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Dept.:
Motion:
Jury Trial:
IN CUSTODY- *Transport Req'd*

Est. Time: 1 hour

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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF ORANGE, CENTRAL JUSTICE CENTER**

14 PEOPLE OF THE STATE OF CALIFORNIA,

15 *Plaintiff,*

16 vs.

18 DEFENDANT,

19 *Defendant.*

) Case No.:

) **NOTICE OF MOTION AND**
) **MOTION FOR RELIEF UNDER**
) **RACIAL JUSTICE ACT**
) **(Pen. Code § 745 subd.(a)(1))**

22 **NOTICE IS HEREBY GIVEN** that on [DATE], at 9:00 a.m., or as soon as counsel
23 may be heard in Department [] (or the assigned trial department) of the above-entitled
24 court, Defendant (hereinafter “[]” or “Defendant”), by and through counsel, will move
25 this Court for an order finding that Defendant has made a prima facie showing that
26 Penal Code section 745, subdivision (a)(1) was violated and setting a date for an
27 evidentiary hearing pursuant to Penal Code section 745, subdivision (c). Upon
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1 conclusion of the motion and/or hearing, the defense will move the court to take
2 remedial action permitted under Penal Code section 745, subdivision (e)(4).

3 **MOTION**

4 Defendant, by and through counsel, hereby moves this Court for an order finding
5 that he has met his prima facie burden and setting a date for an evidentiary hearing
6 pursuant to Penal Code section 745(c). This is based on the fact that Defendant, who is
7 Hispanic, of Mexican-origin, and speaks only Spanish, has been subjected to bias or
8 animus by a law enforcement officer in this case because of his national origin,
9 ethnicity, and race. (Pen. Code, § 745(a)(1).)

10 Specifically, as explained more thoroughly in the Statement of Facts, when
11 Officer Bujanonda arrived to Defendant's home of 20 years to investigate a potential
12 violation of a restraining order, Officer Bujanonda displayed great annoyance upon
13 learning that Defendant spoke only Spanish. His audible sigh and eyeroll can be seen
14 on his colleague's Body Worn Camera ("BWC"). Then, without verifying the existence
15 of a valid, properly-served restraining order, without requesting a Spanish-interpreter,
16 and without making any attempt to inform Defendant whether he was being detained,
17 arrested, or simply interviewed, Officer Bujanonda began shouting English commands
18 at Defendant.

19 When Defendant responded in Spanish and raised his hands in a shrug as if to
20 ask "What's going on?," the other officer, Officer Nakano-Hitzke, began making a feeble
21 attempt to answer him in very broken, remedial Spanish. As Defendant was focused on
22 Officer-Nakano-Hitzke, trying to figure out what she was saying, Officer Bujanonda
23 rushed behind Defendant and grabbed him. Defendant reacted to this unexpected
24 ambush by tensing up. Rather than allowing his colleague to try and communicate with
25 Defendant, within 10 seconds of having entered the apartment, Officer Bujanonda had
26 his arm around Defendant's neck in a chokehold position and forcibly slammed him
27 onto the ground.

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1 For the next 5 minutes, Officer Bujanonda proceeded to scream curses and
2 commands in English that Defendant had no way of understanding. In between Officer-
3 Bujanonda's repeated punches and strikes, which can eerily be heard on a BWC that
4 had fallen on the ground obscuring the video, Defendant cried out in Spanish and
5 eventually began screaming his daughter's name, begging her to help him.

6 When a supervisor arrived and asked Officer Bujanonda what happened, he
7 explained "We go inside and we told him, 'Hey, come out.' ... I was like, 'Hey, you stand
8 up, let's go.' And he, he gets up, he's like, I'm like, 'Hey, let's go turn around, put on your
9 back.' He's like, and **he starts speaking Spanish. You know what? I don't have time
10 for this [so] I just grabbed him. . . .**" The officer's choice to use physical force as the
11 first response to Defendant speaking a foreign language reveals the officer's animus
12 towards Defendant's national origin and a bias against his ethnicity.

13 The officer's conduct is squarely within the type of conduct anticipated by the
14 RJA. This Motion is based on all papers in the court's file, the attached exhibits,
15 including the Body Worn Camera of Garden Grove Police Department officers involved
16 in this case, and these moving papers, including the attached Points, Authorities and
17 Argument, and any evidence or argument of counsel presenting at an evidentiary
18 hearing.

