circumstances, we conclude that the Board's consideration of the inapplicable aggravator in NAC 213.518(2)(k) infringed upon Anselmo's statutory right to receive proper consideration for parole. Given the Board's clear error, we conclude that extraordinary relief is necessary in this instance.

#### CONCLUSION

Parole is an act of grace in Nevada, and this court will not disturb a decision to deny parole for any reason authorized by statute. Nonetheless, eligible Nevada inmates have a statutory right to be considered for parole by the Board. This court cannot say that an inmate receives proper consideration when the Board's decision is based in part on an inapplicable aggravating factor.

Therefore, we grant Anselmo's petition for extraordinary relief, and direct the clerk of this court to issue a writ of mandamus instructing the Board to vacate its November 17, 2014, denial of parole and conduct a new parole hearing in which NAC 213.518(2)(k) is not applied.

/s/ Stiglich, J.

Stiglich

We concur:

/s/ Hardesty, J.

Hardesty

/s/ Parraguirre, J.

Parraguirre

#### Footnotes

1

As in Nevada, parole in South Carolina is a privilege, not a right. *Cooper*, 661 S.E.2d at 110. However, inmates who are eligible for parole are entitled by statute to a yearly review by the parole board. S.C. Code Ann. § 24-21-620 (2007).

**CENTRAL OFFICE**

1677 Old Hot Springs Rd., Ste. A  
Carson City, Nevada 89706  
<http://parole.nv.gov>  
(775) 687-5049  
Fax (775) 687-6736

CHRISTOPHER DERICCO, *Chairman*  
TONY CORDA, *Member*  
ADAM ENDEL, *Member*  
SUSAN JACKSON, *Member*

DARLA FOLEY, *Executive Secretary*

**STATE OF NEVADA**  
BRIAN SANDOVAL  
Governor



**LAS VEGAS OFFICE**

4000 S. Eastern Ave., Ste. 130  
Las Vegas, Nevada 89119  
<http://parole.nv.gov>  
(702) 486-4370  
FAX (702) 486-4376

CHRISTOPHER DERICCO, *Chairman*  
ED GRAY, JR., *Member*  
MICHAEL KEELER, *Member*  
ERIC CHRISTIANSEN, *Member*

**NEVADA BOARD OF PAROLE COMMISSIONERS**

July 31, 2018

Michael Anselmo, NDOC #10999  
Northern Nevada Correctional Center  
P.O. Box 7000  
Carson City, Nevada 89702

Re: Your letter received July 3, 2018.

Mr. Anselmo,

The Board has reviewed your letter requesting a reconsideration of your RPO hearing dated April 18, 2018. As stated in the Board's response dated June 27, 2018, the Board's decision was to maintain the denial period of three years.

Signed,

A handwritten signature in cursive script that reads "Darla Foley".

Darla Foley  
Executive Secretary

Ext B

1 Case No.: 18 OC 00224 1B

2 Dept. No.: 1

REC'D & FILED

2018 SEP 12 AM 8:27

SUSAN MERRIWETHER  
CLERK

BY  CLERK

3  
4  
5  
6 IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7 IN AND FOR CARSON CITY

8  
9 MICHAEL P. ANSELMO,

10 Petitioner,

**ORDER TO RESPOND**

11 vs.

12 CONNIE BISBEE, TONY COROLA, SUSAN  
13 JACKSON, AND THE STATE OF NEVADA  
14 BOARD OF PAROLE,

15 Respondent.

16  
17 This matter comes before the Court pursuant to a Petition for Writ of Mandamus filed by  
18 Petitioner on September 10, 2018. In reviewing the Petitioner's Petition for Writ of Mandamus,  
19 the Court has concluded that a response would assist this Court. Therefore, good cause  
20 appearing,  
21


22 IT IS HEREBY ORDERED that the Office of the Nevada Attorney General shall, within  
23 thirty (30) days after the date of this order, answer or otherwise respond to the petition and file a  
24 response in accordance with the provisions of NRS 34.150 to 34.310, inclusive. A copy of the  
25 Petition for Writ of Mandamus shall be provided with this Order to the Office of the Nevada  
26 Attorney General.  
27

28 ///

Upon filing said response, Respondent shall file a request for submission with the Clerk to ensure the matter is brought to the attention of the undersigned Judge.

**IT IS SO ORDERED.**

Dated this 12<sup>th</sup> day of September, 2018.

  
JAMES T. RUSSELL  
DISTRICT JUDGE



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Michael P. Anselmo # 10999  
Northern Nevada Correctional Center\  
P.O. Box 7000  
Carson City, NV 89702

D. Judd, Esq.  
Law Clerk, Dept. 1

KIRK B. LENHARD, ESQ., Nevada Bar No. 1437  
klenhard@bhfs.com  
EMILY A. ELLIS, ESQ., Nevada Bar No. 11956  
eellis@bhfs.com  
BROWNSTEIN HYATT FARBER SCHRECK, LLP  
100 North City Parkway, Suite 1600  
Las Vegas, NV 89106-4614  
Telephone: 702.382.2101  
Facsimile: 702.382.8135

*Attorneys for Petitioner Michael Anselmo*

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SUSAN MERRIWETHER  
V. Alegria CLERK  
BY \_\_\_\_\_ DEPUTY

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR CARSON CITY

MICHAEL P. ANSELMO,  
Petitioner,

v.

CONNIE BISBEE; TONY COROLA;  
SUSAN JACKSON; and THE STATE OF  
NEVADA, BOARD OF PAROLE,  
Respondent.

CASE NO.: 18 OC 00225-1B  
DEPT NO.: 1

**AFFIRMATION**  
Pursuant to NRS 239B.030/603A.040  
(Initial Appearance)

The undersigned does hereby affirm that upon the filing of additional documents in the above matter, an Affirmation will be provided **ONLY** if the document contains a social security number (NRS 239B.030) or "personal information" (NRS 603A.040) which means a natural person's first name or first initial and last name in combination with any one or more of the following data elements:

1. Social Security number.
2. Driver's license number or identification card number.
3. Account number, credit card number or debit card number, in combination with any required security code, access code or password that would permit access to the person's financial account.

17614552

1 The term does not include publicly available information that is lawfully made available to  
2 the general public.

3 DATED this 31<sup>st</sup> day of October, 2018.

4 BROWNSTEIN HYATT FARBER SCHRECK, LLP

5  
6 BY: 

KIRK B. LENHARD, ESQ., Nevada Bar No. 1437  
klenhard@bhfs.com

7 EMILY A. ELLIS, ESQ., Nevada Bar No. 11956  
eellis@bhfs.com

8 BROWNSTEIN HYATT FARBER SCHRECK, LLP  
9 100 North City Parkway, Suite 1600  
10 Las Vegas, NV 89106-4614  
11 Telephone: 702.382.2101  
12 Facsimile: 702.382.8135

13 *Attorneys for Petitioner Michael Anselmo*  
14  
15  
16  
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CERTIFICATE OF SERVICE

I hereby certify that on the 31<sup>st</sup> day of October, 2018, I served a true and correct copy of the foregoing **AFFIRMATION AND INITIAL APPEARANCE** via United State Mail, first class postage prepaid, as Las Vegas, Nevada, properly addressed to the following at the last known address of said individuals:

Office of the Nevada Attorney General  
100 N. Carson Street  
Carson City, NV 89701

*Attorneys for Respondents*

  
an employee of Brownstein Hyatt Farber Schreck, LLP

REC'D & FILED

2018 NOV 29 AM 10:23

SUSAN NEERWETHER  
CLERK

BY \_\_\_\_\_  
DEPUTY

1 KIRK B. LENHARD, ESQ., Nevada Bar No. 1437  
klenhard@bhfs.com  
2 EMILY A. ELLIS, ESQ., Nevada Bar No. 11956  
eellis@bhfs.com  
3 MACKENZIE WARREN, ESQ., Nevada Bar No. 14642  
mwarren@bhfs.com  
4 BROWNSTEIN HYATT FARBER SCHRECK, LLP  
100 North City Parkway, Suite 1600  
5 Las Vegas, NV 89106-4614  
Telephone: 702.382.2101  
6 Facsimile: 702.382.8135

7 *Attorneys for Petitioner Michael P. Anselmo*

8  
9 **IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
10 **IN AND FOR CARSON CITY**

11 MICHAEL P. ANSELMO,

12 Petitioner,

13 v.

14 CONNIE BISBEE; TONY COROLA;  
15 SUSAN JACKSON; and THE STATE OF  
NEVADA, BOARD OF PAROLE,

16 Respondent.

CASE NO.: 18 OC 00224 1B  
DEPT NO.: 1

**STIPULATION AND ORDER TO  
SUPPLEMENT THE RECORD**

17 Petitioner Michael P. Anselmo ("Petitioner"), by and through his counsel of record Kirk  
18 B. Lenhard, Esq., Emily A. Ellis, Esq., and Mackenzie Warren, Esq., of the law firm of  
19 Brownstein Hyatt Farber Schreck, LLP; and Respondents Connie Bisbee; Tony Corola; Susan  
20 Jackson; and The State of Nevada, Board of Parole ("Respondents"), by and through their counsel  
21 of record Jeffrey M. Conner, Esq., of the Nevada Attorney General's Office, hereby stipulate and  
22 agree to the following:

23 1. Petitioner filed his Writ of Mandamus on September 10, 2018 ("Writ"), relating to  
24 the Nevada Board of Appeals RPO Hearing conducted on April 18, 2018 ("RPO Hearing");

25 2. Upon retaining counsel in this matter, Petitioner had a transcript prepared of the  
26 RPO Hearing ("Transcript"). A true and accurate copy of the Transcript is attached hereto as  
27 Exhibit A;

28 3. After seeking an extension of time to respond to the Writ, Respondents filed their

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1 Answer to the Writ, wherein they attach a CD of the RPO Hearing; and


2 4. The parties agree that the Transcript will assist this Court in ruling on the issues  
3 before this Court.

4 NOW, THEREFORE, the parties hereby stipulate and agree, subject to this Court's  
5 approval, to supplement the record with the Transcript of the April 18, 2018, Nevada Board of  
6 Appeals RPO Hearing.

7 **IT IS SO STIPULATED.**

8 DATED this 20<sup>th</sup> day of November, 2018.


9 BROWNSTEIN HYATT FARBER  
10 SCHRECK, LLP

11 BY:   
12 KIRK B. LENHARD, ESQ., No. 1437  
13 [klenhard@bhfs.com](mailto:klenhard@bhfs.com)  
14 EMILY A. ELLIS, ESQ., No. 11956  
15 [eellis@bhfs.com](mailto:eellis@bhfs.com)  
16 MACKENZIE WARREN, ESQ., No. 14642  
17 [mwarren@bhfs.com](mailto:mwarren@bhfs.com)  
18 100 North City Parkway, Suite 1600  
19 Las Vegas, NV 89106-4614  
20 Telephone: 702.382.2101  
21 Facsimile: 702.382.8135

22 *Attorneys for Petitioner Michael P. Anselmo*

DATED this 20<sup>th</sup> day of November, 2018.

STATE OF NEVADA  
OFFICE OF THE ATTORNEY GENERAL

BY:   
ADAM PAUL LAXALT  
Attorney General  
JEFFREY M. CONNOR, Bar No. 11543  
Assistant Solicitor General  
[jconner@ag.nv.gov](mailto:jconner@ag.nv.gov)  
100 North Carson Street  
Carson City, NV 89701-4717  
Telephone: 775.684.120  
Facsimile: 775.684.1108

*Attorneys for Respondents*


23 **IT IS SO ORDERED.**

*Dated November 29, 2018*

  
James T. Russell  
District Court Judge

24 Respectfully Submitted by:

25 BROWNSTEIN HYATT FARBER SCHRECK, LLP

26 By:   
27 KIRK B. LENHARD, ESQ., No. 1437  
28 EMILY A. ELLIS, ESQ., No. 11956  
MACKENZIE WARREN, ESQ., No. 14642  
100 North City Parkway, Suite 1600  
Las Vegas, NV 89106-4614  
Telephone: 702.382.2101  
*Attorneys for Petitioner Michael P. Anselmo*

17795269

---

**EXHIBIT A**

**EXHIBIT A**

Audio Transcription of State of Nevada Board of Appeals RPO Hearing

In re: Michael Anselmo v. State of Nevada, Board of Appeals

04/18/2018



OASIS  
REPORTING SERVICES

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AUDIO TRANSCRIPTION OF STATE OF NEVADA

7

BOARD OF APPEALS RPO HEARING

8

IN RE: MICHAEL ANSELMO

9

V.

