

SUPREME COURT  
FILED

FEB 15 2023

Jorge Navarrete Clerk

S274173

Deputy

**IN THE SUPREME COURT OF CALIFORNIA**

**En Banc**

---

In re ALLEN RAY AUTEN on Habeas Corpus.

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The request for judicial notice is denied.

The petition for writ of habeas corpus is denied.

Evans, J., was recused and did not participate.

**GUERRERO**

---

*Chief Justice*

APPENDIX 14: Jun. 2,2022 Request of Judicial Notice documents the Court refused to acknowledge this Court's and the CSC's own controlling authorities. 12

# CONFORMED COPY

**SUPREME COURT  
FILED**

JUN 2 2022

**Jorge Navarrete Clerk**

Deputy

IN THE SUPREME COURT IN AND  
FOR THE STATE OF CALIFORNIA

Case No. SL4113

App. No. CO95350  
Sup. # STK-CR-FMISC-2021-8070

**MOTION FOR:  
Judicial Notice**

MEMORANDUM OF -

#### POINTS AND AUTHORITIES

8 ALLEN R. AUTEN

Petitioner,

vs.

11 KATHLEEN ALLISON, CDCR Sec.; JENNIFER  
12 SHAFFER, Executive Officer of the BPH;  
13 ROB BONTA, (A) Cal. Attorney General;  
JAMES HILL (A) CIM Warden; & GAVIN C.  
NEWSOM, et al, Governor for the State  
of California,

### Respondents, et al.

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TO THE HONORABLE JUSTICES OF THE SUPREME COURT  
IN AND FOR THE STATE OF CALIFORNIA.

## I. INTRODUCTION AND PROCEDURAL HISTORY

20 (1). Please take notice that effective Jan. 7, 2022, Petitioner had  
21 exhausted his State remedies in the Court of Appeal after exhausting his  
22 remedies in the Superior Court (Note: in both cases, Petitioner's filings  
23 contained the six (6) page HC-001 Form stating two (2) grounds for relief  
24 and eight (8) exhibits supporting Petitioner's allegations). In his cases,  
25 Petitioner alleged that: A. the over 27 years Petitioner has suffered for  
26 the offense is disproportionate to the crime itself; B. his sentence has  
27 been unconstitutionally administered by a "State-wide Ministerial Agency"



**COURT PAPER**  
**STATE OF CALIFORNIA**  
**STD. 113 (REV. 3-95)**

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IN THE SUPREME COURT IN AND  
FOR THE STATE OF CALIFORNIA

Case No. S274173

App. No. CO95350  
Sup. # STK-CR-FMISC-2021-8070

8 ALLEN R. AUTEN,

Petitioner,

VS.

11 KATHLEEN ALLISON, CDCR Sec.; JENNIFER  
12 SHAFFER, Executive Officer of the BPH;  
13 ROB BONTA, (A) Cal. Attorney General;  
JAMES HILL (A) CIM Warden; & GAVIN C.  
NEWSOM, et al, Governor for the State  
of California,

### Respondents, et al.

## DECLARATORY AND INJUNCTIVE RELIEF

**AND/FOR**

REQUEST FOR JUDICIAL NOTICE

MEMORANDUM OF:

## POINTS AND AUTHORITIES

18 IN AND FOR THE STATE OF CALIFORNIA.

## I. INTRODUCTION AND PROCEDURAL HISTORY

20 (1). Please take notice that effective Jan. 7, 2022, Petitioner had  
21 exhausted his State remedies in the Court of Appeal after exhausting his  
22 remedies in the Superior Court (**Note:** in both cases, Petitioner's filings  
23 contained the six (6) page HC-001 Form stating two (2) grounds for relief  
24 and eight (8) exhibits supporting Petitioner's allegations). In his cases,  
25 Petitioner alleged that: A. the over 27 years Petitioner has suffered for  
26 the offense is disproportionate to the crime itself; B. his sentence has  
27 been unconstitutionally administered by a "State-wide Ministerial Agency"



