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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 SECOND AMENDED MOTION FOR RELEVANT DATA UNDER THE RACIAL JUSTICE ACT (Pen. Code, § 745(d))** **Date: August 20, 2025** **Time: 8:30 a.m.** **Dept: 62**

TO THE HONORABLE ARLAN HARRELL, JUDGE OF THE FRESNO COUNTY SUPERIOR COURT, AND TO THE DEFENDANT, DOUGLAS R. STANKEWITZ AND HIS DEFENSE COUNSEL:

PLEASE TAKE NOTICE THAT THE PEOPLE OBJECT TO AND OPPOSE DEFENDANT'S DISCOVERY MOTION AND HEREBY SUBMITS THE FOLLOWING OPPOSITION TO: "*DEFENDANT'S SECOND AMENDED MOTION FOR RELEVANT DATA UNDER THE RACIAL JUSTICE ACT (Pen. Code, § 745(d)*."

This opposition is based upon this Notice, the attached Points & Authorities and Argument, as well upon such further evidence and argument allowed by the Court at the hearing(s) on said motion.

1.

INTRODUCTION

The Defendant has brought this Second Amended Motion for Discovery pursuant to Penal Code section 745. The People continue to object and incorporate by reference all former arguments and evidence received in support of their present opposition to the present discovery request.

2.

PENAL CODE 745 – CALIFORNIA RACIAL JUSTICE ACT

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 discovery of evidence relevant to potential violations, upon a showing of good cause. (Pen. Code, § 745(d)).

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.)

3.

ARGUMENT

DEFENDANT'S PRESENT DISCOVERY REQUEST SHOULD BE DENIED

A.

The Motion Is Not Timely

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)). This law went into effect in 2020, and the

defense waited over four years to begin this fishing expedition. This motion is untimely.

B.

The Discovery Request is a Fishing Expedition, Much of What is Sought does not exist, and The People are Under No Duty to Create Such Discovery

Defendant currently makes a 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. The People dispute and deny the hearsay evidence as well as the defense allegations. As will be explained below, Defendant's request should be denied.

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 offenses and are similarly situated to Defendant. (2nd Amend. Mtn, at p. 17.) [1]

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

[1] 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.

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). 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.)

i.

Defendant's Requested Discovery-The Material Requested is Too Broad and Inadequately Described

From the Fresno District Attorney's Office (this Office), the defendant requested data and information[2]. Defense also makes a request under 745(d) for various policies and procedures within the Fresno County District Attorney's Office. (2nd Amend. Mtn. pp. 10-11.)

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, in item #3, the request for those who have engaged in criminal conduct during the homicide incident, regardless of the actual charges alleged, can be construed very broadly, and subjectively interpreted (2nd Amend. Mtn. at p. 9.). 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. Further, they expand that this may include cases outside of a list of 187(a) cases. 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.

Regarding the request for criminal history, more specifically "a list of prior charges," (2nd Amend. Mtn. at p. 9) 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

[2] The requested items in the Second Amended Motion at pp. 7-11 have been summarized and re-ordered, however, the People have not changed the numbers for the respective requested items from the Amended Motion, so that there is clarity in addressing the requested items in this response.

history information comes with significant restrictions, carrying legal liability for the unlawful dissemination of such information. (See Pen. Code, §§ 11141, 11142, 13302, and 13303.) Similarly, defendant requests "list of disposition for all charges (2nd. Amend. Mtn. at p. 9.), which may be 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.

In item 2, defendant request all cases where a defendant was charged "at any point" with murder. (2nd Amend. Mtn. at p. 10.) How should this office interpret the nature of this request? The implication is that it might require the subjective review of thousands of non-murder cases where a related party is later charged with murder. Not only is this review completely subjective, but this request is also not 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 this Office to analyze thousands of cases submitted to this office 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.

ii.

What the People possess and may or may not disclose

In requested items 2-3, and 7-10, defendant requests information in the form of lists, for a time of over 50 years, from 1972-present. (2nd Amend. Mtn. at pp. 9-11.) As a threshold issue, this office does not have any readily available lists with the requested information.

While this Office 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 varied regarding 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' 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 period of 1972 to present (items 2-3, 7-10, 2nd Amend Mtn. at pp. 9-11), the data that has been stored electronically varies dramatically given the period. As explained in the February 24, 2025, PRA response (2nd Amend. Mtn., Exh. 30(e)), our electronic case management system relies on data entered by different staff on various occasions on cases since 1999. The data from cases prior 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 this office 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 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 this office 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.

For example, defendant specifies a list of requested data points for the items requested in 2-3. (2nd Amend. Mtn, at p. 8.) Regarding Defendant race, defense requests demographic information, including race and ethnicity (e.g. 'Chinese' or narrower cultural designations.) Simply put, "narrower" approximation to race is simply unavailable. While general race designations may be available if entered in the electronic system, however, may not always be retrievable on cases prior to 1999.

