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VIA TRUEFILING

Chief Justice Guerrero and Associate Justices
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102-4797

Re: *Office of the State Public Defender et al. v. Bonta* (No. S284496)

Dear Chief Justice Guerrero and Associate Justices:

The Prosecutors Alliance of California, as amicus curiae, respectfully submits this letter urging the Court to grant review.

The petition raises exceptionally important questions warranting guidance from this Court. California's death penalty system, in which prosecutors play a key role, exhibits troubling signs of racial discrimination in its application. Overwhelming and widely recognized evidence developed over decades indicates as much. That evidence alone would justify review here. But review is particularly appropriate because of how many features of the state's death penalty system open the door to potential racial discrimination. Racial discrimination of the sort observed in California's death penalty system is antithetical to the state constitution's equal protection guarantee and threatens to undermine the public trust and legitimacy on which the criminal justice system depends. Now is the right time and this is the right vehicle for the Court to review these issues, which demand an immediate and systemwide answer.

I. Statement of Interest

The Prosecutors Alliance of California is an organization of prosecutors committed to reforming California's criminal justice system by advancing public safety, human dignity, and community wellbeing. The issues the petition presents are particularly important to the Alliance, which since

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its inception has advocated for a criminal justice system that fairly and consistently respects defendants' rights to equal protection under the law.

Prosecutors occupy a special position in the criminal justice system and are closely involved in each stage of a death penalty case, including investigating, charging, prosecuting, and sentencing. In exercising their duties, prosecutors must pursue justice both in particular cases and more broadly. And as stewards of the criminal justice system, prosecutors must work to safeguard public trust in the administration of justice. Ongoing, widespread racial discrimination in the administration of the state's death penalty is inconsistent with those values and undermines the legitimacy and trust on which prosecutors rely.

II. INTRODUCTION AND SUMMARY OF ARGUMENT

"The primary duty of the prosecutor is to seek justice within the bounds of the law." (American Bar Assn., Criminal Justice Standards for the Prosecution Function (4th ed. 2017) standard 3-1.2(b), https://tinyurl.com/2zrcwz5x.) Consistent with that duty, the Alliance's mission is to advocate for a criminal justice system that comports with the highest standards of justice and fairness—including the California Constitution's mandate of "equal protection of the laws." (Cal. Const., art. I, § 7, subd. (a).)

The petition for review raises serious questions as to whether California's death penalty system, as administered, complies with that equal protection mandate. Overwhelming studies and statistics, across the state and over many decades, reveal significant and ongoing racial disparities in the death penalty's application. Prominent public officials, including the Governor, Attorney General, and several district attorneys, have acknowledged that startling evidence and called for examination of the potential causes. This Court has not had an opportunity to consider the equal protection implications of that troubling, longstanding imbalance. The petition affords a valuable opportunity for the Court to do just that.

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Review is especially appropriate because the death penalty system provides many opportunities for racial discrimination to taint the process. From initial investigation to charging to jury selection and beyond, the law permits—indeed, depends on—the exercise of substantial discretion by independent actors. As valuable and necessary as that discretion may be, it comes with a cost: the potential that racial bias, explicit or implicit, will affect the outcome. As central actors in the death penalty system, the Alliance's members urge the Court to provide guidance as to whether the system comports with the state constitution's stringent demands.

This is the right case in which to resolve that important question. This Court's "duty [is] to insure" the "equal protection of the laws" that the California Constitution guarantees. (*Silver v. Brown* (1965) 63 Cal.2d 270, 282.) And the Court has recognized that exercising its original jurisdiction to resolve issues of statewide importance is appropriate even if there are alternative paths to review. (E.g., *Briggs v. Brown* (2017) 3 Cal.5th 808, 822-823; *Clean Air Constituency v. Cal. State Air Resources Bd.* (1974) 11 Cal.3d 801, 808.) Moreover, review via original jurisdiction here is superior to any alternatives, particularly given the fact- and county-specific nature of challenges under Penal Code section 745.

These issues matter to defendants and prosecutors alike, and ultimately to the broader criminal justice system, whose legitimacy depends on equal and fair application of the laws. The Court should grant review.