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STATE OF NEVADA, BOARD OF APPEALS

11

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APRIL 18, 2018

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Proceedings recorded by electronic sound recording;

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transcript produced by transcription service.

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Transcribed by: Blanca I. Cano, CCR No. 861, RPR

1	Appearances:	Commissioner Tony Corda
2		Commissioner Susan Jackson
3		Chairwoman Connie Bisbee
4		Michael Anselmo
5		Unidentified Female Speaker
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## 1 P R O C E E D I N G S

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3

4 COMMISSIONER CORDA: Hello. Good morning,  
5 Mr. Anselmo.

6 MR. ANSELMO: Good morning.

7 COMMISSIONER CORDA: How are you today?

8 MR. ANSELMO: Nervous.

9 COMMISSIONER CORDA: No need to be nervous.  
10 You've been through these before, haven't you?

11 MR. ANSELMO: Yes, sir.

12 COMMISSIONER CORDA: Okay.

13 MR. ANSELMO: (Indiscernible) review.

14 COMMISSIONER CORDA: Well, why don't you go  
15 ahead and give us your name and your prison number for  
16 the record and we'll just go ahead and proceed.

17 MR. ANSELMO: Mike Anselmo, 10999.

18 COMMISSIONER CORDA: Thank you.

19 I'm Commissioner Corda, along with Commissioner  
20 Jackson --

21 COMMISSIONER JACKSON: Good morning.

22 COMMISSIONER CORDA: -- and Chairman Bisbee.

23 CHAIRMAN BISBEE: Good morning.

24 COMMISSIONER CORDA: And today is an RPO  
25 hearing, review previous order hearing, on a hearing

1 that was conducted back in 2014 in November. And that  
2 is based upon a court order that's telling us to do that  
3 and not utilizing, in particular, aggravating factors  
4 that we used back in that hearing.

5 Is that how you understand it today?

6 MR. ANSELMO: Yes, but, Major Corda, I already  
7 got a parole on this case.

8 COMMISSIONER CORDA: You absolutely did, but  
9 let me explain a little further.

10 Before I do that, though, I just want to make  
11 sure that you were properly notified for this hearing.

12 MR. ANSELMO: (Indiscernible.)

13 COMMISSIONER CORDA: Let me get it up there.

14 MR. ANSELMO: That was --

15 COMMISSIONER CORDA: Is that your signature?

16 MR. ANSELMO: Yes, sir.

17 COMMISSIONER CORDA: All right. So what's  
18 happening, Mr. Anselmo, is because of that court order,  
19 the courts are telling us that we have to have another  
20 hearing without that particular aggravating factor, so  
21 that's what we're doing.

22 Now, we understand that you have been granted  
23 parole to your consecutive sentence subsequent to that,  
24 but we are complying with the court order to -- to  
25 rehear the original 2014 hearing.

1           Now, what can happen as a result of this is we  
2           can maintain the previous grant that we had already  
3           granted you parole effective on the date that we granted  
4           you or we can grant you effective back when you were  
5           eligible on the 2014 hearing, which was in  
6           February 2015.

7           You understand?

8           MR. ANSELMO: Yes (indiscernible).

9           COMMISSIONER CORDA: So there's some different  
10          options that we can take.

11          MR. ANSELMO: Oh, I thought that -- my  
12          attorneys were under the impression that was already  
13          done. My parole was effective technically 2000 --

14          COMMISSIONER CORDA: That's absolutely not  
15          correct. No.

16          MR. ANSELMO: Yeah. That -- that was -- we  
17          thought that this was -- the last hearing was the  
18          rehearing.

19          COMMISSIONER CORDA: No. The last hearing was  
20          because you were eligible based upon that prior denial  
21          of parole for that point to 2007 -- basically  
22          February 2018. So that's when we granted you back in  
23          the November 2017 hearing.

24          So this --

25          MR. ANSELMO: Okay. Gotcha.

1 COMMISSIONER CORDA: -- this hearing is a  
2 review of previous order for that 2014 hearing is what  
3 the court order told us to do.

4 So you understand what's happening?

5 MR. ANSELMO: Yes.

6 COMMISSIONER CORDA: We did grant you parole.  
7 You have a grant effective February 2018, which would be  
8 when you would roll over to your next term; correct?  
9 Your --

10 MR. ANSELMO: Yes, sir.

11 COMMISSIONER CORDA: -- escapee term, that's  
12 happened already.

13 MR. ANSELMO: Yes, sir.

14 COMMISSIONER CORDA: What we -- we could decide  
15 is just to maintain that grant like we did or we could  
16 decide to give you the grant back when you were  
17 eligible, 2015.

18 MR. ANSELMO: Yes, sir.

19 COMMISSIONER CORDA: Okay. So could you tell  
20 us any reason why we should decide to give you the  
21 parole in 2015 versus when we granted in 2017?

22 MR. ANSELMO: Did --

23 COMMISSIONER CORDA: Other than the fact that  
24 we did remove your aggravating factor, made your crime  
25 more serious, we've done that, so...

1 MR. ANSELMO: No. I mean, I was the same in  
2 2014 or 2015 as I was in 2018. I mean, I've been  
3 programmed. The only thing different between then and  
4 now --

5 COMMISSIONER CORDA: Uh-huh.

6 MR. ANSELMO: -- was the time -- was the three  
7 years.

8 COMMISSIONER CORDA: All right. Okay.

9 All right. I'm going to go over your risk  
10 assessment real quick with you just to make sure that  
11 it's accurate, just get familiar with that. Just listen  
12 in real close and tell me if I need to make any changes.

13 You were 13 when you were first arrested for  
14 anything in your life. You have no revocations of  
15 parole or probation. You have a limited employment  
16 history prior to committing the crime. You are a  
17 property offender and a drug or alcohol abuser.

18 MR. ANSELMO: No, sir.

19 COMMISSIONER CORDA: At the time, were you?

20 MR. ANSELMO: No. I've never used drugs or  
21 alcohol.

22 COMMISSIONER CORDA: Well, I think we've  
23 covered that at your last hearing as well --

24 MR. ANSELMO: Yeah. You --

25 COMMISSIONER CORDA: -- where it talks about

1 your -- your PSI saying you smoked marijuana with LSD  
2 four times a week, used marijuana, LSD, mescaline since  
3 age 12.

4 MR. ANSELMO: Excuse me. I've never had a PSI.  
5 PSI didn't exist when I fell.

6 COMMISSIONER CORDA: Well, I see one right  
7 here --

8 MR. ANSELMO: They didn't --

9 COMMISSIONER CORDA: -- a full sentence report.

10 MR. ANSELMO: Yeah. Yeah, pre- -- those didn't  
11 start till 1986. I've never had a PSI done.

12 COMMISSIONER CORDA: Well, I'm looking at one  
13 right here dated August 10th --

14 MR. ANSELMO: I -- I know.

15 COMMISSIONER CORDA: -- 1970 -- 1972. Looks  
16 like that, so...

17 MR. ANSELMO: They didn't exist. Somebody made  
18 one up.

19 CHAIRMAN BISBEE: We have one here.

20 COMMISSIONER CORDA: Well, I don't know.

21 (Indiscernible) that's the one they used.

22 MR. ANSELMO: And I don't know (indiscernible).  
23 Yeah. They didn't even exist in 1972. No -- there was  
24 no such thing. I was sentenced by a jury. I was never  
25 sentenced by a -- you know, my jury sentenced me.



1 MS. BISBEE: Post-sentence report  
2 (indiscernible).

3 COMMISSIONER CORDA: They -- they, you know,  
4 call it a post-sentence report.

5 MS. BISBEE: It's a post-sentence report.

6 COMMISSIONER CORDA: But they did it.

7 MR. ANSELMO: And I don't know when they -- I  
8 was never interviewed for it or never talked to about  
9 it. But I -- I've never -- I -- I did -- I smoked grass  
10 one time. I went -- I was allergic to it, so I could  
11 never do it again.

12 COMMISSIONER CORDA: Uh-huh, yeah.

13 MR. ANSELMO: And what was the other drug?

14 COMMISSIONER CORDA: Well, it said --

15 MR. ANSELMO: I've never drank.

16 COMMISSIONER CORDA: It says here --

17 MR. ANSELMO: I've never drank in my life.

18 COMMISSIONER CORDA: -- in this section, "The  
19 subject indicated to this officer," so apparently he's  
20 saying you talked to him, "that he had used marijuana,  
21 LSD, mescaline since the age of 12 on weekends for about  
22 five years and more recently had smoked marijuana and  
23 combined with it LSD about three or four times a week."

24 MR. ANSELMO: No. No, sir. No way. No way  
25 did I do any of that.

1 COMMISSIONER CORDA: That's what we have in the  
2 records, Mr. Anselmo.

3 MR. ANSELMO: I under- -- I understand.

4 COMMISSIONER CORDA: That's why we're using  
5 that. Okay? So I -- that's why we're using it at this  
6 point. Okay?

7 MR. ANSELMO: Yes. I understand. Yes.

8 COMMISSIONER CORDA: All right.

9 MR. ANSELMO: And I -- I've never drank. I --  
10 I never did drink at all.

11 COMMISSIONER CORDA: Well, I mean, this says  
12 drugs or alcohol. Just that's one or the other. Okay?

13 MR. ANSELMO: Yeah.

14 COMMISSIONER CORDA: You're not a gang member.  
15 You did obtain your high school diploma, a couple of A-  
16 -- you know, degrees, so you get a point off on the  
17 assessment.

18 You have a -- your last disciplinary was back  
19 in 2007, so it's been more than a year, and you're  
20 currently in medium custody.

21 So all that sounds accurate to you?

22 MR. ANSELMO: Yes, sir.

23 COMMISSIONER CORDA: Okay. You've got five  
24 points. Same -- same points as you had during your last  
25 hearing.

1                   Guideline recommendation is to consider  
2           factors. These aggravating factors: impact on your  
3           victim and you did commit a crime while under  
4           supervision or while in prison, those two escapes.

5           And --

6                   MR. ANSELMO: (Indiscernible.)

7                   COMMISSIONER CORDA: -- mitigation, you have an  
8           infraction, for instance, in 2007, community support,  
9           support letters in your file, paying the consecutive  
10          sentence, participating in programs, which are helpful  
11          to your situation.

12                   And those basically are the same mitigating  
13          factors that were available to us back in the 2014  
14          hearing.

15                   MR. ANSELMO: Yes, sir.

16                   COMMISSIONER CORDA: Okay. Are there any  
17          questions?

18                   MS. BISBEE: No questions.

19                   COMMISSIONER CORDA: Is there anything else,  
20          Mr. Anselmo, that could -- that you could help us out  
21          with?

22                   MR. ANSELMO: All I can say is I -- I hope you  
23          will grant it back to 2015 so I can, you know, go to a  
24          parole board as soon as possible on my escape charge and  
25          be able to spend some time with my family.

1           My mom's 96. She hasn't got much longer to go.  
2           Apparently, my brother's in bad health now. I'm not  
3           sure how bad that is.

4           I've done everything I can to improve myself.  
5           Sitting in prison is -- I'm working my program. I mean,  
6           I do everything I can in prison.

7           COMMISSIONER CORDA: Uh-huh.

8           MR. ANSELMO: But I'd like to be able to get  
9           out and do something worthwhile to make up for  
10          everything I've done.

11          COMMISSIONER CORDA: Uh-huh.

12          MR. ANSELMO: To work and become productive in  
13          society --

14          COMMISSIONER CORDA: Right.

15          MR. ANSELMO: -- and spend a little time with  
16          my family.

17          COMMISSIONER CORDA: Right.

18          So now, you know, you are currently on the  
19          escape offense, and are you getting ready? Are you  
20          taking reentry? Are you doing anything while you're --  
21          while you're there still?

22          MR. ANSELMO: I'm working, yes, sir. I've  
23          taken reentry before. I've taken, you know -- you know,  
24          those courses before on my other sentence, and right now  
25          they don't have -- I'm not eligible for reentry as it is

1 right now.