19 STATEMENT OF THE CASE

20 On [DATE], the Orange County District Attorney's Office filed a complaint against
21 Defendant, alleging criminal violations in three felony counts and two misdemeanor
22 counts. The public defender's office was appointed the same day and Defendant pled
23 Not Guilty. On [DATE], a preliminary hearing was held in Department [], and Defendant
24 was held to answer on all counts. He required a Spanish-language interpreter at the
25 preliminary hearing, as well as all court proceedings for which he was present. On
26 [DATE], an Information was filed alleging the same five violations. However, on [DATE],
27 a First Amended Information was filed, which deleted two charges. The operative
28 Information alleges in Count 1, a felony violation of Penal Code section 69 [Resisting an

1 Executive Officer]; in Count 2, a felony violation of Penal Code section 4574 [Possession
2 of Weapon in Custody]; and in Count 3, a misdemeanor violation of Penal Code section
3 273.6(a) [Disobeying Domestic Relations Court Order]. Defendant pled Not Guilty to all
4 charges. A jury trial is currently set for [DATE]. Defendant has not waived time for trial.

5 **STATEMENT OF FACTS**¹

6 On [DATE], around 10:00pm, Garden Grove Police Department Officers
7 Bujanonda and Nakano-Hitzke were dispatched to an apartment complex in Garden
8 Grove in reference to a potential restraining order violation. Defendant had lived at the
9 apartment with his wife and children for almost twenty years. As seen on Officer
10 Nakano-Hitzke's body worn camera ("BWC")², upon arriving, the officers were
11 approached by [NAME], who identified himself as Defendant's son and the one who
12 called about the restraining order. (Ex. A, BWC from Officer Nakano-Hitzke at
13 10:17pm.³⁴) Officer Bujanonda explained that "so far we don't have a restraining order
14 on file." (*Ibid.*) While Defendant's son mentioned that his family was nearby with the
15 paperwork, neither Officer Bujanonda nor Officer Nakano-Hitzke asked to see it nor
16 made any attempts to verify proper service, the effective date, the order's specific
17 terms, or whether there was a stay-away or move out order.

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20 ¹ This factual summary is based upon discovery provided by the prosecution,
21 including police reports, body worn camera videos, as well as testimony from a
22 particularly brief preliminary hearing. Notably, the Body Worn Camera reveals many
23 pertinent details that were omitted from the police reports and preliminary hearing
24 testimony. Defendant reserves the right to challenge the accuracy of the facts as
additional discovery or opportunities for cross-examination and investigation

25 ²Officer Bujanonda apparently did not activate his BWC during the entire incident,
26 except for a 1 minute and 20 second period when it appears to have been
inadvertently activated.)

27 ³ Transcripts are included as Exhibit A-1.

28 ⁴ The time stamp refers to the actual time of day and corresponds with the time stamp
in the upper right corner of the video (converted to a 12 hour clock cycle).

1 Officer Bujanonda initially asked Defendant’s son whether his dad was “fighting
2 you guys.” Defendant’s son explained that they had not been fighting, that his dad had
3 just been served paperwork, and had been told that he had time to get his belongings,
4 but it had been “like an hour.” (*Ibid.*) (Notably, a GGPD supervisor later explained to the
5 family that normally a person will be given up to two hours to gather their personal
6 effects before they have to comply with a move-out order.) (Ex. B, BWC from Officer
7 Alamillo at 10:33pm.⁵) In response to Officer Bujanonda’s questions, Defendant’s son
8 clarified that he and his mother just wanted their dad to leave and told the officers that
9 there were no guns or knives in the house. (Ex. A at 10:18pm.)

10 Officer Bujanonda also asked Defendant’s son if Defendant was drunk.
11 Defendant’s son explained that his dad was not drunk, but had been “kind of unstable.”
12 (Ex. A at 10:18pm.) Rather than asking Defendant’s son about Defendant’s potential
13 mental health issues, later confirmed by other witnesses, Officer Bujanonda responded
14 with “He’s just being belligerent?” (*Ibid.*) Officer Bujanonda took no steps to ascertain
15 whether Defendant had the mental capacity to comprehend the situation or might be
16 acting unstable due to a mental health episode.

17 Before entering the family residence, Officer Bujanonda asked Defendant’s son
18 if his dad only speaks Spanish. (*Ibid.*) When Defendant’s son confirmed that Defendant
19 only speaks Spanish, Officer Bujanonda let out a sigh and engaged in an eye roll. (*Ibid.*)
20 And, when Defendant’s son started to explain that he was unsure if his dad had read
21 the protective order (which was only in English), Officer Bujanonda did nothing to
22 ensure that Defendant was able to understand the terms of the order. He did not call
23 dispatch to ask for a Spanish-interpreter despite the department’s Limited English
24 Proficiency Policy and the availability of Spanish-speaking officers. (Indeed, other
25 officers who arrived a short bit later were able to quickly arrange for Spanish-

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28 ⁵ Transcripts are included as Exhibit B-1.

