

Ct. App. No. B310845

**IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SEVEN**

THE ASSOCIATION OF DEPUTY DISTRICT ATTORNEYS FOR LOS ANGELES COUNTY,
Petitioner and Respondent,

v.

GEORGE GASCÓN, AS DISTRICT ATTORNEY, ETC. ET AL.,
Appellants.

After Grant of Motion for Preliminary Injunction on February 8, 2021, by the
Hon. James C. Chalfant, Judge of the
Superior Court of California for the County of Los Angeles,
Case No. 20STCP04250

**APPELLANTS' APPENDIX
VOLUME NO. 1 OF 2 (A1-A290)**

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Supervised by principals of the
firm admitted in D.C.*

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TABLE OF CONTENTS

Chronological

Tab. No.	Document Title	Date Filed	Page(s)
Volume No. 1 of 2			
1.	Superior Court Register of Actions	—	A1-15
2.	Verified Petition for Writ of Mandate and/or Prohibition and Complaint for Declaratory and Injunctive Relief (and Exhibits)	12/29/2020	A16-162
3.	Petitioner's <i>Ex Parte</i> Application for a Temporary Restraining Order and an Order to Show Cause (and Exhibits)	12/29/2020	A163-290
Volume No. 2 of 2			
4.	Opposition to <i>Ex Parte</i> Application for TRO/OSC re. Preliminary Injunction	12/30/2020	A297-303
5.	Declaration of Robert E. Dugdale	12/30/2020	A304-315
6.	Order re: Application for Temporary Restraining Order and Order to Show Cause	12/30/2020	A316
7.	Respondents' Opposition to Application for Preliminary Injunction	1/15/2021	A317-336
8.	Declaration of Shelan Y. Joseph	1/15/2021	A337-340
9.	Declaration of Marshall Khine	1/15/2021	A341-343

Tab. No.	Document Title	Date Filed	Page(s)
10.	Declaration of Stephan A. Munkelt	1/15/2021	A344-346
11.	Declaration of Monnica I. Thelen	1/15/2021	A347-350
12.	Petitioner's Reply in Support of Order to Show Cause re: Preliminary Injunction	1/20/2021	A351-416
13.	Hearing Transcript re: Preliminary Injunction	2/2/2021	A417-479
14.	Decision on Application for Preliminary Injunction	2/8/2021	A480-525
15.	Notice of Appeal	2/9/2021	A526-528
16.	Appellant's Notice Designating Record on Appeal	2/9/2021	A529-533

TABLE OF CONTENTS

Alphabetical

Tab. No.	Document Title	Date Filed	Page(s)
16.	Appellant's Notice Designating Record on Appeal	2/9/2021	A529-533
14.	Decision on Application for Preliminary Injunction	2/8/2021	A480-525
9.	Declaration of Marshall Khine	1/15/2021	A341-343
11.	Declaration of Monnica I. Thelen	1/15/2021	A347-350
5.	Declaration of Robert E. Dugdale	12/30/2020	A304-315
8.	Declaration of Shelan Y. Joseph	1/15/2021	A337-340
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13.	Hearing Transcript re: Preliminary Injunction	2/2/2021	A417-479
15.	Notice of Appeal	2/9/2021	A526-528
4.	Opposition to <i>Ex Parte</i> Application for TRO/OSC re. Preliminary Injunction	12/30/2020	A297-303
6.	Order re: Application for Temporary Restraining Order and Order to Show Cause	12/30/2020	A316
3.	Petitioner's <i>Ex Parte</i> Application for a Temporary Restraining Order and an Order to Show Cause (and Exhibits)	12/29/2020	A163-290

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Search

- Home
- Online Services
Pay Fines, Search Records...
- Forms, Filings & Files
Forms, Filing Fees...
- Self-Help
Self-Rep, Info, FAQs...
- Divisions
Civil, Criminal, Family...
- Jury
Jury Duty Portal, Q&A...
- General Info
Courthouses, ADA ...