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. (2nd Amend. Mtn. at p. 8.) 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. (2nd Amend. Mtn, p. 8.) In other words, they are requesting this office conduct a flexible pattern-based search for its data. Unfortunately, this office is unable to perform this type of search.

Additionally, defendant seeks Defendant identification, date of birth and case disposition details for the items requested in 2-3. (2nd Amend. Mtn. at p. 8-9.) While this office could anonymize identity of defendants, providing a date of birth as well as other identifying information related to the case, along with disposition information implicates other legal restrictions preventing disclosure (See Pen. Code, §§ 11141, 11142, 13302, and 13303), which will be disclosed in length in the sections below.

Defendant also seeks identification of co-defendants, pursuant to an "incident identification number or other linking internal number that is used internally by law enforcement agencies," for all those who were "alleged to have engaged in criminal conduct in connection with each homicide incident, even if they are charged under separate case numbers." (2nd Amend. Mtn. at p. 9.) 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 "in connection with" each homicide incident, and then determine if those are potentially responsive to the request (2nd Amend Mtn., p. 9.) While the Department may be able to identify charged co-defendants, the Department does not have a record consistent with this request.

Regarding defendant's requested in items 7-10, this office does not have a record responsive with this request, and such a request would require a query. (2nd Amend Mtn. p. 11.) However, the request for a list of individuals where a special circumstances conviction, death penalty, LWOP or penalty phase consequences were secured, pertains to sentencing information, which is specifically prohibited. 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. Further, notwithstanding the legal implications of producing sentencing information, this office does not track any data point regarding "resentencing" under any code section.

Finally, defendant requests information on cases where the district attorney "declined to file special circumstances." (2nd Amend. Mtn. at p. 10.) 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. 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 this Office. (Pen. Code § 1054.6 and as defined in subsection (A) of Section 2018.030 of the Code of Civil Procedure.)

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), this office has no responsive record.

Regarding item 6, all training materials, written or informal, from 1972-2025 regarding capital prosecutions that include any discussion of consideration of race, religion or national origin (2nd Amend. Mtn. p. 10) 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 this office 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.

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." (2nd Amend. Mtn. at p. 11.) 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 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 this Office's notes during jury selection, or how it might relate towards bias or animus towards the defendant during defendant's jury selection.

Finally in Item 12, 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 (2nd Amend. Mtn at p. 11). Aside from the fact that this request is vague as to what exactly is being requested, it appears to be a request for information pertaining to a legal determination that only this court can make. As such, this office does not maintain any records responsive to this request.

iii.

The RJA's Discovery Provisions Do Not Create a Duty for the People to Create Records or Conduct Investigation for the Defense

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. While

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.

iv.

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[3].

As noted above, much of the requested records are not "reasonably available" to the District Attorney's office. This Office 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, this office 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

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

incomplete. (See 2nd Amend. Mtn, Exh. (30(e)).)

More specifically, in item 6, defendant requests training materials for the past 50 years (2nd Amend Mtn. at p. 10). Notwithstanding privilege and work product privileges that apply to these records, searching for records for prosecutors of this office for the past 50 years is not reasonably available. "All 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", would require searching within records of hundreds of people who have been employed within this office 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.

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 this office.

Regarding criminal histories, notwithstanding the restrictions that apply to the release of this information, other than running thousands of fresh criminal California Law Enforcement Telecommunications Service (CLETS) inquiries through the Department of Justice—for the thousands of individuals implicated by the search parameters, this office does not have "reasonably available" criminal history information for these individuals.

v.

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" (2nd Amend. Mtn. at p. 9.) and a list of disposition for all charges including convictions (2nd Amend. Mtn. at p. 9.) implicate potentially reviewing and disseminating records of 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 this office 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[4]. (2nd Amend. Mtn., Exh. 30(e).) Defendant's argument is inapplicable here, because many of the requested items are not actually public records that have been filed in court.

Instead, Defendant is requesting information and data, in the form of lists of nearly 50 years of cases either filed by this office 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 this Office would be considered privileged

[4] The People have not received a response from Defendant to this office's February 24, 2024, PRA response letter. (2nd Amend. Mtn., Exh. 30(e).)

work product that this Office 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.

C.

There is No Good Cause Demonstrated to Grant this Discovery Request

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.

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 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 establish 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.
>
> (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 (2nd Amend. Mtn. pp. 32-34). 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[5]. (2nd Amend. Mtn at p. 32.) Second, Defendant alleges that the defense and prosecution elicited racially discriminatory statements

[5] This claim was previously raised in Petitioner'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. Petitioner 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.

during the second trial's death penalty phase (2nd. Amend. Mtn. at p. 34.)

Defendant alleges that data is sought specifically to prove an allegation pursuant to Penal Code section 745(a)(3) or 745(a)(4). (2nd Amend Mtn at p. 43-44.) 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). 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 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 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 this Office would not be required to disclose. (Pen. Code § 1054.6.) Moreover, this claim was previously raised in Petitioner'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. Petitioner 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.*

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)." (2nd Amend. Mtn. at p. 44.) 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 this office 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 this office 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. (2nd Amend. Mtn. at p. 44.) However, in support of his request for data, Defendant's claims fall short of a good cause finding.

