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Supreme Court of California
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No. S286520

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff and Respondent,

vs.

DAVID LEE ALLEN,
Defendant and Appellant.

Second Appellate District, Division One, Case No. B328333
Los Angeles County Superior Court, Case No. NA104090
The Honorable Judith Levey Meyer, Judge

APPLICATION FOR LEAVE TO FILE *AMICI CURIAE* BRIEF

AND

PROPOSED BRIEF OF *AMICI CURIAE* AMERICAN CIVIL LIBERTIES UNION OF NORTHERN CALIFORNIA, AMERICAN CIVIL LIBERTIES UNION OF SOUTHERN CALIFORNIA, AND CALIFORNIA PUBLIC DEFENDERS ASSOCIATION IN SUPPORT OF APPELLANT

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APPLICATION FOR LEAVE TO FILE *AMICI CURIAE* BRIEF

Pursuant to Rule 8.520(f) of the California Rules of Court, proposed *amici curiae* respectfully request leave to file the accompanying Proposed *Amici Curiae* Brief in Support of Appellant David Lee Allen.

INTERESTS OF *AMICI CURIAE* [1]

The American Civil Liberties Union ("ACLU") is a nationwide, non-partisan, non-profit organization with approximately two million members and supporters dedicated to the principles of liberty and equality embodied in the Constitution and our nation's civil rights laws. The ACLU of Northern California and ACLU of Southern California are regional affiliates of the national ACLU. For decades, the ACLU and its California affiliates have advocated to advance racial justice for all Californians, as well as to protect the rights of the criminally accused. The ACLU affiliates in California have participated in cases, both as direct counsel and as amici, involving the protection of due process guarantees for the criminally accused and fair treatment for Black and Latine persons in the criminal justice system.

The California Public Defenders Association ("CPDA") is

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[1] Pursuant to Rule 8.520(f)(4), *amici* state that no counsel for a party authored this brief in whole or in part, and no other person or entity, other than *amici curiae*, its members, or its counsel, made any monetary contribution to the preparation or submission of this brief.

the largest association of criminal defense attorneys and public defenders in the State of California. With a membership of more than 4,000 criminal defense attorneys and associated professionals, CPDA is an important voice of the criminal defense bar.

CPDA has been a leader in continuing legal education for defense attorneys for half a century. It is an approved provider of Mandatory Continuing Legal Education and Criminal Law Specialization Education and is one of only two organizations deemed by the Legislature to be an "automatically" approved legal education provider. (Bus. & Prof. Code, § 6070, subd. (b).)

Courts have granted CPDA leave to appear as *amicus curiae* in nearly fifty California cases that culminated in published opinions. (See, e.g., *People v. Albillar* (2010) 51 Cal.4th 47 [sufficiency of evidence in a gang-related prosecution]; *Barnett v. Superior Court* (2010) 50 Cal.4th 890 [post-trial discovery]; *Galindo v. Superior Court* (2010) 50 Cal.4th 1 [preliminary hearing discovery]; *People v. Lenix* (2008) 44 Cal.4th 602 [comparative juror analysis for the first time on appeal]; *People v. Nelson* (2008) 43 Cal.4th 1242 [DNA evidence in a cold hit case].) CPDA has also served as *amicus curiae* in the United States Supreme Court. (See e.g., *California v. Trombetta* (1984) 467 U.S. 479 [the duty to preserve evidence is limited to evidence that might be expected to play a significant role in the suspect's defense]; *Monge v. California* (1998) 524 U.S. 721 [double jeopardy clause does not bar retrial of a prior conviction allegation after an appellate finding of evidentiary insufficiency].)

Amici believe that additional briefing would be beneficial to demonstrate why the common practice of *Perkins* operations, especially those operations coordinated by law enforcement after a defendant has invoked their right to remain silent and to consult an attorney following a *Miranda* warning, has serious consequences for Californians' constitutional rights. Additionally, CPDA's members represent many defendants charged with serious crimes who were subjected to clandestine and deceitful—and, in *amici's* view, unlawful—*Perkins* operations. They therefore can assist the Court with their real-world perspective on how these operations are executed across the state.

Dated: January 20, 2026

Respectfully submitted,

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BRIEF OF *AMICI CURIAE*

INTRODUCTION

The facts of this case are egregious. Detectives interrogated Petitioner David Allen at the police station for hours despite his unambiguous invocation—on at least four separate occasions—of his *Miranda* right to remain silent. The officers deployed various coercive and deceptive techniques during the interrogation, including false evidence ploys, threats to inform the jury about Mr. Allen's decision to remain silent, minimization of the alleged crimes, and other forms of psychological domination. After the interrogation, the officers realized that Mr. Allen's inculpatory statements were inadmissible under *Miranda v. Arizona* (1966) 384 U.S. 436 (*Miranda*). Rather than honor Mr. Allen's invocation of his Fifth Amendment right, the officers then placed him in a jail cell for three days and arranged for an undercover agent to pose as his cellmate. The agent—a "linebacker"-sized man who identified himself as an experienced gang member—used similar interrogation techniques to those used by the officers to elicit the same inculpatory information from Mr. Allen. The courts below concluded that these statements were admissible, even though they followed Mr. Allen's clear invocation of his *Miranda* rights.

