

July 15, 2024

The Honorable Rob Bonta

Attorney General

Office of the Attorney General

California Department of Justice

1515 Clay St.

Oakland, CA 94612

cc: Chief Deputy Attorney Venus Johnson, State Bar of California, California Commission on Judicial Performance, Office of the Alameda County District Attorney

Re: Ensure Accountability and Quick Resolution for Those Impacted by Death Penalty Scandal in Alameda County

Dear Attorney General Bonta:

We write on behalf of Color Of Change — one of the nation’s foremost racial justice organizations, with millions of members nationwide, including more than 584,823 members in California — and 10 other undersigned civil rights, faith, human rights, and community-based organizations serving California residents. We are outraged by the recently uncovered, four decades-long practice of systematically removing Black and Jewish jurors from capital punishment cases in Alameda County. The scandalous prosecutorial misconduct, hidden by prior administrations, was unveiled through the transparency of District Attorney Pamela Price’s administration. It is unsettling that racist and antisemitic constitutional violations were commonplace in the Office of the Alameda County District Attorney.¹ To make matters worse, newly disclosed records reveal that Alameda County prosecutors also used homophobic slurs to refer to prospective jurors in death penalty cases, only widening the scope of this unethical disaster.² It is deeply troubling that this scandal was initially exposed as far back as 2003,³ but was covered up by three previous district attorney administrations.

To swiftly account for these injustices, we urge you to use your discretion as the chief law officer of the state to support District Attorney Price’s efforts to provide resolution for those whose cases were impacted by this prosecutorial and judicial misconduct.⁴ Furthermore, to avoid another several decades of state-sanctioned constitutional violations, we strongly urge the Office of the Attorney General to launch a pattern-or-practice investigation into both the systemic removal and lack of inclusion of Black and Jewish jurors in Alameda County death penalty cases during the last several

¹ “Federal Judge Orders Alameda County District Attorney to Review 35 Capital Cases Following Disclosure of Prosecutorial Misconduct in Jury Selection,” Death Penalty Information Center, April 26, 2024, <https://deathpenaltyinfo.org/news/federal-judge-orders-alameda-county-district-attorney-to-review-35-capital-cases-following-disclosure-of-prosecutorial-misconduct-in-jury-selection>

² Sam Levin, “California prosecutors used anti-gay slurs to refer to prospective jurors,” The Guardian, June 18, 2024, <https://www.theguardian.com/us-news/article/2024/jun/18/california-prosecutors-homophobic-slurs-jurors#:~:text=Prosecutors%20from%20the%20Alameda%20county,notes%20shared%20with%20the%20Guardian.>

³ Will Harper, “Jury Rigged?” East Bay Express, May 4, 2005, <https://eastbayexpress.com/jury-rigged-1/>

⁴ See Cal. Const., Art. V, § 13. “It is the duty of the Attorney General to see that the laws of the State are uniformly and adequately enforced When required by the public interest or directed by the Governor, the Attorney General shall assist any district attorney in the discharge of the duties of that office.”

decades.⁵ This investigation should thoroughly capture the full extent of this scandal, including documenting the structural pitfalls that allowed for this practice to become commonplace for years in the Office of the Alameda County District Attorney. The Attorney General's Office also should collaborate with the State Bar of California and the California Commission on Judicial Performance to ensure that all current, former and retired prosecutors and judges implicated in this scandal are appropriately held accountable and prevented from subjecting Californians to these racist and unconstitutional practices again.