III. ARGUMENT

A. The petition raises exceptionally important questions about clear racial disparities in California's death penalty system, in which prosecutors play a vital role.

The law abhors racial discrimination. As this Court has recognized, federal and state equal protection guarantees share a "core purpose" of "do[ing] away with all governmentally imposed discrimination based on race, thus ultimately helping to create a political system in which race no longer

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matters." (*Coral Construction, Inc. v. City & County of San Francisco* (2010) 50 Cal.4th 315, 327-328, cleaned up.) California law in particular rejects racial discrimination (e.g., *Burks v. Poppy Construction Co.* (1962) 57 Cal.2d 463, 471; see also Cal. Const., art. I, § 31), including in the criminal justice context (e.g., *People v. Wheeler* (1978) 22 Cal.3d 258, 287).

Racial discrimination in the criminal justice context is doubly harmful. It not only violates the rights of defendants for whom race plays a role in their conviction or sentencing, but also erodes "'public respect for . . . the rule of law.'" (*People v. Turner* (1986) 42 Cal.3d 711, 716-717.) The members of the Alliance are particularly concerned about such an erosion of public trust, which is the lifeblood of the criminal justice system.

Two features of California's death penalty system warrant prompt attention from this Court. First, there are alarming indications of racial discrimination in the way the system has operated over many decades. Second, there are many points during a death penalty case in which racial discrimination could affect the outcome.

1. Widely accepted evidence reveals troubling inconsistencies in the death penalty's application.

Racial discrimination is a "familiar and recurring evil that, if left unaddressed, would risk systemic injury to the administration of justice." (*Peña-Rodriguez v. Colorado* (2017) 580 U.S. 206, 224.) But as the petition describes, statistics show that California's death penalty system is far from one "'in which race no longer matters.'" (*Coral Construction*, 50 Cal.4th at p. 328.) Evident racial disparities in the administration of the death penalty in California are well documented and manifest in two distinct, but related, ways.

First, defendants of color are more often sentenced to death than their white counterparts. One study, for instance, analyzed homicide convictions between 1978 and 2002 and found—even after controlling for nonracial factors—that Black defendants were up to 8.7 times more likely,

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and Latino defendants up to 6.2 times more likely, to receive death sentences as compared to defendants of other races. (See Grosso et al., *The Influence of the Race of Defendant and the Race of Victim on Capital Charging and Sentencing in California*, 1SE10-11.) And, unfortunately, these disparities did not stop in 2002. Another study from 1979 to 2018 found—again, even after controlling for race-neutral variables such as county size, demographics, and annual homicide rate—that Black suspects were more than twice as likely, and Hispanic suspects one-and-a-half times as likely, to receive death sentences as compared to white suspects. (See Petersen, *Racial Disparities in California Death Sentencing During the Post-*Gregg *Period, 1979 to 2018* (2022), 1SE95-96.)

As of 2023, although Black or African American people make up just 6.5% of California's population, they comprise 35% of the state's death row. (See *Quick Facts: California*, U.S. Census Bureau (accessed Apr. 20, 2024), https://tinyurl.com/yc4bfwp6; NAACP Legal Defense & Education Fund, Death Row USA: Winter 2023, at p. 37, https://tinyurl.com/472fdrwa.) And more targeted case studies suggest those figures may even understate the problem. Take Orange County: 89% of defendants sentenced to death there between 2010 and 2015 were people of color, and although only 2% of the county's population is Black, nearly half of all defendants sentenced to death were Black. (Fair Punishment Project, Too Broken to Fix: Part II (2016), at p. 43, https://tinyurl.com/yefhn9ya.) Los Angeles provides another striking example: from 2012 to 2019, twenty-two death sentences were imposed there, *all* on people of color. (Levin, *In Los Angeles, Only People of Color Are Sentenced to Death*, Guardian (June 18, 2019), https://tinyurl.com/5cwywcht.)

Second, the death penalty is more likely in cases involving white victims rather than victims of color. One study found, after controlling for aggravating circumstances and other relevant differences, that cases involving Black victims were 59.3% less likely, and cases with Hispanic victims 67.1% less likely, to result in death sentences as compared to cases involving white victims. (Pierce & Radelet, *Impact of Legally Inappropriate*

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Factors on Death Sentencing for California Homicide, 1990-1999 (2005) 46 Santa Clara L. Rev. 1, 34.) Another found that cases involving white victims were up to 8.8 times more likely to result in death sentences than cases involving non-white victims. (Grosso et al., *supra*, at 1SE11.)

