

2023 ANNUAL REPORT

Habeas Corpus Resource Center

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This year's Annual Report is dedicated to the memory of Jeannie Sternberg, former Deputy Director and Interim Executive Director of the HCRC, who died in June of this year. Jeannie was a fierce and unwavering advocate for her clients. She was and is a legend among the capital defense bar, having worked not only at the HCRC, but also at the California Appellate Project – San Francisco (CAP-SF), the Office of the State Public Defender, and as a partner at Sternberg, Sowards, and Laurence. Prior to practicing as a lawyer, Jeannie was a law clerk to former California Supreme Court Chief Justice Rose Bird. Jeannie represented a total of 25 HCRC clients, and many more people sentenced to death throughout her career. She was a mentor and role model to many who still work at the HCRC – to this day, we rely on her many ideas, methods, and teachings as we carry out our mandate. We deeply mourn her loss and recognize her great contributions to the HCRC, its mission, its clients' cases, and the capital defense bar. As an office, we will do our best to carry forward her legacy.

We miss you, Jeannie.

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INTRODUCTION

The Habeas Corpus Resource Center (HCRC) was created as part of the judicial branch, effective January 1, 1998, by Senate Bill (SB) 513 (Stats 1997, ch. 869). The HCRC opened its doors a year later, and January 19, 2024, will mark the 25th anniversary of its existence. In its 25 years, the HCRC has represented 102 clients. Twenty-six of those clients – about one in every four clients – have gotten relief from their death sentences.

The HCRC's mission is to provide high-quality representation to people on California's death row in their postconviction proceedings, and to serve as a resource center for attorneys appointed in capital cases. (See Gov. Code, §§ 68660-68664.) The HCRC's activities and accomplishments in 2023 include:

- Accepting appointments as counsel in two cases: one in which the client had awaited the appointment of state habeas counsel since 1997, and another in which the client was sentenced to death in 1992;
- Securing a grant of habeas corpus relief and/or resentencing to life without parole for three clients;
- Completing two evidentiary hearings;
- Obtaining orders to show cause (OSCs) in three cases;
- Filing denials to returns to OSCs in five cases;
- Filing a reply to the informal response to the petition for writ of habeas corpus in one case;
- Continuing to represent clients in numerous state and federal cases, and actively preparing for evidentiary hearings in many of those cases;
- Continuing to collect statewide data on the administration of the death penalty;
- Assisting private counsel in state habeas proceedings;
- Holding a summer internship program, which allowed four law students to gain experience working on capital habeas cases;
- Hosting two law student externs in the Fall 2023 semester; and
- Conducting its spring and fall trainings.

In addition to continuing the work above in the year ahead, HCRC will continue to work with the California Supreme Court and superior courts to accept appointments as its resources allow and will continue to press for funding at a level

that will meet the needs of the state and the 410 people currently on California's death row in need of habeas corpus counsel.

The data in this report are current as of at least December 1, 2023.

WHAT WE DO

Capital direct appeals and capital habeas corpus proceedings are distinct proceedings, both of which occur after the imposition of a death sentence in a California superior court. HCRC represents death-sentenced individuals in state and federal habeas corpus proceedings.

THE DIRECT APPEAL PROCESS

Appeals in California death penalty cases proceed automatically to the California Supreme Court. (Cal. Const., art. VI, § 11.) The Supreme Court appoints the Office of the State Public Defender (OSPD) or private counsel to represent a person under sentence of death in the direct appeal, while the Attorney General represents the State of California.

The purpose of the capital direct appeal process is to identify and examine errors of law appearing solely in the trial record and determine whether the conviction(s), special circumstance(s), and/or death sentence should be reversed because of those errors of law. Appellate counsel in a capital case must review thousands of pages of trial records, including all materials filed in the trial court, a transcription of the capital proceedings in the superior court, and any physical evidence introduced at trial. Based on this review, appellate counsel must research and prepare briefing raising violations of state and federal statutory and constitutional law that occurred during the capital trial proceedings.

STATE AND FEDERAL HABEAS CORPUS PROCEEDINGS

While direct appeal proceedings are limited to legal errors appearing in the trial court record, habeas corpus proceedings in California involve constitutional and statutory challenges based on facts *outside* the trial record. The scope of what may be developed and presented on habeas corpus is determined by a thorough investigation of what might have been presented at trial had constitutional and statutory errors not occurred. Either the California Supreme Court or the superior court appoints the HCRC or private counsel to represent the petitioner in habeas corpus and executive clemency proceedings, while the local district attorney, the Attorney General, or sometimes both agencies as co-counsel, represent the State as the respondent in these actions.

United States Supreme Court and California Supreme Court decisions describe numerous actions or omissions that, given the particular facts of a case, may be cognizable in habeas corpus proceedings. As California Supreme Court decisions have emphasized, it is the duty of state habeas corpus counsel in capital cases to develop thoroughly and present fully all available evidence and associated legal claims in the state habeas corpus petition – claims that, by definition, cannot be identified solely by reviewing the trial record. This undertaking is essential to affording people sentenced to death constitutional protections and ensuring expeditious state and federal habeas corpus proceedings.

In 2016, California voters passed Proposition 66, which “extensively revamp[ed] the procedures governing habeas corpus petitions in capital cases.” (*Briggs v. Brown* (2017) 3 Cal.5th 808, 824.) The proposition, which became effective October 25, 2017, shifted much of the responsibility for appointing habeas corpus counsel and adjudicating habeas corpus petitions in the first instance to the superior courts. (Pen. Code, § 1509; Gov. Code, § 68662.)

After a superior court grants or denies a habeas petition, the petitioner or respondent may appeal to the California Court of Appeal. (Pen. Code, § 1509.1.) On appeal, a habeas petitioner may present certain additional claims if their prior habeas corpus counsel was ineffective for failing to raise those claims in the initial state habeas petition. (Pen. Code, § 1509.1, subd. (b).) But in the Court of Appeal, the death-sentenced person is entitled to a new attorney to raise such claims because these claims may present a potential conflict of interest. Moreover, initial habeas corpus counsel cannot “have represented the petitioner in the habeas corpus proceedings that are the subject of the appeal unless the petitioner and counsel expressly request, in writing, continued representation.” (Cal. Rules of Court, rule 8.391.) As there is no source of funding for appellate habeas corpus counsel, the Courts of Appeal have generally stayed habeas corpus appeals until a competent authority indicates the funds from which appellate counsel in habeas corpus proceedings can be compensated and the rate at which counsel will be compensated. At present, at least 43 cases across the state are stayed in the Courts of Appeal for this reason.

While Proposition 66 altered habeas corpus procedures, it did not alter capital habeas counsel’s duties. Capital habeas counsel continue to be guided by the national standard of practice established by the American Bar Association’s (ABA) Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases. (See *Strickland v. Washington* (1984) 466 U.S. 668, 688 [prevailing

norms of practice as reflected in the ABA Guidelines are “guides to determining what is reasonable” professional representation].) Habeas counsel have an “obligation to conduct thorough and independent investigation relating to issues of both guilt and penalty.” (ABA Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases (Feb. 2003 rev.) (ABA Guidelines), §§ 10.7(A), 10.15.1.) Habeas counsel “cannot rely on the previously compiled record but must conduct a thorough, independent investigation.” (ABA Guidelines, com. to § 10.15.1.)

Reasonable investigation includes consultation with appropriate experts and other necessary service providers, as well as making efforts to obtain discovery from the State. (See generally ABA Guidelines, § 9.1; see also ABA Criminal Justice Standards: Defense Function (4th ed. 2017) Standard 4-4.1 [discussing defense counsel’s duty to determine whether experts are needed and engage them if so]; *Rompilla v. Beard* (2005) 545 U.S. 374, 387 fn. 6 [“we cannot think of any situation in which defense counsel should not make some effort to learn the information in the possession of the prosecution and law enforcement authorities”].) Counsel’s duty to investigate includes the well-established obligation to “investigate and present mitigating evidence.” (ABA Guidelines, com. to § 10.7.)

Capital habeas counsel must consider all available legal claims, thoroughly investigate the basis for each potential claim, and evaluate each potential claim in light of the uniqueness of death penalty law, the importance in guarding against later assertions that claims have been waived, defaulted, or not exhausted, and other “professionally appropriate costs and benefits” to asserting a potential claim. (ABA Guidelines, § 10.8(A).) Claims should be presented as forcefully as possible and in a manner specific to the facts particular to the client’s case. (ABA Guidelines, § 10.8(B).) After claims are on file with a court, counsel has an ongoing obligation to consider asserting newly discovered legal claims and supplementing previously-made claims with additional facts or law. (ABA Guidelines, § 10.8(C).)

Since its inception, HCRC has developed and refined tools that promote efficient and timely assumption of these duties which include, at a minimum, the obligations to review clerks’ and reporters’ transcripts from all phases of the lower court proceedings; review the trial defense attorney’s files, which often consist of thousands of pages of materials; review appellate counsel’s files; litigate postconviction discovery motions in the trial and appellate courts; investigate potential constitutional and statutory defects in the judgment of conviction and

the sentence of death by obtaining records and interviewing witnesses; prepare and file a petition for a writ of habeas corpus; prepare and file briefing and pleadings as ordered by the courts; represent the petitioner at an evidentiary hearing, if ordered; represent the petitioner at the hearing to set an execution date pursuant to Penal Code section 1227; and prepare and provide representation on a request for executive clemency from the Governor of California. HCRC recognizes that effective time management is essential, because at the time of appointment, counsel cannot quantify the scope of work or areas of investigation required to fulfill their duties, as doing so depends on trial-related material unavailable until after appointment.

