

No. C2215191

IN THE APPELLATE DIVISION OF THE
SUPERIOR COURT OF SANTA CLARA

ISAAC GABRIEL GONZALES,
Petitioner,

vs.

THE SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SANTA CLARA,
Respondent.

THE PEOPLE OF THE STATE OF CALIFORNIA,
Real Parties in Interest.

Appeal from the Superior Court, County of Santa Clara
The Honorable Brian J. Buckelew
Superior Court Case No. C2215191

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I. INTRODUCTION AND SUMMARY OF ARGUMENT

Prior to the enactment of the Racial Justice Act (“RJA”), a defendant was required to show intentional discrimination to challenge a prosecution for racial bias – effectively barring challenges to prosecutions except for the clearest instances of explicit racist vitriol. California enacted the RJA to remove barriers to challenging racial bias in the criminal legal system. Still unless the RJA is implemented correctly, information asymmetry and restrictions on access to discovery can continue to unlawfully limit a defendant’s ability to advance a claim. The RJA establishes that it is a violation of state law to “seek or obtain a criminal conviction” or sentence “on the basis of race, ethnicity, or national origin.” (Pen. Code § 745(a).)¹ The plain language of the RJA, as well as its stated intent, allows defendants to access via discovery information in the government’s control that may prove racial bias has impacted a case.

In Penal Code § 745(d), the RJA sets forth a “good cause” standard for obtaining discovery pursuant to its terms and goals. As the only published opinion addressing this issue, *Young v. Superior Court of Solano* (2022) 79 Cal.App.5th 138, has recognized: this Court must liberally interpret the good cause standard as used in this statute. Specifically, the requirements of Penal Code § 745(d) are met where a defendant presents “a plausible case, based on specific facts, that any of the four enumerated violations of section 745, subdivision (a) could or might have occurred.” (79 Cal.App.5th 138, 144, 166 [“At this stage, [a defendant] need not make a strong case but only a plausible one.”].) The RJA was enacted to remedy historical disparities

¹ As relevant to the instant case, a defendant may establish a violation of the RJA by showing, with a preponderance of the evidence, that “[t]he defendant was charged or convicted of a more serious offense than” similarly situated “defendants of other races, ethnicities, or national origins”; and “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. Pen. Code § 745, subd. (a)(3).

and injustices in the criminal justice system, therefore the Court should avoid importing pre-RJA bars to discovery where they are not clearly established by the statute.

In the instant case, Isaac Gabriel Gonzales, who is charged with misdemeanor resisting arrest, seeks prosecutorial data pursuant to Penal Code § 745(d) in order to demonstrate that his prosecution is tainted by racial bias. The Superior Court denied Mr. Gonzales' motion on the grounds that an RJA claim cannot be brought by an individual charged with a misdemeanor offense when there is no "lesser-included" or "lesser-related" offense; and because Mr. Gonzales had not sufficiently provided a fact-intensive analysis of "similarly situated" defendants.

The Superior Court established an excessive and unsupported bar for access to discovery pursuant to the RJA. (*See Young, supra*, 79 Cal.App.5th at p. 159 [holding that the standard should be "even more relaxed than the 'relatively relaxed standard'" in *Pitchess*].) "Preventing a defendant from obtaining information about charging decisions without first presenting that same evidence in a discovery motion is the type of a Catch-22 the Act was designed to eliminate." (*Id.* at p. 162.)

The Superior Court's holding is inconsistent with the RJA's statutory language. The significance of the availability of a "lesser-included" or "lesser-related" offense in the statute is *only* that downgrading the charge to such an offense is a potential *remedy* in the event that an RJA violation is found; the existence of such a "lesser-included" or "lesser-related" offense is *not* a prerequisite for the finding of a violation, or for access to data under the statute. *Any* charge is "more serious" than the *non*-prosecution of an offense, and the existence of charging disparities – compared to the *non*-prosecution of the same offense – is sufficient to establish a violation pursuant to Penal Code § 745(a)(3), and to make a "plausible case" of such a violation to be entitled to discovery under the statute.

The Superior Court's interpretation is also contrary to the legislative intent of the RJA to prevent racially biased prosecutions. Such a limiting principle would preclude RJA claims for many misdemeanor defendants, who are the largest proportion of defendants within the criminal legal system, and whose prosecutions are rife with racial bias. The Superior Court's holding would deprive the majority of defendants of an avenue to access information necessary to bring an RJA claim, and would gut the law of its purpose and effect. Setting an unduly high bar for the disclosure of evidence of racial bias would allow the perpetuation of egregious discrimination which the RJA intended to confront and disrupt.

Amici curiae ACLU of Northern California and the Immigrant Legal Resource Center seek leave to provide information and argument to this Court in support of Mr. Gonzales' Writ Petition appealing the Superior Court's denial of his motion for data pursuant to Penal Code § 745(d). For the reasons elaborated herein, Amici urge this Court to reverse the Superior Court's decision below and order the prompt disclosure of the requested discovery.

II. STATEMENT OF INTEREST

The ACLU of Northern California (ACLU-NC) is a regional affiliate of the American Civil Liberties Union (ACLU), a nationwide, nonprofit, nonpartisan organization with more than three million members dedicated to the defense and promotion of the guarantees of individual liberty secured by the state and federal Constitutions. For decades, the ACLU-NC has advocated to advance racial justice for all Californians. The ACLU-NC has participated in cases, both as direct counsel and as amicus curiae, involving the enforcement of constitutional guarantees of equal protection and due process for people of color, including in connection with harms resulting from their involvement with the criminal legal system. The ACLU-NC is actively involved in litigation, legislative advocacy, and other work to ensure the effective implementation of the Racial Justice Act ("RJA"). The ACLU-NC has a vested interest in

ensuring that the RJA is applied in a manner consistent with its purpose of addressing and ameliorating systemic racial disparities in the criminal legal system.

The Immigrant Legal Resource Center (ILRC) is a national non-profit organization that provides legal trainings, educational materials, and advocacy to advance immigrant rights. As part of ILRC's mission, they provide critical support at the intersection of criminal and immigration law through legal analysis, policy work, trainings, technical assistance, and developing and disseminating best practices. Through their extensive networks with service providers, immigration practitioners, and public defenders, ILRC has developed a profound understanding of the barriers faced by low-income individuals seeking to obtain immigration benefits and defend against removal.

