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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF SACRAMENTO

10 People of the State of California, ) Docket No. 17FE012090  
11 vs. ) Department 63  
12 Yvonne C. Felarca, ) **NOTICE OF MOTION AND MOTION**  
13 Porfirio G. Paz, ) **TO DISMISS CHARGES AGAINST**  
14 Michael A. Williams. ) **YVONNE FELARCA, FOR**  
15 Defendants. ) **DISCRIMINATORY PROSECUTION,**  
16 ) **INSUFFICIENT EVIDENCE, AND**  
17 ) **VIOLATION OF HER RIGHT TO**  
18 ) **CONFRONT WITNESSES AGAINST**  
19 ) **HER (1ST, 6TH, AND 14TH**  
20 ) **AMENDMENTS)**  
21 )  
22 ) Opposition due: February 8, 2018  
23 ) Hearing: February 9, 2018  
Time: 1:35 p.m.  
Judge: Hon. Jaime R. Román

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23 NOTICE OF MOTION AND MOTION TO DISMISS CHARGES AGAINST YVONNE FELARCA, FOR  
DISCRIMINATORY PROSECUTION, INSUFFICIENT EVIDENCE, AND VIOLATION OF HER RIGHT TO  
CONFRONT WITNESSES AGAINST HER (1ST, 6TH, AND 14TH AMENDMENTS)  
CASE NO. 17FE012090


1 TO THE ABOVE-TITLED COURT AND TO THE DISTRICT ATTORNEY OF  
2 SACRAMENTO COUNTY, STATE OF CALIFORNIA:

3 PLEASE TAKE NOTICE that on February 9, 2018, in Department 63 at 1:35 p.m., or as  
4 soon thereafter as the matter may be heard, the Defendant Yvonne Felarca will move the Court  
5 to dismiss the charges against her for discriminatory prosecution in violation of the First and  
6 Fourteenth Amendments (*Murgia v. Municipal Court*, 15 Cal.3d 286, 290 (1975)), insufficient  
7 evidence, and violating her Sixth Amendment right to confront the witnesses against her.

8 Additionally, PLEASE TAKE NOTICE that Defendant Felarca will informally request  
9 the Court to dismiss the charges in the furtherance of justice pursuant to Penal Code §1385, due  
10 to insufficient evidence and discriminatory prosecution.

11 This Motion and Informal Request are based on this Notice, the records and files in this  
12 action, the attached supporting memorandum, the attached declarations, the attached exhibits,  
13 and any oral and documentary evidence that may be presented at the hearing.

14  
15 Dated: February 1, 2018

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Ronald Cruz  
Attorney for Defendant Yvonne Felarca

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NOTICE OF MOTION AND MOTION TO DISMISS CHARGES AGAINST YVONNE FELARCA, FOR  
DISCRIMINATORY PROSECUTION, INSUFFICIENT EVIDENCE, AND VIOLATION OF HER RIGHT TO  
CONFRONT WITNESSES AGAINST HER (1ST, 6TH, AND 14TH AMENDMENTS)

CASE NO. 17FE012090

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1 **INTRODUCTION**

2 On June 26, 2016 fascists affiliated with the violent neo-Nazi organizations Traditionalist  
3 Workers Party (TWP) and Golden State Skinheads (GSS) came to the State Capitol armed with  
4 knives, clubs, and improvised spears. Unarmed anti-fascist protesters had gathered that morning,  
5 and by that afternoon seven came away with knife wounds. Anti-fascist protesters were stabbed,  
6 bludgeoned, and had their bones broken by the fascists. Cedric O’Bannon, Vincent White and  
7 Nathan Van Dyke and several other anti-fascists were stabbed, taken away in ambulances, and  
8 hospitalized, some for weeks. Michael Yee was beaten and hospitalized with a fractured skull and  
9 broken arm. Defendant Yvonne Felarca was stabbed and bludgeoned, and taken to the hospital  
10 where she received 24 stitches to her head and arm. The fascists, whom Felarca and the other anti-  
11 fascist defendants are charged with attacking, walked away.

12 The stabbings by the fascists were foreseeable: six KKK members had been arrested in  
13 Anaheim, California just a few months earlier on February 27, 2016 for stabbing anti-fascist  
14 protesters there. But on June 26, 2016, well over one hundred police officers stood by and did  
15 nothing to stop or protect the protesters from the Nazi assault. (Declarations of Melody Yee,  
16 Stephanie Bucknam, and Brian Lovato.) In the aftermath, the California Highway Patrol (CHP)  
17 and Sacramento District Attorney (DA) have done nothing to prosecute the fascists who attempted  
18 to murder people in Sacramento.

19 The cover-up began immediately, with police interrogating and harassing injured counter-  
20 protesters in their hospital beds while doing nothing to pursue charges against the Nazis who had  
21 stabbed them. The police released unsubstantiated public statements blaming anti-fascist protesters  
22 within twenty-four hours. Over a year later, only weeks before the murder of Heather Heyer in



1 Charlottesville, Sacramento District Attorney (DA) Anne Marie Schubert charged and arrested  
2 three counter-protesters with unsubstantiated felony and misdemeanor charges.

3 The CHP and the DA's cover-up and collusion with the fascists in Sacramento sent a  
4 message to TWP leader Matthew Heimbach, the main organizer of the Sacramento demonstration  
5 as well as a central organizer and participant in the August 11-12, 2017 "Unite the Right" rally in  
6 Charlottesville, Virginia, that he and his racist thugs could commit murder in broad daylight and  
7 get away with it. The police policy of allowing the fascists to get away with their attack at the State  
8 Capitol in 2016 set off a chain of events that began with the near-murders in Sacramento and ended  
9 with the murder of Heather Heyer in Charlottesville.

10 Although the Initial Discovery files supplied to Felarca's attorneys contain hundreds of  
11 documents and videos, they do not include reports from police on the ground or eyewitness reports  
12 from June 26, 2016. The videos, pictures and documents that were provided in Discovery are  
13 inadmissible. There are videos apparently copied from neo-fascist and alt-right Facebook pages  
14 and blogs, reports of decades-old political activities of Felarca in defense of women's rights,  
15 reports on her union organizing, her lawsuit against Berkeley Unified School District (BUSD), and  
16 her activity in filing a union grievance as a site representative at Martin Luther King Middle  
17 School—documents that all point to the political targeting of Felarca.

18 Based on the meager evidentiary content of the DA's Initial Discovery release, the delay  
19 of over a year in the filing of charges, the open political targeting of Felarca and other anti-fascists  
20 evident in the police and DA's discovery, and the failure of CHP leadership on the day to protect  
21 anti-fascists against attempted murder by armed fascists, or even make timely reports on the events  
22 of the day, the charges against Felarca should be dropped.



1 In *Murgia*, the United Farm Workers (UFW) were organizing to improve the working  
2 conditions of agricultural laborers. They faced violent opposition from the growers and from the  
3 Teamsters Union. The Supreme Court recognized the defense of selective prosecution after  
4 evidence of:

5 numerous instances of serious criminal conduct – primarily violent assaults – committed  
6 by agents of the growers, members of the Teamsters Union and “private security groups”  
7 against picketing UFW members in the immediate presence of, and under the observation  
8 of, the sheriff’s deputies... the deputies took no steps either to prevent such assaults or to  
9 arrest the assaulting individuals, but rather “ratified” and encouraged such conduct and,  
10 indeed, often arrested the UFW victims of such assaults.

11 *Id.* at 292. The Supreme Court held that, “just as discrimination on the basis of religion or race is  
12 forbidden by the Constitution, so is discrimination on the basis of the exercise of protected First  
13 Amendment activities, whether done as an individual or, as in this case, as a member of a group  
14 unpopular with the government.” *Id.* (quoting *United States v. Falk*, 479 F.2d 616, 620 (1973)).

15 Evidence that other individuals who were similarly situated as the defendants but were not  
16 prosecuted is evidence of selective prosecution. *People v. Superior Court (Baez)*, 79 Cal.App.4th  
17 1177, 1189-91 (2000).

