



January 20, 2022

VIA ELECTRONIC MAIL

Governor Jared Polis
State Capitol Building
200 E. Colfax Avenue, Room 136
Denver, CO 80202

Dear Governor Polis,

We are writing this letter to express our concerns about the process, timing, and manner in which you commuted the sentence of Rogel Aguilera-Mederos, the truck driver who recklessly drove and then crashed his truck into traffic on I-70, killing four victims and injuring others. While the Court was actively reconsidering the sentence imposed based on Colorado's sentencing laws, you commuted the sentence and lowered it to ten (10) years in state prison. That sentence is far too low for someone who kills four people in the appallingly reckless way in which Mr. Aguilera-Mederos chose to do so. As we look to the future, though, our greatest concern is that you chose to intervene in a pending case, thereby undermining the integrity and confidence that Coloradans place in the justice system.

We appreciate that you plan to attend this month's Board meeting of the Colorado District Attorneys' Council. The two of us are sending this letter in advance of that meeting because we want to share our concerns about the case and, perhaps more importantly at this juncture, its possible ramifications. The purpose of this letter is to facilitate a constructive discussion at that meeting and to suggest a path forward. It is our hope that, by sharing these concerns in this letter, the discussion can focus on the future and moving forward. Our overarching goal is to maintain the integrity of the justice system.

We also have the privilege of serving on the Sentencing Reform Task Force, which is comprised of hardworking stakeholders from throughout the justice system, as well as legislators from both parties, who are engaging in data-driven analysis and constructive efforts to improve

our sentencing laws. The Sentencing Reform Task Force is working on the issues underlying the sentencing options in the Aguilera-Mederos case. The Task Force's work has received strong support thus far, but its continued success rests on the premise that your office fully supports this type of effort. We are concerned that the process, timing, and manner of your commutation will call some of these efforts and collaboration into question.

The action you took on December 30, 2021 was unprecedented. We are unaware of any governor who has granted a commutation in a *pending* case. While a governor may have the power under current law to commute sentences in pending criminal cases, using it in this manner creates a troubling precedent. We respect, of course, the power and responsibility that the law provides for you to commute sentences once a conviction is "final," and a legal sentence is imposed.

In this case, you commuted this sentence before the Court ruled on the District Attorney's motion requesting reconsideration of the sentence. The District Attorney made clear that she intended to seek a modification of the sentence, had already filed a motion to do so, and the Court had scheduled the hearing to do so. Furthermore, the trial judge had indicated a willingness to reduce the sentence to what the judge believed appropriate. To protect the rights of crime victims, promote fairness and equity in sentencing, and to provide the Governor with accurate and complete information, the commutation of a sentence should be neither granted nor denied until the request for sentence reconsideration is complete.

To be clear, we agree that the original sentence of 110 years was too severe. A sentence of 110 years in a case involving reckless, rather than intentional conduct, should have been avoided, just as a sentence to 10 years in state prison for killing four people is too lenient.

The right sentence is best determined through the judicial process, where the Court can carefully weigh aggravating and mitigating factors. Our federal and state constitutions make judges the finders of fact for sentencing purposes in criminal cases. If the Court had been permitted to conduct the re-sentencing hearing scheduled for January 13th, the judge would have heard from attorneys for both the prosecution and defense, as well as the victims and their families, law enforcement officers, and the defendant himself. That process is integral to the justice system. Sentences should be influenced by the facts and circumstances, not by petitions, on line surveys, or tweets. By acting when you did, the victims, law enforcement officers, community members, and the justice system were denied an opportunity to fully examine the facts and circumstances to reach the right sentence.

The facts and circumstances in this case are particularly egregious.

First, the defendant was not qualified to operate a truck safely. As you are undoubtedly aware, he had failed multiple portions of the driving exam on numerous occasions, falsified employment applications with different trucking companies, and had been previously terminated by a trucking company. As you know, prior to this crash, the defendant intentionally disabled the safety monitors and manipulated driving logs designed to regulate driver safety. By disabling the safety monitor, he ensured that his employer would be unable to track his reckless speeds on our highways and, also, whether he was complying with the sleep cycles required for

commercial drivers. The law requires that the monitor always be plugged in. In fact, the defendant's employer repeatedly notified the defendant that the monitor had been unplugged and had to be re-connected. An expert testified at trial that the defendant kept it unplugged to hide how fast or long he drove at a time. Additionally, the defendant falsified his driving logs to hide how often he stopped and rested. As the evidence at his trial showed, Mr. Aguilera-Mederos proactively flouted these required safety measures. All of which was done, of course, for the defendant to make more money and gain more time for himself.

Second, the defendant had been speeding and driving dangerously for hours before he crashed into traffic. Numerous witnesses testified at trial that they observed him speeding through different parts of Colorado. Cell phone data and videos recorded the truck at different points along our state highways and corroborated the observations of the witnesses.

