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10

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF LOS ANGELES
13

14 THE ASSOCIATION OF DEPUTY
DISTRICT ATTORNEYS FOR LOS
15 ANGELES COUNTY,

16 Plaintiff and Petitioner,

17 vs.

18 GEORGE GASCÓN, in his official capacity
as District Attorney for the County of Los
19 Angeles; LOS ANGELES COUNTY
DISTRICT ATTORNEY'S OFFICE; and
20 DOES 1 through 50, inclusive,

21 Defendants and Respondents.
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Case No.

**VERIFIED PETITION FOR WRIT OF
MANDATE AND/OR PROHIBITION AND
COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

*[Filed concurrently with Ex Parte Application
for TRO/OSC; Memorandum of Points and
Authorities in Support Thereof; Declarations
of Eric M. George and Michele Hanisee]*

*[[Proposed] Order Lodged Concurrently
Herewith]*

Petitioner and Plaintiff Association of Deputy District Attorneys for Los Angeles County petitions the Court for a writ of mandate and/or prohibition pursuant to Code of Civil Procedure section 1085 enjoining Defendants and Respondents George Gascón, in his official capacity as District Attorney for the County of Los Angeles, Los Angeles County District Attorney's Office, and Does 1 through 50 (together, "Respondents" or "Defendants"), from forcing compliance by this County's Deputy District Attorneys ("DDAs") with unlawful portions of recently-enacted Special Directives 20-08, 20-08.1, 20-08.2, and 20-14 (collectively, the "Special Directives").

INTRODUCTION

1. Respondent George Gascón, within weeks of his investiture as Los Angeles County’s District Attorney, has issued Special Directives that are not merely radical, but plainly unlawful. They command the deputy district attorneys (the “DDAs”) of Respondent Los Angeles County District Attorney’s Office to violate California’s constitution and laws:

- With respect to *future* cases, the Special Directives prohibit DDAs from charging mandatory criminal sentencing enhancements under the Three Strikes Law, which California enacted to protect its citizens from previously-convicted serious and violent felons; and
 - With respect to *pending* cases, the Special Directives require DDAs to withdraw all pre-existing enhancement allegations for six different types of sentencing enhancements.
- These provisions are plainly illegal. (Attached hereto as Exhibits A-D are interlineated copies of the Special Directives, with those portions excised that violate California law). DDAs cannot be commanded to violate the very sentencing enhancements that California law mandates.

2. As this County's District Attorney, Respondent Gascón enjoys wide – but not limitless – discretion in exercising his prosecutorial functions. He may not ignore, but must enforce, California's mandatory sentencing enhancement laws. They were adopted by California voters or elected legislators, then signed into law by the governor, and then tested and found constitutional by the judiciary. Such democratically-enacted mandates overcome Respondent Gascón's personally-held – and legally-irrelevant – views about the wisdom or constitutionality of California's mandatory sentencing enhancement laws. By implementing Special Directives that direct DDAs to violate California law, Respondents have plainly abused their discretion.

3. This Court is both empowered and obligated to enjoin this abuse of discretion. Indeed, only the immediate issuance of injunctive relief will dissolve the unseemly dilemma Respondents have foisted on the DDAs. As California State Bar members who are duty-bound to uphold California's constitution and laws, are the DDAs to follow their legal and ethical obligations? Or are they to follow their employer's edict? They cannot do both. Do they risk disciplinary action by the California State Bar, or risk being terminated for noncompliance with their employer?

4. This Court can and must, consistent with California’s separation of powers doctrine, issue immediate relief: (i) to declare illegal and unenforceable those offending portions of the Special Directives as identified in Exhibits A through D; (ii) to enjoin Respondents from commanding DDAs to enforce such offending portions; and (iii) to restore to the DDAs the *status quo ante* by which the DDAs may continue to charge – and not be compelled to move to dismiss – those sentencing enhancements mandated by California law.

THE PARTIES

5. Petitioner and Plaintiff Association of Deputy District Attorneys for Los Angeles County is the certified exclusive bargaining representative for Bargaining Unit 801, which consists of Deputy District Attorneys I, II, III, and IV, pursuant to Employee Relations Ordinance of the County of Los Angeles. Bargaining Unit 801 consists of approximately 800 deputy district attorneys in Los Angeles County (“DDAs”).