III. STATEMENT OF THE CASE

The case concerns Isaac Gabriel Gonzales, an individual charged with a single misdemeanor count of resisting an officer (Pen. Code § 148, subd. (a)(1)) for purportedly interfering with a law enforcement arrest in a domestic violence case where he was neither an alleged perpetrator nor victim. Mr. Gonzales has asserted a claim pursuant to Penal Code § 745(a)(3) which establishes an RJA violation where a defendant is “charged with 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.” (Emphasis added.) Mr. Gonzales requested RJA data pursuant to the provision within the RJA which allows for discovery upon “good cause.” (Pen. Code § 745, subd. (d).) The Court of Appeal has recognized “good cause” in Penal Code § 745(d) as requiring only “a plausible factual foundation . . . that a violation of the [RJA] ‘could or might have occurred.’” (*Young, supra*, 79 Cal.App.5th at pp. 144, 166.) Nonetheless, the District Attorney countered that individuals charged with most misdemeanors

can *never* allege a violation pursuant to Penal Code § 745(a)(3) because misdemeanors lack a “lesser-included” or “lesser-related” offense.

The Superior Court, in the order subject to the instant writ, denied relief, holding: “There is no [*sic*] simply no lesser offense to a charge of violating Penal Code section 148(a)(1).” (Order at p. 8.) The Superior Court also emphasized the importance of a fact-intensive inquiry to determine whether different defendants are “similarly situated.” (Order at pp. 12-13 [“the defense does not include any facts specific to the offense or the defendant at all and does not undertake any analysis of ‘similar conduct’ or those who may be ‘similarly situated’”].) The defendant petitioned this Court for writ relief.

IV. ARGUMENT

A. Racial Disparities in the Criminal Legal System Demonstrate Unjustified Bias Against People of Color in Arrests, Charges, and Convictions.

From the inception of our country’s legal codes to our present criminal legal system, race has played a major role in the perception and reality of who we criminalize.² While intentional racism has certainly played a stark role in over-criminalization of people of color,³ implicit biases, discriminatory policies, and legal barriers have coalesced to make the racial disparities in criminal arrests, prosecutions, and sentencing shockingly severe.⁴

² The Sent’g Project, *Race and Punishment: Racial Perceptions of Crime and Support for Punitive Policies* (Sept. 2014) p. 3, <<https://www.sentencingproject.org/wp-content/uploads/2015/11/Race-and-Punishment.pdf>> (as of Oct. 10, 2023) [synthesizing “two decades of research establishing that skewed racial perceptions of crime—particularly, white Americans’ strong associations of crime with racial minorities—have bolstered harsh and biased criminal justice policies”].

³ See German, *Hidden in Plain Sight: Racism, White Supremacy, and Far-Right Militancy in Law Enforcement* (Aug. 27, 2020), Brennan Ctr. for J., <<https://www.brennancenter.org/our-work/research-reports/hidden-plain-sight-racism-white-supremacy-and-far-right-militancy-law>> (as of Oct. 10, 2023).

⁴ Drug Pol’y All., *The Drug War, Mass Incarceration and Race*, (Jan. 25, 2018), available at <https://www.unodc.org/documents/ungass2016/Contributions/Civil/DrugPolicyAlliance/DPA_Fact_Sheet_Drug_War_Mass_Incarceration_and_Race_June2015.pdf> (as of Oct. 10, 2023).

As the RJA has made clear, existing racial disparities can, and should, be carefully considered when evaluating whether a charge may be tainted with racial bias. Before the RJA was passed, this pattern of racial disparity had been largely ignored or quietly accepted because—despite its real impact on active cases—discrimination could rarely be tethered to intentional animus.

In passing the RJA, the California legislature rejected such a limited view of racial bias. Racial disparities are created by various sources, including inequitable resources, legislative decisions, and police practices (particularly in “high crime rate” areas),⁵ but they are all odious if they target one group for criminal charges more than others. For this reason, patterns of racial disparities showing that racial minorities are arrested, charged, and sentenced because of their race warrant careful consideration.

1. People of Color Are Disproportionately Stopped, Arrested, and Searched by Police.

Widespread racial disparities in stops, arrests, searches, and detentions demonstrate how the criminal legal system is often tainted by racial discrimination at its very first point of contact with people. Racial discrimination has a long and entrenched history in U.S. policing.⁶ While some of the most vile laws that the earliest police forces sought to enforce have become extinct, the practice of targeting people of color for criminalization has not. People of color continue to be stopped, searched, and arrested at much higher rates than others for the same conduct.⁷

⁵ The Sent’g Project, *Reducing Racial Disparity in the Criminal Justice System: A Manual for Practitioners and Policymakers* (undated) <https://www.njcn.org/uploads/digital-library/resource_865.pdf> (as of Oct. 10, 2023).

⁶ Vitale, *The End of Policing* (Aug. 28, 2018) pp. 45-48; Hassett-Walker, *How You Start is How You Finish? The Slave Patrol and Jim Crow Origins of Policing* (Jan. 12, 2021) ABA, p. 206 <https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/civil-rights-reimagining-policing/how-you-start-is-how-you-finish/> (as of Oct. 10, 2023); see also Foner, *History of Black Americans: From Africa to the Emergency of the Cotton Kingdom* (Aug. 21, 1975).

⁷ See Hinton et al., *An Unjust Burden: The Disparate Treatment of Black Americans in the Criminal Legal System* (May 2018) Vera Inst. of Just., p. 7 <<https://www.vera.org/downloads/publications/for-the-record-unjust-burden->

Racial bias infects our system initially through the discretion exercised by police officers. Police officers are more likely to stop people of color than white people for driving, walking, resting, or engaging in other innocuous behavior.⁸ In 2018, a study revealed that across law enforcement agencies, Black and Latinx people in California were disproportionately stopped by police officers.⁹ This data is particularly troubling when coupled with studies that show that, when officers search Black and Latinx people in California, officers are less likely to find drugs, weapons, or other contraband compared to when they search white people.¹⁰

2. People of Color Are Disproportionately Prosecuted, Convicted and Sentenced Due to Systemic Racial Biases.

“Prosecutors enjoy more unreviewable discretion than any other actor in the criminal legal system” and wield substantial discretion over critical aspects of the legal process—including charging decisions, pretrial detention and bail amounts, plea bargaining negotiations, and post-trial sentencing.¹¹ With such authority, prosecutors can inject unchecked racial biases,

racial-disparities.pdf> (as of Oct. 10, 2023) [reviewing thirty-four studies to examine the effect of prosecutorial decision-making on racial disparities at different discretion points throughout the life of a criminal case].

