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17 SUPERIOR COURT OF CALIFORNIA  
18 COUNTY OF MARIN

19 In re

20 **JERRY RUTHERFORD (C-19059),**  
21  
22 Petitioner,

23 **On Habeas Corpus.**

24 NO. SC135399A

25 **STIPULATION CONCERNING**  
26 **PROPOSITION 9's**  
27 **IMPLEMENTATION**

28 Judge: The Honorable Verna  
Alana Adams

**INTRODUCTION**

On November 4, 2008, California voters approved the Victims' Bill of Rights Act of 2008, commonly referred to as Proposition 9. Proposition 9 amended Penal Code section 3041.5 by increasing the parole-denial periods to which life prisoners could be subjected if the Board of Parole Hearings denied them parole. Under former Penal Code section 3041.5, life prisoners who were not convicted of murder could be denied parole for 1 or 2 years, and life prisoners who were convicted of murder could be denied parole for 1, 2, 3, 4, or

1 5 years. Under amended section 3041.5, all life prisoners can be denied parole  
2 for 3, 5, 7, 10, or 15 years.

3  
4 The Board implemented amended section 3041.5 on December 15, 2008.  
5 A group of prisoners should have had hearings prior to the implementation of  
6 amended section 3041.5, but did not. Some of those prisoners have since had  
7 their parole hearings under amended section 3041.5. Others have not yet had  
8 their outstanding parole hearings. Petitioners filed a motion for a preliminary  
9 injunction against Proposition 9's implementation, seeking relief for the group of  
10 prisoners who should have had a hearing before amended section 3041.5 was  
11 implemented.  
12

13 Because the Board now plans to provide relief to the group of inmates that  
14 are the subject of petitioners' motion for a preliminary injunction, the Board filed  
15 its own motion to vacate petitioners' motion on mootness grounds. Neither  
16 motion has yet been fully briefed or heard by the court.  
17

18 The parties have met and conferred extensively in an attempt to resolve  
19 this issue without the need for court intervention, and have succeeded in  
20 reaching an agreement that disposes of the entire dispute concerning what relief  
21 will be provided to life prisoners whose parole hearings should have taken place  
22 before December 15, 2008, but did not take place before that date.  
23

#### 24 **STIPULATION**

25 Respondent and petitioners stipulate to the following:  
26

27 1. The Board of Parole Hearings will create a list identifying all life  
28 prisoners who should have had a parole hearing before December 15, 2008, the  
date on which amended section 3041.5 was implemented, and who should

1 receive the relief described in this stipulation. The Board will also continue to  
2 review the parole-hearing history and minimum-eligible-parole dates of prisoners  
3 when scheduling future parole hearings to identify any prisoners who should  
4 have been, but were not, identified on the Board's list.  
5

6 2. The Board of Parole Hearings will provide petitioners' counsel with its  
7 list of identified prisoners. Petitioners will provide the Board with the identity of  
8 any additional prisoners that petitioners' counsel contends were inadvertently  
9 excluded from the Board's list. The Board will either add those prisoners to the  
10 list, or provide petitioners' counsel with an explanation of why any such prisoners  
11 should not be included on the list. After meeting and conferring, if the Board and  
12 petitioners cannot reach an agreement concerning any such prisoners,  
13 petitioners may submit the dispute to the court, through a noticed motion, for  
14 resolution, subject to the parameters of this stipulation.  
15

16 3. If petitioners later identify additional prisoners who they believe meet  
17 the criteria set forth in paragraphs 4 through 10, petitioners may request that the  
18 Board of Parole Hearings provide those prisoners with the relief described in this  
19 stipulation. The Board will either provide that relief to any such prisoners, or  
20 provide petitioners' counsel with an explanation of why any such prisoners will  
21 not be provided with that relief. After meeting and conferring, if the Board and  
22 petitioners cannot reach an agreement concerning any such prisoners,  
23 petitioners may submit the dispute to the court, through a noticed motion, for  
24 resolution, subject to the parameters of this stipulation.  
25

26 4. The Board of Parole Hearings will determine whether it would be  
27 appropriate to provide a parole-hearing decision under former Penal Code  
28 section 3041.5 to the following groups of prisoners:

a. Any prisoner who was due a hearing before December 15, 2008, but  
whose hearing was delayed until after December 15, 2008, because of reasons

1 for which the State was responsible;

2  
3 b. Any prisoner who was due a hearing before December 15, 2008, but  
4 whose hearing was delayed until after December 15, 2008, because of "exigent  
5 circumstances," as that term is described in the February 2009 LSTS parole  
6 hearing report;<sup>1/</sup>

7 c. Any prisoner who postponed a parole hearing to a date before  
8 December 15, 2008, but who was not provided the hearing before December 15,  
9 2008, because of reasons for which the State was responsible, or because of  
10 "exigent circumstances," as that term is described in the February 2009 LSTS  
11 parole-hearing report; and

12 d. Any prisoner whose hearing was commenced before December 15,  
13 2008, but which was not completed, and was then continued to be completed on  
14 a date after December 15, 2008.

15 5. The Board's agreement to provide relief to prisoners whose hearings  
16 were delayed because of exigent circumstances is not an admission that the  
17 State was responsible for such delays, or that such delayed hearings should be  
18 included in the backlog of parole hearings for the purposes of this case.

19 6. Nothing in this stipulation constitutes an admission by petitioners to  
20 the validity or constitutionality of Proposition 9.

