Supreme Court of California
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Supreme Court of California
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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

REQUEST RE: COMMUTATION OF DEATH SENTENCES	No. S299513

BRIEF OF AMICI CURIAE CALIFORNIA APPELLATE PROJECT, HABEAS CORPUS RESOURCE CENTER, AND OFFICE OF THE STATE PUBLIC DEFENDER IN SUPPORT OF GOVERNOR'S REQUEST RE: COMMUTATION OF DEATH SENTENCES

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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

REQUEST RE: COMMUTATION OF DEATH SENTENCES	No. S299513

BRIEF OF AMICI CURIAE CALIFORNIA APPELLATE PROJECT, HABEAS CORPUS RESOURCE CENTER, AND OFFICE OF THE STATE PUBLIC DEFENDER IN SUPPORT OF GOVERNOR'S REQUEST RE: COMMUTATION OF DEATH SENTENCES

INTRODUCTION

Amici California Appellate Project, Habeas Corpus Resource Center, and Office of the State Public Defender support Governor Newsom's decision to seek universal clemency for everyone sentenced to death in California. We therefore ask the Court to approve his application to commute the death sentences of those individuals twice convicted of a felony and impose instead sentences of life without possibility of parole. Because amici are the predominant providers of postconviction representation and assistance to counsel who provide such representation for individuals sentenced to death in California, amici have direct, institutional knowledge of California's death row and the systemic issues this class of individuals has faced from charging through

their present incarceration. We urge the Court to promptly grant the recommendation that the Governor requests.

The Court's role in this matter is limited. The only question this Court must answer is whether the Governor's request is an abuse of his discretion. It is not. The Governor's request is powerfully supported by the accompanying letter to the People of California explaining his reasons and submitted with his Explanatory Statement. (Governor Newsom's Open Letter Regarding Commutation of All Death Sentences (Nov. 5, 2026) <https://www.gov.ca.gov/wp-content/uploads/2026/11/2026-11-5-26-GGN-Open-Letter-FINAL.pdf> [as of Nov. 6, 2026] (hereafter Governor's Letter).)

Members of the Court have recognized the faults and shortcomings of the California death penalty statute and its administration, and have concluded that the problems, although real and serious, do not lend themselves to being remedied by decisions of the Court in individual capital cases. (E.g., *People v. Deen* (2026) 19 Cal.5th 151, 179-182 (conc. opn. of Groban, J., joined by Liu & Evans, JJ.); *In re Masters* (2019) 7 Cal.5th 1054, 1090 (conc. opn. of Liu, J., joined by Cuéllar, J.); *People v. Potts* (2019) 6 Cal.5th 1012, 1062-1067 (conc. opn. of Liu, J., joined by Cuéllar, J.); *Briggs v. Brown* (2017) 3 Cal.5th 808, 862-872 (conc. opn. of Liu, J., joined by 3 other JJ.).)

Twenty years ago, Chief Justice George called the administration of the death penalty "dysfunctional." (Death Penalty Information Center, *New Voices: California Chief Justice Calls Death Penalty "Dysfunctional"* (May 3, 2006)

<https://deathpenaltyinfo.org/new-voices-california-chief-justice-calls-death-penalty-dysfunctional> [as of Nov. 6, 2026].) Five years later, Chief Justice Cantil-Sakauye said "'[i]t's not effective[,]'" and cannot be effective without "'structural change'" that the state is unwilling to pay for. (Greenwald, *Conservative California Chief Justice Speaks Out Against the Death Penalty*, Davis Vanguard (Dec. 26, 2011) <https://davisvanguard.org/2011/12/conservative-california-chief-justice-speaks-out-against-the-death-penalty/> [as of Nov. 6, 2026].)

The Governor determined that universal clemency is the appropriate remedy for these systemic flaws. He explained that, "[b]y every measure, California's system for administering the death penalty is a failure." (Governor's Letter, at p. 2.) It "has not been and cannot be fairly applied," has "resulted in the conviction of innocent people," and has "stagnat[ed]" under its own weight. (*Ibid.*) Amici respectfully submit that this Court need not, and should not, look behind the Governor's judgment in exercising this clemency power. His request that this Court permit him to commute this class of individuals is not an abuse of his discretion and should be promptly granted.

ARGUMENT

I. THE GOVERNOR'S REQUEST REFLECTS AN APPROPRIATE USE OF THE CLEMENCY POWER

A. The Court reviews the Governor's request deferentially, only for abuse of discretion

The Court articulated the deferential standard by which it reviews requests such as this one:

> The role of this court under article V, section 8, is not to express a substantive view on the merits of an application; the court takes no position on whether the Governor should, as an act of mercy or otherwise, extend clemency to a particular applicant. It is, rather, to perform a more traditional judicial function: to determine whether the applicant's claim has sufficient support that an act of executive clemency, should the Governor choose to grant it, would not represent an abuse of that power.

