

OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF TULARE

Tim Ward, *District Attorney*

July 24, 2023

Governor's Office
Attn: Legal Affairs
State Capitol
Sacramento, CA 95814

Re: **GARCIA, Richard**
CDCR #: **AI0582**
Location: California Substance Abuse Treatment Facility, Corcoran
Court Case #: VCF226445C

Dear Governor Newsom:

Inmate Garcia has notified this office of his intent to apply for Executive Clemency by way of Commutation of Sentence. The Tulare County District Attorney is submitting this written recommendation for a denial of the application to either pardon the offenses or commute the sentence.

Inmate was found guilty by a jury of second degree murder as an aider and abettor (P.C. 187(a)) with special circumstances of personal discharge of a firearm causing great bodily injury (P.C. 12022.53(d)) and crime for the benefit of criminal street gang (P.C. 186.22(b)(5).) Inmate Garcia was sentenced to 40 years to life. Inmate Garcia is also required to register as an active participant in a criminal street gang pursuant to Penal Code § 186.30.

On the evening of August 28, 2009, Inmate Garcia, a member of the Norteno gang, was a passenger in a vehicle with three friends who were also Norteno gang members¹. The four friends spent several hours at a cemetery drinking beer and mourning the death of a relative who had been killed by a rival Sureno gang member.

The four friends left the cemetery and drove to Co-Defendant Zayas's house in Co-Defendant J. Hernandez's vehicle, a dark colored Honda. Zayas went into the house. When Zayas returned to the vehicle, he had a gun. Inmate Garcia admitted seeing the gun on other occasions. Inmate Garcia said they carried guns to feel safe from southerners. In his statement to Detective Zaragoza, Inmate Garcia said that Zayas said, " '[H]ey, f***, let's go look for some scraps.' "

¹ Information taken from: Court of Appeal, Fifth Appellate District, opinion (unpublished), 06/27/2013, F062834 and Probation Report, by Humberto Valero, Jr., Deputy Probation Officer II, 07/22/2011.

As they drove through Orosi, they saw two men walking on the street who were wearing blue, the color claimed by the rival gang Inmate Garcia said they “ran into those guys,” and Zayas said they were “scraps.” Inmate Garcia admitted to deputies that he said “[F]*** ‘em” when he saw the two men on the street.

A witness heard someone from the vehicle yell the word, “SuRat” at the two men in blue. Inmate Garcia swore at the two men, and the two men yelled something back.

The gunman, not Inmate Garcia, got out of the vehicle and shot five or six shots at the two men in blue. One of the men fell down. The other man appeared to be hit in the leg, but he was able to escape. After firing the shots, the gunman got back into the vehicle.

Deputies found [REDACTED] (18 years old) lying on the road. Victim [REDACTED] was dead, and his head was in a pool of blood. The victim suffered two gunshot wounds. The fatal wound entered his upper lip, just below his nose. It fractured the victim’s teeth on his upper jaw, continued through the airway in the back of the mouth. This bullet wound was “immediately” fatal. There were no weapons found near the victim.

After finding the victim’s body, the deputies saw a vehicle matching the Honda’s description traveling in excess of 75 miles per hour. The vehicle passed two deputies in an unmarked patrol unit. The deputies immediately activated the signal lights and siren to conduct a traffic stop.

At an in-field showup, one of the witnesses identified Zayas as the gunman, and said the three other suspects had been in the Honda. During a search of the vehicle, deputies found a Taurus nine-shot .22-caliber revolver was found on the floorboard of the Honda’s backseat. It contained one .22-caliber live round but no expended shells.

During his second interview, Inmate Garcia told Detective Zaragoza, “we all recognized them.” Detective Zaragoza asked Inmate Garcia “Who came up with the idea to go mobbing?” Inmate Garcia replied, “Well. We all did but we never thought that that was going to happen.” Inmate Garcia was asked “Do you kick it with northerners?” Inmate Garcia nodded his head, “Yes.” Inmate Garcia said they all knew Zayas had a gun before the shooting.

At trial, the prosecution’s gang expert, Detective Sanchez, testified the homicide was part of the deadly turf battle between the two gangs in the Cutler-Orosi area. Detective Sanchez also testified that “scraps” is a derogatory name for Surenos, and “scrap hunting” was when a Norteno was looking for a rival Sureno. Detective Sanchez testified “mobbing” means to get together in a vehicle and look for a rival gang member and take action against that person. As of the date of the shooting, Inmate Garcia was a validated Norteno because he admitted gang membership during his interview, associated with gang members, involved in gang-related crime, and possessed gang indicia, gang writings, and gang photographs at his house.

We begin by noting a pardon “ ‘is an act of grace’ ”; it is “an act of individual clemency, in the gift of the Governor, to which no person has an entitlement.” (*People v. Shepard* (2015) 239 Cal.App.4th 786, 796.)

Clemency is to prevent a miscarriage of justice. Inmate Garcia has not been subjected to any injustice by the People of California, by the courts of this country, or by the Governor. Her attempt to expand the Supreme Court's "minimal procedural safeguards," into a minute review of clemency procedures and decisions should not be countenanced. (*Wilson v. U.S. Dist. Court for Northern Dist. of California* (9th Cir. 1998) 161 F.3d 1185, 1190.)

This crime was committed in furtherance of gang activities as it was done with other gang members and in retaliation for a gang crime. It is of paramount importance to consider Inmate Garcia's association with the Norteno gang. Inmate Garcia actively participated in gang activity and chose to go "mobbing." He knew Inmate Garcia Zayas had a gun. The evidence shows that Inmate Garcia acted willfully and intentionally in furtherance of criminal street gang activities. Considering these circumstances, there is too much of a risk that Inmate Garcia could continue with gang involvement and commit further crimes.

Inmate Garcia acted with total disregard for human life. The victim was only 18 years old at the time of the shooting. The victim was not armed. Inmate Garcia was not acting in self-defense or in defense of someone else.

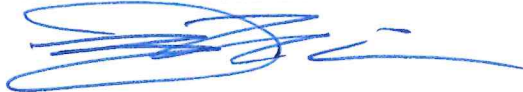
Further, Inmate was convicted of a violation of Penal Code Section 186.22(b)(5) which states, "a person who violates this subdivision in the commission of a felony punishable by imprisonment in the state prison for life shall not be paroled until a minimum of 15 calendar years have been served." Even if Inmate was a good candidate for clemency, which he is not, Inmate Garcia is required to serve *minimum* of 15 years before being paroled pursuant to Penal Code Section 186.22(b)(5).

In no way was Inmate Garcia's sentence a miscarriage of justice that deserves clemency. Inmate Garcia's lack of violent history and the circumstances surrounding the offense does not mitigate his violent conduct. The People contend that Inmate Garcia should be required to serve out his sentence to satisfy the interests of justice.

Accordingly, the People strongly urge that Inmate Garcia be **denied** Executive Clemency.

Respectfully yours,

TIM WARD
DISTRICT ATTORNEY



By David Alavezos
Chief Deputy District Attorney