No. _____

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

Sandy Friend; Marc Klaas; Phyllis Loya; Emily Carranza; Olivia Rubio; Tamara Alexander; Mary Stickle; Colleen Isaacson; Christine Powell-Hougan; Jason Davis; Sam Davis; Debbie McMahon; Mary Muscarella; Carol Davis; Jane De Guzman; Susan Oliver-Burke; Melissa Storz; Jennah Oliver; William Hickman; Gloria Ayala; Crystal Quigley McKay; Maria Loutzenhiser; Cecilia McLean; Claudia Meza Cerda; Gloria Vega; Gilbert Vega; David Kling; Zachary Zerebny; Eric Scovel; Janet Brooks; Enedina Aguirre; Citizens Against Homicide, Inc.; Crime Victims United of California; Doris Tate Crime Victims Bureau d.b.a. Crime Victims Alliance; Crime Survivors, Inc.; Peace Officers Research Association of California; California District Attorneys Association; Stand Up for Victims; Victim Advocate Angels Inc.; Criminal Justice Legal Foundation; District Attorneys of Amador, Butte, Calaveras, El Dorado, Fresno, Kern, Kings, Lake, Los Angeles, Madera, Merced, Modoc, Monterey, Placer, Riverside, Sacramento, San Diego, San Luis Obispo, Sacramento, San Bernardino, San Joaquin, San Mateo, Shasta, Solano, Stanislaus, Sutter, Tehama, Tulare, Ventura and Yuba Counties, *Petitioners*,

v.

GAVIN NEWSOM, Governor of California; CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION, *Respondent.*

548 PERSONS SENTENCED TO DEATH, *Real Parties in Interest.*

PETITION FOR WRIT OF MANDATE
*****STAY REQUESTED*****
All proposed death-penalty commutations announced by the Governor on November 5, 2026

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

There are no interested entities or persons subject to disclosure under California Rules of Court, rules 8.208 and 8.488.

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PETITION FOR WRIT OF MANDATE

I. Introduction.

Since enactment of section 4805 of the Penal Code in 2011,[1] "a Governor can no longer legally commute a sentence without affording the victims of the crimes at issue an opportunity to be heard." (*Santos v. Brown* (2015) 238 Cal.App.4th 398, 415.) Yet that is exactly what the current Governor has announced he will do, claiming that the law passed to prevent recurrence of the *Santos* disgrace still allows him to take substantially the same action. That cannot be right.

Only this Court can stop the Governor's disregard of the law — his abuse of power. This writ petition asks the Court to do just that. His eleventh-hour decision to grant commutation en masse intentionally disregarded the statutorily required notice to the victims of these heinous crimes and the prosecutors who obtained those convictions and penalties, and it even interfered with this Court's mandatory duty to meaningfully review his decisions. As indicated more fully below, this lack of notice has also resulted in errors in the classification of some of the murderers purportedly receiving the benefit of the Governor's decree to commute all death row inmates. All of this could have been avoided by the simple compliance with the law.

Thousands of jurors and hundreds of judges set aside their personal views on the merits of the death penalty to render

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[1]Subsequent section references are to the Penal Code unless otherwise indicated.

judgments based on the evidence and the law. Governor Newsom decided his personal views should override all those who actually participated in the process, followed and applied the law. He did none of that, as he freely admits. That alone is an abuse of power that must not stand.

Unlike the pardon power in the United States Constitution, which is absolute in all cases other than impeachment (U.S. Const., art. II, § 2), the pardon power in the California Constitution is subject to two additional limits. It is expressly made "[s]ubject to application procedures provided by statute" and requires recommendation by four justices of this Court in cases of repeat felons. (Cal. Const., art. V, § 8.)[2]

On November 5, 2026, the Governor of California announced that he intends to grant clemency to all persons presently sentenced to death in the state. He claimed that the statute enacted to guarantee victims of crime notice and an opportunity to be heard before a commutation decision was made does not apply merely because he was acting unilaterally. (See Newsom, Explanatory Statement – Proposed Death Penalty Clemency Action (Nov. 5, 2026), Exhibit B to this petition.) The notice to victims posted on the website is not the opportunity to recommend for or against clemency for a particular prisoner as contemplated by section 4805, but only an insulting invitation "to share how this change of sentence impacts you" with no

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[2]The latter limitation will be the subject of a separate filing in the recommendation matter, S299513.

consideration in the decision. (See Cal. Dept. of Corrections and Rehabilitation, Notice of Death Penalty Sentence Change (Nov. 5, 2026), Exhibit C to this petition.)

The extensive legal research in the Explanatory Statement and the data compiled on which inmates are "twice convicted" make it obvious that this move was planned long in advance. There is no legitimate reason why victims and district attorneys could not have been notified and permitted to provide input *before* the decision was made regarding *whether* it should be made, as the statutory scheme contemplates.

This indiscriminate mass clemency without a meaningful opportunity for district attorneys and crime victims to weigh in on whether the change should be made is contrary to the statutes which the Constitution makes the Governor's power "subject to." This move is therefore in excess of the Governor's power, and any commutation issued in this manner is void. A petition for writ of mandate to restrain enforcement of a challenged act is the proper vehicle for testing its validity.

II. Jurisdiction.

This Court has "original jurisdiction in proceedings for extraordinary relief in the nature of mandamus ...." (Cal. Const., art. VI, § 10.) This case involves a matter of great public importance requiring prompt resolution making the exercise of that jurisdiction appropriate. Specifically, the case involves the sentences of persons who have committed exceptionally heinous murders and multiple murders. The punishment of such crimes has been a matter of great interest and controversy for many

years. The questionable commutation of these sentences requires prompt resolution. Accordingly, Petitioners could not have received the prompt relief sought in a lower court. (See Cal. Rules of Court, rule 8.486).)

III. Parties.

A. Petitioners.

1. The petitioners are families of victims of atrocious murders, victims' service and advocacy organizations, and organizations of prosecutors and police officers. Victims of crime and families of deceased victims have an interest in seeing the perpetrators appropriately punished and in finality of the judgment, recognized in the California Constitution. (See Cal. Const., art. I, § 28, subds. (a)(5), (a)(6).)

2. The District Attorneys of counties which currently have death judgments wherein the inmates are housed by the California Department of Corrections and Rehabilitation ("CDCR") are also petitioners in this writ action because they are tasked under state law with the notification of victim family members so that they may have an opportunity to provide input to the Governor at least ten days prior to the issuance of any clemency. Because the Governor failed to provide the requisite individualized notice to the applicable District Attorney offices, they are aggrieved by the Governor's noncompliance with state constitutional and statutory clemency requirements.

