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March 19, 2025

Commission on State Mandates
980 9th Street
Suite 300
Sacramento, CA 95814

RECEIVED
March 19, 2025
*Commission on
State Mandates*

Re: Criminal Procedure: Discrimination, 24-TC-02

Dear Chair Stephenshaw and fellow members of the Commission on State Mandates:

The Ella Baker Center for Human Rights writes in support of approving the claim underlying Criminal Procedure: Discrimination, 24-TC-02, which would reimburse the County of Los Angeles. The County seeks reimbursement for costs incurred by the public defenders' office as a result of their court appointment in retroactive petitions raised under the Racial Justice Act (RJA), which prohibits the state from seeking, obtaining, or imposing a criminal conviction or sentence on the basis of race, ethnicity, or national origin.

Based in Oakland, California, the Ella Baker Center for Human Rights (EBC) works to advance racial and economic justice to ensure dignity and opportunity for low-income people and people of color. As a co-sponsor of every iteration of the Racial Justice Act, EBC finds it imperative that the law is equitably implemented to ensure that individuals who have been affected by the deleterious impact of racism and prejudice receive proper relief as our state's Legislature intended in their passage of the law and as our Governor intended in his signing of it.

The enactment of AB 256 (Kalra 2022) has created an additional financial burden to counties, like the burden the County of Los Angeles has incurred since 2024 because of the new applicability of the RJA to retroactive cases. Their claim outlines the costs the public defender's office has incurred to effectuate its new obligations to clients. This new type of appointment to defendants whose convictions are otherwise final has increased responsibilities from what the public defender's office has previously performed: habeas petitions are not a type of litigation these offices have traditionally handled. Reimbursement for these new, additional costs is crucial to the effective implementation of RJA.

The Legislature has made clear its intention to "eliminate racial bias from California's criminal justice system" because "racism in any form or amount, at any stage of a criminal trial, is intolerable, inimical to a fair criminal justice system, is a miscarriage of justice . . ." (A.B. 2542, 2020 Gen. Assemb., Reg. Sess. § 2(i) (Cal. 2020).) The language of Penal Code section 745 provides currently incarcerated individuals with the right to counsel - most often a public

defender - when bringing a claim under the RJA. At this time, the county public defender has taken up the role of investigating RJA claims, collecting and reviewing records, communicating with incarcerated clients, drafting legal materials, and providing representation in court where needed while not receiving additional funding for these new activities. Executing these new responsibilities places the public defender's office in an untenable position if required to continue to do so without appropriate funding.

The California Court of Appeals' recent decision cements the new obligation the public defender's office now carries as a result of the enactment of AB 256. *Bemore v. Superior Court of San Diego County* recognized the new right created for indigent RJA petitioners, arising "under a new statutory provision enacted by the RJA[.]" "In 2022, the RJA amended [Penal Code] section 1473 [- the statute codifying grounds and procedures for prosecuting a writ of habeas corpus -] to add subdivision (e) to provide specific procedures for litigating RJA claims including the showing that is required to have counsel appointed at public expense." (*Bemore v. Superior Ct. of San Diego Cnty.*, No. D084579, 2025 WL 520546, at *10 (Cal. Ct. App. Feb. 18, 2025).) Furthermore, the Court of Appeal held that ". . . [Penal Code section 987.2 is the exclusive mechanism for the selection and assignment of counsel to represent indigent litigants in superior court in non-capital [RJA] habeas corpus proceedings[.]" (*Bemore*, *9.) Penal Code section 987.2 directs the court to first select public defenders to be appointed in representing indigent people bringing retroactive RJA claims. This means that in counties where there is a public defender's office, the current law dictates that that office will be the first-in-line to be appointed counsel in these retroactive RJA claims.

The Racial Justice Act is one of the most important and consequential laws enacted in this state. Without appropriate reimbursement for the legislature-created mandate, the purpose and intent of the RJA would be rendered meaningless. Failure to recognize the mandate would also create geographic disparities between counties as implementation of the law would depend on counties' ability to provide or seek funds independently, denying justice to those who have been impacted by racism and risking the erosion of public confidence in the court's responsibility to ensure fair and equitable administration of justice.