18 Felarca and the civil rights organization that she is part of, the Coalition to Defend  
19 Affirmative Action, Integration and Immigrant Rights and Fight for Equality By Any Means  
20 Necessary (BAMN), criticized the CHP and Sacramento police’s response on June 26, 2016 and  
21 their protection of fascists. They have actively campaigned to jail police officers guilty of racist  
22 targeting and murder, including for the deaths of Oscar Grant, Andy Lopez, and Mike Brown.  
23 Additionally, the stepped-up and aggressive targeting of anti-fascist protesters began in November  
and December of 2016, at least five months after June 26, 2016, and after the November 2016

1 election of Donald Trump and his selection of Jeff Sessions to head the U.S. Department of Justice.  
2 At this time, Felarca, BAMN, and the other anti-fascist protesters were very unpopular with the  
3 police and the Trump-headed government.  
4

5 **B. The CHP and DA are engaging in discriminatory prosecution against Felarca, Paz,**  
6 **and Williams based on political viewpoint and race.**

7 The conduct of the CHP and the DA are a textbook example of the discriminatory  
8 prosecution seen in *Murgia* in action.  
9

- 10 **1. On June 26, 2016 the police had full knowledge that the TWP and GSS were**  
11 **armed and likely to commit violence, and failed to intervene to stop the**  
12 **stabbings by fascists or even document these violent crimes through police**  
13 **reports, witness statements, or recordings. This police policy of cover-up has**  
14 **helped the fascists get away with attempted murder.**

15 On June 26, 2016, the California Highway Patrol and Sacramento police ignored standard  
16 police protocols for dealing with large events with the potential for violence. They had no police  
17 taking video footage of the events. They made no police reports. The 133 police officers who were  
18 deployed, many on horseback, stood down as people were viciously stabbed and continued to stand  
19 down after multiple people lay on the ground with multiple stab wounds, and allowed the fascists  
20 to stab more people. They arrested no one. They did not administer medical aid to the protesters  
21 who were stabbed by Nazis and were slow to dispatch any medical personnel. (Declaration of  
22 Melody Yee) This failure to follow basic policing procedure protected the fascists.

1           The police granted TWP their rally permit knowing that they would violate the terms of  
2 the permit, come armed, and attack people. On February 25, 2016, members of the Ku Klux Klan  
3 had stabbed four people during one of their rallies in Anaheim, California, placing one person in  
4 critical condition. The TWP and GSS have been classified by the Southern Poverty Law Center  
5 (“SPLC”) as extremist and violent hate groups. EXHIBITS A, B (SPLC profile of  
6 TWP and SPLC list of skinhead groups). TWP founder and leader Matthew Heimbach had  
7 advocated torching abortion clinics and attacking LGBT people and leftists, saying “Rabid dogs  
8 are put down, not allowed around the family kids. Our enemies are sick animals we need to treat  
9 them as such... ‘Freedom’ of assembly and ‘freedom’ of speech need not apply to Leftists, you  
10 are the enemy, pure and simple.” EXHIBIT C (Heimbach article “I Hate Freedom”). Heimbach  
11 had become notorious for spearheading a racist mob pushing a black woman out of a Trump rally  
12 in Kentucky. EXHIBIT D.

13           They TWP and GSS walked onto the State Capitol bearing dangerous weapons on June 26,  
14 2016 in explicit violation of their event permit. The police did nothing to disarm them or even  
15 regulate what they brought onto Capitol Grounds. They did nothing separate them from anti-fascist  
16 protesters and gave them free reign to try to stab and kill people.

17           Eyewitnesses describe a terrifying scene during which the police stood by and at times  
18 actively assisted the fascists’ aim of harming people. Cedric O’Bannon came to the Capitol on  
19 June 26, 2016 with a video camera to document the events. He recalls being stabbed by the fascists:

20           At a certain point early on, Nazi’s began marching onto the grounds of the Capital. I ran to  
21 the front with my camera to document the events. I began recording Nazi’s attacking people  
22 when some of the Nazi’s surrounded me. One of them lunged toward me with a spear like  
23 weapon. It was a banner pole, but it had a knife taped to the end of it. Before I was able to  
move away, he lunged toward me and breaking my camera out of my hand. As I bent down

1 to pick it up, he shoved his weapon at me again. It sliced right through my clothes as he  
2 stabbed me in my side.

3 Declaration of Cedric O'Bannon.

4 Melody Yee, an Asian American woman who attended the counter-protest at the State Capitol on  
5 June 26, 2016, states in her sworn declaration:

6 I heard someone scream "Medic!", and I ran towards the screams. Someone was lying on  
7 the ground, with at least two stab wounds in his torso. I later found out that he was Vincent  
8 White. We applied pressure to his stab wounds. When police came, they pushed us away,  
even when we explained we were trying to get information such as his name, and if he was  
with anyone at the rally. They would not let us be around him, and would not tell us where  
he would be taken.

9 From what I could see that day, the priority of the police seemed to lie in staring us down.  
10 Their line of police was, for the most part, away from the capitol grounds, and was  
permeable only one way: White nationalists did not seem to have a problem with coming  
11 through the line to attack us, nor did they have problems going back as they ran away.  
Police did nothing to intervene when people were being attacked, and they forced us away  
from our injured comrades.

12 Declaration of Melody Yee.

13 Another eyewitness, Stephanie Bucknam, further describes the chaos of the day and the police's  
14 unusual and deliberate inaction:

15 While we were standing there on the steps around 10:30 am, I heard a commotion. I looked  
16 toward 10<sup>th</sup> Street and a man was running across the grass yelling and spraying pepper  
17 spray. I could not make out what he was saying but he was clearly targeting the group of  
protesters. As soon as the protesters began reacting to being sprayed he ran away. The CHP  
were present but did nothing. They allowed him to flee the scene.

18 After this incident I was wary because I no longer felt safe or that the police would protect  
19 me if anything happened. I made the choice to stay as far back as possible in order to safely  
observe as much as I could without getting involved.

20 The rest of the event soon devolved into complete chaos. I stayed back so I did not witness  
21 any of the stabbings or fighting first hand. There were CHP nearby the entire time but I  
never saw them helping the injured or doing anything to stop the attacks. The only time I  
22 witnessed them help anyone was to step in and escort two TWP rally attendees into the

1 Capitol building. Prior to this I saw several people on the ground being treated for stab  
2 wounds by other protesters. I never saw any officers checking on any of the injured. At one  
3 point several people around me observed a gun on the ground on the south side of the  
4 Capitol. They tried getting the attention of one of the nearby officers to come secure it but  
5 they still did nothing. Someone ended up picking it up with handkerchief and took it to  
6 them. They took it from him but I have not heard anything about the gun in any reports or  
7 articles about the event. Whose gun was it? Why was it there? And why wasn't this reported  
8 anywhere?

9 Declaration of Stephanie Bucknam.

10 The police, despite having several severely injured stabbing victims sprawled out on the ground,  
11 all of them antifascists and requiring emergency care, continued to stand down:

12 [T]he Nazis were the first to attack and they attacked with knives... After this point, I stayed  
13 mostly near the steps of the building while smaller skirmishes continued elsewhere on the  
14 grounds. Throughout all of this I did not witness any police intervention until they  
15 eventually closed in on the crowd of counter-protestors, declared it an unlawful assembly  
16 and requested that we leave the premises.

17 Declaration of Brian Lovato.

18 Many of the victims went to the hospital, some in critical condition. The police were aware  
19 of the severity of their injuries. They sent investigators to the people in the hospital, but when  
20 questioning the stabbing victims they came with the express purpose of investigating the victims  
21 and not the fascists who had stabbed them (see below).

22 A fascist beat Melody Yee's brother, Michael Yee, with blows from a club to his head,  
23 arm, and back on June 26, 2016. But the police did nothing on June 26, 2016 and to this day  
continue to do nothing. Yee states:

That day, my brother was among the injured. He was unarmed, and had ended up with a  
fractured ulna, a fractured skull, and a subdural hematoma that left him with a changed  
speech pattern that lasted for months after his injury. He had been beaten with a picket stick  
on his head, arm and back, and had to spend a night in the neurological ICU, and a few  
days recovering in the hospital. There have been pictures taken that day, showing my

1 brother surrounded by white nationalists; one of them has a picket stick held overhead, just  
2 moments before my brother had been beaten.

3 To this day, I wonder exactly why the only people who are being persecuted are counter-  
4 protesters, and not of the people who actually intended to injure--if not murder--other  
5 people. I wonder why the police, despite their stated goal of protecting people and property,  
6 had done nothing to break up those attacks. I wonder why the people who had brutalized  
7 my brother walk free from justice.

8 Declaration of Melody Yee.

9 The day after the June 26, 2016 event, the CHP's own spokesman Officer Granada made  
10 clear that the CHP would do nothing to prosecute the fascists, telling reporters on the day after the  
11 stabbings that "the permitted group (the TWP and GSS) didn't start it [sic]." EXHIBIT E ("Neo-  
12 Nazis didn't start the violence at state Capitol, police say" *Los Angeles Times*, June 27, 2016).  
13 They had done no investigating at this point, and they already had eyewitness testimony from  
14 stabbing victims (see below) that the fascists had attacked them unprovoked. Nineteen months  
15 later, they still have no evidence to back this claim.