Although egregious, this case unfortunately is not an isolated occurrence. In fact, "the use of deceptive interrogation tactics to deliberately circumvent a suspect's invocation of *Miranda* rights appears to be a common police practice throughout California." (*People v. De Jesus Valencia* (S258038,

petn. for review den. Dec. 11, 2019) 2019 WL 6869128, at *7 (dis. statement of Liu, J.)) (*Valencia*) [citing dozens of cases "from multiple counties up and down the state"].) So-called "*Perkins* operations" are institutionalized and coordinated tactics that California law-enforcement agencies consider to be critical investigative tools, even when—and perhaps especially when—the suspect has already invoked their rights to silence or to counsel under *Miranda*. (See Davis et al., *Interrogation by Proxy: The Growing Role of Lay and Undercover Interrogators in Eliciting Criminal Confession*s (2023) 59 Crim. L. Bull. 395, 426 [from "the perspective of law enforcement, the ability to circumvent *Miranda* warnings is a clear advantage" in favor of using *Perkins* operations].)[2]

These post-invocation undercover interrogations cannot be squared with *Miranda* or the Constitution. Although the United States Supreme Court held in *Illinois v. Perkins* (1990) 496 U.S. 292 (*Perkins*), that jailhouse agents can elicit inculpatory statements without advising individuals of their *Miranda* rights, it has never authorized such operations *after* an individual has invoked those rights. As Mr. Allen persuasively explained in his briefing, there is no doctrinal basis for this Court to hold that *Perkins* permits post-invocation operations. *Amici* file this brief to demonstrate why such a holding would result in serious and deleterious consequences for Californians' constitutional rights.

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[2] *Available at* https://www.academia.edu/105003220/Interrogation_by_Proxy_The_Growing_Role_of_Lay_and_Undercover_Interrogators_in_Eliciting_Criminal_Confessions

Specifically, it would subject individuals to uniquely coercive pressures, effectively undermine the right to counsel, and disproportionately impact Black and brown defendants, who are the primary targets of *Perkins* operations in California.

To be sure, *amici* acknowledge that many of their concerns with post-invocation *Perkins* operations equally apply to *pre*-invocation operations. And *amici* agree with those who have called for *Perkins* itself to be revisited.[3] This Court, of course, does not have the power to do so. But *Perkins*'s dubious logic and problematic implications only highlight why this Court should not extend its holding to the post-invocation context. The decision below should therefore be reversed.

ARGUMENT

I. *Perkins* operations—which rely on uniquely coercive tactics—implicate *Miranda*'s concerns about police coercion.

In *Miranda*, *supra*, 384 U.S. at p. 448, the United States Supreme Court recognized that "the modern practice of in-custody interrogation is psychologically rather than physically oriented." (See also *ibid.*, citing *Blackburn v. State of Alabama*

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[3] See Glennon & Shah-Mirani, *Illinois v. Perkins: Approving the Use of Police Trickery in Prison to Circumvent Miranda* (1990) 21 Loy. U. Chi. L.J. 811, 828–830; see also, e.g., Sasaki, *Guarding the Guardians: Police Trickery and Confessions* (1988) 40 Stan. L. Rev. 1593, 1595 (arguing that "[p]olice trickery should be viewed as a type of fraud, the use of which as an interrogation tool is inconsistent with our adversarial system of criminal justice because it allows the prosecution an unfair, indeed an unconstitutional, advantage at trial").

(1960) 361 U.S. 199, 206 ["[C]oercion can be mental as well as physical . . . the blood of the accused is not the only hallmark of an unconstitutional inquisition."].) The *Miranda* Court's concerns about coercion specifically focused on subtle acts of psychological tactics law enforcement take, such as isolation combined with stimulation intended to increase stress and deceive a suspect into believing law enforcement possesses overwhelming evidence of guilt. (See *Miranda*, *supra,* 384 U.S. at pp. 448–453.)

Although the high court concluded in *Perkins*, *supra*, 496 U.S. at p. 296, that "[c]onversations between suspects and undercover agents do not implicate the concerns underlying *Miranda*," that conclusion does not reflect the coercive pressures that *Perkins* operations impose in the real world. To start, custodial settings like jail cells are in fact "police-dominated atmosphere[s]" (*Miranda*, *supra*, 384 U.S. at p. 445), where an arrestee's movements are coordinated and controlled by law enforcement. Indeed, "the mere fact of custody imposes pressures on the accused; confinement may bring into play subtle influences that will make him particularly susceptible to the ploys of undercover Government agents." (*United States v. Henry* (1980) 447 U.S. 264, 274 (*Henry*).)

Moreover, police use *Perkins* operations intentionally to isolate a suspect from their friends, family, and counsel, and instead place the individual in a cell with undercover agents who partner in a psychological game to force the suspect to talk. This isolation is intended to create uncertainty and apply psychological pressure on an arrestee—and, in this respect, it can

be *even more* coercive than "traditional" custodial interrogation. As *Miranda* observed, police interrogation manuals instruct that the "principal psychological factor contributing to a successful interrogation is privacy—being alone with the person under interrogation." (*Miranda, supra,* 384 U.S. at p. 449, quoting Inbau & Reid, *Criminal Interrogation and Confessions* (1962), at p. 1.) Isolation provides law enforcement a "psychological advantage" by making a suspect less confident. (*Miranda, supra,* 384 U.S. at p. 449.) A person at home, or in a familiar environment, is "more keenly aware of his rights and more reluctant[.]" (*Id.* at pp. 449–450.) Sequestering a suspect in a jail cell with an undercover agent places him or her "under government control . . . in the company of his interrogators 24/7, for as long as needed." (Davis, et al., *supra,* at p. 424.)