6. Respondent and Defendant Los Angeles County District Attorney's Office is the governmental agency responsible for prosecuting public offenses in Los Angeles County.

7. Respondent and Defendant George Gascón is the District Attorney for Los Angeles County.

JURISDICTION AND VENUE

8. This Court has jurisdiction to issue the relief requested pursuant to Code of Civil Procedure sections 526, 527, 1060, and 1085.

9. Venue is proper in this Court in that all of the Respondents are located within the County of Los Angeles, and the conduct underlying each cause of action alleged herein arose

1 within the County of Los Angeles.

2 10. Petitioner has a clear, present, and beneficial right to the performance of the
3 Respondents' duty to adhere to and enforce the law.

4 11. Petitioner has no plain, speedy and adequate remedy at law.

5 **FACTUAL ALLEGATIONS**

6 **Respondents Issue Numerous Unprecedented Special Directives**

7 12. Sentencing enhancements for prior convictions are laws enacted by legislation or
8 ballot initiatives that require the most serious and dangerous criminals to face enhanced sentences
9 as a result of the repeated commission of certain serious and violent felonies. The purpose of
10 these laws, including the Three Strikes Law (which requires lengthier sentences for individuals
11 previously convicted of serious or violent felonies) "has to do with preventing and punishing
12 crime, and with protecting the public from criminals." *People v. Kilborn*, 41 Cal. App. 4th 1325,
13 1329 (1996). The "core idea is that those who have not drawn the proper lesson from a previous
14 conviction and punishment should be punished more severely when they commit more crime
15 [T]he more serious the previous crime, the greater should be the punishment for a subsequent
16 offense." *Id.* These "laws have been part of the legal landscape for a very long time, and their
17 basic validity is beyond serious legal question." *Id.*

18 13. On December 7, 2020, when Respondent Gascón assumed the office of the District
19 Attorney of Los Angeles County, he attempted to uproot this long-standing system. Legislating
20 by fiat, Respondent Gascón immediately issued a series of special directives that all but repealed
21 California's sentencing enhancement laws and commanded his employees—Los Angeles County
22 ("County") prosecutors sworn to uphold and enforce the law—to violate numerous statutory
23 mandates and refrain from performing their duties under the law. The purpose of these directives
24 was in direct conflict with the goals of the sentencing statutes, which aim to protect the public and
25 to create an additional deterrent effect on individuals who commit repeated or particularly heinous
26 crimes by increasing sentences for those offenders. Instead, Respondent Gascón unilaterally
27 determined—based apparently on a single non-peer reviewed study in Michigan—that "the current
28 statutory ranges for criminal offenses alone, without enhancements, are sufficient to both hold

1 people accountable and also to protect public safety. While initial incarceration prevents crime
2 through incapacitation, studies show that each additional sentence year causes a 4 to 7 percent
3 increase in recidivism that eventually outweighs the incapacitation benefit.” Ex. A. Nowhere
4 does the Special Directive consider that the increased recidivism rate resulted from the same
5 factors that would cause an individual to serve a longer sentence in the first place (e.g., the
6 particularly malevolent nature of the crime or the inability to demonstrate good behavior or
7 rehabilitation in custody), rather than a result of the sentence itself.

8 14. Among these directives, Respondent Gascón issued Special Directive 20-08, which
9 provided that all “sentence enhancements or other sentencing allegations, including under the
10 Three Strikes law, shall not be filed in any cases and shall be withdrawn in pending matters.” Ex.

11 A. Special Directive 20-08 further specified:

12 Any prior-strike enhancements (Penal Code § 667(d), 667(e); 1170.12(a) and
13 1170.12(c)) will not be used for sentencing and shall be dismissed or withdrawn
14 from the charging document. This includes second strikes and any strikes arising
15 from a juvenile adjudication;

16 Any Prop 8 or “5 year prior” enhancements (Penal Code § 667(a)(1)) and “3 year
17 prior” enhancements (Penal Code § 667.5(a)) will not be used for sentencing and
18 shall be dismissed or withdrawn from the charging document;

19 STEP Act enhancements (“gang enhancements”) (Penal Code § 186.22 et. seq.)
20 will not be used for sentencing and shall be dismissed or withdrawn from the
21 charging document;

22 Special Circumstances allegations resulting in an LWOP [life without parole]
23 sentence shall not be filed, will not be used for sentencing, and shall be dismissed
24 or withdrawn from the charging document;

Violations of bail or O.R. [own recognizance] release (PC § 12022.1) shall not be
filed as part of any new offense;

If the charged offense is probation-eligible, probation shall be the presumptive offer
absent extraordinary circumstances warranting a state prison commitment. If the
charged offense is not probation eligible, the presumptive sentence will be the low
term. Extraordinary circumstances must be approved by the appropriate bureau
director.