Racism and prejudice have no place within our criminal legal system. Without laws like the RJA which have created new pathways to both challenge and rectify such bigotry, we would be moving in the opposite direction of progress. Our state has a duty to uphold those laws that we have passed and to protect rights for all individuals - especially those who are incarcerated. By providing funding to county public defenders who have taken on this mandate and filled a much-needed gap in legal support, we can ensure that the law is more equitably applied to those indigent communities who would not otherwise have access to counsel. As EBC works alongside attorneys, community-based organizations, and community members - both free and currently incarcerated - to support successful implementation of this law, we see the extreme importance in ensuring not only the right to counsel provided for in



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statute, but also said counsel's access to the monetary resources needed to effectuate proper representation.

For the reasons above, we urge you to approve the County of Los Angeles' test claim, Criminal Procedure: Discrimination, 24-TC-02. We appreciate your review of our comments. If you have any questions or concerns, please contact us at policy@ellabakercenter.org or you can reach me directly at morgan@ellabakercenter.org.

Thank you for your attention to this important matter.

Sincerely,

Morgan Zamora
Prison Advocacy Coordinator

DECLARATION OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment is 980 Ninth Street, Suite 300, Sacramento, California 95814.

On March 19, 2025, I served the:

- **Current Mailing List dated March 19, 2025**
- **Contra Costa Office of the Public Defender's Comments on the Test Claim filed March 19, 2025**
- **Ella Baker Center for Human Rights' Comments on the Test Claim filed March 19, 2025**

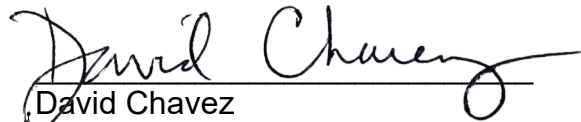
Criminal Procedure: Discrimination, 24-TC-02

Statutes 2022, Chapter 739, Section 1 (AB 256); Penal Code Section 745

County of Los Angeles, Claimant

by making it available on the Commission's website and providing notice of how to locate it to the email addresses provided on the attached mailing list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on March 19, 2025 at Sacramento, California.



David Chavez

Commission on State Mandates

980 Ninth Street, Suite 300

Sacramento, CA 95814

(916) 323-3562

COMMISSION ON STATE MANDATES

Mailing List

Last Updated: 3/19/25

**Claim
Number:** 24-TC-02

Matter: Criminal Procedure: Discrimination

Claimant: County of Los Angeles

TO ALL PARTIES, INTERESTED PARTIES, AND INTERESTED PERSONS:

Each commission mailing list is continuously updated as requests are received to include or remove any party or person on the mailing list. A current mailing list is provided with commission correspondence, and a copy of the current mailing list is available upon request at any time. Except as provided otherwise by commission rule, when a party or interested party files any written material with the commission concerning a claim, it shall simultaneously serve a copy of the written material on the parties and interested parties to the claim identified on the mailing list provided by the commission. (Cal. Code Regs., tit. 2, § 1181.3.)

Adaoha Agu, *County of San Diego Auditor & Controller Department*
Projects, Revenue and Grants Accounting, 5530 Overland Avenue, Ste. 410 ,
MS:O-53, San Diego, CA 92123
Phone: (858) 694-2129
Adaoha.Agu@sdcounty.ca.gov

Rachelle Anema, *Division Chief, County of Los Angeles*
Accounting Division, 500 W. Temple Street, Los Angeles, CA 90012
Phone: (213) 974-8321
RANEMA@auditor.lacounty.gov

Lili Apgar, *Specialist, State Controller's Office*
Local Reimbursements Section, 3301 C Street, Suite 740, Sacramento, CA
95816
Phone: (916) 324-0254
lapgar@sco.ca.gov

Socorro Aquino, *State Controller's Office*
Division of Audits, 3301 C Street, Suite 700, Sacramento, CA 95816

Phone: (916) 322-7522
SAquino@sco.ca.gov

Aaron Avery, Legislative Representative, *California Special Districts Association*

1112 I Street Bridge, Suite 200, Sacramento, CA 95814
Phone: (916) 442-7887
Aarona@csda.net

Ginni Bella Navarre, Deputy Legislative Analyst, *Legislative Analyst's Office*
925 L Street, Suite 1000, Sacramento, CA 95814