After a case is resolved, habeas counsel has an obligation to: (1) "maintain[] the records of the case in a manner that will inform successor counsel of all significant developments relevant to the litigation;" (2) provide "the client's files, as well as information regarding all aspects of the representation to successor counsel;" (3) share "potential further areas of legal and factual research with successor counsel;" and (4) cooperate "with such professionally appropriate legal strategies as may be chosen by successor counsel." (ABA Guidelines, § 10.13.) Where successor counsel has not been appointed, habeas counsel bears this same obligation directly to the client. (See State Bar of Cal. Standing Comm. on Prof'l Responsibility & Conduct (1992) Formal Op. 1992-127 [describing counsel's duty to turn over to the client or to successor counsel case files and information not reduced to writing].) Accordingly, after a case resolves, there remains a considerable amount of work to be done to organize and prepare the case for successor counsel – or, where no successor counsel is identified, to provide the client with the necessary documents, information, and assistance so they can consider their potential "next steps" – and to close the file. (See Cal. Rules of Prof. Conduct, rule 1.16(e) [client file belongs to client]; Cal. St. Bar. Comm. Prof. Resp., Formal Opn. No. 2001-157 ["client files in criminal matters should not be destroyed without the former client's express consent while the former client is alive"]; see also Los Angeles County Bar Assoc. Legal Ethics Comm. Formal Opn. No. 475; Bar Assoc. of San Francisco Legal Ethics Comm. Formal Opn. No. 1996-1.)

CALIFORNIA'S DEATH PENALTY SYSTEM

In 2023, California and Florida led the nation in number of death sentences imposed: 5 in each state. In California, death judgments continued to far outpace habeas corpus appointments, meaning that as the State added more people to death row, it did so recognizing that they faced a remote possibility of obtaining habeas corpus counsel and a remote possibility of execution.

As of December 1, 2023, a total of 1,013 people have been sentenced to death (some with multiple death verdicts or judgments¹) in California since the death penalty was reinstated as an available sentence in 1977. As of December 6, 2023, 652 people were on death row in California, according to the California Department of Corrections and Rehabilitation (CDCR). (CDCR, Condemned Inmate List, <<https://www.cdcr.ca.gov/capital-punishment/condemned-inmate-list-secure-request/>>.) This number, however, overstates the number of people currently under a death sentence in California, as the CDCR does not typically immediately re-classify a person as no longer under a sentence of death following a reversed death judgment. HCRC's own data reflect the total number of people currently under a sentence of death in California is 627.

¹ The total number of death judgments is 1,090.

THE EFFECT OF THE MORATORIUM ON CALIFORNIA CAPITAL CASES

Nearly five years ago, Governor Gavin Newsom issued an Executive Order declaring:

**EXECUTIVE DEPARTMENT
STATE OF CALIFORNIA**

Executive Order N-09-19

WHEREAS, California's death penalty system is unfair, unjust, wasteful, protracted and does not make our state safer.

WHEREAS, the state's bedrock responsibility to ensure equal justice under the law applies to all people no matter their race, mental ability, where they live, or how much money they have.

WHEREAS, death sentences are unevenly and unfairly applied to people of color, people with mental disabilities, and people who cannot afford costly legal representation.

WHEREAS, innocent people have been sentenced to death in California. Moreover, the National Academy of Sciences estimates that as many as one in 25 people sentenced to death in the United States is likely innocent.

WHEREAS, since 1978, California has spent \$5 billion on a death penalty system that has executed 13 people.

WHEREAS, no person has been executed since 2006 because California's execution protocols have not been lawful. Yet today, 25 California death row inmates have exhausted all of their state and federal appeals and could be eligible for an execution date.


WHEREAS, I will not oversee execution of any person while Governor.

NOW, THEREFORE, I, GAVIN NEWSOM, Governor of the State of California, in accordance with the authority vested in me by the Constitution and statutes of the State of California, do hereby issue the following order to become effective immediately:

IT IS HEREBY ORDERED THAT:

1. An executive moratorium on the death penalty shall be instituted in the form of a reprieve for all people sentenced to death in California. This moratorium does not provide for the release of any person from prison or otherwise alter any current conviction or sentence.
2. California's lethal injection protocol shall be repealed.
3. The Death Chamber at San Quentin shall be immediately closed in light of the foregoing.

IT IS FURTHER ORDERED that as soon as hereafter possible, this Order shall be filed with the Office of the Secretary of State and that widespread publicity and notice shall be given to this Order.



The moratorium paused executions in California, but it did not permanently end them. Since the moratorium, the factors the Governor identified have only worsened.

“California’s death penalty system is unfair, unjust, wasteful, protracted and does not make our state safer.”

The protracted nature of California’s death penalty system has been recognized by courts, former judges, and the Committee for Revision on the Penal Code. Former California Supreme Court Chief Justice Ronald George described the system as a “charade” and “dysfunctional.” Former California Supreme Court Chief Justice Tani Cantil-Sakauye explained that Proposition 66 “has not sped up anything” and in fact may have slowed proceedings down. These statements and a review of relevant data led the Committee on the Revision of the Penal Code (CRPC) to conclude: “Proposition 66 has slowed down post-conviction proceedings.” (CRPC, *Death Penalty Report* (Nov. 2021) (CRPC Death Penalty Rep.), at p. 32.)

Although they take decades to occur, grants of relief are the most common outcome in capital proceedings. Of the 1,090 death judgments in California since 1978,² 277 – 81% of those that have completed the state and federal review process³ – have been reversed in state or federal court. Ultimately, each California death judgment has a one-in-five chance of being upheld in every court that reviews it, and a four-in-five chance of reversal.

Figure 1, below, reflects death judgments, grants of relief/resentencing, and deaths by causes other than execution from the year the moratorium was announced (2019) through December 1, 2023.

² Although California’s death penalty was reinstated in 1977, the first death judgment in California in the modern era occurred in 1978.

³ In total, 341 death judgments have completed the court review process.

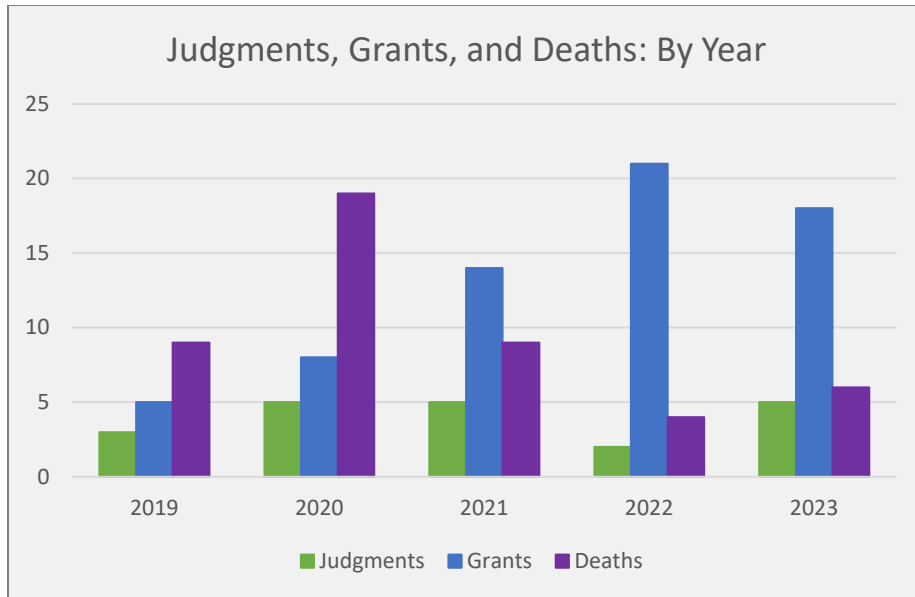


Figure 1. Judgments, Grants, and Deaths: By Year

The number of annual death judgments, reflected in green, has consistently been 5 or fewer since the moratorium. The number of deaths by causes other than execution, reflected in purple has outpaced not only executions (which have not occurred in California since 2006), but also new death judgments. Finally, and reflected in blue, from January 1, 2019, through December 1, 2023, courts have vacated 66 death judgments.

“The state’s bedrock responsibility to ensure equal justice under the law applies to all people no matter their race, mental ability, where they live, or how much money they have. . . . [D]eath sentences are unevenly and unfairly applied to people of color, people with mental disabilities, and people who cannot afford costly legal representation.”

Since the moratorium, 20 people have been sentenced (or, in one case, resentenced) to death. These death sentences were sought and obtained by District Attorneys in just 8 of California’s 58 counties: Riverside, Kern, San Bernardino, Tulare, Los Angeles, San Diego, Merced, and Sacramento.

Sixteen of the 20 people sentenced to death since the moratorium, or 80%, are people of color. And since January 1, 2022, every person this state has sentenced to death has been Black or Latino.

Every one of the 20 people sentenced to death since the moratorium has been found indigent by a court. Indeed, to HCRC’s knowledge, every person currently

on death row is indigent and cannot afford counsel. As discussed below, the lack of state funding for habeas corpus representation of these people is one cause of the delay inherent in California's capital punishment system.

Since the moratorium, seven people have had their death sentences vacated based a finding that they were ineligible for execution because of their intellectual disability. Two others have had their death sentences vacated because courts considered their probable intellectual disability as a factor in recalling and resentencing them under Penal Code section 1172.1. Six more have been deemed permanently incompetent to be executed by courts, which also resulted in their death sentences being vacated. And 17 have had their death sentences vacated after a court found their trial counsel performed ineffectively. Still others had reversals on other grounds – as discussed above, 66 people have had their death sentences vacated since 2019, the year of the moratorium. In sum, the State has removed people from death row due to their mental disabilities and their poor legal representation at trial, but at the same time has continued to add people – overwhelmingly people of color – to death row.

