Berkeley Law | Criminal Law & Justice Center

February 11, 2025

Honorable Chief Justices
Court of Appeal of the State of California
First Appellate District
Division Three
350 McAllister Street
San Francisco, CA 94102

Re: Amicus curiae letter brief from Criminal Law & Justice Center in *McDaniel v. Superior Court of San Mateo County*, No. [Trial Court Case: 22NF014642E; Court of Appeal Case: A171858]

Dear Honorable Justices:

The Criminal Law & Justice Center at UC Berkeley School of Law ("CLJC") submits this letter brief as amicus curiae in support of Petitioner McDaniel's writ of mandate.[1] The petition raises exceptionally important questions warranting guidance from this Court. Racial discrimination is antithetical to the state's constitutional equal protection guarantee and threatens to undermine the public trust and legitimacy on which the criminal justice system depends. The California Racial Justice Act ("RJA") aims to eliminate this threat. This case presents an opportunity to provide meaningful relief to victims of racial discrimination by eliminating barriers to discovery.

## I. STATEMENT OF INTEREST

CLJC conducts research, produces scholarship, and engages in public education regarding criminal justice reform and racial equity in California's criminal legal system. CLJC is published in scholarly journals like Journal of the American Medical Association and Berkeley Journal of Criminal Law, to name a few. The conferences that CLJC hosts have received national media attention, including from the Wall Street Journal. CLJC and its leadership engage frequently in interdisciplinary research collaborations, including with the California Policy Lab. CLJC's practice history includes, in part, leading and filing a class action lawsuit, and operationalizing Memorandum of Understandings (MOUs) with local governmental agencies, including a District Attorney's Office. CLJC is affiliated with the University of California Berkeley, School of Law. The University of California is not a party to this brief.

[1] 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.

Document received by the CA 1st District Court of Appeal.

CLJC has a strong interest in the proper interpretation and implementation of the RJA, landmark legislation aimed at eliminating racial bias from the state's criminal justice system. Our interest in this case stems from a commitment to promoting transparency and evidence-based reform in California's criminal justice system. The petition presents a critical opportunity for this Court to effectuate the Legislature's express repudiation of barriers to accessing law enforcement data necessary to identify and remedy racial disparities in criminal cases. How this Court interprets the discovery standard under section 745, subdivision (d)[2] will determine whether defendants can meaningfully challenge systemic racial disparities or whether the RJA will be merely aspirational. The issues are particularly significant given documented racial disparities in enhancement charging across California and the difficulty of proving implicit bias without access to comprehensive charging data.

## II. AUTHORITY FOR PERMITTING THIS AMICUS LETTER

Amicus curiae letters like this are procedurally proper. California Rules of Court, rule 8.487, subdivision (e)(1) permits filing of amicus briefs after an appellate court issues an alternative writ or order to show cause. The Advisory Committee comment to Rule 8.487 makes clear that amicus letters are also permissible before a court issues an alternative writ or order to show cause:

> Subdivisions (d) and (e). These provisions do not alter the court's authority to request or permit the filing of amicus briefs or amicus letters in writ proceedings in circumstances not covered by these subdivisions, such as before the court has determined whether to issue an alternative writ or order to show cause or when it notifies the parties that it is considering issuing a peremptory writ in the first instance.

Such amicus letters have been accepted in other matters. (See, e.g., *Regents of Univ. of Cal. v. Super. Ct.* (2013) 220 Cal.App.4th 549, 557 ["While initially considering the petition we received letter briefs from amici curiae in support of [the petitioner.]".) On this basis, amici respectfully requests the Court consider this amicus letter brief in deciding whether to grant Petitioner's writ of mandate.

///

[2] All statutory references are to the Penal Code unless otherwise indicated.



Document received by the CA 1st District Court of Appeal.

