

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE

Central Justice Center
700 W. Civic Center Drive
Santa Ana, CA 92702

SHORT TITLE: Tony Rackauckas, District Attorney of Orange County on behalf of the People of the State of California vs. State of California, Department of Corrections and Rehabilitation, Board of Parole Hearings

CLERK'S CERTIFICATE OF MAILING/ELECTRONIC SERVICE

CASE NUMBER:
30-2018-00985610-CU-WM-CJC

I certify that I am not a party to this cause. I certify that the following document(s), Minute Order dated 08/02/18, have been transmitted electronically by Orange County Superior Court at Santa Ana, CA. The transmission originated from Orange County Superior Court email address on August 2, 2018, at 11:13:55 AM PDT. The electronically transmitted document(s) is in accordance with rule 2.251 of the California Rules of Court, addressed as shown above. The list of electronically served recipients are listed below:

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SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE

CENTRAL JUSTICE CENTER

MINUTE ORDER

DATE: 08/02/2018

TIME: 11:03:00 AM

DEPT: C34

JUDICIAL OFFICER PRESIDING: Martha K. Gooding

CLERK: Delia Sanchez

REPORTER/ERM: None

BAILIFF/COURT ATTENDANT:

CASE NO: 30-2018-00985610-CU-WM-CJC CASE INIT. DATE: 04/11/2018

CASE TITLE: **Tony Rackauckas, District Attorney of Orange County on behalf of the People of the State of California vs. State of California, Department of Corrections and Rehabilitation, Board of Parole Hearings**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Writ of Mandate

EVENT ID/DOCUMENT ID: 72863189

EVENT TYPE: Under Submission Ruling

APPEARANCES

There are no appearances by any party.

The Court, having taken Petitioner's Order to Show Cause re: Preliminary Injunction under submission on 7/23/18 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules in accordance with the Order re: Motion for Preliminary Injunction attached hereto and incorporated herein.

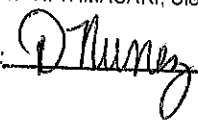
Court orders clerk to give notice.

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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

AUG 02 2018

DAVID H. YAMASAKI, Clerk of the Court

BY:  DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE - CENTRAL JUSTICE CENTER

TONY RACKAUCKAS, DISTRICT
ATTORNEY OF ORANGE
COUNTY, ON BEHALF OF THE
PEOPLE OF THE STATE OF
CALIFORNIA; COLLENE
THOMPSON CAMPBELL,

Plaintiff,

v.

STATE OF CALIFORNIA,
DEPARTMENT OF
CORRECTIONS AND
REHABILITATION, BOARD OF
PAROLE HEARINGS,

Defendant

LAWRENCE RAYBORN COWELL

Party In Interest.

Case No: 30-2018-00985610

ORDER RE: MOTION FOR PRELIMINARY
INJUNCTION

Hon. Martha K. Gooding

Dept. C34

1 Petitioners Tony Rackauckas, the District Attorney of Orange County, and Collene
2 Thompson Campbell (collectively, "Petitioners") ask this Court to enter a preliminary
3 injunction restraining Respondents, the State of California Department of Corrections and
4 Rehabilitation and the Board of Parole Hearings ("the Board"), from conducting a parole
5 suitability hearing for inmate Lawrence Rayborn Cowell ("Cowell") any earlier than October
6 25, 2019, which is three years from the date on which the Board last issued a "three year
7 denial" of parole for Cowell.¹

8 Petitioners filed their Complaint after the Board's administrative staff decided to
9 advance Cowell's parole suitability hearing from October 2019 to May 2018. Petitioners'
10 Complaint alleges: "It is this action which Plaintiffs seek to have declared unlawful and void,
11 and it is this action which is the subject of Plaintiffs' petition for injunctive relief." Complaint
12 ¶ 11.

