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February 8, 2023

California Office of the Attorney General
ATTN: Rob Bonta; Division of Law Enforcement & CaPSIT; and the AB 1506 Program
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004

Re: Request for Attorney General's Office to Assume Prosecution;
People v. Christopher Samayoa; San Francisco Case No. CRI-20012531
Gov. Code §§ 12525.3(b), 12550 & 12553, and Cal. Const., Art 5 sec 13

Dear Attorney General Rob Bonta:

I represent Ms. April Green, the surviving aunt of Keita O'Neil and the representative of his family. By this writing, we are formally requesting that your office exercise the authority granted to it by California Government Code section 12525.3(b), 12550 & 12553, and California Constitution, Article 5 section 13, to assume the prosecution of Christopher Samayoa, who was an on-duty police officer when he murdered Mr. O'Neil, an unarmed civilian, in the matter of People v. Christopher Samayoa; San Francisco Case No. CRI-20012531. This case is believed to be the first time in San Francisco history that homicide charges have been filed against a law enforcement officer who killed someone while on duty.¹ We ask you to intervene now because San Francisco District Attorney Brooke Jenkins and her Office are conflicted in the prosecution, and are presently betraying the public trust by failing to ensure that Samayoa is legally held accountable for crimes he committed while in uniform and under color of law.

*Factual & Procedural Background:*²

On December 1, 2017, Keita O'Neil, a 42-year-old unarmed black man was murdered by former San Francisco Police Officer Christopher Samayoa, who shot O'Neil in the neck through the window of the police car Samayoa was seated in, while the car was still moving.³ Police were pursuing Mr. O'Neil because they suspected him of stealing a California Lottery van. The fact that Mr. O'Neil was unarmed had been transmitted over police broadcast long before Samayoa

¹ See, San Francisco District Attorney's Office, "DA Boudin Announces the Historic Filing of Homicide Charges Against the Former Police Officer Who Shot and Killed Keita O'Neil", Nov. 23, 2020 (available at: <https://www.sfdistrictattorney.org/archive-press-release/da-boudin-announces-homicide-charges-against-officer-who-killed-keita-o-neil/>) (last checked 2/8/23) (hereinafter: "Boudin Announces Homicide Charges").

² This Factual & Procedural Background is distilled from publicly available statements, media coverage of the case, and Ms. Green's personal knowledge from the civil case and her communications with both the Boudin and Jenkins administrations.

³ In direct violation of a local December 2016 Use-of-Force policy. See, SFPD General Order 5.01, section VI, subsection G.2., subparagraphs (a) & (e). (Rev. 2/21/2016).

shot O’Neil. Body-worn camera footage demonstrates that Samayoa had his weapon drawn and at the ready at least several seconds before he decided to kill the unarmed O’Neil.¹ Mr. O’Neil posed no immediate threat to anyone, neither officer nor civilian, and no other responding officer believed the use of deadly force was warranted. The training officer supervising Samayoa at the time, Edric Talusan, immediately seized Samayoa’s firearm and detained him in the squad car for fear that he might harm someone else.² A reconstruction expert opined in the civil case that it would have been impossible for Mr. O’Neil to draw a weapon in the .39 seconds it took Samayoa to point his weapon and shoot Mr. O’Neil. Samayoa was fired from the police department, and the San Francisco Board of Supervisors voted unanimously to settle the civil case for \$2.5 million.³

The murder of Mr. O’Neil was investigated and evaluated by the administrations of three separate district attorneys. The first, George Gascón, did not file charges in the two years he had the case, but he also did not close the case. The second, Chesa Boudin, evaluated the case for approximately 10 months before announcing on November 23, 2020, that his office had formally filed charges of Voluntary Manslaughter, Involuntary Manslaughter, Assault with a Semi-Automatic Firearm, Assault by a Police Officer, and Discharge of a Firearm with Gross Negligence. When he announced the charges, Mr. Boudin proclaimed that “For too long, we have seen failures of our legal system to hold police accountable for the violence committed against members of the public they are entrusted to keep safe. In my administration, police officers are not above the law,” ... “Police officers are obligated to follow the law when using force—even when responding to serious crimes. As District Attorney, I will continue to hold accountable officers who inflict unlawful violence and breach the trust the public places in them.”⁴ Ms. Green, Mr. O’Neil’s other survivors, and the community believed that promise.⁵

¹ In violation of SFPD General Order 5.01, section VI, subsection G.1. subparagraphs (b)-(d).