1 interpreters to interview witnesses on site.) Instead, Officer Bujanonda asked
2 Defendant's son, a protected party on the restraining order and the reporting witness,
3 to open the door and tell Defendant to come out of the apartment. (*Ibid.*)

4 Unsurprisingly, after Defendant's son opened the apartment door, he
5 immediately left the area without conveying any orders to his father. (Ex. A at
6 10:19pm.) When the door opened, Defendant was seen sitting in the dark, on the couch,
7 under a blanket. Officer Bujanonda walked in, and turned on the light. While the officers
8 identified themselves, they did so in English. The officers did not state in English nor
9 Spanish whether Defendant was being detained, arrested, or simply interviewed as
10 part of an investigation into whether there had actually been a knowing violation of an
11 effective court order. They did not explain why they were there nor did they even
12 mention a protective order.

13 Instead, Officer Bujanonda kept shouting in English to come outside. Defendant
14 stood up, said something in Spanish, and shrugged his shoulders with elbows in and
15 palms out as if to ask "What's going on?" (*Ibid.*) Officer Nakano-Hitzke attempted to
16 respond in broken Spanish by saying "No vive aqui." ("He does not live here.")
17 Confused, Defendant was trying to decipher what Officer Nakano-Hitzke was trying to
18 communicate. However, within seconds of the door opening, as Officer Nakano-Hitzke
19 was trying to speak to Defendant, Officer Bujanonda rushed towards Defendant,
20 grabbed him from behind, and started screaming in English, "Turn around...Put your
21 hands behind your fucking back...Get on the fucking ground." (*Ibid.*) A series of still
22 images from Officer Nakano-Hitzke's BWC capture this interaction. (Ex. C, Still
23 photographs from BWC.)

24 In response to this surprise ambush as he was trying to listen to Officer Nakano-
25 Hitzke, Defendant tensed up his hands and had a look of fear and confusion. (Ex. A at
26 10:19pm.) Officer Bujanonda put his forearm and elbow across Defendant's neck, and
27 yanked him to the ground. For the next few minutes, Officer Bujanonda unleashed a
28 torrent of commands and curses, in English, over and over and over again. While the

1 body worn camera fell to the ground, obscuring the officers from view, the audio
2 captures Officer Bujanonda striking and punching Defendant with multiple blows and
3 punches. (*Ibid.*) My Defendant repeatedly cries out in pain and shouts his wife and
4 daughter's name while pleading for help in Spanish.

5 At one point, just after Defendant yelps loudly, Officer Bujanonda responded by
6 aggressively screaming, in a language Defendant cannot understand, "On the fucking
7 ground. Get on the fucking ground. Get on the ground. Get on the ground. Get on the
8 ground or this gonna fucking hurt. You're on the ground. Get on the fucking ground. Get
9 on the ground. Get on the ground." Punching sounds can be heard in between Officer
10 Bujanonda's uncontrolled shouts. (Ex. A at 10:20p.m.) Officer Bujanonda proceeds to
11 use a single Spanish word: "Hey, Señor. Are you done?" Before immediately retuning to
12 yelling in English "Get on your fucking stomach." (Ex. A at 10:22p.m.) When backup
13 officer, Officer DePaudua arrives and sees Defendant handcuffed on the ground, none
14 of the officers inquire whether Defendant was in need of medical attention after
15 suffering numerous blows. Instead, Officer DePaudua suggests they transport
16 Defendant to the jail by exclaiming, "Well, let's fucking ship him." (Ex. A at 10:25pm.)

17 When supervisor Officer Kunkle arrived, Officer Bujanonda tried justifying his
18 use of physical force by explaining:

19 [I said] "Hey, you stand up, let's go." And he, he gets up, he's like, I'm like,
20 "Hey, let's go turn around, put on your back." He's like, and **he starts**
21 **speaking Spanish. You know what? I don't have time for this [so] I**
22 **just grabbed him and he choked away. And then I grabbed him**
23 **again.**

24 (Ex. A at 10:27pm.)

25 Officer Bujanonda repeated his story to another supervisor, Officer Amarillo.
26 Officer Amarillo had to inject more than once to clarify that Defendant did not speak
27 English, and therefore could not understand any of Officer Bujanonda's words. The
28 following exchange is indicative of the supervisor's concern:

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Bujanonda: And then [Nakano-Hitzke] ended up going for the legs and as he was still doing this, I thought that was, thinking he would punch me. So I started hitting in the face. So I was like, “get on the ground, stop, resist, stop fighting me.”

Alamillo: But he can't understand you.

Bujanonda: He can't understand me. But as I told him like, “Hey, are you done? Are you done?” He's like, dude, look at me. I'm like, “are you done?” He's like, I'm like, okay. And I kind of let go and after I let go he squeezes up again. So I have to keep pushing him back, back down. I'm like, “here, are you done? Are you Done?”