13 As a preliminary matter, the Board's Objections to the Declarations of Douglas Pipes
14 and Linda Groberg are SUSTAINED in their entirety

15 For the reasons set forth below, the Court grants Petitioners' Motion for a Preliminary
16 Injunction.

17 In deciding whether to issue an injunction, the Court "must weigh two 'interrelated'
18 factors: (1) the likelihood that the moving party will ultimately prevail on the merits; and (2)
19 the relative interim harm to the parties from issuance or nonissuance of the requested
20 injunction." *Butt v. State of California* (1992) 4 Cal.4th 668, 677-78. "The trial court's
21 determination must be guided by a 'mix' of the potential-merit and interim-harm factors; the
22 greater the plaintiff's showing on one, the less must be shown on the other to support an
23 injunction." *Id.* (citation omitted). No matter how the court balances the interim harm,
24 however, it cannot properly grant a preliminary injunction "unless there is some possibility
25 that the plaintiff would ultimately prevail on the merits of the claim." *Id.*

26 ¹ Respondents took the position in their opposition papers that Respondent California Department of
27 Corrections and Rehabilitation ("CDCR") is "not a proper party to this litigation" because "the underlying matter
28 pertains solely to the Board's actions, and because the petition does not make any separate allegations
against CDCR independent of the Board . . ." Respondent The California Board of Parole Hearings Opposition
to Petitioners' Motion for Preliminary Injunction ("Resp.Opp.") at 6. Accordingly, it appears that only the Board
has opposed the Motion, and although the CDCR remains a party to the action, this Court's Order therefore
focuses on the conduct of and arguments asserted by the Board.

1 With respect to likelihood of success on the merits, Petitioners do not assert that the
2 Board has no authority to advance parole suitability hearings. It plainly has such authority.
3 Penal Code Section 3041.5(b)(4) provides: "The board may in its discretion, after
4 considering the views and interests of the victim, advance a hearing set pursuant to
5 paragraph (3) to an earlier date, when a change in circumstances or new information
6 establishes a reasonable likelihood that consideration of the public and victim's safety does
7 not require the additional period of incarceration of the inmate provided in paragraph (3)."²
8 *See also In Re Vicks*, (2013) 56 Cal.4th 273, 284.

9 Petitioners do assert, however, they are likely to succeed on the merits because the
10 decision to advance Cowell's parole hearing was not genuinely warranted by the facts or
11 circumstances. Petitioners argue the advancement determination made by Nga Lam
12 ("Lam") (who Petitioners describe as an Administrative Law Judge) was not a "faithful
13 application" of Section 3041.5(b)(4) because there were not enough meaningful "changes in
14 [Cowell's] circumstances" or enough meaningful "new information" about Cowell in the year
15 that elapsed between the Board's October 2016 parole denial and its November 2017 order
16 advancing Cowell's next hearing date to truly demonstrate a "reasonable likelihood that
17 consideration of the public and victim's safety does not require the additional period of
18 incarceration," as Section 3041.5(b)(4) requires.³ *See, e.g.*, Petitioners' Memorandum in
19 Support of Motion for Preliminary Injunction ("Pet. MPA") at 9. The Court disagrees.

20 The California Supreme Court has described the Board's discretion to advance a
21 parole suitability hearing as "*unfettered*." *In re Vicks*, 56 Cal.4th at 300 (emphasis added).
22 Lam's written decision recites the changes/new information she considered and on which
23 she based her conclusion that "there is sufficient change in circumstance to meet the
24 standard to advance [Cowell's] next hearing." *See* Respondent's Opposition Brief
25 ("Resp.Opp.") Exhibit ("Exh.") 1.⁴ The new facts/changes identified by Lam include that in

26 _____
27 ² The "board" referred to in Section 3041.5 is the Board of Parole Hearings, which by statute consists of 15
28 members. *See* Penal Code § 5075. Prior to the June 27, 2017 amendment of Section 5075, the Board
comprised 14 commissioners.

³ All statutory references are to the Penal Code unless otherwise indicated.

⁴ Although this document was simply attached to Respondent's Opposition Brief and not authenticated by
declaration, Petitioners did not object to the Court considering it and did not dispute that it is a true and correct

1 the year since his last denial, Cowell “has remained disciplinary free”; “has engaged in
2 positive rehabilitative efforts including continued participation in Alcoholics Anonymous,
3 Yokefellow Peer Counseling, Veterans in Prison and Life Awareness (which focuses on
4 introspection and personal accountability”; has “earned many laudatory chronos from staff
5 who hold him in high esteem”; and “appears to be responding to some of the concerns of
6 the last panel.” *Id.*⁵ If the advancement determination was properly delegated to Lam by
7 the Board, Lam’s determination that these changes or additional facts are enough to
8 warrant advancing Cowell’s parole suitability hearing date would be well within the Board’s
9 “unfettered discretion.”

