



March 11, 2022

Attorney General Rob Bonta
 Office of the Attorney General
 State of California Department of Justice
 1300 "I" Street
 Sacramento, CA 95814-2919
Rob.Bonta@doj.ca.gov

Sent via email

Re: Request for an Investigation into the Orange County District Attorney's Office

Dear Attorney General Bonta,

The ACLU Foundation of Southern California and the undersigned organizations request that you exercise your authority pursuant to CA Civ. Code sec. 52.3 and initiate a pattern or practice investigation into the Orange County District Attorney's Office (OCDA). Over the last several decades, the OCDA has been embroiled in controversies that have illuminated injustices

within the county's criminal legal system.¹ The OCDA's latest scandal involves the head of the office, District Attorney Todd Spitzer. Specifically, it has been reported that DA Spitzer made racist statements during a closed-door case strategy discussion with high-ranking prosecutors.² This controversy serves as just the latest confirmation of what has been apparent for years: the policies and practices of the OCDA are stained by systemic racism and bias that produce measurable harms against Black and Brown people in Orange County.

The OCDA has demonstrated a historical commitment to upholding systems of power that oppress people of color throughout Orange County. The recently published report "In(justice) in Orange County: A Case for Change and Accountability" analyzes the disparate impact of OCDA policies and practices on communities of color.³ In Orange County, Black people are overrepresented among individuals charged with a crime. Black residents represent just over 2 percent of the county's total population yet make up nearly 6 percent of the people charged by the OCDA.⁴ Black residents are more likely to be criminally charged and face jail or prison time for low-level divertible offenses than members of any other racial group. The report indicates that there are persistent racial disparities in access to diversion programs in Orange County.⁵ Whether revealed by the brazen racial disparities in the office's charging, sentencing, and diversion practices, its criminalization of homelessness,⁶ or by its well-documented failure to seek charges against police officers who kill people of color,⁷ there is ample evidence that systemic racism is deeply ingrained within the policies and practices of the OCDA.

The OCDA's recent controversy suggests a culture in which prosecutorial decisions, practices, and policies rooted in racism are not only accepted within the office but are modeled explicitly from the top down. DA Spitzer's alleged disclosure to his colleagues that "he knows many Black people who get themselves out of their bad circumstances and situations by dating white women" is not only an example of an individual prosecution tainted by racial bias, it suggests a broader pattern of racially biased prosecutions by the OCDA against Black people and other individuals of color under DA Spitzer's leadership.

¹ Patrick Dixon & Steve Danley. Special Report to the District Attorney of Orange County: Prosecutors Role in the Dekraai Informant Controversy (July 2020). [Link](#); "A Call For Ethical Standards: Corruption in Orange County," Orange County Grand Jury Report, 2012-2013. [Link](#); Tony Saavedra, "Prosecutors in Orange County snitch scandal were intentionally negligent, DA probe concludes," *Orange County Register*, Jul. 20, 2020. [Link](#); Tony Saavedra, "Former Orange County DA violated state law in hiring outside attorney for embattled prosecutor," *Orange County Register*. Oct. 23, 2019. [Link](#)

² Hannah Fry, "O.C.D.A. made racist comments in case of Black defendant, former colleague alleges," *Los Angeles Times*, Feb. 16, 2022. [Link](#).

³ Steven Medeiros, "In(Justice) in Orange County: A Case for Change and Accountability," ACLU of Northern California. Feb. 28, 2022. [Link](#).

⁴ *Id.* at 16.

⁵ *Id.* at 31.

⁶ Anh Do, Benjamin Oreskes, "Hundreds of homeless face eviction or arrest as O.C. clears encampment amid shelter bed shortage," *Los Angeles Times*, Jan. 22, 2018. [Link](#); Scott Schwebke, "Homeless woman found not guilty of illegally camping in Mile Square Park," *Orange County Register*, Nov. 8, 2021. [Link](#).

⁷ Kim Bellware, "A deputy fatally shot a Black homeless man during a jaywalking stop. He won't face charges," *Washington Post*, Feb. 12, 2022. [Link](#); Ben Brazil, "Friends, family outraged as O.C. district attorney clears officer who shot, killed Hector Hernandez," *Los Angeles Times*, Aug. 10, 2021. [Link](#); Sarah Moon, "Video shows police firing 76 shots at suspect. The officers won't be charged in his death," *CNN*, May 9, 2019. [Link](#); Gabriel San Roman, "OCDA Justifies Deadly Shooting of Homeless Man by Santa Ana Cop," *OC Weekly*, Sept. 14, 2017. [Link](#).

Additionally, DA Spitzer’s alleged statements implicate AB 2542, also known as the California Racial Justice Act (CRJA). The CRJA was developed as a legislative mechanism to mitigate exactly the type of racial bias and animus evidenced here—that which “undermines public confidence in the fairness of the state’s system of justice and deprives Californians of equal justice under law.”⁸ As the California Legislature stated in section 2(g) of the CRJA, “In California... we can no longer accept racial discrimination and racial disparities as inevitable in our criminal justice system and we must act to make clear that this discrimination and these disparities are illegal and will not be tolerated in California, both prospectively and retroactively.”

Under Article V, Section 13 of the California Constitution and California Civil Code Section 52.3, the Attorney General holds the authority to oversee and authorize civil investigations into a district attorney’s office that has engaged in a pattern or practice of violating state or federal law. Accordingly, we call upon the Office of the Attorney General and the California Department of Justice to further investigate systemic and institutional racism within the policies and practices of the OCDA. In presenting this request, ACLU Foundation of Southern California joins coalition partners and residents of color in Orange County who continue to suffer due to the historical malfeasance of the OCDA, and who demand accountability and transparency.

As the California Court of Appeals opined in 2016, “The magnitude of the systemic problems [in the OCDA] cannot be overlooked.”⁹ Today, we ask that the Attorney General and the California Department of Justice not overlook evidence of glaring systemic racism embedded within the policies and practices of the OCDA. We request that you take this crucial first step in addressing the immense damage inflicted by the OCDA upon Black and Brown residents throughout Orange County.

Sincerely,

ACLU Foundation of Southern California
ACLU Foundation of Northern California
Chispa OC
Clergy and Laity United for Economic Justice (CLUE)
HB Huddle Peace and Justice Team
Housing is a Human Right, Orange County (HHROC)
Law Enforcement Accountability Network (LEAN)
Los Angeles County Public Defenders Union - Local 148
Muslim Anti-Racism Collaborative (MuslimARC)
National Action Network Orange County
Orange County Emergency Response Coalition
Orange County Justice Initiative
People's Budget Orange County
Stop The Musick Coalition
The Orange County Rapid Response Network
The Peace and Justice Law Center
Transforming Justice Orange County
United Communities for Peace

⁸ AB 2542, Sec. 2(a).

⁹ *People v. Dekraai*, 5 Cal. App. 5th 1110, 1149 (Ct. App. 2016).

Yalla Indivisible

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