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6 SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

7 ASSOCIATION OF DEPUTY DISTRICT
8 ATTORNEYS FOR LOS ANGELES COUNTY

9 Plaintiff and Petitioner,

11 v.

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

16 Defendants and
Respondents.

COURT CASE NO. 20STCP04250

CALIFORNIA DISTRICT ATTORNEYS
ASSOCIATION APPLICATION TO
FILE AMICUS BRIEF IN SUPPORT
OF PLAINTIFF AND PETITIONER
ASSOCIATION OF DEPUTY
DISTRICT ATTORNEYS FOR LOS
ANGELES COUNTY

DATE: February 2, 2021
TIME: 1:30 p.m.
DEPT: 85

17 TO THE HONORABLE JAMES C. CHALFANT, JUDGE OF THE SUPERIOR COURT FOR
18 THE COUNTY OF LOS ANGELES:

19 The California District Attorneys Association (CDAA) hereby makes application to this
20 Court to file the accompanying amicus curiae brief in support of Plaintiff and Petitioner
21 Association of Deputy District Attorneys for Los Angeles County. Although the Rules of Court
22 do not provide for the filing of amicus briefs at the Superior Court level, CDAA presents
23 briefing that addresses the issues from a distinct viewpoint as that of the parties and other
24 amicus. Consequently, CDAA's proposed amicus brief would be of assistance to this Court
25 in resolving the important issues presented in this case. The acceptance of amicus briefing
26 is within this Court's discretion. (See, e.g. *Overstock.com, Inc. v. Goldman Sachs Group, Inc.*
27

28 CALIFORNIA DISTRICT ATTORNEYS ASSOCIATION APPLICATION TO FILE AMICUS BRIEF IN
SUPPORT OF PLAINTIFF AND PETITIONER ASSOCIATION OF DEPUTY DISTRICT ATTORNEYS FOR
LOS ANGELES COUNTY

1 (2014) 231 Cal.App.4th 471, 489.) This brief is presented in the spirit of rules 8.487, 8.520,
2 and 8.630 of the California Rules of Court.

3
4 **Applicant's Interest in the Proceedings**

5 CDAA is a statewide organization serving the collective interests and educational goals
6 of District Attorneys' offices. As part of its role, CDAA keeps its members apprised of
7 developments in the law that impact those members, and acts as a voice for the common
8 interest of those members.

9 CDAA has an interest in this litigation because of the shared mission of its members
10 to best serve the cause of justice and give a voice to the victims of crime throughout the state.
11 As the largest county in California by population, the decisions of the Los Angeles District
12 Attorney have a significant impact on those victims and the interests of justice.

13 Furthermore, the deputy district attorneys of Los Angeles County have a collective
14 interest in ensuring that they may make prosecutorial decisions legally and ethically. An
15 adherence to the mandates of the California Constitution is crucial to the ethical prosecution
16 of cases. CDAA supports the efforts of the Plaintiff and Petitioner to maintain the ability to
17 practice the high ethical standards for which it is known.

18
19 **Purpose and Assistance of Proposed CDAA Amicus Brief**

20 The accompanying proposed amicus brief focuses on the foundations of the California
21 Constitution and its guarantees of the rights of victims, as well as the role of prosecutors in
22 making certain that those rights remain recognized within the criminal justice system. The
23 opposition briefing of Defendants and Respondents does not speak to victims at all, other
24 than mentioning them in passing in quoting from one of the District Attorney's directives.
25 Similarly, other amicus briefs submitted to this Court for consideration ignore the impact of
26 crime upon victims, focusing solely on defendants instead.

1 By presenting briefing that concerns itself more directly with the victims of crime, CDAA
2 hopes to provide this Court with a more balanced view about the criminal justice system in
3 our state as it pertains to the pending issues.

