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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF FRESNO

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, v. DOUGLAS R. STANKEWITZ, Defendant.	Fresno Superior Court No. CF78227015 **PEOPLE'S OPPOSITION TO DEFENDANT'S THIRD AMENDED MOTION FOR RELEVANT DATA UNDER THE RACIAL JUSTICE ACT (Pen. Code, § 745(d))** Date: May 29, 2026 Time: 8:30 a.m. Dept: 74

TO: THE HONORABLE ALVIN. HARRELL, FRESNO COUNTY SUPERIOR COURT JUDGE, AND TO DEFENDANT AND DEFENSE COUNSEL:

The People of the State of California submit the following Opposition to Defendant's 3rd Amended Motion, both generally as to everything asserted, and specifically as laid out within these moving papers. The People reserve the right to present additional evidence and arguments as the Court may permit on the hearing on said matter.

INTRODUCTION

On September 30, 2020, Governor Gavin Newsom signed Assembly Bill No. 2542 (AB 2542) into law, also known as the California Racial Justice Act (hereafter "the Act"). The Act prohibits the state from seeking or obtaining a criminal conviction or from imposing a sentence based upon race, ethnicity, or national origin. (Pen. Code, § 745(a).) The Act also applies to adjudications and dispositions in juvenile delinquency court. (Pen. Code, § 745(f).) A key component of the Act is the right to discover evidence relevant to potential violations, upon a showing of good cause. (Pen. Code, § 745(d).

1.

DEFENSE MOTION

Defendant makes the present 3rd Amended request for discovery under Penal Code section 745(d).) In making his claim, Defendant represents that there exists a potential claim under 745(a)(3) & (4). Defendant offers as support for his claims under Penal Code section 745(a)(3) & (4) various articles regarding incidents occurring with Native Americans in and around Fresno County. Defendant appears to offer these articles in support for his discovery request under Penal Code section 745(d). Defendant explains that "Native Americans have historically been subjected to racial discrimination in criminal courts." (2nd amend Motion at p. 21.) Defendant offers this article in support for this discovery request. As will be explained below, Defendant's request should be denied.

2.

STANDARD OF REVIEW

The defendant may file a motion requesting disclosure of all evidence relevant to a potential violation of subdivision (a). (Pen. Code § 745(d), emphasis added).) Such will only be disclosed upon a finding of good cause. (*Id.)* In "compelling" disclosure, Defendant has not demonstrated a plausible justification for the items requested and the potential violation alleged, that he was charged or convicted of a more serious offense than defendants of other races, ethnicities, or national origins who have engaged in similar conduct and are similarly situated, or that the evidence establishes that the prosecution more frequently sought or obtained convictions for more serious offenses against people who share the defendant's race, ethnicity, or national origin in the county where the convictions were sought or obtained. (Pen. Code §745(A)(3).

To succeed on his Section 745 motion, Defendant must establish by a preponderance of the evidence that "[t]he judge, an attorney in the case, a law enforcement officer involved in the case, an expert witness, or juror exhibited bias or animus towards the defendant because of the defendant's race, ethnicity, or national origin." (Pen. Code § 745(a)(1).) As explained in the only case interpreting the discovery provisions of the RJA: the Act "permit[s] discovery only upon leave of court, rather than through self-executing party-initiated discovery." (*Young v. Superior Court of Solano County* (2022) 79 Cal.App.5th 138, 168.)

Here, the defendant has fallen far short of establishing relevance, and of meeting the "good cause" standard required for their production. (See *Young*, *supra*, 79 Cal.App.5th at p. 157.)

Additionally, even if Defendant were able to articulate good cause for discovery there can be no order for discovery of the items requested because this Department does not have most, if not all, of the requested information. The RJA only applies to discovery of items that the prosecution has in its possession; there is no duty to create new records for the defendant's benefit. Second, even if such records existed, its contents would be privileged work product, and highly sensitive information subject to the Official Information Privilege of the Evidence Code section 1040. And finally, even if the District Attorney had the requested records, the RJA has limits to what discovery can be obtained. While the RJA authorizes discovery to explore a potential violation, it does not authorize a fishing expedition based upon its mere invocation. The court should deny the defendant's motion for discovery in which the defendant has not shown "good cause."

3.

ARGUMENT

A.

DEFENDANT HAS NOT SHOWN "GOOD CAUSE" FOR DISCOVERY

The language of Penal Code section 745, subdivision (d) allows a defendant to file a motion requesting disclosure of relevant, existing, non-privileged evidence, upon a showing of good cause:

> A defendant may file a motion requesting disclosure to the defense of all evidence relevant to a potential violation of subdivision (a) in the possession or control of the state. A motion filed under this section shall describe the type of records or information the defendant seeks. *Upon a showing of good cause*, the court shall order the records to be released. Upon a showing of good cause, and if the records are not privileged, the court may permit the prosecution to redact information prior to disclosure. (Emphasis added.)

Good cause for discovery does not automatically exist in every case. (*Hill v. Superior Court* (1974) 10 Cal.3d 812, 819; *Joe Z. v. Superior Court* (1970) 3 Cal.3d 797, 804.) Without adequate factual allegations, the court is prevented from exercising its discretion in making an independent assessment of good cause. (*Wood v. Superior Court* (1985) 166 Cal.App.3d 1138, 1150.) Based on settled law and the Act's own requirement that requested discovery be relevant and fully described, the defense must make a factual showing in at least three areas to establish good cause.

Section 745 allows for a motion for discovery of evidence relevant to a potential violation of section 745, subdivision (a). There is a three-step process for the court to follow to determine whether

discovery should be ordered: 1) has the defendant provided good cause for the discovery; 2) if so, what is the scope of the discovery order; and 3) whether the discovery should be redacted.

Young v. Superior Ct. of Solano County (2022) 79 Cal. App. 5th 138 involved a defendant who requested discovery under the Racial Justice act. *Young* determined that when requesting discovery under the RJA, procedures like that of a motion under *Pitchess v. Superior Court* (1974) 11 Cal.3d 531 should be followed. "Described broadly, the court's task will be to engage in a discretionary weighing of the strength of [defendant's] factual showing, the potential probative value of the information he seeks, and the burdens of gathering the requested "records or information" for disclosure." (*Young v. Superior Ct. of Solano County, supra,* 79 Cal. App.5th 138, 145.)

Just as in a *Pitchess* motion, where a defendant must establish a "plausible factual foundation" for officer misconduct, the defendant here must establish a plausible factual foundation of racial bias affecting his case. As discussed below, defendant has failed to establish any factual foundation whatsoever of racial bias towards the defendant. The defendant in *Young* provided evidence that he was Black, that Black drivers are more statistically likely to be stopped in California, and that the facts of his case suggested a racially motivated stop. (*Young v. Superior Ct. of Solano County, supra*, 79 Cal. App. 5th 138, 161.) Here, defendant has shown that he is Native American but has not shown any facts that suggest that the charges filed in this case and the fact that the death penalty was sought, were racially motivated.

If the court were to find that the defendant had somehow demonstrated a plausible justification for the requested discovery, then the court must balance several factors including:

> "…whether the material requested is adequately described, (2) whether the requested material is reasonably available to the governmental entity from which it is sought (and not readily available to the defendant from other sources), (3) whether production of the records containing the requested information would violate (i) third party confidentiality or privacy rights or (ii) any protected governmental interest, (4) whether the defendant has acted in a timely manner, (5) whether the time required to produce the requested information will necessitate an unreasonable delay of defendant's trial, [and] (6) whether the production of the records containing the requested information would place an unreasonable burden on the governmental entity involved." (*City of Alhambra v. Superior Court* (1988) 205 Cal.App.3d 1118, 1134, 252 Cal.Rptr. 789.)

Some factors which rebut the request for discovery are that the records requested would certainly violate third party privacy rights and the time to produce them would place an unreasonable burden on the People. Again, the defendant has not demonstrated any plausible justification, so such a balancing by this court is unnecessary.

If the court determines that these factors weigh in favor of discovery, the court must then determine the scope of the discovery order. The order needs to be based on the identification of the material being sought and the relevance to the alleged violation of section 745, subdivision (a). The necessity of discovery of such data, its scope, and how far back the state must go in disclosing data, are matters within the court's discretion based on the discovery motion and the defendant's showing of good cause. In other words, the duty to release information comes only after the hearing on the motion for disclosure and the court enters an order of disclosure based on a showing of good cause by the defendant. (§ 745, subd. (d).)

The statute then allows the court to permit the prosecution to redact information before disclosure. Section 745, subdivision (d) states in relevant part: "Upon a showing of good cause, and if the records are not privileged, the court may permit the prosecution to redact information prior to disclosure." The showing of good cause to redact must be made by the People. Presumably, the redaction referenced in the statute concerns any information where the interests of the public in confidentiality outweigh the right of the defendant to disclosure. (See § 1054.7.)

The scope of the prosecutor's ability to redact information should be clearly outlined in the court's order. To facilitate the court's review of the prosecution's request for redaction, it may be appropriate to conduct proceedings in camera and on the record. If any case, the court should preserve the record, under seal, in such a manner that there can be meaningful appellate review of the court's actions. (*Facebook, Inc. v. Superior Court (Touchstone)* (2020) 10 Cal.5th 329, 358.)

At this time, the People assert that defendant has not demonstrated a plausible factual foundation for believing that a violation of section 745 has occurred and therefore has failed to provide good cause for the evidence sought. The People reserve the right to argue the scope of the discovery and redaction of that discovery if, and only if, this Court finds good cause for any disclosure.

B.

THE DEFENDANT HAS FAILED TO ESTABLISH A PLAUSIBLE JUSTIFICATION FOR DISCOVERY

The defense must establish a plausible justification for the material requested. (*Hill v. Superior Court, supra*, 10 Cal.3d at p. 817; *People v. Navarro* (1978) 84 Cal.App.3d 355, 359.) It must appear that the information sought will assist in the preparation of the defense. (*Hill v. Superior Court, supra, 10* Cal.3d at p. 817.) "The burden of making such a showing and establishing the existence of a plausible justification for the production of the requested information or material is on the criminal defendant." (*Ballard v. Superior Court (1966) 64 Cal.2d 156, 167.*) A 'plausible factual foundation' requires a declaration by defendant's counsel or other evidence and documentation that supports the motion. (*People v. Moreno* (2011) 192 Cal.App.4th 692, 701.) "[T]rial courts have 'discretion to deny discovery in the absence of a showing which specifies the material sought and furnishes a 'plausible justification' for inspection.'" (*Facebook, Inc. v. Superior Court* (2020) 10 Cal.5th 329, 396.)