Cases involving both a defendant of color and a white victim are the most likely to result in the death penalty. One study found that such cases involving Black defendants were up to 4.4 times more likely, and cases involving Latino defendants up to 8 times more likely, to result in a death sentence. (Grosso et al., *supra*, at 1SE11.) Another found that prosecutors were 58% less likely to seek the death penalty in cases involving both a Black defendant and a Black victim as compared to cases involving a Black defendant and a white victim. (See Petersen, *Cumulative Racial and Ethnic Inequalities in Potentially Capital Cases: A Multistage Analysis of Pretrial Disparities* (2020) 45 Crim. Just. Rev. 225, 235 [2SE386].) And for cases involving a Latino defendant and a Latino victim, prosecutors were 78% less likely to seek the death penalty. (*Ibid.*)

Riverside County presents an illuminating case study. Riverside is known as one of the "most prolific death-sentencing counties in the nation"; although it holds only 6% of the state's population, from 2015 to 2019 it accounted for over one-third of its death sentences. (*Riverside County Capital Cases Among First to Bring Challenges Under CA Racial Justice Act*, ACLU (Oct. 28, 2022), https://tinyurl.com/bdhpzzk9.) Of the dozens of people on death row in California who were sentenced in Riverside, 75% are people of color. (*Ibid.*) And a study of Riverside County from 2006 to 2019 revealed that Black defendants were 1.71 times more likely to be made "death eligible" by being charged with a "special circumstance" under Penal Code section 190.2; 9.06 times more likely to receive a death notice; and 14.09 times more likely to receive a death sentence. (Petersen, *Racial Disparities in Riverside County's Death Penalty System* (2021), 1SE212.) These dramatic increases at each stage of the death penalty system provide a striking illustration of what scholars have labeled "cumulative disadvantage," in that "initial advantages in group

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positionality increase over time, producing large disparities at the final stages." (Petersen, *Cumulative Racial and Ethnic Inequalities*, *supra*, at p. 226 [2SE510].) These disparities are not unique to Riverside County and have been exhaustively replicated in numerous county-specific studies conducted in recent years. (See Pet. at pp. 33-39.)

The higher rate of death sentences for defendants of color is all the more alarming in light of data showing a disproportionately high rate of wrongful convictions among defendants of color. Although Black people make up only 13.6% of the U.S. population, over half of all defendants who have been exonerated have been Black. (Gross et al., Race and Wrongful Convictions in the United States 2022, at p. 3, https://tinyurl.com/v4np3a7e.)

This data is generally uncontested—and it has raised alarm bells with state actors across California. In 2020, Governor Newsom filed an amicus brief before this Court in *People v. McDaniel*, No. S171393, acknowledging that "California's capital punishment scheme is now, and always has been, infected by racism" and that "[t]he overwhelming majority of studies that have analyzed America's death penalty have found that racial disparities are pervasive, and that the race of the defendant and the race of the victim impact whether the death penalty will be imposed." (Brief for Governor Gavin Newsom as Amicus Curiae, at pp. 22-23.)

Similarly, Attorney General Bonta is an outspoken critic of California's death penalty and has called out its "disparate impact based on race." (*Newsom Appoints Legislator Who Co-Authored Constitutional Amendment Against Death Penalty to be California's Attorney General*, Death Penalty Information Center (Apr. 1, 2021), https://tinyurl.com/8ffte3uk.)

Many of California's district attorneys have likewise questioned whether the death penalty system comports with equal protection principles, including Los Angeles County District Attorney George Gascón, who issued a special directive prohibiting county district attorneys from seeking the death penalty and stating that "[r]acism and the death penalty are inextricably intertwined." (Los Angeles County District Attorney's Office,

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Special Directive 20-11 (Dec. 7, 2020), https://tinyurl.com/2ru3dcst.) And just this month, Santa Clara County District Attorney Jeff Rosen petitioned to resentence fifteen defendants on death row to life without parole, citing the "racially biased" nature of the state's death penalty system. (*DA Rosen Asks Court to Remove Death Penalty from 15 Murder Convictions*, San Jose Inside (Apr. 10, 2024), https://tinyurl.com/yfa8htea.)