“Innocent people have been sentenced to death in California. Moreover, the National Academy of Sciences estimates that as many as one in 25 people sentenced to death in the United States is likely innocent.”

When the Governor declared the moratorium, five innocent people – all people of color – had been fully exonerated and released since California's reinstatement of the death penalty in 1977. (CRPC Death Penalty Rep., *supra*, p. 31.) At that time, the most recent exoneration was that of HCRC's client Vicente Benavides Figueroa. As the Committee on Revision of the Penal Code explained, it took 25 years for the California Supreme Court to overturn his conviction, which was based on false evidence. Shortly thereafter, the Kern County District Attorney dismissed all charges against him, and he was released.

Since that time, two more people who Californian prosecutors, jurors, and judges sent to death row have been deemed innocent of capital murder by a court. Both men had been incarcerated for over 30 years. Consistent with the racial demographics of the five men who had been exonerated at the time of the moratorium, both men are Black. The most recent of these two cases is that of HCRC's former client Demetrius Howard. HCRC had represented Mr. Howard in his capital post-conviction proceedings, and the San Bernardino County Superior Court vacated his death sentence in March 2022 because his Sixth Amendment

right to the effective assistance of counsel had been violated at trial. In separate proceedings under Penal Code section 1172.6, Mr. Howard was represented *pro bono* by the law firm of Kecker, Van Nest, & Peters. In those proceedings, Mr. Howard challenged his first-degree murder conviction and the finding of a special circumstance because he was convicted under a felony-murder theory that held him liable for the actions of his co-defendant, even though Mr. Howard did not shoot the victim, nor did he intend for her to die. On December 1, 2023, the San Bernardino County Superior Court vacated Mr. Howard's murder conviction and special circumstance finding. On December 14, 2023, the San Bernardino County District Attorney appealed the decision; accordingly, resentencing has been stayed and Mr. Howard remains incarcerated.

Mr. Howard and Mr. Benavides Figueroa are a small subset of wrongfully convicted people who California has sentenced to death. As Governor Newsom noted, a 2014 study showed that at least 4.1% of people sentenced to death were likely wrongfully convicted. Since 1977, California has sentenced 1,013 people to die. By a conservative estimate, then, it is probable that approximately 42 of them are innocent. This means that today, nearly three dozen innocent people are either currently under a death sentence or have died on death row.

"Since 1978, California has spent \$5 billion on a death penalty system that has executed 13 people."

A 2011 study estimated the administration of the death penalty in California to cost the state \$170 million.⁴ Accounting for inflation, the death penalty now costs the state over \$200 million a year. Thus, in the nearly five years since the moratorium, the state of California has expended an additional \$1 billion on the death penalty.

"No person has been executed since 2006 because California's execution protocols have not been lawful. Yet today, 25 California death row inmates have exhausted all of their state and federal appeals and could be eligible for an execution date."

Today, forty-two people who have completed the state and federal postconviction review process are currently on death row awaiting execution.

⁴ This number excludes the costs of maintaining California's capital punishment borne by the federal government, which are also in the tens of millions of dollars.

Each one these 42 people has been on death row for over 28 years. Six have been under a death sentence for over 40 years. On average, these individuals have spent 35 years under a death sentence.

"I will not oversee execution of any person while Governor."

Even though in 2021, the legislatively-commissioned and gubernatorially-appointed Committee on the Revision of the Penal Code issued its Death Penalty Report, which urged the Governor to use his executive clemency power to commute death sentences and the Attorney General to use his power to resolve death penalty cases on post-conviction review, neither the Governor nor the Attorney General has acted upon these recommendations. The Attorney General continues to defend the death penalty in cases throughout the state, in one case reminding a court that "depending on the next Governor, the moratorium could be lifted."⁵

Thus, the moratorium has paused executions in the State of California, but there is no foreseeable end to death-penalty litigation and the expenses of the State's death penalty system. And the Attorney General – who is "seriously considering" running for Governor – anticipates that a future Governor may allow executions to go forward, which may, in turn, begin the process of carrying out the executions of at least 42 people, if not more.

⁵ Oral Argument, Ninth Circuit Court of Appeals, *Waidla v. Davis*, No. 18-99001 (Mar. 1, 2023), <<https://youtu.be/ypX5yDZTxpU?si=JnBwtsde9KJ1H26F&t=1187>>.

CALIFORNIA DEATH JUDGMENTS BY YEAR

Five death judgments were imposed in 2023.⁶ The number of California death judgments imposed each year from 1990 through 2023 are reflected in Figure 2, below:

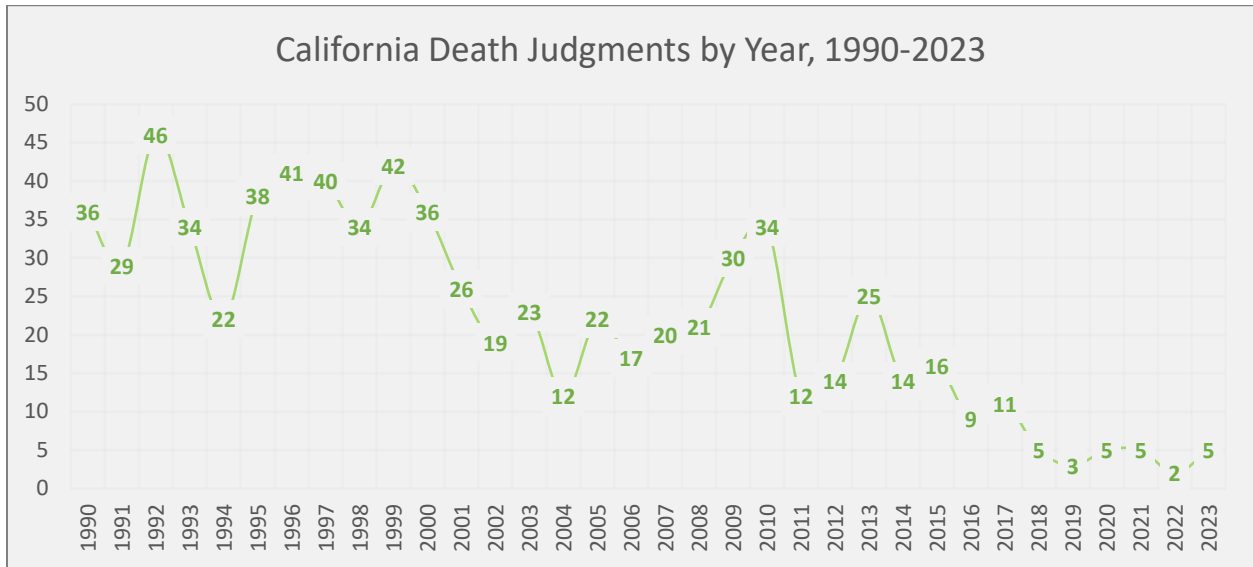


Figure 2. Death Judgments by Year, 1990-2023

APPOINTMENTS MADE IN 2023

The courts made the following direct appeal and habeas corpus appointments in 2023:

- 6 appointments of private counsel for direct appeal, all of which were replacement counsel appointments;
- 2 appointments of OSPD for direct appeal, both of which were as replacement counsel;

⁶ One was a reimposed death sentence. The Merced County District Attorney sought a death verdict and obtained it in Colusa County (on a change of venue) in 2007. In 2023, the case returned to superior court for resentencing on enhancements. The Colusa County Superior Court resentenced the individual to death and filed a new judgment of death in October 2023.

- 3 appointments of CAP-SF as interim counsel, 2 of which were as interim appellate counsel and 1 of which was as interim habeas corpus counsel;
- 2 appointments of HCRC for habeas corpus proceedings, 1 of which was a new appointment and the other of which was as replacement counsel; and
- 2 appointments of private counsel for habeas corpus proceedings, both of which were as replacement counsel.

Appointments of CAP-SF as interim counsel are temporary; typically, a court will vacate that appointment when it appoints replacement counsel. This list does not include CAP-SF interim appointments that were both made and vacated in 2023. Replacement counsel appointments typically occur when currently-appointed counsel withdraws from a case, often because of their retirement from the practice of law.

DELAYS IN APPOINTMENT OF APPELLATE COUNSEL

As discussed above, the first layer of review of a death judgment is the direct appeal to the California Supreme Court. There are currently 20 people on California's death row awaiting the appointment of appellate counsel. On average, a person sentenced to death in California waits for three years after being sentenced to death before the California Supreme Court appoints appellate counsel.

Delays continue after appointment. Currently, there are 126 people whose appeals are fully briefed and await adjudication by the California Supreme Court. Direct appeals take over a decade to resolve in the California Supreme Court – the average time between sentence and a decision on direct appeal is 11 years.

DELAYS IN APPOINTMENT OF HABEAS CORPUS COUNSEL

There are 364 people sentenced to death in California who await the appointment of qualified capital habeas corpus counsel for their initial state habeas proceedings. One-hundred twenty-three of those people have been waiting for the appointment of habeas counsel for more than 20 years. Of the 364 people awaiting the appointment of habeas counsel, four have two death judgments. Of those 368 death judgments, 142 (39%) have been affirmed on direct appeal.