² See, Balakrishnan, Eleni, “SFPD officer who shot unarmed carjacking suspect Keita O’Neil faces potential trial”, Jul. 13, 2021 (available at: <https://missionlocal.org/2021/07/sfpd-officer-who-shot-unarmed-carjacking-suspect-keita-oneil-partner-face-potential-trial/>) (last checked 2/8/23).

³ See, Bay City News, “SF Supes Approve \$2.5 Million Settlement for Mother of Man Killed in 2017 Police Shooting”, Dec. 8, 2021 (available at: <https://www.nbcbayarea.com/news/local/san-francisco/sf-supes-approve-2-5-million-settlement-for-mother-of-man-killed-in-2017-police-shooting/2750439/>) (last checked 2/8/23).

⁴ See, FN 1, *supra*, “Boudin Announces Homicide Charges”.

⁵ E.g., San Francisco Supervisor Shamann Walton, who represented the District where this crime occurred, said “Bayview residents deserve to know that law enforcement officers who inflict violence and harm in our community will be held accountable,” ... “This prosecution is an important, historic step towards showing that Black lives matter and that unlawful police violence will not be tolerated.” See, FN 1, *supra*, “Boudin Announces Homicide Charges”, *supra*. See also, e.g., retired ACLU police practices expert John Crew said, “Criminal prosecutions of police officers for excessive use of force have been exceedingly rare, resulting in a deep erosion of trust when communities feel law enforcement officers are above the law,” ... “In San Francisco, this lack of accountability has too often become normalized. District Attorney Boudin’s willingness to apply the law’s standards to the conduct of a police officer, and, where legally justified, criminally prosecute an officer for homicide may help to reverse that trend.” *Id.*

May 6, 2022, in the last hearing before the special election resulting in Mr. Boudin’s recall on July 7, 2022, Samayoa’s defense team obtained a continuance of the preliminary hearing so that they could secure the attendance of homicide inspector Mark Hutchings, whom they claimed would say a witness told him that Mr. O’Neil’s state of mind was “skewed” from “smoking crack.”⁶ The assistant district attorney prosecuting the case at that time, James Cogner, argued that Hutchings was not necessary because that statement had been documented elsewhere and could be testified to by another. The Judge presiding over that hearing, Honorable Superior Court Judge Russell S. Roeca, continued the hearing to July 21, 2022, but insisted that the case would “go forward irrespectively” at the next calling, and assured Ms. Green that this would be the last continuance.

It should be noted, there is no direct evidence that Mr. O’Neil had been “smoking crack,” nor is there any evidence that his state of mind was actually altered at the time of the shooting. Also, this proffered testimony would neither be relevant nor admissible at either a preliminary hearing or trial, because the statement is uncorroborated double-hearsay; Samayoa was not aware of that statement when he shot and killed Mr. O’Neil, and the relevant actions of Mr. O’Neil prior to being murdered by Samayoa are preserved on Samayoa’s body-worn camera.

On July 7, 2022, Mr. Boudin was recalled from office in a special election, and on July 8, 2022, San Francisco Mayor London Breed appointed Brooke Jenkins to position of District Attorney. Thus, Ms. Jenkins’ administration is the third to handle the prosecution of Samayoa for murdering Mr. O’Neil. Ms. Jenkins had previously resigned from her position in Mr. Boudin’s administration in order to work for his recall. Her actions in that campaign are the subject of three California State Bar complaints filed against her by retired Judge Martha Goldin and resigned Assistant District Attorney Lexa Graynor.⁷ The first complaint, relying upon Ms. Jenkins’ public statements and other public records, complains that Ms. Jenkins failed to properly disclose that she was compensated in excess of \$173,000 by 501(c)(3) groups associated with the recall campaign while claiming to be a “volunteer,” and then later claiming to have been a “consultant” for those groups but failing to provide and justification for her compensation—all in violation of State Bar Rule 8.4, the Internal Revenue Code related to 501(c)(3) groups, and San Francisco Ethics Rules which are enforced criminally. The first

⁶ See, Hom, Annika, “Chaos erupts as judge delays hearing of officer who killed Keita O’Neil”, Mission Local, May 6, 2022 (available at: <https://missionlocal.org/2022/05/sf-judge-delays-trial-in-sfpd-shooting-case/>) (last checked 2/8/23).