1 that C. is acting in excess of its jurisdiction and without term fixing  
2 powers because effective July 1, 1977, **ALL** punishment for crime was fixed by  
3 the Legislature and imposed to a finality by a court of law (See: Habeas @  
4 EXHIBIT 5 Part 1 - Pen. Code § 1170(a)(1)). By the Legislative Declaration  
5 itself, that the purpose for imprisonment for crime, on or after July 1,  
6 1977, is "punishment for the crime itself" shows the Parole Agency has  
7 exceeded its jurisdiction to make law (absent a constitutional amendment) by  
8 including Petitioner's lesser offense with the greater class of crimes  
9 through its rule making authority to give itself jurisdiction in violation  
10 of Article III § 3 of the State Constitution and the Fourteenth Amendment to  
11 the United States Constitution. For example, when the Parole Agency acted  
12 to include the lesser offense of a Pen. Code § 187 in the 2nd degree with  
13 SB-42's more serious and greater Category Five list of crimes where the  
14 punishment is a determinate term of "**Straight Life**", when Petitioner was  
15 convicted of a lesser offense, which the Legislature expressly excluded from  
16 the jurisdiction of the Parole Agency, has denied those within the lesser  
17 SB-42 Category Four, substantive due process and equal protection of the DSL  
18 (See: Cal. Const. Art. II § 8(d); Art. III § 3; and Petitioner's EXHIBIT 7  
19 SB-42 at pg. 3 which states:

20        "(4) 5, 6, 7 years - this classification covers the most serious  
21        crimes that are to be punished with something **less** than life im-  
22        prisonment or death. SB 42 places the following five crimes into  
23        this category: second degree murder; attempted murder; explosives  
24        with bodily injury; gang rape, and conspiracy to commit a crime on  
25        certain elected officials." (Note: Prop. 7 did not ask the voters  
26        to change a SB-42 Category Four crime into a Category Five or  
27        from a determinate sentence into a indeterminate sentence under a  
      repealed ISL; cf. Writ @ EXHIBIT 7 Part 1)

28        (2). Please take notice that Petitioner in his effort to exhaust his  
29        state remedies, he filed his initial Habeas Writ in the Superior Court where  
30        he was sentenced but that Court failed to issue the writ on all the issues



1 and did not allow him to fairly litigate each of the causes he raised in  
2 accordance with State and United States' Supreme Court precedent (See:  
3 **Lucido v. Superior Court**, 51 Cal.3d 336, 341-42 [272 CR 767] (1990) &  
4 **Sanders v. United States**, 372 U.S. 1, 8, 15-16 [83 S.Ct. 1068] (1963)). For  
5 example, the lower court completely ignored prior precedent and the Parole  
6 Agency's own Rules and Regulation (See: Petitioner's Writ @ EXHIBIT 4; cf.  
7 Petitioner's Motion @ Section II, infra, and cases cited therein stating  
8 that "... once the term is fixed it cannot be increased"). Therefore,  
9 Petitioner is requesting a "Show of Cause" issue on all the issues he raised  
10 in the two grounds listed in the writ and on the subject of whether or not  
11 the 1978 Prop. 7 Initiative is unconstitutional on its face because:

- 12 1. Senator Briggs, Prop. 7's Author and Drafter did not have the use of  
13 the People's Initiative process when he did not have the votes to  
14 place the issues raised in Prop. 7 by Referendum (See: ATTACHMENT  
15 5). and
- 16 2. The Legislature declared in AB-476 on pg. 17, Ins. 21-36 that the  
17 purpose of imprisonment for crime is "**punishment** for the crime  
18 **itself**" (ibid). However, under Prop. 7's term to life sentencing  
19 structure, that "punishment for the crime itself", is fatally  
20 uncertain as to what the actual punishment will be (inflicted  
21 equally) in accordance with SB-42 (1976), AB-476 (1977), and the  
22 "Enrolled Bill Report", stating that every offender and their family  
23 members have the right to know at sentencing the exact time the  
24 offender will be coming home; whereas Prop. 7 uncertain sentencing  
25 scheme denies these rights in violation of due process and equal  
26 protection of the law (See: ATTACHMENTS 1 & 4). and
- 27 3. As a Senator Briggs could not use the initiative process to adopt the