⁸ Epp et al., *Pulled Over: How Police Stops Define Race And Citizenship* (2014) p. 7; Hinton, *supra*, fn. 7, at p. 7 [citing Gelman et al., *An Analysis of the New York City Police Department’s ‘Stop-and-Frisk’ Policy in the Context of Claims of Racial Bias* (2007) 102 J. of the Am. Stat. Ass’n 813, 821-22, <<http://www.stat.columbia.edu/~gelman/research/published/frisk9.pdf>> (as of Oct. 10, 2023)]. See also *ibid.* [citing Police Accountability Task Force, *Recommendations for Reform: Restoring Trust Between the Chicago Police and the Communities They Serve* (Apr. 2016) p. 8 <https://igchicago.org/wp-content/uploads/2017/01/PATF_Final_Report_4_13_16-1.pdf> (as of Oct. 10, 2023)]; Kochel et al., *Effect of Suspect Race on Officers’ Arrest Decisions* (2011) 49 Criminology 473, 490, 495-96 <<https://onlinelibrary.wiley.com/doi/epdf/10.1111/j.1745-9125.2011.00230.x>> (as of Oct. 10, 2023).

⁹ See CA. Dept. of J. Open J., *2018 Racial and Identity Profiling Act (RIPA)* <<https://oag.ca.gov/sites/all/files/agweb/pdfs/ripa/ripa-board-report-2018.pdf>> (as of Oct. 10, 2023) [collecting stop data from law enforcement agencies across the state]. See also Ayres & Borowsky, *A Study Of Racially Disparate Outcomes In The Los Angeles Police Department* 6, (2008) p. 43 [Los Angeles police one-hundred and twenty-seven percent more likely to search Black individuals and forty-three percent more likely to search Latinx people than whites, even though they were less likely to be found with weapons or drugs].

¹⁰ *Ibid.*; Lofstrom et al., *Racial Disparities in Law Enforcement Stops* (Oct. 2021) pp. 3, 14-16 <<https://www.ppic.org/?show-pdf=true&docraptor=true&url=https%3A%2F%2Fwww.ppic.org%2Fpublication%2Fracial-disparities-in-law-enforcement-stops%2F>> (as of Oct. 10, 2023).

¹¹ Smith & Levinson, *The Impact of Racial Bias in the Exercise of Prosecutorial Discretion* (2012) 35 Seattle Univ. L.Rev. 745, 805 <<https://digitalcommons.law.seattleu.edu/sulr/vol35/iss3/9/>> (as of Oct. 10, 2023).

prejudices, and stereotypes into prosecutorial decision-making. Prosecutorial bias is “a major cause of racial inequality in the criminal legal system.”¹² Even where bias is not intentional, it has a real impact on whether a person of color is charged with, or convicted of, a crime.

Biased prosecution decisions make it more likely that people of color will be prosecuted for more severe charges, receive less favorable plea deals, and be subject to harsher prison sentences when compared to their white counterparts.¹³ Prosecutors are more likely to charge people of color than similarly situated white people with offenses that carry higher mandatory minimum sentences, and for certain offenses; and are more likely to drop or reduce the most serious referred charge for white defendants.¹⁴ Cases involving Black and Latinx people involve fewer charge reductions throughout the legal process, which contribute to disparities in sentencing.¹⁵ Studies have also consistently shown that Black and Latinx defendants are less

¹² Davis, *Prosecution and Race: The Power and Privilege of Discretion* (1998) 67 Fordham L.Rev. 13, 17 <<https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=3499&context=flr>> (as of Oct. 10, 2023). It is well-accepted that prosecutors—like all people—harbor biases that influence their actions. See *ibid.* at pp. 797-820.

¹³ Hinton, *supra*, fn. 7 at p. 8 [citing Kutateladze et al., *Do Race and Ethnicity Matter in Prosecution?: A Review of Empirical Studies* (2012) Vera Inst. of J. <<https://static.prisonpolicy.org/scans/vera/race-and-ethnicity-in-prosecution-first-edition.pdf>> (as of Oct. 10, 2023)].

¹⁴ See Hinton, *supra*, fn. 7 at p. 8 [citing Starr & Rehani, *Mandatory Sentencing and Racial Disparity: Assessing the Role of Prosecutors and the Effects of Booker* (2013) 123 Yale L.J. 1 <<https://www.yalelawjournal.org/article/mandatory-sentencing-and-racial-disparityassessing-the-role-of-prosecutors-and-the-effects-of-booker>> (as of Oct. 10, 2023)]; Crawford et al., *Race, Racial Threat, and Sentencing of Habitual Offenders* (2006), 36 Criminology 481, 503 <<https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1745-9125.1998.tb01256.x>> (as of Oct. 10, 2023); Bedejó, *Criminalizing Race: Racial Disparities in Plea Bargaining* (2018) 59 B.C. L.Rev. 1187 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3036726> (as of Oct. 10, 2023); Ulmer et al., *Prosecutorial Discretion and the Imposition of Mandatory Minimum Sentences* (2007) 44 J. of R. in Crime and Delinq. 427, 442 <<https://www.ojp.gov/ncjrs/virtual-library/abstracts/prosecutorial-discretion-and-imposition-mandatory-minimum-sentences#:~:text=Prosecutorial%20Discretion%20and%20the%20Imposition%20of%20Mandatory%20Minimum%20Sentences,-NCJ%20Number&text=The%20study%20presents%20a%20multi,as%20repeat%2C%20three%20strikes%20offenders>> [Latino men almost twice as likely to receive a mandatory sentence as their white counterparts].