Under the Racial Justice act, codified in Penal Code section 745(a), four categories of conduct, any of which may be proved by a preponderance of the evidence, may established a violation. Violations occur when:

> (1) The judge, an attorney in the case, a law enforcement officer involved in the case, an expert witness, or juror exhibited bias or animus towards the defendant because of the defendant's race, ethnicity, or national origin.
>
> (2) During the defendant's trial … the judge, an attorney in the case, a law enforcement officer involved in the case, an expert witness, or juror, used racially discriminatory language about the defendant's race, ethnicity, or national origin, or otherwise exhibited bias or animus towards the defendant because of the defendant's race, ethnicity, or national origin, whether or not purposeful. […]
>
> (3) The defendant was charged or convicted of a more serious offense than defendants of other races, ethnicities, or national origins who have engaged in similar conduct and are similarly situated, and the evidence establishes that the prosecution more frequently sought or obtained convictions for more serious offenses against people who share the defendant's race, ethnicity, or national origin in the county where the convictions were sought or obtained.
>
> (4)(A) A longer or more severe sentence was imposed on the defendant than was imposed on other similarly situated individuals convicted of the same offense, and longer or more severe sentences were more frequently imposed for that offense on people that share the defendant's race, ethnicity, or national origin than on defendants of other

races, ethnicities, or national origins in the county where the sentence was imposed.

(4)(B) A longer or more severe sentence was imposed on the defendant than was imposed on other similarly situated individuals convicted of the same offense, and longer or more severe sentences were more frequently imposed for the same offense on defendants in cases with victims of one race, ethnicity, or national origin than in cases with victims of other races, ethnicities, or national origins, in the county where the sentence was imposed.
(Pen Code, § 745, subd. (a)(1)-(4)).

In his motion, Defendant addresses the separate bases for his discovery request (**3rd** Amend. Mtn. pp. 48). First, Defendant claims that the prosecution used a preemptory challenge to remove the "only known Native American juror" from the jury panel in his second trial[1]. (**3rd** Amend. Mtn at p. 48.) Second, Defendant alleges that the defense and prosecution elicited racially discriminatory statements during the second trial's death penalty phase (**3rd** Amend. Mtn. at p. 50.)

Lastly, the Defendant alleges that data is sought specifically to prove an allegation pursuant to Penal Code section 745(a)(3) or 745(a)(4) regarding getting a death penalty conviction of defendant by charging special circumstances, along with getting additional increased incarceration by charging a gun enhancement. (**3rd** Amend Mtn at p. 51-52.) While Defendant claims that the requested data Defendant seeks "easily satisfies" this standard, Defendant has failed to show how his extensive discovery request relate to either of his first claims, alleged under Penal Code section 745(a)(1) & (2) (**3rd** amend Petition, p. 61).

Specifically, Defendant has failed to establish any plausible justification for the data requests, training materials, case notes, or policies, as they relate to claims that "the prosecution used a preemptory challenge to remove" a specific juror, based on bias or animus towards *defendant.* (Pen. Code section 745(a)(2).) Defendant superficially has failed to explain how records, for a period of 50 years, would be relevant to this claim. Defendant has also failed to show how his specific requests would be relevant for any claim that might relate to statements a prosecutor or defense attorney made during trial. Further, while his request for the prosecution's juror notes might be related to his claim that

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[1] This claim was previously raised in The Defendant's habeas petition filed January 28, 2021. This claim was denied for failing to state a prima facie case for relief in the court's order dated September 29, 2021. The Defendant now brings the same claim under the RJA. A claim under *Batson* is not cognizable as an RJA claim because the RJA focuses exclusively on the effect of racism on a defendant—not a prospective juror.

the prosecutor used a preemptory challenge on the "only native American juror," the RJA does not authorize the release of any privileged information (Pen. Code § 745(d).) Notes from jury selection would be considered privileged work product that the Department would not be required to disclose. (Pen. Code § 1054.6.) Moreover, this claim was previously raised in Defendant's habeas petition filed January 28, 2021. The court denied the claim for failing to state a prima facie case for relief in the court's order dated September 29, 2021. The Defendant now brings the same claim under the RJA. A claim under *Batson* is not cognizable as an RJA claim because the RJA focuses exclusively on the effect of racism on a *defendant*—not a prospective juror. As such, he has failed to establish a plausible justification for notes related to a *prospective juror.*

C.

THE RJA'S DISCOVERY PROVISIONS DO NOT CREATE A DUTY FOR THE STATE TO CREATE RECORDS OR CONDUCT AN INVESTIGATION ON BEHALF OF THE DEFENSE

After a showing of "good cause," subdivision (d) of the RJA provides that the court "shall order *the records* to be released" (emphasis added). But if there are no records, what can the court order release? The RJA presupposes the existence of a "record" to be released. As stated above, the District Attorney does not have many of the documents responsive to the search parameters of the defendant's motion, nor does the District Attorney have readily available "lists" or "data" to produce. We do not maintain a log of all cases where homicide is charged including special circumstances for the past 50 years. Nor do we maintain a list of all cases where gun enhancements are charged.

Although the Act contains a definitional component defining some words and phrases (Pen. Code, § 745, subd. (h)), the text of the RJA itself does not define "record." In the Penal Code, "record" is not defined in the preliminary provisions. (See Pen. Code, § 7.) In such an instance: "Words and phrases must be construed according to the context and the approved usage of the language; but technical words and phrases, and such others as may have acquired a peculiar and appropriate meaning in law, must be construed according to such peculiar and appropriate meaning." (Pen. Code, § 7, subd. (16).) When considering what it means to be a "state" "record," an obvious place to look for guidance would be the California Public Records Act. Indeed, the Penal Code, at times, when discussing confidentiality of records, cross-references the California Public Records Act's definitional components. (See, e.g., Pen. Code, § 293.5 [confidentiality of victim identity]; Pen. Code, § 832.7 [police officer

personnel records].)

"It is well settled under California law and guiding federal precedent under the Freedom of Information Act (FOIA) that, while the CPRA requires public agencies to provide access to their existing records, it does not require them to create new records to satisfy a request." (*Sander v. Superior Court* (2018) 26 Cal.App.5th 651, 665 [internal citations omitted].) Nothing in the RJA is inconsistent with the overall general position of California law with respect to the production of government records. The RJA does not contain any language requiring the "State" to *create* records. If anything, the RJA assumes the pre-existing nature of records to be ordered disclosed: "Upon a showing of good cause, and if the records are not privileged, the court may permit the prosecution to redact information prior to disclosure." (§ 745, subd. (d).) If the records ordered to be disclosed did not previously exist, what then would there be to redact?

When certain conditions are satisfied, a defendant petitioning under the RJA may be entitled to the release of relevant records possessed by the state. The defense is always permitted to conduct its own investigation into a violation of the RJA. But what the defense is not permitted to do is to force the state to conduct a defense investigation under the guise of obtaining documents or records that do not otherwise exist. Moreover, requested information may be readily available from other sources. Accordingly, for this independent reason, the defendant's motion for RJA discovery of most of the items listed in his request should be denied.

D.

THE MATERIAL REQUESTED IS NOT ADEQUATELY DESCRIBED

Several of the defendant's requests suffer from the infirmity that they are not adequately described. The defendant has framed many of his requests under broad categorical parameters with subjectively defined queries. For example, his request for all cases where a defendant was charged "at any point" with murder, is not adequately described for the Department to conduct a reasonable search into this inquiry. (**3rd** Amend Mtn. p. 12.) Or, another example, Defendant requests, criminal histories of all defendants charged in *related incidents not limited to Sect. 187 filings.* **(3rd Amend. Mtn, p. 11.)** This is not adequately described because it basically asks for all cases that could conceivably be related to 187 cases that were filed in a 50-year period, which, quite frankly, involves a subjective analysis of each individual case. This a request would require the District Attorney to review hundreds or thousands of police reports, and then determine what other criminal activity has occurred, that may or

may not be subject to charging. The broadness of this request cannot be so narrowly construed to fit within the search parameters, as it includes all potential charges of other actors. We do not know the breadth of this request, nor do we know what other charges are being sought, or what other actors we should focus on in interpreting this specific request.

The request for criminal histories is also not adequately described. (**3rd** Amend. Mtn. at p. 12) What are we to provide? The criminal history at the time each case was charged? What if charges that did not result in a conviction or have since been sealed or expunged? Do arrests count? Regarding the request that we must include a list of all prior convictions "known" to the District Attorney, are we to presume the intent of this inquiry in processing this request? Divulging criminal history information comes with significant restrictions, carrying legal liability for the unlawful dissemination of such information. (See Pen. Code, §§ 11141, 11142, 13302, and 13303.) The request is so broad, the People cannot reasonably comply.

For example, regarding criminal convictions, what convictions are to be provided? All convictions, including misdemeanors and infractions, such as speeding convictions? Juvenile priors, which are subject to the disclosure mechanisms under Welfare and Institutions Code § 827? Similarly, defendant requests "list of disposition for all charges (2nd. Amend. Mtn. at p. 9.), which may be prohibited by law. Does this information include possible resentencing? To what level of detail is this information being requested. Sometimes a case can return to court on a violation of probation, or a re-sentencing, or probation modification, which is not always saved in the system electronically. There could be several "disposition" results from a single case, which might, in some cases, require a manual review of possibly hundreds of cases to determine what the ultimate sentence imposed was.

As is also explained above, requesting all cases where the District Attorney's office "sought" the death penalty is also not adequately described. (**3rd** Amend. Mtn. p. 13.) The Department does not track when the death penalty is "sought." While notes might be contained within the case dockets (which, are work product), the actual notice of intent to pursue death is a document that is within the Court's custody, as it is a document that is filed in court on such cases. The Department does not otherwise have a way to search for whether something is "sought," so it is not an adequately described request.

