Case No. S278446

IN THE SUPREME COURT

OF THE STATE OF CALIFORNIA

In re Application of Atlas, Tyson

On Clemency,

On an executive request for clemency, arising from San Bernardino County Superior Court Case # FVA701479

MOTION OF THE ASSOCIATION OF DEPUTY DISTRICT ATTORNEYS FOR LOS ANGELES COUNTY TO UNSEAL THE REQUEST FOR RECOMMENDATION OF CLEMENCY AND THE SUPPORTING RECORD; MEMORANDUM IN SUPPORT

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IN THE SUPREME COURT

OF THE STATE OF CALIFORNIA

In re Application of Atlas, Tyson
for Executive Clemency,

No. S278446

MOTION TO UNSEAL APPLICATION

Pursuant to Administrative Order 2021-05-26, *In re Confidentiality of Clemency Records,* the Association of Deputy District Attorneys for Los Angeles County (ADDA) moves this Court to unseal the application and supporting record in this matter. The ADDA is the certified bargaining unit for Deputy District Attorney prosecutors in the County of Los Angeles. The ADDA members represent the People of Los Angeles County, which county shares a border with San Bernardino County.

IN THE SUPREME COURT

OF THE STATE OF CALIFORNIA

In re Application of Tyson, Atlas
for Executive Clemency,

No. S278446

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: Carlos Cano - case # S278455 (from Los Angeles County Superior Court case # BA149971), 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.SS0(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.SS0(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 the people of the communities that members of the ADDA represent share a border with San Bernardino County, ADDA 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 San Bernardino County, and those of neighboring counties such as Los Angeles County, deserve full disclosure when the Executive proposes releasing a murderer into their communities. With a shrouded record, this case in

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[2] ADDA 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. Atlas is serving a sentence of life without the possibility of parole, plus 25 years.

[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 28, 2023 Respectfully submitted,

Elizabeth J. Gibbons
Association of Deputy
District Attorneys for Los
Angeles County (ADDA)

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 Gibbons Firm, P.C., located at 811 Wilshire Boulevard, 17th Floor, Los Angeles, California 90017

On February 28, 2023, I served copies of the foregoing Motion of Association of Deputy District Attorneys for Los Angeles County (ADDA) 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 Thurston, Washington, addressed as follows:

Eliza Hersh
Deputy Legal Affairs Secretary
Office of the Governor
State Capitol
1303 10th Street
Suite 1173
Sacramento, CA 95814

Rob Bonta
California Attorney General
1300 I Street
Suite 125
P.O. Box 944255
Sacramento, CA 94244

Tyson Atlas
AB0785
Solano State Prison
P.O. Box 4000
Vacaville, CA 95696-4000

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

Executed on February 28, 2023, Olympia, Washington.

Peggy Madsen

Peggy L. Madsen