¹⁵ Johnson & Larroulet, *The “Distance Traveled”: Investigating the Downstream Consequences of Charge Reductions for Disparities in Incarceration* (2019) 36 J. Q. 1229, 1243 <<https://ccjs.umd.edu/sites/ccjs.umd.edu/files/pubs/The%20Distance%20Traveled%20Investigating%20the%20Downstream%20Consequences%20of%20Charge%20Reductions%20for%20Disparities%20in%20Incarceration.pdf>> (as of Oct. 10, 2023).

likely than whites to be offered a nonfinancial release option at booking, less likely than whites to be cited and released, and more likely to be denied bail overall.¹⁶

Moreover, throughout the criminal legal system, where discretion is authorized, law enforcement and court officials exercise discretion in ways that disproportionately harm people of color.¹⁷ Defendants face disparities in plea bargaining and, if they do go to trial, they are subject to bias in jury selection,¹⁸ jury composition,¹⁹ and jury deliberation.²⁰ Studies also show that judges frequently harbor implicit racial biases that influence decisions during trials.²¹

Discrimination in policing and biased prosecutorial decision-making further result in stark racial disparities in incarceration rates.²² Statistics also show that Black and Latinx people are consistently overrepresented among California's jail and prison populations.²³

¹⁶ Katz & Spohn, *The Effect of Race and Gender on Bail Outcomes* (1995) 19 Am. J. Crim. J. 161 <<https://link.springer.com/article/10.1007/BF02885913>> (as of Oct. 10, 2023); Camplain et al., *Racial/Ethnic Differences in Drug- and Alcohol-Related Arrest Outcomes in a Southwest County from 2009 to 2018* (2020) 110 Am. J. Pub. Health. S85, S88 <<https://ajph.aphapublications.org/doi/full/10.2105/AJPH.2019.305409>> (as of Oct. 10, 2023); Jones, "Give Us Free": *Addressing Racial Disparities in Bail Determinations* (2013) 16 N.Y.U. J. Legis. & Pub. Pol'y 919, 941 <<https://www.nyujlpp.org/wp-content/uploads/2014/01/Jones-Give-Us-Free-16nyujlpp919.pdf>> (as of Oct. 10, 2023) [citing a Justice Department survey of 45 counties that found Black and Latinx men 66 and 91 percent, respectively, more likely to be in jail pretrial than white defendants]; Demuth, *Racial and Ethnic Differences in Pretrial Release Decisions and Outcomes* (2003) 41 Criminology 873 <<https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1745-9125.2003.tb01007.x>> (as of Oct. 10, 2023).

¹⁷ Butler, *Race and Adjudication* (2017) Acad. of J., Reforming Crim. J. 211 <<https://academyforjustice.asu.edu/resource/race-and-adjudication%E2%80%9C%E2%80%9C>> (as of Oct. 10, 2023).

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ See, e.g., Totenberg, *Supreme Court Allows Prying Into Jury Deliberations If Racism Is Perceived* (Mar. 6, 2017) N.P.R. <<https://www.npr.org/2017/03/06/518877248/supreme-court-allows-prying-into-jury-deliberations-if-racism-is-perceived>> (as of Oct. 10, 2023).

²¹ Rachlinski et al., *Does Unconscious Racial Bias Affect Trial Judges?* (2008) 84 Notre Dame L.Rev. 1195, 1197 <<https://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=1691&context=facpub#:~:text=We%20find%20that%20judges%20harbor,the%20influence%20of%20these%20biases.>> (as of Oct. 10, 2023).

²² Carson, *Prisoners in 2019* (Oct. 2020) U.S. Dept. of J. p.10 <<https://www.bjs.gov/content/pub/pdf/p19.pdf>> (as of Oct. 10, 2023).

²³ See Vera Inst., *Incarceration Trends in California: Incarceration in Local Jails and State Prisons* (Dec. 2019) <<https://www.vera.org/downloads/pdfdownloads/state-incarceration-trends-california.pdf>> (as of Oct. 10, 2023).

In part due to the cumulative disparities in discretionary decisions made by law enforcement, prosecutorial and judicial actors, people of color are more likely to plead guilty, or have criminal convictions, for more serious charges and with harsher sentences, as compared to white people.

3. Racial Disparities Plague the Prosecution of Misdemeanor Offenses, Including Resisting Arrest.

Misdemeanors are often the first way that individuals—disproportionately poor people of color from heavily policed communities—enter and then cycle through the criminal legal system.²⁴ Data available regarding misdemeanors show significant racial disparities in arrests, charges, and convictions for these lower-level offenses—with Black and Latinx people typically with the highest rates of arrest for misdemeanors in diverse jurisdictions.²⁵ The “misdemeanor phenomenon . . . is a key ingredient in the racialization of crime, because misdemeanor processing is the mechanism by which poor defendants of color are swept up into the criminal system, i.e., ‘criminalized,’ with little or no regard for their actual guilt.”²⁶

These racial disparities in misdemeanor prosecutions and convictions are reflected in available data statewide,²⁷ and specifically in Santa Clara County. Notably, over the past decade,

²⁴ See, e.g., Agan et al., *Misdemeanor Prosecution* (Mar. 2021) <<https://www.nber.org/papers/w28600>> (as of Oct. 10, 2023) [diversion from misdemeanor convictions results in lower return to court, improved public safety].

²⁵ See, e.g., Cadoff *et al.*, *Misdemeanor Enforcement Trends Across Seven U.S. Jurisdictions* (2020), <https://datacollaborativeforjustice.org/wp-content/uploads/2020/10/2020_20_10_Crosssite-Draft-Final.pdf> (as of Oct. 10, 2023); Stevenson & Mayson, *The Scale of Misdemeanor Justice*, 98 B.U. L. Rev. 731, 758-63, 769-71 (2018), <https://digitalcommons.law.uga.edu/cgi/viewcontent.cgi?article=2210&context=fac_artchop>; Butcher & Rempel, *Racial Disparities in Misdemeanor Justice: Data for New York City, 2019-2020* (2022) <https://www.innovatingjustice.org/sites/default/files/media/document/2022/NYC_Misdemeanor_Justice_Data_Report_NYC.pdf> (as of Oct. 10, 2023).

²⁶ Natapoff, *Misdemeanors*, 85 S.Cal. L.Rev. 101, 101-02, 156-60 (2012) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2010826> (as of Oct. 10, 2023). “In comparison to felony adjudication, misdemeanor processing is largely informal and deregulated, characterized by high-volume arrests, weak prosecutorial screening, an impoverished defense bar, and high plea rates.” *Id.* at p. 101.