Third, well before he decided to crash into the victims' cars, the defendant's brakes were giving out. At one point, he even pulled over to the side of the highway because his brakes were not functioning. Commercial drivers are trained to wait for hours when their brakes begin to show signs of failure. In fact, his supervisor told him to remain on the side of the road to allow for required cooling and assessment of the brakes. Contrary to the requirements for commercial drivers, and the direct request of his supervisor, the defendant refused to wait the hours that are necessary for brakes to cool down. Instead, in order to earn quicker money and have more free time for himself, he resumed driving just a few minutes later.

Fourth, even after the brakes gave out, the defendant had numerous options and demonstrated extreme indifference to the lives of others. The defendant failed to use the runaway truck ramp. He did not engage his horn or flash his lights to warn drivers.

Finally, the most disturbing part of this case is what he did in the final moments before killing the victims, injuring others, and causing tragic, permanent harm to our community. As the defendant testified under oath, in the moments before the crash, he saw another truck in front of him. But he made the conscious decision to turn towards the victims' cars because, as he testified, he feared that the impact with the other truck would kill him. He put his interests above those of others at every moment leading to, and including, the crash.

Considering those facts, it is no wonder that the victim families have expressed such anger over the timing, process, and manner of your decision to commute the sentence. One of our greatest concerns is how the victims were treated in this case. In the flurry of tweets and online petitions, it seemed as though the victims were forgotten by the masses taking up a cause they knew little about. Four people were killed as a direct result of the defendant's decisions and actions. They are no longer with us and their loved ones are left to struggle with the unimaginable loss every day for the rest of their lives. Additionally, law enforcement and other first responders rushed to this horrific, deadly, and avoidable crash. Members of law enforcement, in their mission of preserving public safety, were deeply impacted by the events of that day and, to our knowledge, their observations were not fully considered.

Under the Victims' Rights Act, victims have constitutional rights that must be honored. Based on our experience, we are acutely aware of the stress and traumatic impact that fatalities and murders cause victim families, as well as our community. C.R.S. 24-4.1-302.5(1)(aa) provides: "(1) In order to preserve and protect a victim's rights to justice and due process, each victim of a crime has the following rights: ... (aa) The right to be informed of the governor's decision to commute or pardon a person convicted of a crime against the victim before such information is publicly disclosed." The law requires that victims' rights be honored and upheld, pursuant to statute, during all stages of this process. The public statements from your office undercut the trust that victims had in the process. Also, the premature commutation reinforced their belief that the sentence was not based on the actual facts and circumstances. Respectfully, the law and victims' rights require that the process and timing of commutations be handled in a much better manner.

As we informed your office in advance of the commutation, if the judicial system failed to adequately address the sentence, there would have been strong support for you to act. As you know, the Crime of Violence statute, 18-1.3-406(1)(a), allowed the court to exercise its authority to reconsider the sentence in this case as specifically provided for by the Legislature. That law is in place for cases such as this one, to address cases in which there are exceptional and unusual circumstances. This provision in law was thoughtfully and purposefully provided by the Legislature to address scenarios exactly like the one in this case.

To intervene prior to allowing the judge - who heard every witness, saw all the evidence, and knew the case better than anyone - to exercise his statutory authority, was unprecedented, premature, and unwarranted. The justice system is already set up to reach the proper sentence in this situation through the mechanism provided by the Legislature. The untimely intervention undermined the criminal justice system as it presumed a failure that had yet to occur - and did not allow time for the justice system to run its standard course. To put it bluntly, the difference here would have required you to simply wait two weeks for the Court to finish the scheduled hearing.

It is important to recognize that there was every indication that the sentence would be modified to far less than the original sentence required by law. The District Attorney had filed a motion seeking a substantial reduction. District Court Judge Bruce Jones stated in open court that he believed that a lower sentence should be imposed. Instead, your commutation denied them that opportunity. As Judge Jones wrote in his Order, "The Court respects the authority of the Governor to do so ... Based on the timing of the decision, however, it appears this respect is not mutual."

Please be aware that your decision is having a substantial ripple effect. For example, in Boulder County, we are currently prosecuting a case in which a family member sexually assaulted a little girl. Our plea offer would require the defendant to serve eight (8) years in state prison. The defense attorney has argued that the offer is excessive given the ten (10) year sentence you imposed in the Aguilera-Mederos case.

We respect your authority to commute sentences after the completion of the judicial process. We are aware, of course, that there are many applications for pardons and commutations that have been awaiting review for a long time. Each of us has submitted letters, often supporting those applications. We look forward to your office moving forward on those cases. The difference here, of course, is that this case had not been completed.

By acting when and how you did, you undercut the community's trust in District Attorney King and the justice system of our entire state. It is our hope that this case and the circumstances presented are truly exceptional. Moving forward, we ask for your support of the ongoing work of the Sentencing Reform Task Force and Colorado's justice system.

Sincerely,

/s/ Michael T. Dougherty

Michael T. Dougherty
District Attorney, 20th Judicial District

/s/ Daniel P. Rubinstein

Daniel P. Rubinstein
District Attorney, 21st Judicial District