Family members of murder victims:

Sandy Friend, mother of 8-year-old Michael Lyons

Marc Klaas, father of 12-year-old Polly Klaas

Phyllis Loya, mother of Pittsburg Officer Larry Lasater

Emily Carranza, cousin of 8-year-old Gabriel Fernandez

Olivia Rubio, cousin of 8-year-old Gabriel Fernandez

Tamara Alexander, daughter-in-law of Ebora Alexander; sister-in-law of Dietria Alexander; aunt-in-law of Damon Bonner and Damani Garner-Alexander

Mary Stickle, mother of Jason White

Colleen Isaacson, widow of Keith McDade

Christine Powell-Hougan, daughter of Marie Powell

Jason Davis, brother of Placer County Sheriff's Detective Mike Davis

Sam Davis, daughter of Placer County Sheriff's Detective Mike Davis

Debbie McMahon, mother of Placer County Sheriff's Detective Mike Davis

Mary Muscarella, mother of 8-year-old Paul Bailly

Carol Davis, former wife of Sammy McCullough

Jane De Guzman, widow of San Diego Police Department Officer Jonathan De Guzman

Susan Oliver-Burke, widow of Sacramento Sheriff's Department Deputy Danny Paul Oliver

Melissa Storz, daughter of Sacramento Sheriff's Department Deputy Danny Paul Oliver

Jennah Oliver, daughter of Sacramento Sheriff's Department Deputy Danny Paul Oliver

William Hickman, father of Kim Hickman

Gloria Ayala, mother of U.S. Forest Service Firefighter Daniel Najera

Crystal Quigley McKay, sister of U.S. Forest Service Firefighter Jason McKay

Maria Loutzenhiser, widow of U.S. Forest Service Firefighter Mark Loutzenhiser

Cecilia McLean, mother of U.S. Forest Service Firefighter Jess McLean

Claudia Meza Cerda, sister of U.S. Forest Service Firefighter Pablo Cerda

Gloria Vega, daughter of Palm Springs Police Department Officer Gil Vega

Gilbert Vega, son of Palm Springs Police Department Officer Gil Vega

David Kling, father of Palm Springs Police Department Officer Lesley Zerebny

Zachary Zerebny, widower of Palm Springs Police Department Officer Lesley Zerebny

Eric Scovel, grandson of Ellen Salling

Janet Brooks, niece of Andrea Triplett

Enedina Aguirre, widow of Ventura County Sheriff's Department Deputy John Aguirre, Jr.

Victim Service and Advocacy Organizations:

Citizens Against Homicide, Inc.

Crime Victims United of California

Doris Tate Crime Victims Bureau d.b.a. Crime Victims Alliance Crime Victims Alliance

Crime Survivors, Inc.

Stand Up for Victims

Victim Advocate Angels Inc.

Criminal Justice Legal Foundation

Police and Prosecutor Organizations:

Peace Officers Research Association of California

California District Attorneys Association

District Attorneys:

Amador County District Attorney, Todd D. Riebe

Butte County District Attorney, Michael L. Ramsey

Calaveras County District Attorney, Barbara M. Yook

El Dorado County District Attorney, Vern Pierson

Fresno County District Attorney, Lisa A. Smittcamp

Kern County District Attorney, Cynthia Zimmer

Kings County District Attorney, Sarah Hacker

Lake County District Attorney, Susan Krones

Los Angeles County District Attorney, Nathan Hochman

Madera County District Attorney, Sally O. Moreno

Merced County District Attorney, Nicole A. Silveira

Modoc County District Attorney, Nina Salarno

Monterey County District Attorney, Jeannine M. Pacioni

Placer County District Attorney, Morgan Gire

Riverside County District Attorney, Michael A. Hestrin

Sacramento County District Attorney, Thien Ho

San Bernardino County District Attorney, Jason Anderson

San Diego County District Attorney, Summer Stephan

San Luis Obispo County District Attorney, Dan Dow

San Mateo County District Attorney, Stephen M. Wagstaffe

Shasta County District Attorney, Stephanie Bridgett

Solano County District Attorney, Krishna Abrams

Stanislaus County District Attorney, Jeff Laugero

Sutter County District Attorney, Jennifer R. Dupree

Tehama County County District Attorney, Matthew D. Rogers

Tulare County District Attorney, Tim Ward

Ventura County District Attorney, Erik Nasarenko

Yuba County District Attorney, Clinton J. Curry

B. Respondents.

3. Respondents are the Governor of the State of California and the CDCR. The Governor has a ministerial duty to comply with the procedural requirements of section 4805. CDCR has ministerial duties to keep sentenced prisoners in prison "until the judgment is complied with" (§ 1215), to designate the prisons where men sentenced to death are held (§ 3600), and to hold women sentenced to death at Central California Women's Facility pending appeal. (§ 3601.) Discharge of these duties necessarily requires a correct designation of an inmate as sentenced to death or not. (See Cal. Dept. of Corrections & Rehabilitation Operations Manual (2025) §§ 62050.6.2, 62050.6.3.)

C. Real Parties in Interest.

4. Real parties in interest are the 548 persons convicted of capital murder listed in the Governor's List of Intended Clemency Recipients, Exhibit D to this petition.

IV. Facts.

A. Repeated Decisions by the People.

5. The people of California have decided the question of capital punishment multiple times by direct vote. Among these

votes are Proposition 17 of 1972 (death penalty constitutional), Proposition 7 of 1978 (death penalty reaffirmed and expanded), Proposition 115 of 1990 (further expansion, limit on striking special circumstances), Proposition 34 of 2012 (repeal defeated), Proposition 62 of 2016 (repeal defeated), and Proposition 66 of 2016 (measures to implement penalty). The people have repeatedly decided that the penalty of death for the worst murderers *is* "[]compatible with California's values." (Cf. Newsom, Open Letter Regarding Commutation of All Death Sentences (Nov. 5, 2026), Exhibit A to this petition.)

B. Decision to Grant Clemency Without Notice.

6. On November 5, 2026, Governor Gavin Newsom announced, "I have decided to exercise my constitutional clemency authority to commute all California death sentences to life without the possibility of parole." This decision was announced in a letter posted on the Governor's website accompanied by a number of other documents. (See Exhibit A.)

7. The documents reflect an amount of preparation that indicates the announcement was planned long in advance. The Explanatory Statement amounts to an opening brief with legal arguments and citations. The list of 548 people includes data on trials and purports to designate which ones have more than one felony conviction. (Exhibit D; but see Part IV.C, *infra.*)

8. On information and belief, no prior notice that clemency was being considered was given to district attorneys, and none have been served with notice as of the date of this petition. (Cf. § 4805, subd. (a)); see District Attorney Declarations, Exhibits

and Declarations, pp. 96-170.) There is no indication in the announcement materials that any transmittal was made to the Board of Parole Hearings regarding the twice convicted. (Cf. § 4802.) The Explanatory Statement, at pages 2–3, contends that the application statutes do not affect the Governor's power but only regulate other persons submitting applications. The Constitution expressly makes the Governor's power "[s]ubject to" these statutes. (Cal. Const., art. V, § 8, subd. (a).)

C. The Governor's Express Refusal to Conduct Individualized Review.

9. The Governor's Explanatory Statement confirms that his decision to commute all death sentences was made without individualized consideration of the intended recipients. The Governor expressly acknowledges that he "did not consider information about their individual circumstances," apart from the imposition of a death sentence and whether the intended recipients had been twice convicted of a felony. (Exhibit B at p. 4.)

10. Thus, by the Governor's own account, his decision was not based upon an individualized assessment of the circumstances of the crimes, the histories of the offenders, their conduct during incarceration, or the views of the victims and prosecuting district attorneys. Instead, the Governor made a categorical determination that every death sentence should be commuted based upon his general opposition to capital punishment.

D. Errors of Fact, Twice Convicted.

11. On information and belief, the absence of the normal feedback and investigation processes has resulted in errors of fact by the Governor. With no notice and little time to review complex criminal convictions, Petitioners have sought to confirm whether the list provided by the Governor of all death row inmates and those who he lists as "twice convicted" is accurate. So far, in just a short review by one District Attorney, petitioners have identified at least one case where the inmate is, in fact, "twice convicted" even though not indicated as such on the list nor included in the cases submitted to this Court for consent. Robert Dale Fuller is one identified example. Petitioners allege that his 1975 felony conviction under section 496 remains a qualifying conviction notwithstanding relief under section 1203.4, and that he was not included among the cases referred to this Court. (Zimmer Declaration, ¶¶ 23–29; see Memorandum, Part V.)