25 *Id.*

26 15. On the same day, Respondent Gascón issued Special Directive 20-14, which
27 provided:

28 For any case that is currently pending, meaning that judgment has not yet been

1 entered, or where the case is pending for resentencing, or on remand from another
2 court, the Deputy District Attorney in charge of the case shall inform the Court at
the next hearing of the following:

3 ‘At the direction of the Los Angeles County District Attorney, in accordance with
4 Special Directive 20-08 concerning enhancements and allegations, and in the
interest of justice, the People hereby

- 5 1. join in the Defendant’s motion to strike all alleged enhancement(s);
6 or
- 7 2. move to dismiss all alleged sentence enhancement(s) named in the
information for all counts.’

8 Ex. B. Special Directive 20-14 also provided:

9 If the defendant or petitioner is serving a sentence that is higher than what he/she
10 would receive today, due to operation of law or by operation of the District
Attorney’s new Sentencing Policy, the deputy in charge of the case shall withdraw
11 any opposition to resentencing or sentence recall and request a new sentence that
complies with current law and/or the District Attorney’s new Sentencing Policy.
12 This policy applies even where enhancements were found true in a prior
proceeding. This policy shall be liberally construed to achieve its purposes.

13 . . .

14 On resentencing, this Office will dismiss enhancements consistent with our current
enhancement policies and otherwise not seek a sentence that is inconsistent with
15 this Office’s current sentencing policies.

16 . . .

17 [In any case] where the judgment is final [and] where the defendant received a
sentence that was inconsistent with the charging and sentencing policies in force
18 [under these Special Directives], this Office shall use its powers under Penal Code
section 1170(d)(1) to recommend recall and resentencing.

19 *Id.*

20 16. On December 15, 2020, Respondent Gascón issued Special Directive 20-08.1,
21 which purported to clarify the previous Special Directive 20-08. Ex. C. Special Directive 20-
22 08.1, explained that it was “intended to put an end to the practice of alleging strike priors and all
23 other special allegations. . . .” *Id.* In addition, it commanded County prosecutors to make the
24 following record in pending cases in which strike priors and/or enhancements had already been
25 alleged:

26 “The People move to dismiss and withdraw any strike prior (or other enhancement)
27 in this case. We submit that punishment provided within the sentencing triad of the
substantive charge(s) in this care are sufficient to protect public safety and serve
28 justice. Penal Code section 1385 authorizes the People to seek dismissal of all

1 strike prior(s) (or other enhancements) when in the interests of justice. Supreme
2 Court authority directs this Court to determine those interests by balancing the
3 rights of the defendant and those of society ‘as represented by the People.’ The
4 California Constitution and State Supreme Court precedent further vest the District
5 Attorney with sole authority to determine whom to charge, what charges to file and
6 pursue, and what punishment to seek. That power cannot be stripped from the
7 District Attorney by the Legislature, Judiciary, or voter initiative without amending
8 the California Constitution. It is the position of this office that Penal Code section
9 1170.12(d)(2) and Penal Code 667(f)(1) are unconstitutional and infringe on this
10 authority. Additional punishment provided by sentencing enhancements or special
11 allegations provide no deterrent effect or public safety benefit of incapacitation—in
12 fact, the opposite may be true, wasting critical financial state and local resources.”

13 17. Special Directive 20-8.1 further provided that “if a court refuses to dismiss the
14 prior strike allegations or other enhancements/allegations based on the People’s oral request, the
15 [Deputy District Attorney] shall seek leave of the court to file an amended charging document
16 pursuant to Penal Code section 1009.” In addition, “[i]f a court further refuses to accept an
17 amended charging document pursuant to Penal Code section 1009, the [Deputy District Attorney]
18 shall provide the following information to their head deputy: Case number, date of hearing, name
19 of the bench officer and the court’s justification for denying the motion (if any). The [Deputy
20 District Attorney] shall stipulate to any stay of proceedings if requested by the defense.”