⁷ See, Barman, Jay, “Retired Judge Files State Bar Complaint Against SF District Attorney Brooke Jenkins, Citing Dishonest Conduct”, SFist, Oct. 14, 2022 (available at: <https://sfist.com/2022/10/14/retired-judge-files-state-bar-complaint-against-sf-district-attorney-brooke-jenkins-citing-dishonest-conduct/>) (last checked 2/8/23); See also, Greenwald, David, “Second Bar Complaint Filed Against Jenkins, but Experts Skeptical Much Will Come of It”, The Davis Vanguard, Nov. 8, 2022 (<https://www.davisvanguard.org/2022/11/second-bar-complaint-filed-against-da-jenkins-but-experts-skeptical-much-will-come-of-it/>) (last checked 2/8/23); See also, Greenwald, David, “Another Month, Another Bar Complaint Filed against SF DA Jenkins” Jan. 22, 2023 (available at: <https://www.davisvanguard.org/2023/01/another-month-another-bar-complaint-filed-against-sf-da-jenkins/>) (last checked 2/8/23).

complaint also complains that Ms. Jenkins lied to the public in claiming that she had never been found to have committed misconduct when, in fact, Ms. Jenkins had been found to have committed misconduct resulting in the over-turning of a criminal conviction in People v. Wilborn, San Francisco Superior Court Number 14011323. The second complaint complains that Ms. Jenkins improperly and illegally accessed a defendant's RAP sheet, then improperly and illegally transmitted that RAP sheet outside the District Attorney's Office, then improperly and illegally shared information in that RAP sheet with the recall campaign, and then publicly broadcast that information herself in her efforts for the recall campaign. The third complaint complains that Jenkins: (1) "committed multiple misdemeanors" by accessing and sharing a defendant's RAP sheet "to support the recall campaign"; (2) "unlawfully disclosed to the press information from a minor's juvenile criminal record in violation of established law protecting juvenile records"; and (3) repeatedly made extrajudicial statements in official press releases that she knows or should know have a substantial likelihood of materially prejudicing criminal proceedings litigated by her office." At present, there are no publicly available updates on the status of these complaints.

The difference in the handling of the Samayoa prosecution between the Boudin and the Jenkins administrations was immediately felt by Ms. Green. Ms. Green no longer received regular case updates, she was not provided a victim advocate, and when she was able to meet with the prosecution, she was made to feel belittled and demeaned.

Other changes in Jenkins' approach were more objectively observable. First, whereas the prosecution under Boudin's administration was ready for preliminary hearing and opposing delays, the prosecution under Ms. Jenkin's administration has created multiple delays, such that a preliminary hearing has not yet occurred. When the matter was called for preliminary hearing on July 21, 2022, the case was removed from the preliminary hearing calendar and set for a status date on August 18, 2022. That date was eventually reset to December 1, 2022.

Second, there has been the complete removal of any attorney associated with Boudin's administration from the case. On July 15, 2022, Ms. Jenkins fired 15 attorneys from the District Attorney's Office, including of Mr. Boudin's top advisors and all members of the Independent Investigations Bureau,⁸ with the sole exception of Mr. Cogner.⁹ Nonetheless, days before the case was called for preliminary hearing on August 18, 2022, Ms. Jenkins removed Mr. Conger from the case against Samayoa, and reassigned the prosecution to Assistant District Attorney

⁸ The Independent Investigations Bureau is the agency in San Francisco tasked with investigation officer-related crimes.

⁹ See, Sharpe, Joshua, "Chesa Boudin charged a rookie cop with manslaughter. What will Brooke Jenkins do next?" San Francisco Chronicle, Sep. 19, 2022 (available at: <https://www.sfchronicle.com/sf/article/SFPD-killing-Boudin-Jenkins-17447763.php>) (last checked 2/8/23) (Hereinafter: "What will Jenkins do Next?").

