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Court of Appeal, Second Appellate District
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No. B341644

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT, DIVISION FIVE

Diana Maria Teran,
Petitioner and Defendant,

v.

Los Angeles County Superior Court,
Respondent

The People of the State of California,
Real Party in Interest.

Appeal from the Los Angeles Superior Court
Case No. 24CJCF02649

AMENDED REQUEST FOR PERMISSION TO FILE AMICUS CURIAE BRIEF OF LAW SCHOOL PROFESSORS IN SUPPORT OF DIANA MARIA TERAN'S PETITION FOR WRIT OF PROHIBITION
AND
AMICUS CURIAE BRIEF OF LAW SCHOOL PROFESSORS IN SUPPORT OF DIANA MARIA TERAN'S PETITION FOR WRIT OF PROHIBITION

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I. APPLICATION TO FILE AMICUS CURIAE BRIEF

Pursuant to California Rules of Court, rule 8.487(e), proposed amici seek permission to file the attached amicus curiae brief.

Interest of Amici Curiae and Assistance to the Court

Proposed amici curiae are scholars and professors who have considerable experience working on issues of California and federal criminal law and procedure. Amici have an interest in ensuring the Court properly considers the implications of the case on the administration of justice.

Amici's affiliations are listed below to provide context for their interest and ability to assist the Court in deciding this matter:

Jonathan Abel
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Authorship of Amicus Curiae Brief

No party or counsel for any party in the pending case authored this letter in whole or in part or made a monetary contribution intended to fund the preparation or submission of this letter. No person or entity other than amici or their counsel made a monetary contribution intended to fund the preparation or submission of this letter.

Respectfully submitted,

Dated: February 19, 2025

KEKER, VAN NEST & PETERS LLP

By: _____
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Attorneys for Amici Law Professors

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II. AMICUS CURIAE BRIEF

A. INTRODUCTION

From 2015 to 2018, Petitioner and Defendant Diana Maria Teran worked at the Los Angeles County Sheriff's Department ("LASD") as a Constitutional Policing Advisor. In 2021, she started working at the Los Angeles County District Attorney's Office ("LADA"). In this role, Ms. Teran supervised an employee who was responsible for maintaining LADA's *Brady* database. Ms. Teran shared with this employee a folder containing public court records relating to alleged police misconduct—namely, writ decisions and Civil Service Commission documents publicly filed in connection with writ proceedings. The State alleges that this conduct constitutes unauthorized access and use of LASD's computer system data in violation of Penal Code section 502(c)(2).

The State's prosecution of Ms. Teran raises important issues involving the interaction between the prosecutorial obligation to disclose *Brady/Giglio* evidence and law enforcement privacy protections. Allowing this prosecution to proceed will chill compliance with constitutional obligations in California, particularly the duty of prosecutors and law enforcement to disclose police credibility evidence. Well-meaning law-enforcement employees across the state will fear that they, like Ms. Teran, could be criminally prosecuted for complying with constitutional, statutory,

and ethical responsibilities. In this case, the statute should be ruled unconstitutional as applied to this defendant.

B. ARGUMENT

1. Potential impeachment evidence contained in police personnel records must be evaluated in the context of *Brady/Giglio*.

Prosecutors have a constitutional duty to disclose any evidence that is favorable and material to the defense. (*Brady v. Maryland* (1963) 373 U.S. 83, 87 (hereinafter "*Brady*").) Exculpatory evidence under *Brady* includes impeachment evidence. (*Giglio v. United States* (1972) 405 U.S. 150, 153–155 (hereinafter "*Giglio*").) The duty to disclose exculpatory evidence sweeps in all information known not only to the prosecutor, but also to any member of the prosecution team, including the police. (*In re Steele* (2004) 32 Cal.4th 682, 696–697 (hereinafter "*Steele*") [citing *Kyles v. Whitley* (1995) 514 U.S. 419, 437].)

