



**OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SAN LUIS OBISPO**

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VIA U.S. MAIL AND EMAIL TO Pardons@GOV.CA.GOV

The Honorable Gavin Newsom
Governor of California
1021 O Street, Suite 9000
Sacramento, CA 95814

Re: Proposed Mass Commutation of California's Death Sentences

Dear Governor Newsom:

I write as the District Attorney of San Luis Obispo County, and as Immediate Past-President of the California District Attorneys Association, to urge you not to commute every death sentence in California. Reports that you are considering a blanket commutation of the sentences of all 563 condemned inmates have deeply troubled the families of murder victims in my county and across our state. I join the letter CDAA sent you today, and I write separately to speak plainly on behalf of the victims and the People I serve.

Justice is always individualized

Justice has never been a matter of categories. It is always individualized: a particular defendant, particular victims, and the particular facts and circumstances of a particular crime. Every one of the 563 death sentences you are considering erasing was reached that way. Each required a conviction for first-degree murder, at least one special circumstance found true beyond a reasonable doubt, and a separate penalty phase in which jurors weighed the aggravating and mitigating evidence and chose death. Each was then reviewed by the trial judge on a motion to modify the verdict and sent on automatic appeal to the California Supreme Court. A single order commuting all of them would set aside hundreds of individualized judgments without examining the facts of even one. That is not justice, and it is not how our *criminal and victim justice system* was designed to work. It is the opposite of justice.

Your own clemency practice proves the point. Yesterday you granted 27 pardons and 30 commutations. In every one of the 30 commutation certificates, you wrote that you had "carefully considered and weighed the evidence" of that grantee's conduct and

circumstances. In 11 of them, you noted that the California Supreme Court had first reviewed the application and made the recommendation the Constitution requires when the applicant has more than one felony conviction. You have recognized, in your own words, that clemency demands case-by-case judgment. No one can carefully consider and weigh 563 capital cases with one signature.

The victims deserve to be named

I have reviewed each of yesterday's 57 clemency grants. Twenty-one of the 30 commutations involved a human being who was killed, and 17 of them reduced a sentence of life without the possibility of parole. **Not one of your 57 grants identifies a single victim by name.** Each grantee is named, along with his or her age, education, programming, and the commendations of prison staff. The human beings they killed appear only as "the victim." In one case, a murdered man is identified only as the grantee's "husband."

Throughout my career, I have insisted that our *criminal and victim justice system* treat every victim equally, and always fairly, with dignity and respect. Saying the name of the person whose life was taken is the most basic expression of that respect. Leaving victims nameless, while describing their killers in detail, falls short of it.

Your office knows how to say a victim's name. Today, in announcing rewards for unsolved murders, your office named Michelle Matteucci, a 13-year-old eighth grader from Daly City, along with the other victims in those cases. Victims whose killers have been caught, convicted, and sentenced deserve no less. The People of California wrote that respect into our Constitution through Marsy's Law, guaranteeing victims the right "to be treated with fairness and respect for [their] privacy and dignity" (Cal. Const., art. I, § 28, subd. (b)(1)) and declaring that they are "entitled to finality in their criminal cases." The People expressly found that "the ongoing threat that the sentences of criminal wrongdoers will be reduced" prolongs the suffering of victims and their families for years. (Id., subd. (a)(6).) A mass commutation would make that threat real for every family at once.

So, I will name the victims whose cases arose in San Luis Obispo County.

Rachel Newhouse and Aundria Crawford. Rex Allan Krebs was a career violent felon long before he killed. In 1984, he was convicted of felony grand theft in Idaho and sent to prison. In 1987, he was convicted in San Luis Obispo County of violent felonies, including rape and first-degree residential burglary with great bodily injury, and was sentenced to 20 years in prison. He was paroled in September 1997. Fourteen months later, in November 1998, he ambushed Rachel, a Cal Poly student, on the Jennifer Street Bridge as she walked home, knocked her unconscious, bound her, and raped her in an abandoned cabin. She died bound, and he buried her. In March 1999, he stalked Aundria, a 20-year-old Cuesta College student, crawled through her bathroom window, beat her unconscious, raped and sodomized her, and strangled her with a rope. A jury found three special circumstances true and returned a

verdict of death for each murder. A unanimous California Supreme Court affirmed the judgment in its entirety in 2019.

Kesha Gurke. Michael Whisenhunt had already served a prison term for violence: in 1989, he was convicted of a violent felony firearm offense and sentenced to seven years in prison. In 1995, in Paso Robles, he tortured and murdered **19-month-old Kesha**, the daughter of his live-in girlfriend. She was kicked or punched with such force that her small intestine was severed, and while she was incapacitated, hot cooking oil was poured on her body again and again, leaving 44 burns and 34 bruises. Mr. Whisenhunt blamed the shower, then a cooking accident, then a fall, and opposed taking her to the emergency room. A jury found the torture special circumstance true and returned a verdict of death. A unanimous California Supreme Court affirmed the judgment in its entirety in 2008.

Both of these men stand convicted of more than one felony. Our Constitution provides that the Governor “may not grant a pardon or commutation to a person twice convicted of a felony except on recommendation of the Supreme Court, 4 judges concurring.” (Cal. Const., art. V, § 8, subd. (a).) Your own certificates yesterday described this as “a process required by the California Constitution in cases where the applicant has sustained more than one felony conviction.” A blanket order cannot lawfully commute the sentence of Mr. Krebs or Mr. Whisenhunt unless the California Supreme Court first reviews each case and recommends it, and I expect the same is true of many others on death row. The Constitution itself demands individualized review in these cases. So does justice.

These cases were tried fairly, decided by jurors drawn from our communities, and upheld by our state’s highest court. Rachel’s, Aundria’s, and Kesha’s families and loved ones have waited decades, trusting that our criminal and victim justice system would keep its word. A blanket commutation would be a slap in the face to them and to every family of a special-circumstance murder victim whose killer would receive this benefit.

The government is We the People

Our Constitution does not begin with the Governor. It begins, “We, the People of the State of California.” It declares that “[a]ll political power is inherent in the people.” (Cal. Const., art. II, § 1.) And the People have spoken on this question again and again. They restored the death penalty in 1972, expanded it in 1978, rejected its repeal in 2012, rejected its repeal again in 2016, and on the very same ballot voted to make it work more efficiently.

I do not question that the Constitution gives you the power to grant clemency. But the People entrusted that power to their Governor as a safety valve for the individual case whose facts cry out for mercy, not as a tool to repeal a law the People have repeatedly refused to repeal. A governor who uses clemency to overrule the voters in every capital case at once is no longer acting as the People’s elected representative. He is acting as a sovereign king. The government of California is **We the People**, not “me, the all-wise Governor.”

My request

I respectfully ask that you reject any blanket commutation of California's death sentences. If any condemned inmate seeks clemency, I ask that the application be considered on its own facts through the established process, with notice to the district attorney and to the victim's family, and a meaningful opportunity for them to be heard. And I ask that, in any clemency decision you make, you name the victim, whose life is the reason the case exists, and treat every victim's family equally, fairly, and with dignity and respect.

I would welcome the opportunity to meet with you or your staff, together with the families of these victims, before any decision is made.

Respectfully,



Dan Dow

District Attorney, County of San Luis Obispo

Immediate Past-President, California District Attorneys Association

cc: Jeannine M. Pacioni, President, California District Attorneys Association
Greg Totten, Chief Executive Officer, California District Attorneys Association