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6 Respectfully submitted,

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13 _____
14 Gregory D. Totten
15 Attorney for Amicus Curiae
16 California District Attorneys Association

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Date January 25, 2021

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1 **I. INTRODUCTION**

2 Safeguarding the individual from sovereign injustice ranks among the principles held
3 most dear in our criminal justice system. At the core of our national belief structure is the
4 conviction that government’s might has no greater moment than when it is used to shield the
5 powerless from unmerited or unfair treatment.

6 The People of the State of California recognize that this core belief has more meaning
7 than providing procedural protection for the accused in a criminal case. Where violence
8 damages or destroys a life, or where fruits of hard work are torn from someone through
9 criminal conduct, inaction by the State to redress the wrong wreaks just as much havoc upon
10 our communities’ confidence as the improper wielding of power against a criminal defendant.
11 California’s Constitution embodies the State’s focus on the rights and protections by declaring
12 that “[c]riminal activity has a serious impact on the citizens of California. The rights of victims
13 of crime and their families in criminal prosecutions are a subject of grave statewide concern.”
14 (Cal. Const., art. I, § 28, subd. (a)(1).)

15 Prosecutors play a unique and critical role in ensuring that state law is both properly
16 and justly applied to the prosecution of defendants, while also fulfilling their duties to protect
17 the rights and voices of the victims of crime. Only with a measured decision based upon the
18 facts of each case may the appropriate application of existing law be brought to any
19 prosecution, or any decision on whether prosecution should be pursued. Blanket directives
20 that effectively nullify state law not only act to marginalize crime victims, they also serve to
21 place individual prosecutors in ethical harm’s way. When each deputy district attorney has a
22 solemn legal and moral obligation to uphold the state and federal constitution, an
23 administrative decision to curtail individualized consideration of cases forces the attorney to
24 choose between that which is right and that which is commanded.

25 The recent policy edicts of the Los Angeles County District Attorney place his deputies
26 in an impossible situation. In order to comply with the directives, each deputy must abandon
27 the laws instituted by this state designed to bring measured justice based upon the facts of
28

1 each case, and must further ignore the voices and interests of the victims of crime despite
2 constitutional duties to the contrary.

3 Prosecutorial discretion plays a fundamental role in any just society. And while every
4 District Attorney must be able to craft policy to best serve his or her community, so, too, must
5 each deputy be able to fulfill the duties incumbent on every prosecutor. Without individual
6 recognition, the voices of victims fall silent and the might of the State has failed its most
7 vulnerable.

8 9 **II. PROSECUTORS' ETHICAL DUTIES TO VICTIMS**

10 Over the course of more than 35 years, the People of the State of California struggled
11 to have the rights of victims acknowledged and enforced in the state's criminal courts. The
12 genesis of the constitutional provisions collectively known as "The Victim's Bill of Rights"
13 originated in 1982 with the enactment of Article I, section 28 of the California Constitution via
14 initiative. (*People v. Hannon* (2016) 5 Cal.App.5th 94, 99 – 100.) The People then amended
15 and expanded the constitutional rights of victims in 2008 with the passage of "Marsy's Law."
16 (*Id.*, at p. 99.)

17 The importance of governmental focus on public safety and the rights of victims is
18 spelled out clearly within the Constitution. "California's victims of crimes are largely
19 dependent upon the proper functioning of government, upon the criminal justice system and
20 upon the expeditious enforcement of the rights of victims of crime . . .in order to protect the
21 public safety and to secure justice when the public safety has been compromised by criminal
22 activity." (Cal. Const., art. I, § 28, subd. (a)(2).) Similarly, the People's expectations were
23 also not left to the imagination of the courts or the executive. "Victims of crime have a
24 collectively shared right to expect that persons convicted of committing criminal acts are
25 sufficiently punished in both the manner and the length of the sentences imposed by the
26 Courts of the State of California." (Cal. Const., art. I, § 28, subd. (a)(5).)