2 COMMISSIONER CORDA: Why not?

3 MR. ANSELMO: You have to be -- how many months  
4 with the --

5 FEMALE SPEAKER: 24.

6 MR. ANSELMO: Pardon me?

7 FEMALE SPEAKER: 24.

8 MR. ANSELMO: 24 months.

9 COMMISSIONER CORDA: You have to be within --

10 MR. ANSELMO: 24.

11 COMMISSIONER CORDA: -- 24 months?

12 MR. ANSELMO: Yes, sir.

13 COMMISSIONER CORDA: You have a parole  
14 eligibility date of October 2019 right now.

15 MR. ANSELMO: October 2019 -- nothing was  
16 calculate -- nothing was calculated until when?

17 FEMALE SPEAKER: Just recently.

18 MR. ANSELMO: Yeah, just recently.

19 COMMISSIONER CORDA: Okay.

20 MR. ANSELMO: Yeah. We were thinking 27 -- 27  
21 months --

22 COMMISSIONER CORDA: Well, just to let you  
23 know, it's within that time frame now, so they probably  
24 have different reentry programs from when you took it  
25 the last time. It might be something you'd be

1 interested in.

2 I mean, it's been a long time since you've been  
3 in the community; right?

4 MR. ANSELMO: Yes, sir. I -- and that's why I  
5 have a lot of help when I get out, you know. I've got  
6 support.

7 COMMISSIONER CORDA: Okay. Well, we don't have  
8 any other questions, Mr. Anselmo.

9 So what's going to happen now is we are going  
10 to discuss your case as usual, and you'll get the  
11 results of the decision of the Board after majority  
12 decides. Okay?

13 MR. ANSELMO: Okay. Now, I'm not at any risk  
14 of losing my parole, am I --

15 COMMISSIONER CORDA: Absolutely --

16 MR. ANSELMO: -- for 2008?

17 COMMISSIONER CORDA: Absolutely -- absolutely  
18 not. We're just -- we're just looking at you to either  
19 maintain your parole grant as is or to revert it back to  
20 when you were eligible in 2015.

21 MR. ANSELMO: Oh, okay.

22 COMMISSIONER CORDA: Okay?

23 MR. ANSELMO: Thank you very much.

24 COMMISSIONER CORDA: All right. Take care.

25 MR. ANSELMO: Thank you.

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(End of recording.)

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## 1 REPORTER'S CERTIFICATE

2 STATE OF NEVADA )  
3 ) ss:  
4 COUNTY OF CLARK )

5 I, Blanca I. Cano, CCR No. 861, RPR, do hereby  
6 declare:

7 That I well and truly reported from an audio  
8 recording the enclosed proceedings;

9 That I thereafter transcribed my said shorthand  
10 notes into typewriting and that the typewritten  
11 transcript is a complete, true, and accurate  
12 transcription of my said shorthand notes to the best of  
13 my ability.

14 I further certify that I am not a relative or  
15 employee of counsel, of any of the parties, nor a  
16 relative or employee of the parties involved in said  
17 action, nor a person financially interested in the  
18 action.

19 IN WITNESS WHEREOF, I have set my hand in my  
20 office in the County of Clark, State of Nevada, this  
21 1st day of October 2018.

22  
23  
24  
25  
Blanca I. Cano, CCR No. 861, RPR



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NOV 19 2018

BUREAU OF CRIMINAL JUSTICE  
SPECIAL PROSECUTIONS DIVISION

**IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR CARSON CITY**

MICHAEL P. ANSELMO,

Petitioner,

vs.

CONNIE BISBEE, TONY COROLA, SUSAN  
JACKSON, AND THE STATE OF NEVADA  
BOARD OF PAROLE,

Respondents.

Case No. 18 OC 00224 1B

Dept. No. 1

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

Before the Court for a decision is a petition for writ of mandamus. Having reviewed the petition and the answer submitted by Respondents, this Court enters the findings of fact and conclusions of law that follow and orders that the petition be denied.

**FINDINGS OF FACT**

1. Petitioner was convicted of murder in 1972 and sentenced to life without a possibility of parole.
2. The Pardons Board subsequently commuted Petitioner's sentence to allow Petitioner the opportunity for parole.
3. The Nevada Board of Parole Commissioners (Parole Board) denied parole on Petitioner's sentence for murder after conducting a hearing in November of 2014.
4. Petitioner filed a writ of habeas corpus challenging the Parole Board's decision in this Court.
5. This Court dismissed the petition for failure to state cognizable claims for relief.

1           6.     Petitioner appealed this Court's decision, and the Nevada Supreme Court appointed  
2 counsel for supplemental briefing.

3           7.     After briefing and argument, the Nevada Supreme Court issued its opinion in *Anselmo v.*  
4 *Bisbee*, 133 Nev. \_\_\_, 396 P.3d 848 (2017), which held that Nevada courts may not second-guess the  
5 Parole Board's decisions exercising its statutory authority to grant or deny parole, but also that the Parole  
6 Board must follow its internal guidelines when conducting parole hearings.

7           8.     In light of that decision, the Nevada Supreme Court determined that Petitioner was entitled  
8 to a new parole hearing because the Parole Board improperly considered an aggravating factor that, on  
9 its face, did not apply to Petitioner's case.

10          9.     The Court simultaneously issued an order directing the Clerk to convert the appeal into a  
11 writ proceeding and issued a writ of mandamus to the Parole Board.

12          10.    The writ directed the Parole Board to vacate its 2014 decision and conduct a new hearing  
13 where NAC 213.518(2)(k) is not applied as an aggravating factor.

14          11.    The writ did not require the Parole Board to consider the issue of parole release  
15 retroactively.

16          12.    The writ did not require the Parole Board to grant Anselmo parole.

17          13.    On November 16, 2017, the Parole Board conducted a parole hearing where it granted  
18 Petitioner parole, and ordered that Petitioner be paroled from his sentence for murder effective February  
19 1, 2018.

20          14.    On April 18, 2018, the Parole Board conducted another hearing called a Review Prior  
21 Order (RPO) hearing.

22          15.    At the RPO hearing, the Parole Board explained to Petitioner that the purpose of the  
23 hearing was to reconsider the November 2014 denial while excluding consideration of NAC  
24 213.518(2)(k) as an aggravating factor.

25          16.    The Parole Board further explained that it had two options at the RPO hearing: (1)  
26 maintain the recent grant of parole effective February 1, 2018, or (2) reverse the November 2014 denial  
27 and grant parole effective February 1, 2015.

17. The Parole Board elected to maintain the recent parole grant effective February 1, 20

18. Petitioner sought reconsideration the Parole Board's decision, asserting that he entitled to a retroactive grant of parole effective February 1, 2018.

19. The Parole Board denied reconsideration, noting that it had explained to petitioner different actions that the Board could take” during the ROP hearing and that the Parole Board “determined that there would be no change to the denial period determined at your 11-17-2014 hearing and your subsequent grant effective date.”

20. Petitioner sought reconsideration from the Parole Board a second time.

21. The Parole Board again denied reconsideration, stating "the Boards [sic] decision was to maintain the denial period of three years."

22. Petitioner filed a petition for writ of mandamus arguing that the Parole Board had failed to comply with the Nevada Supreme Court's writ because it did not retroactively grant Petitioner parole effective February 1, 2015.

23. This Court ordered a response to the petition.

24. Respondents filed an answer arguing that the Parole Board's actions in reconsidering denial of parole from November 2014 without consideration of NAC 213.518(2)(k) as an aggravating factor satisfied the terms of the Nevada Supreme Court's writ.

### CONCLUSIONS OF LAW

1. Mandamus is an extraordinary remedy, and the decision to entertain a petition lies w  
the discretion of the court. *Hickey v. District Court*, 105 Nev. 729, 731, 782 P.2d 1336, 1338 (1989

2. A court may issue a writ of mandamus “to compel the performance of an act which law especially enjoins as a duty resulting from an office, trust, or station,” or to control a manifest abuse of or arbitrary or capricious exercise of discretion. NRS 34.160; *Rugamas v. Eighth Jud. Dist. Ct.*, 129 Nev. 424, 430, 305 P.3d 887, 892 (2013)(citing *Round Hill Gen. Improvement Dist. v. Newman*, 97 Cal. 601, 603-04, 637 P.2d 534, 536 (1981)).

3. The writ may not issue where the petitioner has a plain, speedy, and adequate remedy in the ordinary course of law. NRS 34.170.

1           4. To justify the issuance of a writ of mandamus to enforce the performance of an act by a  
2 public officer, the act must be one the performance of which the law requires as a duty resulting from the  
3 office, and there must be an actual omission on the part of the officer to perform it. *Mineral County v.*  
4 *Dep't of Conserv. & Natural Res.*, 117 Nev. 235, 243, 20 P.3d 800 (2001); *Brewery Arts Center v. State*  
5 *Bd. Of Examiners*, 108 Nev. 1050, 1054, 843 P.2d 369 (1992); *Ex rel. Blake v. County Comm'rs*, 48 Nev.  
6 299, 231 P. 384 (1924).

7           5. Mandamus will not issue unless the petitioner shows a clear legal right to the relief  
8 demanded. *Ex rel. Blake v. County Comm'rs*, 48 Nev. 299, 304, 231 P. 384 (1924).

9           6. Mandamus will lie to compel an officer or tribunal exercising judicial functions to act, but  
10 never to review or correct such judicial acts, however, erroneous they may be. *State v. Eighth Judicial*  
11 *Dist. Court*, 116 Nev. 127, 133, 994 P.2d 692 (2000); *York v. Board of County Comm'rs*, 89 Nev. 173,  
12 174, 509 P.2d 967 (1973); *Hardin v. Guthrie*, 26 Nev. 246, 66 P.2d 744 (1901).

13           7. This Court is without authority to second-guess the Parole Board's exercise of its statutory  
14 discretion to grant or deny parole. *Anselmo*, 133 Nev. at \_\_\_, 396 P.3d at 850-51.

15           8. There is no statutory authority or case law providing for a retroactive grant of parole.  
16 *Williams v. State Dep't. of Corr.*, 133 Nev. \_\_\_, \_\_\_, 402 P.3d 1260, 1265 n.7 (2017) (citing *Niergarth*  
17 *v. Warden*, 105 Nev. 26, 29, 768 P.2d 882, 883-84 (1989)).

18           9. The Parole Board's April 18, 2018 RPO hearing reconsidering the November 2014 denial  
19 of parole while excluding consideration of NAC 213.518(2)(k) as an aggravating factor complied with  
20 the terms of the Nevada Supreme Court's prior writ.

21           10. Petitioner is not entitled to extraordinary relief in the form of a writ directing the Parole  
22 Board to retroactively grant his parole effective February 1, 2015.

23 ///

24 ///

25 ///

26 ///

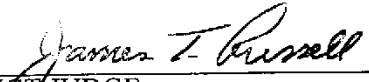
27 ///

28 ///

ORDER

In light of the foregoing, it is **ORDERED** that the petition for writ of mandamus is denied.

Dated this 16<sup>th</sup> day of November, 2018.

  
DISTRICT JUDGE

Submitted by:

Jeffrey M. Conner (Bar. No. 11543)  
Assistant Solicitor General  
State of Nevada  
Office of the Attorney General  
100 North Carson Street  
Carson City, NV 89701-4717  
(775) 684-1200 (phone)



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Jeffrey M. Conner  
Assistant Solicitor General  
Office of the Attorney General  
100 North Carson Street  
Carson City, NV 89701-4717

Angela Jeffries  
Judicial Assistant, Dept. 1

REC'D & FILED

2018 NOV 15 PM 1:21

SUSAN MERRIWETHER  
A. JEFFREY

BY \_\_\_\_\_

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR CARSON CITY

MICHAEL P. ANSELMO,

Petitioner,

vs.

CONNIE BISBEE, TONY COROLA, SUSAN  
JACKSON, AND THE STATE OF NEVADA  
BOARD OF PAROLE,

Respondents.

Case No. 18 OC 00224 1B

Dept. No. 1

ORDER

Respondent filed a motion seeking an extension of time to file a response to the petition for writ of mandamus. Having reviewed the motion and good cause appearing, Respondent's motion is **GRANTED**, and it is hereby **ORDERED** that Respondents shall file a response to the petition by November 13, 2018.

Dated this <sup>15<sup>th</sup></sup> day of <sup>November</sup> ~~October~~, 2018.

*James T. Russell*  
DISTRICT JUDGE

REC'D & FILED

2018 NOV 15 PM 1:21

SUSAN MERRIWETHER

BY A. JEFFRIES CLERK

DEPUTY

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR CARSON CITY

MICHAEL P. ANSELMO,

Petitioner,

vs.

CONNIE BISBEE, TONY COROLA, SUSAN  
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Dated this 15<sup>th</sup> day of <sup>November</sup> ~~October~~, 2018.