ONLINE SERVICES

Case Access

LANGUAGE ACCESS
English

CASE INFORMATION

PRINTNEW SEARCH

Case Information | Register Of Actions | FUTURE HEARINGS | PARTY INFORMATION | Documents Filed | Proceedings Held

Case Number: 20STCP04250
THE ASSOCIATION OF DEPUTY DISTRICT ATTORNEYS FOR LOS ANGELES COUNTY VS GEORGE GASCON, ET AL.
Filing Courthouse: Stanley Mosk Courthouse
Filing Date: 12/30/2020
Case Type: Writ - Administrative Mandamus (General Jurisdiction)
Status: Pending

Click here to access document images for this case
If this link fails, you may go to the Case Document Images site and search using the case number displayed on this page

FUTURE HEARINGS

Case Information | Register Of Actions | FUTURE HEARINGS | PARTY INFORMATION | Documents Filed | Proceedings Held

None

PARTY INFORMATION

Case Information | Register Of Actions | FUTURE HEARINGS | PARTY INFORMATION | Documents Filed | Proceedings Held

- CALIFORNIA DISTRICT ATTORNEYS ASSOCIATION - Non-Party
- CAMERON CINDY - Non-Party
- CARROLL DAVID JUNXIONG - Attorney for Petitioner
- CURIAE AMICUS - Non-Party
- CURRENT AND FORMER ELECTED PROSECUTORS - Non-Party
- DAUM NICHOLAS F. - Attorney for Respondent
- DUGDALE ROBERT EDWARD - Attorney for Respondent
- FIRST LEGAL - Non-Party
- GASCON GEORGE - Respondent
- GASCON GEORGE - Appellant
- GEORGE ERIC MARC - Attorney for Petitioner
- LA DEPOSITIONS INC - Defendant
- LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE - Respondent

Document received by the CA 2nd District Court of Appeal.

LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE - Appellant

LOS ANGELES COUNTY PUBLIC DEFENDER - Non-Party

MOON ADRIAN - Non-Party

THE ASSOCIATION OF DEPUTY DISTRICT ATTORNEYS FOR LOS ANGELES COUNTY - Petitioner

THE ASSOCIATION OF DEPUTY DISTRICT ATTORNEYS FOR LOS ANGELES COUNTY - Respondent

DOCUMENTS FILED

[Case Information](#) | [Register Of Actions](#) | [FUTURE HEARINGS](#) | [PARTY INFORMATION](#) | [Documents Filed](#) | [Proceedings Held](#)

Documents Filed (Filing dates listed in descending order)

Click on any of the below link(s) to see Register of Action Items on or before the date indicated:

[01/25/2021](#)

07/02/2021 Appeal Record Delivered

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05/25/2021 Minute Order ((Trial Setting Conference))

Filed by Clerk

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Filed by George Gascon (Respondent); Los Angeles County District Attorney's Office (Respondent)

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Filed by Clerk

02/10/2021 Minute Order ((Court Order))

Filed by Clerk

02/09/2021 Appeal - Ntc Designating Record of Appeal APP-003/010/103

Filed by George Gascon (Respondent); Los Angeles County District Attorney's Office (Respondent)

02/09/2021 Appeal - Notice of Appeal/Cross Appeal Filed

Filed by Los Angeles County District Attorney's Office (Appellant); George Gascon (Appellant)

02/09/2021 Notice (NOTICE OF DEPOSIT IN LIEU OF BOND RE: PRELIMINARY INJUNCTION)

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02/09/2021 Notice of Lodging (NOTICE OF LODGING BY PETITIONER AND PLAINTIFF OF DEPOSIT IN LIEU OF BOND RE: PRELIMINARY INJUNCTION)

Filed by The Association of Deputy District Attorneys for Los Angeles County (Petitioner)

Document received by the CA 2nd District Court of Appeal.

02/08/2021 Decision on application for preliminary injunction: granted in large part
Filed by Clerk

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02/08/2021 Minute Order ((Ruling on Submitted Matter - Order to Show Cause Re: Prelimin...))
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Filed by George Gascon (Respondent); Los Angeles County District Attorney's Office (Respondent)

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02/08/2021 Objection (Respondents' Evidentiary Objections to Declaration of Michele Hanisee)
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02/05/2021 Reply (Respondents' Reply in Support of Supplemental Request for Judicial Notice)
Filed by George Gascon (Respondent)

02/04/2021 Opposition (To Supplemental Request For Judicial Notice)
Filed by The Association of Deputy District Attorneys for Los Angeles County (Petitioner)