21 *Id.*

22 18. On December 18, 2020, in response to substantial backlash from the public, crime
23 victims, and the County’s own deputy district attorneys, Respondent Gascón issued Special
24 Directive 20-08.2, which rolled back some portions of Respondents’ misguided sweeping policies.
25 Specifically, Special Directive 20-08.2 allowed—in appropriate and/or extraordinary
26 circumstances—prosecutors to allege sentencing enhancements for (1) hate crimes; (2) elder and
27 dependent adult abuse; (3) child physical abuse; (4) child and adult sexual abuse; (5) human sex
28 trafficking allegations; and (6) financial crimes. Ex. D. However, Special Directive 20-08.2
maintained the blanket, non-discretionary prohibition against (1) any prior-strike enhancements;
(2) any Proposition 8 or “5-year prior” enhancements and “three-year” prior enhancements; (3)
STEP Act enhancements (“gang enhancements”); (4) special circumstances allegations resulting in
a life without parole sentence; (5) violations of bail or O.R. release; and (6) firearms allegations.

Id.

1 19. The Special Directives prohibit any case-by-case exercise of discretion with respect
2 to these six enumerated enhancements. Simply put, none of them may be alleged or proven by
3 County prosecutors under any circumstances, regardless of the evidence or other circumstances.

4 The Special Directives Require Deputy District Attorneys to Violate California Law

5 20. The Special Directives require County prosecutors to violate California law, to
6 violate their oaths of office, and to violate their ethical and professional obligations.¹ They must
7 be immediately declared unlawful.

8 21. **First**, the Special Directives violate the Three Strikes Law by prohibiting
9 prosecutors from pleading and proving prior convictions in new cases. In adopting the Three
10 Strikes Law, the People of California determined that increased punishment for repeat offenders
11 was so vital to effectuate the goals of sentencing and to protect the public from violent criminals
12 that it made the prosecutor’s duty to seek the Three Strikes enhancement absolute. In cases where
13 the Three Strike Law applies, the prosecutor has no discretion to refuse to seek the enhancement—
14 he or she is bound by law to do so. Thus, while generally “the selection of criminal charges is a
15 matter subject to prosecutorial discretion . . . the Three Strikes Law limits that discretion and
16 *requires* the prosecutor to plead and prove each prior serious felony conviction.” *People v.*
17 *Roman*, 92 Cal. App. 4th 141, 145 (2001) (emphasis added); *see also People v. Gray*, 66 Cal. App.
18 4th 973, 994 (1998). Accordingly, prosecutors have a ministerial duty to allege all prior
19 convictions under the Three Strikes Law. Respondents have refused, and are refusing, to perform
20 this duty. Further, Respondents have ordered County prosecutors to violate the law by prohibiting
21 them from pleading prior strikes in accordance with their duties under the statute. *See* Cal. Bus. &
22 Prof. Code § 6068 (“It is the duty of an attorney to do all of the following: (a) To support the
23 Constitution and laws of the United States and of this state.”).

24 22. Moreover, the Special Directives require DDAs to incorrectly argue that the
25 mandatory obligation to plead and prove strikes is unconstitutional as violative of the separation of
26

27 ¹ A compendium of the Penal Code sections flouted by the Special Directives is attached hereto as
28 Exhibit J.

1 powers. The First and Second District Courts of Appeal have repeatedly held that this limitation
2 on discretion does *not* violate the separation of powers. *See, e.g., Kilborn*, 41 Cal. App. 4th at
3 1333 (“We conclude that the enactment of the Three Strikes initiative did not violate the
4 separation of powers provision of the State Constitution.”); *Roman*, 92 Cal. App. 4th at 145 n.2
5 (“This limitation on prosecutorial discretion does not violate the separation of powers doctrine.”);
6 *People v. Gray*, 66 Cal. App. 4th 973, 995 (1998); *People v. Butler*, 43 Cal. App. 4th 1224, 1247–
7 48 (1996). And even if the constitutionality of the Three Strikes Law were not already settled law,
8 Respondent Gascón would have no authority to refuse his ministerial duty to plead and prove
9 strikes based on his personal perception of their constitutionality. The Supreme Court has made
10 clear that “a local executive official, charged with a ministerial duty, generally lacks authority to
11 determine that a statute is unconstitutional and on that basis refuse to apply the statute.” *Lockyer*
12 *v. City & Cty. of San Francisco*, 33 Cal. 4th 1055, 1086 (2004). Instead, “the determination
13 whether a statute is unconstitutional and need not be obeyed is an exercise of judicial power and
14 thus is reserved to those officials or entities that have been granted such power by the California
15 Constitution.” *Id.* at 1092–93.