16 **2. The investigators ignored the anti-fascist victims' accounts, suppressed  
17 evidence, let the fascists go free, and single-mindedly pursued a witch-hunt  
18 against Felarca and other anti-fascists.**

19 **a. The CHP and DA have the names and faces of the fascists who stabbed  
20 and nearly killed anti-fascists on June 26, 2016, and have not charged  
21 any of them.**

22 Numerous people were hospitalized after the events of the Capitol, mostly anti-fascist  
23 protesters with stab wounds. Two of them were in critical condition. Several had extended stays



1 in the hospital. The most severely wounded individuals targeted by the fascists were black men,  
2 including a journalist. However, the CHP made no arrests that day and confiscated none of the  
3 knives from TWP members as evidence. (Declaration of Mark Airgood at ¶7)

4 The DA's evidence shows that the CHP and the DA knew the identities of the fascists who  
5 wielded knives on June 26, 2016 and were responsible for the near-fatal wounds of several anti-  
6 fascist protesters on that day. The entire course of the investigation was aimed at sheltering these  
7 individuals from prosecution and finding bases to prosecute their victims and other anti-fascist  
8 protesters from the day.

9 The CHP put together a report identifying numerous members of the TWP who brandished  
10 knives that day, identifying: **Doug McCormack** (the TWP member who applied for the rally  
11 permit), **Sean Foech**, **Derik Punneo**, and **Joseph Simmons**. They additionally identified **Nick**  
12 **Scheel**, **William Planer**, and **Matthew Gore** as individuals who wore knives visible on their  
13 person. The CHP had group photos of TWP and GSS gatherings and had ascertained the names of  
14 all the people they saw who had knives on June 26, 2016. EXHIBITS F, G. The CHP determined  
15 that Simmons had a knife that is expressly prohibited on Capitol Grounds under Penal Code 171b.  
16 They also found two illegal 9-inch knives on the Capitol grounds, one covered in blood. EXHIBIT  
17 H. Matthew Heimbach, leader of the TWP, admitted to CNN that that TWP members had armed  
18 themselves with knives. EXHIBIT I.

19 The CHP "investigation" into these stabbings was a coverup. They made no arrests,  
20 confiscated no knives, made no contemporaneous police statements, and made no effort to find the  
21 most basic evidence to prosecute the perpetrators. (Declaration of Mark Airgood at ¶¶7-9)

1           The DA only has one actual taped interview of a stabbing victim that was recorded in  
2 October 2016, an interview of Cedric O’Bannon. (Declaration of Mark Airgood at ¶9) Ayres, when  
3 conducting this interview, ignored O’Bannon’s account and single-mindedly pursued a witch-hunt  
4 against Felarca and other anti-fascist demonstrators (quoted later in this brief). O’Bannon had a  
5 GoPro camera at the June 26, 2016 rally and took footage showing his attacker at the moment he  
6 stabbed O’Bannon. The memory card from his camera attack was erased while in police custody.  
7 (Declaration of Cedric O’Bannon)

8           CHP Officer Ayres claims knowledge of which individuals were in the immediate vicinity  
9 of several victims when they were stabbed, but without fail he concludes that the CHP had  
10 insufficient evidence to identify the person who stabbed the victim. Vincent White, a black man  
11 who came to protest the fascists, was surrounded and attacked by several members of TWP. White  
12 was stabbed several times, including in his chest. As he tried to get away, the fascists continued to  
13 pull at him to stab him some more. Officer Ayres makes these observations and identifies by name  
14 all the individuals who were near him when he is stabbed:

15           Through exhaustive analysis of this video, the TWP affiliates who are in the vicinity of  
16 White, Jr. when he sustains his injuries are: Punneo, Scheel, Durnay, Zajic, Froech, and  
17 Sessumes... There was also a brief opportunity for White, Jr. to sustain further injuries  
when he fell to the ground east of the walkway in proximity to McCormack, Froech, Zajic,  
Simmons and an unknown affiliate.”

18 But Ayres concludes that charges should not be brought because the stabbings “have not been  
19 linked to a specific person” [sic]. EXHIBIT J (Narrative on stabbings) at 5-8.

20           For one fascist identified as having a knife, Sean Froech, no report at all is written, despite  
21 the fact that reports are written on nearly 100 anti-fascists. (Declaration of Mark Airgood at ¶10)

1 Further showing the sham nature of the CHP investigation into the stabbings, Officer Ayres  
2 made a call on July 6, 2016 to TWP rally permit holder, Doug McCormack, whom he identified  
3 in his June 26, 2016 report as holding a knife. What follows is a partial transcript of Ayres'  
4 "questioning" of McCormack, which lasted 5 minutes and had as its main purpose informing  
5 McCormack that the police would try to shield McCormack's identity from the public.

6 Officer Ayres (3:24): Um.. so Mr. McCormack, here's another reason for my call.. Is that  
7 there's been a request for um.. like public information request regarding the permit and,  
8 which you'd be the main party on there.. when you coordinated with Officer Nelson..  
9 uh.. to take the permit out uh.. you know your name goes on that and uh.. I know you  
guys talked about the rules for the permit and all that stuff you agreed to it.. so.. you  
know we don't have any issue with that, but for the public record request.. uh.. We don't  
have a reason to.. uh.. deny it.. then..

10 McCormack (3:59): Request from the public record?

11 Officer Ayres (4:00) Yeah, so they're gonna request a copy of the permit.. uh.. and that  
12 permit is gonna have your name on it.

13 McCormack (4:06): Who, Antifa?

14 Officer Ayres (4:07): I don't know exactly.. and if I did I would tell you. A lot of the times  
15 is like.. you know.. the news or uh.. I mean anybody can do a public records requests.  
16 It can be the lawyers..um.. so.. you know knowing wh.. I'm gonna take this back to my  
boss.. knowing that uh.. you were part of the group that was present and that uh..  
technically the investigation is still ongoing, then uh.. I'm gonna suggest that we hold  
that or redact your name or something.. uh.. until this thing gets resolved.. but..

17 McCormack (4:45): Yeah, I'd appreciate it. Any.. any information we have of course law  
18 enforcement is welcome to it, but any.. any.. anybody from outside.. that I'd appreciate  
19 it if my name was kept from that. 'cause they're causing.. trying to cause.. uh.. serious  
problems for people.. uh.. as far as.. uh.. finding out where people are working and uh..  
calling the bosses..

20 Officer Ayres (5:08): Yeah I saw that.

21 (Emphasis added) EXHIBIT K (recording of call to McCormack); EXHIBIT K1 (full  
22 transcript of call); Declaration of Mark Airgood at ¶29.

1 The collusion between CHP officers and TWP is explicit and thoroughgoing. Ayres  
2 promises to attempt to redact McCormack's name until "this thing gets resolved." In the logic of  
3 the interchange the only kind of resolution that makes any sense is one in which the fascist  
4 McCormack is found innocent and thus no longer has to worry about anyone linking him to the  
5 fascist attacks.

6 In the CHP's "Stabbings" file, another fascist, Joseph Simmons, is also identified as having  
7 an unlawful knife in violation of PC 171c(a)(2). EXHIBIT L (excerpt from Narrative on  
8 Simmons). No charges have been brought against Simmons.

9 None of the fascists have been charged for possessing weapons in violation of the permit,  
10 nor for their attempts to use their knives to murder the black, Latina/o, Asian, and women anti-  
11 fascist and anti-Trump demonstrators on June 26, 2016. It is no wonder that the fascists have been  
12 emboldened nationwide to continue and escalate their violent, armed demonstrations.

13  
14 **b. The CHP and DA have covered-up for the fascists and targeted Felarca**  
15 **and other anti-fascist protesters.**

16 There was disinterest in and avoidance of investigating the fascists who stabbed anti-Nazi  
17 protesters. Instead, the CHP's interviews were focused on *prosecuting the victims*, all of whom  
18 were anti-fascist and most of whom were black, Latina/o, and Asian, and not on investigating the  
19 fascists who had stabbed them.

1                   **i. Yvonne Felarca: Ayres did not seek the individuals who stabbed**  
2                   **and injured Felarca.**

3                   Defendant Felarca was stabbed and received a blow to the head on June 26, 2016. This was  
4 included in the Felarca Narrative which included the following quotation from an article: “A 46-  
5 year-old anti-fascist, Yvette Felarca was wounded, her left arm and head streaming with blood”...  
6 included in the article is a picture of Felarca with an unknown person pouring water on her head  
7 wound.” However, no officer makes an attempt to contact Felarca to investigate the assaults and  
8 batteries against Felarca.