Alamillo: And he just waited for,

Bujanonda: Yeah. And then pretty much Nakano got his legs, he, he runs outta breath. I turned to the ground. I'm on his back now. I get one arm and he's still like doing this. Mm-Hmm. <affirmative>. And after he went like this, he kind of shook his arm like this. And my leg was like in between his leg and between his arms. So we were able to cuff one. And as I'm trying to get the other, I don't want let go of his arm 'cause I don't know if he's gonna try swinging at me again. Mm-Hmm. <affirmative>, that's where Tanner came help me just (undecipherble).

(Ex. A at 10:31pm)

* * *

Bujanonda: But it's, [Nakano-Hitzke is] not Spanish.

Alamillo: Does she speak Spanish?

1 Bujanonda: No, she's Japanese. Just boo <laugh>. Oh,

2 Alamillo: So you guys had a language barrier too?

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4 Bujanonda: Yeah, it's that too.

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6 (Ex. A at 10:33pm.)

7 After Officer Alamillo discussed the language barrier concern, he went on to
8 address the Officer Bujanonda's enforcement of the restraining order. Officer Alamillo
9 reminded Officer Bujanonda that courts sometimes give people two hours to move out.
10 Officer Bujanonda admitted that he did not verify what time the order had been served.
11 He tried to cover his mistake by explaining that Defendant's son, the son, just wanted
12 the dad out of there. Officer Bujanonda then claimed that, "I was gonna take
13 [Defendant] outside talking and see what was going [on]." (*Ibid.*)

14 **POINTS AND AUTHORITIES**

15 **I. BACKGROUND**

16 **A. THE LEGISLATIVE INTENT FOR THE RACIAL JUSTICE ACT**

17 In a sweeping overhaul of how racial bias can be counteracted in our criminal
18 justice system, the Legislature enacted the California Racial Justice Act, effective
19 January 1, 2021, which is now codified in Penal Code section 745. For years, despite the
20 appearance of concerning racial disparities in California's criminal justice system, such
21 disparities persisted because the legal precedent for addressing discrimination was
22 inadequate. As the Legislature explained: "Even though racial bias is widely
23 acknowledged as intolerable in our criminal justice system, it nevertheless persists
24 because courts generally only address racial bias in its most extreme and blatant
25 forms." (*Id.* at subd. (c).) However, "the impact... [of racial bias] cannot be measured
26 simply by how much air time it received at trial or how many pages it occupies in the
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1 record. Some toxins can be deadly in small doses.” (*Id.* at subd. (a) citing *Buck v. Davis*
2 (2017) 137 S. Ct. 759, 777.)

3 The Legislature acknowledged that “racial bias is often insidious, and that
4 purposeful discrimination is often masked and racial animus disguised.” (*Id.* at subd.
5 (h)). Moreover, it acknowledged that “[e]ven when racism clearly infects a criminal
6 proceeding...proof of purposeful discrimination is often required, but nearly
7 impossible to establish.” (*Ibid.*) For these reasons, the RJA specifically states that “[t]he
8 defendant does *not need to prove intentional discrimination.*” (*Id.* at subd. (c)(2)
9 (emphasis added).)

10 In so doing, the legislature expressed awareness that “all persons possess
11 implicit biases, that these biases impact the criminal justice system, and that negative
12 implicit biases tend to disfavor people of color.” (*Id.* at subd. (g).) The RJA does not
13 intend to punish this type of bias, but rather to remedy the harm to the defendant’s
14 case and to the integrity of the judicial system.” (Assem. Bill No. 2542 (2020-2021 Reg.
15 Sess.) § 2(i).) Peer reviewed psychological and sociological research over the span of
16 several decades has shown that implicit bias can result in exaggerated perceptions of
17 risk, memory divergent perceptions of video, photographic, and testimonial evidence,
18 and a greater likelihood of treating the same activities more or less harshly.

19 “[W]e unconsciously act on implicit biases even though we abhor them when
20 they come to our attention. Implicit biases cause subtle actions ... [b]ut they are also
21 powerful and pervasive enough to affect decisions about whom we employ, whom we
22 leave on juries, and whom we believe.” (Bennett, *Unraveling the Gordian Knot of Implicit*
23 *Bias in Jury Selection: The Problems of Judge-Dominated Voir Dire, the Failed Promise of*
24 *Batson, and Proposed Solutions*, (2010) Harvard Law and Policy Review 149, 150.)
25 Empirical studies over the past three decades affirmed that implicit bias—the “nearly
26 unconscious negative associations with minority racial groups”—exists and influences
27 our behavior. (Quillian, *Does Unconscious Racism Exist*, (2008) Social Psychology
28 Quarterly, Vol. 71 No. 1 6 (hereinafter “Quillian”), 6-7.) It is important to recognize the

1 invidious nature of implicit or unconscious bias. Implicit bias often does not coincide
2 with explicit racial prejudices, instead it is far more subtle and nuanced in its
3 presentation. Even where individuals genuinely believe in egalitarian values, implicit
4 bias can result in unintentional discrimination—especially where that behavior can be
5 justified on race-neutral grounds. (Dovidio & Gaertner, *Reducing Prejudice: Combating*
6 *Intergroup Biases*, (1999) *Current Directions in Psychological Science*, Vol. 8 No. 4 101.)