12. Another apparent error involves Floyd Daniel Smith, who was sentenced to death in San Bernardino County for the 1994 murder of Joshua Rexford. Smith previously pleaded guilty to first-degree murder in Riverside County Superior Court on July 13, 1984, for the murder of Virgil Fowler, committed when Smith was 16 years old. He was sentenced to 25 years to life, plus two years for a firearm enhancement, and committed to the California Youth Authority. In affirming Smith's death judgment, this Court expressly recognized that Smith "was charged and convicted of murder as an adult" for the 1984 murder. (*People v. Smith* (2018) 4 Cal.5th 1134, 1177.) Although Smith

subsequently withdrew his guilty plea and obtained a dismissal of the prior conviction on May 18, 1993, this Court rejected as "legally unsound" the contention that the dismissal invalidated the prior murder conviction for purposes of establishing the prior-murder special circumstance. (*Id.* at pp. 1177–1178.) Petitioners are continuing to investigate additional classifications.

13. Additionally, a potential error in fact arises from another Kern County case involving inmate Juan Villa Ramirez.

Inmate Juan Villa Ramirez was convicted on July 20, 2021, for the October 14, 1997, murder of Chad Yarbrough and was sentenced to death. Ramirez is not identified by the Governor as a twice-convicted felon and, accordingly, his proposed commutation has not been submitted to this Court for the recommendation required by article V, section 8 of the California Constitution.

14. Ramirez's criminal history record, however, reflects a 1994 conviction in Kern County, Case No. SC 59975, for a felony violation of Vehicle Code section 10851, as charged in count 4. A review of local criminal justice information system (CJIS) records reflects a misdemeanor conviction. Further complicating the matter, the counts identified in the local records do not correspond to the counts reflected in Ramirez's rap sheet, making it impossible to reconcile the conflicting information without further investigation and examination of the underlying court records. (See Declaration of Cynthia Zimmer.)

15. The discrepancy raises a substantial question of whether the rap sheets that the Governor relied on for categorizing the cases are sufficiently reliable for that purpose.

16. The investigation by the Kern County District Attorney's Office identifies a further discrepancy: records concerning Larry Hazlett reportedly characterized a 1971 assault conviction as a felony, whereas this Court's opinion identifies it as a misdemeanor. (*People v. Hazlett* (2026) 20 Cal.5th 904, 935; Zimmer Decl., ¶¶ 13–22.) This illustrates that the summary records relied on in the Governor's classification may be in error. The converse risk is that an actual felony conviction may be missing or incorrectly classified.

17. The Governor's list of intended clemency recipients includes 22 condemned inmates from Kern County, six of whom the Governor has not identified as twice-convicted felons. The Kern County District Attorney's Office is currently investigating three of those six cases after discovering conflicting information in their criminal history records regarding prior convictions. In each of these cases, the available records raise substantial questions as to whether the inmate has a prior felony conviction that would require the recommendation of four justices of this Court before the Governor may grant clemency.

18. Additional time is necessary to obtain and review the underlying court records, resolve these discrepancies, and determine whether these inmates have been improperly excluded from the Governor's list of twice-convicted felons. The fact that potentially qualifying prior felony convictions have been

identified in three of the six Kern County cases excluded from the Governor's referral underscores the inadequacy of the Governor's investigation and raises serious concerns regarding the accuracy of his classifications statewide. These unresolved discrepancies further demonstrate the need for interim relief from the proposed commutations pending a determination of the legality of the Governor's process.

19. The Governor states that the process for determining which condemned inmates are "twice convicted" consisted of merely that "staff reviewed the summary criminal history records maintained by the California Department of Justice for every condemned person and identified those who sustained more than one felony conviction under California law." (Exhibit B at p. 4.) But there are grounds to question whether those records are based on complete information. On February 24, 2026, the Los Angeles Superior Court publicly disclosed reporting failures affecting approximately 464,000 criminal case dispositions, including approximately 147,000 felony conviction dispositions. The failures extended over decades. (Zimmer Decl., ¶¶ 33–41, Exhibit G [Los Angeles Superior Court public notice].) Petitioners do not allege that every affected record remains uncorrected or that the notice itself establishes an omitted conviction for a particular intended recipient. It establishes a concrete reason to verify the underlying records before relying on their absence to determine constitutional authority.

V. Cause of Action, Writ of Mandate.

A. Failure to Follow Constitutionally Authorized Statutory Procedure.

20. Properly interpreted, the clemency procedures apply to all grants of clemency. If they did not, they would be ineffective to control the very abuses that they were enacted to prevent and negate the reason that the Constitution makes the Governor's clemency power subject to them. The interpretation is discussed in the Memorandum of Points and Authorities, Part III, *infra.*

21. As the decision to grant clemency was made without the notice to the district attorneys required by section 4805, the "subject to" clause places the grant outside the Governor's power, and any such grant is void. In addition, the "twice convicted" cases have not been properly submitted to this Court because they were not referred to the Board of Parole Hearings as required by section 4802.

B. Failure to Refer Some Twice-Convicted Inmates.

22. The Governor's letter to this Court (Exhibit E, p. 1) states that the only records he considered, and therefore his designation of inmates as twice convicted or not, were "summary criminal history information (or RAP sheets)." (See also Explanatory Statement, Exhibit B, p. 4.) Because these records are known to sometimes have errors, and at least one error has been confirmed (Declaration of Cynthia Zimmer), the Governor proposes to grant clemency that he does not have the unilateral authority to grant in an unknown number of cases. This uncertainty requires a temporary stay of unilateral clemency in

all the cases not referred to this Court and a permanent prohibition for those confirmed to be twice convicted

C. Mass Clemency.

23. The statutory procedures in part 3, title 6, chapter 1 of the Penal Code (§§ 4800–4813) taken as a whole, and section 4805 in particular, call for individual consideration, notice to affected parties, and consideration of the recommendations of district attorneys and victims in each case. This open process required by statutes, to which the clemency power is constitutionally subject, is incompatible with a mass grant of clemency. Whatever may be the law in other jurisdictions, such a mass grant is not within the Governor's power in California.

D. Abuse of Executive Power.

24. The California Constitution sets up a system where the Legislature is responsible to set limits on the exercise of clemency by the Governor pursuant to statutes, and then the California Supreme Court is a further check on that power by its required review of twice convicted. (Cal. Const., art. V, § 8, subd. (a).) The Governor has claimed to himself the unfettered power to decide how clemency should be granted, ignored the Legislature's requirement of a referral to the Board of Parole Hearings for investigation and recommendation (§ 4802), ignored the role of the trial court and District Attorney in providing crucial factual input to the Board of Parole Hearings (§ 4803), ignored the limitation of the required notice to District Attorneys (§ 4805), and deprived the Legislature, the public, and this Court of the information needed to determine whether he has abused his

authority. California set up a system with all three branches of government playing a role, with District Attorneys and citizens of the state having input and the ability to transparently evaluate the process. His rejection of these constitutional limitations are themselves the abuse of power.

25. Petitioners do not have a plain, speedy, and adequate remedy at law. For the foregoing reasons, Petitioners are entitled to a writ of mandate as prayed below.

VI. Relief Requested.

Wherefore, petitioners pray for relief as follows:

A. That this Court grant an immediate stay by issuing an order to the Governor and CDCR to take no further action on clemency for the persons listed in the Governor's November 5, 2026 announcement until this Court makes its decision on the merits of this petition.

