

Case No. S284496

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

OFFICE OF THE STATE PUBLIC DEFENDER, ET AL.,

Petitioners,

v.

ROB BONTA, CALIFORNIA ATTORNEY GENERAL,

Respondent,

PRELIMINARY OPPOSITION OF THE PEOPLE OF THE STATE OF CALIFORNIA, COUNTY OF SAN BERNARDINO (**REAL PARTY IN INTEREST**); MEMORANDUM IN SUPPORT (RULE 8.487(A)(1))

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Service on the Attorney General required by rule 8.29

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**PRELIMINARY OPPOSITION OF REAL PARTY IN
INTEREST PEOPLE OF THE STATE OF CALIFORNIA,
COUNTY OF SAN BERNARDINO**

The People of the State of California (the People), County of San Bernardino, oppose the Petition for Writ of Mandate filed by the Office of the State Public Defender, Eva Paterson, LatinoJustice PRLDEF, Ella Baker Center for Human Rights, and Witness to Innocence (collectively, Petitioners) on the preliminary ground that Petitioners failed to include or serve the Real Parties in Interest impacted by the Petition. Specifically, Petitioners seek action by this Court to thwart imposition of judgment in all capital cases throughout the state, but omitted involvement of the People of the State of California through its counsel, the district attorneys of the state who currently prosecute the cases and who obtained the death judgments.

The views of the district attorneys on capital punishment in California may vary widely, and may or may not coincide with the position of the San Bernardino County District Attorney's Office (SBCDA), but each office responsible for the prosecution of capital cases currently in court, the judgments of currently-condemned inmates, and the defense of those judgments must be included in any litigation that seeks to prevent imposition of the death penalty or the execution of a death sentence. The failure to include the state's district attorneys is further exacerbated by the naming of the Attorney General as Respondent in his official capacity, as it makes the Attorney General a party to the action, rather than designating him in his role as counsel to the People.

Petitioners call for this Court to issue an order “restraining and prohibiting the Attorney General, in the exercise of his duties as chief law enforcement officer and his direct supervisory power over every district attorney and law enforcement officer in the state, from initiating, pursuing, or defending capital prosecutions and from executing death sentences.” (Petition for Writ of Mandate (Petition), at p. 56.) While this statement itself is somewhat ambiguous as to its ultimate impact, Petitioners make clear that they seek “an order mandating an end to capital charging and sentencing in this state and prohibiting the Attorney General and his subordinate district attorneys from seeking, obtaining, or executing death sentences.” (Petition, at pp. 60 – 61.) Thus, Petitioners seek an order that immediately and directly impacts current criminal prosecutions to which Petitioners are not a party, and that does not provide for due process for either party or counsel of record in those active cases.¹

Moreover, the role of district attorneys in post-conviction litigation of capital cases has significantly expanded in the last eight years. Although the Attorney General has historically served as counsel for the People on direct appeal of judgments on felony cases and habeas corpus litigation on capital cases, responsibility for the latter shifted to the district attorneys with

¹ Petitioners as a group do not appear to include any currently condemned inmate, or any person currently being prosecuted in a capital case. There is no indication that Petitioners served anyone in either category with the Petition, either, although there can be no question that their interests would be impacted in addition to the interests of the People.

the enactment of Proposition 66 in 2016. Moreover, the same statutory provision created by the Electorate that redirected initial capital habeas petitions to the state's Superior Courts also established that death judgments may only be collaterally challenged in this way. With this Petition, Petitioners now ask this Court to ignore an Electorate-created statute, and to do so in a manner that silences the majority of prosecutors of the state.

Petitioners raise issues that implicate serious questions ranging from the state's equal protection guarantees to the California Racial Justice Act. Moreover, the approach suggested by the Petition would move this Court into a supervisory role over all three branches of state government, and would necessitate a complete reworking of all understood powers within those branches. Further, Petitioners ask this Court to accept their lodged exhibits as evidence, without any of the process generally associated with the admission of evidence for courts to consider for cases or controversies.

Although Petitioners request that this Court ignore statute created by the People, statutes created by the Legislature (specifically, the Racial Justice Act and the Evidence Code), usurp the Executive's power of commutation, and abandon stare decisis and judicial process without the involvement of the impacted real parties in interest, the Petition ignores all of these issues in its Memorandum of Points and Authorities. Instead, it focuses the bulk of its arguments on comparisons between equal protection found in both the United States and California constitutions, presumably to

convince this Court to ignore federal equal protection precedent and to insulate this Court's ruling from any attempt to petition the Supreme Court of the United States for certiorari. Meanwhile, the radical departure from an adversarial system in which evidence is tested before a trier-of-fact receives no attention, and Petitioners assume without explanation that this Court can convene as a ruling council to shepherd the People whose laws are to be ignored.

The People respectfully request this Court deny the Petition for its failure to follow the most basic tenets of due process.

SBCDA'S INTEREST

The San Bernardino County District Attorney's Office obtained death judgments in the following cases:

- *People v. Samuel Amador*, San Bernardino County Superior Court case number FSB19002375, Supreme Court of California case number S278777. Mr. Amador was convicted in 2022 of the murders of Michael Darnell Wilson and Pedro Rios in 2004. The case is currently before this Court awaiting the assignment of counsel.
- *People v. Lorenzo Arias & Luis Mendoza*, San Bernardino County Superior Court case number FSB032026, Supreme Court of California case number S167010. Mr. Arias and Mr. Mendoza were convicted in 2013 of the murders of Gilbert Agudo, Johnny Agudo, Anthony Luna and Marcelino Luna. They were also convicted of the

attempted murders of Michael Douglas Velarde and Armando Villasenor. All crimes occurred in 2000. The case is currently before this Court and fully briefed.