7 The Legislature’s stated intention in passing the act is to “eliminate racial bias
8 from California’s criminal justice system,” “reject the conclusion that racial disparities
9 within our criminal justice system are inevitable, and to actively work to eradicate
10 them,” and “provide remedies that will eliminate racially discriminatory practices in
11 the criminal justice system, in addition to intentional discrimination.” (Assem. Bill No.
12 2542, *supra*, at subs. (i), (j).) Put another way, the Legislature is calling upon the
13 courts to step in and rectify longstanding practices that result in biased racial outcomes
14 at every stage in the criminal process, and giving them the tools to do so.

15 **B. The Procedural Aspects of the Racial Justice Act**

16 “The [Racial Justice] Act sets forth four categories of conduct, any of which, if
17 proved, is enough to ‘establish’ a violation of section 745, subdivision (a).” (*Young v.*
18 *Superior Court* (2022) 79 Cal.App.5th 138, 147.) The first two categories focus on
19 individual bias and conduct, while the second two focus on system-wide discrimination
20 by county.

21 Penal Code section 745, subdivision (a)(1), the only section currently at issue⁶,
22 provides that “[a] violation is established if the defendant proves by a preponderance
23 of the evidence, any of the following . . . a law enforcement officer involved in the case
24 . . . exhibited bias or animus towards the defendant because of the defendant’s race,
25 ethnicity, or national origin.” (Pen. Code, § 745 subd. (a)(1).)

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28 ⁶ Defendant reserves the right to raise additional RJA claims if they become ripe.

1 “A defendant may file a motion in the trial court . . . alleging a violation of
2 subdivision (a).” (*Id.* at subd. (b).) “If a motion is filed in the trial court and the
3 defendant makes a *prima facie* showing of a violation of subdivision (a), the trial court
4 shall hold a hearing.” (*Id.* at subd. (c).) “At the hearing, evidence may be presented by
5 either party, including, but not limited to . . . expert testimony, and the sworn testimony
6 of witnesses.” (*Id.* at subd. (c)(1).) The defense bears the burden of proving a
7 subdivision (a) violation by a preponderance of the evidence. (*Id.* at subd. (c)(2).)

8 Should the court find a violation of subdivision (a), “the court shall impose a
9 remedy specific to the violation . . . [including any] other remedies available under the
10 United States Constitution, the California Constitution, or any other law.” (*Id.* at
11 subd.(e)(4).)

12 **C. A Prima Facie Showing for an Evidentiary Hearing is a Low Burden**

13 “The defining feature of the *prima facie* standard is that it creates an initial
14 burden on a moving party to proffer evidence that would support a favorable ruling
15 without a court’s consideration of conflicting evidence put forth by the opponent.”
16 (*Finley v. Superior Court* (2023) 95 Cal.App.5th 12, 21.) “[T]he court asks if a defendant
17 has proffered fact sufficient to show a ‘substantial likelihood—defined as ‘more than a
18 mere possibility, but less than a standard of more likely than not’ . . .” (*Id.* at 22.) [citing
19 Pen. Code, § 745, subd. (h)(2)].)

20 “[A] defendant seeking relief under the Racial Justice Act must state fully and
21 with particularity the facts on which relief is sought, and include copies of reasonably
22 available documentary evidence supporting the claim.” (*Id.* at 23.) Further, “[t]he court
23 should accept the truth of the defendant’s allegations” (*Ibid.*) While this includes a
24 “gatekeeping role” on the court to ignore evidence which is made without explanation
25 or which is conclusory, the role “does not involve choosing between competing expert
26 opinions.” (*Id.* at 22-23 [citing *Sargon Enterprises, Inc. v. University of Southern*
27 *California* (2012) 55 Cal.4th 747 at p. 772].) “At the *prima facie* stage of a Racial Justice
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1 Act motion [the court’s role is to] consider whether the motion and its supporting
2 evidence state facts that, ‘*if true*, establish that there is a substantial likelihood that a
3 violation’ occurred.” (*Id.* at 23-24 [citing Pen. Code, § 745, subd. (h)(2)] [italics in
4 original].) A defendant filing a motion under the Racial Justice Act “need not eliminate
5 all contrary inferences’ for the facts presented.” (*Id.* at 25 [citing *People v. Zamora*
6 (2022) 73 Cal.App.5th 1084, 1091].)