B. That this Court issue an order to the respondents to show cause why the permanent relief requested should not be granted.

C. That this Court judicially declare that any grants of clemency issued to the inmates listed in Exhibit D without compliance with section 4805, without compliance with section 4802 for those twice convicted of felony, or on a mass basis rather than individual grants are void.

D. Petitioners further ask this Court to issue a writ of mandate to the CDCR;

1. Requiring that CDCR continue incarcerating all condemned inmates, the twice-convicted as well as those not

twice-convicted, who are named in the Governor's announcement as required for inmates sentenced to death notwithstanding any purported grant of clemency as described in paragraph VI-C and continue to designate them as sentenced to death in its internal records; and

2. Prohibiting CDCR from modifying on its records the sentence of any person pursuant to any purported grant of clemency as described in paragraph VI-C.

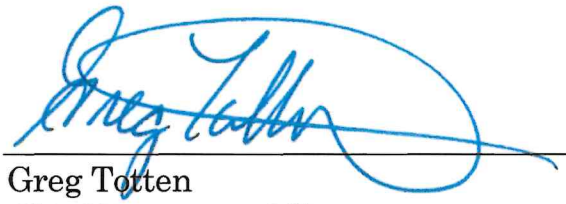
E. Petitioners further ask this Court to grant such further and additional relief as the Court may deem just and proper.

Dated: November 15, 2026

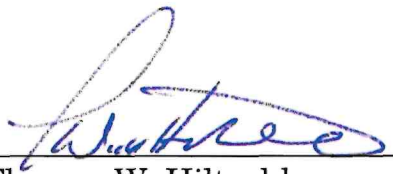
Respectfully Submitted,



Anne Marie Schubert
President & CEO
Criminal Justice Legal Foundation



Greg Totten
Chief Executive Officer
California District Attorneys Assn.



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Attorneys for Petitioners

VERIFICATION

I, ANNE MARIE SCHUBERT, hereby declare:

I am an attorney licensed to practice law in the State of California and the President and CEO of the Criminal Justice Legal Foundation, a party to this action.

I have read the foregoing petition for writ of mandate and the exhibits appended thereto and declare that the contents of the petition are true of my own personal knowledge, except for those matters alleged on information and belief, and as to those matters, I believe them to be true.

I hereby certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Signed this 15th day of November 2026 at Sacramento, California.

Respectfully submitted,



Anne Marie Schubert
President & CEO
Criminal Justice Legal Foundation

MEMORANDUM OF POINTS AND AUTHORITIES

I. Introduction.

California Governor Gavin Newsom is nearing the end of eight years as the state's chief executive. During that time, he has made no secret of his personal antipathy to capital punishment, despite the repeated votes of the people to the contrary, nor of his acceptance of all the common arguments of opponents that the people have repeatedly rejected. (See Executive Order N-09-19 (Mar. 13, 2019), Exhibit F to this petition; Open Letter Regarding Commutation of All Death Sentences 1 (Nov. 5, 2026), Exhibit A to this petition [discussing 2019 moratorium]; but see Scheidegger, Gov. Newsom's Death Penalty Moratorium Undercuts the Voters' Will, S.F. Chronicle (Mar. 13, 2019).)

The same reasons cited for the moratorium are cited again in the Governor's open letter attempting to justify his mass clemency. Conspicuously absent is any explanation for waiting until the last 2 months of a 96-month tenure, bypassing the orderly processes set out in California's clemency statutes, and imposing 382 cases in a batch on this Court for discharge of its responsibilities under article V, section 8 of the California Constitution with a request for rushed consideration. No legitimate reason is apparent. If the Governor is determined to misuse his clemency power in this way, it could have been done in an orderly manner with respect for the victims' rights to have input on the decision.

When such action is taken by a chief executive with unfettered clemency power (see, e.g., U.S. Const., art. II, § 2, cl. 1), it is simply outrageous. In California, where the Governor's power is granted subject to procedural requirements, it is also illegal and void. As such, the action is subject to judicial review via writ of mandate.

II. The clemency power in the California Constitution is expressly subject to procedural limits to ensure an open process.

The United States Constitution followed the English tradition and made the pardoning power absolute. (See Hamilton, The Federalist No. 74 (Rossiter ed. 2003) p. 446.) Many later state constitutions have imposed limits, however, in the widespread recognition that the power was often abused. "It has been conceded by all who have spoken on this subject in the Convention, that there has been an abuse of the pardoning power ... in the interest of those who had been sentenced, and justly sentenced." (1 Willis & Stockton, Debates & Proceedings, Cal. Const. Convention 1878–1879 (Willis & Stockton) p. 357 [remarks of delegate Blackmer].) General statements about the historical absoluteness of the pardon power (see e.g., 33 Ops.Cal.Atty.Gen. 64, 65 (1959) (A.G. Opn.), citing *Ex parte Kelly* (1908) 155 Cal. 39, 41 [opn. of Beatty, C.J., in chambers]) count for little when the subject of discussion is a constitutional limit on the constitutional power, imposed in the express recognition of the history of abuse.

Constitutional interpretation always begins with the text and can often stop there. (See *In re Mohammad* (2022) 12 Cal.5th 518, 530.) " 'If the language is clear, there is no need for construction.' " (*In re Kowalczyk* (2026) 19 Cal.5th 593, 615.) This language is clear. "*Subject to* application procedures provided by statute, the Governor, on conditions the Governor deems proper, may grant a reprieve, pardon, and commutation ...." (Cal. Const., art., V, § 8, italics added (Section 8).) The words "subject to" can have different meanings in different contexts. (*People v. Steward* (2018) 20 Cal.App.5th 407, 420.) There do not appear to be any California cases construing these words in this provision. However, the Supreme Court of Ohio did construe these words in exactly this context.

At the time, the Ohio provision read, "He shall have power, after conviction, to grant reprieves, commutations, and pardons, for all crimes and offenses, ... upon such conditions as he may think proper; subject, however, to such regulations, as to the manner of applying for pardons, as may be prescribed by law." (See *State ex rel. Maurer v. Sheward* (1994) 71 Ohio St.3d 513, 518.) This use of "subject ... to" is indistinguishable from the California provision. The court had little difficulty finding that language "indicates a limit on [the clemency] power." (*Ibid.*)

> "The abuses sought to be remedied by addition of the 'subject to' clause in Section 11, Article III are those that occur during the application process. Thus, the process is subject to regulation, and procedural requirements may be placed on the Governor's power to pardon. To find otherwise would be to read the 'subject to' clause out of Section 11, Article III, when it is clear that that clause

affects the power of the Governor to grant pardons." (*Id.* at p. 525.)

A pardon granted by the governor without compliance with the procedural regulation was invalid. (*Id.* at p. 526.) Because the proviso was limited to pardons, not commutations, the Ohio Supreme Court further held the statutory limitation was invalid as to commutations. (*Id.* at p. 523.) The constitutional provision was soon amended to include commutations. (Ohio Const., art. III, § 11 [as amended Jan. 1, 1996].)

The same conclusion is warranted in California. If one thing is "subject to" another, the former is subordinate to the latter. (See *Byrne v. Drain* (1900) 127 Cal. 663, 667.) This subordination is made in the sentence granting the power. To say that this clause is nothing but an authorization for the Legislature to regulate the conduct of other people, not a limitation on the clemency power, would read it out of the Constitution, just as in Ohio.

There would be no need for a constitutional provision to authorize the Legislature to regulate the conduct of applicants. Its plenary legislative authority empowers it to do that anyway. The "subject to" language would be superfluous if it were not a limitation on the clemency power, and such a construction is avoided whenever possible. (See *City of Alhambra v. County of Los Angeles* (2012) 55 Cal.4th 707, 724.)