²⁷ See, e.g., Lofstrom et al., *Racial Disparities in California Arrests* (Oct. 2019) <<https://www.ppic.org/wp-content/uploads/racial-disparities-in-california-arrests.pdf>> (as of Oct. 10, 2023).

the Black and Latinx rates of arrest were 5.4 and 2.1 times, respectively, the white arrest rate, in Santa Clara County.²⁸

Studies have shown significant racial disparities for the offense of resisting arrest, in particular.²⁹ Critics contend that this offense can be used to mask police violence against community members, particularly where the offense is stand-alone and there is no other ground for the arrest than this charge.³⁰

Available California data shows pointed racial disparities in the prosecution of this offense statewide. An analysis of California Department of Justice data from 2006 to 2018 revealed that Black and Latinx individuals were arrested, charged, and convicted of resisting arrest at substantially higher rates than white individuals. “Black and Hispanic individuals were [] over-represented, in comparison to their population in the state, among individuals arrested for, charged with, and convicted of resisting arrest offenses. . . Black and Hispanic individuals

²⁸ Hunt et al., *Racial Disparities in Arrests in Santa Clara County, California, 1980-2019* (2022), pp. 3, 8-9 <<https://osf.io/preprints/socarxiv/9un7v/>> (as of Oct. 10, 2023) [“white residents have been consistently underrepresented compared to their share of the population in both felony and misdemeanor arrests [in Santa Clara County] throughout the decades”].

²⁹ See, e.g., Payton & Hargrove, *African-Americans Arrested for Resisting Arrest at a Larger Rate in San Diego*, NBC7 (Feb. 9, 2020) <<https://www.nbcsandiego.com/news/local/african-americans-arrested-for-resisting-arrest-at-a-larger-rate-in-san-diego/2260289/>>. See also Arthur, *New Data Shows Police Use More Force Against Black Citizens Even Though Whites Resist More* (May 30, 2019) <<https://slate.com/news-and-politics/2019/05/chicago-police-department-consent-decree-black-lives-matter-resistance.html>> (as of Oct. 10, 2019) [“Chicago police officers used more force against black citizens, on average, than any other race—even though black citizens tended to exercise *less resistance* than whites”].

³⁰ See, e.g., Cacho & Melamed, *How Police Abuse the Charge of Resisting Arrest*, Boston Review (June 29, 2020) <<https://www.bostonreview.net/articles/lisa-cacho-jodi-melamed-resisting-arrest/>> (as of Oct. 10, 2023); Salonga, *Santa Clara County: Half of Those Charged with Resisting Arrest Are Latino*, Mercury News (Oct. 26, 2016) <<https://www.mercurynews.com/2016/10/26/santa-clara-county-da-identifies-race-disparities-in-prosecutions-pledges-further-study/>> (as of Oct. 10, 2023) [San Jose’s Independent Police Auditor “noted that in San Jose, the rate of resisting arrest charges almost mirrors the rate of use-of-force complaints filed with his office and the Internal Affairs unit of the San Jose Police Department”].

were also more likely to be charged with a felony rather than a misdemeanor when prosecutors had discretionary authority to charge the offense as either a misdemeanor or a felony.”³¹

The same study found that Santa Clara was one of the five most racially disparate counties in the state for arrest rates for this offense: Black and Latinx people are 8.1 and 2.5 times as likely, respectively, to be charged with resisting arrest than white people in Santa Clara; and Black and Latinx people are 9.5 and 2.7 times as likely, respectively, to be charged with resisting arrest as a standalone offense, where there is no other companion charge.³² The racial disparities in prosecution of resisting arrest in Santa Clara County are longstanding. Santa Clara District Attorney Jeff Rosen reported in 2016 that Latinx and Black individuals were charged with resisting arrest at rates far above their proportion of the population.³³

B. The RJA Provides an Avenue of Relief for Individuals Charged with Misdemeanor Offenses Even Where the Alternative Is *Non-Prosecution* of the Offense.

The Legislature intended the RJA to provide available remedies for misdemeanor prosecutions even where the alternative to prosecution is declination of charges, dismissal in the interests of justice, or diversion, or indeed no charge at all—and there *is* no “lesser included” or lesser related” offense. Any other outcome would be contrary to the text of the statute and would deprive the RJA of meaning for the majority of all prosecutions in the state.

³¹ Light, *Racial Disparities in California Criminal History Data: Charges of Resisting Arrest*, 1, <https://users.ssc.wisc.edu/~milight/wp-content/uploads/2023/04/Fact_Sheet_No.001_2023-03-22.pdf> (as of Oct. 10, 2023) [“While only 5.7% of California’s population was Black, 20.0% of the arrests for resisting arrest in California, 18.1% of the resisting arrest charges, and 16.6% of the resisting arrest convictions were of Black people. The Hispanic population represented 37.9% of the total California population, yet Hispanic people constituted 41% of all arrests for resisting arrest in California, 42.8% of the resisting arrest charges, and 44.9% of the resisting arrest convictions. . . Prosecutors charged as a felony 69.5% of white individuals arraigned pursuant to California Penal Code 69, while charging 76.8% of Black individuals and 74.4% of Hispanic individuals, respectively, with a felony pursuant to the same charge.”].

³² *Id.* at pp. 3, 8-9 (Tables 1, 2, A-1 & A-2).

³³ Office of the Santa Clara District Attorney, *Race and Prosecutions 2013-2015* (2016), available at <<https://dokumen.tips/documents/and-prosecutions.html?page=2>> (as of Oct. 10, 2023); Salonga, *supra* fn. 30.

Misdemeanor offenses constitute the bulk of all charges and convictions in the criminal legal system in California and across the country. More than ten million misdemeanor charges are filed annually, constituting an estimated 80 percent of state court cases³⁴ and the overwhelming majority of convictions.³⁵ In addition to serious and irreversible consequences,³⁶ misdemeanor convictions contribute to individuals cycling through the legal system and facing progressively more serious penalties.³⁷

The alternative to misdemeanor charges can sometimes be a “lesser” offense, but more often is non-prosecution, including through either declination or diversion. Many misdemeanor offenses lack a “lesser” offense. Prosecutors have significant discretionary authority to determine whether an individual is prosecuted for a misdemeanor offense or, instead, faces one of these other non-prosecutorial outcomes.

Prosecutors make the initial decision whether to charge a misdemeanor at all. Declinations, or rejections, occur soon after arrest and prevent the formal filing of criminal charges. Declination constitutes a prosecutorial check on the police, and the proper exercise of prosecutorial discretion early in a process where a significant number of cases would ultimately

³⁴ See Rich & Scott, *Data on Adjudication of Misdemeanor Offenses: Results from a Feasibility Study*, U.S. Dep’t of Justice Bureau of Justice Statistics (Nov. 2022), p. 1 <<https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/damorfs.pdf>> (as of Oct. 10, 2023); Lafountain et al., National Center for State Courts, *Examining the Work of State Courts: An Analysis of 2008 State Court Caseloads*, 47 (2010) <<https://www.ojp.gov/ncjrs/virtual-library/abstracts/examining-work-state-courts-analysis-2008-state-court-caseloads>> (as of Oct. 10, 2023).