9                   The Narratives further state that Punneo, a TWP member who led their group as they  
10 marched armed onto the Capitol grounds on June 26, 2016, had a fixed-blade knife and that  
11 “Punneo was in the immediate area of Felarca and Felarca suffered cuts to one arm.” EXHIBIT  
12 M. The report also concludes that Punneo was in the immediate vicinity of two other stabbing  
13 victims.

14                   On September 22, 2016, CHP Officer Snyder and Officer Layton #19468 interviewed  
15 Punneo at the jail at which he was being held for domestic battery, assuring him that “[w]e’re  
16 looking at you as a victim.” (EXHIBIT K, Punneo interview at 5:03). They did not question his  
17 activities on the day and instead brought photographs of many anti-fascist protesters to see if he  
18 could be a witness against them:

19                   Officer 1 (15:39): We have just a few things um I’m going to show you a couple photos of  
20 some people, uh, if you don’t know ‘em you don’t know ‘em. Uh, (snorts) lets see uh...

21                   Officer 2 (15:49): They’re, we think they’re kinda they’re, maybe, key leaders or  
22 whatever... organizers so we’re trying to figure out, we’re just trying to figure out who  
their main players were to get ID’d cuz like I said we’re trying to, or he said, we’re  
trying to ID as many of them as we can. We’re pretty much going after *them*, to try to...

1 Punneo (16:08): Right.

2 Officer 1 (16:09): It's, it's kind of unfortunate but uh, uh, we have a lot a lot of 'em, well  
3 over a hundred, probably a hundred...twenty five, a hundred and fifty identify that  
4 we're ... [cut-off by Punneo]

5 (Underlines added; the officer's emphasis on "them" is in the original audio) EXHIBIT K  
6 (recording of interview of Punneo); EXHIBIT K2 (partial transcript of interview);  
7 Declaration of Mark Airgood at ¶29.

8 Again, this is not a line of questioning, so much as it is an assurance to Punneo that the anti-fascists  
9 are the ones targeted for possible arrest. It continues the CHP policy of discriminatory focus on  
10 Felarca and anti-fascist protesters. Nowhere in the interview is there any attempt to bring the  
11 subject around to the actions of Punneo and other fascists on that day.

12 **ii. Cedric O'Bannon, a black journalist and activist stabbed by a**  
13 **fascist on June 26, was interrogated by CHP about Felarca, and the**  
14 **video of his assailant was erased after CHP took custody of it.**

15 Cedric O'Bannon is a journalist who arrived at the State Capitol on June 26, 2016 to  
16 document the events of the day out of concern for fascist and police violence. (Declaration of  
17 Cedric O'Bannon) When he approached a melee in which fascists were stabbing counter-  
18 protestors, one of the fascists lunged toward O'Bannon with a banner pole with a knife taped to  
19 the end of it. The fascist knocked the camera out of O'Bannon's hand, and when O'Bannon tried  
20 to pick it up, the fascist stabbed him in his side. He retrieved his camera and tried to get away.  
21 Ultimately his mobility became compromised due to the attack, and he was transported by  
22 ambulance to UC Davis Medical Center. EXHIBIT O (O'Bannon hospital picture). While at the

1 hospital, O'Bannon removed the memory card from his camera because he knew it had footage of  
2 the fascist who had attacked him. O'Bannon's injuries were serious, and he underwent invasive  
3 surgery. When he awoke from the surgery, he found that the police had confiscated his memory  
4 card without his permission. When he retrieved the memory card later, it was blank. He had to stay  
5 in the hospital for two weeks to recover from his injury. (Declaration of Cedric O'Bannon)

6 The CHP collected no medical report of his injuries. (Declaration of Mark Airgood at ¶8).  
7 After an initial cursory interview in the hospital, the police did not assist him in identifying his  
8 attacker.

9 The police made no further contact with O'Bannon until October 3, 2016, when Officer  
10 Ayres called him. Unlike the June 2016 interview, the CHP has a recording of this interview.  
11 O'Bannon was adamant that the police needed to investigate the man who had nearly killed him.  
12 Ayres expressed his utter lack of concern about O'Bannon's desire to investigate and charge the  
13 fascists who stabbed him and made clear that the police were targeting Defendant Felarca:

14 Ayres (7:00) - We've still got 30... 37 days till election...

15 O'Bannon (13:27): "The fact is, when I got there I stopped. They came to me. They  
16 approached me, I stopped at a distance to shoot, I can't get too close to shoot. Those  
17 two groups approached each other. I stopped a distance where I could close the shot.  
And then they came up to me, broke my monopod. When I picked-up the Go Pro I got  
stabbed.

18 Ayres (13:52): Hey what's your impression of, uh, Yvette Felarca?

19 (Emphasis added) EXHIBIT K (recording of interview of Punneo); EXHIBIT K3 (partial  
20 transcript of call with O'Bannon); Declaration of Mark Airgood at ¶29.

21 Ayres continued to question O'Bannon on BAMN and Felarca and upcoming anti-Trump  
22 activities, with no pretense of pretending to attempt to find O'Bannon's attackers. EXHIBIT K.

1                   **iii. Vincent White, Jr., a black man who was surrounded and stabbed**  
2                   **five times by fascists on June 26, 2016, was treated like a suspect**  
3                   **and not as a victim by CHP; Ayres recommended no charges**  
4                   **against his assailants and recommended charges against White.**

5                   On June 26, 2016, White was surrounded by several fascists and stabbed repeatedly. He  
6 was taken to Mercy San Juan Hospital in Carmichael, CA, where he stayed until at least June 30,  
7 2016. Included in the CHP file of him are shocking photos of White in his hospital bed. EXHIBIT  
8 P (excerpt from Narrative on White). The CHP collected no medical reports of his injuries.  
9 (Declaration of Mark Airgood at ¶29)

10                  The police interviewed White immediately after he had undergone surgery in the hospital  
11 and was still under sedation. He fell asleep during this exchange. Although there is no audio of  
12 this interview, the following account is in the White Narrative:

13                  [H]e was chased by three subjects from the north side of the State Capitol to the south side.  
14 The subjects caught up to White. One of the subjects began stabbing him with a knife.  
15 White described the subject who stabbed him as a white male, short stature, thin build with  
16 short brown hair, wearing a white shirt with designs on it. White said he believed the  
17 subject was holding the knife in his left hand. White succumbed to his pain medication and  
18 passed out. The interview was terminated at that point.

19                  EXHIBIT P at p. 18.

20                  The CHP made no effort to assist White in identifying his assailants. No charges have been brought  
21 against the fascists who stabbed Vincent White.

22                  Instead, the CHP recommended several criminal charges against White, including felony  
23 assault. Much of the CHP's "evidence" is several pages chronicling his political views and



1 associations. One portion of the report includes a photograph of White with a fist in the air. Ayres  
2 narrates, referring to a Wikipedia article:

3 According to Wikipedia, “The raised fist salute consists of raising one arm in the air with  
4 a clenched fist. The meaning can vary based on context. Different movements sometimes  
5 use different terms to describe the raised fist salute: amongst communists and socialists, it  
6 is sometimes called the red salute, whereas amongst some African-American activists,  
7 especially in the United States it has been called the Black Power salute. During the Spanish  
8 Civil War, it was sometimes known as the anti-fascist salute”.

9 EXHIBIT P at 16 (emphasis added).

10 Ayres justified filing charges against White because of his political positions:

11 White’s actions on June 26<sup>th</sup>, 2016 at the State Capitol, coupled with his affiliation and  
12 implied support for anti-racist activism, demonstrate White’s intent and motivation to  
13 violate the civil rights of the TWP affiliates and prevent them from holding their permitted  
14 rally on the steps of the Capitol.

15 EXHIBIT P at 17.

16 The Traditionalist Worker Party’s own website is replete with Nazi salutes, raised fists for “faith,  
17 family, and folk” (“folk” is an anglicization of the racist Nazi of the Aryan “Volk”), and calling  
18 for “national socialism” and a racial purge to “balkanize” the United States. EXHIBIT Q (leaflets  
19 and stickers from TWP’s website); EXHIBIT R (TWP social media postings in the weeks leading  
20 up to June 26, 2016). None of this is included in the TWP members’ Narratives. (Declaration of  
21 Mark Airgood at ¶11)

22 **iv. Nathan Van Dyke, another black man who was targeted and  
23 stabbed by a TWP member, was interrogated as a suspect and not  
as a victim.**

24 Nathan Van Dyke, another black anti-fascist protester who was targeted by the Nazis and  
25 stabbed by them, had identified to police that Derrick Punneo was the man who had stabbed him.