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 Mr. Stankewitz but were not charged with the same charges. (2nd 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.*

Further, Defendant makes many additional generalizations within his motion regarding any potential racial justice act claims in an overreaching attempt to establish good cause. Defendant broadly asserts that "Fresno County" has a history of racial discrimination against Native American people. (2nd Amend. Motion, at p. 19.) Defendant includes info graphs and charts to show this, yet even these charts fail to address how the numbers represent "racial discrimination" as opposed to racial representation. (2nd Amend. Mtn. at p. 19.) And taking it a step further, the charts fail to address bias or animus in the charging or conviction of *Defendant.*

Defendant alleges that Fresno County's has a higher rate of death penalty and cites to two "known Native American Men" who were on death row. (2nd. Amend. Mtn. at p. 23.) Even assuming this is true, Defendant fails to demonstrate how the incidence of these two cases show that this defendant was charged or sentence more harshly in his own case *due to his race*.

Defendant also appears to offer the "activities of KKK" in support of a plausible justification. (2nd Amend. Mtn. p. 22.) While extreme racism may exist in a particular county amongst a group of individuals, general racism does not establish a plausible justification for the requested discovery. Moreso, aside from the general claim that members of law enforcement were part of the KKK (2nd Amend. Mtn. at p. 22.), defendant has failed to demonstrate a nexus between his specific requests and a potential violation under Penal 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. Here, that is completely absent. In fact, Defendant even acknowledges there exists only the possibility of disparity. (2nd Amend. Mtn. at p. 23.)

Defendant cites to several incidents around Fresno county as evidence that Defendant's death sentence was 'influenced by his race.' (2nd Amend. Mtn. at p. 23-24.) 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 presents 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." (2nd Amend. Mtn. p. 23.) 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 support of his claims, defendant claims "the crime had racial overtones." (2nd Amend. Mtn. p. 29.) Defendant requests a broad swath of discovery from this Office 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. Further, Defendant's reference to "clovis high discrimination," "Fresno High mascot," "Fresno native American mortality rate" and "Yokuts valley name change" (2nd. 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 influence by racial bias against him as an enrolled member of the Monache Tribe," is conjecture. (2nd Amend. Mtn. at p. 29.) Defendant fails in his attempt to establish a 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. On its face, Defendant's motion should be denied due to

failing to state a plausible justification for any of the requested items (also discussed below in section 7.)

The Court of Appeal has fairly recently expounded upon the plausible justification threshold in the context of the RJA in its opinion in *Young v. Superior Court of Solano County* (2022) 79 Cal.App.5th 138. As the RJA seems to create a discovery mechanism separate from Penal Code section 1054, et seq., the Court of Appeal adopted the pre-Proposition 115 "Alhambra factors" as the test for whether or not "good cause" has been established, sufficient that a discovery order should issue. Notwithstanding Defendant's failure to state any plausible justification for the requested discovery, when applying the "multi-factor test" from those decisions, it is clear that "good cause" for the discovery of the items requested by Defendant has also not been established.

D.

The Motion Unreasonably Delays the Underlying Proceedings and Unduly Burdensome Upon the District Attorney's Office

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. (2nd Amend. Mtn., Exh. 30(e).) In response, the People informed Ms. Cock, due to exemptions and limited information available, even processing that limited request would take 60 days. (2nd Amend Mtn, Exh. 30(e).) Defendant in his current motion seeks 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.

The discovery request in the instant motion is more extensive, spanning a larger period, and includes other information not previously requested, such as information regarding prior convictions. To process this more extensive request could potentially take several months because gathering the data might implicate the need to manually search through voluminous materials and then reviewing for any legally necessary redactions. This will be more fully explained below in the "Unreasonable Burden" factor.

While much of the information requested can be available through a query search by this office, many records prior to 1999 are not available electronically (2nd Amend. Petition, Exh. 30(e)). As such, to obtain much of the requested information could require searching through thousands of filings and non-filings, and reviewing all potential records for redactions, which would be an unduly burdensome task forced 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, this Office 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, this office 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.

4.

CONCLUSION

Even assuming Defendant were to articulate good cause for discovery there can be no order for discovery of the items requested. This Office 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

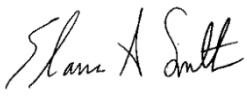
discovery can be obtained. While the RJA authorizes discovery to explore a potential violation, it does not authorize a fishing expedition based upon its mere invocation. The court should deny the defendant's motion for discovery in which the defendant has not shown "good cause."

Based on all the foregoing arguments, 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: July 11, 2025.

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 July 11, 2025, I served the following document described as:

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

On the interested parties in this action:

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_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 **July 11, 2025,** at Fresno, California.

F. Rendon Z

Francisca Rendon-Zamora,
Legal Assistant