7 II. ARGUMENT

8 A. Officer Bujanonda Displayed Animosity and Bias Towards Defendant Due 9 to Defendant’s National Origin, Ethnicity, or Race

10 1. Officer Bujanonda’s Use of Physical Force and Uncontrolled Verbal 11 Rage Because He “Didn’t Have Time” for Defendant’s Spanish 12 Speaking Showed Animosity Towards Defendant

13 Officer Bujanonda’s own characterization of events confirms what his actions
14 belied: he harbored animus, or hostility, towards Defendant based on his national
15 origin, reflected in his Spanish language. Officer Bujanonda admitted that prior to
16 entering Defendant’s residence, he had not verified whether a valid protective order
17 had been properly served on Defendant. (Ex. B at 10:33pm.) Officer Bujanonda had
18 planned to take Defendant outside to talk and find out more about the situation. (*Ibid.*)
19 This approach makes sense given that, in the absence of an active protective order and
20 proper notice, there would be no criminal violation, and thus no legal justification for
21 enforcing it.

22 However, Officer Bujanonda’s intentions to have a conversation that respected
23 Defendant’s rights quickly dissipated once Defendant spoke in Spanish. Despite being
24 informed that Defendant only spoke Spanish, as soon as Officer Bujanonda actually
25 heard the language, he turned hostile. He abandoned his plan to conduct a casual field
26 interview and instead aggressively punished Defendant for his lack of English ability.
27 As Officer Bujanonda described: “[Defendant] starts speaking Spanish. You know what?
28 I don’t have time for this [so] I just grabbed him.” (Ex. A at 10:27pm.)

1 The immediacy with which Officer Bujanonda used force against a person that
2 he still needed to investigate, simply for speaking Spanish, is beyond troubling. While
3 Officer Bujanonda attempted to justify his use of force by describing Defendant as
4 “uncooperative,” as his own supervisor pointed out, Defendant could not understand
5 anything being said, and therefore could not know with which orders, if any, he was
6 supposed to comply.

7 To add insult to injury, Officer Bujanonda charged at Defendant while Officer
8 Nakano-Hitzke was attempting to converse with Defendant in Spanish. Defendant was
9 not being uncooperative; he was confused and trying to communicate with officers in
10 the only ways he knew how: Spanish and nonverbal communication. Rather than giving
11 Defendant any opportunity to understand what was going on, rather than explaining
12 why they were there, Officer Bujanonda dragged Defendant down to the ground. For
13 the next five minutes the officer unleashed a barrage of roaring commands, ear-
14 splitting curses, and physical blows to Defendant’s head and body that were so
15 powerful, so loud, they could be heard even over Officer Bujanonda’s yelling.

16 Officer Bujanonda’s animus towards Defendant’s heritage perpetuates
17 hostilities towards Spanish-speaking immigrants that have persisted for centuries.
18 (Pascual y Cabo & Rivera-Marín, *Understanding and Addressing Linguistic Aggressions*
19 *in the Spanish Heritage Language Classroom*, (2021) vol. 73, Estudios del Observatorio/
20 Observatorio Studies, Instituto Cervantes at the Faculty of Arts and Sciences of Harvard
21 University 1,7.) “Linguistic prejudice” against Spanish-speaking immigrants has arisen
22 as a backlash against increased immigration from Mexico and other Spanish-speaking
23 countries. (*Id.* at 7-8.) Those who do not speak “the idealized hegemonic English
24 language” have often faced negative consequences and may be subject to physical
25 harassment for speaking Spanish. (*Id.* at 7.) This is precisely what happened to
26 Defendant as soon as he dared to speak in his native language.

27 In addition to the explicit bias that Officer Bujanonda displayed, his use of mock
28 Spanish, when calling Defendant, “Señor” (“Sir”), a term meant to convey respect or

1 courtesy, as he is screaming and cursing in English, is a subtle, but harmful display of
2 bias. The mock use of linguistic elements from Spanish “is a form of covert
3 discrimination that is more than rampant in U.S. popular culture.” (*Id.* at 14-15.)