- *People v. Thomas Battle*, San Bernardino County Superior Court case number FVI012605, Supreme Court of California case numbers S119296 (direct appeal) and S269259 (habeas corpus). Mr. Battle was convicted in 2003 of kidnapping, robbing, burglarizing and murdering Shirley and Andrew Demko in 2001. (*People v. Battle* (2021) 11 Cal.5th 749.) His petition for certiorari to the Supreme Court of California was denied in 2022. (*Battle v. California* (2022) 142 S.Ct. 1234.) Mr. Battle's habeas corpus petition is currently pending before this Court.
- *People v. Sherhaun Brown*, San Bernardino County Superior Court case number FMB0700200, Supreme Court of California case number S203206. Mr. Brown was convicted in 2008 of the burglary, robbery and murder of Kristy Vert, and the rape of another woman, in 2007. The case is currently before this Court and fully briefed.
- *People v. Lee Capers*, San Bernardino County Superior Court case number FBA06284, Supreme Court of California case numbers S146969 (direct appeal) and S256752 (habeas corpus). Mr. Capers was convicted in 2006 of the burglary, robbery and murders of Nathaniel Young and Consuelo Young in 1998. (*People v. Capers* (2019) 7 Cal.5th 989.) His petition for writ of certiorari to the Supreme Court of the United States was denied in

2020. (*Capers v. California* (2020) 140 S.Ct. 2532.) Mr. Capers's petition for writ of habeas corpus is currently pending before this Court.

- *People v. Gabriel Castaneda*, San Bernardino County Superior Court case number FWV15543, Supreme Court of California case numbers S085348 (direct appeal), S199475 (habeas corpus) and S250896 (habeas corpus). Mr. Castaneda was convicted in 1999 of the burglary, kidnapping, sodomy by force, robbery and murder of Colleen Mary Kennedy in 1998. (*People v. Castaneda* (2011) 51 Cal.4th 1292.) His petition for writ of certiorari to the Supreme Court of the United States was denied in 2012. (*Castaneda v. California* (2012) 565 U.S. 1123.) Both of Mr. Castaneda's petitions for writs of habeas corpus are currently pending before this Court.
- *People v. Run Chhoun*, San Bernardino County Superior Court case number FSB08658, Supreme Court of California case numbers S084996 (direct appeal) and S267053 (habeas corpus). Mr. Chhoun was convicted in 1996 of the burglary, robbery and murders of Henry, Trinh, 13-year-old Doan, 11-year-old Daniel, and 10-year-old David Nguyen in 1995. (*People v. Chhoun* (2021) 11 Cal.5th 1.) His petition for writ of habeas corpus is currently pending before this Court.
- *People v. Kevin Cooper*, San Diego County Superior Court case number CR72787, Supreme Court of California case numbers S004687 (direct appeal), S052741 (habeas corpus), S064320 (habeas corpus), S075527 (habeas

corpus), S077408 (habeas corpus), S116984 (habeas corpus), S117675 (writ petition), S122389 (habeas corpus), and S122507 (habeas corpus). Mr. Cooper was convicted in 1985 of the murders of Doug Ryen, Peggy Ryen, and 10-year-old Jessica Ryen, and 11-year-old Christopher Hughes, and the attempted murder of eight-year-old Joshua Ryen in 1983. (*People v. Cooper* (1991) 53 Cal.3d 771.) His petition for writ of certiorari to the Supreme Court of the United States was denied in 1991. (*Cooper v. California* (1991) 502 U.S. 1016.) His first federal habeas corpus petition was denied in 2001. (*Cooper v. Calderon* (9th Cir. 2001) 255 F.3d.1104.) His second was denied in 2007 following extensive evidentiary hearings. (*Cooper v. Brown* (9th Cir. 2007) 510 F.3d 870.) Rehearing en banc was denied. (*Cooper v. Brown* (9th Cir. 2009) 565 F.3d 581.) The Supreme Court of the United States again denied certiorari. (*Cooper v. Ayers* (2009) 558 U.S. 1049.) Mr. Cooper currently has no cases pending before any court of which SBCDA is aware.

- *People v. Michael Combs*, San Bernardino Superior Court case number BCR2436, Supreme Court of California case numbers S033975 (direct appeal) and S134705 (habeas corpus). Mr. Combs was convicted in 1993 of the robbery and murder of Janine Lee in 1990. (*People v. Combs* (2004) 34 Cal.4th 821.) His petition for certiorari to the Supreme Court of the United States was denied in 2005. (*Combs v. California* (2005) 545 U.S. 1107.) This Court

denied his petition for writ of habeas corpus in 2012. The Central District of California denied his federal petition for writ of habeas corpus in 2019 in case number 05-04777. His appeal of that denial is pending before the Ninth Circuit Court of Appeals in case number 19-99010 and is fully briefed.

- *People v. Joseph Cook*, San Bernardino County Superior Court case number MCR763, Supreme Court of California case number S042659 (direct appeal), S160915 (habeas corpus) and S217150 (habeas corpus). Mr. Cook was convicted in 1994 of the robberies and murders of 82-year-old Hubert Hails and 81-year-old Pearl Hails in 1992. (*People v. Cook* (2007) 40 Cal.4th 1334.) His petition for certiorari to the Supreme Court of the United States was denied in 2007. (*Cook v. California* (2007) 552 U.S. 976.) His first petition for writ of habeas corpus was denied by this Court in 2012. His second petition for writ of habeas corpus was transferred to the San Bernardino Superior Court in 2019, and was denied in 2023 in case number CHCJS1900002. The denial was appealed and is currently pending before the Fourth District Court of Appeal, Division Two, in case number E080835. His federal petition for writ of habeas corpus is also pending in Central District of California case number 12-08142.
- *People v. John Cunningham*, San Bernardino County Superior Court case number RCR22225, Supreme Court of California case numbers S051342 (direct appeal) and

S229645 (habeas corpus). Mr. Cunningham was convicted in 1996 of burglary, robbery, and the murders of Wayne Sonke, David Smith and Jose Silva in 1992. (*People v. Cunningham* (2015) 61 Cal.4th 609.) His petitioner for certiorari to the Supreme Court of the United States was denied in 2016. (*Cunningham v. California* (2016) 577 U.S. 1123.) This Court transferred his petition for writ of habeas corpus to the San Bernardino Superior Court in 2021, which was denied in 2022 in case number CHCSB2100001. Appeal of that denial is currently pending before the Fourth District Court of Appeal, Division Two, in case number E078684.