(*Procedures for Considering Requests for Recommendations Concerning Applications for Pardon or Commutation* (2018) 4 Cal.5th 897, 897 (hereafter *Procedures*).)[1]

Although the Court's language contemplates a more customary, individual request for clemency, the Court's rationale applies with equal force to the Governor's effort to exercise mercy towards all those who have been sentenced to the most severe sentence society may impose. The Governor bases his request on systemic circumstances that apply to all those under sentence of death. When judged by this Court's deferential standard of review, the Governor's request to grant commutation to all those sentenced to death has sufficient support that it would not represent an abuse of the commutation power.[2]

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[1] In light of this standard of review, the constitutional reference to a "recommendation" from the Court may be misleading insofar as it suggests that the Court is advising the Governor (contrary to the *Procedures*) that he "should" grant clemency. We use the word "recommendation" because it is used in the Constitution, while urging the Court not to deviate from the standard of review set forth in the *Procedures*.

[2] In adopting the *Procedures* in 2018, the Court examined why the Constitutional Convention of 1879 was unwilling to grant the

When the Court is reviewing a trial judge's ruling for abuse of discretion, it describes the standard of review as "deferential," refers to the judge's discretion as "broad," and requires a "manifest" or "palpable" abuse of discretion in order to disturb the ruling. (*People v. Parker* (2022) 13 Cal.5th 1, 39; *People v. Jones* (2013) 57 Cal.4th 899, 949; *Williams v. Marshall* (1951) 37 Cal.2d 445, 455.) As in that context, the Court here need not and should not consider whether the Governor *should* exercise mercy; its function is merely to determine "whether there exists a legitimate basis on which the Governor could choose to [exercise the power the Constitution confers upon him] to grant clemency." (*Procedures, supra,* 4 Cal.5th at pp. 900, 902.)

B. Other chief executives have considered universal clemency to be within the appropriate scope of their powers, and they have been upheld by the courts

The Governor's request is far from unprecedented. Since 1958, seven governors and President Biden have commuted all or most

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clemency power to the Governor alone. The Court concluded that the Convention feared that a grant of clemency might be inappropriately motivated by familial relationship, personal friendship, or corruption. (*Procedures, supra,* 4 Cal.5th at pp. 899-900.) Because of the universal nature of the Governor's present request, it does not implicate any of the abuse-of-power concerns expressed in the Convention. Those concerns were specific to individual applications for clemency, which could potentially be influenced by the Governor's personal interests. The present request is not motivated by personal interests or corruption. The Court can be confident that granting this request is consistent with the understanding of the delegates to the Convention.

death sentences in their jurisdictions, based on systemic circumstances not specific to any individual. The commutations were granted in states as different as Arkansas and Massachusetts, by governors of both parties. (Death Penalty Information Center, *Notable Grants of Clemency* <https://deathpenaltyinfo.org/policy-issues/policy/clemency/notable-grants-of-clemency> [as of Nov. 6, 2026].)[3]

All modern judicial decisions to consider the validity of blanket grants of capital clemency have upheld the governor's power. (*Commonwealth v. Williams* (Pa. 2015) 129 A.3d 1199 [reprieve unlimited in time]; *Haugen v. Kitzhaber* (Or. 2013) 306 P.3d 592 [reprieve to a "volunteer" who did not want it]; *People ex rel. Madigan v. Snyder* (Ill. 2004) 804 N.E.2d 546 [blanket commutation of all death sentences, including those defendants who did not apply for a commutation]; *State ex rel. Maurer v. Sheward* (Ohio 1994) 644 N.E.2d 369 [commutations without individualized review by the Parole Authority]; *Eacret v. Holmes* (Or. 1958) 333 P.2d 741 [blanket commutation of all death sentences without case-specific reasons].)

These executive actions and judicial decisions affirm that the Governor's request has sufficient support and is not an abuse of his power.

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[3] In addition, five other governors granted clemency to multiple people in connection with prospective statutory abolition of the death penalty, in order to give retroactive effect to the abolition statute. (Death Penalty Information Center, *Notable Grants of Clemency*, *supra*.)

C. The Governor's request is consistent with general principles related to clemency

The decisions cited above, in approving grants of clemency such as the one at issue here, answer some specific objections that are sometimes raised to grants of universal clemency.

