

December 30, 2020

John Morrill, Clerk of the Court
United States District Court
Southern District of California
333 West Broadway, Suite 420
San Diego, CA 92101

Re: Comments on the Southern District of California’s New Proposed Jury Selection Plan and Increasing Racial Diversity in our Community’s Juries

Dear Clerk for the Southern District of California,

We are individuals, nonprofits, advocacy organizations, law firms, and attorneys in private practice who serve the San Diego and Imperial County communities. We all have strong commitments to racial equality, justice, and inclusion. We believe that the government entities in our community should have the very same commitments, including our federal court. We believe it is vital that every qualified member of our community have the fair opportunity to participate as jurors in the broad variety of cases litigated in our federal courthouses.

Yet federal juries in this District do not reflect the whole community. We think the District can do better. We hope the Southern District will consider our recommendations to reach every qualified member of our community, so that our juries truly represent the racial diversity of San Diego and Imperial Counties.

Specifically, we recommend that the District:

1. **Designate supplemental source lists in addition to the underrepresentative voter registration list.** According to recent Census data, voter registration lists underrepresent people of color.¹ Thus, a jury pool

¹ See United States Census Bureau, *Voting and Registration in the Election of November 2018*, Table 4b “Reported Voting and Registration by Sex, Race and Hispanic Origin, for States: November 2018” (reporting voter registration rate for Non-Hispanic Whites is 66.8%, but only 55.5% for Non-Hispanic Blacks, 39.7% for Hispanics, and 39.5% for Asians). See also California Civic Engagement Project, Univ. of Southern California, Sol Price School of Public Policy, *Table 5 “California Registration Rates by Race/Ethnicity and County, 2018 Primary Election”* (reporting the total voter registration rate in San Diego County is 77.2%, while the Latino voter registration rate is only 67.9% and the Asian voter

derived only from voter registration lists likely underrepresents people of color. The use of supplemental source lists, including driver's license and state ID lists, could improve the diversity of the jury pool. Expanding the source lists for our jury pool is consistent with jury selection practices in other districts. The Northern, Central, and Eastern Districts of California all require additional source lists beyond voter registration lists.²

2. **Refill the jury wheel annually, rather than every two years.** Increasing the frequency with which the Clerk refills the jury wheel will help capture potential jurors who change residences within that two-year period. Such jurors are more likely to be people of color because renters change residences more frequently than homeowners,³ and there is a racial disparity in homeownership rates.⁴ The Central and Eastern Districts of California both require the jury wheel to be refilled once a year, as do other federal district courts.

registration rate is 47.1%). Notably, in Imperial County the total population's voter registration rate is only 56.6%. *Id.*

² United States District Court for the Northern District of California, *Plan for the Random Selection of Grand and Petit Jurors*, Gen. Order No. 6, Part V (Aug. 7, 2017); United States District Court for the Eastern District of California, *Jury Management Plan*, Section 2.01 (Jan. 25, 2016); *The Plan of the United States District Court, Central District of California, for the Random Selection of Grand and Petit Jurors*, General Order No. 19-07, Part 4 at pg. 2, lines 23-25 (July 15, 2019).

³ United States Census Bureau data from 2017 demonstrates that the “mover rate for renters (21.7 percent) was higher than for owners, which was 5.5 percent.” Derick Moore, Senior Communications Specialist, U.S. Census Bureau, *Overall Mover Rate Remains at an All-time Low*, by (Dec. 21, 2017); *id.* (“The highest mover rates by race were the black or African-American alone population, while the lowest were the non-Hispanic white population.”).

⁴ *See, e.g.*, According to the United States Census Bureau, “[h]omeownership in the US varies significantly by race and ethnicity. In 2019, the homeownership rate among white non-Hispanic Americans was 73.3%, compared to 42.1% among Black Americans.” Homeownership rates show that Black Americans are currently the least likely group to own homes, USA Facts, Source: U.S. Census Bureau, Housing Vacancies and Homeownership (July 28, 2020), updated Oct. 16, 2020).

3. **Direct a supplemental jury summons and questionnaire to be sent to the same zip code when a summons or questionnaire is returned as undeliverable or is not returned.** The rate of summonses and questionnaires returned as undeliverable or not returned may diminish jury pool diversity.⁵ However, juror participation and diversity can be increased by sending a second summons to non-responsive jurors.⁶ Additionally, where a summons is returned as undeliverable or there is no response to the second summons, the Clerk should send a replacement summons to a juror in the same zip code as the “missing” juror. This approach is consistent with that of numerous federal district courts, which send a replacement summons to the same zip code for all summonses that are returned as undeliverable or for which no timely response is received.⁷

4. **Incorporate a reference to a litigant’s entitlement to access jury selection records under the Jury Selection and Service Act of 1968.** Including language that expressly references a litigant’s statutory entitlement to access jury selection records pursuant to 28 U.S.C. § 1867(f) will help guarantee the ability of litigants to enforce the right to a jury selected from a fair cross-section of the community. This right is contingent upon access to jury selection records that may reveal a fair cross-section violation.⁸ Accordingly, many

⁵ See e.g., National Center for State Courts, Jury Managers’ Toolbox, *A Primer on Fair Cross Section Jurisprudence*, 3 (2010) (“undeliverable . . . and failure-to-appear rates tend to disproportionately decrease minority representation”).