³⁵ Stevenson & Mayson, *supra* fn. 25.

³⁶ Consequences of misdemeanors include criminal records; fines; incarceration; harsher subsequent penalties; the deprivation of other fundamental rights; implications on custody or in family court proceedings; and detrimental effects on immigration status, employment, housing, education, and professional licenses. King, *Beyond ‘Life and Liberty’: The Evolving Right to Counsel*, 48 Harv. C.R.-C.L. L. Rev. 1, 48 (2013).

³⁷ See, e.g., Agan et al., *supra* fn. 24.

be dismissed if they proceeded to trial.³⁸ As the American Bar Association has recognized, “[w]hile the decision to arrest is often the responsibility of law enforcement personnel, the decision to institute formal criminal proceedings is the responsibility of the prosecutor.”³⁹

Declination policies can result in less disparate charging and conviction rates.⁴⁰ Even where misdemeanors are charged, both judges and prosecutors have a role in determining whether the consequence will be diversion in lieu of a prosecution to convict.⁴¹

The RJA, by its terms, provides a remedy for the disproportionate charging, prosecution or sentencing of misdemeanor defendants, regardless of whether there is a lesser included or lesser related offense. The *only* significance of “lesser-included” or “lesser-related” offense in the statute is in connection with an available remedy in the event a court finds a violation of the Act. Penal Code § 745(e) details the available remedies where the court finds an RJA violation. Among the available remedies—and the *only* time the statute references “lesser included or lesser related offense[s]”—is the possible “modif[ication of] the judgment to a lesser included or lesser related offense” in the event that the only violation found was Penal Code § 745(a)(3).

³⁸ See, e.g., Nat’l Ass’n for Pub. Def., *Alternatives to Traditional Prosecution Can Reduce Defender Workload, Save Money, and Reduce Recidivism* (Mar. 2017) <https://www.publicdefenders.us/files/NAPD%20Demand%20Side%20paper_FINAL.pdf> (as of Oct. 10, 2023).

³⁹ ABA, *Standards for the Prosecution Function*, Prosecution Standard, 3-4.2, at https://www.americanbar.org/groups/criminal_justice/standards/ProsecutionFunctionFourthEdition/ (as of Oct. 10, 2023). Prosecutors serve the public interest “by exercising discretion to not pursue criminal charges in appropriate circumstances,” including “in individual cases or classes of cases.” ABA Prosecution Standards, 3-1.2(b), (e).

⁴⁰ A Charleston, South Carolina pilot screening program resulted in significantly increased declination rates, and also identified racial disparities in the policies and outcomes pre-screening. See, e.g., Justice Innovation Lab, *Case for Screening’ Report Identifies Ways Prosecutors Can Reduce Impact of Disparate Arrest Rates* (July 27, 2022) <<https://www.justiceinnovationlab.org/updates/2022-0727>> (as of Oct. 10, 2023); see also Stemen, et al., *Disparity and Prosecution in Charleston, SC* <<https://charleston-disparity-in-prosecution.org/>> (as of Oct. 10, 2023).

⁴¹ Notably, the non-prosecution of misdemeanor offenses has been found to be linked to significant reductions in recidivism with no negative effect on public safety. Agan et al., *supra* fn. 24; 2021 Annual Report, Durham County District Atty. [“A 2021 analysis of 35 jurisdictions . . . found that prosecutorial reforms — such as reducing prosecution of nonviolent misdemeanors, diverting people dealing with mental illness and substance use for treatment, and reducing reliance on cash bail — did not affect local crime rates.”].

This is plainly inconsistent with a requirement that a charge have a “lesser included or lesser related offense” to be available for RJA relief, or have access to RJA discovery.

Nor does the requirement in Penal Code § 745(a)(3) that the charged offense be “more serious” limit RJA relief for misdemeanor defendants, or access to RJA discovery. Being charged with *any* offense is self-evidently “more serious” than not being charged with an offense. Being prosecuted for an offense is also “more serious” than having a charge dismissed or diverted. (See Penal Code § 745, subd. (a)(3).)

Any alternative reading – such as the reading advanced by the District Attorney and adopted by the Superior Court below – is also contrary to the legislative intent undergirding the RJA. The Legislature, in enacting the RJA, recognized that “no degree or amount of racial bias is tolerable in a fair and just criminal justice system, that racial bias is often insidious, and that purposeful discrimination is often masked and racial animus disguised.” (AB 2542 (2020), Sec. 2(h).) The Legislature defined its intent in enacting the RJA as: “to eliminate racial bias from California’s criminal justice system because racism in any form or amount, at any stage of a criminal trial, is intolerable, inimical to a fair criminal justice system, is a miscarriage of justice under Article VI of the California Constitution, and violates the laws and Constitution of the State of California.” (*Id.* at Sec. 2(i) [“It is the intent of the Legislature to ensure that race plays no role at all in seeking or obtaining convictions or in sentencing. It is the intent of the Legislature to reject the conclusion that racial disparities within our criminal justice are inevitable, and to actively work to eradicate them.”].) Misdemeanors account for the majority of all prosecutions in the State of California and nationwide. As elaborated above, studies have confirmed that the racial disparities that exist in the criminal legal system as a whole are at least as present in the prosecution of misdemeanors. The RJA would be severely limited in effect, and

could not begin to meet the Legislature’s stated intent, if there was *no* available RJA remedy for racial bias in misdemeanor prosecutions.

C. The RJA’s Good Cause Standard Must Be Interpreted Liberally to Limit Racial Disparities.

For decades, evidence of racial bias has largely been ignored within criminal courthouses. Defendants were denied access even to basic information necessary to force discovery that could shed light on racial bias in drug prosecutions because of high evidentiary burdens. Under the RJA, this should no longer be the case. A robust interpretation of the discovery obligations in the RJA is necessary both to satisfy the text and legislative intent of the RJA, and to limit racial biases that undermine the integrity of the criminal legal system.

In enacting the RJA, the Legislature expressly distanced California from *McCleskey v. Kemp* (1987) 481 U.S. 279, where the U.S. Supreme Court acknowledged detailed statistical proof of racial bias in the implementation of the death penalty yet nonetheless swept this evidence aside and allowed executions to proceed. (AB 2542 § 2(f),(i) [citing *McCleskey*, at pp. 295-99, 312] [“Existing precedent [] accepts racial disparities in our criminal justice system as inevitable...It is the intent of the Legislature to reject the conclusion that racial disparities within our criminal justice are inevitable to actively work to eradicate them.”].)⁴² With the RJA, the Legislature intended to upend systemic racial disparities—to do this, California defendants must have access to the records necessary to prove racial bias.