Phone: (916) 319-8342
Ginni.Bella@lao.ca.gov

Guy Burdick, Consultant, *MGT Consulting*

2251 Harvard Street, Suite 134, Sacramento, CA 95815
Phone: (916) 833-7775
gburdick@mgtconsulting.com

Allan Burdick,

7525 Myrtle Vista Avenue, Sacramento, CA 95831
Phone: (916) 203-3608
allanburdick@gmail.com

Shelby Burguan, Budget Manager, *City of Newport Beach*

100 Civic Center Drive, Newport Beach, CA 92660
Phone: (949) 644-3085
sburguan@newportbeachca.gov

Rica Mae Cabigas, Chief Accountant, *Auditor-Controller*

Accounting Division, 500 West Temple Street, Los Angeles, CA 90012
Phone: (213) 974-8309
rcabigas@auditor.lacounty.gov

Evelyn Calderon-Yee, Bureau Chief, *State Controller's Office*

Local Government Programs and Services Division, Bureau of Payments,
3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 324-5919
ECalderonYee@sco.ca.gov

Kate Chatfield, *California Public Defenders Association*

10324 Placer Lane, Sacramento, CA 95827
Phone: (916) 362-1686
katechatfield@cpda.org

Annette Chinn, *Cost Recovery Systems, Inc.*

705-2 East Bidwell Street, #294, Folsom, CA 95630

Phone: (916) 939-7901
achinnrcs@aol.com

Carolyn Chu, Senior Fiscal and Policy Analyst, *Legislative Analyst's Office*
925 L Street, Suite 1000, Sacramento, CA 95814
Phone: (916) 319-8326
Carolyn.Chu@lao.ca.gov

Adam Cripps, Interim Finance Manager, *Town of Apple Valley*
14955 Dale Evans Parkway, Apple Valley, CA 92307
Phone: (760) 240-7000
acripps@applevalley.org

Elena D'Agustino, Public Defender, *County of Solano*
Office of the Public Defender, 675 Texas Street, Suite 3500, Fairfield, CA
94533
Phone: (707) 784-6700
edagustino@solanocounty.gov

Thomas Deak, Senior Deputy, *County of San Diego*
Office of County Counsel, 1600 Pacific Highway, Room 355, San Diego, CA
92101
Phone: (619) 531-4810
Thomas.Deak@sdcounty.ca.gov

Laura Dougherty, Attorney, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
Laura.Dougherty@csm.ca.gov

Donna Ferebee, *Department of Finance*
915 L Street, Suite 1280, Sacramento, CA 95814
Phone: (916) 445-8918
donna.ferebee@dof.ca.gov

Kevin Fisher, Assistant City Attorney, *City of San Jose*
Environmental Services, 200 East Santa Clara Street, 16th Floor, San Jose, CA
95113
Phone: (408) 535-1987
kevin.fisher@sanjoseca.gov

Tim Flanagan, Office Coordinator, *Solano County*
Register of Voters, 678 Texas Street, Suite 2600, Fairfield, CA 94533
Phone: (707) 784-3359
Elections@solanocounty.com

Amber Garcia Rossow, Legislative Analyst, *California State Association of Counties*

1100 K Street, Suite 101, Sacramento, CA 95814

Phone: (916) 650-8170

arossow@counties.org

Juliana Gmur, Executive Director, *Commission on State Mandates*

980 9th Street, Suite 300, Sacramento, CA 95814

Phone: (916) 323-3562

juliana.gmur@csm.ca.gov

Chris Hill, Principal Program Budget Analyst, *Department of Finance*

Local Government Unit, 915 L Street, 8th Floor, Sacramento, CA 95814

Phone: (916) 445-3274

Chris.Hill@dof.ca.gov

Tiffany Hoang, Associate Accounting Analyst, *State Controller's Office*

Local Government Programs and Services Division, Bureau of Payments,

3301 C Street, Suite 740, Sacramento, CA 95816

Phone: (916) 323-1127

THoang@sco.ca.gov

Linnea Hull, *California District Attorneys Association (CDAA)*

2495 Natomas Park Drive, Suite 575, Sacramento, CA 95833

Phone: (916) 443-2017

lhull@cdaa.org

Jason Jennings, Director, *Maximus Consulting*

Financial Services, 808 Moorefield Park Drive, Suite 205, Richmond, VA 23236

Phone: (804) 323-3535

SB90@maximus.com

Angelo Joseph, Supervisor, *State Controller's Office*

Local Government Programs and Services Division, Bureau of Payments,

3301 C Street, Suite 740, Sacramento, CA 95816

Phone: (916) 323-0706

AJoseph@sco.ca.gov

Anne Kato, Acting Chief, *State Controller's Office*

Local Government Programs and Services Division, 3301 C Street, Suite 740, Sacramento, CA 95816