The current backlog of people awaiting habeas corpus counsel is the direct result of the state sending people to death row at a rate greater than the courts have been able to appoint qualified postconviction counsel. The rules of court direct superior courts to prioritize appointing habeas corpus counsel for the oldest death judgments. HCRC was tasked with identifying the 25 oldest death judgments for the courts' prioritization. Those 25 oldest death judgments occurred between 1994 and 1997. In other words, the people currently prioritized for, but still waiting on, the appointment of habeas corpus counsel were sentenced to death more than 25 years ago.

Proposition 66's lack of funding has resulted in an increase of death-sentenced people in need of habeas corpus counsel throughout the California courts. In total, there are 410 people awaiting the appointment of habeas corpus counsel in the California courts. This number includes those waiting for the initial appointment of state habeas counsel in superior court (i.e., people who have never had state habeas counsel); those waiting for the appointment of appellate habeas corpus counsel in the Court of Appeal, as Penal Code section 1509.1, which was added by the voters as part of Proposition 66, requires (43 people total); and those whose cases have returned to state court for exhaustion proceedings, but whose counsel the superior court is unable to compensate (3 people total). As discussed above, the courts have generally stayed habeas corpus appeals because no competent authority has indicated the funds from which appellate counsel in habeas corpus proceedings will be compensated or the rate at which counsel will be compensated. Some superior courts have taken the same approach.

To further its goal of expediting review of capital habeas petitions, Proposition 66 vested the superior courts with the authority to appoint state habeas counsel to represent death-sentenced individuals. (Gov. Code, § 68662.) But since Proposition 66 became effective, only HCRC has been appointed to represent any of the individuals prioritized as requiring habeas counsel. HCRC has been appointed in one case. Other than HCRC, four attorneys licensed to practice in California are qualified under the California Rules of Court to represent petitioners in their habeas corpus proceedings. (See 4.652 Compliance, Habeas Corpus Resource Center, <<https://www.hcrc.ca.gov/4.562.html>>.) There is no source of funding to compensate those attorneys for their work, however, and none of them have been appointed in a capital case since the passage of Proposition 66. As Justice Liu explained, Proposition 66 does not expedite the appointment of

capital habeas corpus attorneys. (*Briggs v. Brown, supra*, 3 Cal. 5th at p. 868 (conc. opn. of Liu, J.)).

AFTER APPOINTMENT OF HABEAS CORPUS COUNSEL: DELAYS CONTINUE

Delays in the administration of justice continue after the appointment of habeas corpus counsel. The lengthy time frame for adjudication of state habeas petitions mirrors the delays inherent in the appellate stage of proceedings.

In 2004, the Senate Judiciary Committee created the California Commission on the Fair Administration of Justice. In its 2008 report on California’s death penalty, the Commission found that the average time frame from sentencing to resolution in state habeas proceedings was approximately 12 years. (Cal. Com. on the Fair Admin. of Justice, Final Rep. (2008), p. 123 (Com. Rep.), at <<https://digitalcommons.law.scu.edu/cgi/viewcontent.cgi?article=1000&context=ncippubs>> [as of December 1, 2023].) Today, for those capital habeas corpus proceedings in which the California courts have issued a final decision between the time of the Commission report and December 1, 2023, the average time between sentencing and resolution in state court has increased to 21 years.⁷

In 2008, the Commission found that it took approximately 22 months on average from the date a petitioner filed a first state habeas petition for the California Supreme Court to decide it. (Com. Rep., *supra*, at p. 123.) Since January 1, 2009, first capital habeas corpus petitions took on average 72 months from the completion of briefing to resolution – over three times as long as the same process took when Commission issued its report in 2008. As of December 1, 2023, at least 172 state habeas petitions are pending⁸ in the California Supreme Court or the superior courts. On average, these petitions have been pending for 8 years.

⁷ This delay exceeds by four years that which the district court observed in *Jones v. Chappell* in 2014. (*Jones v. Chappell* (C.D. Cal. 2014) 31 F. Supp. 3d 1050, 1059 (*Jones*) [observing that, at that time, by the time the California courts decide a capitally-sentenced person’s state habeas petition, “he will likely have spent a combined 17 years or more litigating his direct appeal and petition for state habeas review before the California Supreme Court”], rev’d. on other grounds sub. nom. *Jones v. Davis* (9th Cir. 2015) 806 F.3d 538, 543.)

⁸ This total excludes the initial petitions that the California Supreme Court permits to be filed to toll the federal statute of limitations period while a court locates counsel willing to accept an appointment, counsel files an amended petition, and the court resolves the amended petition in

FEDERAL HABEAS DELAYS

The Commission concluded that federal habeas delays are entangled with the dysfunction in state court. (Com. Rep., *supra*, at pp. 123, 136-137.) Approximately 175 cases arising from California death judgments are currently pending in federal court. Of the more than 1,000 death sentences in California since 1978, 341 have attained finality by completing the postconviction review process. In these cases, the result has been either a grant of relief in state or federal court or a denial of relief by every available court.

The Commission found, “The delay between sentence and execution in California is the longest of any of the death penalty states.” (Com. Rep., *supra*, at p. 125.) According to the Commission, California would have to execute five people per month for the next twelve years simply to carry out the sentences of the 670 people on death row at that time. (*Id.* at p. 121). Similarly, and more recently, the CRPC observed that if California executed on average one person every two weeks, it would take more than 25 years to carry out the death sentences the state has imposed. (CRPC Death Penalty Rep., *supra*, at p. 13.)

SYSTEMIC ARBITRARINESS

As federal district court Judge Cormac J. Carney explained:

Since 1978, when the current death penalty system was adopted by California voters, over 900 people have been sentenced to death for their crimes. Of them, only 13 have been executed. For the rest, the dysfunctional administration of California's death penalty system has resulted, and will continue to result, in an inordinate and unpredictable period of delay preceding their actual execution. Indeed, for most, systemic delay has made their execution so unlikely that the death sentence carefully and deliberately imposed by the jury has been quietly transformed into one no rational jury or legislature could ever impose: *life in prison, with the remote possibility of death*. As for the random few for whom execution does become a reality, they will have languished for so long on Death Row that their

accordance with *In re Morgan* (2010) 50 Cal.4th 932. This type of initial petition is commonly referred to as a *Morgan* petition.

execution will serve no retributive or deterrent purpose and will be arbitrary.

(*Jones, supra*, 31 F. Supp. 3d at p. 1053.) The arbitrariness has only increased since Judge Carney’s 2014 opinion. Today, the State has sentenced over 1,000 people to death since 1978, and it has executed 13 of them.⁹ A California death sentence creates a 1 in 100 (1.3%) chance a person will actually be executed. Applying this to the current death row population, of the 627 people currently under a death sentence in California, it is probable that a random 8 will be executed. The remaining 619 people will be exonerated, obtain relief from their death judgments, or die in prison.

Figure 3 reflects the state of California’s death penalty between 1978 and 2023.

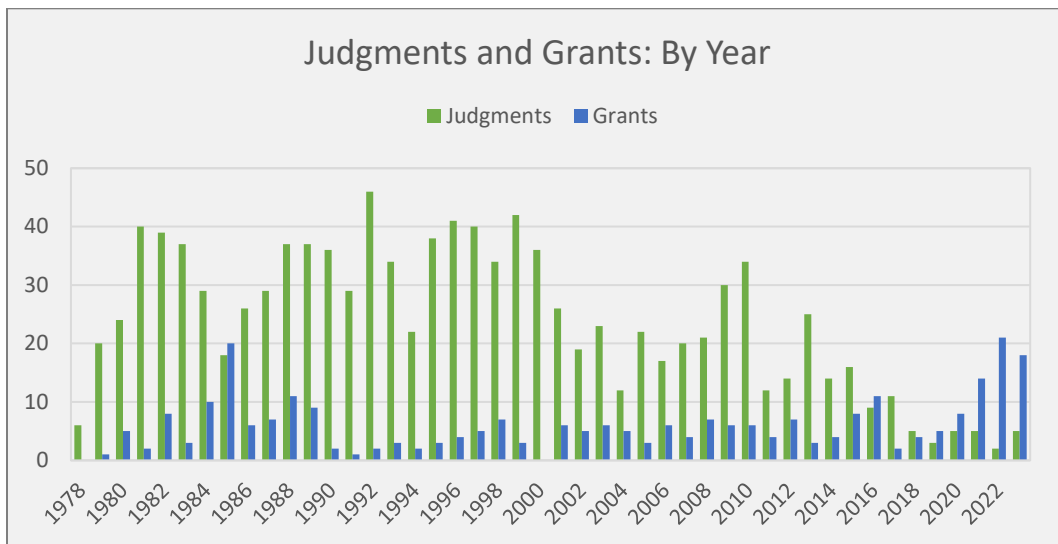


Figure 3. Judgments and Grants: By Year

The number of annual death judgments, in green, reached its peak in 1992, and has remained at or below 11 since 2016 – the year voters passed Proposition 66. At the same time, the number of annual grants of relief and resentencing to a sentence less than death, seen in blue, has steadily increased.

California’s death row population is also aging; the average age on California’s death row is 56. Thus, people on death row have died by non-execution means – typically natural causes, COVID-19 infection, or by suicide – at an increasing pace

⁹ Two other states executed people who also had death sentences in California.

over the years. The deaths of those who California has sentenced to death since 1978, color-coded based on cause, are reflected in Figure 4.