James T. Russell  
DISTRICT JUDGE



SUPREME COURT OF NEVADA  
OFFICE OF THE CLERK  
ELIZABETH A. BROWN, CLERK  
201 SOUTH CARSON STREET, SUITE 201  
CARSON CITY, NEVADA 89701-4702

Telephone  
(775) 684-1600

July 2, 2018

Michael P. Anselmo  
Inmate ID: 10999  
Northern Nevada Correctional Center  
P.O. Box 7000  
Carson City, NV 89702

Re: Anselmo (Michael) vs. Bisbee, Supreme Court Case No. 67619

Dear Mr. Bacon:

We are returning, unfiled, the "Motion for Clarification of Court Order and Order to Enforce Order" received in this office on July 2, 2018 in the above-entitled matter.

A decision was filed in this case on January 19, 2018 and the notice in lieu of remittitur issued on February 13, 2018. Therefore, this court no longer has jurisdiction over this matter.

Sincerely,

A handwritten signature in black ink, appearing to be "R. Wunsch", written over a horizontal line.

R. Wunsch  
Deputy Clerk

Michael P. Anselmo #10999  
P.O. Box # 7000  
Carson City, NV 89702-7000

RETURNED  
UNFILED

JUL 02 2018

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT

BY DEPUTY CLERK

IN THE SUPREME COURT OF THE STATE OF NEVADA

Michael P. Anselmo

CASE NO. 67619

PETITIONER

VS

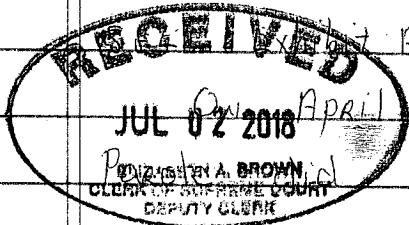
CONNIE BISBEE, Chairman  
SUSAN JACKSON, Tony  
CORDA, COMMISSIONERS,  
AND THE STATE OF  
NEVADA BOARD OF PAROLE  
REAL PARTIES IN INTEREST

MOTION FOR CLARIFICATION  
OF COURT ORDER AND  
ORDER TO ENFORCE ORDER

COMES NOW, the PETITIONER, in proper person, and  
comes before this Honorable Court with the above  
entitled motion.

HISTORY OF THE CASE

The Nevada Supreme Court granted the  
petitioner writ of mandamus and instructed  
the November 14, 2014 denial of parole be  
vacated and a new hearing be held.



On April 18, 2018 the Nevada Board of  
comply with the court order

AND held a NEW 2014 parole board hearing.  
The petitioner was granted parole by all 7  
members of the Nevada Parole Board.

### ISSUE

The parole board SEEMS to NOT be able to  
understand the courts order. They treated the  
2014 rehearing, held on April 18, 2018 as a  
regular board hearing and made the granting  
of parole effective April 18, 2018. Not  
December 14, 2014 as the court intended.


By not applying ~~the~~ 3 years, 6 months it  
took to get said court order and the rehearing,  
the board made the order and court ruling  
have no merit or meaning.

Clearly, the court meant for the REHEARING  
to be retroactive to 11-14-14.

### Conclusion

The petitioner, prays, this court will make  
clear its ruling of July 7, 2017 to the board  
and order them to grant the 3 years 6 months  
time due. The granting of parole at the 11-14-14  
hearing would have had petitioner starting his  
last sentence 2-1-2015.

Respectfully submitted this 28 day of  
JUNE 2018

  
Michael P. Pasiliao  
POPIR- PERSONA - 362

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL P. ANSELMO,  
Petitioner,

vs.

CONNIE BISBEE, CHAIRMAN; SUSAN  
JACKSON; TONY CORDA; ADAM  
ENDEL, COMMISSIONERS; AND THE  
STATE OF NEVADA BOARD OF  
PAROLE,  
Real Parties in Interest.

No. 67619

FILED

JUL 07 2017

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

WRIT OF MANDAMUS

TO: The State of Nevada Board of Parole:

WHEREAS, this Court having made and filed its written decision  
that a writ of mandamus issue,

NOW, THEREFORE, you are instructed to vacate your November  
14, 2014, denial of parole and conduct a new parole hearing in which NAC  
213.518(2)(k) is not applied, in the case entitled Michael P. Anselmo vs.  
Connie Bisbee, Chairman; Susan Jackson, Tony Corda, Adam Endel,  
Commissioners; Nevada Board of Parole, case no. 14EW00029.

WITNESS The Honorables Lidia Stiglich, James W. Hardesty, and  
Ron Parraguirre, Associate Justices of the Supreme Court of the State of  
Nevada, and attested by my hand and seal this 29th day of June, 2017.



*B. Mooneyhan*  
Assistant Clerk

CERTIFICATE OF SERVICE BY MAIL

Pursuant to N.R.C.P. Rule 5 (b), I hereby certify that I am the Petitioner/Defendant named herein and that on this 28 day of JUNE 2018, I mailed a true and correct copy of the foregoing document to the following:

ADAM PAUL LAXALT

100 North CARSON Street

CARSON City NV 89201-4717

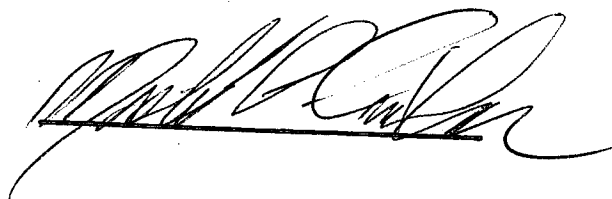
Attention

DANIEL M. ROCHE

Deputy Attorney General

Nv. Bar # 10732

Special Prosecution Division.



Michael P. Anselmo



**IN THE SUPREME COURT OF THE STATE OF NEVADA**

\* \* \*

MICHAEL P. ANSELMO,

Appellant,

vs.

CONNIE BISBEE, CHAIRMAN;  
SUSAN JACKSON; TONY CORDA;  
ADAM ENDEL, COMMISSIONERS;  
AND THE STATE OF NEVADA  
BOARD OF PAROLE,

Respondents.

Supreme Court No.: 67619

Electronically Filed  
Sep 20 2016 09:34 a.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

**APPELLANT'S REPLY BRIEF**

**BROWNSTEIN HYATT FARBER SCHRECK, LLP**

KIRK B. LENHARD, ESQ.

Nevada Bar No. 1437

klenhard@bhfs.com

EMILY A. ELLIS, ESQ.

Nevada Bar No. 11956

eellis@bhfs.com

*Attorneys for Appellant Michael P. Anselmo*

**SUPREME COURT OF NEVADA**  
**ANSELMO V. BRISBEE, ET AL. (CASE NO.: 67619)**  
**NRAP 26.1 DISCLOSURE STATEMENT**

Pursuant to Nevada Rule of Appellate Procedure ("NRAP") 26.1, the undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal:

1. There are no corporations or entities subject to disclosure; and
2. The following law firms have represented Appellant:
  - (a) Brownstein Hyatt Farber Schreck, LLP

Dated this 19th day of September, 2016.

BROWNSTEIN HYATT FARBER SCHRECK, LLP

By: /s/ Kirk B. Lenhard

KIRK B. LENHARD, ESQ.  
Nevada Bar No. 001437  
EMILY A. ELLIS, ESQ.  
Nevada Bar No. 11956  
100 North City Parkway, Suite 1600  
Las Vegas, Nevada 89106  
Telephone: 702.382.2101  
Facsimile: 702.382.8135  
*Attorneys for Appellant Michael P. Anselmo*

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## **I. INTRODUCTION<sup>1</sup>**

This Court was explicit in its directives: "[P]rovide briefing on the issue of whether the district court erred in dismissing Michael P. Anselmo's petition for failure to state a cognizable claim in light of the California Supreme Court's decision in *In re Lawrence*, 190 P.3d 535 (Cal. 2008)." Michael squarely addressed this issue throughout his Opening Brief, including engaging in a thorough analysis of the present facts and those in *Lawrence*, demonstrating the District Court clearly erred in dismissing Michael's Petition. In stark contrast, Respondents disregarded this Court's directives and—providing mere lip service to the Court—devoted a single page to an unsuccessful attempt to distinguish *Lawrence*, wrote off any *Lawrence* discussion as "premature," and rehashed old arguments raised in the District Court. Notably, Respondents do not even attempt to portray Michael as a *current* threat to society – because he is not.

Significantly, choosing to attack Michael's *pro se* status, Respondents fail to address several arguments raised in Michael's Opening Brief, thereby conceding them. These concessions include the applicability of *Lawrence* based on the substantive comparison, that no evidence in the record supported a finding that Michael is a current threat, that Board determinations are

---

<sup>1</sup> Unless otherwise defined, capitalized terms herein shall have the same meaning as provided in the Opening Brief.



subject to judicial review under *In re Rosenkrantz*, that this Court has held that administrative boards' determinations are subject to judicial review if the board fails to adhere to its directives, and that the Board here disregarded Nevada Parole Guidelines.

In an attempt to create a side-show, Respondents propose that this Court can only intervene and reverse the Dismissal Order if it overrules precedent upon a finding of "compelling reasons." This argument ignores that this Court has never addressed the issues raised by *Lawrence*. Respondents' tunnel-vision argument that the law must be changed is incorrect. Nevertheless, the law is not encased in a straight-jacket and this Court is free to find any one of the "compelling reasons" provided in the Opening Brief to clarify prior rulings, if necessary.

Nothing in Respondents' brief alters Michael's improper parole denial based on immutable factors which bear no nexus to his current societal threat. To remedy this injustice, this Court should (i) reverse the District Court's dismissal of Michael's Petition, and (ii) instruct the District Court to remand the matter to the Board to reconsider Michael's parole properly adhering to the Nevada Parole Guidelines and the directives in *Lawrence*.

## **II. STANDARD OF REVIEW**

Critically, this Court's review of the Dismissal Order is, as Respondents admit, *de novo* review. (OB 35-37; AB 4.) Using this standard and a review of the applicable law and particular facts of this case, it is appropriate for this Court to reverse the District Court's dismissal of the Petition for Writ of Habeas Corpus with instructions to remand the matter to the Board for reconsideration properly following its own guidelines and *Lawrence*.

## **III. DISCUSSION<sup>2</sup>**

### **A. Respondents Concede That Under *Lawrence*,<sup>3</sup> The Board's Reliance On The Nature Of Michael's Crime Is Improper.**

Undisputed in the Answering Brief ("AB"), *In re Lawrence*, 44 Cal. 4th 1181, 190 P.3d 535 (2008), dictates that the Board's reliance on Michael's commitment offense is improper because the record is void of any evidence that the offense, or nature thereof, is predictive of a *current* threat to public safety or recidivism. (OB 60-68.) As such, the District Court erred in dismissing Michael's Petition, and the question this Court posed is answered in the affirmative.

---

<sup>2</sup> As Respondents do not dispute any of the facts set forth in Michael's Opening Brief ("OB"), including the statutory scheme governing parole determinations and Michael's extensive rehabilitative and educational efforts, Michael will not restate them herein.

<sup>3</sup> Respondents attempt to distinguish *Lawrence* on other grounds. (AB 8-9, 16.) Each of these fails. (*See* Section II(B), *infra*.)

To be clear, Respondents do not refute that (i) the facts of this case mirror those in *Lawrence*, (ii) both the Board here and the Governor in *Lawrence* exercised their discretion, considering relevant mitigating and aggravating factors,<sup>4</sup> and found that the inmate posed a low risk of recidivism, (iii) both parole denials were based on immutable facts, *i.e.*, the inmates were convicted of murder,<sup>5</sup> (iv) the Board did not find that Michael's crime was particularly extreme or abnormal, or (v) that the proper inquiry before this Court, therefore, is to "determine whether some evidence in the record supports the [Board's] conclusion that [Michael] poses an unreasonable public safety risk because of the gravity of [his] commitment offense." (OB 61-65; *see also generally*, AB.)

Significantly, Respondents do not even mention, let alone dispute, that the Board's denial was not supported by "some evidence" in the record and, consequently, that Michael's due process and statutory rights were violated by

---

<sup>4</sup> Contrary to Respondents' assertion (AB 18-19), Michael recognized that the Board considered more than his criminal history and specifically outlined the mitigating factors considered by the Board (OB 62-63).