In case after case, courts have held that impeachment evidence contained in police disciplinary records falls within the scope of *Brady* and *Giglio*. (See, e.g., *United States v. Henthorn* (9th Cir. 1991) 931 F.2d 29, 30–31 [holding that federal prosecutors, upon request of the defendant, must search federal agents' personnel files for potential impeachment material]; *Assn. for Los Angeles Deputy Sheriffs v. Super. Ct.* (2019) 8 Cal.5th 28, 51 (hereinafter "*ALADS*") ["There can be no serious doubt that confidential personnel records may contain *Brady* material . . . Such records

can constitute material impeachment evidence."].) Clearly, evidence of an officer's dishonesty or other relevant misconduct can be favorable and material to the defendant's case. And, just as clearly, evidence in police personnel files is known to the prosecution team, namely, the police department. (*People v. Super. Ct. (Johnson)* (2015) 61 Cal.4th 696, 715 (hereinafter "*Johnson*") ["When the police department informed the district attorney that the officers' personnel records might contain *Brady* material, the prosecution had a duty under *Brady* [citation] to provide this information to the defense."].)

In this state, unlike others, *Brady/Giglio*'s application to police personnel records is especially dependent on hard-working employees in the law enforcement agencies themselves. In most other jurisdictions, prosecutors have direct access to the materials in an officer's personnel files.[1] Prosecutors in those states can take the lead in seeking out *Brady/Giglio* material in the officers' files, thus relieving the police and sheriff's agencies from that responsibility. (*Ibid*.) In fact, even federal prosecutors working in California can access law enforcement personnel

[1] See Abel, *Brady's Blind Spot: Impeachment Evidence in Police Personnel Files and the Battle Splitting the Prosecution Team*, (2015) 67 Stan. L.Rev 743, 770–773 (hereinafter "*Brady's Blind Spot*"), <http://www.stanfordlawreview.org/wpcontent/uploads/sites/3/2015/04/67_ Stan_L_Rev_743_Abel.pdf>.

records in pursuit of *Brady/Giglio* compliance.[2] But California law blocks state prosecutors from directly accessing disciplinary records, even for *Brady/Giglio* purposes. (See *Pitchess v. Super. Ct.* (1974) 11 Cal.3d 531; Pen. Code, §§ 832.7, 832.8; Evid. Code, §§ 1043–1045 [collectively, "the *Pitchess* laws"].) Rather, under California state law, prosecutors and defendants alike must file *Pitchess* discovery motions to access these records. (*Johnson, supra*, 61 Cal.4th at p. 714.) This has created a tremendous tension between federal constitutional law and state privacy law.

Twice in the past decade, the California Supreme Court has had to reconcile *Brady*'s constitutional duty to disclose with the police privacy protections outlined in the *Pitchess* laws. (See *Johnson, supra*, 61 Cal.4th at pp. 715–723; *ALADS*, *supra*, 8 Cal.5th at p. 50.) In both cases, the Court has endorsed the use of a "Brady alert" system to balance these competing interests. (See *Johnson*, at p. 721; *ALADS*, at p. 36.) In applying a *Brady* alert system, the law enforcement agency screens officers' files for potential *Brady* material. (*ALADS*, at p. 36.) When such material is identified, the officers' names are placed on a *Brady* list. (*Ibid.*) When it

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[2] See Rubin, *This L.A. sheriff's deputy was a pariah in federal court. But his secrets were safe with the state*, L.A. Times (Aug. 10, 2018) <https://www.latimes.com/local/lanow/la-me-police-misconduct-secrecy-federal-20180810-htmlstory.html>.

appears that an officer on a *Brady* list may be called as a witness in a pending prosecution, law enforcement can disclose to the prosecution that the officer may have relevant exonerating or impeachment material in their personnel file. (*Id.* at pp. 53–54.) The prosecution must then convey this information to the defense. (*Johnson*, at p. 722.) In this way, the prosecution and defense are both on notice to file an appropriate motion to gain access to the relevant material. (*Id.* at p. 718.)

This system of partial disclosure is a compromise: it allows the substance of the officers' disciplinary record to be held confidentially, shielded even from prosecutors, while simultaneously allowing the prosecution team to carry out its constitutional duty to disclose favorable, material evidence to the defense. (See *ALADS*, *supra*, 8 Cal.5th at p. 55 ["Although the statutes may shield the fact that an officer has been disciplined from disclosure to the public at large, the mere fact of discipline, disclosed merely to prosecutors, raises less significant privacy concerns than the underlying records."].)