First, the clemency power is not limited to individuals who affirmatively apply for it. The constitutional clemency power is "[s]ubject to application procedures provided by statute." (Cal. Const., art. V, § 8, subd. (a).) These application procedures are set forth in Penal Code section 4802 et seq.[4] These statutes do not purport to limit the constitutional clemency power to individuals who affirmatively apply for clemency. (See 33 Ops.Cal.Atty.Gen. 64 (1959) [Governor's constitutional power to grant a pardon unaffected by applicant's failure to give the required statutory notice to the district attorney]; see also Pen. Code, § 4800 [Legislature's acknowledgment that "[t]he general authority to grant reprieves, pardons and commutations of sentence is conferred upon the Governor by Section 8 of Article V of the Constitution"].)

When Illinois Governor George Ryan commuted all the death sentences in that state for reasons similar to the ones Governor Newsom offers here, the Illinois Supreme Court rejected an argument that the grant of clemency could not extend to those "who did not sign or otherwise consent to the filing of petitions on their behalf." (*People ex rel. Madigan, supra,* 804 N.E.2d at p. 552.) Those objecting to clemency argued that a statute governing the

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[4] Unexplained section references are to the Penal Code.

application process "limits the Governor's authority to grant reprieves, pardons, or commutations to those inmates who follow the proper application procedures." (*Ibid.*) Applying a constitutional provision similar in relevant part to California's, the court held that "the constitution merely allows the legislature to regulate the process for *applying* for executive clemency. It does not purport to give the legislature the power to regulate the Governor's authority to *grant* clemency." (*Ibid.*, original italics.) A contrary view, the court said, "would mean that the legislature could nullify the Governor's clemency power through legislation, simply by enacting regulations sufficiently strict to prevent any clemency petition from ever reaching the Governor." (*Id.* at p. 553.)

The Oregon Supreme Court similarly held that statutes prescribing application procedures did not constrain the Governor's broad constitutional clemency power. (*Eacret, supra,* 333 P.2d at p. 744, fn. 2; see also *Marteeny v. Brown* (Or.Ct.App. 2022) 517 P.3d 343, 360-364 [longer exegesis of the holding in *Eacret*].)

Second, and as a corollary to the principle just discussed, courts – including the United States Supreme Court – have held that a grant of clemency cannot be refused. (*Biddle v. Perovich* (1927) 274 U.S. 480, 486-487; *Haugen, supra*, 306 P.3d at pp. 608-609; accord, *Agofsky v. United States* (S.D.Ind. 2025) 2025 WL 238912; *Davis v. United States* (S.D.Ind. 2025) 2025 WL 238898.) *Haugen*, for example, arose when the Governor of Oregon, motivated by his belief that "'the death penalty is not fairly and consistently applied'" (*Haugen, supra*, 306 P.3d at p. 595), granted a reprieve to a defendant who then "attempted to *reject*" it (*id.* at p.

608, original italics). The state supreme court held that the Governor had acted within his authority, and the reprieve was effective.

Similarly, this Court emphasized the breadth of the Governor's clemency authority in *In re Collie* (1952) 38 Cal.2d 396. At a time when the statutory penalties for first degree murder were death or a parole-eligible life sentence, the Governor commuted Mr. Collie's death sentence to life, on condition that he would never be eligible for parole. In denying Mr. Collie's habeas corpus petition, the Court held that the terms of the grant of clemency were within the Governor's constitutional authority, notwithstanding that those terms were different than any lawful sentence that could be imposed by the superior court. As a result, Mr. Collie was bound by those terms and was not entitled to apply for parole. (Accord, *Green v. Gordon* (1952) 39 Cal.2d 230, 232-233; *Schick v. Reed* (1974) 419 U.S. 256.)[5]

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[5] The Governor's request is for a recommendation in support of unconditional commutations to life without possibility of parole. It therefore does not implicate decisions of this Court holding that *conditional* grants of a pardon, or parole, or probation, may be refused on the ground that the conditions are more onerous than the sentence that the defendant would serve in the absence of the grant of the pardon, parole, or probation. (E.g., *In re Osslo* (1958) 51 Cal.2d 371, 381 [probation, on condition that defendant not be employed by a labor union]; *In re Peterson* (1939) 14 Cal.2d 82, 84-85 [parole, on condition that defendant serve an out-of-state prison sentence]; see *Green, supra*, 39 Cal.2d at p. 232 [distinguishing *Peterson*].)

II. THE GROUNDS FOR THE GOVERNOR'S REQUEST ARE ABUNDANTLY SUPPORTED BY THE FACTS

The Governor's request is grounded both in his deep moral conviction, and in his recognition that the death penalty "has not been and cannot be applied fairly." (Governor's Letter, at p. 2.) Amici are familiar with the imperfect reality of California's capital punishment system, from carrying out our duty to represent and/or assist counsel in the representation of individuals under sentence of death. Research and experience establish the Governor's concerns are well founded.