Law enforcement officers use numerous other coercive tactics during *Perkins* operations to "exhaust defendants into confessing, extending the coercive effects of official interrogation beyond the interrogation room." (*Valencia, supra*, 2019 WL 6869128 at *7.) For example, once an arrestee is firmly in a custodial setting, officers often apply psychological pressure by speaking to an arrestee in front of the undercover *Perkins* agent, conveying facts of the arrestee's guilt, whether truthful or not. In *People v. Martinez* (Aug. 26, 2025, B331242) 2025 WL 2451172 at *12 (nonpub. opn.), a detective came to Martinez's cell's and told him he was being investigated for murder, while the present

Perkins agent remarked that the detective had a "fat ass file."[4] This tactic is referred to as "stimulation" in *People v. Olivares* (Nov. 20, 2014, B248543) 2014 WL 6480341 at *3–4 [nonpub. opn.].) and described by a detective as yelling statements about potentially incriminating evidence against the suspect. The purpose of stimulation, as described by the detective in *Olivares*, is to make a suspect think that the police have "enough information so that he would think that we really did have him" and cause him to be "wound up" prior to being returned to a cell with *Perkins* agents. (*Id.* at *4.) In fact, uniformed officers will often return cell-side for more "stimulation" to create a sense of psychological hopelessness. In *Olivares*, for example, a deputy stood next to the defendant's jail cell and said:

> They're finishing up doing the whole add charge on you . . . . You're fucked, you know that? They got fucking witnesses on you, they got a bunch of shit on you. You're fucking yourself, all right? . . . I don't give a fuck. I don't know you, I don't care about you, but you're fucked, all right?

(*Id.* at *5.)

Another technique commonly deployed in *Perkins* operations is the use of undercover agents posing as high-ranking, well-seasoned gang members. As with the undercover agent in Mr. Allen's cell, *Perkins* agents are often considerably

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[4] As Justice Liu observed in his *Valencia* dissent from the denial of review, post-invocation *Perkins* operations "appear[] to be a pervasive police practice in California," yet they are discussed nearly exclusively in unpublished opinions. (*Valencia*, *supra,* 2019 WL 6869128 at *7.) *Amici* cite such opinions solely to describe the fact patterns in which these operations arise.

older and physically larger than the arrestee, which places the latter in a psychologically subordinate position and gives the undercover interrogator an upper hand. In *People v. Ibanez* (Oct. 18, 2024, B320931) 2024 WL 4523378 at *2 (nonpub. opn.), for example, the *Perkins* agent was considerably older and larger in size: Ibanez was 18-years old and 130 pounds while the agent was 40 years old and weighed between 250 to 300 pounds. Taking opportunity of Ibanez's concern for his undocumented family, the agent reinforced Ibanez's arresting officers' threat that "Ibanez's brothers could be taken away[.]" (*Id.* at *2.) The agent later suggested that the police, "could go pick up your dad." (*Id.* at *3; see also, e.g. *People v. Gonzalez* (Nov. 9, 2022, B302834) 2022 WL 16832424 at *2 [nonpub. opn.] [*Perkins* agent was six feet tall, weighed 300 pounds and falsely identified himself as a gang member]; *People v. Stewart* (Sept. 5, 2024, E078408) 2024 WL 4099714 at *4 [nonpub. opn.] [law enforcement placed a 40-year old agent who identified himself as a "Crip from Long Beach . . . dealing with gang-related charges" with a 20-year old arrestee].) Police also place *Perkins* agents in jail cells with minors. (See *In re S.G.* (Dec. 17, 2024, B320775) 2024 WL 5134360 at *3 [nonpub. opn.] [minor defendant placed in jail cell with two *Perkins* agents who "posed as older gang member"].)

The above examples demonstrate that, in the real world, *Perkins* operations depend on a host of well-recognized, psychologically coercive tactics. Again, *amici* acknowledge that the high court held in *Perkins* that, notwithstanding these

coercive pressures, *pre*-invocation undercover agent operations are constitutional. But such pressures take on more significance in the *post*-invocation context. That is because, as Mr. Allen explains, the question here is *not* whether there was custodial interrogation such that a *Miranda* advisal was required; it is whether Mr. Allen voluntarily, knowingly, and intelligently waived his already-invoked right to remain silent (ARB at pp. 18–22), and whether the *Perkins* operation rendered Mr. Allen's statements involuntary under due process (ARB at pp. 43–48). In answering *those* questions, this Court can—and should—consider the uniquely coercive and deceptive tactics that California law-enforcement agencies employ when conducting *Perkins* operations.

II. Upholding the constitutionality of post-invocation *Perkins* operations will effectively undermine the right to counsel.

Widespread use of *Perkins* operations like that at issue here also threatens the vitality of the right to counsel protected by both the federal and state constitutions. This serious constitutional concern likewise militates against extending *Perkins* to the post-invocation context.

The Sixth Amendment right to counsel attaches when the government initiates formal adversarial proceedings against the defendant. (*Kirby v. Illinois* (1972) 406 U.S. 682, 688.)[5] After that

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[5] Although the state constitutional right to counsel guaranteed by Article I, section 15 "extend[s] more broadly than its federal counterpart" in the Sixth Amendment, this Court has not suggested that it attaches prior to arraignment. (See *Gardner v. Appellate Division of Superior Court* (2019) 6 Cal.5th 998, 1004.)

point, law enforcement is prohibited from deliberately eliciting information from a defendant in the absence of counsel—regardless of whether the questioning takes place at the police station or a jail cell, or whether the questioner is a police officer or a cellmate. (See *Massiah v. United States* (1964) 377 U.S. 201, 205; *Henry, supra,* 447 U.S. at p. 273–274.)