As prosecutors, the members of the Alliance find these figures and critiques alarming in both their strength and consistency over decades. The criminal justice system depends on public faith in fair and equal treatment of all those subject to it. But these dramatic indications of racially biased treatment raise serious questions about whether California is living up to that standard, and thus warrant this Court's attention.

2. California's death penalty system provides an array of opportunities for racial discrimination to affect the death penalty's administration.

The numbers are troubling not just in their own right, but also because the death penalty system provides so many opportunities for racial bias to infect the process. Those features suggest that the disparities observed over many years are no coincidence and that this Court should grant review to analyze the system in light of the mandate of equal protection.

Each stage of the criminal justice system in death penalty cases creates a real risk of racial discrimination. Scholars have noted that "[i]n the criminal justice context," "racial/ethnic disparities arise from the accumulation of biases across multiple decision-making points." (Petersen, *Cumulative Racial and Ethnic Inequalities*, *supra*, at pp. 227-228 [2SE378-379].) Three of those points bear emphasis: (1) policing and investigation, (2) charging, and (3) jury selection.

First, investigatory practices can be affected by racial bias that taints who is investigated and charged with a crime. Studies have shown, for instance, that police officers are more likely to associate Black faces with

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criminality. (Eberhardt et al., *Seeing Black: Race, Crime, and Visual Processing* (2004) 87 J. of Personality & Social Psy. 876, 878.) Other studies have likewise indicated biases of police officers and other investigative actors may be affecting which suspects and defendants enter the death penalty system in the first place. (See generally, e.g., Petersen, *Examining the Sources of Racial Bias in Potentially Capital Cases: A Case Study of Police and Prosecutorial Discretion* (2017) 7 Race & Justice 7 [2SE347-374].) Given the internal and often implicit nature of such racial bias, it is difficult for other actors in the criminal justice system, including prosecutors, to ferret out that discrimination on the back end.

Second, California's death penalty statute relies on a substantial degree of prosecutorial discretion, and this discretion has the potential to be applied unevenly across racial lines. (See Shatz & Rivkind, *The California Death Penalty Scheme: Requiem for* Furman*?* (1997) 72 N.Y.U. L. Rev. 1283, 1283 ["California has adopted a death penalty scheme which defines death-eligibility so broadly that it creates a great[] risk of arbitrary death sentences . . . . "].) Prosecutorial discretion is itself invaluable: it ensures efficient case resolution and affords public servants the opportunity to mold their work in light of the broad dictates of justice. But it also comes with risks—among which is inconsistent application tainted by racial bias, a risk made graver by the breadth of California's death penalty statute.

Under Penal Code section 190.2, a person found guilty of first-degree murder can receive the death penalty if any of twenty-two varying "special circumstances" is present. The result is a near-total overlap of first-degree murder and special-circumstances murder. In fact, one study found that 95% of first-degree homicide convictions (along with 43% of second-degree murder and voluntary manslaughter convictions) were death-eligible under section 190.2, giving California the highest death eligibility in the country "by every measure." (Baldus et al., Furman *at 45: Constitutional Challenges from California's Failure to (Again) Narrow Death Eligibility* (2019) 16 J. Emp. L. Stu. 693, 713, 722, 729.) Yet from

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this broad death-eligible pool, prosecutors allege special circumstances only 28% of the time. (*Id.* at p. 724.)

The only conduit between the broad universe of death-eligible cases and the narrower band of cases in which the death penalty is sought is the prosecutor, who must exercise her discretion in deciding whether to allege a special circumstance. In California more so than any other state, therefore, prosecutorial discretion can be the difference between a death sentence and a life in prison. And this broad discretion may come at a cost: studies indicate that special circumstances are alleged disproportionately based on the race of defendants or victims. (See Grosso et al., *Death by Stereotype Race, Ethnicity, and California's Failure to Implement* Furman's *Narrowing Requirement* (2019) 66 UCLA L. Rev. 1394, 1426-1427; see also Grosso et al., *supra*, at 1SE11 [cases with at least one white victim were between 1.6 and 2.3 times more likely to have special circumstances alleged than cases with no white victims].)