## III. ARGUMENT

### A. The RJA Creates a Comprehensive Framework Specifically Designed to Address Implicit Bias

The central question in this case is whether statistical evidence alone can establish good cause for discovery under section 745, subdivision (d), or whether a defendant must also make a case-specific factual showing of discrimination. Here, Petitioner provided statistical studies and an expert declaration showing that gang-related charges and enhancements in San Mateo County are imposed against Black defendants at significantly higher rates than white defendants. Specifically, while Black individuals make up only 2.7% of San Mateo County's population, they represent 18.9% of those incarcerated on gang charges. Dr. Beth Redbird's analysis found that Black defendants arrested for section 186.22 violations are 47% more likely to be incarcerated than similarly situated defendants of other races.

These stark statistical disparities are precisely the type of bias that the RJA was designed to address. The RJA deliberately departs from traditional approaches to racial discrimination in criminal justice, by expanding relief to cases of implicit bias. As the Court of Appeal recently emphasized in *Bonds v. Superior Court*, "the primary motivation for the legislation was the failure of the judicial system to afford meaningful relief to victims of unintentional but implicit bias." (99 Cal.App.5th 821, 828 (2024).)

The RJA's focus on implicit bias has crucial implications for discovery. Statistical and aggregate data are essential tools for identifying patterns that may reflect unconscious bias. (See Colleen V. Chien et. al., *Proving Actionable Racial Disparity Under the California Racial Justice Act*, 75 UC Law J. 1, 16 (2023).) Indeed, *Bonds* explicitly held that statistical studies are admissible in determining RJA violations, even when examining individual conduct. (99 Cal.App.5th 821, 828.) The Legislature's decision to make such evidence expressly admissible under section 745(c)(1) reflects its understanding that systemic patterns often provide the best evidence of implicit bias. (See Jack Glaser, *Implicit Bias, Science, and the Racial Justice Act*, 29 Berkeley J. Crim. L. 17, 24 (2024); Ash Kalra, *Keynote Speech: Racial Justice Act Symposium*, 29 Berkeley J. Crim. L. 7, 11 (2024).) The legislature enacted the RJA specifically to allow defendants to challenge racial and ethnic disparities without showing explicit or conscious discrimination in their individual cases. (Kalra, 29 Berkeley J. Crim. L. 7, at p.11.) If statistical studies of prosecution patterns are admissible to prove RJA violations, as *Bonds* held, then defendants must have access to the underlying prosecution data through discovery to make such studies possible.



Document received by the CA 1st District Court of Appeal.

**i. The Burden of Proof in a 745(d) Proceeding is Low and Petitioner Need Only Establish "Good Cause" that a Violation of the Racial Justice Act Occurred.**

The key question is what data and records a defendant must produce to establish "good cause" under section 745, subdivision (d). In recognition of the need to ease the barriers to access information critical to rooting out implicit bias in our legal system, the Legislature deliberately created a multi-stage procedure for investigating and litigating RJA claims with escalating burdens of proof. As *Young v. Superior Court* established, the initial "good cause" standard for discovery represents the lowest burden in this framework and "should not be difficult to meet." (79 Cal.App.5th 138, 161.) The Court further reasoned that nothing in the language of the statute required a defendant seeking RJA disclosure to specify or isolate the form of violation as listed in section 745, subdivisions (1)(1) through (a)(4). (See *Id.*) This interpretation aligns with the Legislature's clear intent to make RJA remedies readily accessible to defendants. (Stats. 2020, ch. 317, § 2, subd. (j).)

Critically, the RJA's discovery provisions specifically rejected the federal approach under *United States v. Armstrong* (1996) 517 U.S. 456, which required defendants to "prove up their claims on the merits just to be entitled to discovery." (*Young*, 79 Cal.App.5th at 162.) The Legislature recognized that *Armstrong* created an impossible "Catch-22" by requiring defendants to present evidence they could only obtain through discovery. (*Id*.) Under the RJA, as elucidated in *Young*, a defendant need only "plausible justification", that "a violation of the Racial Justice Act 'could or might have occurred.'" (*Id.* at 159-160.) This standard is even more relaxed than the "relatively relaxed" good cause standard for *Pitchess* discovery of police personnel records. (*Id*. at 158-59.)