In the "adequately Described" prong of Defendants motion, he continually argues that his requests are "relevant" to his claim. (**3rd** amended motion, p. 75.) Even assuming, for the sake of argument, that his requests were relevant (and the People do not concede that they are) they are still not

adequately described. Much of what is being requested is either needle in a haystack, overly broad, or completely subjective. The People cannot be expected to guess regarding what is being requested. Whether or not its relevant has no bearing to the "adequately described" prong of *Alhambra* consideration. Further in Defendant's Reply to the People's Opposition filed July 24, 2025 (Exh. 31h), Defendant simply states "defendant's requests were formulated by our statistician and well defined." (Pg. 23.) This does not make the request adequately described.

In adjudicating the adequacy of a discovery request the court in *Alhambra* cautioned against categorizing discovery requests based on similarity, or investigative technique. Requiring the Department to analyze thousands of cases submitted to the Department for filing for the last 50 years, exercise subjective judgment as to whether each case fits within the Defendant's search parameters does not constitute an adequately described discovery request.

E.

THE REQUESTED MATERIAL IS NOT REASONABLY AVAILABLE TO THE DISTRICT ATTORNEY

The second factor addresses "whether the requested material is reasonably available to the governmental entity from which it is sought (and not readily available to the defendant from other sources)" (*Alhambra*, *supra*, 205 Cal.App.3d at p. 1134). Not only must the information be reasonably available from the entity from which it is sought, but it also must not be readily available to defendant from other sources. For example, much of the information requested may be readily available through already existing databases[2].

As explained in the People's CPRA response (Exh. 1) the Department currently uses a case management system called eProsecutor. EProsecutor has been in operation since 2019. From 1999 – 2019 the Department used STAR. Prior to STAR, the Department used PROMIS.

The information stored in PROMIS was transferred over to STAR, and likewise, the information stored in STAR was transferred over to ePro when that system became operable. However, over the years, different information has been stored, and information has been stored differently across case management systems. For example, the PROMIS case management system only stored the primary charge on a given case, and therefore the Department does not have access to enhancement or other

[2] State of California Department o https://openjustice.doj.ca.gov/f Justice - OpenJustice

charging information from the PROMIS case management system. To obtain this information would first require a query to isolate what set of cases require search, then likely involve the request of individual physical case file from off-site locations, and a manual search of each case file to find the needle in a haystack answer to Defendant's request.

The information in STAR was more consistently stored, however given the time period and the purpose of the case management system (for case tracking, not data collection) much information, since it was still manually entered, lacks reliability or accuracy. While information is stored more consistently in ePro, many search parameters of defendant's request are still not reasonably available, such as whether the death penalty was "sought," searching for case information by birth month and year, "related charges" of co-defendants, dispositions of all charges, and full criminal histories. (**3rd** amend. Mtn. p. 11-12.) Further, given the above, it's unlikely that the Department has access to information regarding decisions to purse the death penalty, if it even exists. And assuming it exists, much of this information is privileged.

Additionally, the Department does not have reasonable access to appellate information because the department does not track appellate information in a designated data field. (**3rd** Amend. Mtn. p. 13.). Defendant requests all cases where, after the penalty phase reversal, the District Attorney's office then re-tried and re-sought the Death Penalty. To the extent that this information might be available, it would only be, if that information was entered in case notes. Otherwise, the Department does not and has not routinely captured appellate information, case reversal information, re-trials, and post-reversal actions as fields of entry.

As noted above, much of the requested records are not "reasonably available" to the District Attorney's office. The Department does not have a readily available list of any of the requested items as described above. And while some of the requested information may be retrieved by way of a query, the results may not be reliable or complete. For records that are not available by way of a query, the Department is not reasonably able to manually search through potentially thousands of filings over 50 years to locate the cases that may fall within Defendant's search parameters for retrieval of cases. As explained above, much of the data that is being requested is not available electronically. To the extent that information *is* available it can be retrieved, but much of the data that is stored electronically is inconsistent or incomplete. (See Exhibit 1.)

More specifically, in item 6, defendant requests training materials for the past 50 years (**3rd** Amend Mtn. at p. 12). Notwithstanding privilege and work product privileges that apply to these records, searching for records for prosecutors of the Department for the past 50 years is not reasonably available. As explained above, aside from the training materials that were provided to the ACLU (which the defendant already has access to), there are no other known training materials on the topic requested.

The request for "All training materials" in the last 50 years related to the prosecution of capital cases that include "any discussion of consideration of race, religion or national origin in any aspect of these prosecutions", would require searching within records of hundreds of people who have been employed within the Department for the past 50 years; it would be virtually impossible. It would require attempting to figure out if there was a single prosecutor in the last 50 years who was in possession of materials on the topic requested, it is not reasonably or readily available. All prosecutors who were employed in the 1970s and 1980s are no longer with the office, it is impossible to obtain their training materials. Regarding current records, the People fail to see the relevance of current training materials to a potential claim under the Racial Justice Act for disparities that Defendant is alleging occurred many, many years ago. There fails to exist a plausible justification for this. Not to mention the fact that a subjective review of these records to finding records which "discuss race, religion or national origin in any aspect of prosecution" would take months and require the redaction of likely most of the training materials due to it being attorney work product since it bears on the deliberative process of a prosecutor.

Additionally, Defendant's request for "non-literal string matching" (e.g., regex search) for the data in his search (2nd Amend. Mtn. at p. 8.) is simply not available by the Department.

Defense argues in his brief that the information he seeks is available to the Fresno County District Attorney's office. (**3rd** amend. Mtn. p. 76.) Defendant states, "The information the defense requests regarding which individuals were chosen to be eligible for the death penalty and how those decisions were made cases is uniquely available to the government, that is, to the Fresno County District Attorney, the prosecuting entity in this jurisdiction." (**3rd** Amend. Mtn, p. 76.) Respectfully, this presumption is not true. Also, Defendant fails to address why, or how, any of the requested information cannot be obtained through other sources, such as the courts. As explained above, much of the information from 50 years ago is *not* reasonably available to the Department anymore. While the Department might be able to query some of the requested information, it is very unlikely that the information produced would exist, even be reliable, or accurate. The most accurate way to obtain the

information Defendant seeks is to search court archives.

In Defendant's Reply he provided that the people should provide data because the people have provided it in the past (Reply, filed 7/24/25, pg. 23.) For example, they claim that because training materials were provided in response to the ACLU's Public Record Act request, that they should be provided materials by way of their discovery request here. Unfortunately, that is not the standard, defense must still establish good cause and a plausible justification for the requested materials. (Pen. Code section 745(d).) Of course, counsel did attempt to retrieve data by way of a public record act request, and the people provided them with a response[3]. (Exh. 1.)

Defense also claims that the People provided data in response to a discovery motion in the matter of *People v Ger Lee,* F26900878. At best, defendant is mistaken. Discovery was not provided in that matter by way of any court order pursuant to any motion under 745(d). Even if it were, it would not form the basis for this court to grant discovery in defendant's case.

Defense continues to claim that the people have the records. (Reply, filed 7/24/2025, p. 25.) This is most definitely an overstatement of what has been explained. And ultimately, this is not the standard. This court must evaluate the *Alhambra* factors, only after a showing of good cause, and determine whether the People can reasonably comply with the discovery request. While the People may have records of some categories of the requested information, many of the records are not reasonably available to the people.

F.

PRODUCTION OF THE REQUESTED MATERIAL WOULD VIOLATE SIGNIFICANT GOVERNMENT INTERESTS AND THE RIGHTS OF THIRD PARTIES

The disclosure of the requested information would encroach on both significant government interests and the rights of third parties who have nothing to do with this litigation. The government has legitimate interests in protecting its official information (Evid. Code, § 1040) and requests for "juvenile and adult convictions" (**3rd** Amend. Mtn. at p. 12.) and a list of disposition for all charges including convictions (**3rd** Amend. Mtn. at p. 12.) implicate potentially reviewing and disseminating records of

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[3] As explained in the People's February 24, 2025, request, the people would be able to provide data in the form of lists for many of the requested categories of their request. However, because the records being requested were not records that the Department produces on a regular basis, the requestor shall bear the cost to construct the record. (Gov. Code section 7922.575(b).) After providing defense with an estimate to construct the records, the people did not hear back.

uninvolved 3rd parties. It is also noteworthy to mention that juvenile records *may only be obtained through court order*. (Welfare & Institutions Code § 827.) The disclosure of records of third parties, including potential criminal history information carries significant restrictions, carrying legal liability for the unlawful dissemination of such information. (See Pen. Code, §§ 11141, 11142, 13302, and 13303.)

The People, here "as custodians of the records, have a duty to 'resist attempts at unauthorized disclosure and the person who is the subject of the record is entitled to expect that his right will be thus asserted.'" (*Craig v. Municipal Court* (1979) 100 Cal.App.3d 69, 77.) *Alhambra* has long protected this information in the consideration of this factor, but even the RJA's express statutory provisions recognize and protect governmental and third-party interests and privileges, even after the finding of good cause: "[i]f a statutory privilege or constitutional right cannot be adequately protected by redaction or a protective order, the court shall not order the release of the records." (Pen. Code § 745(d))
Defendant cites to *Weaver v. Superior Court* (2014) 224 Cal.App.4th 746 to support their claim that the Department cannot object to release based on third party confidentiality. Defendant's argument is misplaced. In *Weaver,* the court held that when a CPRA request seeks copies of records from the DA's office and those records have also been filed in a court of law, then those records are no longer exempt from disclosure. (*Weaver* (2014) 224 Cal.App.4th at 751.) *Weaver* identifies applicable "court records" as including various documents filed in or received by the court such as pleadings and motions. (*Id.* at 749-750.) And in fact, the people have already addressed the ability to release public information pursuant to Defendant's request in the response to their PRA, dated February 24, 2025, PRA. (Exh. 1)

Defendant's argument is inapplicable here, because many of the requested items are not actually public records that have been filed in court. Defendant continues to rely on *Weaver* to support their position, but *Weaver* does not authorize the release of non-public information. Instead, Defendant is requesting information and data, in the form of lists of nearly 50 years of cases either filed by the Department or reviewed for filing. (2nd Amend. Mtn. at p. 9-11.) For readily available public information, the Defendant can obtain public court information directly from the Fresno Superior Court Archives division. Indeed, some of the records requested might be public record, but here Defendant requests a slew of information about each defendant, including sentencing, criminal history, and plea-bargaining information, much of which is not contained in a document that has been filed in court. The disclosure of all this requested information would encroach on both significant government interests and the rights of third parties who have nothing to do with this litigation.