⁴² See generally Barnes & Chemerinsky, *What Can Brown Do for You?: Addressing McCleskey v. Kemp as a Flawed Standard for Measuring the Constitutionally Significant Risk of Race Bias* (2018) 112 Nw. U. L.Rev. 1293, 1301-1306 [“requiring proof of discriminatory purpose in order to demonstrate an equal protection violation...[has] dramatically lessened the ability of claimants to use the Constitution to create a more just society”].

1. The Pre-RJA Legal Standards for Discriminatory Prosecution, and for Discovery in Support of Such a Claim, Are Virtually Impossible to Meet.

Prior to the RJA, defendants were required to meet an inordinately high bar to challenge racial bias in the prosecution of a criminal case. Defendants rarely met that bar.⁴³ The federal standard for proving race-based selective prosecution requires that a defendant demonstrate both discriminatory effect and discriminatory purpose. (*Oyler v. Boles* (1962) 368 U.S. 448.) But in nearly all criminal cases, the accused lack the evidence to make such a showing, because it rests under government control. (See, e.g., *Wayte v. United States* (1985) 470 U.S. 598, 624 (dis. opn. of Marshall, J.) [“[M]ost of the relevant proof in selective prosecution cases will normally be in the Government’s hands.”].) To obtain discovery for race-based selective prosecution claims, federal defendants have to reach a bar nearly as high as to prove the claim outright—producing “some evidence” of both discriminatory effect and discriminatory intent, including “evidence tending to show” that the prosecution declined to prosecute similarly situated suspects of other races on the same federal charges. (*United States v. Armstrong* (1996) 517 U.S. 456, 458, 469.) In myriad cases, including in the authoritative case of *United States v. Armstrong* itself, courts have denied defendants’ attempts to make such a showing and obtain discovery, even in the face of robust statistical evidence of racial disparities.⁴⁴

⁴³ *United States v. Washington* (3rd Cir. 2017) 869 F.3d 193, 216 [recognizing the “functional impossibility of *Armstrong*”]; Jampol, *Goodbye to the Defense of Selective Prosecution* (1997) 87 J. Crim. L. & Criminology 932 [noting that *United States v. Armstrong* made “the already difficult claim of race-based selective prosecution virtually impossible to prove”].

⁴⁴ In *Armstrong*, a case concerning the alleged selective targeting of Black defendants for federal crack cocaine charges, the U.S. Supreme Court held that defendants did not make the required showing for discovery despite the presentation of evidence that: (1) in one year, the prosecutor’s office only closed cases against Black defendants for the relevant underlying offenses; (2) white people were more likely to be tried in state than federal court for cocaine-based offenses; and that, (3) there was no racial disparity between *users* or *dealers* of drugs, but there was among those prosecuted for drugs between people of color and white people in the relevant geographical area (*Armstrong*, *supra*, 517 U.S. at 464; see also *United States v. Taylor* (9th Cir. 1996) 96 F.3d 1452 (unpub. opn.) [defendant did not meet the required *Armstrong* standard for discovery despite submitting evidence including (1) that most defendants charged with crack offenses in his jurisdiction were Black; (2) that investigations for crack-related offenses are concentrated on predominantly Black areas; and (3) that whites are considerably less likely than Black

The federal standard for discovery for a selective prosecution claim is nearly as rigorous as that for proving the claim itself. (*United States v. Sellers* (9th Cir. 2018) 906 F.3d 848, 852; see also *United States v. Hare* (4th Cir. 2016) 820 F.3d 93, 99 [the required showing for discovery is only “slightly lower” than the showing required to prove discriminatory purpose and effect].) It is unsurprising, therefore, that few federal defendants prevail on selective prosecution claims.⁴⁵ A defendant “cannot even get discovery without evidence, and one can rarely get evidence which will satisfy a court without discovery.”⁴⁶

Prior to the RJA, California caselaw also required that selective prosecution claims demonstrate intentional discrimination. (*Murgia v. Municipal Court for Bakersfield Judicial District* (Cal. 1975) 540 P.2d 44, 51.) California courts held that discovery motions based on a claim of discriminatory prosecution must “describe the requested information with at least some degree of specificity and must be sustained by plausible justification.” (*Griffin v. Municipal Court* (1977) 20 Cal.3d 300, 306; *Ballard v. Superior Court* (Cal. 1966) 64 Cal.2d 159, 167.) The California Supreme Court held that such plausible justification requires a defendant to “show by direct or circumstantial evidence that prosecutorial discretion was exercised with

individuals to be arrested for cocaine or crack offenses, and when arrested for crack offenses, whites are far less likely to be prosecuted in federal court than are Black suspects].)

⁴⁵ In most cases, courts have found the evidence of defendants lacking under the *Armstrong* standard, i.e., defendants did not sufficiently prove that other suspects of different races were not prosecuted for the same offense (*United States v. Taylor, supra*, 96 F.3d at p. 1452 (unpub. opn.); *United States v. Walker* (9th Cir. 1996) 108 F.3d 340 (unpub. opn.)); for not showing that non-prosecuted suspects were sufficiently similarly situated in other ways (see, e.g., *United States v. Turner* (9th Cir. 1997) 104 F.3d 1180; *United States v. Bass* (2002) 536 U.S. 862 (per curiam)); for not selecting a control group of suspects of other races from a sufficiently reasonable period of time (*United States v. Bourgeois* (9th Cir. 1992) 964 F.2d 935); and for not ensuring a sufficiently similar control group of suspects of different races. (See, e.g., *United States v. Turner, supra*, 104 F.3d at p. 1185 [Black defendants failed to meet the *Armstrong* standard where they showed that the State of California only prosecuted a handful of white defendants for the same crack-cocaine offense, but failed to show that the crack cocaine sellers prosecuted by California were “gang members who sold large quantities of crack].)