10 The Court also rejects Petitioners’ argument that the Board “did not consider the
11 views and interests of the victims in this case before it administratively advanced [Cowell’s]
12 hearing date.” Pet. MPA at 11. Lam’s written decision states on its face that “[t]he letter
13 from the victim’s next of kin dated 10/16/17 was read and considered prior to conducting
14 this review.” Resp.Opp. Exh. 1. Petitioners submit no evidence to support their accusation
15 that Lam’s statement is nothing more than a “pro forma, boilerplate” recitation. Pet. MPA at
16 11. The Court is unwilling to assume Lam’s statement is false, as Petitioners suggest. *Id.*

17 In the Court’s view, whether Petitioners have shown a likelihood of success on the
18 merits turns on a procedural issue related to the hearing advancement determination, i.e.;
19 whether the Board properly delegated to Lam (who is not a Board Commissioner) the
20 authority to make the decision to advance Cowell’s parole suitability hearing to a date less
21 than three years after the Board’s most recent denial.⁶

22 copy of Lam’s written advancement decision. The same is true of the document reflecting the Board’s October
23 2013 three-year denial, also attached to Respondent’s Opposition Brief as Exhibit 2. Accordingly, the Court
24 exercises its discretion to accept and consider both documents.

25 ⁵ As summarized in Lam’s written decision, the panel that made the three-year denial decision on Cowell “cited
26 several static factors including the life crime that support a finding of unsuitability. The panel also found Mr.
27 Cowell lacked remorse. He also lacked credibility and insight into the causative factors of his life crime. The
28 panel found the traits that made Mr. Cowell dangerous such as a sense of entitlement that was present during
the life crime was [sic] still present during the hearing. Mr. Cowell’s elderly parole status was considered at
the hearing.” Resp.Opp. Exh. 1. The panel recommended that Cowell receive no more 115 or 128A
disciplinary violations, earn positive chromos, and maintain currency of his plans for parole. *Id.* Exh. 2.

⁶ As a result of Lam’s decision, Cowell’s parole suitability hearing was advanced to May 23, 2018. The Court
issued a temporary restraining order on May 18, 2018 enjoining the Board from conducting the advanced
hearing pending the Court’s ruling on Petitioners’ motion for preliminary injunction.

1 Respondent argues Lam had authority to make Cowell's hearing advancement
2 decision because she is a Deputy Commissioner (as well as an Administrative Law Judge),
3 and Deputy Commissioners can be assigned by the Board to make "decisions" under Penal
4 Code Section 5076.1(b). That statute provides that "[t]he board may use deputy
5 commissioners to whom it may assign appropriate duties, including hearing cases and
6 making decisions." Penal Code §5076.1(b). In support of that argument, Respondent
7 submitted admissible evidence that Lam has been a Deputy Commissioner for nine years
8 and thus was a Deputy Commissioner when she made the decision to advance Cowell's
9 parole suitability hearing. See Declaration of Jennifer P. Shaffer ("Shaffer Decl." or "Shaffer
10 Declaration") ¶ 16. Petitioners do not dispute this evidence or otherwise contest that Lam
11 had authority to take whatever action a Deputy Commissioner is properly authorized to take.

12 But that does not end the inquiry.

13 The question then becomes whether Petitioners have shown a likelihood of prevailing
14 on the merits of their claims on the ground that, despite Lam's position as a Deputy
15 Commissioner, she was not properly delegated authority to determine whether to advance
16 Cowell's parole suitability hearing.

17 The Court finds Petitioners have made such a showing and also have shown that the
18 balance of harms weighs in their favor.

19 As noted above, both parties point to Section 5076.1(b), which provides that "[t]he
20 board may use deputy commissioners to whom it may assign appropriate duties, including
21 hearing cases and making decisions." But the statute adds a caveat that "[t]hose decisions
22 shall be made in accordance with policies approved by a majority of the total membership of
23 the board." Penal Code §5076.1(b) (emphasis added).

24 Assuming for purposes of argument that making a decision to advance a parole
25 suitability hearing is an "appropriate duty" that can be delegated to a single Deputy
26 Commissioner under Section 5076.1, there is no evidence before this Court that Lam made
27 her decision regarding Cowell "in accordance with policies approved by a majority of the
28 total membership of the board," as the statute requires.

1 The Board provides no evidence that a majority of the Board members ever voted –
2 or were even asked to vote – to authorize Deputy Commissioners to make parole suitability
3 hearing advancement decisions and to adopt policies governing the Deputy Commissioners'
4 determinations. The Board's concedes that it never "formally" or "officially" adopted any
5 such policies.