1 term to life sentencing structure from the repealed ISL without  
2 submitting the subject for voter approval pursuant to Gov. Code §  
3 9609 & Cal. Const. Art. IV § 9, thus making Prop. 7 "Void on its  
4 Face" because it does not conform to the Legislative Declaration in  
5 Pen. Code § 1170(a)(1) and denies those adversely effected the same  
6 rights for which **All** Pen. Code provisions must conform under the law  
7 as it existed on Nov. 7, 1978. For all the reasons expressed above,  
8 Petitioner is requesting Declaratory and Injunctive Relief for the  
9 entire class on these matters due to the Legislative Declaration in  
10 Pen. Code § 1170(a)(1) and its preclusive effect it has on Prop. 7's  
11 uncertain sentences (See: ATTACHMENT 3,4, & 5 cf. Ptrs. Writ @  
12 EXHIBIT 5 Part 1 - Pen. Code § 1170(a)(1), Stats 1977 Ch. 165 § 15  
13 infra).

14 **Chapter 4.5 Trial Court Sentencing: § 1170(a)(1) Findings and Declarations:**

15 (a)(1) "The Legislature finds and declares that the purpose of imprisonment  
16 for crime is punishment. This purpose is best served by terms  
17 proportionate to the seriousness of the offense with provisions for  
18 uniformity in the sentences of offenders committing the same offense  
19 under similar circumstances. The Legislature further finds and declares  
that the elimination of disparity and the provision of uniformity of sentences  
can best be achieved by determinate sentences fixed by statute in  
proportion to the seriousness of the offense as determined by the  
Legislature to be imposed by the court with specified discretion."

20 **II. IN ADDITION TO JUDICIAL NOTICE THE QUESTION BEFORE THIS COURT IS:**

21 **"WHAT IS A "LIFE" SENTENCE UNDER STATE LAW AFTER JULY 1, 1977".**

22 (3). Before repeal of the Indeterminate Sentencing Law (ISL) and from  
23 1917 up to July 1, 1977, those sentenced to a determinate "**Straight Life**" a  
24 SB-42 Class 5 penalty had to serve a minimum of 7 years before found to be  
25 "**REHABILITATED**" and released on parole (Note: the average term served was 8  
26 to 13 years before parole). Those under the "ISL", had their terms fixed  
27 after being found to be "Rehabilitated" before release on parole (See:



1 9/02/75 Admin. Dir. 75/30; cf. **In re Stanworth**, 33 C.3d 176, **181-86** [187 CR  
2 783] (1982); **In re Jeanice D.**, 28 C.2d 210, **217**, **223-28** [168 CR 455] (1980);  
3 **In re Stanley**, 54 C.A.3d 1030, **1036-38**, **1041-43** [126 CR 783] (1976); **People**  
4 **v. Walker**, 18 Cal.3d 232, **243-44** [133 CR 520] (1976); **In re Rodriguez**, 14  
5 C.3d 639, **652**, **653-54**, n.18 & 20 [122 CR 552] (1975); **People v. Wingo**, 14  
6 Cal.3d 169, **183-84** & n.15 [534 P.2d 1001] (1975); **In re McManus**, 123 C.A.  
7 395, **396** n.1 [266 P.2d 929] (1955)).

8 (4). Previous decisions of the State's highest Court tells us that  
9 before repeal of the Indeterminate Sentencing Law (ISL), persons **not** sent-  
10 enced to serve "**Straight Life**" penalties were sentenced to a "**MINIMUM TO**  
11 **MAXIMUM**" term until fixed by the Parole Agency (See: Pen. Code Sections **671**,  
12 **3020-3025**, (repealed) and **§ 5077**, amended to remove the last vestige of the  
13 Parole Agency term fixing powers). Without term fixing power, uncertain  
14 punishment cannot exist (See: Cal. Const. Art. III § 3; Pen. Code §§ 12 &  
15 13). Effective July 1, 1977, the purpose for imprisonment for **all** crimes  
16 changed from "mitigation of the term" based on rehabilitation, to "**Punish-**  
17 **ment for the Crime Itself**" (See: Pen. Code § 1170 (a)(1), Stats 1977 Ch. 165  
18 § 15). On July 1, 1977, uncertain penalties ceased to exist (**ibid**). Then,  
19 on Nov. 7, 1978, the voters ratified the 1978 Prop. 7 Initiative and  
20 "**CHANGED**" the sentence for a Pen. Code § 187 in the 1st degree from "**Life**"  
21 to "**25-years-to-life**". "**Increases the penalty for second degree murder**" and  
22 stated: "**Prohibits parole ... subject to good-time credits**" and nothing more  
23 (See: Prop. 7's Pen. Code § 190.4 **stating that** when the person is found  
24 guilty of first degree murder and special circumstances are not proved, the  
25 "**court**" shall impose a "**term of 25 years**").