- *People v. James Ellis*, San Bernardino County Superior Court case number FVI902692, Supreme Court of California case number S242792. Mr. Ellis was convicted in 2016 of the murders of Shameka Reliford and Ealy Davis in 2009. The case is currently before this Court awaiting filing of the Appellant's Opening Brief.
- *People v. Alfred Flores*, San Bernardino County Superior Court case number FVA015023, Supreme Court of California case numbers S116307 (direct appeal) and S261322 (habeas corpus). Mr. Flores was convicted in 2003 of the murders of 15-year-old Ricardo Torres, 18-year-old Jason Van Kleef, and 17-year-old Alexander Alaya in 2001. (*People v. Flores* (2020) 9 Cal.5th 371.) His petition for certiorari to the Supreme Court of the United States was denied in 2020. (*Flores v. California*

(2020) 141 S.Ct. 855.) His petition for writ of habeas corpus is currently pending before this Court.

- *People v. Wayne Ford*, San Bernardino County Superior Court case number FSB027247, Supreme Court of California case number S151172. Mr. Ford was convicted in 2007 of the murders of Tina Renee Gibbs, Lanett Deyon White, Patricia Anne Tamez, and an unidentified woman in 1997 and 1998. The case is currently before this Court and fully briefed.
- *People v. Richard Don Foster*, San Bernardino County Superior Court case number VCR5976, Supreme Court of California case numbers S058025 (direct appeal) and S190198 (habeas corpus). Mr. Foster was convicted in 1996 of the burglary, robbery and murder of Gail Johnson in 1991. (*People v. Foster* (2010) 50 Cal.4th 1301.) His petition for certiorari to the Supreme Court of the United States was denied in 2011. (*Foster v. California* (2011) 562 U.S. 1292.) His petition for writ of habeas corpus is currently pending before this Court.
- *People v. Rickie Fowler*, San Bernardino County Superior Court case number FSB904563, Supreme Court of California case number S2088429. Mr. Fowler was convicted in 2013 of arson and the murders of Charles Cunningham, Chad Williams, James McDermoth, Ralph McWilliams and Robert Taylor. The case is currently before this Court and is awaiting the Appellant's Reply Brief.

- *People v. Richard Gamache*, San Bernardino County Superior Court case number FBA4939, Supreme Court of California case numbers S052808 (direct appeal) and S186974. Mr. Gamache was convicted in 1996 of the robbery, burglary, kidnapping and murder of Lee Williams in 1992. (*People v. Gamache* (2010) 48 Cal.4th 347.) His petition for certiorari to the Supreme Court of California was denied in 2010. (*Gamache v. California* (2010) 562 U.S. 1083.) This Court transferred his petition for writ of habeas corpus to the San Bernardino County Superior Court in 2019. **The petition is currently pending before that court, with SBCDA as counsel of record for the People**, in case number CHCJS1900007.
- *People v. Martin Jennings*, San Bernardino County Superior Court case number FVI04195, Supreme Court of California case numbers S081148 (direct appeal) and S189000 (habeas corpus). Mr. Jennings was convicted in 1999 of the torture and murder of five-year-old Arthur Jennings in 1996. (*People v. Jennings* (2010) 50 Cal.4th 616.) His petition for writ of habeas corpus is currently pending before this Court.
- *People v. Jimmy Kelly*, San Bernardino County Superior Court case number FMB006441, Supreme Court of California case number S185640. Mr. Kelly was convicted in 2010 of robbery and the murders of Ward Harold Phillips, William Wayne Landers and Patty

Crevoiser in 2004. The case is currently pending before this Court awaiting the Appellant's Reply Brief.

- *People v. Horace Kelly*, San Bernardino County Superior Court case number SCR45500, Supreme Court of California case numbers S005092 (direct appeal), S069125 (habeas corpus), S115428 (habeas corpus), S115483 (habeas corpus), and S143981. Mr. Kelly was convicted in 1988 of rape, attempted rape, robbery, and the murders of Sonia Reed and Ursula Houser in 1984. (*People v. Kelly* (1992) 1 Cal.4th 495.) His petition for certiorari to the Supreme Court of the United States was denied in 1992. (*Kelly v. California* (1992) 506 U.S. 881.) This Court denied his first petition for writ of habeas corpus in 1998, and his second, third and fourth in 2006. A federal petition for writ of habeas corpus that was filed in 1993 is still pending before the Central District of California in case number 93-05420.
- *People v. Daniel Landry*, San Bernardino County Superior Court case number FCH02773, Supreme Court of California case numbers S100735 (direct appeal) and S239015 (habeas corpus). Mr. Landry was convicted in 2001 of assaults by a life prisoner with malice aforethought and the murder of Daniel Addis in 1997. (*People v. Landry* (2016) 2 Cal.5th 52.) His petition for certiorari to the Supreme Court of the United States was denied in 2017. (*Landry v. California* (2017) 583 U.S. 834.) His petition for writ of habeas corpus is currently pending before this Court.