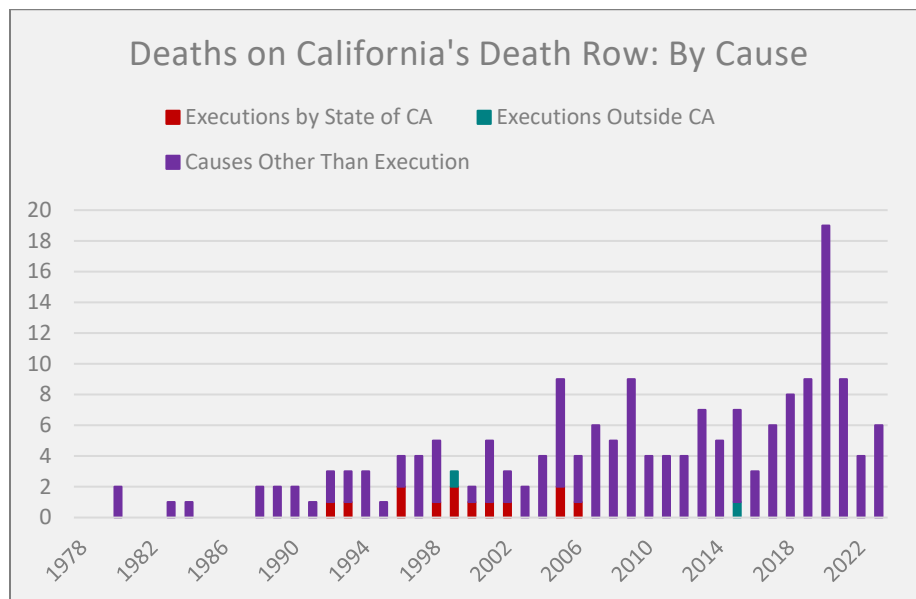


Figure 4. Deaths on California's Death Row: By Cause

In total, since 1978, 166 death-sentenced people have died due to a cause other than execution. (Cal. Dept. Corrections & Rehabilitation, *Condemned Inmates Who Have Died Since 1978*, <<https://www.cdcr.ca.gov/capital-punishment/condemned-inmates-who-have-died-since-1978/>>.) This is 12.8 times the number of people the State has executed since 1978.¹⁰

EFFORTS TO ADDRESS SYSTEMIC DYSFUNCTION AND BACKLOG IN APPOINTMENT OF COUNSEL

In its 2008 report, the Commission identified several sources of California's failure to administer a just, fair, and efficient death penalty system. Principal among the Commission's identified causes of the backlog was the acute shortage of qualified, competent attorneys willing and able to accept appointments in habeas corpus proceedings. The Commission found that adequately funding an expansion of the HCRC was the best, and likely only, means of meeting the State's need for qualified habeas corpus attorneys. The Commission observed that the

¹⁰ The state of California has executed 13 people since 1978, as discussed above. An additional two people who were sentenced to death in California have been executed by other states.

HCRC is able to provide training, supervision, and support to its staff attorneys, and leverage the efficiencies of its team-based model to ensure legally sufficient representation as well as eliminate the need for replacement counsel should individual staff attorneys leave the office. Accordingly, the Commission recommended expanding HCRC from 34 to 150 lawyers and increasing its budget by 500%. (Com. Rep., *supra*, at p. 135.)

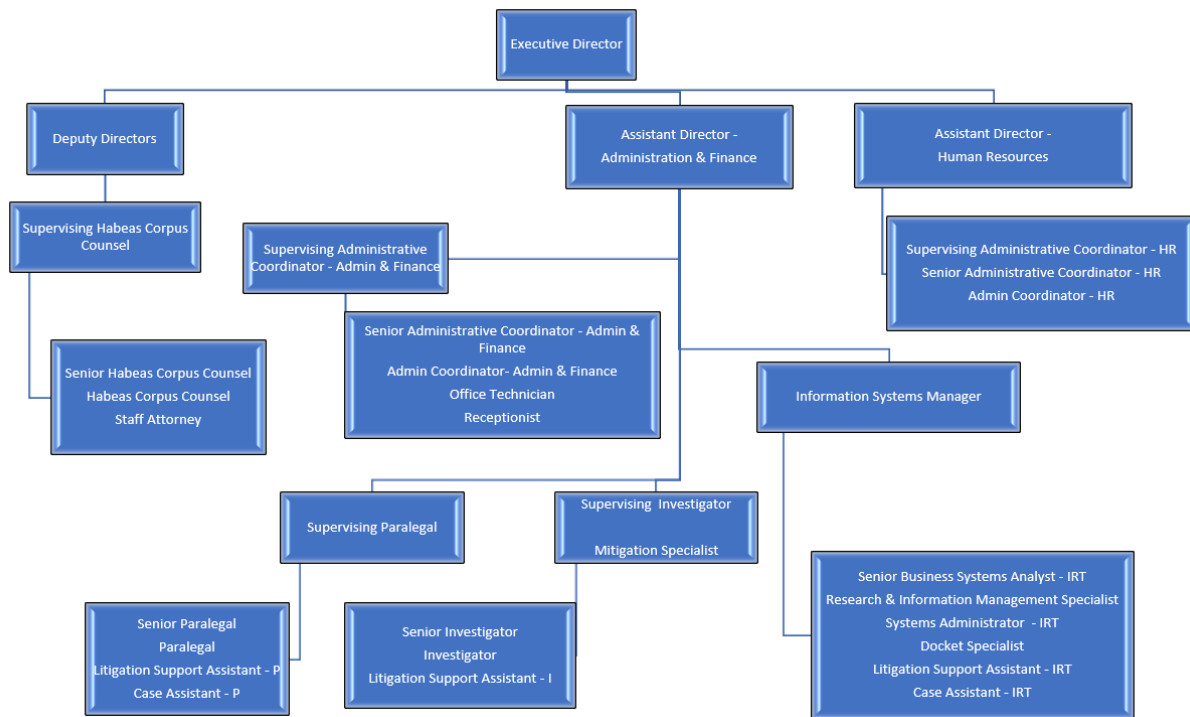
The Commission's recommendations to address the dysfunction of California's death penalty were never adopted. (*Briggs v. Brown*, *supra*, 3 Cal.5th at p. 865 (conc. opn. of Liu, J.)) Today, HCRC is statutorily authorized to employ 34 attorneys (see Gov. Code, § 68661), just four more than it was authorized to employ when it opened its doors in 1999, and the same number it was authorized to employ at the time of the 2008 Commission Report. HCRC has repeatedly sought to remove the statutory limitation and increase its staffing to better address the backlog of unrepresented condemned persons awaiting appointment of counsel. In its budget change proposal for Fiscal Year 2023-2024, HCRC requested a total of 70 new positions phased in over the course of three years. Included in the request was the creation of 15 additional case teams and the establishment of an office in southern California, from where the vast majority of capital cases arise. This request was denied.

HCRC ORGANIZATION

HCRC was created to address the patent need for qualified attorneys to represent death-sentenced individuals in habeas corpus proceedings. In its first decade, HCRC grew from an original start-up staff of just 12 members to 88 funded positions. During that period, HCRC’s caseload grew as well (see HCRC Case Status, *post*).

ORGANIZATION STRUCTURE

The chart below represents the current structure of the HCRC staff. Positions are described in the following sections.



EXECUTIVE AND MANAGEMENT STAFF

The HCRC executive staff is comprised of the Executive Director, two Assistant Directors, and three Deputy Directors. The Executive Director reports to the Supreme Court, and all other employees of HCRC report – directly or through their supervisors – to either the Deputy Directors, the Assistant Directors, or the Executive Director. The executive staff provides direction for the operational, administrative,

and financial functions of the organization. In addition, the Executive Director, Deputy Directors, and one Assistant Director supervise case teams.

The HCRC executive staff is supported by a management team responsible for the day-to-day management of HCRC operations, including finance and budgeting, human resources, case staffing and supervision, staff development and training, interactions with courts and other offices and entities, resource development and assistance, and strategic planning. The management team solicits and acts on reports and feedback from standing and ad hoc committees and provides guidance to committee chairpersons and coordinators of office projects and workgroups. Members of the management team include executive staff members, Supervising Habeas Corpus Counsel, the Supervising Paralegals, the Supervising Investigator, the Mitigation Specialists, the Supervising Administrative Coordinator, and the Information Systems Manager.

LEGAL STAFF

Members of the HCRC legal staff – attorneys, paralegals, investigators, litigation support assistants, and case assistants – are organized into case teams. Assignments of legal staff members to case teams are made based on criteria including case timeline, complexity, size of record and trial file, and team member experience and workload. The Executive Director, deputy directors, one assistant director, and supervising habeas corpus counsel supervise case teams. The benefits of the HCRC’s multidisciplinary case team model include:

- continuity in lengthy cases, minimizing loss of knowledge and productivity caused by staff departures and extended leaves, thereby minimizing delays in presentation of the case for decision;
- efficient division of labor among case team members based on case-specific requirements and team member disciplines, skills, and experience;
- immersive training for new staff members through assignment to case teams with experienced staff members;
- exposure of staff members to a broad range of cases and issues;
- increased opportunities for staff members to work with and learn from colleagues with diverse expertise; and
- a collegial and supportive environment that reduces the adverse effects of the demanding nature of the work and increases productivity and longevity in the office.

The HCRC has one office in San Francisco, California. Its cases, however, arise from counties throughout the state, many of them concentrated in Southern California. In addition, while the majority of the HCRC's clients currently reside in San Quentin, in the coming year the CDCR plans to move the HCRC's clients and all other capitol-sentenced men to prisons throughout the state, many of which are located in Southern California. To address the HCRC's need for a more consistent presence in Southern California as a result of these factors, in late 2021, using its existing budget, the HCRC initiated a pilot program permitting approved staff living within 100 miles of the Clara Shortridge Foltz Criminal Justice Center in Los Angeles, California, to request a full-time regular remote work schedule. Several staff members are participating in the program. The program has been successful, as it has saved the HCRC costs in Southern California-based investigation and enabled the HCRC to file pleadings and obtain records in Southern California more efficiently. The program has also enhanced the HCRC's ability to attract and hire qualified, Southern California-based applicants who may not have applied for a position if they had been required to move to the Bay Area. The HCRC anticipates continuing this program at least until it is provided with sufficient funding to obtain permanent office space in Southern California.