Further, the government has legitimate interests in protecting its official information (Evid. Code, § 1040) and requests for the jury notes, prepared by the Department would be considered privileged work product that the Department would not be required to disclose (Pen. Code § 1054.6.) Moreover, Penal Code section 745(d) does not authorize discovery of information that is privileged or protected by statute or constitution.

G.

THE DEFENSE MOTION IS UNTIMELY, AND NO GOOD CAUSE EXISTS FOR DELAY

Penal Code section 745(c) states A motion made at trial shall be made *as soon as practicable upon the defendant learning of the alleged violation*. A motion that is not timely may be deemed waived, in the discretion of the court. (Pen. Code § 745(c)). Defendant's motion was not made timely. While Defendant brings his motion in the post-conviction case posture, the rules of timeliness still apply.

The Racial Justice Act was passed in 2020. Defendant first filed his motion under the Racial Justice Act for relevant Data 745(d) on March 28, 2025. This motion was not made as soon as practicable, because Defendant's remittitur from the 5DCA was filed on August 29, 2022, remanding his matter back to the trial court. Then, Defendant waited nearly three years to make his motions under the RJA before this court. The first hearing on the remittitur was held on August 30, 2022. Hearings then occurred consistently thereafter for a period of several years.

Additionally, The Defendant became eligible to raise his claim by way of a petition pursuant to 1473 starting January 1, 2024. (Pen Code section 745(a)(j)(3).

Indeed, The Defendant had another pending habeas matter ongoing in 2024 which was denied in 2025. However, nothing about the Defendant's previous habeas matter would have precluded him from filing another Petition under the RJA.

All the facts defendant alleges in his RJA motion were available to counsel, as they pertain to alleged facts that occurred at trial. Further, to the extent that Defendant seeks additional data now to allege claims related to disparate charging or sentencing, these claims are also untimely for the same reasons as stated above- that this information was available both to defendant in 2022 when the remittitur was issued and then again in 2024 when defendant became eligible to file a petition pursuant to 1473. Now, since defendant's habeas petition was denied, and defendant is back before the court for resentencing on the 2022 remittitur, he seeks to raise these new claims. This court should deny the

motions in its discretion as not waived, since it was not raised as soon as practicable, upon the defendant learning of the alleged violation. (Pen. Code section 745(c).

H.

GRANTING THE MOTION MAY UNREASONABLY DELAY THE PROCEEDINGS

Because this motion can be disposed of summarily, it should not cause unreasonable delay of the underlying proceedings. To the extent this court were inclined to grant it, it would indeed cause an unreasonable delay. Defendant has previously sent the DA's office a PRA request which requested all information for the period of 1978-2025, name, case number all people charged with PC 187, all charges in those cases including special circumstances, race of defendant, race of victim(s), age of defendant at time and what sentence they received. (Exh. 1.) In response, the People informed Ms. Cock, due to exemptions and limited information available, even processing that limited request would take 60 days. (Exh. 1.) Defendant in his current motion seeks voluminous information beyond what was requested in the PRA, for a time period of nearly 50 years, and for data which would be unduly burdensome to collect, requiring the hand review of potentially thousands of files to produce a response to the request. As such, gathering the requested records would take an insurmountable amount of time, it could take several months or even years to fully execute Defendant's request, as written.

The discovery request in the instant motion is more extensive, spanning a larger period of time, and includes other information not previously requested, such as information regarding prior convictions. As explained *ante,* much of the requested information is not available electronically. Therefore, gathering the requested information would require hand searches through thousands of files to find the needle in the haystack answers to Defendant's inquiry. Additionally, just requesting CLETS requests for the potentially hundreds of cases to secure updated, fresh criminal histories is a task that would likely take months to accomplish. It would overwhelm staff at the Fresno County District Attorney's office to such a degree that it could negatively impact the administration of justice. It would require the dedication of many people over the span of many months, diverting them from their primary obligations, simply to respond to Defendant's discovery request. Not only would this be time consuming, but it would also be burdensome. This will be more fully explained below in the "Unreasonable Burden" factor.

I.

SEARCHING FOR, AND CREATING THE REQUESTED MATERIALS WOULD BE UNDULY BURDENSOME UPON THE DISTRICT ATTORNEYS' OFFICE

While much of the information requested can be available through a query search by the Department, many records prior to 1999 are not available electronically (Exh. 1). As such, to obtain much of the requested information could require searching through thousands of filings (and reviewing cases that were NOT filed), and reviewing all potential records for redactions, which would be an unduly burdensome task foisted upon the District Attorney's Office. The defendant's requested discovery order would require an extensive *investigation* into likely hundreds of cases by the District Attorney. Moreover, the request would then require the *compilation* of a new record that does not presently exist. First, the office would need to determine what, of the requested information could be electronically queried. Then, the office would need to determine if the information is not available electronically if it is available in a physical file. To determine whether a physical file exists would require indexing all the records potentially available, and determining their physical location, which is typically off-site. Then, for the physical records that do exist, determining if the requested information is within them, if the requested information is complete, accurate, and reliable. Then, if the requested information requires any redactions prior to release. Moreover, for the requested records, the Department would then need to undertake review of the criminal histories by securing fresh criminal histories from the Department of Justice and determining if the histories fall within the defendant's search parameters. Finally, after review of all the potentially disclosable records, the Department would have to compile a record that does not already exist pertaining to the manually reviewed filings, which could take months. Suffice it to say the requested order would be an untenable burden upon the District Attorney.

J.

DEFENDANT'S CLAIMS UNDEER 745(a)(3) AND 745(a)(4) ARE INSUFFICIENT TO SUPPORT A DISCOVERY ORDER UNDER 745(d)

In Defendant's motion, he seeks information spanning 50 years pertaining to individuals charged with murder, and those charged with special circumstances. (**3rd** Amend Mtn. p. 42-43.) Defendant also seeks training materials and policies from the same time period pertaining to capital prosecutions and how the Department makes "decisions" regarding the death penalty. (**3rd** Amend Mtn. p. 42-43.) In support of his motion, Defendant relies on several historical stories regarding general instances of racial bias.

Regarding defendant's potential claim under Penal code section 745(A)(3) or 745(a)(4), Defendant seeks broad data and records relevant to "prove a violation of section 745(a)(3)." (**3rd** Amend. Mtn. at p. 60.) Defendant claims that if the requested data will determine (1) whether Defendant was charged with a more serious offense than defendants of other races (2) whether there are differences in how the Department charges special circumstances against native American defendants compared to defendants of other races or ethnicities committing similar offenses, while being similarly situated to defendant and (3) whether there is a difference in how the Department requests the court impose death or LWOP sentences against Native Americans, compared with defendants of other races who committed similar offenses and are similarly situated to defendant. (**3rd** Amend. Mtn. at p. 61.) However, in support of his request for data, Defendant's claims fall short of a good cause finding.

And in fact, for Defendant's third claim, whether there is a difference in how the Department **requests the court** impose death or LWOP sentences, this information would be best obtained directly from the court- since this is information defendant seeks regarding what is requested by the Department at the time of sentencing. Arguably, under this theory, to show any type of disparity here would require seeking court records, not DA records.

The standard of plausible justification has been recently defined. In *Gonzales,* defendant, charged with a misdemeanor violation of Penal Code § 148(a)(1), sought disclosure under subdivision (d) of "a list of all arrest data between January 1, 2015 and December 19, 2022, relating to section 148 subdivision (a)(1) cases, including case numbers and names of those charged; their races, ethnicities or national origins; unredacted copies of the police reports from those cases; and the final disposition of each case." (*Gonzales v. Superior Court of Santa Clara County* (2024) 108 Cal.App.5th Supp. 36, 45.)

Toward that end, defendant filed a motion, which motion was accompanied by data from the Santa Clara County Public Defender's Office "showing 'that since January 1, 2018, there have been a total of 6,413 [d]efendants represented by the [Public Defender's Office] who were charged with violating [ ] section 148(a)(1) and 3,313 of those individuals are Latinx, making it 51% of individuals charged.'" (*Id.*) The motion also included references to the District Attorney's Office publication that the defendant characterized as recognizing disparities in the charging of violation of Penal Code § 148(a)(1). (*Id.*) The motion likewise made references to a scholarly publication that disclosed a consistent (over two decades) overrepresentation of Latinx defendants in misdemeanor arrests, when compared to the proportion of Latinx persons in the Santa Clara County population. (*Id.*)

During the hearing on the petitioner's motion, the court inquired of the Petitioner's counsel whether something beyond the statistics (the "what else" as the trial court termed it) was necessary to connect the petitioner's particular case to the articulated pattern of disparate treatment. (Id. at 51.) Counsel for the petitioner disagreed, arguing, as was later articulated by the Gonzales court, as follows:

> "[I]n Young, the only statistical data of racial disparities offered was statewide or out of county in scope, whereas the RJA requires such data to be by county, so that case-specific information—the 'what else'—was needed in that instance. She observed that evidence of racial profiling in the Young traffic stop was used to fill that evidentiary gap in specificity, but that such case-specific evidence was not required here because local statistics and data on racial disparities and inequities in the criminal justice system in Santa Clara County had been proffered to satisfy any needed specificity in the showing of a plausible justification." (Id. (italics added).)

The trial court denied the petitioner's motion, concluding that, absent case-specific information pertaining to the petitioner's arrest and prosecution, the statistical evidence alone was insufficient to satisfy the § 745(d) "plausible justification" requirement. (*Id.* at 53.) Following the denial of the petitioner's motion by the trial court, the petitioner brought a writ of mandate. (*Id.* at 52-53.) The reviewing court concluded that the trial court had abused its discretion and remanded the matter for the trial court to consider the application of the Alhambra factors, and to tailor its disclosure ruling. (*Id.* at 66.)