Brady compliance under this system requires heavy lifting by both law enforcement and prosecutors. Law enforcement departments have unique access to the disciplinary records and, thus, have the duty to keep the prosecutor abreast of potentially problematic officers. But once the prosecutor's office becomes aware of potential *Brady* material relating to these officers, it has a constitutional obligation to disclose it when required.

(See *Johnson, supra*, 61 Cal.4th at p. 715.) Accordingly, in Los Angeles, LASD maintains a *Brady* list, while LADA maintains its own independent *Brady* database. (See *ALADS*, *supra*, 8 Cal.5th at p. 36 [discussing LASD's *Brady* list]; Petition for Writ of Prohibition (hereinafter "Pet.") Appen., Vol. 4, 809 [Aug. 20, 2024 Statement of Decision] [discussing LADA's *Brady* database].)

2. The Court should protect prosecutors' ability to rely on public information in maintaining prosecutorial *Brady* databases.

Here, Ms. Teran's constitutional obligation under *Brady* was clear. She was aware of potentially impeaching material relating to the Doe Deputies. She would be required to disclose this impeaching material in a case where any of these Doe Deputies could be called as a witness. (See *Johnson, supra*, 61 Cal.4th at p. 715.)

The State baldly asserts that "no reasonable prosecutor" could find that this impeaching material triggers their *Brady* disclosure obligations. The State is wrong. Where the materiality of evidence is uncertain, a prosecutor must err on the side of disclosure. (*United States v. Agurs* (1976) 427 U.S. 97, 108 (hereinafter "*Agurs*") ["because the significance of an item of evidence can seldom be predicted accurately until the entire record is complete, the prudent prosecutor will resolve doubtful questions in favor of disclosure"]; *Amado v. Gonzalez* (9th Cir. 2014) 758 F.3d 1119, 1136 ["The prosecutor must presume in favor of disclosure, and resolve his

doubts about the exculpatory nature of a document in favor of producing it"]; *ALADS*, *supra*, 8 Cal.5th at 40.)

Here, the public writ documents that Ms. Teran disclosed contained information about officer disciplinary records and other misconduct such as making dishonest statements; inappropriate off-duty conduct (including failure to report cheating in a charity race and returning to a caller's residence while off-duty); and criminal conduct including driving while intoxicated.[3] Courts have found materials reflecting similar misconduct to trigger *Brady/Giglio* disclosure obligations. (See *Milke v. Ryan* (9th Cir. 2013) 711 F.3d 998, 1006 (hereinafter "*Milke*") [*Brady/Giglio* violation where the government suppressed evidence that also included a personnel file "documenting a five-day suspension where [the officer's] supervisors had caught him in a lie"]; *United States v. Cuffie* (D.C.Cir. 1996) 80 F.3d 514, 518–519 [*Brady* violation because the government failed to disclose that its officer-witness had committed perjury in a different proceeding]; *United States v. McClellon* (E.D. Mich. 2017) 260 F. Supp.3d 880, 885 [*Brady* violation because the State failed to disclose that its officer-witness

[3] See Dugdale and Blakinger, *Spotty redactions reveal names of LA sheriff's deputies in Teran case*, Los Angeles Public Press (September 9, 2024) <https://lapublicpress.org/2024/09/diana-teran-redaction-sheriff-deputies-attorney-general/>.

was suspended for falsely reporting charges[4]]; *City of Los Angeles v. Super. Ct.* (2002) 29 Cal. 4th 1, 16 [*Brady* obligations satisfied where prosecution disclosed a 1996 citizen complaint about arresting officer's failure to report a fellow officer's misconduct].) Such "material impeachment evidence isn't just discoverable; under *Giglio*, it must be disclosed unilaterally as a matter of constitutional right." (*Milke, supra*, 711 F.3d at p. 1006.)

In fact, any member of the prosecution team would be subject to the same disclosure requirement. (See *Steele, supra*, 32 Cal.4th at p. 697.) To ensure compliance, Ms. Teran shared public court records detailing the potential misconduct with a LADA colleague who was responsible for maintaining LADA's *Brady* database.