Darby Williams.¹⁰ Ms. Williams had formerly worked in the Independent Investigation Bureau under Gascón's administration.¹¹

Third, the prosecution under Jenkins has manifested an interest in investigating the Boudin administration which is in direct conflict with its duty to prosecute the case against Samayoa. When explaining the delays, Ms. Williams claimed that she needed to take a "deep dive" and review the office's police prosecution cases before she could proceed.¹² A spokesperson for Ms. Jenkins' Office, Randy Quezada, told media that Ms. Williams "requested time to determine what changed from the initial declination [to charge Samayoa] and the decision by Boudin to charge the matter."¹³ This statement was false, as explained by the Gascón administration's former chief of staff, Christine Soto DeBerry, who said that Gascón's administration did not decline to prosecute Samayoa and, "It remained open when D.S. Boudin took office."¹⁴

On August 24, 2022, Ms. Green and her attorney met with Ms. Jenkins and Ms. Williams. At this meeting, Ms. Green raised concerns that Mr. Cogner, who knew the case inside and out and who was ready to go to preliminary hearing, was removed from the case. In justifying her role, Ms. Williams explained that Samayoa's defense attorney Julia Fox "allowed" her to interview Hutchings and would "allow" Ms. Williams as much time as she wanted with him.¹⁵ Ms. Williams claimed that Hutchings had evaded service of subpoenas issued by Mr. Cogner, but that she did not need to subpoena him because Samayoa's attorney Ms. Fox was "allowing" Ms. Williams unlimited time to interview Hutchings. Ms. Williams also claimed that she could not proceed on the case without interviewing Hutchings.¹⁶ Ms. Jenkins claimed that they needed to evaluate whether all of the evidence that Samayoa was not scared for his life would outweigh any allegation that he was.¹⁷ Most troubling, Ms. Williams told Ms. Green that she would need "proof beyond a reasonable doubt, and then some" to proceed with the prosecution.¹⁸

¹⁰ See, Baer, Stephanie, "The First San Francisco Cop To Face Charges For Killing Someone While On Duty Still Hasn't Gone To Trial", BuzzFeed, Sep. 26, 2022 (available at: <https://www.buzzfeednews.com/article/skbaer/keita-oneil-officer-manslaughter>) (last checked 2/8/23) (Hereinafter: "First Cop Charged For Killing Someone Hasn't Gone To Trial.").

¹¹ See, FN 12, *supra*, "What will Jenkins do Next?".

¹² See, FN 13, *supra*, "First Cop Charged For Killing Someone Hasn't Gone To Trial."

¹³ See, FN 12, *supra*, "What will Jenkins do Next?".

¹⁴ *Id.*

¹⁵ Perhaps Ms. Fox was able to obstruct access to Hutchings because her firm Rains, Lucia, Stern, St. Phalle & Silver, PC, represented both Hutchings and Samayoa.

¹⁶ This is a perplexing statement because, again, Hutchings was not a percipient witness to the event and the defense proffer would neither be relevant nor admissible at either a preliminary hearing or trial.

¹⁷ This statement is perplexing because Samayoa is charged with Voluntary Manslaughter, a legal theory that effectively concedes that maybe Samayoa was in actual fear for his life, or in other words, a legal theory that would survive any claim of imperfect self-defense and would require only proof beyond a reasonable doubt that the claimed fear was objectively unreasonable.

¹⁸ This is not a legal standard anywhere in American jurisprudence, and seems to elevate law enforcement officers beyond the reach of the law applicable to all other people; or, stated another way, categorically places police above the law.

On September 30, 2022, Ms. Green sent her concerns to Ms. Jenkins in writing.¹⁹ These concerns included the disrespect that Ms. Williams had shown to Ms. Green by speaking to her in a belittling manner, and “the constant lack of transparency about the case.” The letter also voiced concerns about misrepresentations made to Ms. Green about the law, dishonest statements to the media about the case, and the conflict posed by Ms. Fox representing both Samayoa and her “necessary witness” Inspector Hutchings. In a follow up email, Ms. Green complained that not even a victim-witness advocate had kept her apprised of updates in the case.

On November 1, 2022, Ms. Green and her attorneys met with Ms. Jenkins and Ms. Williams again. At this meeting, Ms. Williams presented her status in review the case, which implied that she was roughly only 25% of the way through the approximately 5,000 pages of discovery in the case. Ms. Green voiced her frustrations and was again spoken to in a demeaning and belittling manner while also being provided no real information about when the case would progress. Instead, Ms. Green was put into contact with District Attorney Paralegal Rannon Ross. Mr. Ross eventually informed Ms. Green that Ms. Williams’ review of the file would be completed by December 21, 2022.

On December 1, 2022, Ms. Williams set the matter was for a preliminary hearing on January 27, 2023. Subsequently, Ms. Jenkins cancelled a meeting with Ms. Green and Mr. Ross stopped responding to her calls and texts. However, the setting of the preliminary hearing indicates that at least Ms. Williams agreed that the case against Samoyoa was ethically prosecutable.