1 Van Dyke was hospitalized at UC Davis Medical Center for a week. The CHP did not gather any  
2 medical reports of his stabbing. Charges were never brought against Punneo. (Declaration of Mark  
3 Airgood at ¶8)

4 Officer Ayres states that he called Van Dyke on June 27, 2016. There is no audio recording  
5 of this call. (Declaration of Mark Airgood at ¶9) Ayres’ summary in the Van Dyke Narrative makes  
6 clear that Ayres was solely focused on prosecuting Van Dyke, trying to find out his political  
7 affiliations and how he got to the Capitol on June 26, 2016.

8 Van Dyke identified TWP member Derik Punneo as the man who had stabbed him:

9 Van Dyke would not talk about the assault and would only answer and bring the  
10 conversation back to his stabbing. Van Dyke claimed to lie down on the sidewalk 3 feet  
11 from where he was stabbed on the grass. The video and photographs do not show any likely  
12 suspects around Van Dyke at the time he claims to have been stabbed. Van Dyke showed  
13 me social media posts with the picture of Punneo and related he believed Punneo was the  
14 one who stabbed him.

15 EXHIBIT S (excerpts from Narrative on Van Dyke) at 34.

16 No CHP officer made any effort to assist Van Dyke in identifying his assailants—such as  
17 giving a list and/or photographs of suspects, since they had no suspects among the fascists whom  
18 they had any intention of prosecuting.

19 Ayres’ “Narrative” about Van Dyke recommended several criminal charges against Van  
20 Dyke. As “evidence” to support these charges, Ayres includes several pages profiling his political  
21 views. Under a picture of an unconscious Van Dyke in a hospital bed, Ayres describes political  
22 organizations he belonged to and notes one group’s support for “socialism, democracy, ecology,  
23 feminism and racial equality.” EXHIBIT S at 31-33.

1                   **c. Ayres and the CHP began to pursue criminal charges after the Trump**  
2                   **election, and that investigation has been solely against Felarca and other**  
3                   **anti-fascist protesters.**

4                   The police policy on June 26, 2016 facilitated the fascists’ plan of stabbing people in broad  
5 daylight and getting away with it. As is apparent from the course of the CHP’s investigation the  
6 next several months, the CHP made no effort to prosecute any of the fascists.

7                   The decision to file criminal prosecutions and to conduct a political witch-hunt against  
8 anti-fascist protesters at the State Capitol coincides with the election of Donald Trump as President  
9 and the appointment of Jeff Sessions as Attorney General.

10                  The vast majority of investigatory interviews, “police reports,” and other CHP  
11 investigatory activity were not conducted any time near the actual event, and were after November  
12 8, 2016. Officer Ayres called Defendant Felarca and her attorneys December 7, 2016 and  
13 December 9, 2016. CHP Officer Snyder contacted Defendant Paz on December 21, 2016 and  
14 January 17, 2017. Officer Ayres contacted Defendant Williams on September 2, 2016 and did not  
15 reach him. Officer Snyder then called him on January 3, 2017 and did not reach him. The only  
16 police statements the CHP and DA have were January 31, 2017 and February 8, 2017. (Declaration  
17 of Mark Airgood at ¶12)<sup>1</sup>

18  
19  
20                  <sup>1</sup> The narratives totaling more 2,000 pages are all signed and dated by Ayres June 26, 2016, and  
21 thus makes clear that no genuine date has been provided for any of those reports. Many of the  
22 reports, such as Ayres’ Narrative about Felarca, make reference to later events including Ayres’  
attempts to reach Felarca by telephone in November and December of 2016. (Declaration of  
Mark Airgood at ¶13)

1 During this witch-hunt, the CHP had the overarching aim of prosecuting Felarca and other  
2 anti-fascists and not any of the fascists who stabbed people on June 26, 2016. Ayres created a  
3 template “Narrative” solely to be used against anti-fascists, and did not create one to be used  
4 against the fascists. EXHIBIT T (boilerplate report); Declaration of Mark Airgood at ¶14.

5 The CHP requested and received a search warrant to scour anti-fascist Facebook accounts  
6 for all posts, private messages, group membership lists, and private identifying information of all  
7 members and contributors. EXHIBIT U (search warrant). The CHP and DA did not seek any search  
8 warrants against the Traditionalist Workers Party (TWP) or the Golden State Skinheads (GSS),  
9 who stabbed people with knives and are classified as violent extremist hate groups by the Southern  
10 Poverty Law Center. EXHIBITS A, B; Declaration of Mark Airgood at ¶15. These documents  
11 were the material used the subject Narratives of First Amendment activities by Felarca, Paz,  
12 Williams, and other anti-fascist protesters whom he sought to prosecute. The Narratives are  
13 saturated with red-baiting, and read as if the Red Squads (specialized police intelligence units that  
14 persecuted labor organizers in the 1930s, antiwar and civil rights activists in the 1960s, and were  
15 outlawed in 1978) had written them.

16  
17 **II. The charges against Felarca are unsubstantiated, based on insufficient and inadmissible**  
18 **evidence in violation of her constitutional Right to Confrontation. (6th Amendment)**

19 Felarca is charged under three counts in the DA’s “Felony Complaint”: felony “assault...  
20 by means of force likely to produce great bodily injury” (Penal Code §245(a)(4)), misdemeanor  
21 participation in a “riot” (Penal Code §404(a)), and misdemeanor incitement to “riot” (Penal Code  
22 §404.6(a)). The DA’s “evidence” consists entirely of unsubstantiated, biased accounts by CHP lead

1 investigator Officer Ayres (who was not present on ground that day), and video documents culled  
2 from alt-right websites that are unattributed, unauthenticated, and inadmissible.

3 **A. Legal standards**

4 Photographs and video recordings are writings under the California Evidence Code. Cal.  
5 Evid. Code §250; see *Rojas v. Superior Court*, 33 Cal.4th 407, 416 (2004) (photographs); *Jones v.*  
6 *City of Los Angeles*, 20 Cal.App.4th 436, 440 (1993) (videos). Like other writings, they must be  
7 authenticated before they can be admitted as evidence. Cal. Evid. Code §§1400-1402. “[T]he  
8 testimony of a person who was present at the time a film was made that it accurately depicts what  
9 it purports to show is legally sufficient foundation for its admission into evidence.” Cal. Evid.  
10 Code §1413.

11 Further, as a shield against government persecution, the Confrontation Clause of the Sixth  
12 Amendment of the United States Constitution requires the prosecution to present its witnesses and  
13 make them available for cross-examination by the defendant. US Const. amend. VI; *Crawford v.*  
14 *Washington*, 541 U.S. 36 (2004). Thus, failure to authenticate the bases for evidence violates a  
15 defendant’s Right to Confrontation. *Melendez-Diaz v. Massachusetts*, 557 U.S. 305 (2009) (failure  
16 to allow defendant to cross-examine forensic analysts whose written reports concluded the  
17 defendant had cocaine on his person violated defendant’s Right to Confrontation and conviction  
18 was reversed).

1 In *People v. Rekte*, 232 Cal.App.4th 1237, 1247 (2015), the California Appeals Court  
2 reversed a conviction for failing to stop at a red light, where the only evidence was video from an  
3 automated traffic-light camera.<sup>2</sup> The Appeals Court reversed the conviction:

4 The sole evidence presented to the trier of fact in the present case consisted of photographs,  
5 initially presumed to be reliable, but which presumption was rebutted. [Footnote 4] As a  
6 result, the foundational requirement of authentication was lacking. *Operator Teagarden*  
7 *was not a percipient witness to the violation.* As a matter of law, without the photographic  
8 evidence, there is insufficient evidence to support the judgment.

9 [Footnote 4:] The trial court did not expressly rule on the admissibility of, or rely on, the  
10 declaration of the *Redflex technician* that accompanied the photographs, in ruling on their  
11 admissibility... *If the court did rely on the declaration, such reliance would have violated*  
12 *defendant's constitutional right to confrontation because the technician did not testify and*  
13 *declarations, like affidavits, constitute testimonial hearsay.* (*Crawford v. Washington*  
14 (2004) 541 U.S. 36, 51-52, 124 S.Ct. 1354, 158 L.Ed.2d 177; see *Bullcoming v. New*  
15 *Mexico* (2011) 564 U.S. ----, 131 S.Ct. 2705, 2716-2717, 180 L.Ed.2d 610\_[regarding  
16 admissibility of lab report containing a testimonial certificate].)

17 *Id.* (emphasis added). Also see *People v. Winters*, 147 Cal.Rptr.3d 825 (2012) (“red light camera”  
18 video in the absence of witnesses to authenticate the video violated the defendant’s Right to  
19 Confrontation and conviction was reversed).