Internal maintenance of a *Brady* database is a far cry from disclosure. Post-*Johnson*, California prosecutors do not directly provide the defense with *Brady* material in officer personnel records. Rather, they notify the defense that potential *Brady* material may exist in a particular officer's file. (*Johnson, supra*, 61 Cal.4th at p. 722.) If the defense decides to move for disclosure, a court must review the file and decide what, if any,

[4] The officer-witness in this case was criminally charged for these offenses, but later prevailed at jury trial. He remained an officer on the Detroit Police Force and was promoted in 2020. (*Lynem v. Worthy* (E.D.Mich., Mar. 31, 2022, No. 21-10534) 2022 WL 995562, at *2–5.

information must be disclosed. (*Id.* at p. 718.) There were still several steps (including judicial review) that needed to occur before any of the information that Ms. Teran passed to her LADA colleague was disclosed to a defense team.

The State now claims that Ms. Teran's circulation of public court records to her colleague at LADA constitutes a felony violation of Penal Code section 502(c)(2). However, the Superior Court recognized that the People's case "turns on whether the Defendant breached the confidentiality of personnel records" under the *Pitchess* laws. (See Pet. Appen., Vol. 4, 810 [Aug. 20, 2024 Statement of Decision].) Ms. Teran did not breach the confidentiality of any personnel records, and her efforts to further LADA's *Brady* compliance through the internal circulation of public documents cannot provide the basis for a section 502(c) violation.

Both the Superior Court and the State have repeatedly acknowledged that the public court records are not protected personnel records under the *Pitchess* laws. (See Pet. Appen., Vol. 5, 878 [RT 712:15–18] ["The writ documents are in the public domain. That's where they live. They've always lived there. They began there. They were born. They still live there."]; Pet. Appen., Vol. 4, 810–811 [Aug. 20, 2024 Statement of Decision].) Amici request affirmation of the Superior Court's holding that public court records are not protected personnel records, and further urge

this Court to hold that officer names obtained from public court records are not protected information under the *Pitchess* laws.

The State argues, relying on *ALADS*, that the names of the officers referenced in the public court records are protected information. But in *ALADS*, LASD sought not only to disclose the names of officers, but also to notify LADA that *Brady* material may exist in the officers' personnel records. (*ALADS*, *supra*, 8 Cal.5th at pp. 47–48.) In this context, the Court found that the identities of officers on LASD's *Brady* list were confidential, because they were explicitly tied to the officers' confidential personnel records. (*Ibid.*)

In contrast, Ms. Teran merely shared with her LADA colleague a folder containing public court records. (Pet. Appen., Vol. 2, 299–303 [Preliminary Hearing Tr. 242:12–246:10].) She did not say anything about the existence of *Brady* material in the officers' personnel records. (*Ibid*.) In fact, she did not disclose whether any of the officers named in the court records were on LASD's *Brady* list. (*Ibid*.) Nor did she instruct her colleague to add *any* officers to *any* database. (*Ibid*.) Rather, she provided publicly available information to her LADA colleague, which her colleague then used to conduct further research and populate LADA's separate *Brady* database. (*Ibid*.) It is well established that if "records are not confidential, then information 'obtained from' those records is also not confidential." (*ALADS, supra*, 8 Cal.5th at p. 44; see also *Com. on Peace Officer Stds. &*

Training v. Super. Ct. (2007) 42 Cal.4th 278, 295–296 (hereinafter "*POST*") ["It seems unlikely that the Legislature contemplated that the identification of an individual as a peace officer, unconnected to any of the information it defined as part of a personnel record, would be rendered confidential by section 832.8."].)[5]

The State's attempts to criminalize Ms. Teran's use of public information to comply with constitutional mandates miss the mark. The State suggests, for example, that simply because Ms. Teran became aware of these public court records while employed at LASD, she is now forbidden from raising them at LADA.[6] Judge Olmedo captured the danger of this line of reasoning at the hearing on the motion to set aside: "I'm

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[5] The State suggests also, based on *Pasadena Police Officers Association v. Superior Court* (2015) 240 Cal.App.4th 268, that officers do not waive the confidentiality of protected personnel information by placing it in the public domain. But the Court need not reach the question of waiver: under the circumstances of this case, the officer names do not rise to the level of protected personnel information in the first instance. Moreover, *Pasadena* was a case involving a Public Records Act request, and did not involve any analysis of the impact of *Brady* obligations on disclosure requirements.