<sup>5</sup> Respondents attempt to refute that the Board relied on immutable factors in its denial by arguing that the Board "listed three aggravating factors." (AB 18.) This argument ignores that while three aggravating factors were listed on the PRAG Form, the Board specifically articulated that the "Reason(s) for [its] action" of denial were the fact that a 22-year old died and that his crimes were "increasingly more serious." (AR 45-46.) Nonetheless, Respondents cannot refute that the three factors are immutable and that there is no nexus to a finding of a *current* risk to society. (*See generally*, AB.)

the Board's reliance upon the unchangeable circumstances of his commitment offense. (OB 65-68; *see also generally*, AB.) In fact, Respondents do not contend that Michael is a current threat to society. (*See generally*, AB.)

Thus, the Court should find the District Court erred in dismissing Michael's Petition in light of *Lawrence* and reverse the Dismissal Order. *See Bates v. Chronister*, 100 Nev. 675, 682, 691 P.2d 865, 870 (1984) (respondents' failure to address an argument raised in the opening brief is a "confession of error".)

**B. Respondents' Attempt To Distinguish *Lawrence* Fails.**

In recognizing the Board's parole decision must be subject to judicial review before the Court can apply *Lawrence*, Michael dedicated ten (10) pages of his brief to discussing the same. (OB 37-46.) Respondents' response thereto, however, is thin and/or non-existent,<sup>6</sup> and, put frankly, disingenuous.

**1. *Respondents concede that the Board's decision is subject to judicial review under In re Rosenkrantz.***

Respondents ignore that the Board's decisions are subject to judicial review under *In re Rosenkrantz*, 29 Cal. 4th 616, 664, 146, 59 P.3d 174, 209 (2002), because the Board is statutorily *mandated* to consider certain factors in

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<sup>6</sup> Admittedly, Respondents only address "a few" of Michael's arguments. (AB 17-21.) This should not be rewarded, and should be treated as a concession. *See Ledesma v. State*, 2015 Nev. App. Unpub. LEXIS 418, \*8 (Nev. Ct. App. Sept. 16, 2015) (treating respondents' failure to address certain arguments as a concession).

making parole determinations.<sup>7</sup> Under *In re Ronsenkrantz*, since due process requires the Board's consideration of these factors to be "supported by some evidence in the record," the District Court has authority to review Board decisions "to ensure compliance with this constitutional mandate." *Lawrence*, 44 Cal. 4th at 1203 (quoting *Rosenkrantz*, 29 Cal. 4th at 664) (internal quotations omitted). Consequently, the District Court erred in dismissing Michael's Petition and the inquiry ends. *See Bates*, 100 Nev. at 682.

If the Court is inclined, however, to consider Respondents' remaining arguments regarding judicial review, they fail nonetheless.

**2. Respondents' judicial review arguments lack merit.**

Notwithstanding Respondents' concession that Board decisions are judicially reviewable under *In re Rosenkrantz*, Respondents advance three arguments challenging review on other grounds: (i) Michael utilized the wrong procedural mechanism in seeking judicial review, (ii) that NRS 213.10705 precludes any claims, and (iii) that the Nevada Parole Guidelines are not "officially" adopted. (AB 12-13, 19-21.) These arguments fail at every turn.

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<sup>7</sup> *See* NRS 213.1099.

- a. Michael was *pro se* and sought the "appropriate" relief.

Respondents attack Michael for not seeking "judicial review in an appropriate manner," *i.e.*, a mandamus petition and a civil law suit. (AB 12-13.) First, Michael was *pro se* in District Court and filed this appeal *pro se*. Therefore, his pleadings are held to a "less stringent standard." *See Haines v. Kerner*, 404 U.S. 519, 520, 92 S. Ct. 594, 596 (1972) (holding that a *pro se* pleading is held to a "less stringent standard"). Notably, the District Court denied Michael's request for counsel, yet this Court appointed counsel for Michael's appeal after reviewing the record. (*See* AR 17-20; *see also* Docket Nos. 15-35985 & 16-05617.)

Second, the remedy articulated in Michael's Opening Brief is precisely the remedy permitted in a mandamus petition: to "reverse the District Court's dismissal of Michael's Petition, with instructions for the District Court to remand to the Board to reconsider Michael's parole and follow: (i) its own guidelines and (ii) the California Court's directives outlined by *In re Lawrence*." (OB 6, 37; *see also* AB 13.)

To force Michael to file a mandamus petition (while he continues to sit in prison because of an improper parole denial) when the relief sought is admittedly proper, would be inequitable and further delay his parole. The Court should reject Respondents' meritless attacks.

- b. Irrespective of NRS 213.10705, the Board's decision is subject to judicial review.

Despite Respondents' heavy reliance on NRS 213.10705 and its corresponding case law, neither of these avenues is definitive of the question before the Court. The Board is not shielded from judicial review of its parole decisions: (i) the Board's decision can be challenged even without a statutorily mandated right, because the Board failed to adhere to the Nevada Parole Guidelines,<sup>8</sup> and (ii) Michael has an expectation that he will be *eligible* for parole and properly considered, and the Board's automated rejection of Michael's parole, based on facts that Michael can never change, is to essentially deem him forever ineligible for parole — thus, triggering "a liberty interest sufficient to require at least minimal due process."<sup>9</sup>

Respondents' brief ignores this Court's ruling in *Cohen*,<sup>10</sup> half-heartedly attempts to distinguish the South Carolina cases, and improperly accuses

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<sup>8</sup> See OB 40-43 (citing *Cohen v. State*, 113 Nev. 180, 183, 930 P.2d 125, 127 (1997) and *Cooper v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 377 S.C. 489, 496-99, 661 S.E.2d 106, 112 (2008).)

<sup>9</sup> See OB 44-46 (citing *Cooper*, 377 S.C. at 496-99), *Furtick v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 352 S.C. 594, 576 S.E.2d 146 (2003), *cert. denied*, 539 U.S. 932, 123 S. Ct. 2584, 156 L. Ed. 2d 612 (2003), and *Sullivan v. S.C. Dep't of Corr.*, 355 S.C. 437, 443, 586 S.E.2d 124, 127 (2003).)

<sup>10</sup> Respondents' failure to address *Cohen* should be construed as a concession. See *Ledesma*, 2015 Nev. App. Unpub. LEXIS 418, at \*8.

Michael of misrepresenting facts. (AB 17-19.) These arguments, while creative, fall flat.

*i. The South Carolina cases demonstrate that the Board's decision is subject to judicial review.*

A cursory review of the applicable Nevada statutes reveals that the South Carolina cases are not distinguishable. NRS 213.120(1) dictates when a prisoner becomes eligible for parole, and NRS 213.131(1)(a)<sup>11</sup> *requires* the Department<sup>12</sup> to "[d]etermine when a prisoner sentenced to imprisonment in the state prison is eligible to be considered for parole." After eligibility is determined, the Board is *required* to consider the inmate for parole. NRS 213.140(1). Because of this mandatory language, Michael has an expectation that he will be eligible for parole and properly considered. *See e.g., Greenholtz v. Inmates of Neb. Penal & Corr. Complex*, 442 U.S. 1, 12, 99 S. Ct. 2100, 2106 (1979) (holding that statutory language including the word "shall" can create an "expectancy of release" which "is entitled to some measure of constitutional protection").

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<sup>11</sup> This is analogous to S.C. Code Ann. § 24-21-620, relied upon in *Furtick*, 352 S.C. at 598, requiring the board to review an inmate's case after serving a certain amount of his/her sentence.

<sup>12</sup> Respondents fail to articulate a difference between whether the Board or the Department makes parole eligibility determinations. (*See generally*, AB.)



Additionally, Respondents cite S.C. Code Ann. § 24-21-640,<sup>13</sup> which mirrors NRS 213.1099 and 213.140(1), in that the board "must" consider a parole eligible inmate and no inmate "may" be paroled without certain considerations present. *See* NRS 213.1099 and 213.140(1); *see also* S.C. Code Ann. § 24-21-640. Thus, Respondents' attempt to statutorily distinguish the South Carolina cases fails.

Moreover, the *Cooper* ruling parallels each issue here – (i) the inmate appealed a parole denial, (ii) the appeal was dismissed based on lack of jurisdiction, (iii) the inmate argued the board failed to apply the proper criteria in violation of his liberty interest and effectively rendered him ineligible for parole based on "immutable" factors, (iv) the statute provides that "[p]arole is a privilege, not a right" and the board has "sole authority," (v) the review and consideration for parole is a right created by statute, (vi) the inmate "clearly was not permanently denied parole eligibility," (vii) the Legislature created the board "to operate within certain parameters," (viii) the parole board failed

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<sup>13</sup> S.C. Code Ann. § 24-21-640 provides as follows:

The board must carefully consider the record of the prisoner..., and no such prisoner may be paroled until it appears to the satisfaction of the board: that the prisoner has shown a disposition to reform; that in the future he will probably obey the law and lead a correct life; that by his conduct he has merited a lessening of the rigors of his imprisonment; that the interest of society will not be impaired thereby; and that suitable employment has been secured for him.

to give credence to its "own criteria," and (ix) the reasons stated for the denial of parole were "fixed as of the date of the offense and can never...be changed..." *Cooper*, 377 S.C. at 492-99.

The *Cooper* court held that, although the inmate did not have a right to be paroled (identical to Nevada's statutory scheme), he "does have a right to require the Board to adhere to statutory requirements in rendering a decision." Furthermore, "the apparent failure by the Parole Board to consider the requisite statutory criteria in rendering its decision constitutes an infringement of a state-created liberty interest and, thus, warrants minimal due process procedures." *Id.* at 499. *Cooper* ultimately held when a board abandons its own criteria, "it has the effect of rendering an inmate parole ineligible," and that "[i]n the instant case, the Parole Board apparently failed to consider the requisite factors and, instead, based its decision on certain fixed factors that are unaffected by any rehabilitation efforts on the part of Cooper." *Id.* at 502. This is precisely what occurred in Michael's case. Consequently, the Board's decision is subject to judicial review.

*ii. Michael did not misrepresent the facts.*

Similarly, Respondents' assertions that Michael misrepresented facts and ignored the Board's consideration of mitigating factors, is false. Michael correctly represented that the PRAG form indicated the aggravating factors

the Board considered, but that the Final Denial Order specifically stated the **"Reason(s)"** for denial as (i) the impact on the victim, and (ii) the nature of his criminal record being "increasingly more serious," a factor the Board is forbidden to consider. (OB 25, 27, 64, 67; *see also* AR 45-46.)

Nevertheless, even *if* the Board's reasons for denial included all of the aggravating factors listed on the PRAG form, the factors are immutable, based on events that occurred nearly forty (40) years ago and have no nexus to Michael's *current* risk to society. (AR 46.) The Board's continued reliance on fixed factors subjects the Board's decision to judicial review.

Michael also recognized the Board's consideration of his achievements and other mitigating factors (OB 25-26) and outlined this in detail (OB 16-17, 61-62, 66).<sup>14</sup> Thus, Respondents' accusation that Michael misrepresented facts is unfounded and should be disregarded by this Court.

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<sup>14</sup> In calling Michael's argument "unproductive hyperbole," Respondents merely highlight the arbitrary nature of the "discretionary" parole determinations. (AB 18-19.) In the two years between Michael's 2012 parole denial and 2014 denial, not a single mitigating factor changed, *i.e.*, family support, academic and rehabilitative achievements, his pending sentence, and his discipline free record remained the same. (AR 42-46.) Yet, Commissioner Gray voted to deny parole in 2012 and to grant parole in 2014. (*See id.*) Notably, Commissioner Gray voted to grant parole when he was present at the parole hearing and able to hear Michael's answers to questions relating to his record. (*See id.*)

- c. The Board failed to adhere to its own directives, thus subjecting its decision to judicial review.

In an attempt to refute judicial review despite the Board's violation of its own directives (OB 40-43), Respondents<sup>15</sup> make the disingenuous arguments that (i) the guidelines are for the "public" and not an "officially adopted standard," (ii) under NAC, the Board has an "unrestricted right to deviate from its standards," (iii) the Board's standards are "permissive," and (iv) even if the Board "misapplied one of its standards," there is no cause of action, because the Board "adopts its own standards, and has the power to change them" (AB 19-21.) All of these arguments lack merit.

The Nevada Parole Guidelines are on the Board's official website under the heading "Forms and Other Documents *Used By the Board*."<sup>16</sup> The Board's official website also contains a document entitled, "Operation of the Board," which provides that a "sample copy of the standards adopted by the Board is available at...the Board's website."<sup>17</sup> Clearly, the Nevada Parole Guidelines are not purely a document for the "public," as Respondents represent.