Third, jurors of color are disproportionately filtered out of death-qualified juries. That process begins before would-be jurors even show up at the courthouse. Each county relies on lists of registered voters and licensed drivers to identify prospective jurors. (Semel et al., Whitewashing the Jury Box: How California Perpetuates the Discriminatory Exclusion of Black and Latinx Jurors (2020), at p. 4, https://tinyurl.com/ypdwkfw2.) But citizens of color are demonstrably underrepresented in these lists. (*Ibid.*) For example, in Orange County, Black citizens are underrepresented in the registered voter and licensed driver lists by nearly 20%. (*Ibid.*) That underrepresentation stems from a variety of factors, including felon disenfranchisement and geographic mobility due to unstable employment and socioeconomic status. (*Ibid.*) But whatever the cause, the result is a juror pool that begins on unequal footing.

Once they make it to the courtroom, people of color are also disproportionately removed from jury pools. California law does not require employers to compensate employees for missed time due to jury

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service. (*Employer Information*, California Courts (accessed Apr. 20, 2024), https://tinyurl.com/43wjwfpb.) And although legislation to increase low-income jurors' pay has received broad support, at present California compensates jurors and prospective jurors at a rate of only $15 per day, below the state's minimum wage. (See, e.g., *Frequently Asked Questions*, San Bernardino County Superior Court (accessed Apr. 20, 2024), https://tinyurl.com/9hr5e8yc; *Minimum Wage*, Cal. Dept. of Industrial Relations (updated Mar. 2024), https://tinyurl.com/y4nyj3hc.) Thus, many low-income people, including many would-be jurors of color, simply cannot afford to participate in jury duty, and judges and attorneys will often relieve them from duty on this ground alone. (See, e.g., Offit, *Benevolent Exclusion* (2021) 96 Wash. L. Rev. 613, 638-641.)

Further, in capital cases, every juror must be "death qualified." This means prospective jurors are asked about their views on the death penalty and can be excluded based on their answers. (Lynch & Haney, *Death Qualification in Black and White: Racialized Decision Making and Death-Qualified Juries* (2018) 40 L. & Pol'y 148, 148.) As a result, jurors of color are again filtered out at disproportionate rates because, as evidence shows, they are more likely to oppose the death penalty as compared to their white peers. (See *id.* at pp. 148, 153, 157 [finding that in Solano County, 70% of white jury-eligible people favored the death penalty as compared to 45% of Black jury-eligible people].)

The final step in this exclusionary process is the peremptory strike, which is likewise used against people of color at a disproportionate rate. One widely cited source posits that the disproportionate rate of peremptory strikes against minority prospective jurors can be traced to racial stereotypes—for instance, a perception that Black jurors are more skeptical of law enforcement and the criminal justice system. (Semel et al., *supra*, at p. 14.) Studies have also revealed that various factors with potential racial discrepancies—including prior contact with law enforcement, relationships with people convicted of crimes, residence in high-crime neighborhoods, and the demeanor and appearance of

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prospective jurors—are common reasons cited in justifying peremptory strikes. (*Ibid.*)

These multiple opportunities for racial bias in jury selection are alarming. The makeup of a jury is vital in determining guilt and deciding punishment. Under California law, for the death penalty to be imposed, the jury must find that aggravating circumstances outweigh mitigating circumstances. (Pen. Code, § 190.3.) That determination is left to the jury's discretion. And, again, although that discretion is valuable, it also creates a risk that improper considerations of race will affect the process. Many of the matters entrusted to the jury during the penalty phase—such as weighing aggravating and mitigating evidence and judging a defendant's "culpability"—call for amorphous moral decisions rather than purely factual judgments. These subjective determinations open yet another window for implicit bias to affect the course of capital cases involving defendants or victims of color. Indeed, those who have studied the disproportionate racial composition of death-qualified juries have noted that, in the end, they "are more likely to disregard or misuse mitigating as compared to aggravating evidence." (Lynch, *supra*, at p. 152.)