[6] The State's insistence that Ms. Teran learned this information by accessing LASD data, rather than through public sources, belie its true intentions. The State has made clear that it would consider Ms. Teran's conduct a crime even if she had requested the documents at issue from the Superior Court. (Pet. Appen., Vol. 5, 1018–1019 [Oct. 10, 2024 Motion to Set Aside Hearing Transcript at 68:17–69:11].)

trying to figure out where your liability for her ends." (Pet. Appen., Vol. 5, 1020 [Oct. 10, 2024 Motion to Set Aside Hearing Transcript at p. 70:9–10].) The answer is that it doesn't. The fact that public information, including the names of officers, may have passed through the LASD at some point in time does not transform it into confidential personnel information under *Pitchess*. Any other conclusion would allow the law enforcement agency to discourage disclosure by laundering public information through its private databases.

Similarly, the State's argument that Ms. Teran's conduct ran afoul of LASD policies falls flat. The State suggests that Ms. Teran violated the law by failing to comply with LASD policies requiring her to make a written request for disclosure prior to sharing information with her colleague at LADA. But such an approach again leads to nonsensical results, requiring prosecutors to request permission from law enforcement agencies to rely on *public* information regarding police misconduct. Law enforcement agencies cannot enact policies to hide publicly available *Brady/Giglio* material, then prosecute well-intentioned members of the prosecution team for violating that unlawful policy.

Indeed, the State's attempts to cloak public information behind a veil of confidentiality run contrary to the goal of transparency in the criminal justice system. These efforts are antithetical to California's recent efforts to facilitate public access to records of police misconduct, including through

two landmark 2018 bills, Senate Bill No. 1421 and Assembly Bill No. 748.[7] Moreover, this prosecution seeks to inappropriately expand the scope of the *Pitchess* laws, which protect only "the types of information enumerated in section 832.8"—namely, personnel information whose disclosure "would constitute an unwarranted invasion of personal privacy." (See *POST, supra*, 42 Cal.4th at p. 293.) There is no such information here. The State cannot sidestep the "threshold question" of confidentiality and seek to hide any and all information relating to officer misconduct. (See *ALADS*, *supra*, 8 Cal.5th at p. 41.)

Prosecutors should be able to stay abreast of public developments involving police misconduct, increasing their awareness of potential *Brady* material. Recognizing this obligation, LADA has developed rigorous guidelines for its maintenance of its internal *Brady* database.[8] Allowing this prosecution to proceed will disincentivize compliance with such systems–which are already built on top of a delicate compromise between

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[7] See Dedrick, *California law enforcement agencies have hindered transparency efforts in use-of-force cases* (Mar. 28, 2024) <https://apnews.com/article/lethal-restraint-california-transparency-b582c63c8872631190a87a73c20b7720>.

[8] See Los Angeles District Attorney, Discovery Compliance System Manual, 24-25 (Dec 2021) <https://da.lacounty.gov/sites/default/files/pdf/Discovery-Compliance-System-Manual-December-2021.pdf>.

disclosure and privacy–and ultimately increase risks that critical impeachment evidence never comes to light.

3. To the extent Ms. Teran relied on protected information, Penal Code section 502(c) is unconstitutional as applied to prosecutors complying with their *Brady* obligations.

Even assuming, *arguendo*, Ms. Teran accessed protected information, she nonetheless had a duty to disclose the *Brady/Giglio* material it contained to ensure that LADA prosecutors can fulfill their constitutional obligations to defendants. (*Kyles, supra*, 514 U.S. at p. 437 ["[T]he prosecution, which alone can know what is undisclosed, must be assigned the consequent responsibility to gauge the likely net effect of all such evidence and make disclosure when the point of 'reasonable probability' is reached."].) Penal Code section 502(c) criminalizes the prosecution team's required actions under *Brady* and is therefore unconstitutional as applied to Ms. Teran.