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<sup>15</sup> Respondents do not contest that the Board failed to adhere to the Nevada Parole Guidelines. (*See generally*, AB.) This amounts to a concession. *See Ledesma*, 2015 Nev. App. Unpub. LEXIS 418, \*8.

<sup>16</sup> *See* <http://parole.nv.gov/Information/Forms/>, last visited on August 25, 2016 (emphasis added).

<sup>17</sup> *See* <http://parole.nv.gov/uploadedFiles/parolenvgov/content/Information/OpsBoardOctober2012.pdf>, at p. 7, last visited on August 25, 2016.

Further, the Nevada Parole Guidelines do not "suggest" anything; rather they specifically mandate that "[i]f the person is now serving a sentence of life, or Murder/Sexual Assault, *don't* use this [aggravating factor] as the person has already committed the most serious of crimes." *See* Nevada Parole Guidelines, at A037 (emphasis added). While NAC 213.560(1) provides what the Board *may* consider, the Nevada Parole Guidelines *mandate* that the Board is forbidden from considering this factor in circumstances such as Michael's. *See Tarango v. SIIS*, 117 Nev. 444, 451 n.20, 25 P.3d 175, 186 n.20 (2001) ("In statutes, "may" is permissive and "shall" is mandatory...") (citation omitted).<sup>18</sup> Moreover, while the Board "may deviate" from NAC standards, *see* NAC 213.560(2), this language does not translate into unfettered Board power to violate its own directives and consider banned factors.

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<sup>18</sup> Contrary to Respondents' representation, NAC 213.560(1) does *not* provide a blanket rule that *nothing* restricts Board authority; rather, it provides that nothing contained in *specific sections* of NAC "shall be construed to restrict the authority of the Board to: (a) Deny or revoke parole in any case in which application of the standards indicates that parole should be granted or continued; or (b) Grant or continue parole in any case in which application of the standards indicates that parole should be denied or revoked, if the decision of the Board is otherwise authorized by the provisions of chapter 213 of NRS." *See* NAC 213.560(1). This distinction is paramount here, as the Board presumably created the Nevada Parole Guidelines to expressly restrict its use of aggravating factors.

Finally, while the Board may amend its standards under NRS 213.10885, it must follow a statutorily mandated procedure, *i.e.*, "adopt[ing] revised standards" (which the Board has not done). The Board is not permitted to "amend" standards on a case-by-case basis.

In sum, none of Respondents' arguments refute the Board's failure to adhere to its own guidelines or that its denial of Michael's parole is subject to judicial review. Thus, the District Court erred and the Dismissal Order should be reversed.

**C. Contrary To Respondents' Contention, This Court Is Not "Constrained" By Precedent.**

Respondents argue the District Court did not err because it was obligated to follow "controlling Nevada authority" absent "compelling reasons" for altering such law. (AB 7.) Respondents resort to the circular argument that because Nevada's statutory scheme is different from California's, as discussed in *Lawrence*, no compelling reasons exist. (AB 7-9.) Contrary to Respondents' bold assertion, the Court need not overrule Nevada law to find the Board's determinations subject to judicial review. (OB 37-44.)

Assuming, *arguendo*, this Court agrees its judicial power is hamstrung by precedent, Michael's Opening Brief<sup>19</sup> articulates ample compelling reasons

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<sup>19</sup> Michael did not address "compelling reasons" in his Opening Brief because no such reasons are required. (*See generally*, OB.) However,

for this Court to clarify any existing case law inconsistent with a finding that (i) Nevada inmates have an expectation of parole eligibility, (ii) that the Board essentially deems an inmate ineligible for parole when its parole determination is based on fixed, immutable factors, and (iii) that the Board's decisions are subject to judicial review if it fails to adhere to its own guidelines.

***1. This Court may depart from or clarify precedent upon a finding of compelling reasons.***

While it is true that this Court is "loath to depart from the doctrine of stare decisis," it will not, however, "adhere to the doctrine so stridently that the "law is forever encased in a straight jacket." *Armenta-Carpio v. State*, 306 P.3d 395, 398 (Nev. 2013) (citations omitted). That is, upon a finding of "compelling reasons," a Court will "overrule prior caselaw." *City of Reno v. Howard*, 318 P.3d 1063, 1067 (Nev. 2014). Put differently, "[l]egal precedents of this Court should be respected until they are shown to be unsound in principle," *ASAP Storage, Inc. v. City of Sparks*, 123 Nev. 639, 653, 173 P.3d 734, 743 (2007) (quotations omitted), "unworkable or . . . badly reasoned," *Cty. of Clark v. Sun City Summerlin Cmty. Ass'n*, No. 60776, 2014 Nev. Unpub. LEXIS 486, at \*9 (Mar. 25, 2014), or where the purpose of a

consistent with NRAP 28(c), because Respondents raised the new issue of "compelling reasons" in their Answering Brief, Michael will address the same herein.

statute would "be defeated" if the precedent is not overturned, *Adam v. State*, 127 Nev. 601, 605, 261 P.3d 1063, 1065 (2011).

Moreover, this Court will "reexamine" previously decided issues and overrule its prior rulings when adhering to the precedent would be "substantially inequitable." *Egan v. Chambers*, 299 P.3d 364-65, 367 (Nev. 2013). Further, when prior rulings contain a "fundamental flaw," this Court will review and "retreat from [its] prior holdings and clarify [a statute's] scope." *ASAP Storage, Inc.*, 123 Nev. at 650-51.

In determining whether such "compelling reasons" exist, this Court will, among other things, elicit guidance from other courts that have addressed the issue (or similar issues), and reexamine applicable statutes and prior Nevada case law. *See Howard*, 318 P.3d at 1067; *see also Adam*, 127 Nev. at 605, 261 P.3d at 1065.

**2.           *The requisite compelling reasons are present here.***

Here, upon review of the applicable statutes, this Court's prior rulings, and rulings in other jurisdictions, "compelling reasons" empower this Court to (if necessary) overrule precedent relating to parole eligibility and the Board's failure to adhere to its directives.



- a. The Court should clarify that inmates have an expectation of parole eligibility under Nevada law and a denial of eligibility is subject to judicial review.

While Nevada's statutory scheme explicitly states that parole is a privilege and not a right, a plain reading dictates that inmates have—at a minimum—a right to parole eligibility and an expectation of Board consideration after completing a certain portion of their sentence. *See* NRS 213.120(1), 213.131(1)(a)-(c), and NRS 213.140(1). Notably, although Nevada's Legislature was "under no constitutional obligation to create a parole system," it chose to do so and enacted these provisions which are "phrased in such a way that [they] create a real expectation of and not just a unilateral hope for" parole eligibility. *Severance v. Armstrong*, 96 Nev. 836, 839, 620 P.2d 369, 370 (1980) (citation omitted.)

Consistent with this statutory reading, this Court has addressed issues relating to parole eligibility while declining to address challenges to parole denials based on lack of jurisdiction.<sup>20</sup> This Court has not, however, squarely

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<sup>20</sup> *See e.g. Ramirez v. McDaniel*, No. 56267, 2011 Nev. Unpub. LEXIS 419, at \*1-2 (May 10, 2011) (holding that "any alleged due process violation by the Board was remedied, as the Board...credited appellant with an additional two years towards his next parole eligibility date," and that "[t]o the extent appellant challenged the denial of parole, parole is an act of grace of the State, and there is no cause of action permitted when parole has been denied."); *Parra v. Baker*, No. 65076, 2014 Nev. Unpub. LEXIS 964, at \*1 (June 12, 2014) (considering the inmate's challenge to his parole eligibility

addressed whether Chapter 213 creates a right to parole eligibility because its inquiry stopped short of this analysis. Therefore, this Court should elicit guidance from the South Carolina Supreme Court that found, when addressing this identical issue with similar statutory language as Nevada, that "review or consideration for parole is a right granted by statute," *Steele v. Benjamin*, 362 S.C. 66, 72, 606 S.E.2d 499, 502 (Ct. App. 2004), and that, consequently, the "denial of parole *eligibility* implicates a liberty interest sufficient to require at least minimal due process," *Cooper*, 377 S.C. at 497.

A finding to the contrary would "defeat" Chapter 213's purpose and would be "substantially inequitable" – a statutory mandate providing an expectation of parole eligibility that can be violated without judicial review. *See Egan*, 299 P.3d at 367; *see also Adam*, 127 Nev. at 605. Thus, "compelling reasons" prompt this Court to "clarify" an inmate's right to parole eligibility, and that the Board's denial thereof implicates a liberty interest, subjecting its decision to judicial review. *See ASAP Storage, Inc.*, 123 Nev. at 650-51.

- b. This Court should clarify that the denial of parole based on immutable factors constitutes denial of parole eligibility, triggering judicial review.

Upon further review of Nevada case law, and, in particular, the case law relied upon by Respondents, this Court has not had a meaningful opportunity,

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date, but holding that "there is no cause of action when parole has been denied.")

since the *Lawrence* decision, to specifically address whether a denial of parole based on immutable factors constitutes a denial of parole eligibility, consequently triggering judicial review.<sup>21</sup> Moreover, Michael's challenge is not to "a routine denial of parole"; rather, Michael's challenge is to the procedure employed. *See Cooper*, 377 S.C. at 496; *see also generally*, OB.

In considering a statutory scheme and facts similar to those here, the Supreme Court of South Carolina held when the parole board bases its decision on "certain fixed factors that are unaffected by any rehabilitation

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<sup>21</sup> *See State ex rel. Bd. of Parole Comm'rs v. Morrow*, 127 Nev. 265, 269, 255 P.3d 224, 226 (2011) (addressing the parole board's challenge to the District Court's order that the inmate must "receive all the documents and the exact information that the Parole Board considered when it denied him parole," and an inmate's challenge to the District Court's dismissal of his complaint relating to the Open Meeting Law and the statutory due process protections of former NRS 213.130); *Severance*, 96 Nev. at 837 (stating "specific contentions raised in this appeal are that Nevada's statutes governing parole release are unconstitutionally vague and vest too much discretion with the board of parole commissioners, and that appellant was denied due process of law when the board, which allegedly acted arbitrarily and capriciously, denied him a parole release from prison."); *Niergarth v. State*, 105 Nev. 26, 28, 768 P.2d 882, 883 (1989) (an inmate advancing challenges relating to a retroactive institutional parole); *Weakland v. Bd. of Parole Comm'rs*, 100 Nev. 218, 219, 678 P.2d 1158, 1159 (1984) (addressing the inmate's argument that the Board was required to provide a statement of reasons for his denial and the "statement of reasons given was constitutionally inadequate because it focused on the unchangeable circumstances of his offense," and holding "[b]ecause the Board is not constitutionally required to give any statement of reasons, appellant's argument that the reasons he did receive were constitutionally inadequate is without merit...").

efforts on the part of" the inmate, it has the effect of rendering an inmate parole ineligible and triggers judicial review." *Cooper*, 377 S.C. at 502.

To find otherwise would be "substantially inequitable," because a Nevada inmate has the right to parole eligibility and to be assessed based on factors relating to his current status. Under Respondents' unyielding interpretation, the Board could nonetheless base its denial on the fixed, immutable fact of Michael's decades-old crime—essentially robbing Michael of any parole eligibility and his right to be considered—without any judicial review. *See Egan*, 299 P.3d at 367.

Thus, "compelling reasons" exist for this Court to clarify that parole denial based on immutable factors deprives inmates of their parole eligibility, triggering judicial review.

- c. This Court should clarify that the Board's failure to adhere to its own directives triggers judicial review.

This Court previously held that, even where no right exists, an administrative board's decision is subject to review when it fails to adhere to its own directives. (*See* OB 41-42 (citing *Cohen*, 113 Nev. at 181-82).) Thus, should this Court require a "compelling reasons" analysis, this Court has already recognized compelling reasons exist amid statutory constraints, such as those found here.

In looking at other jurisdictions, the South Carolina court held that despite the fact that "[p]arole is a privilege, not a right," an inmate does "have a right to require the Board to adhere to statutory requirements in rendering a decision," and if the parole board renders its decision "without consideration of the appropriate criteria, we believe it essentially abrogates an inmate's right to parole eligibility and, thus, infringes on a state-created liberty interest." *Cooper*, 377 S.C. at 496-99.

Further, it is "substantially inequitable" for the Board to create guidelines, such as the Nevada Parole Guidelines, which contain explicit directives *not* to consider certain factors in particular situations, and to be completely free to follow its directives therein in some instances and to disregard them in other instances –without *any* form of judicial review.