16 23. ***Second***, the Special Directives violate Respondents’ specific duty to prosecute
17 violations of general laws under California Government Code section 26500. “This duty is
18 mandatory, not discretionary.” *City of Merced v. Merced County*, 240 Cal. App. 2d 763, 766
19 (1996). Although a district attorney has discretion to determine what charges to file (if any) in any
20 particular case, the district attorney cannot wholly decline to exercise that discretion by
21 indiscriminately prohibiting the prosecution of all violations of certain offenses. Simply put,
22 Respondents have a ministerial duty to enforce the law and to exercise their prosecutorial
23 discretion in particular cases. Respondents have failed, and are failing, to do either. *See People ex*
24 *rel. Becerra v. Superior Court*, 29 Cal. App. 5th 486 (2018) (holding that “a district attorney’s
25 ‘mandatory’ duty is to exercise his or her *discretion* to prosecute crimes,” and that mandate may
26 be appropriate to compel the district attorney to take certain action “if a district attorney failed and
27 refused to prosecute any crimes whatsoever”).

28 24. Both the Washington Supreme Court and the Arizona Supreme Court have

1 concluded that blanket prosecutorial policies that do not allow for the exercise of case-by-case
2 discretion are unlawful. In *State v. Pettitt*, 93 Wash. 2d 288 (1980), the prosecutor filed an
3 information asserting that the defendant was a “habitual criminal,” which made him eligible for an
4 enhanced sentence. *Id.* at 296. At the time, “the Lewis County prosecuting attorney had a
5 mandatory policy of filing habitual criminal complaints against all defendants with three or more
6 prior felonies. *Id.* at 290. Under the policy, “once the prior convictions were clearly established
7 by the record, [the prosecutor] had no choice but to file a supplemental information.” *Id.* The
8 prosecuting attorney further testified that, in this particular case, “he did not consider any
9 mitigating circumstances in reaching his decision, and that he could imagine no situation which
10 would provide for an exception to the mandatory policy.” *Id.* In vacating the sentence, the
11 Washington Supreme Court held that “this fixed formula which requires a particular action in
12 every case upon the happening of a specific series of events constitutes an abuse of the
13 discretionary power lodged in the prosecuting attorney.” *Id.* Similarly, in *State v. City Court of*
14 *City of Tucson*, 150 Ariz. 99 (1986), the Arizona Supreme Court also concluded that such blanket
15 prosecutorial policies were unlawful. *Id.* at 102. There, the city attorney had instituted a policy
16 requiring that all prosecutors file a peremptory challenge in every case against a particular judge.
17 Citing *Pettitt*, the Arizona Supreme Court held that this was impermissible, reasoning that the
18 policy “infringed upon the obligation of each Deputy City Prosecutor to exercise his or her
19 individual professional judgment on a case by case basis.” *Id.*

20 25. California has also held impermissible similar blanket refusals to exercise
21 discretion conferred on executive branch officials. In *In re Morrall*, 102 Cal. App. 4th 280 (2002),
22 the Court of Appeal considered a challenge to the Governor’s refusal to grant an inmate parole.
23 The court recited the well-established rule that there is no right to parole before the expiration of
24 the defendant’s sentence; that “[t]he decision [whether to grant parole], and the discretion implicit
25 in it, are expressly committed to the executive branch”; and that, “[i]n this respect, the discretion
26 of the parole authority has been described as ‘great’ and ‘almost unlimited.’” *Id.* at 287.
27 Nonetheless, the court squarely held that “[i]t is without doubt that a blanket no-parole policy
28 would be contrary to the law,” because the Governor is required to make an “individualized

1 [determination] of an inmate’s suitability for parole.” *Id.* at 291 (citing *Roberts v. Duffy*, 167 Cal.
2 629, 640–41 (1914) and *In re Minnis*, 7 Cal. 3d 639, 642 (1972)). Thus, “[a] refusal to consider
3 the particular circumstances relevant to an inmate’s individual suitability for parole would be
4 contrary to the law.” *Id.* at 292.