21 7. Any prisoner in one of the groups described in paragraph 4 who has  
22 not yet been provided with his or her outstanding parole hearing shall be  
23 provided with his or her next hearing under former Penal Code section 3041.5.  
24

25  
26 1. A copy of the list of postponement-related circumstances that  
27 constitute "exigent circumstances" from LSTS's February 2009 parole-hearing  
28 report is attached as Attachment A to this stipulation. For the purposes of this  
stipulation, the Board of Parole Hearings will also treat cancellations under the  
category "Inmate Unavailable" as exigent circumstances. Attachment A also  
includes a description of the category "Inmate Unavailable."

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8. For any prisoner in one of the groups described in paragraph 4 who was provided his or her parole hearing after December 15, 2008, under amended Penal Code section 3041.5, the Board of Parole Hearings will review the hearing decision to determine whether it should be modified under the Board's decision-review process set forth in California Code of Regulations, title 15, section 2041(h). The Board of Parole Hearings will provide modified decisions under former Penal Code section 3041.5 to any such prisoners who were denied parole under amended section 3041.5.

9. For any prisoner described in paragraph 4 whose parole hearing commenced before December 15, 2008, but was then continued to be completed on a date after December 15, 2008, the Board of Parole Hearings will complete any such hearing under former Penal Code section 3041.5.

10. For any prisoner in one of the groups described in paragraph 4 who was provided his or her parole hearing after December 15, 2008, under amended Penal Code section 3041.5, and who stipulated to unsuitability for parole for a period of 3, 5, 7, 10, or 15 years, the Board of Parole Hearings will modify those stipulations by converting the associated denial periods to the shorter, corresponding denial periods under former Penal Code section 3041.5. Accordingly, for inmates convicted of murder, the Board will convert all 3-year stipulated denials to 1 year, all 5-year denials to 2 years, all 7-year denials to 3 years, all 10-year denials to 4 years, and all 15-year denials to 5 years.

For inmates convicted of a life crime other than murder, three year stipulated denial lengths will be converted to 1 year and all others will be converted to two years.

11. Any prisoner in one of the groups described in paragraph 4 who was granted parole under amended Penal Code section 3041.5, will proceed through the normal decision-review process under California Code of Regulations, title

1 15, section 2041, and will remain subject to the Governor's review authority. Any  
2 such prisoner whose parole grant is reversed by the Governor will no longer be  
3 considered a prisoner entitled to the relief described in this stipulation.

4 Accordingly, the Board will provide any such prisoner's next hearing under the  
5 law in effect at the time the next hearing is held.  
6

7 12. This stipulation precludes any prisoner who had a hearing before  
8 December 15, 2008, and who elected to waive or postpone that hearing to a date  
9 after December 15, 2008, for a reason that was neither the State's fault nor  
10 caused by "exigent circumstances," as that term is described above, from  
11 seeking a parole suitability hearing or a parole suitability hearing decision under  
12 former Penal Code section 3041.5 based on a claim arising from the fact that  
13 their hearings were not provided before December 15, 2008. Likewise, any  
14 prisoner who was due a hearing before December 15, 2008, and waived a  
15 hearing or postponed a hearing that was scheduled after December 15, 2008, for  
16 a reason that was neither the State's fault nor caused by "exigent  
17 circumstances," as that term is described above, is precluded from seeking a  
18 parole suitability hearing or a parole suitability hearing decision under former  
19 Penal Code section 3041.5 based on a claim arising from the fact that their  
20 hearings were not provided before December 15, 2008.  
21

22 13. Petitioners' counsel will provide notice of this stipulation to all  
23 prisoners impacted by it. The Board of Parole Hearings will provide written  
24 notification concerning this stipulation to the state-appointed attorneys who  
25 represent prisoners at parole hearings. The Board will also provide copies of any  
26 modified parole decisions directly to the prisoners whose decisions were  
27 modified.

28 14. Petitioners will withdraw their motion for a preliminary injunction  
against Proposition 9's implementation, and respondent will withdraw its motion


1 to vacate petitioners' motion for a preliminary injunction.

2  
3 15. The relief described in this stipulation constitutes the full and final  
4 relief that will be provided to prisoners described in Paragraph 4 to remedy any  
5 claimed harm arising from the implementation of Proposition 9 based on the fact  
6 that their hearings were not provided before December 15, 2008.

7 16. If petitioners believe that respondent has not complied with the  
8 terms of this agreement, they must meet and confer with respondent before  
9 seeking relief from the court, and any such request for relief must be made  
10 through a noticed motion.

11  
12 **IT IS SO STIPULATED.**

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15 Dated: March 27, 2009

  
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Damon McClain  
Attorney for Respondent

16  
17  
18 Dated: March 27, 2009

  
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Keith Wattley  
Attorney for Petitioners

# **ATTACHMENT A**



<b>Exigent Circumstance Postponements</b>	<b>EC</b>
Natural disaster	Nat Dis
Institution security lockdown	Lock dwn
Institution medical lockdown/quarantine	Quarantine
Essential party ill	EP Ill
Emergency involving essential party	EP Emerg
Power outage	Pwr Out
Equipment failure	Equip Fail
Prisoner medically unavailable	I/M Med Unavail
Prisoner psychiatrically unavailable	I/M Psych Unavail
Attorney not prepared to proceed	Atty Not Prepared
Attorney became unavailable after hearing schedule confirmed	Atty Unavl aft schd

<b>Prisoner Requested Postponements</b>	<b>I/M PP</b>
Essential document	Essen Doc
I/M private attorney not available	I/M Pvt Atty

<b>Cancellations</b>	<b>Cancel</b>
I/M Unavailable (i.e. medically or out to court)	I/M Unavail
Prisoner dead	Dead
Prisoner discharged	Discharged
Prisoner paroled	Paroled
MEPD in the future	MEPD in future
Prisoner Scheduled in Error – Hearing not due	Sch in Error
Stay of Previously Court Ordered Hearing	Stay Prev Ct Ordr