A. Bias based on the race of the victim and the defendant

The Committee on Revision of the Penal Code (CRPC) collected and analyzed the historical and empirical data demonstrating that California's death penalty is racially biased, based on both the race of the victim and the race of the defendant. Controlling for other factors, individuals who kill White victims are more likely to be sentenced to death, and people of color are more likely to be sentenced to death. (Com. on Revision of the Pen. Code, Death Penalty Report (Nov. 2021) pp. 18-24 <https://clrc.ca.gov/CRPC/Pub/Reports/CRPC_DPR.pdf> [as of Nov. 6, 2026] (hereafter CRPC Report).)[6]

[6] On this and other issues, the Committee in turn relied on a detailed report it had received from the Office of the State Public Defender, California's Broken Death Penalty: It's Time to Stop Tinkering with the Machinery of Death (Mar. 2021), available at

"Racial disparities are especially pronounced in young people sentenced to death. While 68% of all people on death row are people of color, the percentage jumps to 77% for people who were 25 or younger at the time of their offense, and to 86% for people who were 18 at the time of their offense." (CRPC Report, *supra*, p. 30; see also Habeas Corpus Resource Center, Annual Report: 2025 in Review (May 14, 2026) p. 7 <http://www.hcrc.ca.gov/documents/HCRC%20Annual%20Report%202025.pdf> [as of Nov. 6, 2026] (hereafter HCRC Report) [of those who were 18 or 19 years old at the time of their offense, 88 percent are people of color].) This disparity is compounded by the fact that California sentences *more* young people to death than any other state. (OSPD White Paper, *supra*, pp. 31-33)

The Court is familiar with the strong evidence supporting the Committee's conclusions, because much of it was submitted in support of the petition for writ of mandate in *OSPD et al. v. Bonta*, No. S284496 (Apr. 9. 2024). The Attorney General conceded that this evidence was "profoundly disturbing" and warranted "careful consideration by a judicial tribunal." (Preliminary Response, No. S284496 (May 6, 2024), p. 9.) And on May 27, 2026, this Court issued an order to show cause, returnable in Sacramento Superior Court. (Order, No. S284496 (May 27, 2026).) Amici invite the Court to take judicial notice of pleadings and supporting evidence filed in No. S284496.

Professor Catherine Grosso of Michigan State University and her colleagues examined "data from over 27,000 murder and

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<https://www.ospd.ca.gov/wp-content/uploads/2024/04/White-Paper.pdf> and cited herein as OSPD White Paper.

manslaughter convictions in California state courts between 1978 and 2002. Using multiple methods, [they] found significant racial and ethnic disparities in charging and sentencing decisions." (Grosso et al., *The influence of the race of defendant and the race of victim on capital charging and sentencing in California* (2024) 21 J. Empirical Legal Stud. 482, 482.) They identify this "entrenched pattern of racial disparities in charging and sentencing that privileges white victim cases" as "the natural result of California's capacious statutory definition of death eligibility, which permits virtually unlimited discretion for charging and sentencing decisions." (*Ibid.*) "These results, confirmed through multiple statistical approaches, unmistakably demonstrate that race has infected the California capital sentencing process." (*Id.* at p. 519.)

Examining a more recent time period (1987-2019) and using different methodology, Professor Nick Petersen of the University of Miami found "the odds of a death sentence are much higher in some counties . . . . [D]eath sentencing rates [in California] are highest among homicides with White victims and/or offenders of color, especially inter-racial homicides with White victims and non-White offenders. While these racial disparities are remarkably consistent within all California counties, their magnitude varies across counties. Such spatial-racial disparities raise constitutional concerns about the arbitrariness of California death sentences." (Petersen, *Spatial-Racial Disparities in California's Capital Punishment: Examining the Influence of Geography and Race on Death Sentencing from 1987 to 2019* (2025) 16 Race & Just. 1 <https://doi.org/10.1177/21533687241299788>.)

Professor John Donohue of Stanford University conducted a meta-analysis of three statewide studies on racial disparities, including the two just quoted, and six county-level studies. He found that these studies "collectively provide powerful and compelling evidence that racial factors have marred capital sentencing outcomes in the state." (Donohue, *Evaluating the Research on the Impact of Race in the California Death Penalty Regime* (May 25, 2023), pp. 497-498 [Exh. S to the petn. in *OSPD et al. v. Bonta, supra*].)

Since the Governor declared a moratorium on the death penalty in 2019, the State has sentenced 30 people to death, 86.7 percent of whom are people of color. This year is the fifth consecutive year that every person the State has sentenced to die has been a person of color. (See HCRC Report, *supra*, pp. 19, 20.)