- *People v. Keith Loker*, San Bernardino County Superior Court case number SCR58212, Supreme Court of California case numbers S045060 (direct appeal), S167792 (habeas corpus) and S261622 (habeas corpus). Mr. Loker was convicted in 1995 of robbery and the murders of Randall Paul and Richard Bodine, and the attempted murder of Jose Lopez in 1991. (*People v. Loker* (2008) 44 Cal.4th 691.) This Court denied his first petition for writ of habeas corpus in 2018. It transferred his second petition to the San Bernardino County Superior Court in 2020, and was denied by that court in case number CHCJS2000001 in 2022. Appeal of that denial is currently pending before the Fourth District Court of Appeal, Division Two, in case number E080498. His federal petition for writ of habeas corpus is pending before the Central District of California in case number 18-02429 and has been stayed pending the outcome of his state claims.
- *People v. Phillip Lucero*, San Bernardino County Superior Court case numbers 36822, Supreme Court of California case numbers S004427 (direct appeal with remand for new penalty trial), S012568 (direct appeal), S104589 (habeas corpus) and S238286 (habeas corpus). Mr. Lucero was convicted in 1982 of arson and the murders of seven-year-old Linda Christine Hubbard and 10-year-old Teddy Engilman in 1980. (*People v. Lucero* (2000) 23 Cal.4th 692.) His petition for certiorari to the Supreme Court of the United States was denied in 2001. (*Lucero*

v. California (2001) 531 U.S. 1192.) This Court denied his first petition for writ of habeas corpus in 2003. It transferred his second petition to the San Bernardino Superior Court in 2019. That court denied the petition in 2019 in case number CHCJS1900003. The appeal of that denial is currently pending before the Fourth District Court of Appeal, Division Two, with proceedings stayed pending the outcome of Mr. Lucero's pending federal petition for writ of habeas corpus before the Central District of California in case number 1-2823.

- *People v. James Marlow & Cynthia Coffman*, San Bernardino County Superior Court case number SCR45400, Supreme Court of California case numbers S011960 (direct appeal), S101172 (habeas corpus), S108267 (habeas corpus), S135024 (habeas corpus) and S178102 (habeas corpus). Mr. Marlow and Ms. Coffman was convicted in 1989 of kidnapping, kidnapping for robbery, robbery, residential burglary, forcible sodomy, and the murder of Corinna Novis in 1986. (*People v. Coffman & Marlow* (2004) 34 Cal.4th 1.) Their petitions for certiorari to the Supreme Court of the United States was denied in 2005. (*Marlow v. California* and *Coffman v. California* (2005) 544 U.S. 1063.) This Court denied his first, second, and third petitions for writs of habeas corpus in 2008. It denied his fourth in 2013. His federal petition for writ of habeas corpus is currently pending before the Central District of California in case number 05-06477.

- *People v. Martin Mendoza*, San Bernardino County Superior Court case number FMB01787, Supreme Court of California case numbers S067678 (direct appeal) and S162563 (habeas corpus). Mr. Mendoza was convicted in 1997 of the murders of Sandra Resendes, Eric Resendes and Wendy Cervantes, the attempted murders of Julio Cervantes, Antonio Cervantes, San Bernardino County Sheriff's Deputies Mark Kane and Stan Gordon, and assault with a semiautomatic firearm on Rocio Cervantes and Sergio Mendoza in 1996. (*People v. Mendoza* (2007) 42 Cal.4th 686.) His petition for certiorari to the Supreme Court of the United States was denied in 2008. (*Mendoza v. California* (2008) 552 U.S. 1715.) His petition for writ of habeas corpus has been pending before this Court since 2008.
- *People v. Charles Merritt*, San Bernardino County Superior Court case number FVI404194, Supreme Court of California case number S260376. Mr. Merritt was convicted in 2020 of the murders of the McStay family: Joseph, Summer, four-year-old Gianni, and three-year-old Joseph, Jr. in 2010. His appeal is currently pending before this Court and awaiting appointment of counsel.
- *People v. Johnny Miles*, San Bernardino County Superior Court case number FSB09438, Supreme Court of California case numbers S086234 (direct appeal) and S262359 (habeas corpus). Mr. Miles was convicted in 1999 of burglary, and the rape, robbery, false imprisonment by violence and murder of Nancy Willem

in 1992. (*People v. Miles* (2020) 9 Cal.5th 513.) His petition for certiorari to the Supreme Court of the United States was denied in 2021. (*Miles v. California* (2021) 141 S.Ct. 1686.) His petition for habeas corpus is currently pending before this Court.

- *People v. Brian Mincey*, San Bernardino County Superior Court case number SCR41466, Supreme Court of California case numbers S004692 (direct appeal), S269871 (direct appeal after retrial of penalty phase, following federal habeas corpus), S025754 (habeas corpus), S056504 (habeas corpus) and S132358 (habeas corpus). Mr. Mincey was convicted in 1985 of the torture and murder of five-year-old James B. in 1983. (*People v. Mincey* (1992) 2 Cal.4th 408.) His petition for certiorari to the Supreme Court of the United States was denied in 1992. (*Mincey v. California* (1992) 506 U.S. 1014.) A jury again returned a penalty of death following a retrial of the penalty phase in 2021, and direct appeal is now pending before this Court awaiting appointment of counsel.
- *People v. Louis Mitchell*, San Bernardino County Superior Court case number FSB051580, Supreme Court of California case numbers S147335 (direct appeal) and S25565 (habeas corpus). Mr. Mitchell was convicted in 2006 of the murders of Mario Lopez, Patrick Maiwkere and Susan Torres, and the attempted murders of Juan Bizzotto, Jerry Payan and Armando Torres in 2005. (*People v. Mitchell* (2019) 7 Cal.5th 561.) His petition for certiorari to the Supreme Court of the United States was

denied in 2020. (*Mitchell v. California* (2020) 140 S.Ct. 2535.) His petition for writ of habeas corpus is currently pending before this Court.