Phone: (916) 322-9891

akato@sco.ca.gov

Anita Kerezsi, AK & Company

2425 Golden Hill Road, Suite 106, Paso Robles, CA 93446

Phone: (805) 239-7994

akcompanysb90@gmail.com

Joanne Kessler, Fiscal Specialist, City of Newport Beach

Revenue Division, 100 Civic Center Drive , Newport Beach, CA 90266

Phone: (949) 644-3199

jkessler@newportbeachca.gov

Lisa Kurokawa, Bureau Chief for Audits, State Controller's Office

Compliance Audits Bureau, 3301 C Street, Suite 700, Sacramento, CA 95816

Phone: (916) 327-3138

lkurokawa@sco.ca.gov

Government Law Intake, Department of Justice

Attorney General's Office, 1300 I Street, Suite 125, PO Box 944255,

Sacramento, CA 94244-2550

Phone: (916) 210-6046

governmentlawintake@doj.ca.gov

Eric Lawyer, Legislative Advocate, California State Association of Counties (CSAC)

Government Finance and Administration, 1100 K Street, Suite 101,

Sacramento, CA 95814

Phone: (916) 650-8112

elawyer@counties.org

Kim-Anh Le, Deputy Controller, County of San Mateo

555 County Center, 4th Floor, Redwood City, CA 94063

Phone: (650) 599-1104

kle@smcgov.org

Fernando Lemus, Principal Accountant - Auditor, County of Los Angeles**Claimant Representative**

Auditor-Controller's Office, 500 West Temple Street, Room 603, Los Angeles,

CA 90012

Phone: (213) 974-0324

flemus@auditor.lacounty.gov

Erika Li, Chief Deputy Director, Department of Finance

915 L Street, 10th Floor, Sacramento, CA 95814

Phone: (916) 445-3274

erika.li@dof.ca.gov

Everett Luc, Accounting Administrator I, Specialist, *State Controller's Office*
3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 323-0766
ELuc@sco.ca.gov

Jill Magee, Program Analyst, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
Jill.Magee@csm.ca.gov

Darryl Mar, Manager, *State Controller's Office*
3301 C Street, Suite 740, Sacramento, CA 95816
Phone: (916) 323-0706
DMar@sco.ca.gov

Graciela Martinez, President, *California Public Defenders Association*
10324 Placer Lane, Sacramento, CA 95827
Phone: (916) 362-1686
gmartinez@pubdef.lacounty.gov

Tina McKendell, *County of Los Angeles*
Auditor-Controller's Office, 500 West Temple Street, Room 603, Los Angeles,
CA 90012
Phone: (213) 974-0324
tmckendell@auditor.lacounty.gov

Michelle Mendoza, *MAXIMUS*
17310 Red Hill Avenue, Suite 340, Irvine, CA 95403
Phone: (949) 440-0845
michellemendoza@maximus.com

Marilyn Munoz, Senior Staff Counsel, *Department of Finance*
915 L Street, Sacramento, CA 95814
Phone: (916) 445-8918
Marilyn.Munoz@dof.ca.gov

Andy Nichols, *Nichols Consulting*
1857 44th Street, Sacramento, CA 95819
Phone: (916) 455-3939
andy@nichols-consulting.com

Patricia Pacot, Accountant Auditor I, *County of Colusa*
Office of Auditor-Controller, 546 Jay Street, Suite #202 , Colusa, CA 95932
Phone: (530) 458-0424
ppacot@countyofcolusa.org

Arthur Palkowitz, *Law Offices of Arthur M. Palkowitz*
12807 Calle de la Siena, San Diego, CA 92130
Phone: (858) 259-1055
law@artpalk.onmicrosoft.com

Kirsten Pangilinan, Specialist, *State Controller's Office*
Local Reimbursements Section, 3301 C Street, Suite 740, Sacramento, CA
95816
Phone: (916) 322-2446
KPangilinan@sco.ca.gov

Jai Prasad, *County of San Bernardino*
Office of Auditor-Controller, 222 West Hospitality Lane, 4th Floor, San
Bernardino, CA 92415-0018
Phone: (909) 386-8854
jai.prasad@sbcountyatc.gov

Jonathan Quan, Associate Accountant, *County of San Diego*
Projects, Revenue, and Grants Accounting, 5530 Overland Ave, Suite 410, San
Diego, CA 92123
Phone: 6198768518
Jonathan.Quan@sdcounty.ca.gov