HIRING

The HCRC has devoted significant efforts in 2023 to filling a number of open positions on its staff, many of which were vacated during the coronavirus pandemic. The HCRC thoroughly vets applicants in order to hire the most qualified people to perform its mission, a process that requires a substantial investment of staff resources. This investment of time and effort has paid off in 2023, in which the HCRC was able to add three new attorneys, four new members to the investigator team, four new case assistants, and three new members to the administrative team (one of whom will start in 2024). In addition, we recently completed – or are near completing – three other recruitment efforts: we have made several offers to attorney candidates and expect to add between six and seven new attorneys to our staff in 2024; and at the end of this year or the beginning of next year, we expect to hire a new Deputy Director responsible for training and a new Research and Information Management Specialist responsible for coordinating the collection of and analyzing data pertinent to potential Racial Justice Act claims.

HCRC CASE STATUS

Since its inception, the HCRC has accepted 102 state appointments and 16 federal appointments. In that time, 42 of the HCRC's clients have obtained OSCs in state court, and 4 more have obtained federal evidentiary hearings in cases in which the HCRC is federal counsel. A complete list of the HCRC's current cases is attached to this report as Appendix A.

The HCRC accepted two new appointments this year. In one case, the California Supreme Court appointed the HCRC as replacement state habeas corpus counsel. That case has a pending OSC on the prosecutor's discriminatory exercise of peremptory challenges. The client was sentenced to death in 1992, and his prior state habeas corpus counsel withdrew from representation. The second case in which the HCRC accepted appointment is a case in which the client has awaited the appointment of state habeas counsel since 1997. This is the only state habeas case in the entire state in which a new appointment (i.e., one that is not simply replacing prior habeas corpus counsel) has been made since Proposition 66 became effective.

This year, two of the HCRC's clients obtained a grant of habeas relief: one on a claim of ineffective assistance of counsel at the penalty phase and another on a claim of ineligibility for execution due to intellectual disability. A third client with a pending OSC on a claim of ineligibility for execution due to intellectual disability was resentenced to life without the possibility of parole following a motion for recall and resentencing in the superior court.¹¹ A fourth client, who HCRC had represented in state court and who has new counsel in federal court, had his death sentence recalled under Penal Code section 1172.1. These grants of relief bring the total number of HCRC clients who have obtained relief from their death sentence to 26, or one in every four of HCRC's clients.¹²

¹¹ As explained above, before it may close a case, the HCRC must comply with its ongoing duty to these clients (and all other former clients) to prepare the case files for the client or successor counsel, to provide relevant information about legal claims and factual development, and to cooperate with the client and successor counsel in future litigation. (See ABA Guidelines, § 10.13; see also discussion above about capital habeas counsel's duties after a case is resolved.)

¹² An additional 16 HCRC clients died in prison while under a sentence of death. The State of California executed one of HCRC's clients, Donald Beardslee. Our remaining clients remain under

Three HCRC clients obtained OSCs in their cases this year. The issues on which the clients were granted OSCs included guilt and penalty-phase issues.

The HCRC is actively litigating 19 cases with OSCs, pending evidentiary hearings, awaiting decision following an evidentiary hearing, or awaiting resentencing following a grant of relief. In the course of that litigation, in the last year, the HCRC filed denials to returns to OSCs in five cases. The HCRC conducted and completed two evidentiary hearings in 2023. The HCRC also continues to work up petitions for writ of habeas corpus; this year, the HCRC completed informal briefing in the California Supreme Court in one case.

Eight of the HCRC's cases are stayed in the California Courts of Appeal indefinitely "until the matter of compensation of counsel in appeals arising under section 1509 has been resolved," and the HCRC anticipates a ninth case being stayed for the same reason soon. Although the HCRC wishes to continue as counsel for our clients in the Court of Appeal, and our clients in the Court of Appeal want the HCRC to continue to represent them, our clients are also legally entitled to have counsel review the case for claims of ineffective assistance of counsel that the HCRC may have overlooked. (See Pen. Code, § 1509.1, subd. (b); Cal. Rules of Court, rules 8.391, 8.397.) As discussed above, there is, however, no funding for counsel to review the case to evaluate whether the HCRC overlooked claims of ineffective assistance of counsel.

a death sentence, although the vast majority have not yet exhausted the state and federal habeas process.

RESOURCE CENTER FUNCTIONS

In addition to direct representation of indigent persons on California's death row in habeas corpus and executive clemency proceedings, the HCRC develops resources for and provides advice to private counsel appointed to capital cases. (See Gov. Code, § 68661.)

The HCRC has continued to develop and refine its technological resources to improve efficiency and the quality of its representation, as well as to expand its ability to disseminate material to members of the capital defense community. A description of the HCRC's resource efforts and tools follows.

RESOURCE DEVELOPMENT AND ASSISTANCE

The HCRC maintains a resource collection that covers a wide range of legal and factual topics relevant to capital defense work. The collection is vast and the office has harnessed systems and organizational tools to provide easy and thorough access to relevant information. Throughout the past year, HCRC legal staff have continued to contribute materials to the resource collection.

HCRC's Extranet provides private and agency-appointed capital defense counsel with direct access to the HCRC's fully searchable brief bank, the HCRC's library catalog, sample pleadings, and other material relevant to their work.

HCRC's public website provides members of the general public a means through which to learn about and make inquiries regarding the organization. In addition, the site is used to recruit for staff positions, internships and externships, and volunteer opportunities. As discussed in more detail below, HCRC's public website also lists the public information that the California Rules of Court require HCRC to provide.

PROPOSITION 66 TRACKING

Pursuant to California Rules of Court, rule 4.561(c), HCRC is required to:

maintain a list of persons subject to a judgment of death, organized by the date the judgment was entered by the sentencing court. The list must indicate whether death penalty-related habeas corpus

counsel has been appointed for each person and, if so, the date of the appointment. The list must also indicate for each person whether a petition is pending in the Supreme Court.

The HCRC first posted the list on its website on April 25, 2019 (the effective date of rule 4.561) and updates the list monthly. In addition to the required information, the list includes the county of conviction and is searchable so as to assist the superior courts in identifying the cases from their jurisdictions. The list may be found in .pdf and .csv formats at: <https://www.hcrc.ca.gov/4.561.html>.

Rule 4.561(d) requires the HCRC to identify the persons with the 25 oldest death judgments for whom capital habeas corpus counsel have not been appointed, and then notify the presiding judges of the superior courts in which those judgments were entered that judgments from their courts are on the list of the 25 oldest cases without habeas counsel. On May 20, 2019, the HCRC sent out the 25 required notices, and sent a copy of each notice to the administrative presiding justice of the appellate district in which each superior court is located. After appointing counsel, the appointing court is required to send a copy of the appointment order to the HCRC, which then must update the list to reflect that counsel has been appointed. (Cal. Rules of Court, rule 4.561(d)(5).) To date, the HCRC has not been notified of the appointment of counsel in any of the identified cases, other than the one case in which the HCRC itself was appointed as counsel. Three of the twenty-five people have died since 2019. Thus, 21 of the 25 people with the oldest death judgments in 2019 continue to await the appointment of state habeas counsel.

Proposition 66 also required establishment of a statewide panel of attorneys deemed qualified to accept superior court appointments in capital habeas matters. Pursuant to rule 4.562, each of the six appellate districts established a committee to assist the superior courts in recruiting counsel to accept capital habeas appointments. As the committees have provided the HCRC the names of attorneys they have deemed qualified to accept habeas appointments, the HCRC has placed those names onto a single statewide list. The list of the four attorneys who the courts have deemed qualified to accept superior court appointments in capital habeas matters may be found at: <https://www.hcrc.ca.gov/4.562.html>.

CAPITAL CASE TRANSCRIPTS

The HCRC receives superior court trial transcripts – including clerk’s and reporter’s transcripts – in all California capital cases after judgment is entered and the record is certified. (See Cal. Rules of Court, rule 8.619(f).) The electronic capital case transcripts collection currently covers death judgments from approximately 1995 to the present. The HCRC is also undertaking the longer-term project of obtaining transcripts from capital trials that pre-date 1995.

GENERAL RESEARCH COLLECTIONS

The HCRC’s research collections include the organization’s physical library, as well as a digital library and research archive, and other digital collections. The HCRC’s physical library houses a multi-media collection of approximately 5,000 items that covers a broad range of topics important to postconviction and appellate work. Holdings are fully indexed and searchable. HCRC resource staff facilitate inter-library loans from local, state, and independent libraries, including university libraries and the California State Library.

The HCRC’s digital library and research archive and its other digital collections contain over 120,000 items covering the full range of factual and legal topics important to capital defense work. The digital collections are fully cataloged and searchable, providing ready access to information. Additions to the digital collections are made continuously based on case needs, developments in the capital defense community, and the availability of new research collections (contributed by HCRC staff and by private or agency counsel). Materials from the HCRC’s digital library and research archives are made available through the HCRC Extranet, and the office aims to provide additional access to its research collections in the coming years.