⁴⁶ Chin, *Race, the War on Drugs, and the Collateral Consequences of Criminal Conviction* (2002) 6 J. Gender Race & Just. 253, 267; see also Kruse, *Comment, Proving Discriminatory Intent in Selective Prosecution Challenges—An Alternative Approach to United States v. Armstrong* (2005) 58 SMU L.Rev. 1523, 1534.

intentional and invidious discrimination in his case.” (*People v. Keenan* (Cal. 1988) 46 Cal.3d 478, 506; see also *People v. Montes* (Cal. 2014) 58 Cal.4th 809, 829 [similar to *Armstrong*, a defendant must offer some evidence of both discriminatory effect and discriminatory intent to compel discovery on a selective prosecution claim].) Under this standard, and as with federal jurisprudence, California courts have rejected statistical evidence that does not focus on the same charging authority, does not provide evidence of people of other races who were eligible to be charged with the same offense, or where the facts were distinguishable (see, e.g., *Montes, supra*, 58 Cal.4th 809; *People v. Suarez* (Cal. 2020) 10 Cal.5th 116), thereby denying defendants access to the very types of case-specific information that would prove their claim. This circular defense makes prosecutorial bias nearly impenetrable.

2. The RJA’s Relaxed Discovery Standard Cannot Be Interpreted to Require a Fact-Intensive Analysis of Similarly Situated Defendants as a Prerequisite to Accessing Information.

The pre-RJA standard set a bar that was virtually impossible to reach; the Legislature squarely rejected that standard. The RJA compels, “[u]pon a showing of good cause,” that a court order the government to disclose information to permit a defendant to make the case for discriminatory prosecution. (Pen. Code § 745, subd. (d).) The good cause threshold for discovery under the RJA must be very low and cannot require a fact-intensive analysis of the prosecution of “similarly-situated” defendants.

The prevailing “good cause” standard which governs *Pitchess* motions (motions for the disclosure of evidence of law enforcement misconduct) must serve as the ceiling for what a defendant must show to compel discovery in the context of a Penal Code § 745(d) motion. RJA motions should require even less. The only published decision concerning Penal Code § 745(d) motions recognized that the standard should be “even more relaxed than the ‘relatively relaxed standard’” in *Pitchess*. (*Young, supra*, 79 Cal.App.5th at p. 159.)

Good cause for a *Pitchess* motion “is measured by ‘relatively relaxed standards’ that serve to ‘insure the production’ for trial court review of ‘all potentially relevant documents.’” (*Warrick v. Superior Court* (2005) 35 Cal.4th 1011, 1016.) In the context of a *Pitchess* motion, a defendant meets their burden of showing “plausibility” where the defendant presents a “scenario . . . that might or could have occurred.” (*Id.* at 1026.)

Thus, “good cause” for discovery under the RJA requires only a plausible claim of an RJA violation. The Court of Appeal in *Young* held that the standard is met where a defendant presents “a plausible case, based on specific facts, that any of the four enumerated violations of section 745, subdivision (a) could or might have occurred.” (*See Young v. Superior Court of Solano* (2022) 79 Cal.App.5th 138, 144, 166.) “At this stage, [a defendant] need not make a strong case but only a plausible one.” (*Id.* at p. 166.)

This standard should be met easily with objective evidence (like statistical racial disparities) and a showing that racial bias may have played a role in the underlying case. Statistical evidence showing stark racial disparities at every stage of the criminal legal system (as presented herein) favor findings of RJA violation plausibility for purposes of discovery. The overwhelming objective evidence of racial disparities throughout the criminal legal system—detailed above and acknowledged in the RJA’s legislative findings—should inform and influence what is deemed plausible in an individual case.⁴⁷

The standard for discovery under Penal Code § 745(d) is low, and does not require a fact-intensive analysis of “similarly-situated” defendants, which is information that is in the control of the District Attorney, and is sought *through* the Penal Code § 745(d) motion itself.

⁴⁷ Racial discrimination endemic in the criminal legal system—from start to finish—makes racial bias almost inherently plausible.

“Preventing a defendant from obtaining information about charging decisions without first presenting that same evidence in a discovery motion is the type of a Catch-22 the Act was designed to eliminate.” (*Id.* at p. 162.)

The California Legislature passed the RJA to lower the burden of proof required to challenge racial bias in prosecutions, and to permit defendants to access discovery to such an end. The RJA eliminates the requirement that a defendant show purposeful discrimination—either to make a threshold showing for discovery or to prevail on a claim. (AB 2542 § 2(c) [racial bias persists in the criminal legal system because “proof of purposeful discrimination is often required, but nearly impossible to establish”].) The Legislature also rejected the requirement that a defendant show discrimination to compel disclosure. (See AB 2542 § 2(j) [“It is the [] intent of the Legislature to ensure that individuals have access to all relevant evidence, including statistical evidence, regarding potential discrimination in seeking or obtaining convictions or imposing sentences.”].) The good cause threshold for discovery therefore cannot be interpreted to require proof of a violation, i.e., actual proof of discriminatory prosecution—which was the very circularity that gave rise to the need for the RJA. The undeniable information asymmetry further supports a very low threshold for discovery under the RJA.

The text of the RJA expressly intends to establish mechanisms for California defendants to challenge entrenched racial bias—“in any form or amount”—in the criminal legal system. (*See* AB 2542 § 2(i).) The RJA intended to ensure access to information to upset a system where discriminatory prosecution claims were all but impossible. Courts should not introduce requirements not expressly elaborated or clearly implied in the law.⁴⁸ Nothing in the RJA

⁴⁸ While the regulatory framework governing *Pitchess* motions requires that a petitioner make a showing of “materiality...to the subject matter,” Evid. Code § 1043, subd. (b)(3), no such showing is required for good cause discovery under the RJA and none should be read into the statute.

requires a fact-intensive analysis of similarly situated defendants as a prerequisite to accessing information, and the courts should not read such a prerequisite into the law. Setting a high bar to access information to prove a claim would be contrary to the text and intent of the RJA to eliminate such obstacles to proving discriminatory prosecutions.

3. The Good Cause Standard for Discovery Is Easily Met Here.

The standard advanced by the District Attorney and accepted by the Superior Court below would negate the legislative intent of the RJA. The threshold showing for discovery is easily met here. Nothing in the RJA requires, as a prerequisite to a successful Penal Code § 745(d) motion, that a defendant provide a fact-intensive analysis of “similarly-situated” defendants. Where a defendant presents some evidence and a showing that racial bias may have played a role in the underlying case, the defendant should meet this standard and discovery should be required. Mr. Gonzales has done so here.

V. CONCLUSION

For the reasons elaborated herein, Amici respectfully urge this Court to grant Petitioner’s writ.

Dated: October 10, 2023

Respectfully by,

/s/ Emi MacLean

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