5 26. **Third**, the Special Directives demand that County prosecutors violate the law by
6 requiring them to bring a motion—and to refuse to oppose a motion at resentencing—to strike
7 prior convictions and special circumstances resulting in a sentence of life without parole in *all*
8 pending cases in which they have already been alleged. However, the striking of these prior
9 convictions and special circumstances is prohibited by law in many cases. For example, after a
10 prior conviction has been pleaded in accordance with the Three Strikes Law, a prosecutor may
11 only move to strike a prior conviction if it is “in the furtherance of justice pursuant to [Penal
12 Code] section 1385,” or if there is insufficient evidence to prove the allegations. Cal. Pen. Code
13 § 1170.12(d)(2); *see also People v. Romero*, 13 Cal. App. 2d 667, 670 (1936) (“[T]he legislature
14 has gone so far as to guard against the likelihood of the court doing violence to the interest of
15 justice by providing that such order [to strike] can be made only ‘in the furtherance of justice.’”).
16 “[T]he language of that section, ‘furtherance of justice,’ requires consideration of both the
17 constitutional rights of the defendant, and *the interests of society represented by the People*, in
18 determining whether there should be a dismissal At the very least, the reason for dismissal
19 must be ‘that which would motivate a reasonable judge.’” *People v. Orin*, 13 Cal.3d 937, 945
20 (1975) (emphasis in original). “Such a determination, however, can be properly made only when
21 the sentencing court focuses on considerations that are pertinent to the specific defendant being
22 sentenced, not an aversion to a particular statutory scheme.” *People v. Dent*, 38 Cal. App. 4th
23 1726, 1732 (1995); *see also* Ex. E² (Hon. Judge Mark S. Arnold refusing to grant motion to strike
24 enhancement pursuant to Special Directives because “society has an interest in the fair prosecution
25 of properly alleged crimes and enhancements.”).

26
27 ² Attached hereto as Exhibit E is a true and correct copy of a court transcript of the Honorable
28 Judge Mark S. Arnold’s statements.

1 27. In addition, a prosecutor may not move to strike or dismiss any special
2 circumstances alleged under California Penal Code sections 190.1 to 190.5 which have been
3 admitted by a plea of guilty or nolo contendere or found by a jury or court to be true. Pen. Code
4 § 1385.1. This mandate was added to the statute by voter initiative Proposition 115 and it cannot
5 be overturned by the state legislature, much less the District Attorney. *See People v. Johnwell*,
6 121 Cal. App. 4th 1267, 1283-84 (2004).

7 28. Notwithstanding these limitations, the Special Directives require County
8 prosecutors to bring the motion—or refuse to oppose a motion on resentencing—in *all* cases,
9 regardless whether the particular circumstances would motivate a reasonable judge and regardless
10 of whether it is permitted under the statute. This command not only violates the law, but also
11 requires the County prosecutors to violate their ethical duties. *See* Cal. Rules Prof. Conduct, rule
12 1.2.1 (“[A] lawyer shall not violate the lawyer’s duty under Business and Professions Code section
13 6068, subdivision (a) to uphold the Constitution and laws of the United States and
14 California . . .”); *see also id.*, rule 3.3 (“A lawyer shall not . . . fail to disclose to the tribunal legal
15 authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position
16 of the client and not disclosed by opposing counsel.”).

17 29. ***Fourth***, the Special Directives violate the Three Strikes Law by purporting to wrest
18 from the judiciary its legislatively mandated role in determining whether a prior conviction should
19 be stricken “in furtherance of justice.” When a prosecutor moves to strike a prior conviction,
20 ultimately the Court—not the prosecutor—decides whether doing so would be in the interests of
21 justice. *See People v. Roman*, 92 Cal. App. 4th 141, 148 (2001). The Special Directives seek to
22 circumvent the Court’s role by requiring County prosecutors to file an amended charging
23 document abandoning the allegations in the event the motion is denied. However, this tactic runs
24 afoul of section 1386, which provides that once a prosecution has been initiated, “neither the
25 Attorney General nor the district attorney can discontinue or abandon a prosecution for a public
26 offense” without permission of the Court. Pen. Code § 1386. Respondents have a ministerial duty
27 to proceed with prosecution once it has been initiated unless the Court permits it to be dismissed.
28 Respondents have failed, and are failing, to perform this duty.