On January 23, 2023, I sent a letter to Ms. Jenkins and Ms. Williams requesting Ms. Green’s Marsy’s Rights. Specifically, for notification, conferences, and to be heard. On January 25, 2023, Ms. Jenkins’ office advised Ms. Green of a defense motion to compel discovery and dismiss for violation of *Brady*. Ms. Green was also advised for the first time that the day before, January 24, 2023, the defense had filed a motion to continue the preliminary hearing. It was from these motions that Ms. Green learned for the first time that there was an investigation into the charging decisions in this case being conducted by the San Francisco City Attorney’s Office. The defense motion revealed that on January 13, 2023, Ms. Jenkins’ Office had disclosed to Samayoa’s defense a summary of an interview of former D.A. Inspector Jeffrey Paillet, and that on January 19, 2023, Ms. Jenkins’ Office had disclosed to the defense a 31-page transcript of an interview of DA Inspector Daniel Lundberg. Ms. Jenkins’ office has not provided Ms. Green with any access to those items, nor has she provided any explanation as to their contents nor their importance.

However, the defense filing asserts that in October 2018, D.A. Inspector Lundberg formed the opinion that the case was “unprosecutable,” and that an Assistant District Attorney Cha prepared a Power Point presentation recommending that charges not be filed. The defense motion asserts that later, when the case was handled by Mr. Boudin’s administration, Mr. Cogner told Lundberg that “we need to find a path to prosecute” and that Lundberg said that he would not draft an arrest warrant for Samayoa. The motion asserts that while Lundberg was on vacation, Mr.

¹⁹ See, Jones, Griffin, “Interim-DA Brooke Jenkins poised to abandon police accountability”, San Francisco Bay View, Oct. 19, 2022 (available at: <https://sfbayview.com/2022/10/interim-da-brooke-jenkins-poised-to-abandon-police-accountability/>) (last checked 2/8/23).

Boudin requested a different D.A. Inspector Jack Friedman prepare the arrest warrant. The motion asserts that Inspector Paillet claimed that it would take “a couple of months” to review the information in this case before an affiant could attest to having included “all exculpatory evidence.”

Even having asserted all that, however, the motion does not state once how or in what way exculpatory evidence might have been withheld from the defense. The opinions of the D.A. Inspectors are not “evidence,” and they are not relevant, nor are they exculpatory. The power point would be undiscoverable work product. There is also no provision of law or ethics which prevents a district attorney’s office from reviewing “open cases,” or “closed cases,” to determine if criminal charges are warranted. Even if the arrest warrant were somehow defective in failing to disclose exculpatory evidence, there would be zero impact on the criminal case because there is nothing stemming from the arrest warrant to suppress. In short, the defense motion to dismiss is baseless and entirely without merit.

It is also perhaps notable that Michael Rains, who is a named partner of Rains, Lucia, Stern, St. Phalle & Silver, PC, represents both Inspector Paillet and Samayoa. Also, that Paillet was fired by Mr. Boudin.

On January 26, 2023, Ms. Green and I met again with Ms. Jenkins and Ms. Williams. In this meeting, Ms. Jenkins said that the investigation started because “two staff members” approached her separately with concerns about something that could negatively impact the case against Samayoa. She noted that there was conflicting information between the two of them and questioned the validity of some of the information they had provided. She said that they would have done the investigation in December, but the holidays made staffing difficult. She said that she referred the investigation to the City Attorney’s Office because she wanted to handle it more formally. She claimed that she had not revealed the investigation to us because it was “an ongoing investigation.” She claimed that the interviews generated *Brady* materials. She also revealed that they were in the process of a third interview that week and claimed that more interviews needed to be conducted. She said that she had no idea there was so much conflict in the DA investigators in her office. She also claimed that Ms. Williams was not involved in the investigation.

When Ms. Green asked if the investigators were from Gascón’s administration, Ms. Jenkins was unsure but said she thought so. She wasn’t sure about the third investigator, who she said had requested a lawyer. When I asked if this investigation changed the position of her office toward the case in general, she said she could not answer now because she had to think about it. She acknowledged that the Power Point and the opinions of D.A. Inspectors are normally considered “work product,” and are thus not discoverable, relevant, nor admissible in a prosecution. When I asked Ms. Jenkins how long a delay she anticipated, she said that the investigation would be complete within two weeks to a month “at most.”