Here, of course, the *Perkins* operation took place before Mr. Allen was charged, and so it did not formally violate his constitutional right to counsel. Nevertheless, post-invocation *Perkins* operations have significant *practical* consequences for defendants' ability to exercise their right to counsel. That is because these operations allow law enforcement to quickly gather information from the defendant that they could not otherwise obtain once the right to counsel attaches. Upholding the constitutionality of these post-invocation operations, in other words, will allow police officers to take an end run around the Sixth Amendment and Article I, section 15, vitiating those key constitutional protections for many defendants.

To explain further: California law requires that arraignment take place "without unnecessary delay, and, in any event, within 48 hours" of a person's arrest, excluding Sundays and holidays. (Pen. Code, § 825, subd. (a)(1).) At arraignment, courts have a duty to notify defendants of their right to counsel and to appoint counsel when appropriate. (*Id.*, §§ 859, 987.) These statutory requirements mean that once police officers arrest a person, they face a short time before the right to counsel

attaches, and after which *Perkins* operations are no longer constitutionally permitted in most circumstances.

The Court of Appeal's holding thus encourages officers to front-load their investigative efforts into the pre-charge custodial window, exploiting the period before the constitutional right to counsel formally attaches to obtain statements they know would be prohibited once a lawyer is appointed. Although this is the case even with pre-invocation *Perkins* operations, it is especially problematic in the post-invocation context, because an individual who has asserted their right to counsel during a police interrogation likely assumes that the government will subsequently respect that invocation, regardless of whether the person is placed in jail or not. This problem is perfectly distilled in the police officer's response in *People v. Orozco* after the defendant requested an attorney during an interrogation: "All right. Go to jail. Done." (*People v. Orozco* (2019) 32 Cal.App.5th 802, 808.) A reasonable person in Mr. Orozco's situation would believe that the government was now on notice of his invocation of *Miranda* rights, and that he therefore would no longer be subject to questioning without the presence of a lawyer.

Yet the decision below holds precisely the opposite. This dynamic transforms the Constitution's protections into a race against time—a race that defendants will rarely win. After all, "the right to counsel safeguards the other rights deemed essential for the fair prosecution of a criminal proceeding." (*Maine v. Moulton* (1985) 474 U.S. 159, 169 (*Moulton*).) In fact, "to deprive a person of counsel during the period prior to trial may be more

damaging than denial of counsel during the trial itself," because it permits the government to obtain "incompetent evidence" and all but seal the defendant's fate at trial. (See *id.* at pp. 169–170.) Thus, while *Perkins* operations do not formally violate the Sixth Amendment right to counsel, they subvert the logic of the Supreme Court's jurisprudence, which has consistently rejected attempts to undermine that right through strategic manipulation of timing or form. (See, e.g., *Massiah*, *supra*, 377 U.S. at p. 206 [condemning deliberate elicitation of statements after the right attaches]; *Moulton*, *supra*, 474 U.S. at p. 176 [warning that the State may not "knowingly circumvent[]" the right to counsel].)

The decision below also threatens the distinct right to counsel protected by the Fifth Amendment. Here, law enforcement conducted a *Perkins* operation despite Mr. Allen's invocation of his *Miranda* right to silence. But the Court of Appeal's reasoning extends equally to invocations of the *Miranda* right to *counsel*. (See *Orozco*, *supra*, 32 Cal.App.5th at p. 815 ["California courts have uniformly come to the conclusion that *Perkins* controls when a suspect invokes his *Miranda* right to counsel but later speaks with someone he does not know is an agent of the police"]; see also, e.g., *People v. Felix* (2024) 100 Cal.App.5th 439, 450–452.) In *Orozco*, for example, the defendant invoked his *Miranda* right to counsel *five* times before the police undertook a *Perkins* operation to get him to confess. (See *Orozco*, *supra*, 32 Cal.App.5th at pp. 807–809.)

Affirming the decision below will thus have a broader impact on people who, like Mr. Allen, invoked their right to

silence. It will also hollow out the Fifth Amendment's distinct right to counsel, which serves a critical prophylactic function by guarding against the "inherently compelling pressures" of custodial interrogation that undermine a suspect's capacity to exercise free choice. (*Miranda*, *supra,* 384 U.S. at p. 467.) Indeed, that function is so important that the Supreme Court established in *Edwards v. Arizona* (1981) 451 U.S. 477, a bright-line rule barring further police-initiated interrogation after a person invoked the right to counsel, precisely because continued questioning risks wearing down the suspect's resolve and defeating the protection counsel is meant to provide. But that bright-line constitutional rule means little when police can circumvent it simply by placing the suspect in a jail cell and coercing them to speak with an undercover agent.

III. *Perkins* operations have a disparate effect on Black and brown criminal defendants.

As is the case here, *Perkins* operations are often framed as "gang" investigations, which have long been directed at historically over-policed communities of color. Additionally, as explained, a key technique in many *Perkins* operations is the use of a jailhouse agent who is, or poses as, an experienced gang member to exercise psychological leverage over the suspect. In explicitly adopting the gang-policing frame as a method of interrogation, these undercover law enforcement investigative practices perpetuate a long history of racially biased policing in California. And the limited demographic data we have about the targets of such operations suggests that these concerns are well-

founded.[6] The fact that *Perkins* operations appear to disproportionately target Black and brown men is only further reason that this Court should not extend *Perkins*'s logic to situations where the defendant has invoked his *Miranda* rights.