In reaching its conclusion, the *Gonzales* court found the logic in the *Mosby* decision to be instructive. (*Id.* at 62.) In particular, the *Gonzales* court noted that the *Mosby* court struggled with, but ultimately did not reach, the question of whether statistics alone were sufficient to satisfy the prima facie requirement. (Id.) In particular, the *Gonzales* court cited approvingly the *Mosby* concurrence, which

stated: "[s]tatistical techniques such as regression analysis can show that racial disparities exist even when one controls for various relevant characteristics, meaning that racial disparities exist among defendants who are similarly situated." (*Id.* (citing *Mosby v. Superior Court* (2024) 99 Cal.App.5th 106, 137.)) As the *Gonzales* court observed, "[i]t stands to reason that if the higher prima facie burden under the RJA can be met with statistical evidence alone, then the lower good cause showing required for disclosure under section 745(d) does not necessarily require comparative case-specific factors from the defendant's and other cases—the 'what else'—as the trial court seemed to require here for Gonzales to meet the threshold plausible factual foundation." (*Id.*)

Apparently approving of the petitioner's counsel's argument at the hearing on the § 745(d) motion, the *Gonzales* court went on to reason as follows: "it is logical to conclude that the racial profiling evidence [in Young] was needed to provide the 'specific facts' relating to a potential RJA violation as part of a plausible factual foundation because the statistical evidence showing disparities offered in that case was only statewide and out of county, not generated at the local, county level. Here, in contrast, Gonzales has offered local county data that can provide the 'specific facts' required for a 'plausible case' for RJA discovery." (*Id.* at 63 (italics added.) The court then summarized the record supporting its conclusions as follows: "(1) he is Latinx; (2) he has been charged with violating section 148, subdivision (a)(1) as a stand-alone offense; (3) according to the July 2021 United States Census, the population of Santa Clara County is 25 percent Latinx; (4) according to the People's own data . . . 68 percent of those charged with violating section 148, subdivision (a)(1), are Latinx; (5) [Public Defender's Office] data suggests some similar racial disparities or disparate impacts in the prosecution of charges for resisting arrest in Santa Clara County; and (6) Dylan Yep's opinion that these overall statistical disparities are likely not due to chance and could reasonably be attributed to bias in policing and/or prosecution." (*Id.*)

The *McDaniel* court reached a similar result in the case where the petitioner was one of five defendants charged with multiple offenses, including substantive offenses under Penal Code § 186.22(a) and the enhancement under Penal Code § 186.22(b), and proffered statistical evidence from the San Mateo County showing racial disparities in arrests, charging, and sentencing, supported by a declaration of and analysis by a statistician, Dr. Redbird, who concluded that the racial disparities in the data were "'substantial, which suggests observed outcomes result[ ] from at least some actual disparity,' rather than from methodological artifacts alone." (*McDaniel v. Superior Court of San Mateo County* (2025)

111 Cal.App.5th 228.) In reaching its decision, the McDaniel court expressly endorsed the approach of the *Gonzales* court. (Id. at 243-244.) *McDaniel* ultimately concluded that "[I]n seeking discovery, a showing could be met by *case*-specific facts, as offered in *Young.* Or, it could be met by specific statistical facts relevant to the charges and individuals involved, as in *Gonzales.* Or both. Neither the RJA nor *Young* requires any particular type of "specific facts." Nor do we. Rather, courts should focus on the relevance of the proffered facts to the claims of racial bias to determine whether a minimally plausible basis exists to grant discovery- a low threshold." (*McDaniel, supra,* at p. 244.)

Defendant asserts that obtaining a list of all people charged with murder in the last 50 years which identifies the race of those individuals will allow defendant to identify the set of individuals who committed a similar offense as Defendant but were not charged with the same charges. (**3rd** Amend. Mtn. at p. 44.) This broad, overgeneralization of the characterization of the data defendant requests fails to acknowledge how this information would demonstrate a potential violation as to *Defendant.* The evidence provided by Defendant falls below the standard in *McDaniel,* and *Gonzales.* First, as "evidence" Defendant asserts several incidents of general racism, as mentioned above, to support his claim. General racial profiling, and general racism, does not reach a good cause showing, as stated in *Gonzales* or *McDaniel.* Defendant's general assertions begin on page 15, where he asserts that in 1958, the KKK rallied against the Lumbee tribe in northeastern North Carolina. (**3rd** Amend. Mtn, p. 15.) While reprehensible, Defense fails to establish how the Lumbee tribe in northeastern North Carolina bears relevance to the Defendant. Was he a member of this tribe? Were there members of this tribe in Fresno who were charged with murder? These case-specific distinctions are what impart relevance to Defendant's assertion; they are absent.

Defense tries to advance his theory by asserting that the proverb "the only good Indian is a dead Indian" with an unknown author promulgated deep racism. (**3rd** Amend. Mtn. p. 16.) Unfortunately, this statement likely did contribute to racism. But where is the case specific relevance, as required per *Young,* to Defendant's claim under Penal Code section 745(a)(3) or (a)(4)? Defendant continues with other similar occurrences: a toast made by Major James Norris in 1779, a New Yorker Cartoon, "Drunken Indian Phrase," the genocide from the 1800s. (**3rd** Amend. Mtn. pp. 17-18.) Defendant also uses, in support, to explain the KKK activities in Fresno County in the 1970s and 1980s, as well as the Yokuts valley name change, and clovis high discrimination issues. (**3rd** Amend Motion at pp. 25-27.) While all significant historical items with horrible implications, they do not rise to the standards defined

in pertinent cases that deal with establish good cause.

Defendant cites to several incidents around Fresno County as evidence that Defendant's death sentence was 'influenced by his race.' (**3rd** Amend. Mtn. at p. 25-27.) Defendant cites in his motion to incidents related to missing persons, school mascots, and name changes, and the KKK, but he has failed to present any evidence about how these support a potential claim under Penal code section 745(a) *as to him*. The incidents and articles he asserts are undisputedly unrelated to the defendant. Aside from merely providing examples of random incidents involving Native Americans, Defendant has failed to show how these incidents offer support for his claim that he is entitled to discovery related to a potential violation that he was charged or sentenced more harshly than similarly situated individuals. (Pen. Code §745(A)(3) & (4).) Defendant also includes, under the section of "history of discrimination," a brief synopsis of the procedural history on the "Dickey Double Murder case." (**3rd** Amend. Mtn. p. 47.) Aside from a recitation of the factual and procedural outcomes of that case, Defendant again fails to address how that case provides a plausible justification for the requested discovery related to Defendants' *potential* claims of racial bias against *him.* (Pen. Code section 745(a).)

In *Young*, the court held that it would be insufficient for the defendant to rely merely on the defendant's race to establish even a plausible justification. "[I]f Young indeed argued nothing more than that he is a black person who was charged with felony possession of Ecstasy for sale—the court would have been right to deny his discovery motion." (*Young, supra*, 79 Cal.App.5th at p. 161.) And while it is true that Young put forward statewide studies showing that black drivers are more likely to be stopped by police than other racial groups, there was still a particularized nexus to Young's discovery request to establish the threshold plausible justification: "the circumstances of the traffic stop leading to Young's arrest suggest the traffic stop here was racially motivated." (Id.) In other words, there was at least a particularized allegation unique to Young's claim that he was being treated disparately on account of his race.

The *McDaniel* court was careful to point out that even in the absence of case-specific facts, some specific statistical facts relevant to the charges and individuals could be used to satisfy a plausible basis exists to grant discovery. (*McDaniel, supra,* at 244.) However, even the statistics proffered by defendant fall way below the minimal requirement for a plausible justification. For example, Defendant provides on page 19 a graph showing "Disproportionate impact on California Death row, discrimination against "people of color." (**3rd** Amend Mtn. at p. 19.) While the threshold showing is low, the generalization that

"people of color" are disproportionately represented on California Death Row is not specific enough. Defendant claims that he, as an American Indian was disproportionately charged and convicted due to his race, particularly those charged with special circumstances. (**3rd** amend Mtn. p. 62.) Yet in another infographic, only individuals convicted of homicide, and more specifically "people of color" are represented (**3rd** amend Mtn. p. 20.) Finally, another infographic is provided that specifically shows 2% of those serving LWOP are American Indians. Yet, this small amount, as compared with the other percentages, does not appear to be disproportionate. (**3rd** amend mtn. p. 20-21.) Defendant's use of "people of color" to establish a disparity is not enough to show a plausible justification for discovery under guiding law and the standard defined in 745(a)(3) and 745(a)(4). And taking it a step further, the charts fail to address bias or animus in the charging or conviction of *Defendant.*

Additional evidence he proffers that is also not relevant to his claims include the article on Fresno County maternal mortality rate for Native American women at p. 26, and the article regarding 400 white supremacists living in Owen Valley, an area of Los Angeles County at page 23. Defense also addresses that racism was prevalent in law enforcement as evidenced by yearbooks that were addressed. (**3rd** Amend Motion, p. 28.) Even the prevalence of general racism, which this prosecutor does not condone, as well as the fact that the employees of law enforcement may have predominantly been white, Defense still needs to establish a nexus for production of the requested discovery, that are pertinent to his claims under 745(a)(3) and 745(a)(4).

While extreme racism may exist (and even, unfortunately, persist) in a particular county amongst a group of individuals, general racism does not establish a plausible justification for the requested discovery. And unlike *McDaniel,* Defendant does not proffer any statistical analysis by an expert showing a potential disparity either. Defendant claims to that have hired and consulted with an expert on this, however that expert does not opine on any of the information presented by defendant in his Motion. Defense states "consultation with Professor Beth Redbird, of Northwestern University confirms that a rigorous disparity is *possible* but requires access to the discovery requested herein." (emphasis added, **3rd** Amend. Mtn. p. 46.) In *McDaniel,* Dr. Redbird concluded there was a "robust" disparity in connection with section 664/187 charges versus those incarcerated for such offenses. (*McDaniel, supra,* at p. 245.) Here, Defendant has not provided either a declaration or even a strong suggestion (more than a possibility at least), that a disparity exists in charging of American Indians for murder with special circumstances by the Fresno District Attorney's office. Defendant's only claim is that this is *possible*.