1 To effect these essential goals, article 28 provides a litany of rights afforded to victims
2 of crime. These rights include 17 nonexclusive, explicit areas guiding the criminal justice
3 system, including the rights for the victim to be protected, (subd. (b)(2)), the right to have
4 victim safety considered in the setting of bail, (subd. (b)(3)), the rights of the victim to be
5 apprised of the proceedings and how the prosecution intends to proceed, (subds. (b)(6) – (8),
6 (10) – (12)), and the right to restitution, (subd. (b)(13)).

7 Article I, section 28 is not the only part of the Constitution in which California prescribed
8 the need to protect victims of crime.¹ Article I, section 12 also lists particular circumstances
9 in which bail may be denied altogether based upon the danger to victims or others. Article 1,
10 section 29 guarantees the rights of due process and speedy trial to the People, from which
11 the same rights may be attributed to crime victims. (*People v. Lynch* (2010) 50 Cal.4th 693,
12 727, overruled on other grounds, *People v. McKinnon* (2011) 52 Cal.4th 610, 637 – 643.) And
13 Article 1, section 30, subdivision (b) permits the use of hearsay testimony at preliminary
14 hearings in order to protect victims and witnesses. Without question, the People of California
15 have taken significant steps to protect victims above the reach of the legislature, the
16 executive, or the judiciary.

17 As a representative of the sovereign state itself, a prosecutor is bound not to the whims
18 of a client, but rather to a duty of impartial governance and a pursuit of justice in every case.
19 (See *People v. Hill* (1998) 17 Cal.4th 800, 820, pointing to the United States Supreme Court's
20 framework of the role of the United States Attorney in *Berger v. Bain* (1935) 295 U.S. 78, 88
21 (*Berger*.) In California, this means that the prosecutor plays a special role in fairly protecting
22 the victims of crime. For while a criminal defendant has among her or his protections the right
23 to be appointed counsel of her or his own based upon the Sixth Amendment to the United
24 States Constitution and Article I, section 15 of the California Constitution, (*Gideon v.*
25 *Wainwright* (1963) 372 U.S. 335 and *People v. Chavez* (1980) 26 Cal.3d 334, 344), the victim
26 of crime has no equivalent protection. To provide balance against the voice of defense

27 ¹ Among Californians' inalienable rights is the right to pursue and obtain safety. (Cal. Const.
28 art. 1, § 1.)

1 counsel, who owes primary fealty to the accused,² the prosecutor must ensure that the
2 constitutional rights and interests of the victims do not fall from the attention of the judicial
3 process. Otherwise, the prosecutor’s oath and legal duty to “support the Constitution and
4 laws of the United States and of this state,” (Bus. & Prof. Code, § 6068, subd. (a)) becomes
5 meaningless, particularly when the California Constitution charges prosecutors with
6 enforcement of crime victims’ constitutional rights. (Cal. Const., art. I, § 28 (c)(1) (“[T]he
7 prosecuting attorney upon request of the victim . . . may enforce the rights enumerated in
8 subdivision (b) in any trial or appellate court with jurisdiction over the case as a matter of
9 right.”).)