The discovery standard is certainly more relaxed than what is required to make a prima facie showing of an RJA violation. As the Court of Appeal explained in *Finley v. Superior Court*, the burden at the prima facie stage of the proceedings only requires facts showing a "substantial likelihood" of an RJA violation–defined as more than a mere possibility but less than more likely than not. (95 Cal.App.5th 12 (2023).) Since discovery precedes the prima facie stage, its threshold must be lower. Indeed, in *Gonzales v. Superior Court of Santa Clara*, the Santa Clara County Appellate Division held just that. (See No. 23AP002906, 2024 WL 5364723 (Cal. App. Dep't Super. Ct. Nov. 21, 2024))

The scope of permissible discovery under the RJA is not boundless, but the limiting factor is "good cause" and "relevance" in the discovery sense. (*Young*, 79 Cal.App.5th at 161.) Given this structure, the initial good cause showing for discovery must be minimal, and courts should work to facilitate access to data that could reveal patterns of bias, whether conscious or unconscious. (See *Id*., holding "[w]here the defendant makes a showing of plausible



Document received by the CA 1st District Court of Appeal.

justification" of a potential violation of the CRJA, "it will likely be an abuse of discretion to totally foreclose discovery.") The RJA legislative findings express the goal to "ensure" that defendants claiming a violation of section 745, subdivision (a) have "access to all relevant evidence, including statistical evidence, regarding potential discrimination in seeking or obtaining convictions or imposing sentences." (Stats. 2020, Ch. 317 section 2(j); see also *Young*, 79 Cal.App.5th at 163 ["The Legislature was focused . . . on creating a discovery-triggering standard that is low enough to facilitate potentially substantial claims, even if it came at some cost to prosecutorial time and resources."].)) Thus, courts should focus on managing the scope of discovery rather than denying access entirely.

**ii. Statistical and Historical Evidence Alone Can Establish Good Cause for Discovery Under Section 745(d)**

The central dispute is whether statistical evidence of racial disparities in charging alone can establish good cause for discovery under section 745, subdivision (d), or whether a defendant must also show case-specific evidence of discrimination. Here, Petitioner produced persuasive statistics, historical evidence, and expert declaration demonstrating that gang enhancements, specifically within San Mateo County, are disproportionately charged against Black individuals. The People contend in their response that the court in *Young* required a "plausible factual foundation, *based on specific facts*, that a violation could or might have occurred," in order to show good cause for discovery, (People's Response at p9, citing *Young*, 79 Cal.App.5th at p159, emphasis added), and thus more is required by Petitioner here. In support of his request for discovery, *Young* cited "statewide data and data from another county" of likely discrimination in traffic stops. (*Young*, 79 Cal.App.5th at 534.) There, the court found that even though the systemic evidence was "unimpressive" on its own, when combined with specific examples of racial profiling, it was enough to justify granting discovery. (*Id*.) However, this case is distinguished in that Petitioner here, unlike in *Young*, claimed purely charge-based violations pursuant to section 745, subdivision (a)(3). This localized evidence, on a pure charge based RJA claim, exceeds what the *Young* court found to be sufficient, and thus should be more than enough to establish good cause for disclosure of charging data pursuant to section 745, subdivision (d). (See also *Gonzales*, *supra*, at 13, holding that "local county data, in itself, can provide the 'specific facts' required for a 'plausible case' for RJA discovery. [citations].")

Examining systemic charging disparities necessarily requires analyzing patterns across cases. Individual cases rarely reveal implicit bias; rather, bias emerges through statistical analysis showing disparate impacts on particular racial groups. As the Court found in *Young*, " statistical discovery will bolster [the] claim and rationally tie it to prosecutorial decision-making, at least as a prima facie matter." (*Young*, 79 Cal.App.5th at 178.) The discovery phase is not the place where courts should be making credibility determinations or weighing evidence. (See *People v.*



Document received by the CA 1st District Court of Appeal.

*Howard* 104 Cal.App.5th 625 (2024).) Therefore, requiring defendants to prove case-specific discrimination before obtaining the very statistical evidence needed to establish systemic bias would defeat the RJA's core purpose of addressing implicit bias in prosecutorial decision-making.

