

# EXHIBIT 9

## DECLARATION OF NICK PETERSEN, PH.D.

I, NICK PETERSEN, declare as follows:

1. I am a tenured Associate Professor of Sociology and Law at the University of Miami. A true and correct copy of my curriculum vitae is attached as Exhibit A.3.
2. I received my Bachelor of Arts in Psychology at the University of California, Santa Cruz, and my Doctor of Philosophy (Ph.D.) in Criminology, Law & Society at the University of California, Irvine. I have also acquired extensive training in statistics from the University of Michigan's Inter-university Consortium for Political and Social Research.
3. This paragraph briefly summarizes my current professional positions and research relevant to the subject matter of this declaration. As an Associate Professor at the University of Miami, I teach courses focusing on statistics, criminology, and criminal justice at undergraduate and graduate levels. I am a member of several professional and academic organizations, including the American Society of Criminology and the Law & Society Association. I have served as a peer-reviewer for leading journals in my field, such as *Criminology*; *Law & Society Review*; *Justice Quarterly*; and *American Journal of Sociology*. I am also on the editorial board for *Social Currents*, the official journal of the Southern Sociological Society. My academic articles have been published in several top-tier peer-reviewed journals, including *Criminology*; *Social Problems*; *Social Forces*; *Justice Quarterly*; *Homicide Studies*; and *Criminal Law and Criminology*. These research projects have been funded by several private and public entities, including the National Institute for Health, the Bureau of Justice Statistics, the University of California, the University of Miami, and the University of Michigan. My research focusing on prosecutorial decision-making and the death penalty in California has been featured prominently in policy discussions concerning capital punishment. For example, in 2012, Federal Judge Arthur Alarcón cited my research on Los Angeles County's death-penalty costs<sup>1</sup> in his highly publicized co-authored article on capital punishment.<sup>2</sup> My co-author and I were invited by the California Legislative Analyst's Office (LAO) to submit our work to the LAO. After reviewing our research, the LAO incorporated the findings into the California Voter Guide on Proposition 34 (Death Penalty Initiative Statute). Finally, my research and expert commentary have been covered by prominent media outlets such as *The Huffington Post* and *The Washington Post*.
4. I was asked by the Office of the State Public Defender (OSPD) to assess whether racial disparities exist in capital prosecutions and the imposition of the death penalty in Riverside County. To answer this question,

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<sup>1</sup> Petersen & Lynch, *Prosecutorial Discretion, Hidden Costs*, *supra* note 1.

<sup>2</sup> Arthur L. Alarcón & Paula M. Mitchell, *Costs of Capital Punishment in California: Will Voters Choose Reform this November*, 46 LOYOLA L. REV 221 (2012).

I conducted two studies. A full description of the data, methodology, and results of both studies is contained in my report entitled “Racial Disparities in Riverside County’s Death Penalty System,” dated September 21, 2021. A copy of this report is attached as Exhibit A.2. I briefly summarize the studies in the following paragraphs.

5. In one study, I analyzed cases in which Penal Code section 187 had been charged in Riverside County from 2006 to 2019 (the “charging study”). This data, obtained by OSPD from the Riverside County District Attorney’s Office, was supplemented by data from the Riverside County Superior Court docketing system and other official sources. I used logistic regression models to estimate the likelihood of a special circumstance allegation, a death notice (i.e., the decision to seek the death penalty), and a death sentence. This statistical method allowed me to control for legally legitimate non-racial factors that could explain outcomes in these cases in order to isolate the independent effect of defendant and/or victim race at various points in the death penalty process and compare similarly situated cases.
6. In the charging study, I found large differences in the ways that Black and Hispanic defendants were charged in Riverside capital cases compared to White defendants. Specifically, Black defendants were 1.71 times more likely to be charged with a special circumstance, 9.06 times more likely to receive a death notice, and 14.09 times more likely to be sentenced to death compared to similarly situated White defendants. Moreover, Hispanic defendants were 1.08 times more likely to be charged with a special circumstance, 3.73 times more likely to receive a death notice, and 10.85 times more likely to be sentenced to death compared to similarly situated White defendants.
7. I also found large differences based on victim race and the interaction between victim and defendant race (i.e., victim-defendant racial dyads). Compared to cases with White victims, cases with Black victims were 61% less likely to result in a death sentence, and cases with Hispanic victims were 66% less likely to result in a death sentence. When victim and defendant race dyads were considered, I found that White victims allegedly killed by minority (Black or Hispanic) defendants resulted in more severe death penalty outcomes than White victims allegedly killed by White defendants. For cases involving a White victim, those allegedly killed by a minority (Black or Hispanic) defendant were 1.38 times more likely to be charged with a special circumstance, 9.41 times more likely to receive a death notice, and 6.87 times more likely to be sentenced to death compared to similarly situated cases with a White defendant.
8. In a second study, I compared Riverside County death-sentenced cases from 1976-2018 to all homicides committed in Riverside County during the same period based on data published by the FBI in the Supplementary Homicide Report (SHR) (the “SHR study”). I used logistic regression analysis to examine whether racial disparities existed after controlling for the presence of multiple victims and contemporaneous felonies.