For decades, gang statutes such as Penal Code section 186.22 labeled young men of color as "gang members," justifying aggressive surveillance, mass field interviews, and pretextual stops. Indeed, racial disparity is built into the architecture of "gang" policing. Research has repeatedly found that gang profiling and enforcement is highly racialized and racially coded; whether consciously or unconsciously, gang validation criteria are intertwined with racial stereotypes, including that Black and brown people are assumed to be more violent and criminal inclined.[7] This affects policing practices and racialized gang designations, resulting in entire communities of color becoming victim to the violence of racialized policing.

This is borne out by empirical data on gang policing and convictions. For example, at one point, "half of the Black males in Los Angeles between the ages of twenty-one and twenty-four

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[6] Although beyond the scope of the issues presented in this case, these concerns may also run afoul of California's Racial Justice Act (Pen. Code, § 745).

[7] See, e.g., Godsil & Richardson, *Racial Anxiety* (2017) 102 Iowa L.Rev. 2235; Richardson, *Police Racial Violence: Lessons from Social Psychology* (2015) 83 Fordham L.Rev. 2961; Johnson, *Gang Databases: Race and the Constitutional Failures of Contemporary Gang Policing in New York City* (2020) 94 St. John's L.Rev. 1033; Hufstader, *Immigration Reliance on Gang Databases: Unchecked Discretion and Undesirable Consequences* (2015) 90 N.Y.U. L.Rev. 671.

were included in the local gang database." (See Tieu, *Picturing the Asian Gang Member Among Us* (2006) 11 Asian Pacific Am. L.J. 41, 45.) To take another example, the Committee on Revision of the Penal Code found that over 90 percent of adults serving gang enhancements in California prisons are Black or brown. Statewide, 68 percent of those prisoners are Latine, and 24 percent are Black, while only 3 percent are white. (Sernoffsky, *SF DA-elect Chesa Boudin Sets New Course in Gang Cases, Citing Charges 'Infused With Racism,'* S.F. Chronicle (Dec. 15, 2019).) The Attorney General's 2020 CalGang Report documented similar disparities: Black individuals are listed in CalGang nearly three times more often than white individuals. (California Attorney General, *Attorney General's Annual Report on CalGang for 2020*, p. 7.)[8] These data compelled the Legislature to narrow section 186.22 through Assembly Bill 333, acknowledging that the statute "is applied inconsistently against people of color." (Assem. Bill. No. 333 (2021-2022 Reg. Sess.) §2.) Former San Francisco District Attorney Chesa Boudin's own analysis led him to restrict gang enhancements, acknowledging that they "unfairly target[] [B]lack and brown populations." (Office of the District Attorney, *Policy Directive San Francisco District Attorney's Office Status Sentencing Enhancements* (Feb. 22, 2020), p. 3.)[9]

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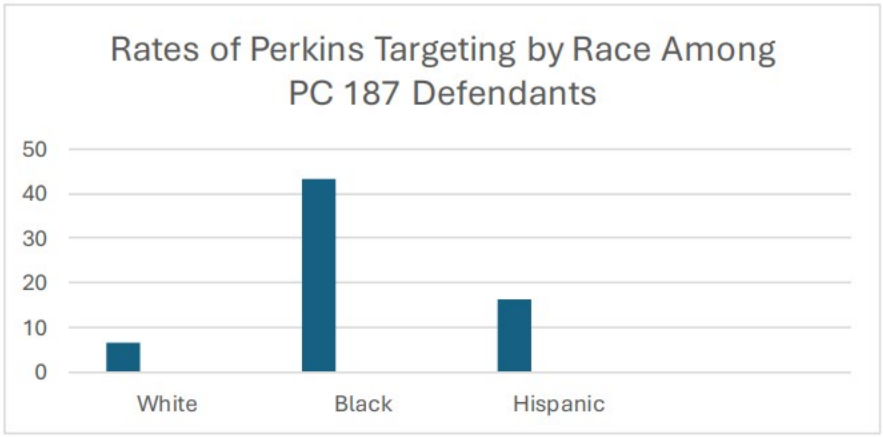
[8] *Available at* https://oag.ca.gov/sites/all/files/agweb/pdfs/calgang/ag-annual-report-calgang-2020.pdf

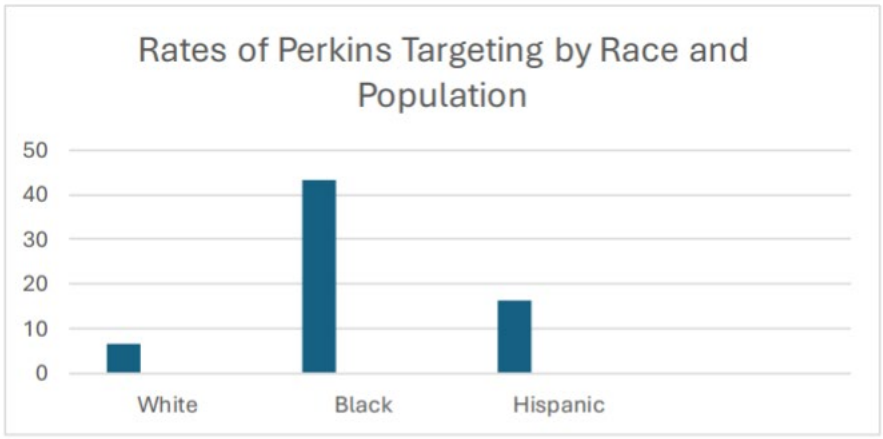
[9] *Available at* https://sfdistrictattorney.org/wp-content/uploads/2020/11/Status-Sentencing-Enhancements.pdf