In strengthening the Racial Justice Act last year, the Legislature enacted, and the Governor signed into law, findings that "the racially disproportionate application of the death penalty is 'in historical continuity with the long and sordid history of lynching in this country.' (Ogletree, "Black Man's Burden: Race and the Death Penalty in America" (2002) 81 Or. L.Rev. 15.)" (Stats. 2025, ch. 721, § 1(e); see also Reparations Task Force, Final Report (June 29, 2023) pp. 140-141 [affirming direct link from history of lynching to the contemporary death penalty, here in California as well as in the South]; see also *id.* at p. 413; CRPC Report, *supra*, pp. 18-19

[California-specific]; Brief of Amici Curiae Const. L. Scholars, No. S284496 (Dec. 3, 2024) pp. 24-34 in *OSPD et al. v. Bonta, supra.*)[7]

Given the extensive scholarship on the legacy and impact of racial discrimination in use of the death penalty, the Governor's conclusion that California's death penalty has not been applied fairly is not an abuse of discretion.

B. Arbitrariness extends far beyond racial bias

Race may be the most striking arbitrary factor in the administration of the death penalty but it is far from the only one.

The CRPC also addressed the data demonstrating that California's death penalty is *geographically* biased, with comparable crimes receiving the death penalty or not depending on the demographics and the politics of the county in which the crimes occurred. (CRPC Report, *supra*, pp. 24-27; OSPD White Paper, *supra*, pp. 24-27; see also HCRC Report, *supra*, pp. 23-26.) Riverside County, for instance, does not have the most murders and there is no reason to believe it has the worst murders, but it has had, of late,

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[7] For a national perspective, see, e.g., Equal Justice Initiative, Lynching in America (3d ed. 2017) Lynching's Legacy: Capital Punishment in America, pp. 62-64 <https://eji.org/wp-content/uploads/2005/11/lynching-in-america-3d-ed-110121.pdf> (as of Nov. 6, 2026); Death Penalty Information Center, Enduring Injustice: The Persistence of Racial Discrimination in the U.S. Death Penalty (Sept. 15, 2020), pp. 3-21 <https://deathpenaltyinfo.org/facts-and-research/dpic-reports/in-depth/enduring-injustice-the-persistence-of-racial-discrimination-in-the-u-s-death-penalty> (as of Nov. 6, 2026); *State v. Santiago* (2015) 122 A.3d 1, 85-100 (conc. opn. of Norcott & McDonald, JJ.); Hoag, *Valuing Black Lives: A Case for Ending the Death Penalty* (2020) 51 Colum. Hum. Rts. L.Rev. 985, 998-1003.

the most death sentences – more, in fact, than any other county in the nation. (Fair Punishment Project, Too Broken to Fix: Part I (Aug. 2016) p. 31 <https://dpic-cdn.org/production/documents/FairPunishmentProject-TooBroken_2016-08.pdf> [as of Nov. 6, 2026] (FPP I).)[8]

Race and geography are not independent forms of arbitrariness but are related to each other. A study of statewide capital sentencing in the 1990s – when many of the individuals who are the subject of the Governor's request were tried and sentenced – showed that death sentences varied substantially from county to county and did not correlate with homicide rates; instead, they correlated largely with race. Counties with the highest percentage of White population and the lowest population densities had the highest death-sentencing rates. Committing a murder in a White, rural community was more likely to lead to a death sentence than the same crime in a diverse urban area. (Pierce & Radelet, *The Impact of Legally Inappropriate Factors on Death Sentencing for California Homicides, 1990-1999, The Empirical Analysis* (2005) 46 Santa Clara L.Rev. 1, 25-31, 36-37.)

Beyond this, arbitrariness manifests itself in individual counties. In Los Angeles County, over a lengthy period, almost all

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[8] The Fair Punishment Project identified 16 counties in the nation that each imposed five or more death sentences between 2010 and 2015. The list includes Kern, Los Angeles, Orange, Riverside, and San Bernardino. Each of them has a large population and a correspondingly large number of homicides, but so do counties such as San Diego, Santa Clara, Alameda, Sacramento, and Contra Costa, which each imposed sufficiently few death sentences as not to come to FPP's attention. (FPP I, *supra*, at p. 2.)

death sentences were imposed on capitally-charged people represented by individually-appointed private counsel. Clients of the better-resourced and more experienced public defender and alternate defender offices rarely received death sentences. (Fair Punishment Project, Too Broken to Fix: Part II pp. 30-32 (Sept. 2016) <https://dpic-cdn.org/production/documents/FairPunishmentProject-TooBroken_II_2016-12.pdf> [as of Nov. 6, 2026] (FPP II) [2010-2015]; American Civil Liberties Union, The California Death Penalty is Discriminatory, Unfair, and Officially Suspended. (June 2019) <https://www.aclu.org/wp-content/uploads/publications/061819-dp-whitepaper.pdf> [as of Nov. 6, 2026] [2013-2019].) An individual cannot choose their appointed counsel. The selection of appointed counsel is arbitrary in multiple ways: It is unrelated to any factor that could legitimately go into the sentencing decision, and it is entirely beyond the control of the accused. Yet it has been overly determinative of who is sentenced to death and who is not.