As you know, 21 years ago, Jack Quatman, who worked for 26 years as an Alameda County deputy district attorney, filed a sworn declaration that it was "standard practice to exclude Jewish jurors in death cases, as it was to exclude African American women from capital juries."⁶ The declaration also included Quatman's admission of his own use of this tactic as advised by the late Judge Stanley Golde.⁷ Reports say that Judge Golde, who died in 1998 after 25 years on the bench, presided over more death penalty cases in the county than any other judge.⁸ Quatman filed the aforementioned declaration in the habeas corpus case of Fred Freeman, a man who Quatman successfully prosecuted, winning a death sentence in 1987 after Quatman used three of his challenges to remove Jewish people from the jury.⁹ Despite the finding by Freeman's attorneys that non-Jews were excluded at a rate of 49.97%, while Jews and people with Jewish surnames were excluded at a rate of 93.10%, Santa Clara Superior Court Judge Kevin Murphy concluded that Quatman "is a man not to be believed," noting that Quatman "had a motive to embarrass the Alameda County District Attorney's Office in general, and District Attorney Tom Orloff in particular."¹⁰ After Quatman's admission, other Alameda County defense attorneys informed California justices that the Alameda County District Attorney's Office had an unwritten policy of excluding Jewish and Black women jurors in death penalty cases as far back as the late 1970s.¹¹ It appears that the previous proceedings and the failure to uncover this unwritten policy was actually about protecting the prosecutorial and judicial institutions themselves, given how these significant allegations likely would overturn many convictions in Alameda County.

This level of ongoing, individual and systemic misconduct should raise alarms, especially for California's state apparatus that oversees Alameda County's prosecutorial and judicial operations.

Previous administrations of the Office of the Attorney General, the Alameda County District Attorney Office, the State Bar of California and the California Commission on Judicial Performance did not thoroughly investigate or take action when public allegations initially were made about the systemic removal of Black and Jewish jurors in Alameda County capital punishment cases. This inaction amounted to ongoing constitutional

⁵ California Code, Civil Code - CIV § 52.3

⁶ Glenn Chapman, "Prosecutor: Judge told me to dismiss Jews from juries," East Bay Times, March 23, 2005, <https://www.eastbaytimes.com/2005/03/23/prosecutor-judge-told-me-to-dismiss-jews-from-juries/>

⁷ Dean Murphy, "Case Stirs Fight on Jews, Juries and Execution," New York Times, March 16, 2005, <https://www.nytimes.com/2005/03/16/us/case-stirs-fight-on-jews-juries-and-execution.html#:~:text=%22It%20was%20standard%20practice%20to,has%20not%20been%20an%20issue.>

⁸ Ibid.

⁹ Bob Egelko, "All of Alameda County's death sentences are under review over evidence of juror discrimination." San Francisco Chronicle, April 22, 2024, <https://www.sfchronicle.com/politics/article/alameda-county-death-sentences-19416946.php>

¹⁰ "Judge and Prosecutor Agreed on Keeping Jewish People Off Juries," Death Penalty Information Center, March 17, 2005, <https://deathpenaltyinfo.org/news/judge-and-prosecutor-agreed-on-keeping-jewish-people-off-juries>; The Record, "Judge: Former prosecutor 'dishonest and unethical,'" Recordnet.com, April 7, 2005, <https://www.recordnet.com/story/news/2005/04/07/judge-former-prosecutor-dishonest-unethical/50672636007/>; Glenn Chapman, "Judge decides attorney lied about juries," East Bay Times, April 6, 2005, <https://www.eastbaytimes.com/2005/04/06/judge-decides-attorney-lied-about-juries/>

¹¹ Ibid.

violations, a complete failure to hold implicated prosecutors and judges accountable and, ultimately, worsened trust in the criminal legal system and its oversight. This is unacceptable and must be changed.

In early May, Color Of Change penned a letter, along with more than a dozen other civil rights, justice reform and community-based organizations in California, to the leaders of the State Bar of California and the California Commission on Judicial Performance expressing our dismay and calling on them to launch their own investigation into the current and retired prosecutors and judges who are implicated in this scandal.¹² In mid-June, the 8th Amendment Project, Bend the Arc: Jewish Action California, Black and Jewish Unity Coalition, the ACLU of Northern California, Color Of Change and several other partner organizations organized a press conference led by Black and Jewish leaders in Alameda County, where we expressed our collective outrage and community demands related to accountability and quick resolution for those impacted.¹³ We are appalled by the lack of accountability for current or retired prosecutors and judges implicated in this scandal. We demand that all implicated prosecutors and judges are appropriately held accountable (i.e. disbarment, etc.) and prevented from engaging in these kinds of constitutional violations again. In 2005, Judge Morris Jacobson – formerly an Alameda County deputy district attorney – was appointed to the Alameda County Superior Court despite being an implicated prosecutor in this scandal.¹⁴ Just recently, Gov. Gavin Newsom included Michael Nieto, an implicated Alameda County prosecutor, among his recently announced judicial appointments. **When accountability is not prioritized, people who engage in unconstitutional, racist or otherwise harmful behavior are allowed to rise in power within the prosecutorial and judicial systems – subjecting more and more Californians to unfair trials and constitutional violations.**