(3rd Amend Mtn. p. 46.) As such, Defendant has not established a plausible justification for the requested discovery.

Defendant requests a broad scope of discovery from the Department including but not limited to lists of data involving other individuals charged with homicide, special circumstances, and gun charges over the last 50 years. Defendant has failed to establish a nexus between the charges in other defendant's cases with his own. Defendant has also failed to proffer statistics that can be taken either in combination with specific facts, or on their own, consistent with relevant authority on the issue. (*McDaniel, supra,* p. 244.) Further, Defendant's reference to "Clovis High discrimination," "Fresno High mascot," "Fresno native American mortality rate" and "Yokuts valley name change" (3rd Amend. Mtn, pp. 26-28.) has nothing to do with the charging or sentencing objectives at the Fresno DA's office, nor would any of the requested data establish such a connection. Defendant's claim that his "death sentence was influenced by racial bias against him as an enrolled member of the Monache Tribe," is conjecture. (3rd Amend. Mtn. at p. 79.) Defendant fails in his attempt to establish the required nexus between these articles and how they are relevant towards a potential claim as to him under Penal Code section 745(A)(3)/(4), and thus, form the basis for the requested discovery. As Defendant has not established any plausible justification for his discovery request, he has also not established "good cause" for the production of any of the discovery requested. Defendant's motion should be denied.

4.

STATEMENT OF FACTS RELEVANT TO THE RJA DISCOVERY MOTION[4]

According to the defendant, "data and records that defense seeks" will determine whether the District Attorney charged Defendant with a more serious offense than defendants of other races, that there exists a significant difference in how the Fresno DA's office charges special circumstances murder against Native American Defendants compared with defendants of other races or ethnicities who committed similar offenses and are similarly situated to defendant, and there exists a significant difference in how the Fresno DA"s office requests the court to impose LWOP or death sentences against Native American defendants compared to defendants of other races or ethnicities who committed similar

[4] Statement of Facts is taken directly from the Attorney General's Respondent's Brief "Argument" section titled "A. Background" filed on September 7, 2023. For the purposes of this summary the original footnotes have been removed.

offenses and are similarly situated to Defendant. (**3rd** Amend. Mtn, at p. 44.)

5.

DEFENDANT'S SPECIFIC REQUEST FOR DISCOVERY

A) Defendant's Requested Discovery

From the Fresno District Attorney's Office (the Department), the defendant requests the following data and information[5]:

Case Data Request

2. For the time period of 1/1/1972 through the present date, a list of all cases where an individual was charged, at any point, with murder. (Second Amended Motion under Penal Code section 745(d) (**3rd** Amend. Mtn.), at p. 12.)
3. For the time period of 1/1/1972 through the present date, a list of all cases that were reviewed for potential filing of special circumstances under Penal Code section 190.2 where the District Attorney declined to file special circumstances. (**3rd** Amend. Mtn. at p. 12.)

For requested items #1 and #2, Defense requests the following information:

a. List of All Defendants
    i. Including the date of the offense, race, gender (if known), birth month/year and court case number
b. List of All charges filed
    i. Including the date they were filed and all enhancements and special circumstances
c. List of all cases where death penalty sought
    i. Including whether it was sought, imposed, and whether it was later dropped.
d. List of co-defendants and related charges
    i. Including all defendants charged in related incidents not limited to Section 187 filings
e. List of disposition for all charges
    i. Including all enhancements, special circumstances, specifying whether

[5] The requested items in the **Third** Amended Motion at pp. 12-13 have been summarized and re-ordered, however, the People have not changed the numbers for the respective requested items from the **Third** Amended Motion, so that there is clarity in addressing the requested items in this response.

resolved via plea, trial, dismissal, etc.

f. All local charges
    i. including any misdemeanor or felony charges substantiated by plea
    ii. or conviction.

g. List of prior charges and convictions
    i. Including juvenile and adult convictions known to the District Attorney, with corresponding dates, counties, case numbers and statutes relevant to sentencing enhancement (e.g., three Strikes Law).

h. Investigating agency information
    i. Name of investigating agency
    ii. Date of alleged incident
    iii. Gender, age and race of victim
    iv. Incident ID number and any related report numbers or booking numbers

Defense also makes a request under 745(d) for various policies and procedures within the Fresno County District Attorney's Office. (**3rd** Amend. Mtn. p. 12.) They are repeated here:

Policies & Training Materials Request

4. Defense requests any office policies during the years 1972-2025 regarding the decision to pursue the death penalty, including:
    a. Factors considered
    b. Decision makers involved
    c. Precautions against racial bias
    d. Dates of adoption, amendment or repeal of such policies

5. Defense requests any policies in the office of the Fresno County District Attorney, written or informal, during the years 1972-2025, relating to the promotion of prosecutors who tried capital cases, including incentives for obtaining death verdicts.

6. Defense requests all training materials, written or informal, from 1972-2025 regarding capital prosecutions that include any discussion of consideration of race, religion or national origin, including:

a. Written handout
b. Training binders
c. MCLE materials
d. Digital Resources (CDs/DVDs)

Additional Case Data Requests

7. Defense requests all cases where the District Attorney's Office secured a special circumstance conviction which resulted in a death sentence.

8. Defense requests all cases where the District Attorney secured a special circumstance conviction resulting in a sentence of life without the possibility of parole.

9. Defense requests all cases where, after a penalty phase reversal, the District Attorney retried the defendant and again sought the death penalty, including the race of the defendant.

10. Defense requests all cases where there was a penalty phase reversal, including:

a. The post-reversal action taken (retrial, dismissal, resentencing)
b. The race of the defendant
c. Time served at the time of post-reversal disposition.

11. Defense requests that the Fresno County District Attorney produce for an in camera review by the Court any and all notes and other information during jury selection, including juror *voir dire* during defendant's second trial in 1983, and to release to defense counsel any information relevant to a potential claim under the CA Racial Justice Act, Penal Code section 745.

12. Defense requests any information, whether written or oral, indicating that a judge, attorney, law enforcement officer, or juror involved in Douglas Stankewitz's case exhibited bias or animus toward Mr. Stankewitz because of his race.

Finally, regarding their request, defense has included clarity in the form of definitions to provide specifications, which includes:

A. Defendant Identification: Defense requests that the data be anonymized, with a unique defendant ID number, such as XREF. If provided, the names will be used to remove any duplication from the data and then destroyed, in keeping with best practices of social science research.

B. Defendant Race: Defense requests demographic information, including race and ethnicity (e.g. 'Chinese' or narrower cultural designations). Also, Indigenous status or tribal membership and national origin, if known.

C. Defendant Date of Birth: Defense requests the defendant's birth month and year. Full birthdates are not required. If only age is provided, the specific reference date for the calculation (e.g., date of incident, arrest, charge or disposition) must be specified.

D. Charges: Defense requests a list of all charges, delineated by defendant (using either name or ID number), along with the dates charges were filed. This includes:

a. Charges in the initial complaint

b. Charges added after probable cause determinations

c. Charges submitted to the jury.

Where applicable, information distinguishing between misdemeanors and felonies, or between degrees (e.g., first vs. second-degree murder), must be included. Defense also requests that non-literal string matching (e.g., regex search) be used to identify charges where database inconsistencies or variations in statutory labeling may exist.

E. Case Dispositions: Defense requests the disposition for each charge, including but limited to outcomes such as 'dismissed', not guilty', and 'guilty' 'plea' and 'half-time dismissal', to ensure accurate measurement and prevent double-counting.

F. Co-defendants: Defense requests identification of all individuals alleged to have engaged in criminal conduct in connection with each homicide incident, even if they are charged under separate case numbers. To facilitate this, defense requests an incident identification number or other linking internal number that is used internally or by law enforcement agencies.

6.

WHAT THE DISTRICT ATTORNEY ACTUALLY HAS IN ITS POSSESSION

Data Requests (items 2-3, 7-10)

Item 2 subds (a)-(h), Item 3 subds (a)-(h), Item 7, Item 10

In requested items 2-3, and 7-10, defendant requests information in the form of lists, for a time period of over 50 years, from 1972-present. (**3rd** Amend. Mtn. at pp. 12-13.) As a threshold issue, the Department does not have any readily available lists with the requested information.

While the Department does not have the lists as described above, the District Attorney's office uses an electronic database called "eProsecutor." This management system became functional in 2019. The primary purpose of this management system is for case management and workload distribution, and to share and store case information across the District Attorney's office. Over the years the capability has been developed to be able to design a query within our eProsecutor case management system to retrieve data from designated fields within the system. A query, designed to retrieve information from before 2019, would entail a separate search of both the old and new management systems. What fields of information were created has evolved over time. Historically, there have been no specific requirements for data collection. So, to the extent we were able, we have attempted to create fields most helpful to the prosecution of crimes. But the information entered has changed over time and the data entry has been lacking in uniformity and consistency. As a result, the information that we can retrieve can be inaccurate and be of varied reliability. While the information can serve our Office interests well, the information was not intended for statistical or certifiable record purposes. Moreover, because the database was designed for application related to the prosecution of a cases, rather than as an informational archive, there are many instances where the information being sought is inconsistently recorded and available. While we do not possess stand-alone, readily available records responsive to these items sought by the defendant, eProsecutor does have the ability to generate ad-hoc reports of certain data, provided it is initially tracked as a data point.

Regarding defendant's request for information on cases from the time period of 1972 to present (items 2-3, 7-10, **3rd** Amend Mtn. at pp. 12-13), the data that has been stored electronically varies dramatically given the time period. As explained in the February 24, 2025, PRA response (Exhibit 1), our electronic case management system relies on data entered by different staff on various occasions on cases since 1999. The data from cases before 1999, as early as the late 1970s was previously stored in a separate system, and while some of the information was transferred over to eProsecutor when the conversion occurred, much of it was not. As such, only limited information is available by query for cases between 1978-1999. Very limited information is available prior to 1999; generally, only the lead charge, age of the defendant and court number have been stored electronically for these cases. Some race information of the Defendant, and the victim may be retrieved to the extent that it has been electronically stored.