In California, "the execution of a death sentence is so infrequent, and the delays preceding it so extraordinary," Federal District Court Judge Cormac J. Carney observed in 2014 after analyzing a wealth of data, "that the death penalty is deprived of any deterrent or retributive effect it might once have had," rendering it an arbitrary punishment. (*Jones v. Chappell* (C.D.Cal. 2014) 31 F.Supp.3d 1050, 1063, revd. on other grounds *sub nom*; *Jones v. Davis* (9th Cir. 2015) 806 F.3d 538.) California death sentences have been "quietly transformed into one no rational jury or legislature could ever impose: *life in prison, with the remote*

possibility of death." (*Jones, supra*, 31 F.Supp.3d at p. 1053, original italics.) Judge Carney accurately recognized that selection of "the random few" who have been executed or might be executed in the future would depend not on relevant factors, but instead on sheer happenstance, "how quickly the inmate proceeds through the State's dysfunctional post-conviction review process." (*Id.* at pp. 1053, 1062-1063.)

Judge Carney's decisions in *Jones* and another similar case were reversed on appeal, *not* because the Ninth Circuit thought the court was mistaken on the facts or wrong on the law, but instead because procedural and substantive impediments laced into federal habeas corpus law prevented the federal court from even *considering* whether the arbitrariness Judge Carney identified might violate the federal Constitution. (*Jones*, *supra,* 806 F.3d at pp. 541, 553 [claim is barred by *Teague v. Lane* (1989) 489 U.S. 288]; *Alfaro v. Johnson* (9th Cir. 2017) 862 F.3d 1176, 1186 [claim is barred by the failure to exhaust state remedies and is untimely].)[9] Indeed, the Ninth Circuit acknowledged that "[m]any agree . . . that California's capital punishment system is dysfunctional." (*Jones*, *supra*, 806 F.3d at p. 553.)

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[9] The factual record from these cases was also presented to this Court, which is not constrained by the principles of federal habeas law on which the Ninth Circuit relied. Without addressing the merits, the Court transferred the matter to the superior court. (See, e.g., *In re Alfaro*, No. S245828 (May 22, 2019); see also *People v. Potts, supra,* 6 Cal.5th at p. 1064 (conc. opn. of Liu, J.) [citing the district court opinion in *Jones* with approval].) That petition has remained pending in Orange County Superior Court with no action being taken by the court for the past seven years.

The many forms of arbitrariness that infect the California death penalty – and have not been cured in half a century of experience – provide sufficient support for the Governor's discretion to grant universal clemency. The Governor recognized that the system is broken, and that efforts to repair it have "only compounded its stagnation." (Governor's Letter, at p. 2.) His determination that these factors are "incompatible with our legal system's commitment to justice" (*ibid.*) and warrant clemency is not an abuse of discretion.

C. Innocent people are sentenced to death

The Governor also explained that our flawed death penalty system "has resulted in the conviction of innocent people." (Governor's letter, at p. 2.). Indeed, eight individuals sentenced to death in California have been exonerated, based on determinations by prosecutors, judges, or juries that the evidence does not demonstrate their guilt. All are men of color. (Death Penalty Information Center, Innocence Database <https://deathpenaltyinfo.org/facts-and-research/data/innocence?state=California> [as of Nov. 6, 2026];[10] see also HCRC

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[10] The Death Penalty Information Center uses very conservative criteria to define exoneration, relying only on decisions of official authorities. For example, individuals who assert innocence but plead nolo contendere to a non-capital offense in exchange for time served are *not* included. (Death Penalty Information Center, *Criteria for Inclusion on DPI's Innocence List* <https://deathpenaltyinfo.org/stories/criteria-for-inclusion-on-dpics-innocence-list> [as of Nov. 6, 2026].) Nor are individuals who had their murder charges dismissed under Pen. Code section 1172.6, because they were not acquitted of *all* charges. (*Id.*; see, e.g., Press

Report, *supra*, pp. 26-27.) Given the way in which innocence is customarily discovered, the fact that the majority of California death-sentenced individuals have not yet been accorded their statutory right to state habeas counsel makes it virtually certain that innocent people are the subject of this request. (See, e.g., Gross et al., *Rate of false conviction of criminal defendants who are sentenced to death* (May 20, 2014) 111 Proceedings Nat'l Acad. Sci. 7230 [estimating that 4.1 percent of people sentenced to death are innocent]; HCRC Report, *supra*, p. 27 [noting that based on the Gross study, "approximately 42 of the 1,021 people sentenced to die [in California] in the modern era are innocent"].) Experience and social science thus establish that the Governor's concern about the possibility of an innocent person being sentenced to death is legitimate. His request is therefore not an abuse of discretion.