A prosecutor's duty to disclose persists even when the *Brady* material is confidential. In *ALADS*, the California Supreme Court found that the names of the officers on the *Brady* list of LASD were confidential under the *Pitchess* statutes. (8 Cal.5th at p. 47.) But nevertheless, the Court held that *Pitchess* did not prevent LASD from sharing the names of the officers with prosecutors via *Brady* alerts. (*Id.* at p. 51.) The Court explained that "construing the *Pitchess* statutes to cut off the flow of information from law enforcement personnel to prosecutors would be

anathema to *Brady* compliance." (*Ibid*.; see also *Pennsylvania v. Ritchie* (1987) 480 U.S. 39, 58 [holding that *Brady* reached confidential information in records from the state's Department of Children and Youth Services]; *United States v. Alvarez* (9th Cir. 2004) 358 F.3d 1194, 1207–1208 [holding that defendants are entitled to disclosure of *Brady* material contained in confidential presentence reports of critical witnesses].) That Ms. Teran allegedly accessed the protected information through her former employment at LASD did not relieve her of her *Brady* obligations as a member of the LADA prosecution team. "What matters for *Brady* purposes is what the prosecution team knows, not how the prosecution team knows it." (*ALADS*, 8 Cal.5th at p. 53.)

Nor does it matter that the *Brady* material Ms. Teran shared did not relate to an active case. Because prosecutors are presumed to have knowledge of *Brady/Giglio* material known to the entire prosecution team, "procedures and regulations can be established to carry [the prosecutor's] burden and to insure communication of all relevant information on each case to every lawyer who deals with it." (*Kyles, supra*, 514 U.S. at p. 438 [quoting *Giglio, supra*, 405 U.S. at p. 154] [alteration in *Kyles*]; see also *ALADS, supra*, 8 Cal.5th at p. 51 ["Prosecutors are deemed constructively aware of *Brady* material known to anyone on the prosecution team and must share that information with the defense."].) Ms. Teran's disclosure to her colleague was essential to maintain LADA's Brady alert system and

ensure that LADA prosecutors can fulfill their "responsibility to gauge the likely net effect of all such evidence and make disclosure when the point of 'reasonable probability' is reached." (*Kyles*, 514 U.S. at p. 437.)

Moreover, it is well-settled that the duty to retain and disclose *Brady/Giglio* material exists even when there has been no request from a defendant. (See *Agurs*, *supra*, 427 U.S. at p. 107.) These duties may apply even when the materiality of a piece of evidence to a specific prosecution is unclear. Indeed, *Brady/Giglio* material from seemingly unrelated (and confidential) sources often turns out to be favorable to an accused down the road. (See, e.g., *Milke*, *supra*, 711 F.3d at p.1016 [finding a *Brady* violation when prosecutors failed to disclose evidence of misconduct in other cases in an officer's personnel file]; *Agurs*, at pp. 100–101, 114 [finding a *Brady* violation based on a murder victim's undisclosed criminal record, which was not drawn from the particular case]; *Kyles, supra*, 514 U.S. at 428–429 [deeming evidence of an informant's criminal conduct as *Brady* material, even though it was unrelated to the case].)

Prosecutors bear the responsibility to "make judgment calls about what would count as favorable evidence, owing to the very fact that the character of a piece of evidence as favorable will often turn on the context of the existing or potential evidentiary record." (*Kyles, supra*, 514 U.S. at p. 439.) That is why "the prudent prosecutor will resolve doubtful questions in favor of disclosure." (*Agurs, supra*, 427 U.S. at p. 108; see also *Kyles*, at p.

439 ["[T]he prosecution cannot be subject to any disclosure obligation without at some point having the responsibility to determine when it must act."].) LADA prosecutors cannot make those judgment calls unless employees like Ms. Teran internally share information to keep the *Brady* list current.

Section 502(c) puts prosecutors like Ms. Teran in an impossible bind. Imagine if LASD decided to protect one of the officers on the list that Ms. Teran shared with her colleague at LADA. If LASD declined to include that officer on the *Brady* list it disclosed to LADA, all future cases involving that officer would be compromised and subject to potential reversal on appeal. And Ms. Teran, as a member of the LADA prosecution team, could be prosecuted for a felony under Section 141(c) and/or disbarred under Section 1425.5 for suppressing *Brady/Giglio* material within her actual knowledge.

As this case demonstrates, it runs afoul of the fundamental purpose of *Brady* to impose criminal liability on prosecutors who share *Brady* material internally within the prosecutor's office for use in future cases. The case law does not support such a strict application of form over function.