The Governor's Explanatory Statement relies on the Attorney General opinion noted above for the proposition that procedural statutes do not limit his clemency power. (Exhibit B at

pp. 2–3.) That opinion is not binding on courts (see *Santos v. Brown* (2015) 238 Cal.App.4th 398, 428 (*Santos*)), and its analysis is deficient in a number of ways. The opinion does not squarely address the language, the meaning of "subject to," or the superfluity of including that language if it does not limit the clemency power. It asserts that interpreting the statutes to limit the power would render them unconstitutional, citing no California authority other than the general language about pardon power from a brief, off-point, single-justice opinion. (See A.G. Opn. at p. 65, citing *Ex parte Kelly* (1908) 155 Cal. 39 [opn. of Beatty, C.J. in chambers].)

The Attorney General opinion's discussion of the constitutional debates is also seriously incomplete. It notes that a delegate proposed adding the words "and granting" to the constitutional provision and that the amendment was defeated. (*Ibid.*) However, a closer reading of the debate shows that the opponents of the amendment were not concerned with limiting the clemency power on matters of procedure. They were concerned that it was aimed at giving the Legislature control over the substance, or that it was at least subject to that interpretation. (See Willis & Stockton, *supra*, at p. 355 [remarks of delegate Shafter] ["cover the grounds of pardon"]; *id.* at p. 356 [remarks of delegate Freeman] ["aiming, not at the mode and manner, but at the substance"].) The rejection of this amendment therefore does not support the proposition that the Attorney General opinion and the Governor's statement cite it for. As to regulation of procedure, it is consistent with an interpretation

that the majority of delegates believed that the existing language covered the subject.

The statutes in effect at the time of the convention provide an indication of what the Legislature was authorized to require. These laws, similar to some of those presently in effect, provided for an open process, and the Legislature specified which ones the Governor could choose to dispense with and those he could not. Former section 1421 (1872),[3] like present section 4804, required ten days notice to the district attorney "before the Governor acts upon an application for pardon." Former section 1422 (1872) required publication in a newspaper for 30 days "[u]nless dispensed with by the Governor." (Cf. § 4802.5 [internet].) The fact that one requirement was optional with the Governor and one was not is telling. The Legislature believed that it could make requirements mandatory on the Governor, and that was the state of the law at the time of the constitutional convention.

The provision for notice to the district attorney was only for pardons, not for commutations, though, with notorious results. Section 4805 is the result, as discussed in the next part.

III. The Governor's interpretation of section 4805 would permit the same abuse that section was enacted to prevent.

On his last day in office, Governor Schwarzenegger granted a commutation to the son of a former Speaker of the Assembly. Esteban Nuñez had been charged with the murder of Luis Santos

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[3]Section references are to the Penal Code unless otherwise indicated.

and pleaded guilty to voluntary manslaughter and two counts of assault with a deadly weapon under a plea agreement. (*Santos v. Brown* (2015) 238 Cal.App.4th 398, 403.) The Governor granted clemency with no notice to the victims' parents or the district attorney. In an interview a few months later, the former governor freely admitted that he had taken this action as a favor to a friend. (*Id.* at p. 407.) In the process of the issuance of this commutation, "[b]ackroom dealings were apparent." (*Id.* at p. 406.) "Although the executive order stated Esteban Nunez applied for commutation, there is no application in the record, and plaintiffs allege they requested the application but none was provided." (*Id.* at p. 408.)

Nothing could be done about this travesty because section 4804 does not apply to commutations, and Marsy's Law does not apply to executive clemency. (*Santos, supra*, 238 Cal.App.4th at pp. 428, 430.) In 2011, the Legislature enacted section 4805, which duplicates 4804 for commutations. The *Santos* court had no doubt about the purpose of this new statute. "Though it does not help these victims, under the new statute, *a Governor can no longer legally commute a sentence without affording the victims of the crimes at issue an opportunity to be heard.*" (*Id.* at p. 415, italics added.) But the present Governor thinks he has found a way around this law that effectively negates its value in preventing abuse.

The normal process for clemency begins with a written application, and the statutes are worded with that in mind. But the worst abuses come from "backroom dealings." (See *Santos*,

238 Cal.App.4th at p. 406.) If the statutory sunshine process can be defeated merely by the absence of a formal application, the worst abuses would be unregulated, while inmates following the normal procedures would have their applications regulated. That would be backwards and an absurd result.

There are two alternate interpretations to avoid this absurdity and this defeat of the statutory purpose. First, "application" can be construed to include whatever process begins the consideration of clemency. It could be an application duly filed on the government form, either paper or on a website. It could be a crony quietly asking the Governor or someone on his staff in a private conversation. It could be the Governor acting on his own motion, just as courts sometime act on their own motions for actions that are normally taken on the motion of a party. However the process begins, section 4805 requires service of a notice on the district attorney 10 days before the grant of clemency, and the district attorney has a duty to make reasonable efforts to notify the victims. Although section 4805 does not specifically address the issue, an adjustment to the effective date of service is needed if the notice is served by mail, as otherwise the notice might well arrive too late. (See Code Civ. Proc., § 415.20, subd. (a) [10 days].)

A second interpretation to avoid absurdity is to construe the application procedure statute to require an actual request for clemency submitted to the Governor by the person seeking relief or on that person's behalf, disallowing backdoor practices. This construction is consistent with Penal Code section 4800 et seq.

and this Court's Administrative Order of March 28, 2018, which repeatedly contemplate an applicant seeking clemency and the Governor acting upon that application. Further, the fact that "a commutation may not be imposed upon [a prisoner] without his consent" (*Green v. Gordon* (1952) 39 Cal.2d 230, 232) implies that the prisoner is a necessary party. The Governor is the decisionmaker, not the applicant.

Sections 4801 and 4812, subdivision (b) expressly provide mechanisms for the Board of Parole Hearings to recommend clemency and for the Governor to initiate investigations of potential candidates. Thus, the Governor had lawful means to initiate consideration of clemency for the condemned inmates without dispensing with the statutory application process. Also worth noting is section 4806, which creates two exceptions to section 4805 not relevant here. When an enactment creates explicit exceptions, courts should be cautions about finding implied ones. (See *In re Kowalczyk*, 19 Cal.5th at p. 618.)

Whichever alternative is adopted, the statutory safeguards cannot depend upon who initiates the process. The Governor's contrary interpretation would permit him to circumvent the very protections the Legislature enacted following the Nuñez commutation simply by dispensing with a formal application. Under that interpretation, the more secretive the clemency process, the fewer protections afforded to victims. Such a result is fundamentally inconsistent with the legislative purpose of section 4805 and the express constitutional limitation making the Governor's clemency power subject to statutory application

procedures. The Governor may have the authority to initiate the clemency process, but that does not mean he has the authority to dispense with it.

Along with the factual information that the district attorneys can provide, section 4805 is also intended to enable the victims of crimes and the families of deceased victims to make known to the Governor the effect the commutation will have on them. Given what so many of these families have been through for so long, the impact in this case is exceptionally severe, as documented in the declarations filed with this petition. The Governor's assurance that the perpetrators will never be released is obviously cruelly false. The Legislature has already enacted one statute to grant parole to persons sentenced to life without parole (§ 3501, subd. (b)(4)), and it may enact more. There are already statutes for recall and resentencing. (See, e.g., § 1172.1). Even if the current Board of Parole Hearings regulations exclude persons who have received commuted sentences from its recommendation process, nothing stops CDCR from making the recommendation or the Board from amending its regulation. Nothing stops a future Governor from further commuting the sentences to life with parole. (*In re Collie* (1952) 38 Cal.2d 396, 398.) While the Governor might, subject to other limitations, ignore their pleas and grant the commutations anyway, they have a right to be heard and to have their voices considered in the decision.