- *People v. Johnny Morales*, San Bernardino County Superior Court case number FVA015456, Supreme Court of California case numbers S137307 (direct appeal), S228642 (review of writ of mandate) and S243960 (review of writ of mandate). Mr. Morales was convicted in 2005 of burglary, and the robbery and murder of Carlos Guterrez in 2001. His appeal is fully briefed and pending before this Court.
- *People v. John Myles*, San Bernardino County Superior Court case number FSB10937, Supreme Court of California case numbers S097189 (direct appeal), S271547 (direct appeal), S205669 (habeas corpus), S235184 (habeas corpus). Mr. Myles was convicted in 2001 of robbery and the murder of Fred Malouf in 1996. (*People v. Myles* (2012) 53 Cal.4th 1181.) His petition for certiorari to the Supreme Court of California was denied in 2012. (*Myles v. California* (2012) 568 U.S. 876.) It appears his two petitions for writs of habeas corpus are both pending before this Court.
- *People v. Gilbert Sanchez*, San Bernardino County Superior Court case number FVA701267, Supreme Court of California case number S239380. Mr. Sanchez was convicted in 2016 of burglary, and the rape, sodomy and murder of Sylvia Galindo. His appeal is currently

before this Court awaiting filing of the Appellant's Opening Brief.

- *People v. Floyd Smith*, San Bernardino County Superior Court case number FWV08607, Supreme Court of California case numbers S065233 (direct appeal) and S247842 (habeas corpus). Mr. Smith was convicted in 1997 of the lying in wait murder of Joshua Rexford, as well as two counts of attempted voluntary manslaughter, two counts of first degree burglary, assault with a firearm, false imprisonment, and possession of a firearm by a convicted felon in 1994. (*People v. Smith* (2018) 4 Cal.5th 1134.) His petition for certiorari to the Supreme Court of the United States was denied in 2019. (*Smith v. California* (2019) 139 S.Ct. 2774.) His petition for writ of habeas corpus is currently pending before this Court.
- *People v. Desmond Stevenson*, San Bernardino County case number FSB1600375-1, Supreme Court of California case number S279627. Mr. Stevenson was convicted in 2023 of the robbery and murder of Mitesh Patel and the robberies of two other victims in 2016. His appeal is currently before this Court awaiting appointment of counsel.
- *People v. Howard Streeter*, San Bernardino County Superior Court case number FVA07519, Supreme Court of California case numbers S078027 (direct appeal), S191287 (habeas corpus), S195821 (review of writ of mandate), S196360 (review of writ of mandate) and S256597 (review of writ of mandate). Mr. Streeter was

convicted in 1999 of the torture and lying in wait murder of Yolanda Butler in 1997. (*People v. Streeter* (2012) 54 Cal.4th 205.) This Court transferred his petition for writ of habeas corpus to the San Bernardino County Superior Court in 2018. That court denied the petition in case number WHCJS1800238 in 2023, following proceedings in which the People's counsel of record was SBCDA. Mr. Streeter's appeal from that denial is currently pending before the Fourth District Court of Appeal, Division Two, in case number E082224.

- *People v. Keith Taylor*, San Bernardino County Superior Court case number FRE00861, Supreme Court of California case numbers S054774 (direct appeal), S187003 (habeas corpus), S239791 (habeas corpus) and S248006 (habeas corpus). Mr. Taylor was convicted in 1996 of first degree burglary, and the robbery and murder of Marilyn Mishak in 1994. (*People v. Taylor* (2009) 47 Cal.4th 850.) His petition for certiorari to the Supreme Court of the United States was denied in 2010. (*Taylor v. California* (2010) 562 U.S. 885.) His first, second and third petitions for writs of habeas corpus are all currently pending before this Court.
- *People v. Gregory Whiteside*, San Bernardino County Superior Court case number FSB022986, Supreme Court of California case number S188067. Mr. Whiteside was convicted in 2000 of the murders of Shawana and Brittany Andrews in 1999. The appeal is currently pending before this Court and is fully briefed.

- *People v. Javance Wilson*, San Bernardino County Superior Court case number FVA012968, Supreme Court of California case number S118775. Mr. Wilson was convicted in 2003 of the kidnappings, robberies and murders of Andres Dominguez and Victor Henderson, as well as the robbery and attempted murder of James Richards in 2000. The appeal is currently pending before this Court and is fully briefed.

Additionally, **SBCDA is currently counsel of record for the People** and engaged in the penalty phase in the case of *People v. Jerome Rogers*, San Bernardino County Superior Court case number FSB1500068.

SBCDA is also currently counsel of record for the People in the following capital cases pending trial:

- *People v. Louis Lucero*, San Bernardino County Superior Court case number FVI20001000.
- *People v. Dennis Mayfield*, San Bernardino County Superior Court case number SCR4461.
- *People v. Caleb Mendez*, San Bernardino County Superior Court case number FWV20002189.
- *People v. Ralph Meneses*, San Bernardino County Superior Court case number FSB19004153.
- *People v. Eric White*, San Bernardino County Superior Court case number FSB20003009.
- *People v. Phillip Williamson*, San Bernardino County Superior Court case number FVI20002333.

MEMORANDUM OF POINTS AND AUTHORITIES

I.

THE DISTRICT ATTORNEYS OF CALIFORNIA MUST BE INCLUDED AS COUNSEL FOR REAL PARTIES IN INTEREST

a.