02/03/2021 Request for Judicial Notice
Filed by George Gascon (Respondent)

02/02/2021 Motion for Reconsideration and attachment to motion to intervene
Filed by Adrian Moon (Non-Party)

02/02/2021 Certificate of Mailing for ((Court Order - Motion of Adrian Moon for Reconsideration and A...) of 02/02/2021)
Filed by Clerk

02/02/2021 Minute Order ((Court Order - Motion of Adrian Moon for Reconsideration and A...))
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02/02/2021 Minute Order ((ORDER TO SHOW CAUSE RE: PRELIMINARY INJUNCTION))
Filed by Clerk

02/02/2021 Order on Court Fee Waiver (Superior Court)
Filed by Clerk

02/01/2021 Emergency motion for leave of court to intervene as plaintiff and defendant and peremptory challenge against Judge James C. Chalfant
Filed by Adrian Moon (Non-Party)

02/01/2021 Ex parte application to file in support and in opposition of preliminary injunction in lieu of filing an amicus brief
Filed by Adrian Moon (Non-Party)

02/01/2021 Certificate of Mailing for ((Court Order - Ex Parte Application of Adrian D. Moon to File ...) of 02/01/2021)
Filed by Clerk

02/01/2021 Minute Order ((Court Order - Ex Parte Application of Adrian D. Moon to File ...))
Filed by Clerk

01/29/2021 Objection (Evidentiary Objections to the Declarations of Eric M. George and Michele Hanisee)
Filed by George Gascon (Respondent); Los Angeles County District Attorney's Office (Respondent)

01/29/2021 Proof of Service (not Summons and Complaint)
Filed by George Gascon (Respondent); Los Angeles County District Attorney's Office (Respondent)

01/29/2021 Response (Respondents' Response to Petitioner's Evidentiary Objections in Support of OSC Re Preliminary Injunction)
Filed by George Gascon (Respondent); Los Angeles County District Attorney's Office (Respondent)

01/27/2021 Notice of Lodging (BY PETITIONER AND PLAINTIFF OF THE CALIFORNIA DISTRICT ATTORNEYS ASSOCIATION'S APPLICATION TO FILE AMICUS BRIEF IN SUPPORT OF PLAINTIFF AND PETITIONER; [PROPOSED] AMICUS BRIEF)
Filed by The Association of Deputy District Attorneys for Los Angeles County (Petitioner)

01/27/2021 Order on Media Request to Permit Coverage

01/27/2021 Media Request to Photograph, Record, or Broadcast

01/26/2021 Request for Judicial Notice
Filed by The Association of Deputy District Attorneys for Los Angeles County (Petitioner)

01/26/2021 Reply (IN SUPPORT OF ORDER TO SHOW CAUSE RE: PRELIMINARY INJUNCTION; SUPPLEMENTAL DECLARATION OF ERIC M. GEORGE; SUPPLEMENTAL DECLARATION OF MICHELE HANISEE)
Filed by The Association of Deputy District Attorneys for Los Angeles County (Petitioner)

01/26/2021 Proof of Personal Service
Filed by The Association of Deputy District Attorneys for Los Angeles County (Petitioner)

01/26/2021 Objection (IN SUPPORT OF OSC RE: PRELIMINARY INJUNCTION)
Filed by The Association of Deputy District Attorneys for Los Angeles County (Petitioner)

Document received by the CA 2nd District Court of Appeal.

01/26/2021 Application of California District Attorneys to file amicus brief in support of petitioner
Filed by California District Attorneys Association (Non-Party)

Click on any of the below link(s) to see Register of Action Items on or before the date indicated:
[TOP 01/25/2021](#)

01/25/2021 Proof of Service (not Summons and Complaint)
Filed by Adrian Moon (Non-Party)

01/25/2021 Application for permission to file amicus curiae brief
Filed by Adrian Moon (Non-Party)

01/25/2021 Certificate of Mailing for ((Court Order) of 01/25/2021)
Filed by Clerk

01/25/2021 Minute Order ((Court Order))
Filed by Clerk

01/22/2021 Order on Court Fee Waiver (Superior Court)
Filed by Clerk

01/20/2021 Proof of Service (not Summons and Complaint)
Filed by Amicus Curiae (Non-Party)