26 (5). Please take notice that based on the foregoing facts, the question  
27 then becomes how does the lesser "**Term-to-life**" or, SB-42 Category one thru



1 four crimes morph by ministerial law making, into the same category as the  
2 more serious determinate SB-42 "**Straight Life**" "**For Life**" category five list  
3 of crimes and turn the Pen. Code § 1170(a)(1) declaration in the Determinate  
4 Sentencing Law on its head. As shown by statute, this question can best be  
5 answered by Prop. 7 because the subject of reenacting any part of the ISL is  
6 not presented in the Initiative which violates Articles II § 8(d) and IV § 9  
7 of the State Constitution. There is no question Senator Briggs knew this  
8 but did it anyway and completely disregarded the Legislative Declaration in  
9 Pen. Code § 1170(a)(1) (See: Cal. Const. Art. II § 8(d); Art. III § 3 & Gov.  
10 Code § 9609). The second part of the question is whether Senator Briggs  
11 could use the power of initiative to defeat the purpose and policy stated by  
12 the Legislature in Pen. Code § 1170(a)(1)'s declaration when he did not have  
13 the votes for a Referendum and could not do indirectly what he was prevented  
14 from doing directly by using the People's Initiative. For his illegal acts,  
15 Senator Briggs was sanctioned (fired) and told he would never be allowed to  
16 hold another public office in this state (See: **Fairbank v. United States**,  
17 181 U.S. 283, 294 [21 S.Ct. 648] (1901); cf. Gov. Code § 9609 and **Gibbs v.**  
18 **City of Napa**, 130 Cal. Rptr. 382, 384-385 [59 Cal.App. 3ed 148] (1976); **In**  
19 **the matter of Goddard**, 24 Cal.App. 2d 132, 138-141 [74 P.2d 818] (1937) and  
20 **Association for Retarded Citizens v. Department of Developmental Services**,  
21 38 C.3d 384, 390-394 [211 CR 758] (1985) and **Bixby v. Pierno**, 4 Cal.3d 130,  
22 137-145, 150-151 [123 P.2d 457] (1971)).

23 (6). Petitioner posits that the questions raised by Prop. 7's uncertain  
24 sentencing scheme, can only be answered in two ways. First, because the "**25**  
25 **and 15 year terms**" described in Prop. 7's title can only be enforced accord-  
26 ing to the Legislative Declaration in Pen. Code § 1170(a)(1) as it existed  
27 on Nov. 7, 1978, and exactly the way the voters were told it would be and



1 the same as all other SB-42's list of crimes committed on or after July 1,  
2 1977; where a person earns their release on parole "**subject to good-time**  
3 **credits**" (See: **s/n #1**) or Secondly, Petitioner posits, Prop. 7 is "**void on**  
4 **its face**" as a violation of State and United States Supreme Court precedent  
5 (See: **United States v. Gonzales**, 520 U.S. 1, 6 (1997) held: "We have stated  
6 time and time again that the courts **must** presume that a legislature says in  
7 a statute what it means and means in a statute what is says there."; cf.  
8 Pen. Code § 1170(a)(1), Stats 1977 Ch. 165 § 15; cf. Prop. 7's Title @  
9 ADDENDUM 3). Moreover, it would conflict with the Legislative policy and  
10 the specific language used in Prop. 7's Title and Pen. Code § 190.4 if the  
11 penalties of 25 and/or 15 years were construed to be "Life" sentences when  
12 the Legislature declared that **ALL** persons whose crime was committed on or  
13 after July 1, 1977 had a right to know at sentencing the exact punishment  
14 for the crime itself, including the offender's family members (See: SB-42