As no notice has been served on the district attorneys, a grant of clemency would be illegal.

IV. Mass commutation is inconsistent with the individualized process provided by statute and therefore outside the Governor's power.

A. The Statutory Scheme as a Whole.

The Governor contends that he has the power to commute hundreds of sentences in a single act, or with only separation into the once and twice convicted groups. (Exhibit B at p. 2.) But the authority cited is exceedingly thin and takes no account of the system of regulation of procedure enacted under the Legislature's constitutional authority.

The two California cases cited in the Governor's order are pure *obiter dicta* in cases where the matter was not at issue. *People v. Blocker* (2010) 190 Cal.App.4th 438, 440, was a case about trial court discretion in issuing a certificate of rehabilitation. The passing comment, in a footnote, that "a single pardon can extend to a group" is made in the course of noting, based on a federal precedent, that legislatures can enact a general amnesty. There is no discussion of the unique features of the California Constitution or its authorized statutory limitations on the clemency power. This is an example of a comment made without considering all the factors that may come into play when the point is actually at issue. (See *Cohens v. Virginia* (1821) 19 U.S. 264, 399.)

Way v. Superior Court (1977) 74 Cal.App.3d 165, 177, on the other hand, states that the Legislature does not have the power to grant amnesty. The court makes the unremarkable statement that "only [the Governor] can pardon or commute" and without any examination asserts that includes general amnesty.

This is another comment on a matter not at issue. It is unnecessary to the holding, which upholds the statute without it being an amnesty. (*Id.* at p. 178.) Again, this is *dicta* with no precedential value.

The only prior California mass clemency that the Governor can point to is a clemency for alcohol crimes after the repeal of Prohibition. (Exhibit B at p. 2.) It is not remarkable that no one challenged a procedural irregularity in an act so obviously warranted and just. Relief for people convicted of acts that are no longer crimes has long been regarded as exceptionally compelling. (See, e.g., *Montgomery v. Louisiana* (2016) 577 U.S. 190, 200–201 [exception to general rule of nonretroactivity as to final judgments].) This single instance in unusual circumstances should not be regarded as establishing the validity of mass commutations.

Looking to California clemency procedures, a mass clemency is inconsistent with a scheme designed to create a public process that ensures that all relevant information is considered regarding the individual crime and criminal. Notice to the district attorney and victims of the crime with opportunity to recommend for or against clemency (§ 4805) is a case-by-case matter. The Governor is given authority to grant clemency "without investigation and recommendation by the Board of Parole Hearings" only for "[a]pplications supported by a certificate of rehabilitation" where the superior court has done that work. (§ 4802.5.) Again, this is a case-by-case matter.

Although no one statute explicitly addresses whether a mass clemency is valid, the statutory scheme as a whole effectively requires individual applications. The mass clemency is therefore incompatible with the statutory application procedures to which the clemency power is subject.

B. Abuse of Power.

For the reasons stated in paragraph 24 of the petition and the authorities cited in it, the Governor's action in this case is an abuse of power.

C. Practice in the Previous Administration.

The statutory framework contemplates individualized applications and investigation by the Board of Parole Hearings, including the examination of records and recommendations to the Governor. (§§ 4802, 4812, 4813.) Governor Brown employed individualized clemency review during his 2011–2018 administration, including referrals to the Board and submissions to this Court where judicial concurrence was required. His publicly announced grants described individual circumstances supporting relief, including the offense, sentence, rehabilitation and institutional conduct.

During that administration, this Court explained that its role is to provide a check on potential abuses of executive power and determine whether a proposed grant has sufficient support to constitute a legitimate exercise of that power. (Admin. Order 2018-03-28, p. 4.) In the closing weeks of 2018, the Court withheld its recommendation in ten Brown clemency matters. (See Exhibit H.) The orders did not publicly state individualized

reasons; Petitioners do not attribute particular findings of misconduct to the Court. The denials nonetheless demonstrate that the constitutional recommendation is not automatic, even following individualized executive review.

Governor Brown's practice is not asserted to be an independent source of binding procedural law. It illustrates how the statutory and constitutional safeguards can operate in practice. Here, Governor Newsom's announced universal outcome and limited criminal-history submissions raise the question whether this Court has sufficient information to perform the same independent function. The Court should not be asked to approve a predetermined result on a record that omits the very circumstances that could bear upon whether clemency is a legitimate exercise of executive power.

V. The mass clemency contains errors as to which inmates are "twice convicted of felony."

A. Known and Possible Errors.

Even on its own terms, the Governor's action requires an accurate factual determination of which inmates sentenced to death are "twice convicted of felony" within the meaning of article V, section 8 of the California Constitution. The facts of the errors found to date are stated in paragraphs 11 to 14 of the petition.

These findings also demonstrate the substantive importance of the statutory notice procedures. Had the Governor notified prosecuting district attorneys before announcing his decision, these discrepancies could have been investigated and resolved before he determined which cases required this Court's

recommendation. The Governor's failure to provide notice did more than deprive victims of an opportunity to be heard; it deprived the Governor himself of information necessary to determine the constitutional limits of his own authority.

The Kern County findings and the *Smith* case further support Petitioners' challenge to the entire blanket commutation. The Governor's categorical refusal to consider individual circumstances, coupled with his failure to adequately investigate the criminal histories of the intended recipients, illustrates the dangers of exercising executive clemency on a mass basis while disregarding the statutory procedures governing that power.

Accordingly, Petitioners respectfully request that this Court stay implementation of the proposed commutations pending resolution of the legal challenges presented herein. At a minimum, no commutation should proceed where an unresolved question exists as to whether this Court's recommendation is constitutionally required. Prosecuting district attorneys must be afforded sufficient time to investigate these discrepancies before the Governor exercises clemency power that may exceed his constitutional authority.

If clemency is issued to a twice-convicted felon without a recommendation of this Court, that clemency is outside the power of the Governor and void. (Cal. Const., art. V, § 8, subd. (a).) Additionally, this illustrates the importance of getting input from the district attorneys before granting clemency, as section 4805 requires.

B. The Limitations of Rap Sheets.

History has proven that criminal rap sheets can be wrong.

The United States Supreme Court has expressly recognized that rap sheets may be incorrect or incomplete and may contain information concerning other persons with similar names. (*United States Dept. of Justice v. Reporters Committee for Freedom of Press* (1989) 489 U.S. 749, 752.) Although that case concerned disclosure under the Freedom of Information Act, its description of criminal history compilations is directly pertinent here. An official compilation is not the judgment of conviction; its reliability depends on the information supplied by the originating agencies.

In *People v. Wiley* (2025) 17 Cal.5th 1069, 1087–1088, footnotes 12–13, this Court identified an actual error in a certified CLETS rap sheet: a misdemeanor conviction for driving with a suspended license was recorded as an infraction. Certification establishes the provenance of a record, not the correctness of every entry. The error in *Wiley* concerns the very distinction material here—the legal classification of a prior conviction.

