



4 September 2020

The Honorable Gavin Newsom
Governor of the State of California
State Capitol, 1st Floor
Sacramento, CA 95814

Re: Support – AB 2542 (Kalra) Racial Justice Act

Dear Governor Newsom,

Amnesty International USA¹ respectfully submits this letter in strong support of AB 2542, the California Racial Justice Act, a bill to prohibit the state from seeking or obtaining a criminal conviction, or from imposing a sentence, based on race, ethnicity or national origin. California's legal system is plagued by racial disparities and discrimination in arrest, trial and sentencing

AB 2542 asks California to uphold our human rights to equal protection of the law and to be free from discrimination when interacting with the criminal legal system. The use of the death penalty raises serious human rights concerns, including in regard to the rights to life, and to be free from cruel, inhuman and degrading punishment. In the United States, the death penalty has proven time and time again to be racially biased, violating our rights to equal protection of the law and to freedom from discrimination. The United States has a legal obligation to respect, protect and fulfill these human rights, and has ratified the International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Elimination of All Forms of Racial Discrimination (CERD), which explicitly protect these rights².

According to Prison Policy Institute, Black people make up 27 percent of incarcerated people in the state yet only comprise six percent of California's

¹ Amnesty International is a global movement of more than 8 million supporters, members and activists in more than 150 countries and territories who campaign to end grave abuses of human rights. We have hundreds of thousands of supporters, members and activists in the U.S. and over 70,000 Californians took action with us last year. Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards. We are independent of any government, political ideology, economic interest or religion and are funded mainly by our membership and public donations.

² The United States ratified the ICCPR in 1992 and CERD in 1994. States parties to the ICCPR are obliged to ensure these and other rights set out in the ICCPR to everyone within the jurisdiction without discrimination and Article 26 of the ICCPR underlines that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law. Article 6 of the CERD underlines the state obligation to assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate their human rights.

population based on 2010 census data³. Currently we have no feasible path forward for people who wish to pursue justice in the face of discriminatory treatment during the criminal legal process.

The California Racial Justice Act addresses the problem of what Justice William Brennan called a "fear of too much justice." The new law would make it possible for a person charged or convicted of a crime to challenge racial, ethnic, and national origin bias in their case, as shown through evidence of:

- 1) Explicit racial bias by an attorney, judge, law enforcement officer, expert witness, or juror involved in the case.
- 2) Use of racially discriminatory language in court and during the criminal proceedings, whether or not intentional.
- 3) Racial bias in jury selection, such as removing all or nearly all Black, Brown, Native American, Indigenous, and people of color from the jury.
- 4) Statistical disparities in charging and convictions – that is, evidence that people of one race are disproportionately charged or convicted of a specific crime or enhancement.
- 5) Statistical disparities in sentencing – that is, evidence that people of one race receive longer or more severe sentences, including the death penalty or life without parole

This law is needed to provide redress for a widely condemned precedent established in 1987 by the U.S. Supreme Court, in *McCleskey v. Kemp*, 481 US 279 (1987). The *McCleskey* decision has the functional effect of requiring that criminal defendants prove intentional discrimination when challenging racial bias in their legal process. This is an unreasonably high standard and is almost impossible to meet without direct proof that the racially discriminatory behavior was conscious, deliberate and targeted.

In 1986, the U.S. Supreme Court ruled on race in the juror selection process in *Batson v. Kentucky*, 476 US 79, where the Court held that prosecutors and defense attorneys cannot strike potential jurors from a pool solely on the basis of race, and that there must be a neutral reason for exclusion from serving on a jury. In 2019, the U.S. Supreme Court ruled in favor of Curtis Flowers, a Black man, who over six murder trials had 41 out of 42 potential Black jurors struck from his jury pool by the prosecution. Despite the precedent set by *Batson* and the ruling, however narrow, in *Flowers v. Mississippi* 588 US, stronger protections need to be made to ensure that potential jurors are not excluded from serving on a jury due to their race, ethnicity or national origin. Today after 23 years of incarceration,

³ Prison Policy Institute, California Profile, 2014, <https://www.prisonpolicy.org/profiles/CA.html>

Curtis Flowers' fight is finally over, the Mississippi Attorney General's office has dropped charges against him. We find these protections in the California Racial Justice Act vital to encouraging seating of a jury of our peers and shoring up protections established in *Batson*.

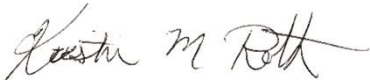
Californians have relied on state or federal constitutional provisions to challenge discrimination in the criminal justice system. However, these provisions are insufficient to address persistent racial discrimination in the criminal legal system, because courts have concluded that, due to *McCleskey* and other cases, proof of purposeful discrimination is required. As a result, California convictions and sentences are routinely upheld despite:

- Blatantly racist statements by attorneys, judges, jurors and expert witnesses;
- The exclusion of all, or nearly all Black, Brown, Native American, Indigenous, and people of color from serving on a jury; and
- Stark statistical evidence showing systemic bias in charging and sentencing.

The *McCleskey* majority observed that state legislatures concerned about racial bias in the criminal legal system could act to address the problem. We agree. Just as California's Unruh Civil Rights Act currently prohibits racial discrimination in employment, housing and public accommodation, we need a statewide policy that makes it unlawful to discriminate against Black and Brown people in the state's criminal legal system. It's time to take a stand against racial discrimination in our criminal legal system.

For these reasons, Amnesty International USA respectfully asks you sign the California Racial Justice Act into law, which will take a profound step forward by establishing a clear prohibition on the use of race, ethnicity or national origin in seeking or obtaining convictions or sentences. Mr. Governor, you now have the authority to sign this bill and AB 3070 to help prevent anymore Curtis Flowers' in California. Should you have any questions, please email Senior Advocate, Criminal Justice Program, Kristina Roth at kroth@aiusa.org or (202) 945- 2021.

Sincerely,



Amnesty International USA
600 Pennsylvania Avenue SE, 5th Floor
Washington, DC 20003