III. THE COURT SHOULD DEFER TO THE GOVERNOR'S JUDGMENT THAT *UNIVERSAL* CLEMENCY IS THE APPROPRIATE REMEDY BECAUSE THE DISTINCTION BETWEEN THE INDIVIDUALS WHO HAVE AND HAVE NOT BEEN TWICE CONVICTED OF A FELONY IS NOT RATIONALLY RELATED TO THE GOVERNOR'S PURPOSE

The Governor's request is scaled to the magnitude of the systematic injustices that motivated it. The Governor is correct that,

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Release, Keker, Van Nest & Peters, Keker, Van Nest & Peters Secures Release of Client Demetrius Howard After 30 Years in Prison (Dec. 23, 2024) <https://www.keker.com/news/news-items/keker-van-nest-peters-secures-release-of-client-demetrius-howard-after-30-years-in-prison> [as of Nov. 6, 2026].)

for these purposes, universal clemency is more appropriate than grants of clemency based on individual circumstances. Because the Governor has concluded that, given the failures of the death penalty in California, universal clemency is the only action that will "ultimately affirm the strength and integrity of our state and its justice system," his request here is not an abuse of discretion. (Governor's Letter, at p. 2; accord, Explanatory Statement (Nov. 5, 2026) at p. 4 <https://www.gov.ca.gov/wp-content/uploads/2026/11/2026-11-5-26-GGN-Explanatory-Statement-FINAL.pdf> [as of Nov. 6, 2026].) He also deliberately chose not to "create two classes of murder victims" by "attempting to distinguish among crimes" and death-sentenced people to identify those deserving of the death penalty and not. (Governor's Letter, at p. 2.) He therefore seeks to "issue the same commutation to every condemned person." (*Ibid.*)

In keeping with article V, section 8 of the Constitution, the pending request is limited to those individuals under sentence of death who have been "twice convicted of a felony," as the latter phrase has been interpreted by the Court. The Governor announced his intention to commute 166 death sentences, as to which the clemency authority is his alone.

His determination that *universal* clemency is the appropriate remedy motivated his request to this Court. The clemency grants he has asked this Court to recommend would buttress those he can unilaterally issue, to complete his goal. His request that the Court approve commutation for this subset of death-sentenced people is not an abuse of discretion.

The Constitution's distinction between the individuals who have and have not been twice convicted of a felony should not be an obstacle to achieving the Governor's purpose. The Constitutional Convention gave this Court a role in the clemency process by choosing the more *expansive* of the two options it had before it. A committee of the Convention proposed that those twice convicted be categorically barred from any clemency, even a pardon based on newly discovered evidence of innocence. Delegates who thought this proposal inappropriately stringent offered an amendment allowing clemency in these cases, but only on recommendation of the Court. The amendment was adopted. (3 Willis & Stockton, Debates and Proceedings, Cal. Const. Convention 1878-1879, pp. 1195-1197; see *Procedures*, *supra,* 4 Cal.5th at p. 900.)

The Court has articulated two basic principles in interpreting the "twice convicted" clause: First, the two convictions must be on charges brought and tried separately. An individual convicted of multiple counts of a single indictment or information has not thereby been "twice convicted." (*Green v. Superior Court* (1934) 2 Cal.2d 1, 3.) Second, "the phrase 'twice convicted' in article V, section 8 . . . does not apply only to defendants who have two *prior* felony convictions in addition to their current felony offense, but also applies to a defendant whose current offense is a felony and who has one prior felony conviction." (*People v. Hart* (1999) 20 Cal.4th 546, 656, fn. 44, original italics.)

Who ends up in which category may depend more on variations in charging practices than on the seriousness of the offenses. Excluding from universal clemency all those who have

been twice convicted would therefore introduce new arbitrariness in who remains under a sentence of death and defeat the Governor's conclusion that crimes and the people who are convicted of them cannot appropriately be ranked by those who are "deserving" of the death penalty and those who are not. (Governor's Letter, at p. 2.)