6 Instead, the Board argues that a majority of the Board *factitly* approved such policies
7 because at least some of the Board members were told by staff that Deputy Commissioners
8 would be making these decisions and they did not object. In effect, the Board argues that
9 the Board's "knowledge plus acquiescence" is the functional equivalent of "a majority of the
10 total members of the board" assigning Deputy Commissioners to make hearing
11 advancement decisions *and* adopting policies governing their exercise of discretion in
12 making those decisions.

13 In support of its argument, the Board points to the Shaffer Declaration and several
14 exhibits attached to it. The documents consist of (1) minutes of "Executive Board Meetings"
15 of the Board of Parole Hearing on July 15, 2013 and August 19, 2013 (Shaffer Decl. ¶¶ 6, 8
16 and Exhs. 1, 2); (2) a flow chart entitled "Administrative Review of 3-Year Denials August
17 2013," which Shaffer states was "presented to the Board" and describes the "administrative
18 review process" (*id.* ¶ 9 and Exh. 3); (3) a statement posted on the Board's website entitled
19 "Advancing an Inmate's Next Parole Suitability Hearing Date," which describes the
20 administrative review process (*id.* ¶11 and Exh. 4); and (4) a Board of Parole Hearing Job
21 Description for the Job Title of Administrative Law Judge I, Board of Parole Hearings (Exh.
22 5).

23 The Board also points to Shaffer's declaration testimony that "information concerning
24 the Board's administrative review process has been on the Board's website since 2013" and
25 that "[e]very year since 2013, [she has] provided updates to the Board about the status of
26 the administrative review process." *Id.* ¶¶ 10, 11.⁷ From all this, Respondent argues it "is
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⁷ Shaffer's conclusory assertions that the "administrative review process" is "the Board's official policy" and that it was a "policy adopted by the Board" are just that – conclusory assertions of the fact this Court must determine. They are not supported by any documentary evidence – including, by way of example, Board minutes, orders or resolutions – showing that the Board actually agreed to adopt such a policy. And, significantly, Shaffer's conclusory assertions are inconsistent with the concession by the Board's counsel that there has never been any vote, formal adoption, or other affirmative Board action approving and adopting the

1 evident" that a majority of the Board approved a policy delegating hearing advancement
2 decisions to Deputy Commissioners and establishing criteria for them to apply in doing so.
3 See Respondent's 5/30/2018 Supplemental Briefing ("Resp.Supp.Br.") at 6.⁸

4 The Board's exhibits show that at a July 15, 2013 Executive Board Meeting, Shaffer
5 told the Commissioners in attendance about an "administrative review" program or "sua
6 sponte review program" (Shaffer Decl. Exh. 1 at 1); told them that "every hearing resulting in
7 a three-year denial will be reviewed approximately one year later with specific screening
8 criteria" (*id.* Exh. 1 at 2); and told them "commissioners will receive individual assistance as
9 they begin reviewing" sua sponte advancements. *Id.* Exh. 1 at 3 (emphasis added).
10 Shaffer's Declaration acknowledges that, as of July 2013, the administrative review process
11 had been "recently developed" but does not indicate whether it was developed at staff's
12 initiative or at the request of a majority of the Board. *Id.* ¶ 7. Nothing in the July 15, 2013
13 minutes reflects that Shaffer advised the Board that Deputy Commissioners would be
14 making the advancement determinations.

15 Moreover, although Shaffer's Declaration avers that the July 15, 2013 minutes reflect
16 both "the topics discussed" and any "actions" taken by the Board at that meeting (Shaffer
17 Decl. ¶ 6), the minutes in fact do not reflect *any action* taken by the Board on the "recently
18 developed administrative review process." See Shaffer Decl. ¶ 7 and Exh. 1. The most
19 Shaffer says in her Declaration is that "there were no questions or comments from any of
20 the commissioners" at that meeting "about the administrative review process or how the
21 Board would be implementing it in the future" and that Shaffer asked for a full briefing on the
22 procedure by the Chief Counsel at the next monthly Executive Board Meeting in August
23 2013. *Id.* ¶ 7.

24 The Board's evidence further shows that the Board's Chief Counsel, Howard
25 Moseley, did make a presentation at the next monthly Executive Board Meeting, on August
26 19, 2013. The minutes reflect that Moseley referred to "an internal process the board has
27 adopted" in which "the board will administratively review all 3-year denials one-year after the

28 "administrative review process" described to the Board by its staff. The Court disregards Shaffer's conclusory
assertions.

⁸ Petitioners did not object to the admissibility of any of Shaffer's declaration testimony or to these documents.