4 Further, Officer’s Bujanonda’s use of physical and verbal force so early in the
5 interaction, suggests that he was operating on racial/ethnic stereotypes, implicit or
6 otherwise. Scholars have found that police officers use force against Latinos earlier into
7 interactions than in interactions with White people. One study explains this
8 phenomenon:

9 Within the broader society and in the criminal justice context in
10 particular . . . Latinos are stereotyped as criminals, aggressive, and
11 dangerous Police officers are also aware of and may hold these racial
12 stereotypes, which can influence their interactions with racial minority
13 citizens and decisions to use force Once activated, racial stereotypes
14 serve as a lens through which subsequent behavior is interpreted and
15 shape perceptions to be consistent with the stereotype. Stereotype
16 application is most powerful under conditions of ambiguity . . . and less
information When police officers first interact with a racial minority
suspect, racial group stereotypes may be automatically activated, which
can alter the ways in which officers interpret subsequent actions.

17 (*Kahn, et al., How Suspect Race Affects Police Use of Force in an Interaction Over Time*
18 (2017) *Law and Human Behavior* Vol 41 (No.2) 117-126. This sort of bias appears to
19 have affected Officer Bujanonda’s perception of Defendant. Unfortunately, rather than
20 seeking to gather more information about Defendant through an interpreter, Officer
21 Bujanonda acted on his biases and unleashed his animosity. Officer Bujanonda’s actions
22 exemplify the type of animus on the basis of national origin that is prohibited by the
23 Racial Justice Act. (Pen. Code § 745(a)(1).)

24 **2. Officer Bujanonda’s Refusal to Request a Spanish-Language**
25 **Interpreter Constitutes Discrimination Against Defendant**

26 Officer Bujanonda’s refusal to request a Spanish-language interpreter, despite
27 being informed that Defendant only speaks Spanish, also reflects his bias.
28 Discrimination against non-English speakers has long been recognized as a type of

1 discrimination on the basis of national origin. (See e.g. Title VI and VII of the Civil Rights
2 Act of 1964, 42 U.S.C. 2000d et. seq. [characterizing discrimination against people with
3 limited English proficiency as discrimination on the basis of national origin].) In fact,
4 any law enforcement agency receiving federal funding must provide reasonable access
5 to language assistance for limited English speakers or risk being in violation of the Civil
6 Rights Act for discrimination on the basis of national origin. (Shah & Estrada, *Bridging*
7 *the Language Divide* (2009) VERA Institute of Justice and Community Oriented Policing
8 Services, U.S. Department of Justice at p.9.)

9 In fact, Garden Grove Police Department has a Limited English Proficiency Policy
10 in place so that officers do not discriminate against anyone on the basis of national
11 origin. (Ex. D, GGPD Limited English Proficiency Policy.) The policy was enacted “to
12 reasonably ensure that LEP individuals have meaningful access to law enforcement
13 services” with a commitment that “[GGPD] will not discriminate against or deny any
14 individual access to services, rights or programs based upon national origin . . .” (*Ibid.*)
15 The policy teaches officers that language barriers can prevent individuals with limited
16 English from understanding important rights or obligations, which can lead to ethical
17 issues. (*Ibid.*) It explains that the department will provide qualified translators
18 whenever they are available and cautions officers not to use family members or other
19 civilian “translators” who may have a conflict of interest and likely do not have training
20 in translating law enforcement terms. (*Ibid.*)

21 The LEP policy and GGPD’s availability of qualified bilingual interpreters is
22 important because “[c]ompetent translation by law enforcement officials requires not
23 only the ability to speak the foreign language, but also the ability to understand what
24 the LEP person is saying, translate the dialect of the LEP individual, and competently
25 explain essential information, so that the LEP individual can knowingly and
26 intelligently be informed of all their rights as required by law.” (Coppersmith, *Lost in*
27 *Translation: Persons with Limited English Proficiency and Police Interaction in the United*
28 *States* (2018) 10 N. Ill. U. L. Rev. Online Supp. 1, 13.) When adequate translation

1 services are not provided, it is as if the defendant is not even present. (*Id.* at 8 [*citing*
2 *United States ex rel. Negron v. New York* (2d Cir. 1970) 434 F.2d 386l].)

3 Tellingly, Officer Bujanonda ignored his department’s policy. Not only did he
4 make zero attempts to request an interpreter, but he asked an individual he believed
5 to be a protected party to convey police commands to the presumed restrained party.
6 “This use of family members as interpreters is devastating to the pursuit of justice in
7 our policing system because it places the victim of a crime in a position of responsible
8 advocacy for the defendant while also placing the defendant in a position where he is
9 unable to achieve true justice due to the lack of interpretation and translation provided
10 to him by the law enforcement agency.” (*Id.* at 23.)

11 Officer Bujanonda had every opportunity to call for a qualified interpreter. There
12 was no exigency and he was alerted before hand that Defendant spoke Spanish. There
13 is no justification for depriving Defendant access to the justice system. Without an
14 interpreter, Defendant was blocked from understanding his rights and from being put
15 on notice of his obligations. This ultimately created a situation that escalated the risk
16 of harm to both Defendant and everyone else on scene. The failure to provide, let alone
17 try to provide, reasonable language accommodations constitutes discrimination
18 against Defendant on the basis of national origin. This too violates the Racial Justice act.