* * *

The petition calls the Court's attention to well-documented disparities in California's capital cases about which virtually all participants in the criminal justice system agree. And several features of California's death penalty system suggest that those disparities may be the product of racial discrimination rather than happenstance or permissible considerations. The members of the Alliance, as trustees of the criminal justice system, cannot disregard these troubling facts and urge the Court to address the constitutional question presented in the petition.

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B. The Court should grant review to resolve important constitutional questions and provide guidance to actors across the criminal justice system.

Issues "of great public importance . . . should be resolved promptly." (*Raven v. Deukmejian* (1990) 52 Cal.3d 336, 340.) This Court has previously followed that principle in exercising original jurisdiction over a challenge to the validity of California's death penalty system (*Briggs v. Brown* (2017) 3 Cal.5th 808, 822-823), and more broadly in reviewing significant questions of constitutional law (e.g., *Silver v. Brown*, 63 Cal.2d 270, 281-282; *Legislature v. Eu* (1991) 54 Cal.3d 492, 500). It should do so again here because the petition raises serious concerns regarding the fundamental fairness of a central component of the State's justice system. As amicus, the Alliance urges this Court to provide guidance on how, if at all, the multiple discretionary components of the state's death penalty system may operate consistent with the guarantees of equal protection.

The California Constitution's equal protection guarantee ensures that the State will "treat like cases alike." (*Kasler v. Lockyer* (2000) 23 Cal.4th 472, 513 (conc. opn. of Kennard, J.), quoting *Vacco v. Quill* (1997) 521 U.S. 793, 799.) But as detailed, the facts indicate that in applying the death penalty—when the stakes are "as high as they can get" (*People v. Johnson* (2019) 8 Cal.5th 475, 453 (dis. opn. of Cuellar, J.))—California is not making good on that promise. That is precisely the sort of statewide issue of exceptional importance, with implications for all death-eligible cases and more broadly for the public's perception of the criminal justice system, that warrants this Court's immediate review.

This Court has a vital role to play in ensuring that actors in the criminal justice system receive appropriate guidance as to how they may properly carry out their jobs. And writ review, though extraordinary, is the right way for the Court to provide that guidance. The issues raised here are certainly "of sufficient public importance to justify the exercise of [the Court's] original jurisdiction." (*Briggs*, 3 Cal.5th at p. 822.) Whether the

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death penalty, as administered, complies with "the general strictures of the state Constitution" is just such an important question. (*People v. Superior Court* (*Engert*) (1982) 31 Cal.3d 797, 807-808.) And as this Court has explained, "the existence of an alternative appellate remedy will not preclude this court's original jurisdiction" when the issues presented require immediate resolution. (*Clean Air Constituency v. Cal. State Air Resources Bd.* (1974) 11 Cal.3d 801, 808.) If anything, the need for writ review is particularly pressing in this case because an exercise of the Court's original jurisdiction would be superior to any alternative.

To be sure, other branches of California's government have been aware of the problem of racial inequality in the administration of the death penalty. Among the measures taken in response is Penal Code section 745, which prohibits the state from "impos[ing] a sentence on the basis of race, ethnicity, or national origin" (Pen. Code, § 745, subd. (a)) and which creates a cause of action for defendants to challenge their sentence as tainted by racial bias (*id.*, § 745, subd. (b)). Section 745 is a valuable step in addressing systemic bias in the criminal justice system, but it does not supplant the need for review here.

Section 745 petitions will necessarily approach the issue of racial discrimination through the lens of a single petitioner's prosecution. Considering the evidence of and reasons for racial disparities in the death penalty system across *all* cases is one thing; proving that racial discrimination affected the result in a *particular* case is another. And while specific instances of racial discrimination are significant and warrant relief, they are different in kind from the broader, systemic, and multifaceted sources of racial inequality in the imposition of the death penalty that the petition here identifies.