15 **S/n #1:** As shown by the repealing statutes in Stats 1976 Ch. 1139 and Stats 1977 Ch. 165, the  
16 statutory authority allowing the Parole Agency to fix terms was repealed (See: Pen. Code Sec-  
17 tions 671, 2920-2940, 3020-3025, repealed and § 5077, amended to remove the last vestige of the  
18 Parole Agency's Term Fixing Authority). The controlling issue in this case is the Legislative  
19 Intent in its Pen. Code § 1170(a)(1), setting forth the PURPOSE for imprisonment for all crimes  
20 committed on or after July 1, 1977 (See: Legislative Pen. Code § 1170(a)(1) Declaration & Pen.  
21 Code § 2930, et seq.). For example, "The almost unbroken custom for centuries has been to  
22 preface laws with a Statement in some form declaring the enacting authority. The purpose of an  
23 enacting clause of a statute is to identify it as an act of legislation by expressing on its  
24 face the authority behind the law" (73 Am.Jur2d Statutes; Sjoberg v. Security Savings & Loan  
25 Ass'n, 73 Minn. 203, 212-213 (1898)). In this case the enacting clause states the purpose of  
imprisonment in Pen. Code § 1170(a)(1), and in 82 C.J.S. Statutes, § 65 p. 104, it states:  
26 "[A]lthough there is no constitutional provision requiring an enacting clause such a clause  
27 has been held to be requisite to the validity of a legislative enactment" (See: Harry  
Bettenson, Documents of the Christian Church, 2nd ed. Oxford Univ. Press, 1963 p. 65; cf,  
Morgan v. Murray, 328 P.2d 644, 654 (Mont. 1958) stating: "The enacting clause of a bill goes  
to the substance of that bill, it is not merely procedural."]). Effective July 1, 1977, the  
Legislature stated its intent by repealing the ISL and in its Pen. Code § 1170(a)(1) declara-  
tion made clear its Purpose & Policy standards for control over all Pen. Code violations for  
crimes listed in its "Seven Category Sentencing Structure" and there is nothing in the Nov. 7,  
1978 Prop. 7 Initiative asking the voters to reenact any part of the ISL, change or repeal any  
part of the DSL, nor revest the Parole Agency with Term Fixing Powers, without which the ISL  
cannot exist (See: ADDENDUMS attached hereto). This means, unless it can be proven otherwise  
Petitioners must be given the same punishment as those in their SB-42 classification; such as  
provided by CDCR shown in SB-42's Ways & Means Seven Category Sentencing Structure.



1 ENROLLED BILL REPORT at Benefits § 12). Furthermore, Prop.7 did not ask the  
2 voters to change the punishment for crime from determinate sentencing to  
3 indeterminate sentencing under the repealed ISL and at that moment in time,  
4 the punishment for a Pen. Code § 187 in the second degree was a SB-42  
5 Category Four Crime of "**Less than Life**" in which the Parole Agency had no  
6 jurisdiction over on Nov. 7, 1978 when Prop. 7 was ratified by the voters  
7 (See: Cal. Const. Art. III § 3; **cf. Witkin & Epstein**, Crim. Law Vol. 1 § 12  
8 (1989) and Gov. Code § 9609). Moreover, any construction that defeats the  
9 Legislative Declaration in Pen. Code § 1170(a)(1) without submitting the  
10 subject to the voters would seemingly be void simply because the penalty  
11 provisions must conform to the Legislative Declaration and not the other way  
12 around (See: Cal. Const. Art. III § 3; Art. IV §§ 9 & 16; & U.S. Const. 14th  
13 Amend. & ante @ s/n #1).

14 (7). Please take notice that the law of this case clearly shows that  
15 John V. Briggs, Prop. 7's Author and Drafter as a State Senator, did not  
16 have the votes for a Referendum and therefore did not have the power of  
17 initiative nor could he recreate uncertain punishments for crime by adopting  
18 the sentencing structure from the repealed ISL under the Purpose & Policies  
19 of the DSL (See: **cf. Fairbank v. United States**, supra, 181 U.S. @ 294 &  
20 **Gibbs v. City of Napa**, supra, 130 Cal. Rptr. @ pp. 384-385; **cf. Cal. Const.**  
21 **Art. III § 3; IV §§ 8(b), 9, & 16** and **U.S. Const. 14th Amend.**). Senator  
22 Briggs knew this but submitted Prop. 7 knowing it was a direct attack upon  
23 the Legislative Declaration in Pen. Code § 1170(a)(1) as well as a violation  
24 of Article III § 3 to give the Executive Branch judicial and legislative  
25 powers without a Constitutional Amendment (See: e.g., Pen. Code Sections 12  
26 & 13; **cf. Stats 1977 Ch. 165 § 15**). This, in and of itself proves that the  
27 Parole Agency has been exceeding its jurisdiction and statutory powers since