1 30. The illegality of Respondent’s Special Directives has placed line prosecutors in an
2 ethical dilemma—follow the law, their oath, and their ethical obligations, or follow their
3 superior’s orders. Indeed, Judges have already scolded deputy district attorneys for following the
4 Special Directives in the face of their obligations under the law. *See* Ex. F³ (Hon. Judge Laura F.
5 Priver stating to prosecutor: “I understand it came from the top. I understand why you’re making
6 the motion, but the Court will deny the motion as to each and every one of the other allegations.
7 You have an ethical duty to do your job and proceed with prosecution. You should not be allowed
8 to abandon the prosecution at this juncture.”); *see also* Ex. G⁴ (Hon. Judge Laura F. Priver stating
9 to prosecutor in response to motion to dismiss enhancement: “[A]lthough I understand you’re
10 operating under your directives, I think it’s unethical”); Ex. H⁵ (Hon. Judge Douglas Sortino
11 denying a motion to strike an enhancement because “Mr. Gascon’s directive is a blanket directive
12 that applies to all cases and all circumstances, regardless of the defendant, or the facts and
13 circumstances of the case . . . I think under those circumstances, it is not a sufficient basis under
14 1385 to articulate or support a finding of a dismissal in the interest of justice.”).

15 31. Exacerbating this conundrum, Respondents have dispatched agents to monitor
16 prosecutors at their hearings to ensure that they abide by the Special Directives rather than the law.
17 Respondents have also falsely claimed and asserted that “[p]rosecutors are sworn to follow the
18 directives of the elected D.A,” when, in truth, prosecutors swear an oath only to defend and uphold
19 the Constitution and the laws of this State. Cal. Const. Art. XX, § 3. Ex. I.⁶ For at least one that
20

21 _____
22 ³ Attached hereto as Exhibit F is a true and correct copy of a court transcript of the Honorable
23 Judge Laura F. Priver’s statements at a hearing in which a prosecutor moved to strike prior
24 convictions pursuant to the Special Directives.

24 ⁴ Attached hereto as Exhibit G is a true and correct copy of a court transcript of the Honorable
25 Judge Laura F. Priver’s statements.

25 ⁵ Attached as Exhibit H is a true and correct copy of a court transcript of the Hon. Douglas
26 Sortino’s statements.

27 ⁶ Attached hereto as Exhibit I is a true and correct copy of an LA Times article containing
28 Respondent Gascón’s statement.

1 has remained steadfast and chosen to uphold the law, Respondents have exacted retribution,
2 issuing a letter of reprimand against that prosecutor.

3 32. As the District Attorney, Respondent Gascón has no authority to legislate and no
4 right to unilaterally abrogate the law—no matter his personal opinion as to the law’s merits.
5 “[U]nder our system of government no man is above the law.” *Jenkins v. Knight*, 46 Cal.2d 220,
6 223 (1956). Where an executive officer is compelled by law to act, but fails to do so, “it has been
7 established that the duty is ministerial and that its performance may be compelled by mandamus.”
8 *Id.* at 224.

9
10 **FIRST CAUSE OF ACTION**
(WRIT OF TRADITIONAL MANDATE)

11 33. Petitioner incorporates by reference the preceding paragraphs as if fully set forth
12 herein.

13 34. Petitioner seeks a writ of traditional mandamus under Code of Civil Procedure
14 section 1085, which provides that a writ of traditional mandamus is available to compel public
15 agencies to perform acts required by law, for failure to perform a mandatory duty, or for review of
16 quasi-legislative action by a local agency. A writ of traditional mandamus “may be issued by any
17 court to any inferior tribunal, corporation, board, or person, to compel the performance of an act
18 which the law specially enjoins, as a duty resulting from an office, trust, or station, or to compel
19 the admission of a party to the use and enjoyment of a right or office to which the party is entitled,
20 and from which the party is unlawfully precluded by that inferior tribunal, corporation, board, or
21 person.” Cal. Civ. Proc. Code § 1085(a).