01/20/2021 Application (APPLICATION TO FILE BRIEF OF AMICUS CURIAE IN SUPPORT OF RESPONDENTS? OPPOSITION TO PETITIONER?S APPLICATION FOR PRELIMINARY INJUNCTION)
Filed by Amicus Curiae (Non-Party)

01/15/2021 Declaration (of Stephan A. Munkelt in Support of Respondents' Opposition to Petitioner's Application for Preliminary Injunction)
Filed by George Gascon (Respondent); Los Angeles County District Attorney's Office (Respondent)

01/15/2021 Declaration (of Marshall Khine in Support of Respondents' Opposition to Petitioner's Application for Preliminary Injunction)
Filed by George Gascon (Respondent); Los Angeles County District Attorney's Office (Respondent)

01/15/2021 Order ([Proposed] Rulings on Evidentiary Objections to Declaration of Michele Hanisee)
Filed by George Gascon (Respondent); Los Angeles County District Attorney's Office (Respondent)

01/15/2021 Request for Judicial Notice
Filed by George Gascon (Respondent); Los Angeles County District Attorney's Office (Respondent)

01/15/2021 Proof of Service (not Summons and Complaint)
Filed by George Gascon (Respondent); Los Angeles County District Attorney's Office (Respondent)

01/15/2021 Declaration (of Monnica I. Thelen in Support of Respondents' Opposition to Petitioner's Application for Preliminary Injunction)
Filed by George Gascon (Respondent); Los Angeles County District Attorney's Office (Respondent)

01/15/2021 Declaration (of Shelan Y. Joseph in Support of Respondents' Opposition to Petitioner's Application for Preliminary Injunction)
Filed by George Gascon (Respondent); Los Angeles County District Attorney's Office (Respondent)

01/15/2021 Opposition ([Respondents'] to Petitioner's Application for Preliminary Injunction)
Filed by George Gascon (Respondent); Los Angeles County District Attorney's Office (Respondent)

01/15/2021 Opposition (Petitioner's Partial Opposition To Application for Leave to File Amicus Brief; Declaration Of David J. Carroll)
Filed by The Association of Deputy District Attorneys for Los Angeles County (Petitioner)

01/15/2021 Proof of Service (not Summons and Complaint)
Filed by Current and Former Elected Prosecutors (Non-Party)

01/15/2021 Brief (of Amici Curiae Current and Former Elected Prosecutors)
Filed by Current and Former Elected Prosecutors (Non-Party)

01/15/2021 Application for Permission to File Amicus Curiae Brief in Opposition to application for preliminary injunction
Filed by Current and Former Elected Prosecutors (Non-Party)

01/14/2021 Application of the Los Angeles Public Defender and Alternate Public Defender to File an Amicus Curiae Brief
Filed by Los Angeles County Public Defender (Non-Party)

01/06/2021 Notice (of Trial Setting Conference)
Filed by The Association of Deputy District Attorneys for Los Angeles County (Petitioner)

12/30/2020 Declaration (of Dugdale in opp to ex parte)
Filed by George Gascon (Respondent); Los Angeles County District Attorney's Office (Respondent)

12/30/2020 Opposition (to ex parte application)
Filed by George Gascon (Respondent); Los Angeles County District Attorney's Office (Respondent)

12/30/2020 Exhibit List (table of exhibits for ex parte application)
Filed by The Association of Deputy District Attorneys for Los Angeles County (Petitioner)

12/30/2020 Notice of Trial Setting Conference and Attached Orders Thereon
Filed by Clerk

12/30/2020 Summons (on Petition)
Filed by The Association of Deputy District Attorneys for Los Angeles County (Petitioner)

Document received by the CA 2nd District Court of Appeal.

12/30/2020 Ex Parte Application (for A Temporary Restraining Order)

Filed by The Association of Deputy District Attorneys for Los Angeles County (Petitioner)

12/30/2020 Notice of Case Assignment - Unlimited Civil Case

Filed by Clerk

12/30/2020 Civil Case Cover Sheet

Filed by The Association of Deputy District Attorneys for Los Angeles County (Petitioner)

12/30/2020 Order (ORDER TO SHOW CAUSE RE PRELIMINARY INJUNCTION)

Filed by The Association of Deputy District Attorneys for Los Angeles County (Petitioner)

12/30/2020 Minute Order ((EX PARTE APPLICATION OF PETITIONER, ASSOCIATION OF DEPUTY DIS...))