People v. Martinez (2000) 22 Cal.4th 106, 119–134, does not establish otherwise. *Martinez* held that criminal history computer printouts could be admitted under the official records exception (Evid. Code, § 1280), relying on the statutory reporting duties and evidentiary foundation before the Court. It recognized that inaccuracies could be explored through cross-examination. (*Martinez*, at p. 132.) Admissibility is not conclusiveness. Justice

Werdegar's dissent, joined by Justice Kennard, specifically warned against excessive confidence in computerized records and discussed errors arising from delayed reporting of postconviction developments. (*Id.* at pp. 145–146 (dis. opn. of Werdegar, J.).) Those concerns are illustrated by *Wiley* and the reporting failures discussed below.

Furthermore, the presumption of regular performance of official duties (Evid. Code, § 664) is rebuttable. In fact, earlier this year, the Los Angeles Superior Court's acknowledgment that thousands of felony dispositions were not successfully transmitted is affirmative evidence that the reporting system has failed in substantial numbers of cases. It does not rebut the presumption as to every individual record, but it forecloses treating the system as an assurance that every qualifying conviction has been captured.

The February 24, 2026 Los Angeles Superior Court public notice identified approximately 464,000 affected cases involving approximately 408,000 individuals, including 380,000 convictions and 84,000 dismissals. Approximately 147,000 of the convictions were felonies and 233,000 were misdemeanors. The court attributed the reporting failures to its former case management system and described corrective work with Department of Justice (DOJ). (See Exhibit G, Superior Court of Los Angeles County Identifies Backlog of Unreported Arrest Disposition Reports (Feb. 24, 2026).) The period covered extends through 2023 and includes decades in which condemned inmates accumulated criminal histories.

DOJ separately acknowledged the backlog in its Los Angeles County Superior Court FAQs (https://www.oag.ca.gov/fingerprints/lasc-faqs). DOJ explained that it had been unaware of the reporting problem and that a portion of the backlog would require additional analysis. Petitioners do not presently know whether remediation was complete when the Governor prepared his lists or whether any particular intended recipient was affected. The notice and FAQ establish the reporting failure, not the existence of a qualifying prior felony in any particular capital case.

The DOJ FAQ also explains that California transmits arrest and disposition information to the FBI. Thus, to the extent the Governor consulted both state and federal repositories, agreement between them does not necessarily constitute independent verification: a disposition never transmitted to DOJ may also be absent from the federal record. The question is whether the underlying court disposition was verified, not simply whether two administrative databases agree.

Penal Code section 11126 establishes a mechanism for challenging the accuracy or completeness of DOJ criminal history records. Subdivision (a) directs DOJ to determine whether the information accurately reflects the source document and to correct discrepancies. The statute recognizes that the underlying source, rather than the administrative summary, is the benchmark for accuracy. Section 11126 does not itself prescribe a clemency investigation, but it demonstrates legislative

recognition of the problem and the practical means of addressing it.

Additionally, the California State Auditor reported that DOJ required additional research on 22,978 rap sheets during fiscal years 2013–14 through 2015–16, approximately four percent of the records prepared for individuals fingerprinted for Social Services. Missing final dispositions required examination of court records or direct contact with superior courts. (Cal. State Auditor, Report No. 2016-126 (Mar. 2017), p. 43.) While this audit concerns a different statutory framework, it nevertheless demonstrates that incomplete criminal histories are a recurring operational problem and that verification against court records is feasible.

C. Legal Issues Regarding Status and Significance of Prior Convictions.

Determining the status of prior conviction and its legal effect may involve difficult or unsettled legal questions. In *People v. Vasquez* (2001) 25 Cal.4th 1225, 1230, this Court recognized that a section 1203.4 dismissal does not render the conviction a legal nullity. Importantly, this case involved the continuing legal effect of a dismissed conviction outside the context of a subsequent criminal prosecution, in a civil sexually violent predator proceeding. On the other hand, in *People v. Park* (2013) 56 Cal.4th 782, 789–795, this Court held that a wobbler reduced to a misdemeanor under Penal Code section 17, subdivision (b) before commission of a subsequent offense could not support a serious felony enhancement under section 667, subdivision (a).

People v. Guerrero (1988) 44 Cal.3d 343, 355, likewise recognizes the importance of the record of conviction in determining the substance of a prior offense.

These cases do not decide the meaning of article V, section 8, but they illustrate why the actual judgment, sentence, and subsequent orders matter. The original charge or a database classification cannot resolve the legal effect of a reduction, dismissal, or other disposition.

The Hazlett discrepancy is especially instructive. The criminal history and probation reports reportedly identified the same 1971 assault conviction as a felony, while this Court's opinion describes it as a misdemeanor. (*People v. Hazlett* (2026) 20 Cal.5th 904, 935; Zimmer decl., ¶¶ 13–18.)

Multiple records may repeat a common error rather than independently corroborate it. The Fuller matter presents a distinct legal question: whether section 1203.4 relief affects the constitutional classification of an otherwise qualifying felony, similar to the issue in *Vasquez*. A sweeping exercise of the clemency power such as the present raises issues as to its validity that cannot be answered without examining individual cases.

D. Errors, Unreliability, and Exercise of Executive Power.

The Governor's designation cannot create constitutional power. If an intended recipient has in fact been twice convicted of a felony within article V, section 8, a unilateral commutation would exceed the Governor's authority notwithstanding a good-faith error in screening. The actual discrepancies identified by

prosecuting agencies warrant examination of the judgments and orders underlying disputed classifications.

The Governor's publicly described submissions to this Court must also be distinguished from any separate verification his administration may have undertaken; the limited submissions alone do not establish that no other verification occurred.

The absence of individualized merits review compounds this problem. The Governor's categorical decision and admitted decision not to review certain individualized records raise questions concerning the adequacy of the process. For twice-convicted persons, this Court's independent abuse-of-power review cannot be treated as a ministerial step. (Admin. Order 2018-03-28, p. 4.) For persons genuinely outside that category, the cited authorities do not independently establish a mandatory individualized clemency review.

Petitioners rely on the separate statutory and constitutional grounds set forth in Part IV. The common screening process, documented reporting failures, and actual disputed classifications support a temporary statewide stay pending expedited adjudication. Petitioners do not contend that an error in one case automatically invalidates every correctly classified commutation. If broader interim relief is denied, the Court should at minimum preserve the judgments of individuals whose classifications are genuinely disputed and those requiring its recommendation. Permanent relief should be tailored to established constitutional or statutory violations. The existing

execution moratorium permits preservation of the status quo without exposing any intended recipient to imminent execution

VI. Petitioners have standing, and original mandate is the appropriate vehicle.

There should be no genuine question of standing in this case. Section 4805 confers on victims and district attorneys a right to notice and an opportunity to be heard in the commutation decision. Article I, section 28, subdivision (a)(6) of the California Constitution recognizes that victims of crime have an interest beyond that of the general public in the finality of the judgments against the perpetrators. Even though the specific provisions of Marsy's Law do not address commutation (*Santos*, 238 Cal.App.4th at p. 430), the recognition of the finality interest is sufficient to establish the minimal interest " 'over and above the interest held in common with the public at large' " needed for standing. (*Save the Plastic Bag Coalition v. City of Manhattan Beach* (2011) 52 Cal.4th 155, 165.)

As long as at least one petitioner has standing, there is no need to adjudicate the standing of the rest. (*Strauss v. Horton* (2009) 46 Cal.4th 364, 399, fn. 6; *Jessica M. v. Department of Corrections & Rehabilitation* (2026) 120 Cal.App.5th 54, 60, fn. 3.) In any event, all of the petitioners have an interest as citizens (including organizational citizens) in seeing the law enforced, sufficient for public interest standing. (*Save the Plastic Bag Coalition*, *supra*, 52 Cal.4th at pp. 166, 170.) This Court has repeatedly entertained challenges to criminal law initiatives brought by people with no interest at all over and above the

general public. (See, e.g., *Briggs v. Brown* (2017) 3 Cal.5th 808, 822 [petition by Ron Briggs, a private citizen, with no additional interest stated].)