### B. Requiring Case-Specific Evidence at the Discovery Phase Would Defeat the RJA's Core Purpose

The Legislature enacted the RJA "with the express intent 'to eliminate racial bias from California's criminal justice system' and 'to ensure that race plays no role at all in seeking or obtaining convictions or in sentencing.' [Citations.] Its goal is to 'provide remedies that will eliminate racially discriminatory practices in the criminal justice system, in addition to intentional discrimination.' [Citation.]" (*Mosby v. Superior Court,* (2024) 99 Cal.App.5th 106, 123.) Instead, requiring case-specific evidence of discrimination at the discovery phase puts defendants in an impossible position where they need the very charging data they seek through discovery to analyze potential disparities in their individual cases. (*Young*, 79 Cal.App.5th at162.)

Furthermore, the legislative history confirms that the RJA aimed to facilitate challenges to systemic racial disparities by ensuring access to relevant data. (Stats. 2020, ch. 317, § 2(j).) The trial court's ruling frustrates this purpose by erecting barriers to obtaining the very information needed to identify potential violations. Applying a liberal standard during the discovery process, "comports most closely with the apparent intent of the lawmakers, with a view to promoting rather than defeating the general purpose of the statute." (*People v. Tan* (2021) 68 Cal.App.5th 1, 5 , citing *Mays v. City of Los Angeles* (2008) 43 Cal.4th 313, 321.) Alternatively, requiring case-specific evidence of discrimination at the discovery phase would effectively gut the RJA's core purpose of addressing unintentional disparities arising from implicit bias. Statistical evidence showing significant racial disparities in gang enhancement charging in San Mateo County amply demonstrates good cause for discovery here.

Therefore, while courts retain discretion to manage the scope of discovery, *Young* makes clear that wholesale denial is likely an abuse of discretion once a defendant makes the minimal showing of plausible justification. (79 Cal.App.5th at 169.) The trial court's requirement of case-specific evidence contradicts this framework and frustrates the Legislature's clear intent to facilitate meaningful examination of systemic racial disparities. Petitioner's statistical showing - unrebutted by the prosecution - establishes precisely the type of systemic charging disparity the RJA was enacted to address. The trial court's ruling imposing additional evidentiary requirements finds no support in the statutory text and would render the RJA's discovery provisions largely meaningless.



Document received by the CA 1st District Court of Appeal.

### C. Systemic Transparency Requires Liberal Discovery Standards

The RJA expands defendants' rights beyond federal equal protection standards by giving them access to statistical data and other information they need to prove racial discrimination in their case. In enacting the RJA, the Legislature specifically called out "courts" for "sanctioning racism in criminal trials" and for "only address[ing] racial bias in its most extreme and blatant forms." (Stats. 2020, ch. 317, § 2, subds. (c), (d).) It repeatedly criticized "[e]xisting precedent" as "insufficient to address discrimination in our justice system" and for "accept[ing] racial disparities in our criminal justice system as inevitable." (*Id*., § 2, subds. (c), (f).) Instead, it implored courts to *actively* "'work to eradicate them.' [Citation.]" (*Young*, 79 Cal.App.5th at 150.)

Overly restrictive discovery standards signal continued resistance to transparency and accountability in uncovering and rooting out system bias within the criminal legal system. This undermines public trust and confidence in the fairness of the system. (A.B. 2542, §2, subd. (a), "Discrimination undermines public confidence in the fairness of the state's system of justice and deprives Californians equal justice under law.") Indeed, the court in *Finley* further underscored the importance of a liberal discovery standard by emphasizing that courts should not impose a "heavy burden" as this would contravene "the Act's structure and purpose." (*Finley*, 95 Cal.App.5th at 22.) Similarly, the *Young* Court emphasized that "discovery is crucial" to establish a violation of the RJA. (*Young*, 79 Cal.App.5th at 150.) These holdings reflect judicial recognition that restrictive discovery standards would effectively immunize charging practices from meaningful review.