IV. THESE COMMUTATIONS WILL NOT IMPAIR PUBLIC SAFETY

The Governor requests authorization only to permit commutation of death sentences to life without possibility of parole. A person serving life without possibility of parole – such as these defendants *after* commutation is granted – does not change the status quo with regard to public safety. (See *People v. Williams* (2018) 19 Cal.App.5th 1057, 1062-1063 [interpreting statute allowing denial of recall and resentencing based on danger to public safety], citing *People v. Johnson* (2015) 61 Cal.4th 674.) It follows that the Court need not examine the circumstances of each defendant individually regarding the risk factors relevant to the assessment of whether a person should be *released* from prison. (See Explanatory Statement, at pp. 4-5.)

The present request therefore bears no similarity to the one instance in which the Court set forth reasons for denying a request from the Governor. *In re Billings* (1931) 210 Cal. 669 addressed a request for a *pardon*, and the Court demanded a showing of "doubt upon the regularity of [the] conviction" and a demonstration of innocence. (*Id.* at p. 685.) The present request, being limited to commutation of sentence, ensures their continuing incarceration. And upon reflection, the Court more recently concluded that it had

judged the application in *Billings* by too strict a standard. "[A]n intensive examination of the merits of a clemency petition," such as the Court undertook in *Billings*, "exceeds this court's proper role in our system of separated powers." (*Procedures*, *supra,* 4 Cal.5th at p. 901.) More so here, where the request is for commutation to life without possibility of parole, not a pardon.

Proposition 66, passed by the voters in 2016, amended section 3600, subdivision (a), to authorize the placement of death-sentenced individuals at any appropriate prison. In 2024, the Department of Corrections and Rehabilitation (CDCR) implemented this statute by adopting the Condemned Inmate Transfer Program, under which all but a handful of these individuals have been transferred "from San Quentin to other correctional facilities commensurate with the condemned inmate's classification score." (Cal. Reg. Notice Register 2024, No. 6-Z, p. 176.)

Commuting their sentences to life without possibility of parole will not, by itself, change their classification, custody level, program, or institutional placement. Those determinations are now made by CDCR through its ordinary classification processes, based on criteria CDCR applies to all those in its custody, whether sentenced to death or not.

CONCLUSION

"Under the California Constitution, the power to grant clemency to a person convicted of crime is an executive power, and its exercise often, and permissibly, rests on extrajudicial considerations." (*Procedures*, *supra,* 4 Cal.5th at p. 897.) Only one precedent from this Court speaks to the present issue: the

Procedures for clemency cases that the Court adopted in 2018, and that precedent supports granting the Governor's request in full. The Governor may therefore properly conclude that universal clemency is appropriate because "we cannot execute people in our imperfect legal system and remain true to our core values [of] justice and human decency." (Governor's Letter, at p. 1.)

We urge the Court to promptly grant in full the Governor's request for a recommendation in favor of universal clemency.

Dated: November 6, 2026 Respectfully submitted,

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CERTIFICATE OF COUNSEL

(Cal. Rules of Court, rule 8.360(b)(1))

I, Galit Lipa, have conducted a word count of this brief using our office's computer software. Based on that computer-generated word count, I certify that this brief is 7,228 words in length, excluding tables and certificates.

Dated: November 6, 2026 Respectfully submitted,

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DECLARATION OF SERVICE

Case Name: *Request re: Commutation of Death Sentences*
Case Number: California Supreme Court No. S299513

I, **Margarita Maiz Vazquez**, declare as follows: I am over the age of 18, and not party to this cause. My business address is 1111 Broadway, Suite 1000, Oakland, California, 94607. I served a true copy of the following document:

BRIEF OF AMICI CURIAE CALIFORNIA APPELLATE PROJECT, HABEAS CORPUS RESOURCE CENTER, AND OFFICE OF THE STATE PUBLIC DEFENDER IN SUPPORT OF GOVERNOR'S REQUEST RE: COMMUTATION OF DEATH SENTENCES

The aforementioned document was served electronically via TrueFiling to the individuals listed below on **November 6, 2026**:

Office of the Governor Attn: Eliza Hersh 1021 O St., Ste. 9000 Sacramento, CA 95814 *eliza.hersh@gov.ca.gov* *commutations@gov.ca.gov*	Office of the Solicitor General Attn: Zach ZhenHe Tan 455 Golden Gate Ave., Ste. 11000 San Francisco, CA 94102 *zach.tan@doj.ca.gov*

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Signed on **November 6, 2026**, at Campbell, California.

Margarita Maiz Vazquez
Digitally signed by Margarita Maiz Vazquez
Date: 2026.11.06 17:28:49 -08'00'

MARGARITA MAIZ VAZQUEZ