10 The sanctity of this role is further underscored if the Superior Court binds the hands of
11 the victim. (See, e.g., *People v. Subramanyan* (2016) 246 Cal.App.4th Supp 1, 7 (a victim
12 may not step into the shoes of the prosecutor).) As the only truly empowered advocate in a
13 criminal court with a duty to pursue a complete and just result, the gravity of the attention to
14 the rights of victims shines paramount. “[The prosecutor] is in a peculiar and very definite
15 sense the servant of the law, the twofold aim of which is that guilt shall not escape or
16 innocence suffer.” (*People v. Superior Court (Greer)* (1977) 19 Cal.3d 255, 266, citing *Berger*,
17 *supra*.) While the second segment of that aim has often been the subject of much
18 commentary, a view to the core functions of a prosecutor and her or his duty to be the voice
19 for the victimized must not fade in the twilight. While every California attorney shoulders an
20 obligation not to reject the cause of the defenseless or the oppressed, (Bus. & Prof. Code, §
21 6068, subd. (h)), few carry that duty through every case like those in government service
22 practicing criminal law. The role of a public defender in fulfilling that duty is quite visible and
23 easy to comprehend at a glance. But the commitment of shepherding the powerless in a
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26 ² See, e.g., Business and Professions Code section 6068, subds. (c), (e)(1), (h); rules 1.2(a),
27 1.3(a), 1.4, 1.4.1(a), 1.9, 3.1(b), 3.6(c), and 3.7(c) of the Rules of Professional Conduct; and
28 *Strickland v. Washington* (1984) 466 U.S. 668, 688 (“Counsel’s function is to assist the
defendant, and hence counsel owes the client a duty of loyalty, a duty to avoid conflicts of
interest.”).

1 hostile system plays no lesser role in the hearts of the deputy district attorneys of Los Angeles
2 County as they walk into court each day.

3
4 **III. A DISTRICT ATTORNEY MAY NOT SUBSTITUTE HIMSELF FOR THE**
5 **ELECTORATE, THE LEGISLATURE OR THE COURTS AND CHOOSE TO IGNORE THE**
6 **LAW**

7 As well illustrated by the filings of the Plaintiff and Petitioner in this case, the District
8 Attorney of Los Angeles issued several policy directives to his staff that purported to nullify
9 California law. At least three of those policies in particular acted as an attempt to erase
10 California statutes from application in his county, the largest county by population in the state
11 by far.³

12 Special Directive 20-06 (20-6) created a presumptive pretrial release of criminal
13 defendants and elimination of cash bail. Special Directive 20-08 (20-8) swept away the
14 application of statutory sentence enhancements (including Special Circumstances for
15 murder), although the District Attorney has twice modified his stance in the face of outcry.
16 Special Directive 20-14 (20-14) included, in part, a blanket default prohibition against office
17 members participating in parole hearings. Each of these directives served to suspend the
18 application of many and varied long-standing California statutes, and in the case of bail,
19 revoked both constitutional and statutory provisions. While a District Attorney certainly has
20 significant discretion to determine how the law might best be used to serve justice in an
21 individual case,⁴ such discretion does not translate to an ability to usurp separation of powers

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23 ³ According to the United States Census Bureau, the estimated population of Los Angeles
24 County in 2019 was 10,039,107, representing more than 25% of California's estimated total
25 population of 39,512,223. (United States Census Bureau County Population Totals 2010 –
26 2019, <[https://www.census.gov/data/datasets/time-series/demo/popest/2010s-counties-
total.html](https://www.census.gov/data/datasets/time-series/demo/popest/2010s-counties-total.html)> (visited January 23, 2021).) The next-largest county in the state, San Diego, is
one-third the size of Los Angeles. (*Ibid.*)

27 ⁴ "It is well established, of course, that a district attorney's enforcement authority includes the
28 discretion either to prosecute or to decline to prosecute an individual when there is probable
cause to believe he has committed a crime." (*Davis v. Municipal Court* (1988) 46 Cal.3d 64,
BRIEF OF AMICUS CURIAE CALIFORNIA DISTRICT ATTORNEYS ASSOCIATION IN SUPPORT OF
PLAINTIFF AND PETITIONER

1 lines and permit the District Attorney to undo the laws passed by the Legislature and approved
2 by the Governor. Nor does it permit him to tie the hands of his deputies to the extent that they
3 cannot fulfill their own individual ethical obligations as prosecutors.

4 As described in part above, bail in California has its roots within the state Constitution.
5 With notable exceptions that permit the denial of bail in the face of threats to victims' safety,
6 a defendant in California "shall be released *on bail by sufficient sureties . . .*" (Cal. Const.
7 art. I, § 12.) And nothing about this constitutional application of bail prevents a court, in the
8 exercise of its appropriate discretion, from releasing a criminal defendant on her or his own
9 recognizance. (*Ibid.*) Moreover, the Constitution sets forth the factors to be used in the setting
10 of bail.