Roberta Raper, Director of Finance, *City of West Sacramento*
1110 West Capitol Ave, West Sacramento, CA 95691
Phone: (916) 617-4509
robertar@cityofwestsacramento.org

Jessica Sankus, Senior Legislative Analyst, *California State Association of
Counties (CSAC)*
Government Finance and Administration, 1100 K Street, Suite 101,
Sacramento, CA 95814
Phone: (916) 327-7500
jsankus@counties.org

Cindy Sconce, Director, *Government Consulting Partners*
5016 Brower Court, Granite Bay, CA 95746
Phone: (916) 276-8807
cindysconcegc@gmail.com

Camille Shelton, Chief Legal Counsel, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
camille.shelton@csm.ca.gov

Carla Shelton, Senior Legal Analyst, *Commission on State Mandates*
980 9th Street, Suite 300, Sacramento, CA 95814
Phone: (916) 323-3562
carla.shelton@csm.ca.gov

Paul Steenhausen, Principal Fiscal and Policy Analyst, *Legislative Analyst's Office*
925 L Street, Suite 1000, , Sacramento, CA 95814
Phone: (916) 319-8303
Paul.Steenhausen@lao.ca.gov

Kim Stone, Legislation, *California District Attorneys Association*
2495 Natomas Park Drive, Suite 575, Sacramento, CA 95833
Phone: (916) 443-2017
kim@stoneadvocacy.com

Jolene Tollenaar, *MGT Consulting Group*
2251 Harvard Street, Suite 134, Sacramento, CA 95815
Phone: (916) 243-8913
jolenetollenaar@gmail.com

Gregory Totten, Chief Executive Officer, *California District Attorneys Association*
2495 Natomas Park Drive, Suite 575, Sacramento, CA 95833
Phone: (916) 443-2017
gtotten@cdaa.org

Jessica Uzarski, Consultant, *Senate Budget and Fiscal Review Committee*
1020 N Street, Room 502, Sacramento, CA 95814
Phone: (916) 651-4103
Jessica.Uzarski@sen.ca.gov

Oscar Valdez, Interim Auditor-Controller, *County of Los Angeles*

Claimant Contact

Auditor-Controller's Office, 500 West Temple Street, Room 525, Los Angeles, CA 90012
Phone: (213) 974-0729
ovaldez@auditor.lacounty.gov

Renee Wellhouse, *David Wellhouse & Associates, Inc.*
3609 Bradshaw Road, H-382, Sacramento, CA 95927
Phone: (916) 797-4883
dwa-renee@surewest.net

Adam Whelen, Director of Public Works, *City of Anderson*
1887 Howard St., Anderson, CA 96007

Phone: (530) 378-6640
awhelen@ci.anderson.ca.us

R. Matthew Wise, Supervising Deputy Attorney General, *Department of Justice*

Attorney General's Office, 1300 I Street, Suite 125, PO Box 944255,
Sacramento, CA 94244-2550
Phone: (916) 210-6046
Matthew.Wise@doj.ca.gov

Jacqueline Wong-Hernandez, Deputy Executive Director for Legislative
Affairs, *California State Association of Counties (CSAC)*

1100 K Street, Sacramento, CA 95814
Phone: (916) 650-8104
jwong-hernandez@counties.org

Elisa Wynne, Staff Director, *Senate Budget & Fiscal Review Committee*
California State Senate, State Capitol Room 5019, Sacramento, CA 95814

Phone: (916) 651-4103
elisa.wynne@sen.ca.gov

Kaily Yap, Budget Analyst, *Department of Finance*

Local Government Unit, 915 L Street, Sacramento, CA 95814
Phone: (916) 445-3274
Kaily.Yap@dof.ca.gov

Siew-Chin Yeong, Director of Public Works, *City of Pleasonton*

3333 Busch Road, Pleasonton, CA 94566
Phone: (925) 931-5506
syeong@cityofpleasontonca.gov

Morgan Zamora, Prison Advocacy Coordinator, *Ella Baker Center for Human Rights*

1419 34th Avenue, Suite 202, Oakland, CA 94601
Phone: (510) 428-3940
morgan@ellabakercenter.org

Helmholt Zinser-Watkins, Associate Governmental Program Analyst, *State Controller's Office*

Local Government Programs and Services Division, Bureau of Payments,
3301 C Street, Suite 700, Sacramento, CA 95816
Phone: (916) 324-7876
HZinser-watkins@sco.ca.gov