In fact, in reviewing the Nevada Parole Guidelines and the Discretionary Release Parole Guideline Worksheet,<sup>22</sup> which are both located on the Board's website and identified as Board-sanctioned and Board-utilized documents, it is no wonder why the Board found it necessary to define the aggravating and

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<sup>22</sup> See [http://parole.nv.gov/Information/Forms\\_Pages/Guideline\\_Related\\_Forms/Discretionary\\_Release\\_Parole\\_Guideline\\_Worksheet/](http://parole.nv.gov/Information/Forms_Pages/Guideline_Related_Forms/Discretionary_Release_Parole_Guideline_Worksheet/), last visited on September 13, 2016; see also [http://parole.nv.gov/uploadedFiles/parolenvgov/content/Information/Discretionary\\_Release\\_Parole\\_Guideline\\_Worksheet.pdf](http://parole.nv.gov/uploadedFiles/parolenvgov/content/Information/Discretionary_Release_Parole_Guideline_Worksheet.pdf), last visited on September 13, 2016.

mitigating factors: the Nevada Parole Guidelines are outcome determinative. For example, one of the available aggravating factors is "Repetitive similar criminal conduct." *See* Discretionary Release Parole Guideline Worksheet. The definition of "repetitive" is "happening again and again."<sup>23</sup> Thus, *without* referring to the Nevada Parole Guidelines, a Commissioner could find that a parole eligible inmate currently serving a sentence for burglary, with a prior burglary conviction, has "[r]epetitive similar criminal conduct" and, therefore, apply this aggravating factor in making the parole determination. Contrarily, if the Commissioner instead refers to the Nevada Parole Guidelines, which directs the Commissioner to "not count the instant offense as one of the prior convictions," the inmate would *not* be given that additional aggravating factor. (*See* A036.)

Under this scenario, and countless others,<sup>24</sup> inmates in similar situations would be treated differently by the Board – resulting in inconsistent parole

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<sup>23</sup> *See* <http://www.merriam-webster.com/dictionary/repetitive>, last visited on August 31, 2016.

<sup>24</sup> Notably, the aggravating factor at issue here is not the only aggravating factor with Board mandated restrictions. *See generally*, Nevada Parole Guidelines. In fact, if the Board can disregard its own mandates provided in the Nevada Parole Guidelines, it could result in an inmate who was terminated from treatment because of an involuntary housing change receiving an additional aggravating factor, or an inmate receiving an additional aggravating factor because the Board improperly deemed the

determinations, disparate treatment of similarly situated inmates, and utter inequity. This could not have been the Legislature's intention when it directed the Board to create guidelines and standards governing parole. Such an outcome is "unworkable" and "unsound in principle." *See ASAP Storage, Inc.*, 123 Nev. at 653; *see also Cty. of Clark*, 2014 Nev. Unpub. LEXIS 486, at \*9.

Thus, requisite "compelling reasons" exist for this Court to overrule precedent, if any exists, and determine that the Board is not free to disregard its own directives and any such disregard triggers judicial intervention. Accordingly, this Court should find the District Court erred in dismissing Michael's Petition and remand with instructions for the Board to adhere to its own directives and reconsider Michael's parole in harmony with *Lawrence*.

**3.        *Respondents' treatment of Lawrence does not  
refute a finding of compelling reasons.***

In ignoring the "compelling reasons" articulated in the Opening Brief, Respondents make the unpersuasive argument that "*Lawrence* does not change the law in Nevada" because "three years after" it was decided, this Court issued its ruling in *Morrow* finding no right to parole or corresponding liberty interest. (AB 8-9.)

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inmate as having a "program failure" due to the fact that he was actually ineligible for the program. *See id.*

While it is true that *Lawrence* was decided when this Court (and the Ninth Circuit)<sup>25</sup> issued rulings relating to parole determinations, the opinions do not mention *Lawrence* in any manner and do not preclude this Court from reconsidering and/or clarifying its prior rulings. *See Armenta-Carpio*, 306 P.3d at 398 (holding that "[a]lthough the Supreme Court's decision in *Nixon* was available when we decided *Hernandez*, our opinion makes no mention of it and does not discuss the reasoning underlying *Perez* in any significant degree.") Further, the issues raised in *Morrow* are different than those raised here (*see n. 21*), and this Court specifically held therein that "we recognize that no statutory due process protections applied *in these particular cases*." *Morrow*, 127 Nev. at 267 (emphasis added). As such, Respondents' attempt to refute a finding of "compelling reasons" fails.

**D. Respondents' Arguments Relating To Habeas Relief Ignore The Contents Of The Petition And Improperly Condemn Michael For Proceeding *Pro Se*.**

In disregard of this Court's directive to address the Dismissal Order in light of *Lawrence*, Respondents (re)argue the position they took in the District Court—that Michael did not state a cognizable claim for habeas relief, that his

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<sup>25</sup> Respondents' reliance upon *Moor v. Palmer*, 603 F.3d 658, 660 (9th Cir. 2010), is misplaced, as the inmate there filed a federal habeas petition and challenged (i) the state's failure to release him three years after his parole revocation, (ii) the Board's failure to adopt standards for granting parole after revocation, and (iii) the alleged fact that he was denied a parole hearing in 2005.



Petition was outside the scope of habeas relief, and that his claims lack merit. (AB 9-13.) These arguments prove futile for several reasons.

**1. Michael presented a cognizable claim for habeas relief.**

Respondents first contend that (i) Michael's claims based on the U.S. Constitution are not cognizable because the only valid Constitutional claim is "procedural due process," and (ii) Michael's state law claims were presented for the first time on appeal. (AB 9-10.) To begin, Michael was *pro se* and, therefore, his pleading is held to a less stringent standard. *See Haines*, 404 U.S. at 520. Further, Michael attacked the parole procedure and properly alleged due process violations in his Petition—"[t]he parole board process has been voided, the whole purpose of seeing a sitting board has been voided by respondents['] action," "[a] continued reliance on unchanging, unchangeable factors runs contrary to the whole rehabilitation goals and exposes the parole system to a due process violation," and the Board has "voided...Nevada Parole board system when it comes to petitioner." (AR 5-6.) Michael also argued in his Opposition to the Motion to Dismiss that the "whole reason for having a parole board was thrown out" in his case, that the "denial was not based on the hearing..." and that the "whole case screams denial of due process." (AR 48.)

Moreover, while Michael cited the U.S. Constitution, he relied on *Lawrence* in his Petition, which addressed state parole statutes. *See In re Lawrence*, 44 Cal. 4th at 1201-02. Additionally, as a *pro se* litigant, Michael advanced arguments akin to the arguments raised in the attorney-drafted Opening Brief confronting the Board's parole process and its unsupported denial amounting to a permanent denial of Michael's parole eligibility. (AR 3.)

**2. *Michael's claims are within the scope of habeas relief.***

Respondents' contention that Michael's Petition was outside of the scope of habeas relief fails because (i) Michael argued that the denial of parole improperly resulted in an extension of his sentence, (ii) even without "specify[ing]" NRS 34.360<sup>26</sup> in his Petition, Michael contested his unlawful detainment despite his near-exemplary prison record and a commutation which entitled him to parole eligibility, and (iii) Michael seeks the relief Respondents deem "appropriate," *i.e.*, to "compel consideration" of the mandated factors. (AR 3, 6.)

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<sup>26</sup> NRS 34.360 provides that "[e]very person unlawfully committed, detained, confined or restrained of his or her liberty, under any pretense whatever, may prosecute a writ of habeas corpus to inquire into the cause of such imprisonment or restraint."

**3. Michael's claims are meritorious.**

Similarly, Respondents' characterization of Michael's claims as meritless fail. Michael was proceeding *pro se* and, despite his Constitutional citations and inadvertent mention of overruled case law, Michael nonetheless attacked the Board's improper parole denial based on the unchangeable factors, *i.e.*, a denial of parole eligibility. (AR 1-8.) Further, Michael's *pro se* arguments, while not of lawyerly caliber, were logical—to deny parole based solely on his murder sentence is to punish him again for that same crime. (AR 6, 48-49.) Undisputedly, Nevada statute provides for the Board's consideration of several factors, in addition to the nature of the crime committed and whether the inmate poses a current threat to society. (*See* OB 7-13.) Moreover, this is the very concern the *Lawrence* court addressed and the precise issue this Court ordered the parties address on appeal. *See In re Lawrence*, 44 Cal. 4th at 1212. The District Court erred in dismissing the Petition.

**E. Respondents Were Not Prejudiced Because of Michael's Alleged "New Claims."**

This Court should disregard Respondents' argument that Michael presented "new claims." Michael specifically relied upon *Lawrence* in his Petition. (AR 7.) This Court also expressly requested the parties address the Dismissal Order in light of *Lawrence*. (*See* Docket Nos. 15-35985 & 16-05617.) Thus, contrary to Respondents' contention, the arguments addressing *Lawrence* are

by no means "new claims." With regard to the other "new claims," in order for Michael to follow this Court's order, it was necessary for him to outline the Board's abandonment of its own directives to demonstrate its decision is subject to judicial review, *i.e.*, that the District Court had jurisdiction to review the Board's decision.

Further, Michael's *pro se* pleading and brief in the lower court challenged the Board's denial and argued the denial voided the entire parole process (AR 1-8, 47-49). It was only after this Court's appointment of pro bono counsel that the Board's failure to adhere to its own guidelines published on its website was identified.<sup>27</sup> *See Allen v. Ornoski*, 435 F.3d 946, 960 (9th Cir. 2006) (holding that appellate courts "may exercise discretion to review newly presented issues if...there are exceptional circumstances why the issue was not raised in the trial court," or "when plain error has occurred and an injustice might otherwise result.") (internal quotations omitted).

Additionally, Respondents cannot reasonably assert prejudice from these purported "new claims," as Respondents had an opportunity to address the claims in their Answering Brief, but admittedly chose to address only "a few." *See id.* (review of newly presented issues where "the issue presented is purely

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<sup>27</sup> Michael does not have access to the Internet, as no inmate housed at the Northern Nevada Correctional Center is afforded Internet privileges.

one of law and the opposing party will suffer no prejudice as a result of the failure to raise the issue in the trial court.")

Michael's arguments are hardly "premature," because the Board's decision is subject to judicial review. Finally, Michael explicitly asked this Court to "reverse the District Court's dismissal of the Petition for Writ of Habeas Corpus with instructions to remand the matter to the Board for reconsideration properly following its own guidelines and the directives in *Lawrence*," which is the precise relief Respondents contend would be "appropriate" for Michael to seek. (OB 37.)

Accordingly, Respondents' attempt to discredit Michael's legitimate challenge to the Dismissal Order and the Board's parole determination fail, and this Court should grant Michael the relief requested herein.

#### **IV. CONCLUSION**

Based on the foregoing, Michael respectfully requests this Court (i) reverse the District Court's dismissal of Michael's Petition, (ii) instruct the District Court to remand the matter to the Board to reconsider Michael's parole properly adhering to the Nevada Parole Guidelines, and following the directives in *Lawrence*, and (iii) find as follows:

A. Judicial review is appropriate when a governing board is statutorily mandated to consider certain factors, yet fails to follow its own guidelines

and, instead, issues arbitrary decisions based on a sole immutable factor – thus resulting in the inmate being denied the right to be properly considered for parole upon eligibility.

B. The District Court erred in dismissing Michael's petition for writ of habeas corpus for failure to state a cognizable claim in light of the California Court's ruling in *In re Lawrence*, that a denial-of-parole decision may be based "upon the circumstances of the offense, or upon other immutable facts such as an inmate's criminal history, but some evidence will support such reliance only if those facts support the ultimate conclusion that an inmate continues to pose an unreasonable risk to public safety."

DATED this 19th day of September, 2016.

BROWNSTEIN HYATT FARBER  
SCHRECK, LLP

BY: /s/ Kirk B. Lenhard  
KIRK B. LENHARD, ESQ.  
Nevada Bar No. 001437  
EMILY A. ELLIS, ESQ.  
Nevada Bar No. 11956  
100 North City Parkway, Suite 1600  
Las Vegas, Nevada 89106  
Telephone: 702.382.2101  
Facsimile: 702.382.8135  
*Attorneys for Appellant*

## **CERTIFICATE OF COMPLIANCE**

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

This brief has been prepared in a proportionally spaced typeface using Microsoft Word, Version 2010, in 14-point Times New Roman font.