1 Nov. 7, 1977 every time this "MINISTERIAL AGENCY" fixes the term within  
2 Prop. 7's sentencing structure without term fixing powers (See: ADDENDUM 1 -  
3 LIST OF DECISIONS CALLING FOR JUDICIAL NOTICE and ADDENDUM 2 - FYI WHY  
4 UNCERTAIN PUNISHMENT FOR CRIME CANNOT EXIST UNDER STATE LAW; and ADDENDUM 3  
5 - 1978 Prop. 7 Initiative).

6 **CONCLUSIONS**

7 (8). Please take notice that Petitioner posits that this writ should be  
8 granted unless the Respondents can meet their burden and show on the merits:

- 9 1. The Indeterminate Sentencing Law, as it existed from 1917 to 1977  
10 was **not** repealed, or that it was lawfully reenacted by Prop. 7  
11 voters; and
- 12 2. That the Determinate Sentencing Law and the Legislative Declara-  
13 tion in Pen. Code § 1170(a)(1) did not supersede and control all  
14 Penal Code provisions that provide "**punishment**" for ALL crime for  
15 which imprisonment is prescribed on or after July 1, 1977; and
- 16 3. That during the Legislative process used to repeal the ISL, the  
17 Legislature gave the Parole Agency jurisdiction to fix terms for  
18 crimes listed in SB-42's Categories one through four or in any  
19 other lawful legislative process; and
- 20 4. By what authority of law Prop. 7 voters were asked to give the  
21 Parole Agency jurisdiction over less than SB-42 Category Five list  
22 of crimes; and
- 23 5. That after repeal of the ISL and its "PURPOSE, POLICY, WAYS and  
24 MEANS", necessary for the ISL's existence, by what authority of law  
25 the ISL was reenacted with voter approval and the Parole Agency  
26 was given back its term fixing authority without which the ISL  
27 cannot exist.



1 (9). Please take notice that Petitioner posits that unless it can be  
2 shown otherwise, Petitioner respectfully requests this Court find and  
3 declare that the Legislative Declaration in Pen. Code § 1170(a)(1), stating  
4 that the "**punishment**" is for the crime itself must be the same for every  
5 offender committing the same offense (See: Cal. Const. Art. 1 § 7(a)(&(b) &  
6 the U.S. Const. 14th Amend.). Additionally, the "**punishment**" for the crime  
7 itself, and must be fixed to a certainty in all its terms and provisions  
8 when it leaves the hands of the Legislature so that every offender  
9 committing the same crime serves the same punishment as determined by the  
10 Legislature and imposed by a court of law so that no person is kept beyond  
11 his minimum term or held beyond his Pen. Code § 2931 contractually earned  
12 good-time and participation release date in violation of United States  
13 Supreme Court precedent (See: Cal. Const. Art. III § 3 & U.S. Const. 14th  
14 Amend.; **cf. Alleyne v. United States**, 113 S.Ct. 2151, 2155-63 & 2164-65 [186  
15 L.Ed.2d 315] (2013) [cited on pg. 3 in Petitioner's Writ]; **cf. Sandin v.**  
16 **Conner**, 575 U.S. 472, 477-80, 482 [115 S.Ct. 2293] (1995) [Held: mandatory  
17 parole based on state credit earning statute]). Otherwise we have different  
18 punishments for different persons committing the same crime being  
19 arbitrarily decided by a ministerial agency under the same branch charged  
20 with the person's prosecution. Petitioner posits that this is not only  
21 fundamentally unfair, it violates the State Separation of Powers Clause and  
22 denies those adversely affected substantive due process and equal protection  
23 of the DSL (See: EXHIBIT 7 Part 2 - AB-476 @ p. 17, lns. 21 thru 36. Stats  
24 1977 Ch. 165 § 15; **cf. Cal. Const. Art. III § 3**).