Filed by Clerk

12/30/2020 Order Appointing Court Approved Reporter as Official Reporter Pro Tempore

Filed by The Association of Deputy District Attorneys for Los Angeles County (Petitioner)

12/30/2020 Proof of Service (not Summons and Complaint) (of opposition papers on the ex parte application)

Filed by George Gascon (Respondent); Los Angeles County District Attorney's Office (Respondent)

12/30/2020 Petition for Writ of Mandate

Filed by The Association of Deputy District Attorneys for Los Angeles County (Petitioner)

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[TOP 01/25/2021](#)

PROCEEDINGS HELD

[Case Information](#) | [Register Of Actions](#) | [FUTURE HEARINGS](#) | [PARTY INFORMATION](#) | [Documents Filed](#) | [Proceedings Held](#)

Proceedings Held (Proceeding dates listed in descending order)

05/25/2021 at 1:30 PM in Department 85, James C. Chalfant, Presiding

Trial Setting Conference - **Held**

04/08/2021 at 09:30 AM in Department 85, James C. Chalfant, Presiding

Trial Setting Conference - **Held - Continued**

02/10/2021 at 08:30 AM in Department 85, James C. Chalfant, Presiding

Court Order

02/08/2021 at 09:30 AM in Department 85, James C. Chalfant, Presiding

Ruling on Submitted Matter

02/02/2021 at 4:30 PM in Department 85, James C. Chalfant, Presiding

Court Order

02/02/2021 at 1:30 PM in Department 85, James C. Chalfant, Presiding

Order to Show Cause Re: (PRELIMINARY INJUNCTION) - **Held - Taken under Submission**

02/01/2021 at 3:30 PM in Department 85, James C. Chalfant, Presiding

Court Order

01/25/2021 at 09:00 AM in Department 85, James C. Chalfant, Presiding

Court Order

12/30/2020 at 08:30 AM in Department 1, David J. Cowan, Presiding

Hearing on Ex Parte Application (FOR TRO AND SETTING OF AN OSC RE P.I.) - **Held**

REGISTER OF ACTIONS

[Case Information](#) | [Register Of Actions](#) | [FUTURE HEARINGS](#) | [PARTY INFORMATION](#) | [Documents Filed](#) | [Proceedings Held](#)

Register of Actions (Listed in descending order)

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05/25/2021 Minute Order ((Trial Setting Conference))

Filed by Clerk

Document received by the CA 2nd District Court of Appeal.

05/25/2021 Stipulation and Order (RE ST A Y OF CASE PENDING PRELIMINARY INJUNCTION APPEAL:)

Filed by George Gascon (Respondent); Los Angeles County District Attorney's Office (Respondent)

05/19/2021 Appeal - Notice Court Reporter to Prepare Appeal Transcript (;B310845, NA2/9/21;)

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04/30/2021 Appeal - Notice of Default Issued

Filed by Clerk

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Trial Setting Conference - **Held - Continued**

04/08/2021 Minute Order ((Trial Setting Conference))

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02/19/2021 Notice (Notice Electing)

Filed by The Association of Deputy District Attorneys for Los Angeles County (Petitioner)

02/18/2021 Appeal - Notice of Filing of Notice of Appeal

Filed by Clerk

02/16/2021 Answer

Filed by George Gascon (Respondent); Los Angeles County District Attorney's Office (Respondent)

02/16/2021 Notice (OF PROOF OF DEPOSIT IN LIEU OF BOND RE: PRELIMINARY INJUNCTION)

Filed by The Association of Deputy District Attorneys for Los Angeles County (Petitioner)

02/11/2021 Notice (of Entry of Order)

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02/10/2021 at 08:30 AM in Department 85, James C. Chalfant, Presiding

Court Order

02/10/2021 Certificate of Mailing for ((Court Order) of 02/10/2021)

Filed by Clerk

02/10/2021 Minute Order ((Court Order))

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02/09/2021 Appeal - Notice of Appeal/Cross Appeal Filed

Filed by Los Angeles County District Attorney's Office (Appellant); George Gascon (Appellant)