22 35. Petitioner has a clear, present, and direct beneficial interest in, and right to,
23 Respondents’ performance of their legal duty to adhere to and enforce the law, which includes a
24 duty to obey statutes regarding mandatory sentencing enhancements. This duty to enforce the
25 sentencing enhancements is ministerial and does not implicate any discretion on the part of
26 Respondents.

27 36. At all times relevant to this action, Respondents have had the ability to perform the
28 duties set forth herein, and have failed and refused to do so.

1 37. Unless compelled by this Court to perform those acts and duties and to refrain from
2 acts as required by law, Respondents will continue to refuse to perform said duties and continue to
3 violate the law, and Petitioner and others similarly situated, as well as the public, will be injured as
4 a result. Petitioner and others have no plain and speedy adequate alternative remedy.

5 **SECOND CAUSE OF ACTION**

6 **(DECLARATORY AND INJUNCTIVE RELIEF)**

7 38. Petitioner incorporates by reference the preceding paragraphs as if fully set forth
8 herein.

9 39. Code of Civil Procedure section 1060 authorizes a court to render a declaratory
10 judgment in cases of actual controversy relating to the legal rights and duties of the respective
11 parties.

12 40. Code of Civil Procedure section 526 authorizes a court to issue injunctive relief.
13 Such relief is warranted: (i) where the moving party “is entitled to the relief demanded, and the
14 relief, or any part thereof, consists in restraining the commission or continuance of the act
15 complained of, either for a limited period or perpetually” (§ 526(a)(1)); (ii) “the commission or
16 continuance of some act during the litigation would produce waste, or great or irreparable injury,
17 to a party to the action” (§ 526(a)(2)); (iii) where “a party to the action is doing, or threatens, or is
18 about to do, or is procuring or suffering to be done, some act in violation of the rights of another
19 party to the action in respecting the subject of the action, and tending to render the judgment
20 ineffectual” (§ 526(a)(3)); or (iv) when pecuniary compensation would not afford adequate relief
21 (§ 526(a)(4)).

22 41. Petitioner and others similarly situated stand to suffer immediate irreparable injury
23 unless the court enjoins the Respondents’ Special Directives. No money damages or other legal
24 remedy could adequately compensate them for the irreparable harm Respondents’ conduct has
25 caused, continues to cause, and threatens to cause them.

26 42. An actual controversy exists between Petitioner and Respondents in that Petitioner
27 contends that Respondents are acting in violation of the law, and requiring County prosecutors to
28 violate the law, by refusing to allege and prove any and all required sentencing enhancements.

43. Petitioner has no plain, speedy, or adequate remedy at law other than the relief requested herein.

44. Petitioner is entitled to temporary, preliminary and permanent injunctive relief requiring Respondents to comply with their legal duties as alleged herein.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays:

1. That a Preemptory Writ of Prohibition issue commanding Respondents to cease all enforcement of the Special Directives;

2. That a Preemptory Writ of Mandate issue commanding Respondents to rescind the Special Directives;

3. In the alternative, that an alternative writ of mandate and/or prohibition issue commanding Respondents to cease acting and/or to act as specified in Paragraphs 1 and 2 of this Prayer for Relief, or to show cause why they should not be ordered to do so, and upon return of the alternative writ, the court issue a preemptory writ as set forth in Paragraphs 1 and 2 of this Prayer for Relief or issue such other extraordinary relief as is warranted;

4. For a declaration that the Special Directives are invalid and illegal;

5. For a temporary restraining order, preliminary injunction, and permanent injunction barring enforcement of the Special Directives;

6. For attorneys' fees and costs incurred herein; and

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7. For such other and further relief as the court deems just and proper.

DATED: December 30, 2020

BROWNE GEORGE ROSS
O'BRIEN ANNAGUEY & ELLIS LLP

Eric M. George
Thomas P. O'Brien
David J. Carroll
Matthew O. Kussman



By: _____

Eric M. George

Attorneys for Plaintiff and Petitioner The Association of
Deputy District Attorneys for Los Angeles County

VERIFICATION

I, Michele Hanisee, declare as follows:

I am the President of The Association of Deputy District Attorneys for Los Angeles County, the Petitioner and Plaintiff in this action. I have read the VERIFIED PETITION FOR WRIT OF MANDATE AND/OR PROHIBITION AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF. As to the matters stated therein, I am informed and believe that they are true and correct.

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

Executed on December 29, 2020 at Los Angeles, California


Michele Hanisee