⁶ Research conducted by the National Center for State Courts concluded that sending a follow-up notice resulted in a non-response rate that was 34% to 46% lower than courts that did not send a reminder. See Paula Hannaford-Agor, An Overview of Contemporary Jury System Management, NCSC CTR. FOR JURY STUD. 1, 6 (May 2011); Mize, Honorable Gregory (ret.), Paula Hannaford-Agor, and Nicole Waters, The State-of-the-States Survey of Jury Improvement Efforts: Compendium Report, 13, National Center for State Courts (April 2007) at 22, Tbl. 16.

⁷ See e.g., United States District Court for the Northern District of California, *Plan for the Random Selection of Grand and Petit Jurors*, Gen. Order No. 6, Part VIII (Aug. 7, 2017); *Plan for the Random Selection of Grand and Petit Jurors in the United States District Court for the Eastern District of Pennsylvania*, page 5 (July 18, 2017); United States District Court, Northern District of Illinois, *Plan for Random Selection of Jurors*, Part 7(b) (Jan. 8, 2020).

⁸ *Test v. United States*, 420 U.S. 28, 30 (1975) (“Indeed, without inspection, a party almost invariably would be unable to determine whether he has a potentially meritorious jury challenge.”).

federal jury selection plans expressly reference the JSSA's language regarding access to records.⁹

5. **Specify a nonexclusive list of jury selection records that will be preserved and made available to litigants preparing a motion challenging the composition of the jury pool.** In our experience, transparency is key. Identifying which records regarding the representativeness of the jury pool will be made available, as appropriate, will work to increase transparency.
6. **Direct the Clerk to conduct periodic examinations of racial and ethnic diversity in the jury pool.** Periodic examinations and collection of reliable data regarding the racial and ethnic diversity of our District's jury pool are essential for the Court to determine whether the fair cross-section right is being adequately protected. This recommendation is consistent with the ABA's recommendations and several federal districts.¹⁰
7. **Include additional protected groups in the antidiscrimination policy set forth in Section 1.06.** The proposed Plan includes an antidiscrimination policy. However, the policy omits a number of protected groups that other districts have included in their discrimination policies, including groups the Ninth

⁹ See e.g., *The Plan of the United States District Court, Central District of California, for the Random Selection of Grand and Petit Jurors*, General Order No. 19-07, Part 12 at pg. 15, lines 10-16 (July 15, 2019); United States District Court for the Northern District of Alabama, *Plan for the Random Selection of Grand and Petit Jurors*, Part VIII(C) (Feb. 10, 2017); United States District Court, Western District of Louisiana, *Plan for the Random Selection of Jurors*, Part 19(a)(3) (Aug. 8, 2019); United States District Court for the Eastern District of Texas, *Amended Plan for the Random Selection of Jurors in all Divisions*, Part 9(e)(4) (April 4, 2019); United States District Court for the District of Connecticut, *Jury Plan*, Part XVII (June 26, 2020); United States District Court for the Western District of New York, *Jury Plan*, at 8 (April 2018); *Jury Selection Plan of the United States District Court for the Central District of Illinois for the Random Selection of Grand and Petit Jurors*, Pg. 12 (June 1, 2015); United States District Court for the District of Maine, *Plan for the Random Selection of Grand and Petit Jurors for Service in the District of Maine*, Part VII(4) (July 13, 2020); *Revised Plan of the United States District Court for the District of Delaware for the Random Selection of Grand and Petit Jurors*, Part 8 (Jan. 1, 2019).

¹⁰ See American Bar Association, American Jury Project, *Principles for Juries & Jury Trials*, 51 (2005) (Principle 10(A)(3)); United States District Court for the Northern District of West Virginia, *Plan Prescribing Method for the Composition of Jury Wheels and the Qualification and Random Selection of Grand and Petit Jurors*, Part 2.04.

Circuit Judicial Council suggests be considered for inclusion.¹¹ We recommend the policy be expanded to prohibit exclusion based on disability, sexual orientation, and gender identity.