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20 <sup>2</sup> California law is more permissive as to the admission of footage that is the product of  
21 “computer information or a computer program” (such as a traffic-intersection video) than to  
22 other videos, and presumes that such footage is an accurate representation of “the computer  
23 information or computer program that it purports to represent.” Cal. Evid. Code §1552. This law  
is in contrast to all other videos, including those provided by anonymous sources on the internet  
such as in the present case.

1           **B. The District Attorney’s evidence offered in support of the charges against Felarca**  
2           **is inadmissible under the California Evidence Code and Sixth Amendment,**  
3           **violating Felarca’s right to confront the witnesses against her.**

4           In the reams of documents and videos provided by the CHP and the DA, there is not a  
5 single witness statement that Felarca did any of the above acts. In violation of Penal Code  
6 §1054.1(a) and the Sixth Amendment, the DA has provided no list of witnesses in the DA’s  
7 disclosures. The only witness statements are from four police officers who did not see Felarca  
8 doing anything she is accused of: officers Postak, Anglesey, J. Davis, and Ratha, which are dated  
9 1/31/17, 2/4/17, 2/4/17, and 2/8/17 respectively. They were not offered to support the CHP and  
10 DA’s case against Felarca and were included in a Supplemental Reports file. Only one witness  
11 makes a passing references to her; the others do not mention or see her at all. (Declaration of Mark  
12 Airgood at ¶12)

13           The videos that the DA has are unauthenticated and inadmissible. Evidence Code §§250,  
14 1400-1402. The police took no video on June 26, 2016 showing what the police and DA allege  
15 Felarca to have done. (Declaration of Mark Airgood at ¶16)

16           If the prosecution against Felarca is allowed to continue, these defects in the evidence deny  
17 Felarca her constitutional right to confront her witnesses under the Sixth Amendment to the U.S.  
18 Constitution.

1           **C. CHP lead investigator Officer Donovan Ayres was not an eyewitness at the State**  
2           **Capitol June 26, 2016 and exhibits bias against Felarca and other anti-fascist**  
3           **protesters.**

4           The only “testimony” the DA has is a narrative signed by CHP’s Investigation Coordinator  
5 Officer Donovan Ayres (ID 18111). Ayres was not present on the ground at the State Capitol on  
6 June 26, 2016.<sup>3</sup>

7           The Felarca narrative is the sole statement offered against Felarca. However, Ayres was  
8 not an eyewitness to any of the events he alleges.

9           Ayres also has no witnesses for the charges against Defendants Porfirio Paz and Michael  
10 Williams. Ayres led the CHP investigation (EXHIBIT W, CHP report cover) that resulted in not  
11 charging any of the fascists who stabbed Felarca and other anti-fascist protesters. In addition to  
12 what is about to be presented, Ayres showed a single-minded focus to cover-up for the fascists and  
13 pursue the anti-fascists throughout the course of the investigation. This bias throughout the  
14 investigation is detailed later in this brief.

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15  
16  
17  
18  
19  
20 <sup>3</sup> Officer Ayres prepared an exhaustive list of “Agencies Involved” and police officers and fire  
21 department personnel who were at the State Capitol on June 26, 2016. It gives names of 133  
22 police officers and 53 firefighters involved and Ayres does not list himself. EXHIBIT V.  
23 Officer Ayres gets first credit on the cover of the CHP’s report and is listed as the CHP’s  
“Investigation Coordinator.” EXHIBIT W.



1           **D. The Narrative on Felarca is misdated and based on a Report Template that**  
2                           **discriminates on the basis of political views, political affiliations, and race**

3           Ayres signs all the “Subject Narrative” reports against Felarca, Paz, Williams, and 98 other  
4 anti-fascist demonstrators. The only date on all these reports is June 26, 2016. These 2000+ pages  
5 were not written by Ayres on June 26, 2016. References are made in his “Felarca Subject  
6 Narrative” about articles and events, that occurred after June 26, 2016, including Ayres’ efforts to  
7 reach Felarca in December 2016. This date serves to obfuscate the lack of actual police reports and  
8 witness statements from the day. (Declaration of Mark Airgood at ¶13) Judging from the future  
9 dates referenced, the majority of the reports could not have been produced until after the November  
10 8, 2016 election of Donald Trump.

11           Officer Ayres’ Narrative of Felarca operates from a boilerplate report he created that serves  
12 as the template for all of Officer Ayres’ reports for all the anti-fascist protesters. EXHIBIT T  
13 (boilerplate narrative). Ayres produced no such template for the group of racist fascists. Id. at ¶14.  
14 This template’s political content demonstrates Ayres’ bias in targeting anti-fascists for their  
15 political views and pre-judging the anti-fascist protesters to be guilty and the fascists to be the  
16 victims of attack. The first lines of the template are:

17           On June 26<sup>th</sup>, prior to 11:40 hours SUBJECT arrived at the California State Capitol to  
18 support a planned action to deny the Traditionalist Worker Party (TWP) from assembling  
and speaking at their event...

19 EXHIBIT T at 3. Later, the template states:

20           SUBJECT’s actions are consistent with known philosophies, tactics, techniques and/or  
21 procedures and indicate a (strong?) commitment to the furthering the goals of NAMED  
22 GROUP. The SUBJECT’s criminal activity/actions listed above, coupled with the  
stated/implied intent demonstrate support to the clearly identified and widely advertised

1 goal of denying the permitted party the ability use their constitutionally protected right to  
assemble and right to free speech.

2 EXHIBIT T at 4.

3 The template also lists twenty-five criminal charges that could be charged against anti-fascists.

4 EXHIBIT T at 16-17.

5 Large portions of this boilerplate were employed by Ayres in writing his “Narratives”  
6 against Felarca, Paz, and Williams and other anti-fascists. Declaration of Mark Airgood at ¶17.

7  
8 **E. The Narrative on Felarca substitutes biased opinions for witnesses and**  
9 **authenticated videos.**

10 The Narrative Report on Felarca makes sweeping generalizations about the anti-fascist  
11 protesters on June 26, 2016, presents biased conclusions as facts, and does not attribute  
12 observations to any witnesses or authenticated videos. These biases are based on assertions that  
13 Felarca’s political work in defending affirmative action, immigrant rights, and women’s rights as  
14 well as her union activity are proof of her guilt. The “Narrative” begins, not with Felarca’s actions  
15 on June 26, 2016, but several pages of a history of her political activities: it includes material on  
16 Felarca’s work with the National Women’s Rights Organizing Coalition in the 1990s, a grievance  
17 she had filed as a Berkeley Federation of Teachers (BFT) Site Rep, and records on her lawsuit  
18 against Berkeley Unified School District for political targeting Latina/o, black, and other minority  
19 students. EXHIBIT M at 3-5. The “Narrative” reads like a political dossier, not an eyewitness  
20 report, and it exposes the political bias and discriminatory motive in prosecuting Felarca for her  
21 political speech and associations.

1 The Narrative makes conclusory statements that contradict the very evidence offered. In  
2 one part of his “Narrative,” Ayres includes a picture that depicts Felarca on the ground with a TWP  
3 member (Derik Punneo, whom the CHP identified as wielding a knife that day) standing over her.  
4 Another anti-fascist protester, Vincent White, is reeling from a fascist having just struck him.  
5 EXHIBIT M at 15. Felarca and White are surrounded by eight armed, masked fascists, several of  
6 whom the CHP identify in photos as bearing knives. EXHIBIT J at 3,5. Based on this photo, the  
7 Narrative opines that: “During Event #3 (Large group assaults and batteries), Felarca thrust herself  
8 into the TWP formation with Vincent White Jr. engaging in the first acts of violence at this  
9 location. Felarca assaulted the lead element of TWP and committed another assault by throwing  
10 an unknown projectile at TWP affiliates after she was knocked down.” EXHIBIT M at 15. Ayres  
11 later describes this moment with Felarca on the ground surrounded by armed fascists as “running  
12 into the TWP formation and using her body[!] to assault TWP affiliates.” EXHIBIT M at 33, line  
13 3.<sup>4</sup>

14 The world is turned upside-down through the words of the police. Immediately preceding  
15 one of his claims against Felarca, Ayres describes a scene of terror among anti-fascist protesters:  
16 “There was a distinct physical separation when the protestors realized the level of injuries they  
17 were receiving from the defenses[!] of the TWP affiliates, and after the announcement from the  
18 protesters that, ‘knives are out.’ EXHIBIT M at 16. It is apparent to anyone present that the fascists

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19  
20 <sup>4</sup> Punneo, who led the TWP group as they entered the Capitol grounds and has a fixed-blade knife,  
21 was the first to attack Felarca. He was identified as being near White when he was stabbed, and  
22 was identified by stabbing victim Nathan Van Dyke as the prime suspect in his stabbing (see  
23 above). He is said to have a “legal” knife by Ayres, is not charged, and is only interviewed by  
police for the purpose of identifying anti-fascist protesters for potential prosecution (EXHIBIT F  
(Punneo audio interview)).

