

Case No. S278455

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

In re Application of Cano, Carlos

On Clemency,

On an executive request for clemency, arising from Los Angeles County Superior Court Case # BA149971, Court of Appeal Case # B124584, Supreme Court Case # S101544

MOTION OF THE SAN BERNARDINO COUNTY DISTRICT ATTORNEY'S OFFICE TO UNSEAL THE REQUEST FOR RECOMMENDATION OF CLEMENCY AND THE SUPPORTING RECORD; MEMORANDUM IN SUPPORT

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In re Application of Cano, Carlos
for Executive Clemency,

No. S278455

MOTION TO UNSEAL APPLICATION

Pursuant to Administrative Order 2021-05-26, *In re Confidentiality of Clemency Records*, the San Bernardino County District Attorney's Office (SBCDA) moves this Court to unseal the application and supporting record in this matter. SBCDA is the primary prosecutorial agency in the County of San Bernardino, whose western border is shared with Los Angeles County.

**IN THE SUPREME COURT
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In re Application of Cano, Carlos
for Executive Clemency,

No. S278455

**MEMORANDUM IN SUPPORT OF MOTION TO UNSEAL
APPLICATION AND RECORD**

On February 2, 2023, the Office of the Governor submitted a Request for Recommendation for Clemency in this case.¹ A letter to the Clerk of this Court from the Governor’s Deputy Legal Affairs Secretary indicated the filing was done in accordance with article V, section 8, subdivision (a) of the California Constitution. The docket for this case indicates that a “[c]onfidential record from Governor’s Office” was lodged.

In issuing Administrative Order 2021-05-26, *In re Confidentiality of Clemency Records* (Order), this Court recognized that its role in reviewing Gubernatorial requests for executive clemency of twice-convicted felons under article V, section 8, subdivision (a) of the California Constitution “should

¹ Three other cases were also simultaneously submitted: Tyson Atlas – case # S278446 (from San Bernardino County Superior Court case # FVA701479), Martin Loftis – case # S278451 (from Los Angeles County Superior Court case # BA035840), and Gregory Sanders -case # S278453 (from Los Angeles County Superior Court case # CR41379).

be available for public inspection.” (Order, at p. 2.) This conclusion was based on the “public’s legitimate interest in understanding how the court exercises its responsibilities” in this area. (*Ibid.*) The Order thus naturally flows from the public’s general rights to open government, as “[t]he people have the right of access to information concerning the conduct of the people’s business” (Cal. Const., art. I, § 3, subd. (b)(1).)

This theme of open government runs throughout both the California Public Records Act, (Gov. Code, § 7920.000 et seq.) and the Court’s own rule providing access to judicial administrative records, (Cal. Rules of Court, rule 10.500.) As the latter states, the rule “must be broadly construed to further the public’s right of access.” (Cal. Rules of Court, rule 10.500(a)(2).) As to filings with the courts, there is a presumption that records are open, “[u]nless confidentiality is required by law.” (Cal. Rules of Court, rule 2.550(c).)

The sealing of a record may occur only when there is an overriding interest that overcomes the right of public access to the record, the overriding interest supports sealing, a “substantial probability that the overriding interest will be prejudiced” absent sealing, where the sealing is narrowly tailored, and where there is no less restrictive means able to achieve the overriding interest. (Cal. Rules of Court, rule 2.550(d).)

In this case, the public interest in the potential commutation of a convicted special circumstance murderer,² whose crimes are largely hidden from public scrutiny, strongly favors a transparent process when commutation is sought by the Executive. The original opinion of Division Two of the Second District Court of Appeal does not appear on that court's website. Nor is the opinion located anywhere within Westlaw.³ As SBCDA's communities share a border with Los Angeles County, SBCDA requests this Court return the Commutation Application and its accompanying record in this case to the Governor's office so that it may be resubmitted in conformity with the procedures described in the Order.

As this Court stated, it "perceives no rationale for nondisclosure that would justify a rigid rule shielding from public inspection the entire contents of documents such as parole or commutation investigation reports, rap sheets, probation reports, letters received by the Governor supporting or opposing a grant of clemency, and prison records, whenever they appear within a clemency file." The citizens of Los Angeles County, and those of neighboring counties deserve full disclosure when the Executive proposes releasing a murderer into their communities. With a shrouded record, this case in

² SBCDA presumes that at least one special circumstance was found to be true, as the submission from the Governor's Deputy Legal Affairs Secretary indicates Mr. Cano is servicing a sentence of life without the possibility of parole.

³ Telephonic and e-mail attempts to obtain the opinion have generated no response as of this writing.

particular prevents the People from even appreciating the risks in place.

February 27, 2023

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'R. Brown', with a long horizontal flourish extending to the right.

Robert P. Brown
Assistant District Attorney
San Bernardino County
District Attorney's Office

PROOF OF 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 San Bernardino County District Attorney's Office, located at 303 West Third Street, San Bernardino, California 92415.

On February 27, 2023, I served copies of the foregoing Motion of the San Bernardino County District Attorney's Office to Unseal the Request for Recommendation of Clemency and the Supporting Record; Memorandum in Support by depositing true copies of it enclosed in sealed envelopes with postage paid in the United States mail, in the County of San Bernardino, California, addressed as follows:

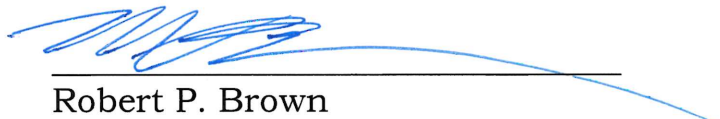
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on February 27, 2023, San Bernardino, California.


Robert P. Brown