9. In the SHR study, I found large differences based on both defendant and victim race. Compared to White suspects, I found that Black suspects were 3.96 times more likely to be sentenced to death, and Hispanic suspects were 2.53 times more likely to be sentenced to death. Cases with Black victims were 77% less likely than cases with White victims to end in a death sentence. Cases with Hispanic victims were 61% less likely than cases with White victims to result in a death sentence.
10. In addition, I found large differences based on victim-defendant racial dyads. For cases involving a White victim, those allegedly killed by a Black suspect were 4.75 times more likely to result in a death sentence compared to similarly situated cases with a White defendant. Likewise, for cases involving a White victim, those allegedly killed by a Hispanic suspect were 2.61 times more likely to result in a death sentence compared to similarly situated cases with a White defendant.
11. In sum, while the charging study and the SHR study utilized different data sources covering distinct time periods and analysis techniques, they tell a similar story regarding victim/defendant racial disparities. Taken together, the results highlight large-scale and widespread racial disparities in Riverside County over four decades, where Black/Hispanic defendants and victims are systematically disadvantaged at multiple death penalty decision-making points. In fact, the convergence of the studies' findings gives me greater confidence that race plays an important role in shaping death penalty outcomes in Riverside County. Because I have employed state-of-the-art statistical methodologies to analyze robust datasets, I believe that my findings offer strong empirical evidence of racial disparities within Riverside County's death penalty system from 1976-2019.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on September 30, 2021 at Coral Gables, Florida.



**NICK PETERSEN, PH.D.**

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# EXHIBIT 10

### **Declaration of Nick Petersen, Ph.D.**

I, Nick Petersen, declare as follows:

1. I am a tenured Associate Professor of Sociology & Criminology at the University of Miami, with a Secondary Appointment in the University's School of Law.
2. I received my Bachelor of Arts in Psychology at the University of California, Santa Cruz, and my Doctor of Philosophy (Ph.D.) in Criminology, Law & Society at the University of California, Irvine. I have also acquired extensive training in statistics from the University of Michigan's Inter-university Consortium for Political and Social Research.
3. This paragraph briefly summarizes my current professional positions and research relevant to the subject matter of this declaration. As an Associate Professor at the University of Miami, I teach courses focusing on statistics, criminology, and criminal justice at undergraduate and graduate levels. My academic articles have been published in several top-tier peer-reviewed journals, including *Criminology*; *Social Problems*; *Social Forces*; *Law & Policy*; *Justice Quarterly*; *Homicide Studies*; and *Criminal Law and Criminology*. My research focusing on prosecutorial decision-making and the death penalty in California has been featured prominently in policy discussions concerning capital punishment. For example, in 2012, Federal Judge Arthur Alarcón cited my research on Los Angeles County's death-penalty costs<sup>1</sup> in his highly publicized co-authored article on capital punishment.<sup>2</sup> My co-author and I were invited by the California Legislative Analyst's Office (LAO) to submit our work to the LAO. After reviewing our research, the LAO incorporated the findings into the California Voter Guide on Proposition 34 (Death Penalty Initiative Statute). In addition, my research and expert commentary have been covered by prominent media outlets such as *The Huffington Post* and *The Washington Post*.
4. I was asked by counsel Brian Cosgrove and David Macher at the Riverside County Public Defender's Office ("Public Defender"), and co-counsel from the ACLU Capital Punishment Project and ACLU of Southern California, to respond to a filing entitled "Opposition to Motion for a Hearing & Relief Pursuant to the Racial Justice Act" issued by the Riverside County District Attorney's Office ("District Attorney") on 09/30/2022. In responding to the District Attorney's filing, I highlight findings from a report I issued on September 21, 2021, entitled

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<sup>1</sup> Petersen & Lynch, *Prosecutorial Discretion, Hidden Costs*, *supra* note 1.

<sup>2</sup> Arthur L. Alarcón & Paula M. Mitchell, *Costs of Capital Punishment in California: Will Voters Choose Reform this November*, 46 LOYOLA L. REV 221 (2012).

“Racial Disparities in Riverside County’s Death Penalty System” as well as Dr. Marisa Omori’s June 2022 Declaration.