02/09/2021 Appeal - Ntc Designating Record of Appeal APP-003/010/103

Filed by George Gascon (Respondent); Los Angeles County District Attorney's Office (Respondent)

02/09/2021 Notice (NOTICE OF DEPOSIT IN LIEU OF BOND RE: PRELIMINARY INJUNCTION)

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02/01/2021 Emergency motion for leave of court to intervene as plaintiff and defendant and peremptory challenge against Judge James C. Chalfant
Filed by Adrian Moon (Non-Party)

02/01/2021 Certificate of Mailing for ((Court Order - Ex Parte Application of Adrian D. Moon to File ...) of 02/01/2021)
Filed by Clerk

02/01/2021 Minute Order ((Court Order - Ex Parte Application of Adrian D. Moon to File ...))
Filed by Clerk

01/29/2021 Proof of Service (not Summons and Complaint)
Filed by George Gascon (Respondent); Los Angeles County District Attorney's Office (Respondent)

01/29/2021 Objection (Evidentiary Objections to the Declarations of Eric M. George and Michele Hanisee)
Filed by George Gascon (Respondent); Los Angeles County District Attorney's Office (Respondent)

01/29/2021 Response (Respondents' Response to Petitioner's Evidentiary Objections in Support of OSC Re Preliminary Injunction)
Filed by George Gascon (Respondent); Los Angeles County District Attorney's Office (Respondent)

01/27/2021 Order on Media Request to Permit Coverage

01/27/2021 Notice of Lodging (BY PETITIONER AND PLAINTIFF OF THE CALIFORNIA DISTRICT ATTORNEYS ASSOCIATION'S APPLICATION TO FILE AMICUS BRIEF IN SUPPORT OF PLAINTIFF AND PETITIONER; [PROPOSED] AMICUS BRIEF)
Filed by The Association of Deputy District Attorneys for Los Angeles County (Petitioner)

01/27/2021 Media Request to Photograph, Record, or Broadcast

01/26/2021 Reply (IN SUPPORT OF ORDER TO SHOW CAUSE RE: PRELIMINARY INJUNCTION; SUPPLEMENTAL DECLARATION OF ERIC M. GEORGE; SUPPLEMENTAL DECLARATION OF MICHELE HANISEE)
Filed by The Association of Deputy District Attorneys for Los Angeles County (Petitioner)

01/26/2021 Proof of Personal Service
Filed by The Association of Deputy District Attorneys for Los Angeles County (Petitioner)

01/26/2021 Objection (IN SUPPORT OF OSC RE: PRELIMINARY INJUNCTION)
Filed by The Association of Deputy District Attorneys for Los Angeles County (Petitioner)

01/26/2021 Application of California District Attorneys to file amicus brief in support of petitioner
Filed by California District Attorneys Association (Non-Party)

01/26/2021 Request for Judicial Notice
Filed by The Association of Deputy District Attorneys for Los Angeles County (Petitioner)

Click on any of the below link(s) to see Register of Action Items on or before the date indicated:

[TOP](#) [01/25/2021](#)

01/25/2021 at 09:00 AM in Department 85, James C. Chalfant, Presiding
Court Order

Document received by the CA 2nd District Court of Appeal.

01/25/2021 Proof of Service (not Summons and Complaint)

Filed by Adrian Moon (Non-Party)

01/25/2021 Minute Order ((Court Order))

Filed by Clerk

01/25/2021 Certificate of Mailing for ((Court Order) of 01/25/2021)

Filed by Clerk

01/25/2021 Application for permission to file amicus curiae brief

Filed by Adrian Moon (Non-Party)

01/22/2021 Order on Court Fee Waiver (Superior Court)

Filed by Clerk

01/20/2021 Application (APPLICATION TO FILE BRIEF OF AMICUS CURIAE IN SUPPORT OF RESPONDENTS? OPPOSITION TO PETITIONER?S APPLICATION FOR PRELIMINARY INJUNCTION)

Filed by Amicus Curiae (Non-Party)

01/20/2021 Proof of Service (not Summons and Complaint)

Filed by Amicus Curiae (Non-Party)

01/15/2021 Proof of Service (not Summons and Complaint)

Filed by Current and Former Elected Prosecutors (Non-Party)

01/15/2021 Brief (of Amici Curiae Current and Former Elected Prosecutors)