When I asked if Ms. Jenkins felt that her office was conflicted, she agreed that there could be a borderline conflict, and stated “we may be conflicted.” She agreed that if her office was conflicted, that your office would be the proper agency to take up the prosecution. Ms. Green requested that Ms. Jenkins make that request of your office to take over the prosecution. At first,

Ms. Jenkins agreed to join us in asking your office to assume the prosecution because of the conflict, but later in the meeting she walked it back to merely “round-tabling” the idea internally. Prior to the hearing on January 27, 2023, Ms. Jenkins advised that her office had disclosed a third interview, this one conducted with Inspector Friedman, and that her office would not oppose the continuance requested by the defense but that it would oppose the motion to dismiss.

On January 27, 2023, at the latest calling of the case, the court continued the preliminary hearing to March 1, 2023 due to the late discovery of the Friedman interview, which was disclosed to the defense the night before. Ms. Williams did not oppose the motion to continue, but Ms. Green did.²⁰ When the Court inquired about the lateness of the investigation and discovery, Ms. Williams claimed that one of the investigators had approached her directly, and the others had approached Ms. Jenkins directly.²¹ Ms. Williams also claimed that she did not know how long the investigation would take so that the preliminary hearing could occur, despite Ms. Jenkins giving us a timeline of two weeks to a month in our meeting. Thus, I was compelled to interject on Ms. Green’s behalf again, and informed the court that Ms. Jenkins said the “investigation” would take no longer than a month, because Ms. Williams and Ms. Fox were in apparent agreement to kick the preliminary hearing out to an undetermined future date.

On January 31, 2023, I wrote to Ms. Jenkins a formal request that her office refer the prosecution of Samayoa to you. I told her that we believe that her office is conflicted in the matter and because we are concerned that her office will not adequately seek justice in this matter. We further believe that the Jenkins administration and their handling of cases coming under the purview of Government Code section 12525.3 should be investigated by your office. It is for those same reasons that I write you now to request that your office exercise the authority granted to it by California Government Code section 1252.3(b), 12550 & 12553, and California Constitution, Article 5 section 13, and assume the prosecution of Christopher Samayoa for the murder of Keita O’Neil.

Relevant Law and Analysis:

Mr. Bonta, et al., we are tired of being lied to. We are tired of watching Ms. Jenkins and her administration toy with the case prosecuting Mr. O’Neil’s murderer like a political football. From the moment that Jenkins took office and announced that Ms. Williams needed time to review the charging decision, we should have known that she was conflicted by a desire to investigate Mr. Boudin. This case is too important to be sacrificed to her vainglorious crusade, and the games she is playing with this baseless investigation are tormenting my client and the remaining family of Keita O’Neil. The case for Voluntary Manslaughter is air tight, yet this family has been left waiting for five years without even a preliminary hearing. Murder charges are warranted on these facts, yet Brooke Jenkins and Darby Williams cannot get this case to a

²⁰ See, Balakrishnan, Eleni, “Following allegations of misconduct, hearing delayed for SFPD officer who shot Keita O’Neil”, Mission Local, Jan. 27, 2023 (available at: <https://missionlocal.org/2023/01/hearing-delayed-for-sfpd-officer-shot-keita-oneil/>) (last checked 2/8/23).

²¹ Notably, Ms. Williams’ explanation contradicts Ms. Jenkin’s account to Ms. Green, wherein she was very clear that Ms. Williams had no prior knowledge of the investigation.

preliminary hearing without manufacturing irrelevant discovery and delays for the defense. Justice requires your intervention.

CA Gov. Code 12525.3 (b)(2)(C)/AB 1506:

It has always been left to California’s local law enforcement agencies and local district attorney’s office to investigate, and review for potential criminal liability, all incidents of an officer involved shooting resulting in the death of an unarmed person within the state of California. However, under AB 1506 it is now the responsibility of the California Department of Justice (DOJ) to investigate and prosecute all such incidents.

AB 1506 was signed into law on September 30, 2020 and went into effect July 1, 2021. According to the Office of the Attorney General itself, the purpose of AB 1506 is to:

“Directly help build and maintain trust between law enforcement and the communities they serve by creating a mandate for an independent, statewide prosecutor, moving forward, to investigate and review office involved shooting of unarmed civilians across California. . .” because “. . . when an officer involved shooting occurs, transparent and open communication is critical to maintain public trust.”