5. In the September 2021 report, I examined death penalty charging in Riverside County from 2006 to 2019 (the “charging study”) based on data from court records and death sentencing trends from 1976 to 2018 based on data from the FBI’s Supplementary Homicide Report (SHR) and the Habeas Corpus Resource Center (the “SHR study”). I used multiple regression models to examine these data because multiple regression is the “most widely used vehicle for empirical analysis in economics and other social sciences,” and it allowed me to isolate the independent effect of victim/defendant race on death penalty outcomes for similarly situated cases (i.e., cases that are mathematically similar in every other respect except for defendant/victim race).
6. Using regression models, I tested whether the likelihood of a prosecutor alleging a special circumstance or filing a death notice or the jury reaching a death verdict varies by race (of both the suspect/defendant and the victim), holding constant a host of non-racial factors that could influence death penalty decision-making by prosecutors and juries. This was necessary to ensure that my results were not what statisticians call “spurious.”<sup>3</sup> To the extent that legally relevant aggravating factors (e.g., number of victims, offense severity, prior criminal history) correlate with race, my regression analyses accounted for these factors and isolated the independent effect of race on capital decision-making. My regression models controlled for many non-racial factors (independent variables) that could impact death penalty decision-making (the dependent variable). In this context, the phrases “controlling for” or “holding constant” non-racial factors mean that the regression models compared the likelihood of a death penalty decision for two similarly situated defendants, except for race. For example, I compared the likelihood that a Black, Hispanic, or White defendant received a special circumstance, death notice, or death sentence in cases with similar independent variables corresponding to victim/defendant demographics (e.g., age, gender, etc.) and case characteristics (e.g., felony-murder charge, multiple-victim charge, etc.). Therefore, multiple regression models allowed me to control for legally legitimate non-racial factors that could explain outcomes in these cases to isolate the

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<sup>3</sup> “Spurious” is a term commonly used in quantitative analysis in the social sciences. A relationship is spurious if the link between an independent variable and the dependent variable is explained by variables other than those being analyzed. For example, the relationship between victim race and capital charging decisions would be spurious if it were explained by the number of homicide victims, but the number of homicide victims had not been included in the analysis. *Id.*

independent effect of defendant and/or victim race at various points in the death penalty process and compare similarly situated cases.

7. In both studies, I excluded murders committed by those under the age eighteen since juveniles are no longer eligible for the death penalty.<sup>4</sup> Thus, my results cannot be explained by the presence of juveniles in the data.
8. In the charging study, I found Black defendants were 1.71 times more likely to be charged with a special circumstance among all murder cases, 9.06 times more likely to receive a death notice among special circumstance cases, and 14.09 times more likely to be sentenced to death among death noticed cases compared to similarly situated White defendants. These White-Black disparities were statistically significant at the 0.1 p-value level (i.e.,  $p < 0.1$ ), meaning that there is less than a 10% chance of obtaining these results by random chance.<sup>5</sup> Hispanic defendants were 1.08 times more likely to be charged with a special circumstance, 3.73 times more likely to receive a death notice, and 10.85 times more likely to be sentenced to death compared to similarly situated White defendants. White-Hispanic disparities were only statistically significant at the 0.1 p-value level for the death sentence model.
9. In the SHR study, I found Black suspects were 3.96 times more likely to be sentenced to death than White suspects, and Hispanic suspects were 2.53 times more likely to be sentenced to death than White suspects. These disparities were statistically significant at the 0.01 p-value level (i.e.,  $p < 0.01$ ), meaning that there is less than a 1% chance of obtaining these results by random chance.
10. My findings point in a similar direction to those outlined in Dr. Omori's deceleration examining death penalty charging in Riverside County from 2016 to 2021. Dr. Omori found prosecutors were more likely to file special circumstances and death notices in cases involving minority defendants, although the death notice results were not statistically significant because of small sample sizes. My report summarized analyses from longer time periods but uncovered racial disparities pointing in the same direction. The fact that analyses conducted by me and Dr. Omori utilizing different data sources, time periods, and methodologies yield similar results helps to corroborate our findings.

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<sup>4</sup> Penal Code 190.5 (a).

<sup>5</sup> FINLAY AND AGRESTI, *supra* note 25; BALDUS, WOODWORTH, AND PULASKI, *supra* note 8.



11. In sum, while my report and Dr. Omori's deceleration rely on different data sources covering distinct time periods and analysis techniques, they tell a similar story regarding defendant racial disparities. Taken together, the results highlight large racial disparities in Riverside County, where minority defendants are disadvantaged at multiple death penalty decision-making points. The convergence of findings in my report and Dr. Omori's deceleration bolsters claims that race plays an important role in shaping death penalty outcomes in Riverside County.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on October 11, 2022, at Miami-Dade County, Florida.



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