To the extent that defendant seeks information from the Department that might be available in any physical file, this would require complex indexing to determine if any of the potentially hundreds of files falling within the parameters of their request from the time period as early as 1972 still exist, as they are generally stored off-site. Then the review of these files could take several months to accomplish. The files, in whatever condition they are in, may be incomplete and the information contained within them may not be accurate, requiring verification through other records, such as court records. This extremely extensive hand-search for the requested information through hundreds (or even thousands) of cases would be overly burdensome and could take months to accomplish given the lack of time and resources dedicated to staffing to achieve this task.

For cases occurring after 1999, while the Department could generate a query for data that is stored as a data point, the accuracy and reliability of the result depends on many factors. The more complex the query becomes, the more time consuming. Some queries, depending on the information requested, could take weeks if not months to produce. And because the system was not designed to retrieve all possible categories, it's possible that some information exists, but cannot be retrieved with reliable accuracy. This would result having to manually retrieve and hand-search tens of thousands of case files to search for information which may or may not fall within defendant's search parameters.

(a) List of all Defendants charged with Sect. 187, including date of the offense, race, gender, birth month/year, and court case number:

Regarding Defendant race, defense requests demographic information, including race and ethnicity (e.g. 'Chinese' or narrower cultural designations.) (**3rd Amend Motion,** p. 10.) Ethnicity and Country of Origin are categories of information that are not stored within the people's case management system, and, thus, cannot be retrieved. To the extent that Defendant seeks "narrower" cultural designations, indigenous status or tribal membership, this information is simply not available.

To the extent that this information might be located and retrieved it would involve the review of each individual police report to determine if law enforcement included this information in the report. It is additionally highly *unlikely* that the police reports contain ethnicity, cultural information, and country of origin information.

While general race designations may be available if entered in the electronic system, however, may not always be retrievable on cases prior to 1999. Race is available as a data point that is retrievably by a query by our case management system. However, race codes are provided to the Department by law

enforcement using the codes and descriptions set forth in the California Department of Justice Disposition Reporting Guide (JUS 8715/8716), without additional verification by the Department. Therefore, there is potential in the entries for transcription error, source error, and omission error in any query. An individual's race is available in some instances, but it is not available in many.

The Department's case management system does not store a defendant's age as a data point which can be retrieved. The date of birth or age of uncharged 3rd parties has no bearing on their race, the charges in their case, or their case outcomes. Neither did the defense demonstrate a plausible justification associated to the age of the accused. Further, the people object to providing this based on the concern that providing a combination of personal identifying information along with the defendant's demographic information would improperly disclose criminal history information that could be used to identify the holder of the record, in violation of state law. Pen. Code, §§ 11141, 11142, 13300-13303; *Westbrook v. County of Los Angeles* (1994) 27 Cal.App.4th 157, 164-166; see *American Civil Liberties Union Foundation v. Deukmejian* (1982) 32 Cal.3d 440, 450 ["Not only names, aliases, addresses, and telephone numbers must be excluded, but also information which might lead the knowledgeable or inquisitive to infer the identity of the individual in question"].)

Moreover, the People additionally object to providing defendant's age (or month/year of birth) because this is not a data point that is readily available in the case management system. An order to provide age would require the People to conduct a calculation involving date of birth at the time of filing for each case, to produce an answer and, thus, result in the creation of a record that does not already exist. Further, the Department's case management system does not have a way to retrieve only the birth month and year of any given individual. Here, it is important to note that nothing in Penal Code § 745(d) requires the People to compile a record they do not already possess. (Penal Code § 745(d) (stating "in the possession of control of the state.")) Accordingly, this is information that is easily accessible to the defense. (*See In re Littlefield* (1993) 5 Cal.4th 122, 135; *People v. Superior Court* (2000) 80 Cal.App.4th 1305, 1318-1319.)

(b) <u>List of all charges</u>

Further, as to all homicide cases from 1972 to present, Defense requests a list of all charges, at the initial complaint stage, charges added after probable cause determination and charges submitted to the jury. (**3rd** Amend. Mtn. at p. 10-11.) While the lead charge may be available through a query, any amendments, or charges submitted later, would not be. Even on more recent cases occurring after 1999, an amendment may not be captured in the electronic system because an amendment to a complaint may

occur in court and may not always added into the electronic system after. Additionally regarding "charges submitted to the jury" while the electronic system can capture current charges stored, previous charges are not stored with any consistency. Also, defendant requests, under the "charges" section, that non-literal string matching (e.g., regex search) be used to identify charges where database inconsistencies or variations in statutory labeling may exist. (**3rd** Amend. Mtn, p. 11.) In other words, they are requesting the Department conduct a flexible pattern-based search for its data. Unfortunately, the Department is unable to perform this type of search.

(c) <u>List of all cases where death penalty is sought</u>

In this section, Defendant seeks a list of cases where the death penalty was sought for a period of 50 years from 1972-2025. The designation seeking cases were the prosecution "sought" the death penalty, is simply not available in the Department's case management system.

California rule of court 8.613 designates that in any case where death penalty may be imposed the prosecution notifies the responsible judge that it intends to seek the death penalty. This information is entered by the clerk into the court file. (Cal. Rules of Court 8.613(b).)

It is unknown whether a notice was filed in every case or what notification system the Department employed dating all the way back to 1972. The only way to verify this information would be to first query all cases from 1972 to 2025 where the Department charged 187 with a special circumstance pursuant to section 190.2(a). Then for each case, for which there would likely be thousands of results, manually review each individual file to determine if such notice was made.

From 1972-1999, enhancements were not entered in the case management system. Therefore, it would not be possible to isolate cases where specials were filed pursuant to 190.2. Instead, all the Department would be able to query would be all cases where 187(a) was the primary charge. Then, the Department would have to determine if any physical file existed (usually stored in a location off site) for each respective case, and conduct a manual search of each individual file, which might be several boxes for each case, to attempt to locate any time of documentation that indicates that the Department sought death.

As explained above, locating a list of cases where the death penalty was sought for cases that span over a period of 50 years would be an insurmountable burden, and a task that would likely take the department several months to accomplish. And even these searches might not produce accurate results.

Given the fact that the any notice to seek death is filed in the court's management system, this

specific information is likely to be more readily available from the court through archives searches.

(d) List of co-defendants and related charges: including all defendants charged in related incidents not limited to section 187 filings

Defense appears to request, for a period of over 50 years, 1972-present a list of all co-defendants and "related charges." As will be described in more detail below, this request is not adequately described. What information is the Department supposed to provide, how does the Department determine if a case is "related." Not to mention this would likely entail an insurmountable task of reviewing hundreds of reports to see if there are "related" incidents, the Department would have to make its own subjective determination of what it believes is "related" for this inquiry. In essence, this request requires the Department to do the work of Defendant's own attorneys. Further, this raises third party confidentiality concerns regarding "all defendants charged in related incidents not limited to Section 187 filings." Defense appears to request a catalog of all connected criminal activity; this is a very subjective determination which would require the prosecution to review every homicide case since 1972 to determine that criminal acts were "related" each homicide incident and then determine if those are potentially responsive to the request. While the Department may be able to identify charged co-defendants, the Department does not have a record consistent with this request.

(e) List of Disposition for all charges: Including all enhancements specifying whether resolved via plea, trial, dismissal, etc.

Defense request disposition information, otherwise known as sentencing information for cases for a period of over 50 years. Not only is this information 3rd party confidential information, but there are also significant restrictions carrying legal liability for the unlawful dissemination of such information. (See Pen. Code, §§ 11140, subd. (b), 1141, 11142, 13302, and 13303; see also *Westbrook v. County of Los Angeles* (1994) 27 Cal.App. 157, 164-166 and 89 Ops.Cal.Atty.Gen.. 204, 2015 (2006.) Further, because of the time period of this request, much of the requested information is likely not electronically stored, and not available by a query. To the extent that information might be retrieved, it would greatly vary in accuracy. **The best and most accurate source of disposition or sentence information is the Court.**

Like other information stored in the eProsecutor, all sentence and case disposition information is stored within the "case notes" section of eProsecutor. Because this information is not court generated and is manually inputted by the handling attorney, this information is considered work product and is privileged

and not required to be produced under the Act. (Code of Civ. Proc. 2018.010; Pen. Code section 745(d).) Moreover, since the sentence information stored in eProsecutor is the attorney's own interpretation of the sentence, and not direct court information it may be inaccurate or incomplete.

Additionally, this request is overbroad. Regarding "dispositions" does this information include possible resentencing? To what level of detail is this information being ordered? Sometimes a case can return to court on a violation of probation, or a re-sentencing, or probation modification, which is not always saved in the system electronically. There could be several "dispositions" from a single case, which might, in some cases, require a manual review of possibly hundreds of cases to determine what the ultimate sentence imposed was.

(f) <u>All local charges: including any misdemeanor or felony charges substantiated by plea or conviction</u>

In this section it appears defense is requesting the criminal histories of ALL individuals for a period of over 50 years, 1972-present for those charged with Section 187. Not only is this information 3rd party confidential information, but there are significant restrictions, carrying legal liability for the unlawful dissemination of such information. (See Pen. Code, §§ 11140, subd. (b), 1141, 11142, 13302, and 13303; see also *Westbrook v. County of Los Angeles* (1994) 27 Cal.App.157, 164-166 and 89 Ops.Cal.Atty.Gen.. 204, 2015 (2006.) Further, this request is so broad, the People cannot reasonably comply. For example, regarding "all local charges", what convictions do the People produce, and for what time period of each individual? Is it all convictions, including misdemeanors and infractions, such as speeding convictions? Juvenile priors, which are subject to the disclosure mechanisms under Welfare and Institutions Code § 827? eProsecutor, in most cases, only stores local (Fresno County) convictions, and the information that is stored is only based on what has been manually inputted by an attorney or a staff member, which can oftentimes be inaccurate based on manual data entry error. Additionally, these entries are often incomplete because information is only entered (manually) when it's needed or discovered. And even then, the eProsecutor system does not have any built-in queries to pull criminal convictions. Other than running hundreds of fresh criminal California Law Enforcement Telecommunications Service (CLETS) inquiries through the Department of Justice—for the hundreds of individuals charged with requested crimes—we do not have "reasonably available" criminal history information for these individuals. Thereafter, the task of redacting every CLETS received by DOJ is an unsurmountable task that would take extensive staff resources and time to complete. Based on the above, and the primary concern of turning over third party

confidential criminal conviction information.