The District Attorneys of California Serve as Active Counsel to the People in Criminal Cases

California's district attorneys serve as independently elected officials representing the People in criminal prosecutions throughout the state. Constitutionally established, (Cal. Const., art. 11, § 1, subd. (b)), each district attorney serves as "the public prosecutor, except as otherwise provided by law." (Gov. Code, § 26500.) In that capacity, a district attorney "shall initiate and conduct on behalf of the people all prosecutions for public offenses." (*Ibid.*). California's district attorneys "are not employees or mere agents, but public officers with public duties . . ." (*People v. Terry* (1994) 30 Cal.App.4th 97, 101, citing *People v. Brophy* (1942) 49 Cal.App.2d 15, 28 (*Brophy*).

Like all district attorneys in this state, SBCDA represents the sovereign in criminal actions. (*Dix v. Superior Court* (1991) 53 Cal.3d 442, 451 (*Dix*)). "The prosecution of criminal offenses on behalf of the People is the sole responsibility of the public prosecutor." (*Ibid.*) Moreover, the prosecutor's own discretion is not subject to judicial control at the behest of persons other than the accused." (*Ibid.*, citations omitted.)

A district attorney plays a dual role in California, as both a state and county officer. Although a county officer in a “geographic sense,” the district attorney is also a state officer based on the representation of the sovereign. (*GameStop, Inc. v. Superior Court* (2018) 26 Cal.App.5th 502, 510.) Thus, a district attorney’s powers as a state officer are limited to the county from which he or she has been elected. (*Singh v. Superior Court in and for Glenn County* (1919) 44 Cal.App. 64, 65 – 66.)

b.

The Attorney General’s Limited Supervisorial Powers

Petitioners request this Court compel the Attorney General to use his “supervisory” power over the state’s district attorneys to prevent or obstruct capital prosecutions. (Petition at pp. 19, 56.) Other than a citation to article V, section 13 of the California Constitution, however, Petitioners provide this Court with no authority describing the nature of that “supervisory” power or its limitations in relation to two independently-elected constitutional offices.

Petitioners correctly state that the state constitution assigns the Attorney General with “direct supervision over every district attorney and sheriff and over other such law enforcement officers as may be designated by law, in all matters pertaining to the duties of their respective offices . . .” (Cal. Const., art. V, § 13.) However, the authority provided in connection with that supervision is *not* left further

undescribed. The constitution continues that the Attorney General

may require any of said officers to make reports concerning the investigation, detection, prosecution, and punishment of crime in their respective jurisdictions as to the Attorney General may seem advisable. Whenever in the opinion of the Attorney General any law of the State is not being adequately enforced in any county, it shall be the duty of the Attorney General to prosecute any violations of law of which the superior court shall have jurisdiction, and in such cases the Attorney General shall have all the powers of a district attorney. When required by the public interest or directed by the Governor, the Attorney General shall assist any district attorney in the discharge of the duties of that office.

(Ibid.)

If the Attorney General held plenary powers of supervision over the district attorneys, why would further description be required when the Attorney General assumes prosecutorial control over a case? Or do the final two sentences of the constitutional section explicitly create limitations in the Attorney General's supervision of district attorneys, so that only certain conditions trigger the ability of the Attorney General to step into the shoes of a given district attorney and assume the role of public prosecutor, or provide assistance to a district attorney? Indeed, is the Attorney General's supervisory role such that the three actions described in the constitution (the requiring of reports, assuming the role of the district attorney in specific cases, and the assistance of district attorneys) spell out the scope within which he may act?

“[I]t is at once evident that ‘supervision’ does not contemplate control,” noted a Court of Appeal, “and [] sheriffs and district attorneys cannot avoid or evade the duties and responsibilities of their respective offices by permitting a substitution of judgment.” (*Brophy, supra*, 49 Cal.App.2d at p. 28.)² Thus, the exercise of discretion on prosecutorial actions is not something that might be dictated as policy by the Attorney General to SBCDA or the other district attorneys. As *Brophy* described, the defined areas of power in the latter half of article V, section 13 are *not* illustrative examples, but rather serve as the boundaries of the Attorney General’s supervisory power. *Brophy* continued by explaining that only in the constitutionally-described circumstances may the Attorney General “have all the powers of the district attorney.” (*Brophy, supra*, 49 Cal.App.2d at p. 28.) The court was then more direct. “[E]ven this provision affords no excuse for a district attorney or a sheriff to yield the general control of his office and duties to the Attorney General.” (*Ibid.*) If a district attorney cannot yield power to the Attorney General, neither can the latter wrest it from the district attorneys by directorial edict. Only by stepping in on specific cases in which the law is “not being

² *Brophy* addressed the former article V, section 21 of the California Constitution. (*Brophy, supra*, 49 Cal.App.2d at p. 27.) An examination of the pertinent language quoted by *Brophy* shows that it was unchanged in substance when relocated to its current incarnation within article V, section 13 in 1966. (*Ibid.* and *Statutes of California 1965-1966 [Legislative Counsel of California]*, <https://clerkassembly.ca.gov/sites/clerkassembly.ca.gov/files/archive/Statutes/1966/66Vol1_Constitution.pdf>, visited April 30, 2024.)

adequately enforced,” (Cal. Const., art. V, § 13), could the Attorney General substitute his own decision-making authority for his fellow constitutional officers.