AD HOC ASSISTANCE TO ATTORNEYS

HCRC attorneys regularly respond to questions from, and provide ad hoc support to, capital appellate and habeas corpus counsel who contact the HCRC seeking guidance.

TRAINING AND CONFERENCES

The HCRC continues to provide extensive training opportunities for members of the capital defense community and for HCRC staff members.

The HCRC has hosted major conferences to educate the postconviction defense community about legal, forensic, mental health, and habeas corpus practice issues since its inception. This past year, HCRC conducted two virtual, tuition-free conferences, one in May and one in November. Each spanned two days and was well-attended by capital practitioners from all over California.

HCRC staff participated as faculty for the conference in November, and several staff were chosen as faculty for the annual Capital Case Defense Seminar, held in February.

The HCRC also conducted a widely attended, inter-institution, hybrid training at its office, which allowed for both in-person and remote participation, and participated in and hosted another multiple-day, inter-institution hybrid training for the summer interns of the HCRC, OSPD, and CAP-SF.

As has been the case since Proposition 66 became effective, because there have been no new appointments other than the HCRC's appointment in one case, HCRC has not been able to conduct the program it developed to train newly-appointed counsel.

STAFF TRAINING AND DEVELOPMENT

Comprehensive in-house staff trainings and summer intern legal training continued this past year. In addition to training focused on orienting new staff to HCRC systems, the HCRC provides numerous trainings focused on substantive legal, mental health, and forensic issues.

The HCRC continually revises its training program based on feedback from staff and the changing nature of capital habeas practice. The HCRC is also committed to providing staff with opportunities to take on training responsibility and continues to foster this priority.

CONCLUSION

The HCRC remains focused on its mission to provide timely, high-quality legal representation for indigent petitioners in death penalty habeas corpus proceedings in state and federal courts; to assist in recruiting, identifying, and training attorneys qualified to accept capital habeas appointments; and to serve as a resource to counsel who accept those appointments. Some HCRC clients have secured significant legal victories, and the HCRC continues to advocate for many more.

Proposition 66 has ground state habeas appointments nearly to a halt. Just one of the over 360 people who were awaiting the appointment of habeas corpus counsel for their initial state habeas proceedings at the time Proposition 66 became effective have been appointed counsel. Today, 364 people are awaiting the appointment of initial state habeas counsel. Proposition 66's lack of funding has also resulted in other delays, including at least 43 petitioners for whom the Courts of Appeal cannot appoint counsel until the matter of compensation of habeas corpus appellate counsel is resolved statewide. In total, 410 people are awaiting the appointment of capital habeas corpus counsel in a California court. Because, for years, the rate of death sentences in the state has far outpaced the state's ability to appoint habeas corpus counsel for people sentenced to death, for many, "the likelihood that a viable petition can be filed in the future is diminishing to the vanishing point, given the likely unavailability of witnesses and documents concerning the long-ago crime and trial." (*Redd v. Guerrero* (9th Cir. 2023) 84 F.4th 874, 901.) The plaintiff in the cited case, Stephen Redd, "waited over a quarter-century for California to appoint counsel to aid him in pursuing his capital habeas petition." (*Id.*) Almost exactly nine years ago, Justice Sonia Sotomayor noted that "the State represents that state habeas counsel will be appointed for petitioner [Stephen Redd] '[i]n due course'—by which I hope it means, *soon*." (*Redd v. Chappell* (2014) 135 S.Ct. 712, 713 (statement of Sotomayor, J., respecting cert. den.)) Mr. Redd died on December 21, 2023. The State never appointed state habeas counsel for him.

At the same time, Proposition 66 shifted litigation in cases in which people sentenced to death had already been appointed counsel to the superior courts. This shift has had a significant impact: since Proposition 66 became effective on October 25, 2017, 70 people on California's death row have had their death sentences vacated.

In the coming year, the HCRC will continue providing support, to the extent possible, to the superior courts, who have been tasked with recruiting, vetting, and appointing qualified counsel, but who do not have a source of funding for counsel. The HCRC will also continue to provide comprehensive training and advice to qualified counsel representing people who have been sentenced to death in California. Most critically, the HCRC will continue to zealously represent all of its clients and to seek new appointments in cases as its caseload allows.

**Appendix A: List of cases in which HCRC is providing representation
(current as of at least December 1, 2023)**

Client Name	Case No.	Pending in current court more than 1 year	Reason case has been pending in current court for more than 1 year (if applicable)	Actions being taken to bring case to completion if pending in current court for more than 1 year (if applicable)
Beck, James	110467 (Alameda County Super. Ct.)	Yes	The petition is awaiting action by the superior court.	HCRC completed informal briefing in the California Supreme Court in 2014; the petition is now awaiting action by the superior court.
Bell, Steven	S038499 (Cal. Sup. Ct.)*	No*		
Bloom, Robert	A801380 (Los Angeles County Super. Ct.)	No		
Bloom, Robert	S095223 (Cal. Sup. Ct.)*	No*		

* Denotes a case in which HCRC was appointed as counsel for state habeas corpus and executive clemency proceedings, and the state habeas proceedings litigated by HCRC have concluded.

**Appendix A: List of cases in which HCRC is providing representation
(current as of at least December 1, 2023)**

Client Name	Case No.	Pending in current court more than 1 year	Reason case has been pending in current court for more than 1 year (if applicable)	Actions being taken to bring case to completion if pending in current court for more than 1 year (if applicable)
Bryant, Stanley	B308280 (2d Dist. Ct. App.)	Yes	The Court of Appeal stayed the proceedings due to Proposition 66's lack of funding for counsel.	None; HCRC is not aware of any source of compensation for counsel.
Bryant, Stanley	B310052 (2d Dist. Ct. App.)	Yes	The petition is awaiting action by the court.	None; HCRC is awaiting action by the court.
Casares, Jose	VHC372146 (Tulare County Super. Ct.)	Yes	An evidentiary hearing is pending.	HCRC is preparing for the evidentiary hearing, which is scheduled to begin in the spring of 2024.
Coffman, Cynthia	S011960 (Cal. Sup. Ct.)*	No*		

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Contreras, George	S199915 (Cal. Sup. Ct.)*	No*		
Cox, Tiequon	A758447 (Los Angeles County Super. Ct.)	Yes	Briefing is ongoing.	HCRC is awaiting the filing of Respondent's brief.
Cox, Tiequon	S004711 (Cal. Sup. Ct.)*	No*		
Cunningham, John	E078684 (4th Dist. Ct. App.)	Yes	The Court of Appeal stayed the proceedings due to Proposition 66's lack of funding for counsel.	None; HCRC is not aware of any source of compensation for counsel.

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Curl, Robert	20CRWR685668 (Fresno County Super. Ct.)	Yes	Formal briefing is complete; the matter is now awaiting action by the court.	The parties completed formal briefing and are awaiting action by the court; the court has extended its time to rule to December 29, 2023.
Curl, Robert	22CRWR686800 (Fresno County Super. Ct.)	Yes	Informal briefing is in progress.	HCRC requested leave for, and the court granted leave to, file an amended petition in light of new law. Informal briefing will resume thereafter.
Curl, Robert	F086255 (5th Dist. Ct. App.)	No		
Danks, Joseph	11-cv-00223 (E.D. Cal.)	Yes	The case was stayed from 2011 through October 2022 for exhaustion in state court. Briefing in federal court is now ongoing.	HCRC is preparing to file its reply to Respondent's Answer to the habeas corpus petition.

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Danks, Joseph	S032146 (Cal. Sup. Ct.)*	No*		
DeHoyos, Richard	S034800 (Cal. Sup. Ct.)*	No*		
Delgado, Anthony	99CM7335 (Kings County Super. Ct.)	Yes	Formal briefing is ongoing.	HCRC is awaiting the filing of Respondent's return.
Dement, Ronnie	F080595 (5th Dist. Ct. App.)	Yes	The Court of Appeal stayed the proceedings due to Proposition 66's lack of funding for counsel.	None; HCRC is not aware of any source of compensation for counsel.

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Client Name	Case No.	Pending in current court more than 1 year	Reason case has been pending in current court for more than 1 year (if applicable)	Actions being taken to bring case to completion if pending in current court for more than 1 year (if applicable)
Dement, Ronnie	F080674 (5th Dist. Ct. App.)	Yes	The Court of Appeal stayed the petition "at least until such time" as the issues in Case No. F080595 can be "identified and delineated."	None; see above.
Duong, Anh	B325525 (2nd Dist. Ct. App.)	No		
Edwards, Robert	HC66-00001 (Orange County Super. Ct.)	Yes	The petition is fully briefed and awaiting action by the court.	HCRC completed informal briefing in the California Supreme Court in 2015; the petition is awaiting action by the superior court.
Ervine, Dennis	S054372 (Cal. Sup. Ct.)*	No*		

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Fudge, Keith	S004790 (Cal. Sup. Ct.)*	No*		
Fudge, Keith	95-cv-05369 (C.D. Cal.)	Yes	HCRC completed the evidentiary hearing and is awaiting a decision from the court.	HCRC conducted the evidentiary hearing in 2022, and is now awaiting a decision from the court.
Gamache, Richard	CHCJS1900007 (San Bernardino County Super. Ct.)	Yes	Following completion of formal briefing, the court indicated its inclination to grant relief on the ineffective assistance of counsel at the penalty phase claim. The case appears to be moving toward evidentiary hearing.	HCRC is preparing for an evidentiary hearing.
Garcia, Randy	B305406 (2d Dist. Ct. App.)	Yes	The Court of Appeal stayed the proceedings due to Proposition 66's lack of funding for counsel.	None; HCRC is not aware of any source of compensation for counsel.