Filed by Current and Former Elected Prosecutors (Non-Party)

01/15/2021 Application for Permission to File Amicus Curiae Brief in Opposition to application for preliminary injunction

Filed by Current and Former Elected Prosecutors (Non-Party)

01/15/2021 Opposition (Petitioner?s Partial Opposition To Application for Leave to File Amicus Brief; Declaration Of David J. Carroll)

Filed by The Association of Deputy District Attorneys for Los Angeles County (Petitioner)

01/15/2021 Opposition ((Respondents') to Petitioner's Application for Preliminary Injunction)

Filed by George Gascon (Respondent); Los Angeles County District Attorney's Office (Respondent)

01/15/2021 Declaration (of Shelan Y. Joseph in Support of Respondents' Opposition to Petitioner's Application for Preliminary Injunction)

Filed by George Gascon (Respondent); Los Angeles County District Attorney's Office (Respondent)

01/15/2021 Declaration (of Monnica I. Thelen in Support of Respondents' Opposition to Petitioner's Application for Preliminary Injunction)

Filed by George Gascon (Respondent); Los Angeles County District Attorney's Office (Respondent)

01/15/2021 Request for Judicial Notice

Filed by George Gascon (Respondent); Los Angeles County District Attorney's Office (Respondent)

01/15/2021 Order ((Proposed) Rulings on Evidentiary Objections to Declaration of Michele Hanisee)

Filed by George Gascon (Respondent); Los Angeles County District Attorney's Office (Respondent)

01/15/2021 Declaration (of Marshall Khine in Support of Respondents' Opposition to Petitioner's Application for Preliminary Injunction)

Filed by George Gascon (Respondent); Los Angeles County District Attorney's Office (Respondent)

01/15/2021 Declaration (of Stephan A. Munkelt in Support of Respondents' Opposition to Petitioner's Application for Preliminary Injunction)

Filed by George Gascon (Respondent); Los Angeles County District Attorney's Office (Respondent)

01/15/2021 Proof of Service (not Summons and Complaint)

Filed by George Gascon (Respondent); Los Angeles County District Attorney's Office (Respondent)

01/14/2021 Application of the Los Angeles Public Defender and Alternate Public Defender to File an Amicus Curiae Brief

Filed by Los Angeles County Public Defender (Non-Party)

01/06/2021 Notice (of Trial Setting Conference)

Filed by The Association of Deputy District Attorneys for Los Angeles County (Petitioner)

12/30/2020 at 08:30 AM in Department 1, David J. Cowan, Presiding

Hearing on Ex Parte Application (FOR TRO AND SETTING OF AN OSC RE P.I.) - **Held**

12/30/2020 Petition for Writ of Mandate

Filed by The Association of Deputy District Attorneys for Los Angeles County (Petitioner)

12/30/2020 Proof of Service (not Summons and Complaint) (of opposition papers on the ex parte application)

Filed by George Gascon (Respondent); Los Angeles County District Attorney's Office (Respondent)

12/30/2020 Order Appointing Court Approved Reporter as Official Reporter Pro Tempore

Filed by The Association of Deputy District Attorneys for Los Angeles County (Petitioner)

12/30/2020 Minute Order ((EX PARTE APPLICATION OF PETITIONER, ASSOCIATION OF DEPUTY DIS...))

Filed by Clerk

12/30/2020 Order (ORDER TO SHOW CAUSE RE PRELIMINARY INJUNCTION)

Filed by The Association of Deputy District Attorneys for Los Angeles County (Petitioner)

12/30/2020 Civil Case Cover Sheet

Filed by The Association of Deputy District Attorneys for Los Angeles County (Petitioner)

Document received by the CA 2nd District Court of Appeal.