REQUEST FOR RELIEF

26 (10). Please take notice that Petitioner adopts herein all his pre-  
27 vious claims brought in his Habeas Writ, as well as in this Motion for

1 Declaratory and Injunctive Relief and respectfully requests this Court to  
2 issue a "Show of Cause" for Respondent(s) to answer this complaint pursuant  
3 to Pen. Code § 1473(a)&(b) on:

- 4 1. The two grounds raised in his original Habeas Writ pending in this  
5 Court and the matters presented ante from pg. 1 ¶ (1) thru pg. 10  
Ins. 1 thru 27 inclusive; and
- 6 2. That this Court "ORDER" Respondent(s) show by what authority of  
7 law the Parole Agency was vested with jurisdiction by the Legisla-  
8 ture and/or Prop. 7 voters, over less than SB-42 Category Five  
Crimes as those crimes existed on Nov. 7, 1978, and/or over Peti-  
9 tioner and those in his SB-42 Category Four Class (See: ante @ pg.  
10 2, Ins. 20 thru 24; and
- 11 3. That this Court "Find & Declare" that those within Petitioner's  
12 SB-42 Category Four who have specifically performed according to  
13 the terms and provisions of Pen. Code §§ 1170(a)(1) and 2931 who  
14 are entitled to have been released "... s]ubject to good-time  
15 credits", be "ORDERED" by this Court to be released on parole  
16 forthwith and if those contractually earned Pen. Code § 2931  
17 credits exceed the term of parole that those person's be ordered  
18 discharged; and
- 19 4. That this Court "Find & Declare" that Petitioner and those within  
20 his class, who have performed according to the "Aleatory Con-  
21 tract" provisions in Pen. Code § 2931 and have served "punish-  
22 ment" in excess of the "MINIMUM" term -- in violation of United  
23 States Supreme Court precedent -- of either 10-years 6-months for  
24 a 2nd degree Pen. Code § 187 and/or 16-years 6-months for a 1st  
25 degree Pen. Code § 187 and whose credits exceed parole of 1-year  
for 2nd degree and 3-years for 1st degree, be "ORDERED" discharged  
forthwith; and
- 26 5. That for all the reasons expressed in this Motion and those filed  
27 in his Writ of Habeas Corpus, that this Court "Find & Declare" the  
Nov. 7, 1978 Prop. 7 Initiative to be "Void on its Face" and that  
unless shown by authority of law, under the "Rule of Law" that the  
State's Ministerial Parole Agency can make law to increase its own  
jurisdiction and give itself term fixing powers, that its author-  
ity and jurisdiction is confined (exclusively) to SB-42 Category  
Five Crimes and no other; and
- 28 6. That based on all the issues presented herein and in Petitioner's  
29 Writ, that this Court issue the "Writ" and grant any other relief  
this Court finds he is entitled to as a matter of law; including  
the "Findings" that a "Structural Error" occurred at sentencing as  
well as in the post administration of a repealed laws sentencing  
scheme proving Petitioner's fundamental rights, under the State  
and Untied States Constitutions, have been violated.

27 //



1 Respectfully submitted,

2 *Allen Ray Auten*

3 Allen Ray Auten, et al.

4 VERIFICATION

5 As the Petitioner in the above entitled action, I declare under penalty  
6 of perjury under the laws of the United States of America, that the forego-  
7 ing is true and correct. Executed on April (Month) 28 (Day), 2022.

8 Allen Ray Auten

9 Allen Ray Auten, et al.

4.28.22

Date

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11

WORD-COUNT CERTIFICATE

12

I hereby certify, under penalty of perjury, that the attached Motion  
13 contains no more than 3,360 words, including footnotes, pursuant to the  
California Rules of Court, as determined by Petitioner based on 75 spaces  
14 per line, 7 word character and 27 lined legal paper.

15

Dated: 4.28.22

Respectfully submitted,

*Allen Ray Auten*

Allen Ray Auten  
Petitioner, in pro se.

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