11 Excessive bail may not be required. In setting, reducing or denying bail, the
12 judge or magistrate shall take into consideration the protection of the public, the
13 safety of the victim, the seriousness of the offense charged, the previous
14 criminal record of the defendant, and the probability of his or her appearing at
the trial or hearing of the case. *Public safety and the safety of the victim shall
be the primary considerations.*

15 (Cal. Const. art. I, § 28, subd. (f)(3), emphasis added.)

16 Similarly, the Legislature instituted a parallel statutory mandate in the application of
17 bail. A judge or magistrate setting bail must consider the protection of the public, the nature
18 of the offense, the defendant's criminal record and the likelihood of appearance before the
19 court. (Pen. Code, § 1275, subd. (a)(1).) Of utmost importance in the consideration is the
20 safety of the public. (*Ibid.*) Further appropriate considerations for the court are the presence
21 and extent of injuries to the victim and the use of weapons. (Pen. Code, § 1275, subd. (a)(2).)

22 It is quite clear from the District Attorney's edict in 20-6 that he believes that the setting
23 of bail is an inequitable institution, and that he laments the recent decision of the electorate
24 that it should remain. (See 20-6, at p. 1 – 3.)⁵ Nevertheless, he is not empowered to

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26 77.) "The decision as to appropriate charges is a matter of prosecutorial discretion.
(*Gananian v. Wagstaffe* (2011) 299 Cal.App.4th 1532, 1543.)

27 ⁵ It perhaps worth noting that the opponents of using some form of property surety as a means
28 of enforcing restrictions upon a defendant pending criminal trial often cite to a purported

1 completely ignore laws that he personally dislikes, and he does an inequitable disservice to
2 his community by attempting to do so. The failure to exercise discretion in an individual case
3 is in itself an abuse of discretion. (Cf. *People v. Bigelow* (1984) 37 Cal.3d 731, 743 (a court's
4 failure to exercise discretion is an abuse of that discretion).)

5 Of equal concern to those whose welfare is the District Attorney's responsibility is his
6 abandonment through 20-8 of the use of sentencing enhancements. The Directive reflects
7 an incredible lack of recognition that the use of a firearm routinely aggravates a case, or
8 awareness that serious injuries to a victim almost always makes the impact of the crime much
9 more significant. And although the District Attorney unquestionably believes that the death
10 penalty is inappropriate, his decision to prohibit the filing of special circumstances ensures
11 that the serial torture/murder of numerous victims will be treated no differently than the
12 robbery of a liquor store gone tragically wrong.⁶

13 Similarly, barring his staff from participating in parole hearings for defendants convicted
14 of the most serious crimes with 20-14 amounts to a command to every deputy district attorney
15 to abandon her or his oath and post. Who better to speak to the impact of the crimes upon
16 society and enforce the rights of victims at a parole hearing than the prosecutor who handled
17 the case? While claiming that prosecutors are "not experts on rehabilitation," he nevertheless
18 attempts to compel his staff to support the parole of those who have served only the minimum
19 amount of time. This is not a complete distancing from the process, this is effectively turning
20 his back on crime victims and indicating that those who were properly convicted have greater
21 value than those who suffered harm at a defendant's hands.

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25 unconstitutionality of the practice, (see, e.g., 20-6, at p. 2), while failing to recognize that the
26 country's constitution itself contemplates the use of bail. (U.S. Const., 8th Amend.)

27 ⁶ In 20-8 the District Attorney directs his deputies to dismiss or withdraw any enhancements
28 or allegations as described in the directive. As discussed, a prosecutor has substantial
discretion in determining the appropriate charges, but requires a case-based reason to
dismiss the action or allegations "in the furtherance of justice." (Pen. Code, § 1385.)
Conversely, a prosecutor may not abandon prosecution without such reasons. (Pen. Code,
§ 1386.)