Ms. Teran was constitutionally obligated to share the *Brady* material she accessed, even if it was protected under state privacy laws. The prosecution of Ms. Teran under section 502(c) "defeat[s] the right of the

prosecutor to obtain access to officer personnel records in order to comply with *Brady*." (*City of Los Angeles v. Super. Ct.* (2002) 29 Cal.4th 1, 12, fn.1.) The statute is therefore unconstitutional and unworkable as applied to Ms. Teran and other similarly situated prosecutors.[9]

4. Allowing this prosecution to proceed will intimidate law enforcement employees and impede the due process rights of criminal defendants.

Brady is critical to the Constitution's guarantee of due process and to the state's "obligation to ensure that justice shall be done." (*ALADS, supra*, 8 Cal.5th at p. 39 [internal quotations omitted].) But *Brady* cannot be fulfilled unless conscientious employees of law enforcement agencies learn about exculpatory or impeachment material and communicate it to the prosecutor. (*Kyles, supra*, 541 U.S. at p. 437.) Ms. Teran is one such employee. Her alleged actions—reviewing deputies' disciplinary records while part of the LASD and populating a *Brady* list while serving as a prosecutor—were not criminal. They were professionally and constitutionally obligated.

[9] In light of these constitutional concerns, Penal Code section 502(c) should be interpreted to not apply to Ms. Teran in these circumstances. (See *People v. Chandler* (2014) 60 Cal.4th 508, 524 ["A statute must be construed, if reasonably possible, in a manner that avoids a serious constitutional question."]; *United States v. Davis* (2019) 588 U.S. 455, 463 fn.6 ["[C]ourts should, if possible, interpret ambiguous statutes to avoid rendering them unconstitutional."].)

The prosecution of Ms. Teran sends a message: protecting officers with known misconduct trumps defendants' due process rights. That message will intimidate others from carrying out their duties under *Brady/Giglio*. This outcome is not only unjust to the prosecutors who, like Ms. Teran, are seeking to abide by the Constitution. It harms other law enforcement employees and the integrity of California's criminal justice system. Most worrisome of all, it denies defendants in criminal cases the due process of a fair trial.

The impeachment material in police personnel files can mean the difference between acquittal and conviction for criminal defendants. Internal reports of police misconduct are especially valuable because they reflect the department's own assessment of the officer's credibility. (See *Brady's Blind Spot*, 67 Stan. L.Rev. at p. 746 [citing reports finding that a detective's "image of honesty, competency, and overall reliability must be questioned," that a detective repeatedly lied to internal affairs investigators, and that a detective "should not be entrusted with a gun and badge."].) Defendants have relied on impeachment evidence from police personnel records to overturn murder convictions and death sentences. (See, e.g., *Milke, supra*, 711 F.3d at pp. 1012–1013, 1019.)

Due to California's restrictive privacy laws, California prosecutors cannot carry out their professional and constitutional duties to criminal defendants without rigorously and regularly updated *Brady* lists. That is

why, in 2019, the California District Attorneys Association and several federal prosecutors banded together in support of Senate Bill No. 1220. The bill would have required each prosecuting agency to maintain a *Brady* list of officers who, in the preceding five years, had sustained findings of misconduct, were facing criminal prosecution, or were on probation. The bill was vetoed due to budget concerns.

Moreover, punishing prosecutors for disclosing *Brady* evidence will "put deputies in a precarious position" and place tremendous pressure on other law enforcement employees. (*ALADS, supra*, 8 Cal.5th at p. 52.) The prosecutor's duty to "learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police" does not allow other law enforcement employees to dodge *Brady*'s disclosure requirements by hiding information from the prosecutor. (*Kyles, supra*, 514 U.S. at p. 437.) To the contrary, all members of the prosecution team—including police officers—are obligated to disclose *Brady* material. (*ALADS*, at p. 52 ["The Fourteenth Amendment underlying Brady imposes obligations on states and their agents – not just, derivatively, on prosecutors."].) That is why "[t]he harder it is for prosecutors to access that material, the greater the need for deputies to volunteer it." (*Ibid*.) And due to California's *Pitchess* laws, *Brady*'s application to police personnel records is already especially dependent on hard-working employees in law enforcement agencies.

