



December 1, 2016

Transmitted by First-Class mail

The Honorable Edmund “Jerry” Brown
Governor of the State of California
State Capitol, Suite 1173
Sacramento, CA 95814

Re: Clemency for Kevin Cooper

Dear Governor Brown,

The American Civil Liberties Union of California (“ACLU”) asks you to grant clemency to death row prisoner Kevin Cooper. The American Civil Liberties Union is a nationwide, non-profit, non-partisan membership organization dedicated to the defense and promotion of the guarantees of privacy, liberty and other individual rights embodied in the state and federal constitutions and statutes. The American Civil Liberties Union of California consists of the American Civil Liberties Union of Northern California, the American Civil Liberties Union of Southern California, and the American Civil Liberties Union of San Diego and Imperial Counties.

The ACLU is deeply involved in criminal justice reform issues, including the death penalty. We believe that the death penalty is a violation of the 8th Amendment of the U.S. Constitution. We also have a long history of working to ensure quality legal representation for those facing a sentence of death, including by providing post-conviction representation to Robert Alton Harris, the first person executed under California’s current death penalty statute.

The ACLU has been aware of and concerned about Mr. Cooper’s case for many years. We have seen from the record of his appeals and the facts that have come to light in his case over the past two decades that his case is extremely troubling from many different perspectives. It is clear that the San Bernardino Sheriff’s Department and the San Bernardino County District Attorney destroyed and hid exculpatory evidence. These actions violated Mr. Cooper’s due process rights under the 5th and 14th Amendments to the United States Constitution. In addition, the Inter-American Commission on Human Rights found after its four-year review of Mr. Cooper’s case

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that his counsel committed serious errors of omission and commission that fundamentally denied Mr. Cooper his right to counsel and his ability to establish his innocence at trial.

Many doubts remain about Mr. Cooper's case but one thing is clear to us: his trial lacked the basic requirements of due process and it is impossible to have confidence in the verdict rendered in this case.

Eleven federal appellate judges have publicly stated their doubts about Mr. Cooper's guilt.¹ A twelfth has said that she is discomfited by law enforcements errors and the questions of innocence that remain in Mr. Cooper's case.² The evidence that the California Supreme Court relied on to affirm Mr. Cooper's conviction and death sentence have been seriously undermined and in some cases proven false.³ But the federal standard, found in the so-called "Anti-terrorism and Effective Death Penalty Act of 1996," 28 U.S.C. section 2244(b)(2)(B), erects high barriers that prevent the federal courts from fully reviewing errors in state court cases, including death penalty cases. As Ninth Circuit Judge William Fletcher said about Mr. Cooper's case in presenting the Madison Lecture in 2014: "If you have been wondering why Kevin Cooper is still on death row, the answer is AEDPA."

We urge you to stand for justice and mercy and grant Mr. Cooper's request for clemency.

Thank you,

A handwritten signature in purple ink that reads "Ana Zamora". The signature is written in a cursive, flowing style.

Ana Zamora
Criminal Justice Policy Director
ACLU of Northern California

¹ *Cooper v. Brown*, 565 F.3d 581 (9th Cir. 2009) (Fletcher dissenting)

² *Cooper v. Brown*, 510 F. 3d 870, 1004 (9th Cir. 2007) (McKeown concurring)

³ See Kevin Cooper's Petition for Executive Clemency at pp. 93-109.