Item 7, 8

The Department does not have a readily available list of information specifically containing this requested information. As explained in the Departments February 24, 2025, CPRA response. (Exh. 1.) The request in items 7 and 8 seems to be the most similar to the CPRA request by defendant, except in Defendant's motion, he requests the sentence information separated. For example, in addition to all cases where special circumstances were alleged, defendant seeks to know, those which resulted in a death sentence (Item 7), those which resulted in a sentence of LWOP (Item 8). As explained above, the disclosure of sentencing information along with the specific identifying information including but not limited to date of birth, race, other charges and criminal histories, may implicate criminal penalties in its disclosure. There are significant restrictions, carrying legal liability for the unlawful dissemination of such information. (See Pen. Code, §§ 11141, 11142, 13302, and 13303.) And to the extent that sentencing information is tracked, it is often inconsistently stored and collected, and not as accurate or reliable as court records.

Item 9, 10

In these requests, defendant seeks all cases where, after a penalty phase reversal, the defendant was retried and again sought the death penalty, including the race of the defendant. (Item 9.) Additionally, for each of the cases where the penalty phase was reversed, defendant seeks the post reversal action, the race of the defendant, and the time served at the time of post-reversal disposition. (Item 10.) As explained above, the Department does not have an easy, or reliable way to search whether the Department "sought death" on cases from 1972- 2025. Further, even if the Department could isolate this information, which could take several months, the Department does not maintain a field entry that stores "case reversals", what post reversal action could have been, and then time served after the post-reversal action.

While sentence information is generally stored, there are significant restrictions, carrying legal liability for the unlawful dissemination of such information. (See Pen. Code, §§ 11141, 11142, 13302, and 13303.) But even assuming this information might be stored, the Department does not track any data point regarding "resentencing" under any code section. It is more likely that any appellate information, reversal, or re-trial information would be stored within the attorney's personal case notes of any given case. The dissemination of anything contained within case notes, is inherent work product,

and privileged. (Code Civ. Proc. § 2018.030(a) "A writing that reflects an attorney's impressions, conclusions, opinions, or legal research or theories is not discoverable under any circumstances."; Pen. Code § 1054.6 "Neither the defendant nor the prosecuting attorney is required to disclose any materials or information which are work product as defined in subdivision (a) of Section 2018.030 of the Code of Civil Procedure, or which are privileged pursuant to an express statutory provision or are privileged as provided by the Constitution of the United States." Even assuming this court were to require the people to attempt to segregate information, it would require the manual review of thousands of cases for a period of over 50 years to determine very specific subjective inquiries related to appellate process, trial procedure, and potential resentencing at very specific statutory posture (post-death penalty phase.) This would be an insurmountable task that would take several months to accomplish.

Item 3

Defendant requests "all cases reviewed for potential filing of special circumstances under Penal Code section 190.2, where the district attorney "declined to file special circumstances." (3rd Amend. Mtn. at p. 12.) Information regarding whether a case is recommended or not recommended to another attorney for filing is simply not stored in the electronic system to be queried. To determine whether a case was reviewed for potential filing, would require the manual review of thousands of cases to determine if special circumstances were not thereafter filed. Not only would this task be unduly burdensome, it's also highly unlikely that this information was stored in a way that could be retrieved or accessed, or even if the information stored was reliable.

And if it were, cases that are reviewed and not filed, as well as any discussions whether to file any given case is privileged attorney work product. Any legal or practical reasons applied to a charging decision of the prosecutor is traditional work product, regardless of the form in which they are maintained by the Department. (Pen. Code § 1054.6 and as defined in subsection (A) of Section 2018.030 of the Code of Civil Procedure.) While the Racial Justice Act may mandate discovery, it does not require the people to produce privileged information.

Policy Requests

Item 4

In this item, defense requests any office polices during the years 1972-2025 regarding decisions to pursue death including: (a) factors considered (b) decision makers involved (c) precautions against racial bias and (d) dates of adoption, amendment, or repeal of such policies.

The Department does not have records of policies for the time period of 1972- 2010, or 2012-2014 Regarding the years 2011, 2012, and 2015 to the present, the Department does not have any record that contains a written formal policy regarding decisions to pursue death, which include any of the subcategories (a) through (d) of Defendant's request. Therefore, the Department has nothing further to provide on this item.

Item 5

Regarding item 5, any policies in the office of the Fresno County District Attorney, written or informal, during the years 1972-2025, relating to the promotion of prosecutors who tried capital cases, including incentives for obtaining death verdicts (2nd Amend Mtn. at p. 10), the Department has no responsive record. The Department has nothing further to provide on this item.

Item 6

In item 6 defense requests all training materials, written or informal, from 1975-2025 regarding capital prosecutions that include discussion of considerations of race, religion, national origin including (1) written handouts (b) training binders (c) MCLE materials and (d) digital resources. Notwithstanding the extremely burdensome and extensive nature of searching for over 50 years of "training materials" related to the prosecution of capital cases that include "any discussion of consideration of race, religion or national origin in any aspect of these prosecutions", such a request would require searching within records of hundreds of people who have been employed within the Department for the past 50 years; it would be virtually impossible. Not to mention the fact that a subjective review of these records to finding records which "discuss race, religion or national origin in any aspect of prosecution" would take weeks, if not months, and require the redaction of likely the majority of the training materials due to it being attorney work product, since it bears on the deliberative process of a prosecutor. Notwithstanding the near impossibility of responding to this request, as will be explained below, defendant has failed to show how discovery related to training materials of members of this office for the *last 50 years* might

relate to bias or animus toward the defendant.

Further, any trainings that include "discussions of considerations" of any kind are work product and not required to be produced by the act. (Pen. Code section 745(d).) (Code Civ. Proc. § 2018.030(a) "A writing that reflects an attorney's impressions, conclusions, opinions, or legal research or theories is not discoverable under any circumstances."; Pen. Code § 1054.6 "Neither the defendant nor the prosecuting attorney is required to disclose any materials or information which are work product as defined in subdivision (a) of Section 2018.030 of the Code of Civil Procedure, or which are privileged pursuant to an express statutory provision or are privileged as provided by the Constitution of the United States.")

Regarding the request for trainings that pertain to capital prosecutions that discuss race, religion, or national origin, the Department does not possess training materials specifically on this topic. And, to the extent that the Department might possess training materials that mention capital prosecution, or race issues, it would involve the review of thousands of pages of training materials. And then it would require the redaction of all privileged information. This would be an inquiry that would be akin to locating a needle in a haystack.

It is an accurate statement by Defense in their reply (Exh. 31h to the **3rd** amended Motion at p. 31.) that all training materials from 2015 through 2022 were provided to the ACLU by way of a request pursuant to the Public Record Act. While the Department provided all training materials, all were redacted for privileged and work product information. Nonetheless, these materials are indeed public and can accessed by defense on ACLU's website.

Miscellaneous Requests

Item 11

Defendant has requested in Item 11 "any and all notes and other information during jury section, including juror *voir dire* during defendant's second trial in 1983." (**3rd** Amend. Mtn. at p. 13.) Any notes made during jury selection are considered attorney work product. (Pen. Code § 1054.6 and as defined in subsection (A) of Section 2018.030 of the Code of Civil Procedure.) Additionally, Evidence Code section 1040, the "Official Information Privilege" would be directly applicable to the items requested here, if they existed. Moreover, Penal Code section 745(d) does not authorize discovery of information that is privileged or protected by statute or constitution.

As will be explained in the People's opposition to Defendant's claim under Penal Code section

745(a)(2), defendant has failed to establish "good cause" for retrieval of the prosecutor's notes during jury selection, or how it might relate towards bias or animus towards the defendant during defendant's jury selection.

Item 12

In this item, Defendant seeks all information about the internal recommendation sentencing process including the criteria used for making sentencing recommendations. This is an extremely broad request that requires clarification. For example, is defendant seeking all internal sentencing recommendations for the last 50 years, or something else? Is he seeking sentencing recommendations for all cases (misdemeanor, and felony) or homicides? Not only is this request broad, but, as will be explained below, Defendant has failed to establish a plausible justification for this information.

Item 13

Finally in Item 13, defendant has requested any information, whether written or oral, relating to an instance in which a judge, attorney, law enforcement officer, or juror involved in defendant's case exhibited bias or animus toward defendant because of his race (**3rd** Amend. Mtn at p. 11). This inquiry calls for a legal conclusion, not discovery. And to the extent that they are requesting such materials from the Department, the Department does not have any information where bias or animus was used toward defendant in violation of Penal Code section 745(a).

CONCLUSION

Based on the foregoing argument, the People respectfully request that this court deny the defendant's request for the non-existent and privileged records. Defendant has failed to state a plausible justification for the records, and as a result has not established good cause. This motion should be denied.

DATED: April 10, 2026.

Respectfully submitted,

LISA A. SMITTCAMP
District Attorney

By: _____
Elana Smith
Senior Deputy District Attorney
Attorneys for Plaintiff

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF FRESNO:

I am employed in the County of Fresno, State of California. I am over the age of 18 and not a party to the within action; my business address is FRESNO COUNTY DISTRICT ATTORNEY'S OFFICE, 2100 Tulare Street, Fresno, California 93721.

On April 10, 2026, I served the following document described as:

PEOPLE'S OPPOSITION TO DEFENDANT'S THIRD AMENDED MOTION FOR RELEVANT DATA UNDER THE RACIAL JUSTICE ACT

On the interested parties in this action:

J. Tony Serra & Curtis Biggs, jt@pier5law.com Briggslawsf@gmail.com

Peter M. Jones, pjones@wjhattorneys.com

Marshall D. Hammons, marshall@esilverlaw.com

[ ] MAIL
[] FAX
[ ] HAND DELIVERY
[X] EMAIL

__X__ **(State) I** declare under penalty of perjury under the laws of the State of California that the above is true and correct.

_____ **(Federal) I** declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on **April 10, 2026,** at Fresno, California.

F. Rendon-Zamora

Francisca Rendon-Zamora,
Sr. Legal Assistant