The federal Ninth Circuit Court of Appeals’ examination of the Attorney General’s supervisory role under article V, section 13 is instructive. “[T]he Attorney General’s control over the district attorney is quite limited: he or she is limited to requiring a district attorney to ‘make reports.’ [Citation.]” (*Goldstein v. City of Long Beach* (9th Cir. 2013) 715 F.3d 750, 756 (*Goldstein*)). Indeed, the *Goldstein* court flatly rejected the very course sought by Petitioners here. The Attorney General’s supervision power “falls far short of a power to dictate policy to district attorneys statewide” (*Ibid.*)

These prior examinations of the supervisorial capacity of the Attorney General demonstrate the logic of a limited-role view. If the Attorney General possessed complete control over the direction of all state prosecutions, why would the state constitution need to spell out the specific circumstances described in article V, section 13? An all-encompassing reading such as that suggested by Petitioners is not only devoid of supporting authority, it would render some of the language in article V, section 13 surplusage. If the rules of statutory construction give significance to every word where possible, (*People v. Valencia* (2017) 3 Cal.5th 347, 357 – 358), shouldn’t the gravity of the state constitution compel no less respect?

Even setting aside Petitioners’ constitutionally catastrophic suggestion that a court may direct another

branch of government's discretion,³ Petitioners' choice to aim mandate at the Attorney General personally is both telling and demonstrative of the limitations of his supervision.

If the Attorney General was served as counsel to the People as respondent, he would not be counsel of record in every capital case in California. But here he is not listed as counsel for *any* case, but rather as the holder of his office. Thus, if Petitioners were correct that his discretion could be directed by mandamus, he would have to direct his office to take over the prosecution of every special circumstances murder in the state in order to fulfill the mandate within the confines of article V, section 13. Moreover, by listing the Attorney General as Respondent, Real Party in Interest, the People (who seek or obtained death judgments), go unrepresented.

c.

District Attorneys' Expanded Role in Capital Habeas

As discussed above, SBCDA and other district attorneys serve as counsel to Real Party in Interest, the People, via the direct prosecution of capital and potentially-capital cases currently before the superior courts of this state. However, the

³ “[I]t is the district attorney who is vested with discretionary power to determine whether to prosecute. There is no review by way of the appellate process of such a decision nor can a court control this statutory power by mandamus.” (*People v. Wallace* (1985) 169 Cal.App.3d 406, 410, internal citations omitted.)

district attorneys' roles in relation to capital punishment significantly expanded with the passage of Proposition 66, The Death Penalty Reform and Savings Act of 2016. As a result of litigation before this Court, the statutory construct created by Proposition 66 went into effect on October 25, 2017. (*Briggs v. Brown* (2017) 3 Cal.5th 808.) Penal Code section 1509 came into being as a result.

Section 1509 contains two significant components that impact this Court's analysis of the Petition. First, it made a petition for writ of habeas corpus the "exclusive procedure for collateral attack on a judgment of death." (Pen. Code, § 1509, subd. (a).) Whatever it might be, this Petition is assuredly not a petition for a writ of habeas corpus, for it represents no condemned inmate and attacks no individual death judgment.

More immediately pertinent to this Preliminary Opposition, however, is the procedural change effected upon capital habeas corpus by the statute. Unlike pre-Proposition 66 habeas corpus litigation, original petitions for the writ must now begin in the superior court. "A petition filed in any other court other than the court which imposed the sentence should be transferred promptly to that court unless good cause is shown for the petition to be heard by another court." (Pen. Code, § 1509, subd. (a).) This effectively made SBCDA and every other district attorney's office counsel of record for capital habeas petitions throughout the state. Consequently, SBCDA now represents the People at both the trial and habeas portions of capital litigation.

d.

Real Party in Interest Must Be Included in the Litigation

Absent a summary denial of the Petition by this Court, litigation of the matter cannot proceed without the involvement of the People and their counsel of record, the district attorneys of the state. “A person or entity whose interest will be directly affected by writ proceedings has standing to appear in a writ matter.” (*Manfredi & Levine v. Superior Court* (1998) 66 Cal.App.4th 1128, 1132.) Indeed, the Petition itself is facially defective for failing to include the People as Real Party in Interest. “If the petition names as respondent . . . [an] officer acting in a public capacity, it must disclose the name of any real party in interest.” (Cal. Rules of Court, rule 8.486(a)(2).) Even if Petitioners succeeded on the merits of their claims, this fundamental flaw would largely render the resulting writ ineffective.

“[T]he petition in a mandamus proceeding serves as the complaint, it must name all of the parties.” (*Tracy Press, Inc. v. Superior Court* (2008) 164 Cal.App.4th 1290, 1297 (*Tracy Press*).) If a party is not named in a petition, its results will not bind the ignored party. “[T]he rights of a person cannot be affected by a suit to which he is a stranger.” (*Whitney v. Higgins* (1858) 10 Cal. 547, 551.)

By ignoring California’s district attorneys as counsel for the People in capital cases, Petitioners have failed to include a statutorily indispensable party. (Code Civ. Proc., § 389, subd.

(a.) Petitioners exponentially magnify their error by also failing to include a single condemned inmate or any defendant currently facing capital prosecution. Although Petitioners clearly feel that they know what is best for each of those inmates and defendants without their involvement, excluding them from a proceeding in which impacts their very lives cuts to the core of due process without a second thought.

By submitting this filing, SBCDA is deemed to consent to the jurisdiction of this Court for the purposes of proceeding as a party in the action. (*Tracy Press, supra*, 164 Cal.App.4th at p. 1297.) This would be true for any other district attorney's office, inmate or special circumstance defendant who files a preliminary opposition. (*Ibid.*) But the same cannot be said for every other district attorney, inmate or defendant, as those parties have not benefitted from service of the action. (*Ibid.*)

Petitioners offer no explanation for their failure because the failure goes unrecognized in the Petition. Absent a summary denial by this Court, the only remedy would be to include every district attorney, every inmate, and every potentially impacted defendant in the litigation. Unless, of course, Petitioners' wish for this Court to become an oversight committee is granted.

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II.