1 No constitutional provision and no statute vests the District Attorney with a veto power
2 over the law.

3 The citizens of Los Angeles County rightfully expect the laws of the state to apply to
4 them in equal force as they do to every other county. Where the setting of bail is compelled
5 as a means of protecting victims of crime, the District Attorney may not simply wipe away the
6 law with the stroke of his pen. Indeed, the state Constitution provides a hedge against a
7 District Attorney acting in an executive role above the Governor and the Legislature,
8 positioning the Attorney General as a backup in the event that the state's laws are not
9 followed. "Whenever in the opinion of the Attorney General *any* law of the State is not being
10 adequately enforced in any county, it shall be the duty of the Attorney General to prosecute
11 any violations of law of which the superior court shall have jurisdiction." (Cal. Const. art. 5, §
12 13.) While it is unclear whether the Attorney General of California is already acting to correct
13 the injustice visited upon Los Angeles County, it *is* clear that the electorate places a firm
14 expectation that the laws of the state will be followed.

15 16 **IV. CONCLUSION**

17 The District Attorney of Los Angeles has visited two injustices upon his community
18 through his various special directives to his staff. Of utmost importance, he has taken steps
19 to remove the fundamental rights of victims of crime in his community, so that they can no
20 longer rely upon the safeguards provided to the rest of the state as determined by the will of
21 the electorate. Second, and equally troubling, he has commanded his deputies to not only
22 ignore the laws of the state, but to abandon their oaths and ethical obligations as servants of
23 justice. He has not acted with prosecutorial discretion with his sweeping edicts. He has acted
24 with incredible caprice based on perceptions that demonstrate a lack of understanding of the
25 impact of crime upon those who suffer from its cruelties.

26 With the exception of the District Attorneys of Contra Costa and San Francisco County,
27 the various amici who have filed proposed briefs with this Court do not share the constitutional

1 obligations born by the District Attorney of Los Angeles, or his counterparts throughout the
2 state represented by the California District Attorneys Association (CDAA). Given the
3 comparative experience level of CDAA's membership as courtroom criminal prosecutors, the
4 District Attorney's actions cause great concern. While he assuredly creates policy within his
5 office, he does not write the laws that govern this state. Nor may he compel his deputies to
6 set aside their legal, ethical and moral obligations in an attempt to enforce his will.

7 The relief sought by Plaintiffs and Petitioners is not merely a desirable correction of
8 workplace conditions. It is an essential requirement in order for the people of Los Angeles
9 County to ensure that they have the protection and acknowledgement in the criminal courts
10 guaranteed to them by the Constitution and laws of California.

11 Petitioner and Plaintiff's prayer for relief should be granted.

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13 Respectfully submitted,

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Gregory D. Totten
Attorney for Amicus Curiae
California District Attorneys Association

____ January 26, 2021 ____
Date

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

ASSOCIATION OF DEPUTY DISTRICT
ATTORNEYS FOR LOS ANGELES COUNTY

Plaintiff and Petitioner,

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PLAINTIFF AND PETITIONER

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PROOF OF SERVICE BY EMAIL

I, the undersigned, declare as follows:

I am employed in the County of Sacramento, over eighteen years of age and not a party to the within action. My business address is 2495 Natomas Park Drive, Suite 575, Sacramento, CA 95833.

The parties have agreed to receive service by electronic mail (email). On January 26, 2021, a member of our office served a copy of the within **BRIEF OF AMICUS CURIAE CALIFORNIA DISTRICT ATTORNEYS ASSOCIATION IN SUPPORT OF PLAINTIFF AND PETITIONER** to the interested party in the within action by email as follows:

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on January 26, 2021 at 2495 Natomas Park Drive, Suite 575, Sacramento, CA 95833.



Laura Bell