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Garcia, Randy	B305764 (2d Dist. Ct. App.)	Yes	The Court of Appeal stayed the petition "at least until such time" as the issues in Case No. B305406 can be "identified and delineated."	None; see above.
Ghobrial, John	HC66-00003 (Orange County Super. Ct.)	Yes	The petition is fully briefed and awaiting action by the court.	HCRC completed informal briefing in the California Supreme Court in 2016 and provided the superior court with supplemental briefing in 2022. The petition is awaiting action by the superior court.
Hoyt, Ryan	20CR07912 (Santa Barbara County Super. Ct.)	Yes	Briefing has been ongoing since the court issued an OSC on two claims in 2021.	HCRC will appear in superior court for resentencing proceedings in the near future.
Johnson, Joe	20HC00308 (Sacramento County Super. Ct.)	Yes	Formal briefing has been completed, and the court has extended its time to act to March 7, 2024.	HCRC completed formal briefing and is now awaiting action from the court.

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Client Name	Case No.	Pending in current court more than 1 year	Reason case has been pending in current court for more than 1 year (if applicable)	Actions being taken to bring case to completion if pending in current court for more than 1 year (if applicable)
Johnson, Joe	20HC00309 (Sacramento County Super. Ct.)	Yes	Formal briefing has been completed, and the court has extended its time to act to March 7, 2024.	HCRC completed formal briefing and is now awaiting action from the court.
Johnson, Michael	S203329 (Cal. Sup. Ct.)	Yes	Formal briefing is ongoing.	HCRC recently received Respondent's return and is preparing the denial.
Jones, Albert	RIC200912 (Riverside County Super. Ct.)	Yes	Formal briefing is ongoing.	HCRC is awaiting Respondent's filing of the return.
Jones, Bryan	S217284 (Cal. Sup. Ct.)	Yes	Informal briefing is in progress.	HCRC is drafting the reply to the informal response, which is anticipated to be filed by June 14, 2024.

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Client Name	Case No.	Pending in current court more than 1 year	Reason case has been pending in current court for more than 1 year (if applicable)	Actions being taken to bring case to completion if pending in current court for more than 1 year (if applicable)
Jones, Bryan	4:22-cv-01086-JSW (N.D. Cal.)	Yes	DOJ's production of records is ongoing.	HCRC continues to confer with the DOJ about production of records.
Jones, Ernest	S046117 (Cal. Sup. Ct.)*	No*		
Jones, Ernest	2:09-cv-02158-CJC (C.D. Cal.)	Yes	The case is currently stayed pending outcome of state proceedings.	None; the case is stayed.
Jones, Ernest	BA063825 (Los Angeles County Super. Ct.)	Yes	Formal briefing has been completed, and a stipulation filed, but the court has not accepted the stipulation.	HCRC is preparing briefing.

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Lee, Philian	RIC1821311 (Riverside County Super. Ct.)	Yes	An evidentiary hearing is pending.	HCRC is preparing for the evidentiary hearing.
Leonard, Eric	S054291 (Cal. Sup. Ct.)*	No*		
Letner, Richard	S015384 (Cal. Sup. Ct.)*	No*		
Lewis, John	S031603 (Cal. Sup. Ct.)*	No*		

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Lewis, John	11-cv-06395 (C.D. Cal.)	Yes	The parties are awaiting a decision by the district court on the applicability of 28 U.S.C. § 2254(d).	HCRC completed briefing on the applicability of 28 U.S.C. § 2254(d) in 2016 and is now awaiting action by the Court.
Lopez, Michael	H28492A (Alameda County Super. Ct.)	Yes	The petition is fully briefed and awaiting action by the court.	HCRC completed informal briefing in the California Supreme Court in 2015 and is now awaiting action by the superior court.
Marks, Delaney	S040575 (Cal. Sup. Ct.)*	No*		
Marks, Delaney	17-99007 (9th Cir.)	Yes	The case is fully briefed and has been argued and is awaiting action by the court.	None; HCRC argued the case in December 2022 and is awaiting an opinion from the court.

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Martinez, Michael	H15696 (Alameda County Super. Ct.)	Yes	The petition is fully briefed and awaiting action by the court.	HCRC completed informal briefing in the California Supreme Court in 2015; the petition is now awaiting action by the court.
Maury, Robert	S012852 (Cal. Sup. Ct.)*	No*		
McPeters, Ronald	318048 (Fresno County Super. Ct.)	Yes	The petition is fully briefed and awaiting action by the court.	HCRC completed informal briefing in the California Supreme Court in January 2016 and is now awaiting action by the superior court.
McPeters, Ronald	95-cv-05108 (E.D. Cal.)	Yes	The district court vacated all litigation deadlines pending state court exhaustion proceedings.	HCRC filed an exhaustion petition in state court in 2015 (listed above).

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McPeters, Ronald	S004712 (Cal. Sup. Ct.)*	No*		
Merriman, Justin	CR45651 (Ventura County Super. Ct.)	Yes	An evidentiary hearing is pending.	HCRC is preparing for the evidentiary hearing, which it expects to occur in 2024.
Merriman, Justin	S097363 (Cal. Sup. Ct.)*	No*		
Monterroso, Cristhian	S034473 (Cal. Sup. Ct.)*	No*		

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Montes, Joseph Manuel	CVRI2204950 (Riverside County Super. Ct.)	No		
O'Malley, James	S024046 (Cal. Sup. Ct.)*	No*		
Parker, Gerald	HC66-00004 (Orange County Super. Ct.)	Yes	The petition is fully briefed and awaiting action by the court.	HCRC completed informal briefing in the California Supreme Court in 2015 and is awaiting action by the superior court.
Pearson, Michael	S058157 (Cal. Sup. Ct.)*	No*		

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Rountree, Charles	HCRC017077A (Kern Super. Ct.)	Yes	The court denied the petition in November 2023.	HCRC has filed a notice of appeal, which will move the case to the Court of Appeal.
Sánchez, Juan	VHC390792 (Tulare County Super. Ct.)	Yes	Informal briefing is in progress.	HCRC recently received Respondent's informal response and is preparing its reply.
Sanchez-Fuentes, Edgardo	B302679 (2d Dist. Ct. App.)	Yes	The Court of Appeal stayed the proceedings due to Proposition 66's lack of funding for counsel.	None; HCRC is not aware of any source of compensation for counsel.
Sanchez-Fuentes, Edgardo	B302632 (2d Dist. Ct. App.)	Yes	The Court of Appeal stayed the proceedings "at least until such time as the issues raised in" Case No. B302679 "will be identified and delineated."	None; see above.

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Sanchez-Fuentes, Edgardo	LA011426 (Los Angeles County Super. Ct.)	Yes	Formal briefing is ongoing.	HCRC is awaiting Respondent's filing of the return.
Sims, Mitchell	S004783 (Cal. Sup. Ct.)*	No*		
Solomon, Morris	21HC00485 (Sacramento Super. Ct.)	Yes	Formal briefing is ongoing.	HCRC is awaiting Respondent's filing of the return.
Streeter, Howard	E082224 (4th Dist. Ct. App.)	No		

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Tafoya, Ignacio	93WFO692 (Orange County Super. Ct.)	Yes	An evidentiary hearing is pending.	HCRC is preparing for the evidentiary hearing.
Tate, Gregory	93308 (Alameda County Super. Ct.)	Yes	An evidentiary hearing is pending.	HCRC is preparing for the evidentiary hearing.
Taylor, Robert	S025121 (Cal. Sup. Ct.)*	No*		
Taylor, Robert	07-cv-06602 (C.D. Cal.)	Yes	HCRC is awaiting action by the court.	HCRC is currently awaiting a decision from the court.

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Thomas, Regis	BA075063 (Los Angeles County Super. Ct.)	No		
Thornton, Mark	S046816 (Cal. Sup. Ct.)*	No*		
Trujeque, James	S065877 (Cal. Sup. Ct.)	Yes	Appellate briefing in the case is ongoing.	HCRC is preparing a petition to be filed by the court-approved presumptively timely filing date.
Valencia, Alfredo	S167195 (Cal. Sup. Ct.)*	No*		

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Wall, Randall	D078005 (4th Dist. Ct. App.)	Yes	The Court of Appeal stayed the proceedings due to Proposition 66's lack of funding for counsel.	None; HCRC is not aware of any source of compensation for counsel.
Wall, Randall	D078387 (4th Dist. Ct. App.)	Yes	The Court of Appeal stayed the proceedings due to Proposition 66's lack of funding for counsel.	None; HCRC is not aware of any source of compensation for counsel.
Weaver, Ward Jr.	S004665 (Cal. Sup. Ct.)*	No*		
Williams, George Brett	TA006961 (Los Angeles County Super. Ct.)	Yes	Discovery following formal briefing was ongoing at the time prior habeas corpus counsel withdrew.	HCRC accepted appointment in this case earlier this year, as prior habeas counsel withdrew from the case. HCRC has assigned a case team and is beginning its work on the case.

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Wilson, Andre	B299089 (2d Dist. Ct. App.)	Yes	The Court of Appeal stayed the proceedings due to Proposition 66's lack of funding for counsel.	None; HCRC is not aware of any source of compensation for counsel.
Wilson, Andre	B299069 (2d Dist. Ct. App.)	Yes	The petition is awaiting action by the court.	None; HCRC is awaiting action by the court.
Wilson, Byron	BA164899 (Los Angeles County Super. Ct.)	Yes	The petition is awaiting action by the court.	The petition is fully briefed and awaiting action from the court.