

No. S262365

In the Supreme Court of the State of California

IN RE APPLICATION OF ANTHONY BANKS,

For Executive Clemency.

**MOTION TO VACATE AND STAY DEADLINE
TO RESPOND TO RESUBMISSION ORDER;
MEMORANDUM OF POINTS AND AUTHORITIES**

ROB BONTA (SBN 202668)

Attorney General of California

THOMAS S. PATTERSON (SBN 202890)

Senior Assistant Attorney General

PAUL STEIN (SBN 184956)

Supervising Deputy Attorney General

*ANNA FERRARI (SBN 261579)

Deputy Attorney General

455 Golden Gate Avenue, Suite 11000

San Francisco, CA 94102-7004

Telephone: (415) 510-3779

Fax: (415) 703-5480

Anna.Ferrari@doj.ca.gov

Attorneys for Governor Gavin Newsom

July 7, 2021

Document received by the CA Supreme Court.

Pursuant to California Rules of Court, rule 8.54, the Governor respectfully moves the Court to vacate its order filed June 16, 2021, regarding the resubmission of the clemency record of Anthony Banks (“Resubmission Order”) because the Governor has recently withdrawn his request for a clemency recommendation from this Court as to Mr. Banks. The Governor also respectfully requests an immediate temporary stay or extension of the July 14, 2021 deadline to comply with the Resubmission Order pending resolution of this motion to vacate. This motion is supported by the following memorandum of points and authorities.

Respectfully submitted,

ROB BONTA

Attorney General of California

THOMAS S. PATTERSON

Senior Assistant Attorney General

PAUL STEIN

Supervising Deputy Attorney General

/s/ Anna Ferrari

ANNA FERRARI

Deputy Attorney General

Attorneys for Governor Gavin Newsom

July 7, 2021

Document received by the CA Supreme Court.

MEMORANDUM OF POINTS AND AUTHORITIES

The Governor respectfully requests that the Court issue an order vacating the Resubmission Order in this matter in light of the Governor’s recent withdrawal of his request to recommend clemency for Mr. Banks. Because the request to recommend clemency for Mr. Banks is no longer before this Court, the Resubmission Order should be vacated as moot. The Governor also requests that the Court enter an immediate order temporarily staying or extending the July 14, 2021 deadline to comply with the Resubmission Order by three weeks, until and including August 4, 2021, pending the resolution of this motion.

BACKGROUND

On May 26, 2020, Governor Newsom forwarded to this Court the clemency application of Mr. Banks, along with the record relating to his application, for a recommendation in accordance with article V, section 8, subdivision (a) of the California Constitution and Penal Code section 4851. The First Amendment Coalition filed a motion to unseal the clemency record of Mr. Banks on August 21, 2020. The Court has not yet acted upon the clemency recommendation request for Mr. Banks.

On May 26, 2021, this Court issued Administrative Order 2021-05-26 concerning procedures and standards for requests to unseal clemency materials forwarded to this Court for a recommendation in accordance with article V, section 8, subdivision (a) of the California Constitution and Penal Code section 4851. On June 16, 2021, this Court ordered the Governor to resubmit Mr. Banks’s clemency records to the Court in the

Document received by the CA Supreme Court.

manner prescribed by Administrative Order 2021-05-26 and California Rules of Court, rules 8.45 and 8.46(d)(2)-(5).

After the Governor requested a clemency recommendation, Mr. Banks was made eligible for and participated in a parole suitability hearing. At the hearing, Mr. Banks was denied parole. In light of these events, in a letter filed concurrently with this motion, the Governor notified the Clerk of Court that he withdraws his recommendation request for Mr. Banks and requests return of Mr. Banks's clemency record.

ARGUMENT

Administrative Order 2021-05-26 provides that a motion to unseal the record in a clemency matter submitted to this Court may be entertained “[w]hen a clemency record is before the court.” (Admin. Order 2021-05-26 at p. 3, amending Internal Operating Practices and Proc., XIV.A.) Here, for reasons unrelated to the Coalition's pending motion to seal, the Governor has withdrawn his recommendation request for Mr. Banks. In the absence of a pending request for a recommendation to grant clemency to Mr. Banks, the Governor respectfully moves this Court to vacate the Resubmission Order and, to the extent necessary, to deny the Coalition's pending motion to dismiss, on the grounds that both are now moot.

The Governor also requests that the Court temporarily stay or otherwise extend the deadline to comply with the Resubmission Order by 21 days, until and including August 4, 2021. Although the Governor is prepared to submit Mr. Banks's clemency record in accordance with the Resubmission Order

without delay, it would promote judicial economy and help to conserve party resources if the Court could rule on the motion to vacate before it must receive and review Mr. Banks's resubmitted clemency record.

Respectfully submitted,

ROB BONTA

Attorney General of California

THOMAS S. PATTERSON

Senior Assistant Attorney General

PAUL STEIN

Supervising Deputy Attorney General

/s/ Anna Ferrari

ANNA FERRARI

Deputy Attorney General

Attorneys for Governor Gavin Newsom

July 7, 2021

Document received by the CA Supreme Court.

CERTIFICATE OF COMPLIANCE

I certify that the attached MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO VACATE AND STAY DEADLINE TO RESPOND TO RESUBMISSION ORDER uses a 13 point Century Schoolbook font and contains 519 words.

ROB BONTA
Attorney General of California

/s/ Anna Ferrari

ANNA FERRARI
Deputy Attorney General
Attorneys for Governor Gavin Newsom

July 7, 2021

SA2019100396
42769282.doc

Document received by the CA Supreme Court.

DECLARATION OF ELECTRONIC SERVICE

Case Name: **In re Application of Anthony Banks
for Executive Clemency**
Case No.: **S262365**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collecting and processing electronic and physical correspondence. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business. Correspondence that is submitted electronically is transmitted using the TrueFiling electronic filing system. Participants who are registered with TrueFiling will be served electronically. All participants in this case are registered with TrueFiling.

On July 7, 2021, I electronically served the attached **MOTION TO VACATE AND STAY DEADLINE TO RESPOND TO RESUBMISSION ORDER; MEMORANDUM OF POINTS AND AUTHORITIES** by transmitting a true copy via this Court's TrueFiling system.

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on July 7, 2021, at San Francisco, California.

Robert Hallsey
Declarant

/s/ Robert Hallsey
Signature