Moreover, even in its broadest form, section 745 allows petitioners to seek relief if sentences "were more frequently imposed" based on the defendant's or victim's race "*in the county* where the sentence was imposed." (Pen. Code, § 745, subds. (a)(4)(A), (B), italics added.) Thus, for

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each of the 58 counties in California, and across multiple historical periods, defendants will have to litigate whether data for that county supports their claims. And for some counties, historical data sufficient to make the kind of rigorous determination necessary at such fine-grained levels likely does not exist. (See Petersen, *Racial Disparities in California Death Sentencing During the Post-*Gregg *Period*, *supra*, at 1SE90-91.) That kind of piecemeal litigation not only offers no guarantee of consistency but also is certain to stretch on for years, if not decades, and to demand staggering costs from both individual defendants and the offices that prosecuted their cases.

Defendants need difficult-to-obtain data for countywide section 745 claims, such that "few—if any—statistics-based claims have been fully litigated" to date. (Com. on Revision of the Penal Code, Annual Report and Recommendations (2013), at p. 18, https://tinyurl.com/2s4x232n.) Given the strain that capital cases already place on the legal system, capital defendants will likely face yearslong delays in obtaining habeas counsel and resolving section 745 claims. (See Habeas Corpus Resource Center, 2023 Annual Report, at pp. 18-20, https://tinyurl.com/94b6n29u.) And the burden such piecemeal litigation imposes will affect prosecutors, too. Many capital habeas petitioners bring claims regarding convictions that are decades old. Assessing the validity of section 745 claims with respect to those cases will only add to the strain already placed on district attorney offices across the state.

Nor does Governor Newsom's 2019 moratorium on executions eliminate the need for review here. True, the moratorium is a striking acknowledgment of the issue presented in the petition: Governor Newsom recognized that the death penalty system "has been, by all measures, a failure" and "has discriminated against defendants who are . . . black and brown." (*Governor Gavin Newsom Orders a Halt to the Death Penalty in California*, Office of the Governor (Mar. 13, 2019), https://tinyurl.com/yk8hjp8b). But the moratorium does not prevent additional defendants from receiving capital sentences. Moreover,

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hundreds of inmates remain on death row, more than a dozen of whom received their capital sentences since the Governor issued the moratorium. (*Condemned Inmate List*, Cal. Dept. of Corrections & Rehabilitation (updated Apr. 8, 2024), https://tinyurl.com/48njc45p.) Those on death row have no guarantee that the moratorium will be extended by future governors. And in the meantime, they remain under a constant threat of execution as a result of a system that by all accounts may be infected by racial bias. The writ thus presents a circumstance in which "there is no adequate remedy in the ordinary course of law," and this Court's review is thus appropriate. (*Mooney v. Pickett* (1971) 4 Cal.3d 669, 675.)

Only prompt exercise of this Court's original jurisdiction can adequately address whether California's current death penalty system comports with the state constitution's equal protection guarantee. The judiciary has a vital role in enforcing that guarantee. (See, e.g., *Peña-Rodriguez*, 580 U.S. at p. 222 ["[t]he duty to confront racial animus in the justice system is not the legislature's alone"].) The petition offers this Court the opportunity to exercise that important responsibility and to provide guidance on an important question at the heart of the state's criminal justice system.

IV. Conclusion

Amicus respectfully urges the court to grant review.

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Respectfully submitted,

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PROOF OF SERVICE

I, Matt Aidan Getz, declare as follows:

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years, and I am not a party to this action. My business address is 333 South Grand Avenue, Los Angeles, California 90071-3197.

On April 23, 2024, I served:

LETTER OF THE PROSECUTORS ALLIANCE OF CALIFORNIA AS AMICUS CURIAE SUPPORTING REVIEW

on the parties stated below, by the following means of service:

SEE ATTACHED SERVICE LIST

☑ **BY ELECTRONIC SERVICE**: True and correct copies of the letter were electronically served through TrueFiling on counsel for the parties as listed on the attached service list.

☑ **BY MAIL SERVICE**: I caused true and correct copies of the letter to be placed in sealed envelopes addressed to counsel for the parties as listed on the attached service list, to be placed for collection and mailing following our ordinary business practices. I am familiar with this firm's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited with the U.S. Postal Service in the ordinary course of business in a sealed envelope with postage fully prepaid. I am aware that on motion of party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after date of deposit for mailing set forth in this declaration.

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☑ **(STATE)** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on April 23, 2024.

Matt Aidan Getz

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SERVICE LIST

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