19 **3. Officer Bujanonda’s Characterization of Defendant’s Mental Health**
20 **Struggles as “Acting Belligerent” and the Officers Decision to “Fucking**
21 **Ship Him” Without Determining if Medical Attention Was Needed**
22 **Reflects Animus Towards Defendant**

23 As he approached Defendant’s apartment, Officer Bujanonda asked Defendant’s
24 son if his father was fighting with the family or drunk. When Defendant’s son started
25 to explain that his dad had been unstable for a time, Officer Bujanonda immediately
26 jumped to an assumption that Defendant was acting “belligerent.” Officer Bujanonda’s
27 failure to consider that “unstable” may refer to a mental health issue (which was later
28 confirmed) reflects the officer’s bias because it assumes that Defendant was acting with
volitional criminality or aggression rather than suffering a mental infirmity.

1 “Criminalization of mental health is situated within the broader context of
2 racialized policing practices in America.” (Mubarak, et al., *Promoting Antiracist Mental*
3 *Health Crisis Responses* (August 2022) vol. 24(8) AMA (American Medical Association)
4 J. Ethics. 788. Not only does having a mental illness and being a person of color increase
5 the risk of being met with police use of force individually, but experiencing police
6 violence is in and of itself traumatic and an independent risk factor for subsequent
7 mental illness. (*Ibid.*) Language barriers exacerbate this risk. Consequently, many with
8 mental health needs are done a disservice, or worse, suffer harm by a law enforcement
9 officer’s poor response to a mental health issue.

10 Here, Officer Bujanonda’s treatment of Defendant as a target, even when he saw
11 that Defendant was sitting alone, in the dark, under a blanket and staring into the void,
12 reflects a complete disregard for Defendant’s wellbeing. He did not consider
13 Defendant’s humanity or the potential complexities Defendant faced navigating mental
14 instability and a language barrier.

15 Officer Bujanonda, along with Officer DePauda, further dehumanized Defendant
16 when they left him lying handcuffed on the ground and did not even consider checking
17 him for injuries. The callous way they described the plan to transport him to the jail,
18 “Well, let’s fucking ship him,” is reminiscent of anti-immigrant calls for deportation.
19 This language positions Defendant as less human than the officers and reflects biased
20 policing, in violation of GGPD’s policy. (Ex. E, GGPD Biased Policing Policy.)

21 Reducing Defendant to a belligerent caricature, while failing to check on his
22 medical needs after he endured significant force, reflects exactly the kind of bias that
23 the Racial Justice Act aims to eliminate from our system.

24 **B. The Defense Has Made a Prima Facie Showing That Penal Code §**
25 **745(a)(1) Was Violated Warranting an Evidentiary Hearing**

26 In determining whether or not Defendant has established prima facie evidence
27 of a violation of the Racial Justice Act, the court is to assume the truth of the allegations
28 and may not engage in credibility determinations or factfinding at this stage. (*Finley*,

1 *supra*, 95 Cal.App.5th 1, 23.) Only if the record contains facts that disprove the
2 petition's allegations as a matter of law, should the court make a credibility
3 determination against Defendant. (*See, e.g., People v. Lewis* (2021) 11 Cal.5th 952, 971.)
4 The defense meets its burden when it proffers facts, presumed to be true, that are
5 sufficient to show a substantial likelihood that the RJA has been violated. (*Ibid.*) To
6 impose a heavier burden would be antithetical to the RJA's structure and purpose.
7 (*Ibid.*) A defendant need only state fully and with particularity the facts on which relief
8 is sought and provide all reasonably and readily available documentation to support
9 the claim. (*Id.* at 23.)

10 The defense has set forth facts indicating that a law enforcement officer in the
11 case demonstrated animus and bias against Defendant by responding to his use of
12 Spanish with physical and verbal force, by failing to investigate whether a crime had
13 occurred, by using mocking language, by failing to provide access to an interpreter, by
14 assuming criminality and disregarding a mental health crisis, and by failing to
15 determine if medical aid was needed. This showing is enough to demonstrate that
16 there is a substantial likelihood that Penal Code § 745, (a)(1) has been violated. A
17 substantial likelihood simply requires more than a mere possibility, but is less than a
18 standard of more likely than not. (Pen. Code, § 745(h)(2).)

19 **CONCLUSION**

20 For all of the reasons stated herein, there is a substantial likelihood that Penal
21 Code section 745, subdivision (a)(1) was violated in this case. The defense requests an
22 evidentiary hearing pursuant to Penal Code section 745, subdivision (c).
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Dated: May 14, 2024

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