Further, the public interest in transparency is particularly acute given the Legislature's declaration that "racism in any form or amount, at any stage of a criminal trial, is intolerable." (Stats. 2020, ch. 317, § 2, subd. (i).) As *People v. Garcia* recognized, preparing RJA claims requires thorough review of records for any conduct that might evidence bias. (85 Cal.App.5th 293, 297.) Restricting access to such materials at the discovery stage not only hampers individual defendants but deprives policymakers, researchers, and the public of crucial information needed to identify patterns and develop evidence-based reforms. This express intent demonstrates that the RJA is meant to facilitate the examination of systemic issues, not just individual cases.

Liberal discovery promotes institutional accountability by creating an expectation of data transparency. When prosecutors know their charging decisions will be subject to systematic review through RJA discovery requests, they are more likely to monitor their own practices proactively for potential disparities. (See generally ABA Criminal Justice Standards for the Prosecution Function §§ 3-1.1(b), 3-1.6(a) (4th ed. 2017), "A prosecutor should strive to eliminate implicit biases, and act to mitigate any improper bias or prejudice when credibly



Document received by the CA 1st District Court of Appeal.

informed that it exists within the scope of the prosecutor's authority.") This administrative accountability helps fulfill the Legislature's intent that "race plays no role at all in seeking or obtaining convictions or in sentencing." (Stats. 2020, ch. 317, § 2, subd. (i).)

The low burden at the discovery stage thus serves as a crucial accountability mechanism - by promoting transparency rather than depending on after-the-fact remedies. The trial court's holding contravenes legislative intent to promote such transparency. Courts should err on the side of facilitating RJA discovery, addressing any legitimate concerns through scope limitations rather than wholesale denial.

The petition should be granted and the discovery order vacated.

Respectfully submitted,

**Criminal Law & Justice Center**
Attorneys for Amicus Curiae

Chesa Boudin, SBN 284577

Andrea Crider

Andrea Crider, SBN 311017

**Berkeley Criminal Law & Justice Center**
UC Berkeley School of Law
2763-2719 Bancroft Way, Berkeley, CA 94704

Document received by the CA 1st District Court of Appeal.

**PROOF OF SERVICE**

Case Name: *McDaniel v. The Superior Court of San Mateo County*
No.: A171858

I am employed in the County of Alameda, State of California. I am over the age of 18 and not a party to the within action. My business address is UC Berkeley School of Law. My email address is chesa@berkeley.edu. On the date indicated below, I caused to be served the foregoing document described as:

AMICI CURIAE LETTER BRIEF IN SUPPORT OF PETITIONER MCDANIEL 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:

I further caused the same the foregoing document(s) to be placed in theUnited States mail, with postage thereon fully prepaid, for delivery by the United States Postal Service to the following recipients:

| | | |
|---|---|---|
| Attorneys for Real Party in Interest:<br>JULIA Y. JE (SBN 192746)<br>Deputy Attorney General<br>455 Golden Gate Avenue, Suite 11000 San Francisco, CA 94102-7004<br>Telephone: (415) 510-3804<br>Fax: (415) 703-5480<br>Julia.Je@doj.ca.gov | Attorney for Petitioner/Defendant<br>Matt A. Sullivan, Esq. (SBN 2848842<br>533 Airport Blvd., Suite 400<br>Burlinggame, CA 94010<br>Telephone: (415) 770-0146<br>info@mattsullivanlaw.com | First District Appellate Project<br>Email: eservice@fdap.org |
| Joshua Martin<br>San Mateo County District Attorney's office<br>Email: jxmartin@smcgov.org | Clerk of the Court<br>Main Courthouse-Hall of Justice<br>San Mateo County Superior Court<br>400 County Center Redwood City, CA 94063-1655 | |



Document received by the CA 1st District Court of Appeal.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on February 11, 2025, at San Francisco, California.

Chesa Boudin

Printed Name

Signature

**Berkeley Criminal Law & Justice Center**
UC Berkeley School of Law
2763-2719 Bancroft Way, Berkeley, CA 94704



Document received by the CA 1st District Court of Appeal.