The prosecution of Ms. Teran will erode the public's trust and confidence in the criminal justice system. (See *Pasadena Police Officers Assn.* (1990) 51 Cal.3d 564, 568 ["Nothing can more swiftly destroy the community's confidence in its police force than its perception that concerns raised about an officer's honesty or integrity will go unheeded or will lead only to a superficial investigation."].) The finality and fairness of criminal trials and convictions depend on *Brady* alert systems ensuring due process. Robust maintenance of *Brady* alert systems honors the courage of civilian witnesses and other officers who raise concerns regarding officer conduct, ensuring that evidence of misconduct is not swept under the rug[10] and may come to light as necessary to protect the rights of defendants. Moreover, these alert systems protect the privacy interests of both complainants and officers, by allowing only *limited* disclosure of confidential information to ensure compliance with constitutional obligations.[11] (See *ALADS*, *supra*, 8

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[10] See, e.g., Katey Rusch and Casey Smith, *This is the secret system that covers up police misconduct — and ensures problem officers can get hired again*, S.F. CHRONICLE (Sept. 24, 2024) <https://www.sfchronicle.com/projects/2024/police-clean-record-agreements/> (detailing California police agencies' systematic practice of whitewashing officer misconduct, including in Los Angeles County).

[11] Indeed, even if the officer names at issue in the present case were construed as confidential (which they are not), Ms. Teran disclosed these names only *internally* within the prosecution team—not to the defense or the public.

Cal. 5th at 50 ["the confidentiality created by the *Pitchess* statutes does not forbid the limited disclosure" of a *Brady* alert].) The *Brady* alert systems must therefore be zealously maintained to preserve the compromise between *Brady* and *Pitchess* and avoid a direct conflict between federal constitutional law and California privacy law. The law enforcement employees who carry out this work must be protected from prosecution.

The prosecution of Diana Teran will instill fear in prosecutors and other law enforcement personnel around California. It will unravel the delicate balance between *Brady* and *Pitchess*. Most worrisome of all, it will impede the due process rights of criminal defendants.

C. CONCLUSION

For the foregoing reasons, and as more fully explained in Ms. Teran's petition, amici urge this Court to grant Ms. Teran's petition for writ of prohibition.

Respectfully submitted,

Dated: February 19, 2025

KEKER, VAN NEST & PETERS LLP

By: _____

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III. CERTIFICATE OF INTERESTED ENTITIES OR PERSONS (CAL. RULES OF COURT, RULE 8.208)

There are no interested entities or persons to list in this certificate (Cal. Rules of Court, rule 8.208(e)(3)).

Dated: February 19, 2025

KHARI J. TILLERY

IV. CERTIFICATION OF WORD COUNT

Pursuant to rule 8.204(c)(1), California Rules of Court, the undersigned hereby certifies that the foregoing proposed Amici Curiae Brief contains 4894 words as counted by the word count feature of the Microsoft Word program used to generate this brief, not including the tables of contents and authorities, the cover information, the signature block, and this certification.

Dated: February 19, 2025

KHARI J. TILLERY

PROOF OF SERVICE

Diana Maria Teran, Petitioner and Defendant, v.
Los Angeles Superior Court, Respondent;
California Attorney General, Real Party in Interest.

Case No: B341644

I am employed in the County of San Francisco, State of California. I am over the age of 18 and not a party to the within action. My business address is 633 Battery Street, San Francisco, CA 94111-1809. On the date indicated below, I caused to be served the foregoing document described as:

AMENDED REQUEST FOR PERMISSION TO FILE AMICUS CURIAE BRIEF OF LAW SCHOOL PROFESSORS IN SUPPORT OF DIANA MARIA TERAN'S PETITION FOR WRIT OF PROHIBITION AND AMICUS CURIAE BRIEF OF LAW SCHOOL PROFESSORS IN SUPPORT OF DIANA MARIA TERAN'S PETITION FOR WRIT OF PROHIBITION

on the interested parties in this action by causing a true and correct copy of the above-described document(s) to be transmitted from an Electronic Filing Service Provider (EFSP) on the date listed below:

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I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on February 19, 2025, at San Francisco, California.

Barbara Palomo