1 are stabbing protestors. The police’s attempt to turn this into “self-defense” on the part of the Nazis  
2 flies in the face of any conclusion an unbiased observer could draw.

3 **F. There is no evidence to support the DA’s felony charge against Felarca of assault**  
4 **“with force likely to produce great bodily injury” against Nigel Walker.**

5 The DA’s first charge against Felarca is Count One: “a felony, namely: violation of Section  
6 245(a)(4) of the Penal Code of the State of California... in that said defendant did willfully and  
7 unlawfully commit an assault on NIGEL WALKER by means of force likely to produce great  
8 bodily injury.”

9 There is no evidence to support this charge. There is no witness statement from or any  
10 interview with the alleged victim Nigel Walker. There are no medical reports documenting that  
11 Nigel Walker had any injury, and no police report or video of Felarca causing such injury.  
12 (Declaration of Mark Airgood at ¶18.) There is nothing that the DA has produced which indicates  
13 that Felarca, who was unarmed, stands 5 feet tall and weighs 110 pounds, had any means to inflict  
14 “great bodily harm” on Mr. Walker who stood a full two heads taller than Felarca.

15 “The term ‘great bodily injury’ as used in the felony assault statute means *significant or*  
16 *substantial bodily injury or damage*; it does not refer to trivial or insignificant injury or marginal  
17 harm.” *People v. Duke*, 174 Cal.App.3d 296, 302 (1985) (emphasis added). Further, the term “great  
18 bodily injury” is considered to have “essentially equivalent elements” to the term “serious bodily  
19 injury.” *People v. Burroughs*, 35 Cal.3d 824, 831 (1984). “Serious bodily injury” is defined as a  
20 “serious impairment of physical condition, including, but not limited to, the following: loss of  
21 consciousness; concussion; bone fracture; protracted loss or impairment of function of any bodily  
22

1 member or organ; a wound requiring extensive suturing; and serious disfigurement.” *Id.*; Penal  
2 Code §243.

3 The California Appeals Court in *Duke* quoted Witkin favorably in noting that evidence of  
4 physical injury is generally required to prove force likely to produce “great bodily injury”:

5 “The issue is... whether the force used was such as would be likely to cause it... It would  
6 seem, however, that an assault or battery which does not result in any physical injury, and  
7 does not come within the scope of any of the other felonious assaults... [T]he nature and  
8 extent of the injuries inflicted will often be the controlling factor in determining that the  
9 force used was of that character.” (1 Witkin, [Cal. Crimes] (1963) §272, pp. 255-256)

8 In *Duke*, the Appeals Court concluded that a headlock did not constitute a threat of great bodily  
9 harm, and contrasted it to a prior case involving choking someone where the force to produce great  
10 bodily harm was found: “[in the previous case,] the ‘choking’ was done with both hands, with the  
11 defendant’s thumbs on the victim’s larynx. The victim appeared to be gasping and was actually  
12 choking her tongue protruding about an inch, her eyes bulging and her face red. The victim testified  
13 that the defendant had tried to kill her.” *Duke* at 303 (citing *People v. Covino*, 100 Cal.App.3d 660  
14 (1980)).

15 Stabbing people, which the fascists did on June 26, 2016, including stabbing Felarca,  
16 constitutes great bodily harm and a threat to life more than anything that Felarca or of any other  
17 anti-fascist demonstrator is accused of. In violation of the Event Permit, the fascists illegally  
18 brought knives onto the Capitol grounds. In extensive evidence described above that was provided  
19 to the DA, the TWP and GSS stabbed people with knives on Capitol grounds—knives and  
20 improvised spears that were dangerous weapons and patently illegal to bring onto Capitol grounds.  
21 EXHIBIT X (TWP event permit); Declaration of Cedric O’Bannon. Felarca came out of June 26,  
22 2016 with significant injuries-- a fascist had slashed her arm with a knife, and another had struck

1 her in the head with a club. EXHIBIT Y (photographs of Felarca’s injuries). But the CHP and DA  
2 are not trying to prosecute the fascist who severely injured Felarca or any of the other fascists,  
3 underscoring how baseless and politically motivated the felony assault charge against Felarca  
4 really is.

5  
6 **G. There is no evidence to support the charges against Felarca of “participating in a  
7 riot” and “incitement to riot.”**

8 The charges of participating in a “riot” and “incitement to riot” constitute political targeting  
9 and a direct attack on Felarca’s right to free speech. Section 404(a) of the California Penal Code  
10 defines a “riot” as “one and more persons acting together, and without authority of law,  
11 accompanied by immediate power of execution, use force and violence, disturb the public peace,  
12 and threaten to use such force and violence,” and defines “incitement to riot” as “do[ing] an act...  
13 or urg[ing] others to commit acts of force or violence... that produce[s] a clear and present and  
14 immediate danger of acts of force or violence or the burning or destroying of property.” Cal. Penal  
15 Code §404(a) and §404.6(a).

16 The CHP and DA have no witnesses, no witness statements, and no authenticated videos  
17 to support these baseless and political charges. Seven anti-fascists were stabbed and nearly killed  
18 by the TWP’s and GSS’ members’ racist stabbings on June 26, 2016. The DA has no witness  
19 statements or medical reports of any of the fascists being harmed. (Declaration of Mark Airgood  
20 at ¶19)

21 The anti-fascist demonstrators on June 26, 2016 found themselves in a quickly developing  
22 and perilous situation, with armed fascists with shields aggressively pursuing and stabbing people,

1 particularly black men. The testimony of people who actually were there depicts a scene of  
2 violence by the fascists against unarmed demonstrators as the police took no action. (Declarations  
3 of Cedric O’Bannon, Melody Yee, Stephanie Bucknam, and Brian Lovato)

4 The police and prosecution claim that the fascists were “defending” themselves. This is the  
5 same claim made by TWP leader Heimbach who, after the horrific murder of Heather Heyer in  
6 Charlottesville by white supremacist Alex Fields, Jr., defended Fields by claiming "the nationalist  
7 community" was defending itself from counter-protesters. EXHIBIT Z.

8 Their bias is apparent in that part of the “evidence” against Felarca which include several  
9 pages on Felarca’s past First Amendment activities, including her work over two decades earlier  
10 as a women’s rights activist, exercising her rights as a union representative and union member,  
11 and bringing legal action against racial discrimination. EXHIBIT M at 3-5. Ayres repeatedly  
12 references Felarca’s and other anti-fascists’ speech activities on June 26, 2016, including chants  
13 expressing opposition to Nazis. These are First Amendment activities and not a “riot.”  
14

15 **III. This Court should dismiss the charges “in the furtherance of justice” pursuant to its**  
16 **authority under Penal Code 1385.**

17 Additionally, Defendant Felarca informally requests the Court to dismiss the charges  
18 pursuant to its discretion under Penal Code §1385. Penal Code §1385 states: “The judge or  
19 magistrate may, either of his or her own motion or upon the application of the prosecuting attorney,  
20 and in furtherance of justice, order an action to be dismissed.” In considering what “further[s]...  
21 justice,” the Court “must consider the constitutional rights of the defendant, and the interests of  
22 society represented by the People.” *People v. Hatch*, 22 Cal.4th 260, 268 (2000) (citation omitted).

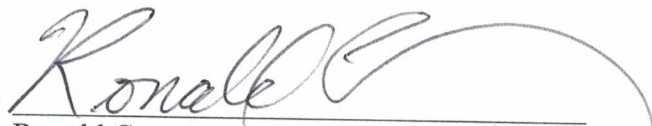
1 Insufficient evidence is one ground for such dismissal: “Under these principles, trial courts  
2 historically have had the power to acquit for legal insufficiency of the evidence pursuant to section  
3 1385.” *Id.* (citation omitted). When dismissing under §1385, the Court must set out the factual  
4 basis for doing so in the court record. *People v. McAlonan*, 22 Cal.App.3d 982, 985-986 (1972).

5 Numerous grounds (as enumerated in detail above) exist for dismissing the charges against  
6 Felarca in the furtherance of justice. There are no witnesses or witness statements against Felarca  
7 of what the DA is charging her with, violating her Right to Confrontation. The evidence offered  
8 against her is unauthenticated. There are no medical reports from the much taller fascist who police  
9 claim was seriously injured by the diminutive Ms. Felarca. The charges of “riot” and “incitement  
10 to riot” are brought on entirely political grounds and violate Ms. Felarca’s right to free speech.  
11 CHP Lead Investigator Officer Ayres is leading a coordinated political witch-hunt.