"Mandamus under section 1085 is the appropriate vehicle to challenge the constitutionality or validity of statutes or other official acts." (*City of Redondo Beach v. Padilla* (2020) 46 Cal.App.5th 902, 909.) "Declaratory relief may be awarded in a mandamus action." (*Malott v. Summerland Sanitary District* (2020) 55 Cal.App.5th 1102, 1109.) This case involves a matter of great public importance requiring prompt resolution making the exercise of that jurisdiction appropriate. (*Legislature v. Eu* (1991) 54 Cal.3d 492, 500; Petition Part II at pp. 13–14, *supra.*)

VII. A temporary stay is necessary to preserve this Court's jurisdiction and prevent irreparable harm.

Petitioners respectfully request an immediate temporary stay of any further implementation of the challenged commutations pending this Court's consideration of this writ petition. A stay is necessary to preserve the status quo, prevent irreparable harm, and ensure that the Court's ability to grant effective relief is not defeated before the legality of the Governor's actions can be determined. (Cal. Rules of Court, rule 8.486(a)(7).)

A. Challenged Actions Imminent.

This petition challenges the legality of Respondents' implementation of a statewide clemency action affecting hundreds of inmates. According to the Governor's public announcements, implementation of the challenged commutations is either imminent or already underway. The precise timeline is

unknown, but time is certainly of the essence, as the Governor's term expires in less than two months.

Absent immediate intervention, the commutations as to the once-convicted felons may become effective before this Court has an opportunity to determine whether the procedures mandated by article V, section 8 of the California Constitution and Penal Code sections 4802 and 4805 were followed.

If that occurs, the issues presented by this petition may become substantially more difficult to remedy. The statutory notice rights asserted by Petitioners, and the opportunity for victims and prosecutors to participate in the clemency process, may be irrevocably impaired before judicial review can occur.

Because the challenged actions are ongoing and time-sensitive, ordinary briefing schedules would not adequately preserve the Court's ability to provide meaningful relief.

B. Significance of Issues Presented.

A temporary stay is appropriate where serious legal questions are presented and interim relief is necessary to preserve the court's jurisdiction and the effectiveness of its eventual decision.

The petition raises substantial questions concerning compliance with mandatory constitutional and statutory prerequisites governing the clemency process. Petitioners contend that the Governor failed to provide notice required by Penal Code section 4805 and failed to comply with procedures mandated by article V, section 8 of the California Constitution and Penal Code section 4802 et seq. before undertaking the challenged proposed

commutations. At a minimum, the petition presents serious and substantial legal questions warranting preservation of the status quo until those questions can be resolved.

C. Irreparable Harm.

The harm caused by denial of interim relief cannot be adequately remedied after implementation of the challenged commutations.

Once a commutation becomes effective, statutory notice rights cannot be retroactively exercised. District attorneys cannot meaningfully provide input after a clemency decision has already been implemented. Victims cannot be restored to the position they would have occupied had notice been timely provided. The resulting injury is therefore procedural, constitutional, and irreparable in nature.

D. Balance of Harms.

The requested stay would preserve the status quo while the Court considers the legality of the Governor's actions. It would not determine the merits of any inmate's clemency request, revoke any commutation, or dictate how executive discretion must ultimately be exercised.

By contrast, denial of interim relief would permit implementation of challenged commutations before the legality of those actions can be examined. If Petitioners prevail, important statutory and constitutional protections may already have been lost.

Moreover, a temporary stay would impose little hardship on Respondents or affected inmates. California's existing

execution moratorium remains in effect, and the requested stay would merely maintain existing custodial classifications and legal relationships until the Court determines whether the Governor complied with governing law. The stay therefore preserves, rather than disturbs, the status quo.

E. Public Interest.

The public has a profound interest in both the lawful exercise of executive clemency and faithful adherence to the constitutional and statutory procedures established to govern that process. The public interest is always served by ensuring that governmental power is exercised according to law and that constitutional safeguards are respected.

A temporary stay will allow the Court to resolve these important questions in an orderly fashion without risking the irreversible consequences that may result from immediate implementation of the challenged commutations.

F. Preserving Effective Judicial Review.

Finally, the central purpose of interim relief is preservation of the Court's ability to grant meaningful relief after consideration of the merits. Without a stay, the very actions challenged in this proceeding may be completed before the Court can determine whether they were lawful. Courts routinely issue temporary stays to preserve the status quo and prevent the frustration of effective judicial review.

Accordingly, Petitioners respectfully request that the Court immediately stay any issuance, implementation, recognition, or enforcement of the challenged commutations pending further

order of the Court and pending determination of this petition on the merits.

CONCLUSION

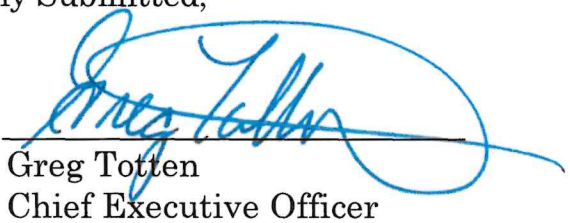
The petition for writ of mandate should be granted as prayed for in the petition.

Dated: November 15, 2026

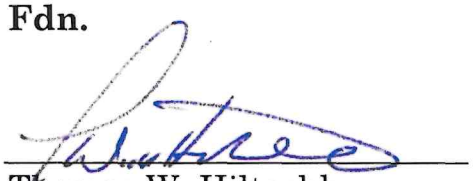
Respectfully Submitted,



Anne Marie Schubert
Criminal Justice Legal Fdn.



Greg Totten
Chief Executive Officer
California District Attorneys Assn



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Attorneys for Petitioners

CERTIFICATE OF WORD COUNT

I, ANNE MARIE SCHUBERT, hereby declare:

I am an attorney licensed to practice law in the State of California and the President and CEO of the Criminal Justice Legal Foundation, a party to this action.

I hereby certify pursuant to California Rules of Court, rules 8.204(c) and 8.486(a)(6), that this document contains 11758 words, including footnotes and excluding cover information, tables, signature blocks, the certificate of interested entities or persons, the verification, and this certificate. This document was prepared in Microsoft Word, and this is the word count generated by the program for this document.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Signed this 15th day of November 2026 at Sacramento, California.

Respectfully submitted,



Anne Marie Schubert
President & CEO
Criminal Justice Legal Foundation

DECLARATION OF ELECTRONIC SERVICE

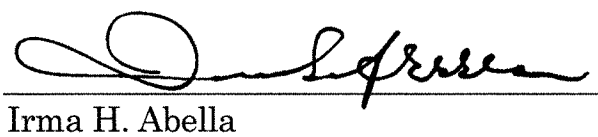
The undersigned declares under penalty of perjury that the following is true and correct: I am over eighteen years of age, not a party to the within cause, and employed by the Criminal Justice Legal Foundation, with offices at 2131 L Street, Sacramento, California 95816.

On the date below, I electronically served the attached document by sending it via electronic mail to the email address listed below and also deposited a printed copy by depositing it in the United States mail, postage prepaid, addressed to the mailing address listed.

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California Department of Corrections & Rehabilitation
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Executed on November 15, 2026, at Sacramento, California.



Irma H. Abella
Criminal Justice Legal Foundation