1 hearing”; advised that an “analyst will screen cases using a set of criteria and submit a
2 recommendation to an Associate Chief Deputy Commissioner, who will determine if the
3 case should receive a full review on the merits”; and further stated that “[i]f [an inmate is]
4 approved for a full review, a commissioner or deputy commissioner will review the case and
5 determine if the inmate’s next suitability hearing should be advanced.” *Id.* Exh. 2.

6 Shaffer’s Declaration describes Moseley’s August 2013 comments to the Board as a
7 presentation “about the Board’s *recently adopted* administrative review process.” Shaffer
8 Decl. ¶ 9. It is true the August 2013 minutes do not reflect any “objection” by any Board
9 members, but they also do not reflect any “adoption” or any other “action taken” by the
10 Board at the August 19, 2013 Executive Board Meeting regarding the administrative review
11 process described by staff. The Board produces no evidence showing how the
12 “administrative review process” went from a “*recently developed*” process as of the July 15,
13 2013 meeting to a “*recently adopted*” process by August 19, 2013, just one month later,
14 without any action ever having been taken by the Board.⁹

15 This is consistent with the concession by the Board’s counsel that there was never
16 any formal or official vote or approval by the Board of the administrative review program.
17 Indeed, there is no indication in any Board minutes or other document provided to the Court
18 that a majority of Board members even directed the staff to create such a program. For all
19 that appears from the documents before this Court, the administrative review program was a
20 program conceived by staff, developed by staff, “adopted” by staff, and presented to the
21 Board as a *fait accompli* that would require “everyone’s patience” and would be “closely
22 monitored and changed if warranted.” Shaffer Decl. Exh. 2 at 2.

23 Although the Court is not persuaded by the Board’s “tacit approval” argument, the
24 Court nevertheless addresses the Board’s assertion that the evidence submitted with its
25 Supplemental Briefing proves this “tacit approval” because it establishes that (1) “No
26 commissioner has voiced any opposition to the [administrative review] process” and (2) “The
27 administrative review process has existed since 2013 without objection from any
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⁹ The Court attaches no significance to Moseley’s and Shaffer’s characterizations of the administrative review process as having been “adopted” by the Board. As noted, there is no evidence submitted by the Board that reflects any such adoption.

1 commissioner." Resp.Supp.Br. at 6. The only evidence the Board cites as support for the
2 first assertion is Paragraphs 7 and 9 of the Shaffer Declaration; the Board cites no evidence
3 to support the second factual assertion. *Id.* In fact, neither of the cited paragraphs of the
4 Shaffer Declaration supports *either* assertion.

5 Paragraph 7 describes Shaffer's presentation at the July 15, 2013 Executive Board
6 Meeting and states: "*At that time*, there were no questions or comments from any of the
7 commissioners about the administrative review process or how the Board would be
8 implementing it in the future." Shafer Decl. ¶ 7 (emphasis added). Evidence showing a lack
9 of questions or comments at a *single meeting* in July 2013 certainly does not prove that no
10 Commissioner has *ever* objected to the administrative review process, as the Board baldly
11 asserts.

12 Paragraph 9 provides even less support for the Board's assertion. In that paragraph,
13 Shaffer recounts Chief Counsel Moseley's presentation about the administrative review
14 process at the August 19, 2013 Executive Board Meeting, states that Moseley "answered
15 questions about the process posed by the Board's commissioners," and states that "[p]ublic
16 comments were received both in favor of and in opposition to the administrative review
17 process." *Id.* ¶ 9. Literally *nothing* in Paragraph 9 supports the Board's factual assertion
18 that, since 2013, no commissioner has *ever* objected to the administrative review process.
19 In fact, nothing *anywhere* in Shaffer's Declaration supports either of these two factual
20 assertions. Thus, even if the Court were to accept the Board's argument that a lack of
21 objection by the Commissioners to an administratively-created procedure is equivalent to
22 the adoption of "policies approved by a majority of the total membership of the board," as
23 required by Section 5076.1(b), the Board's evidence does not establish the factual predicate
24 to its argument.

25 In sum, none of the evidence provided by the Board shows that a majority of the total
26 membership of the Board ever approved (1) a policy delegating authority to Deputy
27 Commissioners to make discretionary decisions to advance parole suitability hearings; or
28 (2) a policy establishing criteria (much less the "specific criteria" Shaffer told the Board in
July 2013 would be applied) to guide Deputy Commissioners in making those discretionary
decisions.