More concretely, the data on *Perkins* operations—although scarce and largely hidden from public view—likewise indicates that they disproportionately target Black and brown criminal defendants. For example, recent data obtained in Riverside County in connection with discovery under the Racial Justice Act (see Pen. Code, § 745, subd. (d)), revealed that Black people were targeted for *Perkins* operations at *a rate twenty-three times higher than for white defendants*. (See Exh. A. at ¶ 12.)[10] Although Black people constitute about 6 percent of the population in the county, they made up 34 percent of all *Perkins* targets in homicide cases. (*Ibid.* at ¶¶ 8–10.) Within homicide prosecutions, *Black defendants are more than four times as likely to face a Perkins operation as white defendants*. (*Ibid.* at ¶ 11.) Similarly, Latine defendants are victims of *Perkins* operations at over *twice the rate of white defendants*. (*Ibid.* at ¶ 11.)

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[10] Demographic data about the people targeted in *Perkins* operations is difficult to obtain and generally not public. For this reason, *Amici* seek leave from this Court to introduce a declaration of Riverside County Public Defender Linda Moore, attached as Exhibit A, detailing her collection and analysis of *Perkins*-related data in Riverside County.





(*Ibid.* at ¶¶ 11–12.) These figures reveal stark structural bias. In fact, as one practitioner remarked, "*of all of the inquires that I've made of my colleagues, I have not had one instance where I've been told that Perkins has been applied to non-African Americans or non-Hispanic Latino X.*" (*People v. Stewart* (Sept. 5, 2024, E078408) 2024 WL 4099714 at *43 [nonpub. opn.].)

When a police practice, particularly one requiring extensive coordination, training and supervisory approval, produces such extreme racial disparities, this Court should look critically at the practice. As this Court is aware, encounters between law enforcement and young Black men occur against a backdrop of

fear, stereotype, and unequal power. When police exploit that dynamic—by embedding an ostensible older gang member to deceptively elicit statements from Black and brown, often young, men—the coercive effect is magnified. For defendants of color, the choice to speak is rarely free in the constitutional sense.

In her concurrence in *People v. Flores* (2024) 15 Cal.5th 1032, Justice Evans eloquently detailed how racialized police tactics undermine trust and legitimacy in communities of color. (*Id.* at p. 1053.) Such tactics are a microcosm of the "long-standing realities of policing in many minority communities across the country," including thousands of police killings in just the last decade. (*Ibid.*) Acknowledging that "communities of color disproportionately experience heightened levels of police scrutiny and racial profiling," Justice Evans noted that, when evaluating an officer's reasonable suspicion, "a test that fails to account for the realities of so many Californians would not be a reasonable one." (*Id.* at p. 1054–55.)

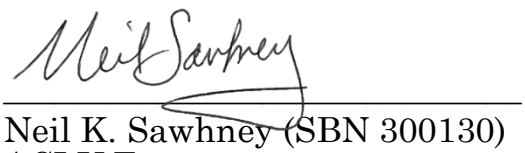
Here, too, this Court must "account for the realities" of how *Perkins* operations are deployed throughout California. Mr. Allen has persuasively explained why these operations cannot be constitutionally maintained against a defendant who has invoked their *Miranda* rights. That such highly deceptive and psychologically coercive law enforcement tactics are disproportionately used against Black and brown defendants only reinforces that conclusion. Accordingly, this Court should not extend *Perkins* to the post-invocation context.

CONCLUSION

For the foregoing reasons, *Amici* respectfully urge this Court to reverse the decision below.

Dated: January 20, 2026

Respectfully submitted,



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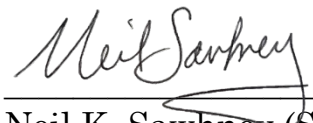
Attorneys for Amici Curiae

CERTIFICATE OF WORD COUNT

Pursuant to Rule 8.520(c)(1) of the California Rules of Court and in reliance on the word count of the computer program used to prepare this Proposed *Amici Curiae* Brief, counsel certifies that the text of this brief (including footnotes) was produced using 13-point type and contains 4,012 words. This includes footnotes but excludes the tables required under Rule 8.204(a)(1), the cover information required under Rule 8.204(b)(10), the Certificate of Interested Entities or Persons required under Rule 8.208, the Application to File *Amici Curiae* Brief required under Rule 8.520(f), this certificate, and the signature blocks. See Rule 8.520(c)(3).

Dated: January 20, 2026

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Exhibit A

DECLARATION OF LINDA MOORE

I, Linda Moore, declare as follows:

1. I am an attorney licensed to practice law in the State of California and am currently employed by the Law Offices of the Public Defender, Riverside County. I have worked at the Public Defender's Office since January 2006.

2. During the course of my employment at the Law Offices of the Public Defender, Riverside County, I engaged in research to determine whether racial disparities existed in the use of *Perkins* operations, within the scope of *Illinois v. Perkins* (1990) 496 U.S. 292, in Riverside County against defendants subsequently charged with one or more violations of *Pen. Code* § 187 between January 1, 2015 and June 2023. Independent research was necessary, as case-specific materials routinely are provided to defense counsel in Riverside County accompanied by a protective order, which prohibits dissemination of *Perkins*-related discovery to persons outside of the subject defendant's defense team. In lieu of filing nearly a thousand motions, seeking access to case-specific *Perkins* data, instead to facilitate this research, I reviewed the complete list of defendants charged with one or more violations of *Pen. Code* § 187 between January 1, 2015 and June 2023, previously compiled for and used in conjunction with litigation pursuant to *Pen. Code* § 745 in *Mosby v. Sup. Ct.* (2024) 99 Cal. App. 5th 106 ("case list"), and the population statistics presented in that matter by Prof. Omori. This case list included a list of all persons charged with a violation of *Pen. Code* § 187 between January 1, 2015 and June 2023, and the name of the person charged, and the racial identity of the person charged. Racial identities were determined primarily by the racial identity displayed in the biographical booking information at the time of his or her arrest.