THE PETITION ATTEMPTS TO BYPASS SPECIFIC STATUTORY MECHANISMS FOR ITS CLAIMS

In addition to the as-yet unexplored separation of powers problems that would result from granting Petitioners' request, the Petition disregards two explicit statutes that would allow for the pursuit of the claims made: the aforementioned Penal Code section 1509, and the Racial Justice Act. The latter was specifically designed to give criminal defendants a means by which the racial inequity claims made by the Petition could be raised, while the latter provides the procedure by which any evidence could be presented.

The Racial Justice Act permits criminal defendants to challenge convictions by showing racial, ethnic or national origin-based disparate treatment either based on charges brought against the defendants, (Pen. Code, § 745, subd. (a)(3)), or longer or more severe sentences imposed, (Pen. Code, § 745, subd. (a)(4)). Defendants presenting this evidence may do so either by motion before the trial court or via a petition for writ of habeas corpus. (Pen. Code, § 745, subd. (b).) Statistical evidence such as that described in this Petition can support a prima facie showing before the superior court. (See *Mosby v. Superior Court* (2024) 99 Cal.App.5th 106.)

Petitioners explicitly chose not to use the Racial Justice Act. (Petition, at p. 59.) They complain that it must be pursued on a case-by-case basis. (*Ibid.*) It would also require them to represent a capital defendant, which they apparently do not. Instead, Petitioners wish for this Court to ignore recent

legislative efforts to address claims of racial inequity and craft their own, judicially-drafted solution.

Moreover, as discussed in Part I(c), *supra*, the People of California dictated that the only means by which a capital judgment may be collaterally attacked is by a petition for a writ of habeas corpus. (Pen. Code, § 1509, subd. (a).) Petitioners unquestionably seek a wholesale collateral attack on the death judgments of the state, but again choose to ignore the Electorate's statute that provides a procedure to do so. Again, this would require Petitioners to include a capital defendant, and would require them to pursue their claims in a superior court. The Petition is silent as to why the Court should ignore Penal Code section 1509, and it is obvious that neither this Court nor any other is free to do so.

III.

CONCLUSION

Petitioners suggest this Court don a virtual crown. Under the method suggested by the Petition, there would no longer be a need for statutes created by the Electorate or the Legislature. There would no longer be a need for commutation power within the sole province of the Governor of the state. Nor would the Court need to be bound by the traditional rules and processes of the judicial branch (such as the need for the application of statute to an identified person in order for an "as-applied" analysis to proceed). Rather, on the theory of this Petition, a simple acceptance of untested statistics lodged with this Court

is the only justification needed to sweep aside law, precedent and the public will.

Racial, ethnic and nationality-based inequities are among the most serious concerns facing our criminal justice system. But a just solution cannot lie with a casting aside of due process. Indeed, true equal protection, be it by state or federal constitutional guarantee, cannot be achieved by excluding those whose lives and roles are most impacted by crime.

Victims of the state's most egregious murders go unnoticed by Petitioners. Faces, names and destroyed families have no place in the abstract world of the Petition. Yet, death penalty cases are not simply about numbers, a fact well known by the district attorneys whose communities are horribly fractured by capital cases. It is no surprise that Petitioners seek to exclude district attorneys from the process.

The Petition merits summary denial. Not because it speaks to issues unworthy of consideration at the highest of levels, but because it fails to follow even the most basic aspects of due process and the rule of law in its attempts to cast aside statute and constitutional constructs.

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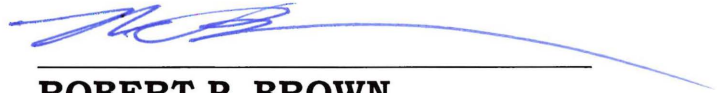
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The People of the State of California, County of San Bernardino, as Real Party in Interest, respectfully request that this Court deny the Petition.

Done this 3rd day of May, 2024.

Respectfully submitted,

JASON ANDERSON,
District Attorney,



ROBERT P. BROWN,
Assistant District Attorney
San Bernardino County District
Attorney's Office

CERTIFICATE OF COMPLIANCE

I certify that the attached **PRELIMINARY OPPOSITION OF THE PEOPLE OF THE STATE OF CALIFORNIA, COUNTY OF SAN BERNARDINO; MEMORANDUM IN SUPPORT** uses a 13-point Bookman Old Style font and contains 7,401 words.

Done this 3rd day of May, 2024, at San Bernardino, California.

Respectfully submitted,



ROBERT P. BROWN,
Assistant District Attorney
San Bernardino County District
Attorney's Office

**OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF SAN BERNARDINO
PROOF OF SERVICE BY U.S. MAIL**

STATE OF CALIFORNIA

ss.

COUNTY OF SAN
BERNARDINO

} *Office of the State
Public Defender Et Al.
V. Bonta
S284496*

Robert P. Brown says:

That I am a citizen of the United States and employed in San Bernardino County, over eighteen years of age and not a party to the within action; that my business address is 303 W. Third Street, Sixth Floor, San Bernardino, CA, 92415.

That I am readily familiar with the business' practice for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence would be deposited with the United States Postal Service that same day in the ordinary course of business.

That on May 3, 2024, I served the within:

**PRELIMINARY OPPOSITION OF THE PEOPLE OF THE
STATE OF CALIFORNIA, COUNTY OF SAN BERNARDINO
(REAL PARTY IN INTEREST); MEMORANDUM IN SUPPORT**

on interested parties by depositing a copy thereof, enclosed in a sealed envelope for collection and mailing on that date following ordinary business practice at 303 W. Third Street, San Bernardino, CA, 92415, addressed as follows:

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I certify under penalty of perjury that the foregoing is true and correct, and that this declaration was executed at San Bernardino, California, on May 3, 2024.



Robert P. Brown