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either:

Proportionately spaced, has a typeface of 14 points or more, and contains 6,979 words.

3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the

accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 19th day of September, 2016.

BROWNSTEIN HYATT FARBER  
SCHRECK, LLP

By: Kirk B. Lenhard  
KIRK B. LENHARD, ESQ.  
Nevada Bar No. 001437  
EMILY A. ELLIS, ESQ.  
Nevada Bar No. 11956  
100 North City Parkway, Suite 1600  
Las Vegas, Nevada 89106  
Telephone: 702.382.2101  
Facsimile: 702.382.8135  
*Attorneys for Appellant*



**CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing **APPELLANT'S REPLY BRIEF** with the Clerk of the Court of the Supreme Court of Nevada by using the Court's Electronic Filing System on September 19, 2016.

I hereby certify that I served a copy of this document by mailing a true and correct copy, postage prepaid, via U.S. Mail, addressed to the following:

ADAM PAUL LAXALT ATTORNEY GENERAL DANIEL M. ROCHE DEPUTY ATTORNEY GENERAL 100 NORTH CARSON STREET CARSON CITY, NV 89701-4717	
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/s/ Paula Kay  
an employee of Brownstein Hyatt  
Farber Schreck, LLP

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2  
3  
4  
5  
6 **IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
7 **IN AND FOR CARSON CITY**

8 MICHAEL P. ANSELMO,

9 Petitioner,

10 vs.

11 CONNIE BISBEE, TONY COROLA, SUSAN  
12 JACKSON, AND THE STATE OF NEVADA  
13 BOARD OF PAROLE,

Respondents.

Case No. 18 OC 00224 1B

Dept. No. 1

14 **NOTICE OF ENTRY OF ORDER**

15 PLEASE TAKE NOTICE that on November 16, 2018, the Court entered a Finding of Fact,  
16 Conclusion of Law, an Order in this matter, a true and correct copy of which is attached to this notice.

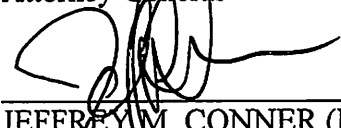
17 **AFFIRMATION PURSUANT TO NRS 239B.030**

18 This document does not contain the social security number of any person.

19 RESPECTFULLY SUBMITTED this 11th day of April, 2019.

20 AARON D. FORD  
21 Attorney General

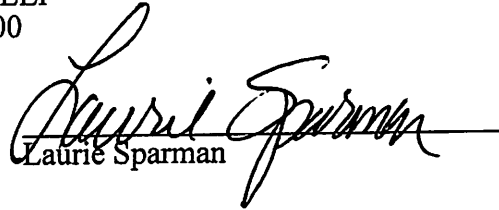
22 By:

23   
24 JEFFREY M. CONNER (Bar No. 11543)  
25 Deputy Solicitor General  
26 State of Nevada  
27 Office of the Attorney General  
28 100 North Carson Street  
Carson City, Nevada 89701-4717  
Tel: (775) 684-1100  
Fax: (775) 684-1108  
Email: jconner@ag.nv.gov

**CERTIFICATE OF SERVICE**

I certify that I am an employee of the Office of the Attorney General and that on this 11th day of April, 2019, I caused to be deposited for mailing a true and correct copy of the foregoing, NOTICE OF ENTRY OF ORDER to the following:

Kirk B. Lenhard, ESQ  
Emily A. Ellis, ESQ  
Brownstein Hyatt Farber Schreck, LLP  
100 North City Parkway, Suite 1600  
Las Vegas, NV 89106

  
Laurie Sparman

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SUSAN MERRIWETHER  
CLERK

BY

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR CARSON CITY

MICHAEL P. ANSELMO,

Petitioner,

vs.

CONNIE BISBEE, TONY COROLA, SUSAN  
JACKSON, AND THE STATE OF NEVADA  
BOARD OF PAROLE,

Respondents.

Case No. 18 OC 00224 1B

Dept. No. 1

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

Before the Court for a decision is a petition for writ of mandamus. Having reviewed the petition and the answer submitted by Respondents, this Court enters the findings of fact and conclusions of law that follow and orders that the petition be denied.

**FINDINGS OF FACT**

1. Petitioner was convicted of murder in 1972 and sentenced to life without a possibility of parole.

2. The Pardons Board subsequently commuted Petitioner's sentence to allow Petitioner the opportunity for parole.

3. The Nevada Board of Parole Commissioners (Parole Board) denied parole on Petitioner's sentence for murder after conducting a hearing in November of 2014.

4. Petitioner filed a writ of habeas corpus challenging the Parole Board's decision in this Court.

5. This Court dismissed the petition for failure to state cognizable claims for relief.

1           6.     Petitioner appealed this Court's decision, and the Nevada Supreme Court appointed  
2 counsel for supplemental briefing.

3           7.     After briefing and argument, the Nevada Supreme Court issued its opinion in *Anselmo v.*  
4 *Bisbee*, 133 Nev. \_\_\_, 396 P.3d 848 (2017), which held that Nevada courts may not second-guess the  
5 Parole Board's decisions exercising its statutory authority to grant or deny parole, but also that the Parole  
6 Board must follow its internal guidelines when conducting parole hearings.

7           8.     In light of that decision, the Nevada Supreme Court determined that Petitioner was entitled  
8 to a new parole hearing because the Parole Board improperly considered an aggravating factor that, on  
9 *its face*, did not apply to Petitioner's case.

10          9.     The Court simultaneously issued an order directing the Clerk to convert the appeal into a  
11 writ proceeding and issued a writ of mandamus to the Parole Board.

12          10.    The writ directed the Parole Board to vacate its 2014 decision and conduct a new hearing  
13 where NAC 213.518(2)(k) is not applied as an aggravating factor.

14          11.    The writ did not require the Parole Board to consider the issue of parole release  
15 retroactively.

16          12.    The writ did not require the Parole Board to grant Anselmo parole.

17          13.    On November 16, 2017, the Parole Board conducted a parole hearing where it granted  
18 Petitioner parole, and ordered that Petitioner be paroled from his sentence for murder effective February  
19 1, 2018.

20          14.    On April 18, 2018, the Parole Board conducted another hearing called a Review Prior  
21 Order (RPO) hearing.

22          15.    At the RPO hearing, the Parole Board explained to Petitioner that the purpose of the  
23 hearing was to reconsider the November 2014 denial while excluding consideration of NAC  
24 213.518(2)(k) as an aggravating factor.

25          16.    The Parole Board further explained that it had two options at the RPO hearing: (1)  
26 maintain the recent grant of parole effective February 1, 2018, or (2) reverse the November 2014 denial  
27 and grant parole effective February 1, 2015.



17. The Parole Board elected to maintain the recent parole grant effective February 1, 2018.

18. Petitioner sought reconsideration the Parole Board's decision, asserting that he was entitled to a retroactive grant of parole effective February 1, 2018.

19. The Parole Board denied reconsideration, noting that it had explained to petitioner "the different actions that the Board could take" during the ROP hearing and that the Parole Board "determined that there would be no change to the denial period determined at your 11-17-2014 hearing and your subsequent grant effective date."

20. Petitioner sought reconsideration from the Parole Board a second time.

21. The Parole Board again denied reconsideration, stating "the Boards [sic] decision was to maintain the denial period of three years."

22. Petitioner filed a petition for writ of mandamus arguing that the Parole Board had failed to comply with the Nevada Supreme Court's writ because it did not retroactively grant Petitioner parole effective February 1, 2015.

23. This Court ordered a response to the petition.

24. Respondents filed an answer arguing that the Parole Board's actions in reconsidering the denial of parole from November 2014 without consideration of NAC 213.518(2)(k) as an aggravating factor satisfied the terms of the Nevada Supreme Court's writ.

### CONCLUSIONS OF LAW

1. Mandamus is an extraordinary remedy, and the decision to entertain a petition lies within the discretion of the court. *Hickey v. District Court*, 105 Nev. 729, 731, 782 P.2d 1336, 1338 (1989).

2. A court may issue a writ of mandamus "to compel the performance of an act which the law especially enjoins as a duty resulting from an office, trust, or station," or to control a manifest abuse of or arbitrary or capricious exercise of discretion. NRS 34.160; *Rugamas v. Eighth Jud. Dist. Ct.*, 129 Nev. 424, 430, 305 P.3d 887, 892 (2013) (citing *Round Hill Gen. Improvement Dist. v. Newman*, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981)).

3. The writ may not issue where the petitioner has a plain, speedy, and adequate remedy in the ordinary course of law. NRS 34.170.



1           4.       To justify the issuance of a writ of mandamus to enforce the performance of an act by a  
2 public officer, the act must be one the performance of which the law requires as a duty resulting from the  
3 office, and there must be an actual omission on the part of the officer to perform it. *Mineral County v.*  
4 *Dep't of Conserv. & Natural Res.*, 117 Nev. 235, 243, 20 P.3d 800 (2001); *Brewery Arts Center v. State*  
5 *Bd. Of Examiners*, 108 Nev. 1050, 1054, 843 P.2d 369 (1992); *Ex rel. Blake v. County Comm'rs*, 48 Nev.  
6 299, 231 P. 384 (1924).

7           5.       Mandamus will not issue unless the petitioner shows a clear legal right to the relief  
8 demanded. *Ex rel. Blake v. County Comm'rs*, 48 Nev. 299, 304, 231 P. 384 (1924).

9           6.       Mandamus will lie to compel an officer or tribunal exercising judicial functions to act, but  
10 never to review or correct such judicial acts, however, erroneous they may be. *State v. Eighth Judicial*  
11 *Dist. Court*, 116 Nev. 127, 133, 994 P.2d 692 (2000); *York v. Board of County Comm'rs*, 89 Nev. 173,  
12 174, 509 P.2d 967 (1973); *Hardin v. Guthrie*, 26 Nev. 246, 66 P.2d 744 (1901).

13           7.       This Court is without authority to second-guess the Parole Board's exercise of its statutory  
14 discretion to grant or deny parole. *Anselmo*, 133 Nev. at \_\_\_, 396 P.3d at 850-51.

15           8.       There is no statutory authority or case law providing for a retroactive grant of parole.  
16 *Williams v. State Dep't. of Corr.*, 133 Nev. \_\_\_, \_\_\_, 402 P.3d 1260, 1265 n.7 (2017) (citing *Niergarth*  
17 *v. Warden*, 105 Nev. 26, 29, 768 P.2d 882, 883-84 (1989).

18           9.       The Parole Board's April 18, 2018 RPO hearing reconsidering the November 2014 denial  
19 of parole while excluding consideration of NAC 213.518(2)(k) as an aggravating factor complied with  
20 the terms of the Nevada Supreme Court's prior writ.

21           10.      Petitioner is not entitled to extraordinary relief in the form of a writ directing the Parole  
22 Board to retroactively grant his parole effective February 1, 2015.

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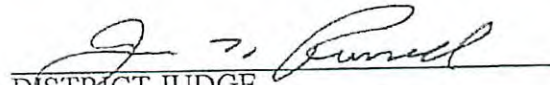
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ORDER

In light of the foregoing, it is **ORDERED** that the petition for writ of mandamus is denied.

Dated this 16<sup>th</sup> day of November, 2018.

  
DISTRICT JUDGE

Submitted by:

Jeffrey M. Conner (Bar. No. 11543)  
Assistant Solicitor General  
State of Nevada  
Office of the Attorney General  
100 North Carson Street  
Carson City, NV 89701-4717  
(775) 684-1200 (phone)

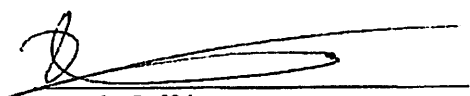


**CERTIFICATE OF MAILING**

Pursuant to NRCP 5(b), I certify that I am an employee of the First Judicial District Court, and that on this 16<sup>th</sup> day of November, 2018, I deposited for mailing, postage paid, at Carson City, Nevada, a true and correct copy of the foregoing Order addressed as follows:

Kirk B. Lenhard, Esq.  
Emily A. Ellis, Esq.  
Brownstein Hyatt Farber Schreck, LLP  
100 North City Parkway, Suite 1600  
Las Vegas, NV 89106

Jeffrey M. Conner  
Assistant Solicitor General  
Office of the Attorney General  
100 North Carson Street  
Carson City, NV 89701-4717

  
Angela Jeffries  
Judicial Assistant, Dept. 1