Office of the Attorney General, *AB 1506: Officer-Involved Shooting Investigations and Review*, <https://oag.ca.gov/ois-incidents> (last checked 2/8/23).

The passage of AB 1506 added § 12525.3 to the California Government Code. Under Gov. Code, § 12525.3 the state prosecutor shall investigate incidents of an officer involved shooting resulting in the death of an unarmed civilian. Furthermore, the state prosecutor is authorized to investigate and gather facts in an incident involving a shooting by a peach officer that results in the death of an unarmed civilian and if criminal charges against the involved officer are found to be warranted, initiate **and prosecute a criminal action against the officer**. (Gov. Code, §12525.3, sub (b)(2)(A); Gov. Code, §12525.3, sub (b)(2)(C)).

Thus, under the current state of the law, your office is the proper agency to investigate and prosecute Samayoa for the murder of Keita O’Neil.

California Constitution Article 5, section 13

The District Attorney's office is obligated not only to prosecute with vigor, but to also seek justice, as emphasized by the U.S. Supreme Court in *Berger v. United States* (1935) 295 U.S. 78, 88, 55 S.Ct. 629, 633, 79 L.Ed. 1314, “[The prosecutor] is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done.” People v. Conner, 34 Cal. 3d 141, 148, 666 P.2d 5, 8–9 (1983).

Article 5, Section 13 of the California Constitution states:

It shall be the duty of the Attorney General to see that the laws of the State are uniformly and adequately enforced. . . Whenever in the opinion of the Attorney General any law of the State is not being adequately enforced in any county, it shall be the duty of the Attorney General to prosecute any violations of law of which the superior court shall have jurisdiction, and in such cases the Attorney General shall have all the powers of a district attorney. 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.

Similarly, Government Code section 12550 states that your office “may, if deemed necessary, take full charge of any investigation or prosecution of violations of law of which the superior court has jurisdiction. In this respect the Attorney General has all the powers of a district attorney, including the power to issue or cause to be issued subpoenas or other process.” Moreover, “If a district attorney is disqualified to conduct any criminal prosecution within the county, the Attorney General may employ special counsel to conduct the prosecution.” Gov. Code § 12553.

In Pitts v County of Kern, the court stated the constitutional and statutory supervisory power provided to the Attorney General is not reasonably susceptible to interpretation that it is limited to oversight of a district attorney's actions when he or she is prosecuting a particular case. Rather, the court said the Constitution provides that it is the “duty of the Attorney General to see that the laws of the State are uniformly and adequately enforced,” and that the Attorney General has “direct supervision over every district attorney ... *in all matters pertaining to the duties of their ... office* [], and may require any of said officers to make reports concerning the investigation, detection, prosecution, and punishment of crime in their respective jurisdictions as to the Attorney General may seem advisable.” (Cal. Const., art. V, § 13; Gov. Code, § 12550.) Pitts v. County of Kern, 17 Cal. 4th 340, 363, 949 P.2d 920, 935 (1998)

In People v Honig, the court held that this constitutional provision does not require a pattern of inadequate enforcement before the Attorney General may decide to prosecute, nor does it require any finding of dereliction or recalcitrance upon the part of local prosecutors. Rather, the Honig court stated it is sufficient that, in the Attorney General's opinion, “any law of the State is not being adequately enforced in any county.” (Cal. Const., art. V, § 13.) People v. Honig, 48 Cal. App. 4th 289, 355, 55 Cal. Rptr. 2d 555, 595 (1996).

Furthermore, the Honig court adds that assuming, without deciding, that a criminal defendant may object to prosecution by the Attorney General, it cannot be doubted that the superior court's authority to consider the objection would be very limited. Honig notes that this is dictated by the separation of powers doctrine that precludes courts from interfering with the executive decisions of prosecutorial authorities. (See People v. Superior Court (Felmann) 59 Cal.App.3d 270, 276, 130 Cal.Rptr. 548.) Lastly, Honig states it is also clear from the constitutional provision itself which, at least in the first instance, vests the Attorney General with broad discretion in deciding when to prosecute. People v. Honig, 48 Cal. App. 4th 289, 355, 55 Cal. Rptr. 2d 555, 595 (1996)

Here, from the moment Ms. Jenkins office took over the case, it has been clear that she is more interested in investigating the Boudin administration's charging decisions than prosecution law enforcement officers for their crimes. Although Penal Code section 1424 speaks most directly of a defendant's right to a fair trial, the victim has a right to a fair trial too, and section 1424 also speaks very clearly about the proper prosecutorial agency where a district attorney is conflicted. Here, Ms. Jenkins vendetta poses a clear conflict. It has caused her to clear out nearly every attorney in her office associated with Mr. Boudin, and to color her perception of the case against Samayoa. Clearly, this conflict extends to Ms. Williams and permeates the entire office of the San Francisco District Attorney.