Given the historic inaction of previous administrations of the Attorney General’s Office in appropriately investigating these allegations during the last several decades, we believe that you have a unique responsibility to be on the right side of history this time around. The Attorney General’s Office is able to review and concede pending *Batson* claims from impacted incarcerated people in this jurisdiction. The attorney general also should do everything in his power to rectify past abuses. For instance, Charles Stevens, the only affected death row prisoner with no appeals left, was tried by a jury in which seven of eight Black potential jurors and all six Jewish potential jurors were stricken. A federal district court judge, examining only three of those 13 strikes, concluded that a Black juror was improperly stricken, but denied relief based on a federal procedural issue. But for the moratorium on executions in California, Stevens would have been executed despite his case being clearly impacted by racist jury selection practices and constitutional violations. With the newly discovered evidence supporting that previously recognized wrongdoing, we believe you, Attorney General Bonta, should take action to remedy that already determined injustice. The U.S. Supreme Court has been clear: Peremptory challenges cannot be used to systematically strike prospective jurors from the panel on the basis of

¹² On May 10, Color Of Change and over a dozen civil rights, justice reform, and community-based organizations serving California residents penned a letter to California State Bar and Commission on Judicial Performance urging for them to launch an investigation into current and former prosecutors and judges implicated in Alameda County death penalty scandal. Full letter can be found here: https://colorofchange.org/wp-content/uploads/2024/05/Letter-to-CA-State-Bar-Judicial-Performance-Commission-re_investigati-on-FINAL.pdf

¹³ Darwin Bond Graham. “Alameda County prosecutors accused of using slurs, excluding LGBTQ people from juries.” *Oaklandside*. June 18, 2024, <https://oaklandside.org/2024/06/18/alameda-county-prosecutors-accused-using-slurs-lgbtq-murder-death-penalty-trials/>

¹⁴ “Judge Morris D. Jacobson: Professional Background and Legal Expertise.” *Trellis*. <https://trellis.law/judge/morris.d.jacobson>

race.¹⁵ **We believe that every person is entitled to a fair and just trial no matter what they are accused of.**

The time is now to make clear there are consequences for engaging in this kind of behavior. This is also an important opportunity to incentivize a culture shift across all implicated offices that would eliminate the walls of silence that allowed for this unwritten policy to continue for so long uncritiqued and unaddressed. Our organizations, our members and our communities are thoroughly disturbed by these revelations, and we are equally motivated to ensure that justice and accountability are the highest priority for all entities that are capable or obligated to collaborate on this matter. We are well aware that the recent discovery by the current Alameda County district attorney likely only scratches the surface. **There is a lot at stake, and the people of California cannot afford another slapdash investigation into prosecutorial and judicial misconduct of this magnitude. As previously shared, we strongly urge you to support efforts to provide swift resolution to those whose cases are impacted, launch a pattern-or-practice investigation into the racist and antisemitic unwritten policy of removing Black and Jewish jurors from death penalty cases and ensure that all implicated prosecutors and judges are appropriately held accountable for their gross misconduct. Continued silence from the California attorney general, the chief law officer of the state, is unacceptable.**

If you have any questions related to this letter or are open to discussing further, please contact Queen Adesuyi, policy strategist for Color Of Change, at queen.adesuyi@colorofchange.org.

Sincerely,

**8th Amendment Project
Amnesty International USA
Anti Police-Terror Project
Bend the Arc: Jewish Action - California
Color Of Change
Communities United for Restorative Youth Justice (CURYJ)
Ella Baker Center for Human Rights
Friends Committee on Legislation of California
Interfaith Communities United for Justice and Peace
San Francisco Bay Area Black & Jewish Unity Coalition
Urban Peace Movement**

¹⁵ *Batson v. Kentucky*, 476 U.S. 79, 89 (1986) (holding that the Equal Protection Clause forbids prosecutors from using peremptory challenges to exclude jurors on the basis of race).