1 Notably, the Board cites no legal authority for the proposition that the Board can
2 properly adopt a policy to delegate and govern Deputy Commissioners' exercise of
3 discretion by acquiescence, i.e., by failing to object to what the Board's administrative staff
4 has announced it intends to do or is doing. It cites no legal authority for its argument that
5 Commissioners' "knowledge and acquiescence" satisfy Penal Code Section 5076.1(b). And
6 it cites no legal authority for its assertion that, although "there is no written order from the
7 Board expressing approval of this process . . . no written statement is legally required."
8 Resp.Supp.Br. at 6.

9 The Court finds the Board's arguments unpersuasive. "Knowing about and not
10 objecting to" actions taken by administrative staff does not constitute approval of a policy "by
11 a majority of the total membership of the board" delegating such decisions to Deputy
12 Commissioners and articulating the criteria governing their review, as Section 5076.1(b)
13 requires.

14 Because the Court finds no evidence that a majority of the Board adopted any policy
15 delegating to Deputy Commissioners authority to advance parole suitability hearings and
16 articulating criteria by which such advancement decisions are governed, the Court need not
17 address Petitioners' additional argument that if such a policy had been adopted it would be
18 void as a regulation adopted without complying with the California Administrative Procedure
19 Act ("APA"), as required by Penal Code Section 5076.2. See Plaintiffs' Supplemental Brief
20 in Support of Motion for Preliminary Injunction at 8-13, and Plaintiffs'/Petitioners' Further
21 Briefing on the Internal Management Exception to the APA.

22 The Court also need not address the Board's responsive argument that its
23 "administrative review" program comes within the "internal management" exception to the
24 APA because it does nothing more than decide "*who*, on behalf of the Board, decides
25 whether an inmate's parole consideration hearing should be advanced, and does not
26 address the criteria as to how that decision is made, which is otherwise guided by statute
27 [citation] and case law [citation] and thus does not require the adoption of a separate
28 regulation." Respondents' 7/13/2018 Court-Ordered Further Supplemental Opposition Brief
at 3 (emphasis original).

The Court does note, however, that the flow chart submitted by the Board certainly
suggests that the "administrative review program" involves more than simply "who" makes

1 the decision whether to advance a parole suitability hearing. See Schaffer Decl. Exh. 3.
2 Moreover, the July 15, 2013 Executive Board Meeting minutes indicate that Schaffer
3 represented to the Board that “every hearing resulting in a three-year denial will be reviewed
4 approximately one year later with *specific screening criteria.*” *Id.* Exh. 1 at 2 (emphasis
5 added). The Board cannot credibly argue that its “administrative review” program is exempt
6 from the APA because it does nothing more than identify “who makes the decision” and, at
7 the same time, argue that its “administrative review” program meets the requirements of
8 Section 5076.1(b) because it includes “specific criteria” for Deputy Commissioners to apply
9 in making their hearing advancement decisions.

10 Finally, the Court concludes Petitioners have shown not only a likelihood of success
11 on the merits but also that the balance of hardship weighs in their favor. Petitioners have
12 submitted credible evidence of harm they will suffer if the Cowell parole suitability hearing is
13 advanced. In contrast, the Board makes no showing (and does not even offer any
14 argument) that it will suffer *any* harm if it cannot advance Cowell’s hearing to a date sooner
15 than October 2019. The Board simply asserts that Petitioners’ showing of harm is not
16 severe enough to warrant an injunction and that, in any event, any harm Petitioners might
17 suffer is self-inflicted and can be avoided simply by not attending the advanced parole
18 suitability hearing for Cowell. The Board reasons that “there is nothing legally mandating”
19 Petitioners’ attendance at the advanced hearing, that “many [victims] choose not to attend”
20 parole suitability hearings, and that harm for purposes of an injunction “cannot be
21 established by a person’s own decision to attend a parole hearing.” Resp.Opp. at 18.


22 The Court finds the Board’s arguments unpersuasive.
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A preliminary injunction will issue. Petitioners shall, within ten (10) days, file and serve a proposed form of Preliminary Injunction consistent with this Order; the Order shall be submitted to the Court in editable format and a courtesy copy shall be delivered to Department C34.

No bond is required from a public entity. CCP § 995.220; *City of South San Francisco v. Cypress Lawn Cemetery Assn.* (1992) 11 Cal.App.4th 916, 918-19.

Dated: 8/2/2018


MARTHA K. GOODING
Judge of the Superior Court