3. In Riverside County, the Riverside County District Attorney's Office and/ or investigating police agency use specific tactics against persons suspected of violating *Pen. Code* § 187 by intentionally placing the suspect in a jail cell, usually with persons of the same racial identity and gender as the suspect, who pose as inmates. One or more law enforcement officers, typically homicide investigators, then engage in "stimulation" techniques as a tactic to elicit inculpatory statements from the suspect. These "stimulation" techniques involve confronting the suspect with real or falsified incriminating information in an effort to "stimulate" disclosures by the suspect to the undercover

inmates. This incriminating information is then used as a prosecution tool by the Riverside County District Attorney's Office to assist in gaining a conviction.

4. From the case list, I removed any cases involving defendants who were under the age of 18 at the time of the alleged *Pen. Code* § 187 offense and any defendants who were never arrested and successfully taken into custody alive. The remaining case/ defendant list contained 881 entries. Racial categories were assigned as follows: White; Black; Hispanic; and Other.

5. All 881 entries were placed into one of the identified racial categories as follows, primarily determined by the racial identity at the time of his or her arrest:

   a. White: 192
   b. Black: 176
   c. Hispanic: 487
   d. Other: 26

6. The percentages of each racial category for all 881 entries were then calculated as follows:

   a. White: 21.79% (192÷881)
   b. Black: 19.98% (176÷881)
   c. Hispanic: 55.28% (487÷881)
   d. Other: 2.95% (26÷881)

7. Of the 881 entries, 145 *Perkins* targets were identified. I defined a *Perkins* target as a defendant in a criminal prosecution who was placed in a jail cell with undercover agents who were unknown to the defendant and presented themselves as jail inmates, but interacted with the defendant in a manner intended to elicit inculpatory statements. I reviewed all 881 entries and thousands of publicly available court documents via Judicial Access and/ or E-Court, such as protective orders, motions, and court minutes, corresponding to each entry case number and defendant. A protective order, motion, or entry in court minutes that described or identified a "*Perkins* operation" relating to a specific defendant, absent evidence of a contradictory interpretation, was included as a defined *Perkins* target. The absence of information identifying an individual as a *Perkins* target resulted in that person/ entry not being included as a *Perkins* target. In the course of this review, I identified 145 *Perkins* targets.

8. The 145 *Perkins* targets fell into the following racially identified categories, as follows:

   a. White: 13
   b. Black: 50

c. Hispanic: 80

d. Other: 2

9. The percentages of each racial category for all 145 *Perkins* targets were then calculated as follows:

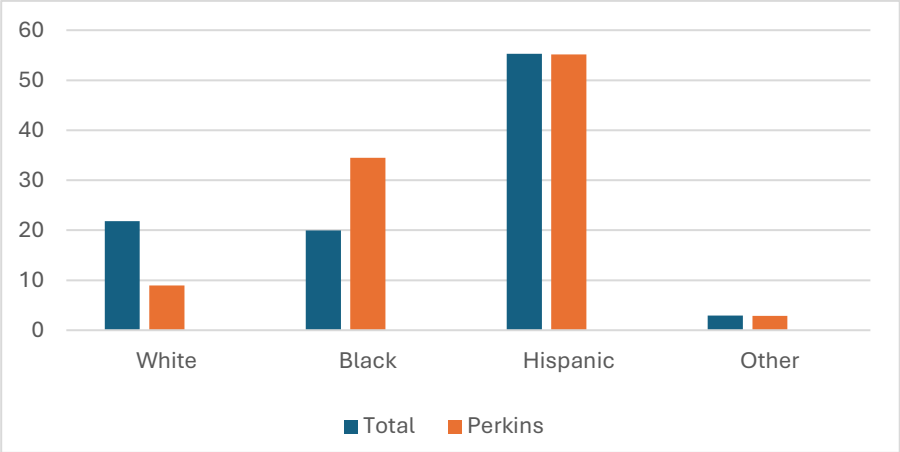
a. White: 8.97% (13÷145)

b. Black: 34.48% (50÷145)

c. Hispanic: 55.17% (80÷145)

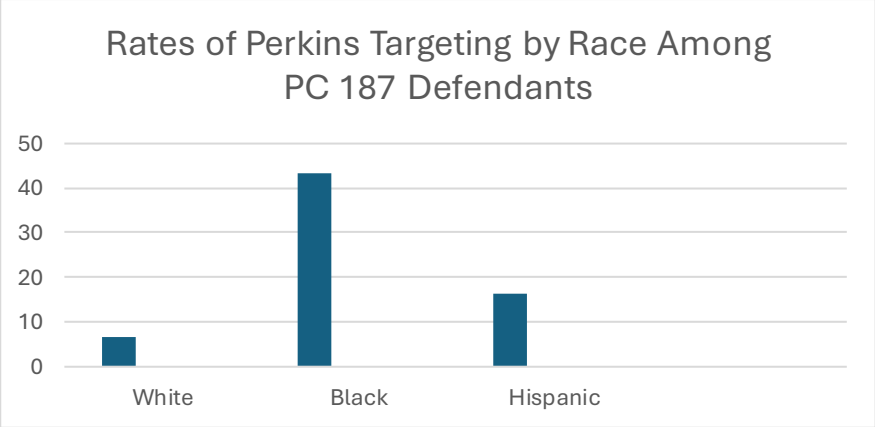
d. Other: 1.38% (2÷145)