Consider that Ms. Jenkins' office announced from the inception that it was investigating Mr. Boudin's charging decisions in this case. Consider that Ms. Williams took from July up to December 1, 2022, to evaluate the evidence in the case and decide to set it for preliminary hearing. What information could Investigators Paillet or Lundberg or Friedman possess that would have affected her ethical decision to set the preliminary hearing? Why then would this "investigation" be instigated five years after the fact? Why would the investigation be delayed over the holidays and discovery disclosures be made in the days before the preliminary hearing? Why would Ms. Jenkins believe this material to be exculpatory when it isn't even evidence? Why would her office fail to oppose the continuance? And why can Ms. Jenkins not state unequivocally to Ms. Green that her office is not conflicted?

Additionally, this conflict seems to be the source of the Jenkins' administration's lack of transparency and communication with Ms. Green regarding the prosecution of her nephew's murderer, which we believe constitutes violations of her rights under Marsy's Law. In almost every meeting Ms. Green has had with Ms. Jenkins and Ms. Williams, she is interrupted, spoken and shouted over, spoken down to, and lied to. Ms. Green receives no contact from the Jenkins administration unless she initiates it. Ms. Jenkins' office never even advised Ms. Green of her rights as a victim under the California State Constitution. Ms. Green has required the assistance two different lawyers to obtain meetings and updates from Ms. Jenkins' office, and to make sure she is given the opportunity to address the court when her rights are at issue. Ms. Jenkins' administration has done nothing independently to facilitate Ms. Green's rights.

Further, we are aware that Ms. Jenkins' office has similarly maltreated other families affected by San Francisco Police murder, and officers criminally charged or investigated by the Boudin administration.²² Thus, we are left with the belief that it is not the conduct of the officers but the extra-legal allegiances of the prosecutor handling the case that determines the fate of a prosecution.

I have advised Ms. Green that if your office were to assume the prosecution, it would certainly cause some time of delay for your office to review the case and advance the prosecution. Ms. Green is prepared to accept that consequence; her concern is that justice be done, that the case

²² See, Mayeda, Olivia Cruz, "Families of Men Killed by Police Accuse DA of Playing Politics With Trial Delays", The San Francisco Standard, Oct. 21, 2022 (available at: <https://sfstandard.com/criminal-justice/families-of-men-killed-by-police-accuse-da-of-playing-politics-with-trial-delays/>) (last checked 2/8/23).

against Samayoa be put to trial. We agree that justice cannot be obtained in this case if it remains in the hands of a conflicted prosecutor. It is better to accept the delay than risk Ms. Jenkins manufacturing a dismissal or further colluding with the defense to undermine the prosecution.

Conclusion:

Mr. Bonta, et. al., your website states that AB 1506 provides the California Department of Justice with an important tool to directly help build and maintain trust between law enforcement and the communities they serve by creating a mandate for an independent, statewide prosecutor, to investigate and review officer-involved shootings of unarmed civilians across California. Ms. Jenkins' handling of this prosecution has undermined that trust.

Your office pledges that "The California Department of Justice will investigate and review for potential criminal liability all such incidents covered under AB 1506, as enacted in California Government Code section 12525.3." This incident meets the criterion for incidents covered by AB 1506, and therefore your office is the proper prosecutorial agency.

Even if this case is somehow outside of section 12525.3's mandate, you possess the authority under California Constitution, Article 5 section 13, and Government Code sections 12550 and 12553 to take over this prosecution. The apparent conflict in the San Francisco District Attorney's Office compels the interests of justice to favor your handling of this prosecution.

Ms. Green prays that you will heed her pleas. The preliminary hearing is presently set for March 1, 2023, at 9:00 a.m. in Department 20 of the San Francisco Hall of Justice. We humbly request you intercede before or on that date.

Sincerely,

A handwritten signature in black ink, appearing to read 'B. A. Ford', written in a cursive, stylized script.

BRIAN A. FORD