8. **Omit the new provision in Section 3.04(c)(2) permitting blanket excuses for hardship and inconvenience based on travel.** Because our district includes both San Diego and Imperial Counties, but virtually all jury trials take place in San Diego County, this excuse may disproportionately exclude Imperial County residents from our jury pool. Imperial County residents often live hours away from downtown San Diego. Moreover, Imperial County residents are 85% Hispanic or Latino;¹² this hardship rule may work to newly, and disproportionately, exclude Latino jurors.

We hope that the Court adopts these recommendations, which will bring our District's jury selection procedures in line with other federal districts. Collectively, we believe these measures will improve racial and ethnic diversity in our jury pools.

Sincerely,

/s/ Geneviève Jones-Wright

Geneviève Jones-Wright, *on behalf of*

Community Advocates for Just and Moral Governance (MoGo)

Earl B. Gilliam Bar Association

/s/ Chris Olsen

Chris Olsen, *on behalf of*

Jewish Family Services of San Diego

/s/ Maricela Amezola

Maricela Amezola, *on behalf of*

La Raza, through San Diego Immigrant Rights Consortium

¹¹ Ninth Circuit Jury Trial Improvement Committee, *Model Jury Plan*, § 1.05 cmt. (Oct. 20, 2016).

¹² See U.S. Census, Imperial County QuickFacts (2019), <https://www.census.gov/quickfacts/imperialcountycalifornia>.

Individual Signatories

Margaret Baker, South Bay People Power
Marcus S. Bourassa, Scott Trial Lawyers, APC
Michelle Bridger, Shustak Reynolds & Partners
James Matthew Brown, James Matthew Brown, APLC
James Chavez, Law Office of James Chavez
Marjorie Cohn, Professor Emerita, Thomas Jefferson School of Law
Donna Duvin, International Rescue Committee in San Diego
Arlene Flores, We Stand United SD
Megan E. Foster, Law Office of Megan E. Foster
Dulce Garcia, BORDER ANGELS
Tammy Gillies, Anti-Defamation League San Diego
Andrea Guerrero, Alliance San Diego
Brandon John, President, University of San Diego National Lawyers Guild Chapter
Kaeley Kaufold, San Diego Cooperative Preschool
Audrey Kyu, San Diego County Public Defender's Office
Rebecca Lack, Lack Law Group
Judith Litzenberger, California Veterans Legal Task Force
Eric Mackenzie, We Stand United SD
Michele A. McKenzie, Scott Trial Lawyers, APC
Joseph Mellano, Shustak Reynolds & Partners, University of San Diego School
of Law
Jeff Nale, Whittemore Pages
Aleena Jun Nawabi, CAIR San Diego
Chris Olsen, Director of Public Policy & External Affairs, Jewish Family Service of
San Diego
Joshua Pang, Gruenberg Law
Lauren Roads Peeters, Shustak Reynolds & Partners, P.C.
Lynanne M. Reed, Esq., Law Office of Lynanne M. Reed
David Rubin, Rubin Law Office, PC
Laura Sheppard, Law Office of Laura R. Sheppard
Benjamin Silver, Gruenberg Law
Suzanne Skolnick, Skolnick Law, APLC
Sarah Thompson, National Immigrant Justice Center
Kimberly S. Trimble, Singleton Law Firm, APC
Erika Vasquez, Singleton Law Firm, APC
Tommy Vu, Singleton Law Firm, APC
Steven Wickman, Esq., Wickman & Wickman
Christina Wickman, Esq., Wickman & Wickman
Julia Yoo, Iredale & Yoo APC

Randy Armenta
Mina Asad
Ana Azpeitia
Danael Barengo
Reese G. Barracks
Martha Elizabeth Bekken
Allen Bloom
Amanda Borow
Lydia Callis
Vi Calvo
Kelly Carll
Clint Carney
Alara Chilton
Chelsea Daus
Kersten Deck
Claire Deken
Mitra Ebadolahi, Esq.
Stacey Edelstein
Luke Ervin
Greta Ervin
Megan Evans
Eric Fish
Noam Fliegelman
Morgan Fraijo
Lorena Garcia
Adam Gorevitz
Sandra Grader
Anne Henry
Matthew Hoeg
Lisa Huff
Erika Julsrud
Lauren Michelle Kasney

Greg Klawitter
Trenton G. Lamere
Alex Landon
Stephanie Larson
Victoria Leahy
Andrea Leal
Kendall Lord
Margaret Lord
Ryan Maguire-Fong
Riley Meehan
Christopher Millow
Erica Nager
Kelly Nolan
Julie Norton
Lindsey O'Crump
Walt Pennington
Jon M. Pettis
Nicole Piquette
Jessica Reyes
Nicholas Rogers
Dalton Rooney
Ashley Rydberg
Toni Sanchez
Tallulah Schloss
Lindsey Sepe
Esther Soifer
Joshua Spohrer
Patrick Sullivan
Gabe Tiano
Sean Walsh
Meredith Wernly
Chris Wriston