12 If the prosecution of Felarca, Paz, and Williams proceeds, then Donald Trump will have  
13 already achieved one of his central aims: the substitution of authoritarianism for constitutional due  
14 process rights and democratic norms. A policy of naked state discrimination and persecution of  
15 racial minorities and left-wing political activists would be a fact and reality. The rule of law would  
16 be replaced by tyranny. Justice requires that the charges be dismissed.

17  
18 Dated: February 1, 2018

Respectfully submitted,

19   
20 \_\_\_\_\_  
21 Ronald Cruz  
22 Attorney for Defendant Yvonne Felarca



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7  
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF SACRAMENTO

10 People of the State of California, ) Docket No. 17FE012090  
11 vs. )  
12 Yvonne C. Felarca, ) **[PROPOSED] ORDER DISMISSING**  
13 Porfirio G. Paz, ) **THE CHARGES AGAINST YVONNE**  
14 Michael A. Williams. ) **FELARCA**  
15 Defendants. )  
\_\_\_\_\_ )

16 It appearing to this Court from the pleadings and argument made in relation to Defendant  
17 Yvonne Felarca's Motion to dismiss the charges against her, this Court ORDERS that the  
18 charges be dismissed against Felarca:

19 Discriminatory prosecution

- 20 1. It is illegal for the government to discriminate against individuals because of their  
21 political speech or affiliations, and proof of such is cause for dismissal. The California  
22 Supreme Court has declared: "If an individual can show that he would not have been  
23 prosecuted except for such invidious discrimination against him, a basic constitutional
-

1 principle has been violated, and such a prosecution must collapse upon the sands of  
2 prejudice.” *Murgia v. Municipal Court*, 15 Cal.3d 286, 290 (1975).

- 3 2. Evidence that other individuals who were similarly situated as the defendants but were not  
4 prosecuted is evidence of selective prosecution. *People v. Superior Court (Baez)*, 79  
5 Cal.App.4th 1177, 1189-91 (2000).
- 6 3. After considering the evidence and argument brought before this Court, including the  
7 conduct of law enforcement at the State Capitol on June 26, 2016 withholding from  
8 taking action to protect against knife attacks by fascists, lack of investigation of the  
9 stabbings despite substantial evidence against the fascists, a concerted effort to prosecute  
10 anti-fascists, the selective and discriminatory conduct of police investigators, this Court  
11 finds that selective and discriminatory prosecution has been conducted against Defendant  
12 Felarca, as an anti-fascist protester on June 26, 2016, in violation of her First and  
13 Fourteenth Amendment rights to freedom of speech and association and to equal  
14 protection under the law, as set forth in *Murgia*.

15  
16 Right to Confrontation

- 17 4. Photographs and video recordings are writings under the California Evidence Code. Cal.  
18 Evid. Code §250; see *Rojas v. Superior Court*, 33 Cal.4th 407, 416 (2004) (photographs);  
19 *Jones v. City of Los Angeles*, 20 Cal.App.4th 436, 440 (1993) (videos). Like other  
20 writings, they must be authenticated before they can be admitted as evidence. Cal. Evid.  
21 Code §§1400-1402. “[T]he testimony of a person who was present at the time a film was  
22 made that it accurately depicts what it purports to show is legally sufficient foundation  
23 for its admission into evidence.” Cal. Evid. Code §1413.
-

- 1 5. Further, as a shield against government persecution, the Confrontation Clause of the  
2 Sixth Amendment of the United States Constitution requires the prosecution to present its  
3 witnesses and make them available for cross-examination by the defendant. US Const.  
4 amend. VI; *Crawford v. Washington*, 541 U.S. 36 (2004). Thus, failure to authenticate the  
5 bases for evidence violates a defendant’s Right to Confrontation. *Melendez-Diaz v.*  
6 *Massachusetts*, 557 U.S. 305 (2009) (failure to allow defendant to cross-examine forensic  
7 analysts whose written reports concluded the defendant had cocaine on his person  
8 violated defendant’s Right to Confrontation and conviction was reversed).
- 9 6. In *People v. Rekte*, 232 Cal.App.4th 1237, 1247 (2015), the California Appeals Court  
10 reversed a conviction for failing to stop at a red light, where the only evidence was video  
11 from an automated traffic-light camera.<sup>5</sup> The Appeals Court reversed the conviction:

12 The sole evidence presented to the trier of fact in the present case consisted of  
13 photographs, initially presumed to be reliable, but which presumption was rebutted.  
14 [Footnote 4] As a result, the foundational requirement of authentication was  
15 lacking. *Operator Teagarden was not a percipient witness to the violation.* As a  
16 matter of law, without the photographic evidence, there is insufficient evidence to  
17 support the judgment.

18 [Footnote 4:] The trial court did not expressly rule on the admissibility of, or rely  
19 on, the declaration of the *Redflex technician* that accompanied the photographs, in  
20 ruling on their admissibility... *If the court did rely on the declaration, such reliance*  
21 *would have violated defendant's constitutional right to confrontation because the*  
22 *technician did not testify and declarations, like affidavits, constitute testimonial*  
23 *hearsay. (Crawford v. Washington (2004) 541 U.S. 36, 51-52, 124 S.Ct. 1354, 158*  
*L.Ed.2d 177; see Bullcoming v. New Mexico (2011) 564 U.S. ----, 131 S.Ct. 2705,*  
*2716-2717, 180 L.Ed.2d 610\_[regarding admissibility of lab report containing a*  
*testimonial certificate].)*

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21 <sup>5</sup> California law is more permissive as to the admission of footage that is the product of  
22 “computer information or a computer program” (such as a traffic-intersection video) than to  
23 other videos, and presumes that such footage is an accurate representation of “the computer  
information or computer program that it purports to represent.” Cal. Evid. Code §1552. This law  
is in contrast to all other videos, including those provided by anonymous sources on the internet  
such as in the present case.

1           *Id.* (emphasis added).

2           Also see *People v. Winters*, 147 Cal.Rptr.3d 825 (2012) (“red light camera” video  
3           in the absence of witnesses to authenticate the video violated the defendant’s Right  
4           to Confrontation and conviction was reversed).

- 5       7. After considering the evidence and argument brought before this Court, including the  
6       lack of witnesses, witness statements, and authenticated documents, this Court finds that  
7       the charges against Defendant Felarca in the above-titled case cannot proceed without  
8       violating her Sixth Amendment right to confront the witnesses against her, and that the  
9       evidence are inadmissible under the California Evidence Code.

10   Furtherance of justice

- 11       8. California Penal Code §1385 states: “The judge or magistrate may, either of his or her  
12       own motion or upon the application of the prosecuting attorney, and in furtherance of  
13       justice, order an action to be dismissed.” In considering what “further[s]... justice,” the  
14       Court “must consider the constitutional rights of the defendant, and the interests of  
15       society represented by the People.” *People v. Hatch*, 22 Cal.4th 260, 268 (2000) (citation  
16       omitted). Insufficient evidence is one ground for such dismissal: “Under these principles,  
17       trial courts historically have had the power to acquit for legal insufficiency of the  
18       evidence pursuant to section 1385.” *Id.* (citation omitted). When dismissing under §1385,  
19       the Court must set out the factual basis for doing so in the court record. *People v.*  
20       *McAlonan*, 22 Cal.App.3d 982, 985-986 (1972).

- 21       9. After considering the evidence and argument brought before this Court, including the  
22       conduct of law enforcement at the State Capitol on June 26, 2016 withholding from  
23       taking action to protect against knife attacks by fascists, lack of investigation of the
-

1 stabbings despite substantial evidence against the fascists, a concerted effort to prosecute  
2 anti-fascists, the selective and discriminatory conduct of police investigators, the lack of  
3 witnesses, witness statements, and authenticated documents, this Court finds that  
4 selective and discriminatory prosecution has been conducted against Defendant Felarca,  
5 as an anti-fascist protester on June 26, 2016, in violation of her First and Fourteenth  
6 Amendment rights to freedom of speech and association and to equal protection under the  
7 law, and that the charges against Defendant Felarca in the above-titled case cannot  
8 proceed without violating her Sixth Amendment right to confront the witnesses against  
9 her, and that the evidence are inadmissible under the California Evidence Code. In my  
10 discretion and upon these factual bases, I find that “the constitutional rights of the  
11 defendant, and the interests of society represented by the People” (*Hatch*) require  
12 dismissal of the charges against Defendant Felarca.

13 IT IS SO ORDERED.

14  
15 Date: \_\_\_\_\_

\_\_\_\_\_  
16 Hon. Jaime R. Román  
17 Judge of the Superior Court  
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