10. Significant racial disparities in White versus Black *Perkins* targets are apparent when compared to White versus Black defendants in the 881 case/ defendant entries:



	Total PC 187 Defendants	*Perkins* Targets
White	21.79%	8.97%
Black	19.98%	34.48%
Hispanic	55.28%	55.17%
Other	2.95%	1.38%

11. The rate at which a Black *Pen. Code* § 187 defendant is targeted in a *Perkins* operation in Riverside County (50/176 x 100 = 28.41) is over **four times higher** than that of a White *Pen. Code* § 187 defendant (13/192 x 100 = 6.77), and **almost twice as high** as a Hispanic *Pen. Code* § 187 defendant (80/487 x 100 = 16.43).



12. When using the Riverside County population statistics presented in Prof. Omori's declaration, even greater racial disparities are apparent when comparing the racial percentages of *Perkins* targets to the racial percentages of the total Riverside County residential population. Population percentages for Riverside County residents, according to Prof. Omori's declaration, are as follows:

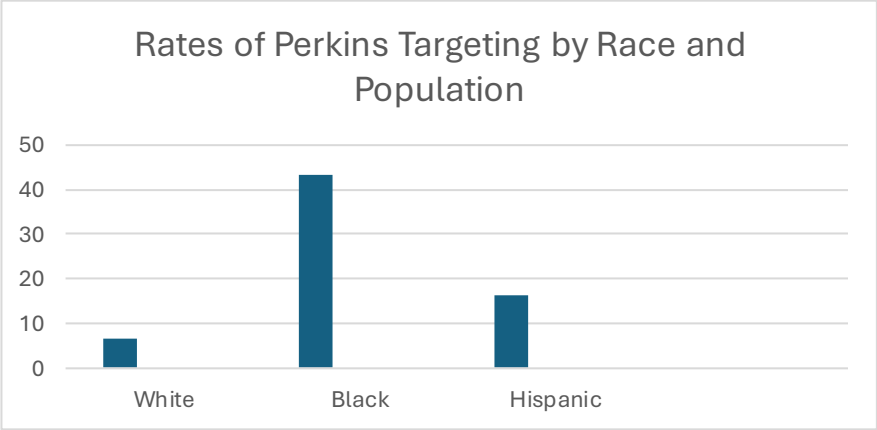
a. White: 38.4%

b. Black: 6%

c. Hispanic: 56.5%

Despite only accounting for 6% of the county's population, Black defendants of *Pen. Code* § 187 cases account for over one-third of the *Perkins* targets. This means that the likelihood that a Black *Pen. Code* § 187 defendant will be targeted by a *Perkins* operation occurs at a rate **over 23 times higher** (50/115,632 x 100,000 = 43.24) than that of a White *Pen. Code* §187 defendant (13/700,651 x 100,000 = 1.86), relative to their respective county populations. Also, a Black *Pen. Code* § 187 defendant is

over four times more likely to be targeted in a *Perkins* operation than a Hispanic *Pen. Code* § 187 defendant (80/825,328 x 100,000 = 9.69).



I declare under penalty of perjury, according to the laws of the State of California, that the foregoing is true and correct.

Executed at Riverside, California, on January 16, 2026.

By: Linda Moore
LINDA MOORE

PROOF OF SERVICE

I, Sara Cooksey, declare that I am over the age of eighteen and not a party to the above action. My business address is 39 Drumm Street, San Francisco, CA 94111. My electronic service address is scooksey@aclunc.org. On January 20, 2026, I served the attached,

APPLICATION FOR LEAVE TO FILE *AMICI CURIAE* BRIEF AND **PROPOSED BRIEF OF *AMICI CURIAE* AMERICAN CIVIL LIBERTIES UNION OF NORTHERN CALIFORNIA, AMERICAN CIVIL LIBERTIES UNION OF SOUTHERN CALIFORNIA, AND CALIFORNIA PUBLIC DEFENDERS ASSOCIATION IN SUPPORT OF APPELLANT; EXHIBIT A: DECLARATION OF RIVERSIDE COUNTY PUBLIC DEFENDER LINDA MOORE**

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused to be transmitted to the following case participants a true electronic copy of the document via this Court's TrueFiling system:

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Counsel for Defendant and Appellant, David Lee Allen

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on January 20, 2026, in Fresno, California.

Sara Cooksey

Sara Cooksey, Declarant

Supreme Court of California
Jorge E. Navarrete, Clerk and Executive Officer of the Court
Electronically FILED on 1/21/2026 by M. Chang, Deputy Clerk

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **PEOPLE v. ALLEN**
Case Number: **S286520**
Lower Court Case Number: **B328333**

1. At the time of service I was at least 18 years of age and not a party to this legal action.

2. My email address used to e-serve: **nsawhney@aclunc.org**

3. I served by email a copy of the following document(s) indicated below:

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APPLICATION	2026.01.26_People -v-Allen_ACLU-CPDA_ AmicusBrief

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

1/20/2026

Date

/s/Neil Sawhney

Signature

Sawhney, Neil (300130)

Last Name, First Name (PNum)

ACLU of Northern California

Law Firm