12/30/2020 Declaration (of Dugdale in opp to ex parte)
Filed by George Gascon (Respondent); Los Angeles County District Attorney's Office (Respondent)

12/30/2020 Ex Parte Application (for A Temporary Restraining Order)
Filed by The Association of Deputy District Attorneys for Los Angeles County (Petitioner)

12/30/2020 Summons (on Petition)
Filed by The Association of Deputy District Attorneys for Los Angeles County (Petitioner)

12/30/2020 Notice of Trial Setting Conference and Attached Orders Thereon
Filed by Clerk

12/30/2020 Exhibit List (table of exhibits for ex parte application)
Filed by The Association of Deputy District Attorneys for Los Angeles County (Petitioner)

12/30/2020 Opposition (to ex parte application)
Filed by George Gascon (Respondent); Los Angeles County District Attorney's Office (Respondent)

12/30/2020 Notice of Case Assignment - Unlimited Civil Case
Filed by Clerk

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[TOP](#) [01/25/2021](#)

NEW SEARCH

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8 Attorneys for Petitioner
9 The Association of Deputy District
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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.
22
23
24
25
26
27
28

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.

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

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

14 **THE PARTIES**

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

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

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

24 **JURISDICTION AND VENUE**

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

27 9. Venue is proper in this Court in that all of the Respondents are located within the
28 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.

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

SECOND CAUSE OF ACTION

(DECLARATORY AND INJUNCTIVE RELIEF)

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

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

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

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

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

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

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

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Petitioner prays:

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

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

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

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

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

19 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

Document received by the CA 2nd District Court of Appeal.

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

Document received by the CA 2nd District Court of Appeal.

EXHIBIT A

SPECIAL DIRECTIVE 20-08

TO: ALL DEPUTY DISTRICT ATTORNEYS

FROM: GEORGE GASCÓN 
District Attorney

SUBJECT: SENTENCING ENHANCEMENTS/ALLEGATIONS

DATE: DECEMBER 7, 2020

This Special Directive addresses the following chapters in the Legal Policies Manual:

Chapter 2	Crime Charging - Generally
Chapter 3	Crime Charging - Special Policies
Chapter 7	Special Circumstances
Chapter 12	Felony Case Settlement Policy
Chapter 13	Probation and Sentencing Hearings

Effective **December 8, 2020**, the policies outlined below supersede the relevant sections of the abovementioned chapters of the Legal Policies Manual. Additionally, the following sections of the Legal Policies Manual are removed in their entirety. Chapter 2.10 - Charging Special Allegations, Chapter 3.02 - Three Strikes, Chapter 7 - Special Circumstances, Chapter 12.05 - Three Strikes, Chapter 12.06 - Controlled Substances.

INTRODUCTION

Sentencing enhancements are a legacy of California's "tough on crime" era. (See Appendix.) It shall be the policy of the Los Angeles County District Attorney's Office that the current statutory ranges for criminal offenses alone, without enhancements, are sufficient to both hold people accountable and also to protect public safety. While initial incarceration prevents crime through incapacitation, studies show that each additional sentence year causes a 4 to 7 percent increase in recidivism that eventually outweighs the incapacitation benefit.¹ Therefore, sentence enhancements or other sentencing allegations, including under the Three Strikes law, shall not be filed in any cases and shall be withdrawn in pending matters.

This policy does not affect the decision to charge crimes where a prior conviction is an element of the offense [i.e., felon in possession of a firearm (Penal Code § 29800(a)(1)), driving under the influence with a prior (Vehicle Code § 23152), domestic violence with a prior (Penal Code §

¹ Mueller-Smith, Michael (2015) "The Criminal and Labor Market Impacts of Incarceration.", available at <https://sites.lsa.umich.edu/mgms/wp-content/uploads/sites/283/2015/09/incar.pdf>.

273.5(f)(1)), etc.], nor does it affect Evidence Code provisions allowing for the introduction of prior conduct (i.e., Evidence Code §1101, 1108, and 1109).

The specified allegations/enhancements identified in this policy directive are not an exhaustive list of all allegations/enhancements that will no longer be pursued by this office; however, these are the most commonly used allegations/enhancements.

POLICY

- Any prior-strike enhancements (Penal Code § 667(d), 667(e); 1170.12(a) and 1170.12 (c)) will not be used for sentencing and shall be dismissed or withdrawn from the charging document. This includes second strikes and any strikes arising from a juvenile adjudication;
- Any Prop 8 or “5 year prior” enhancements (Penal Code §667(a)(1)) and “3 year prior” enhancements (Penal Code §667.5(a)) will not be used for sentencing and shall be dismissed or withdrawn from the charging document;
- STEP Act enhancements (“gang enhancements”) (Penal Code § 186.22 et. seq.) will not be used for sentencing and shall be dismissed or withdrawn from the charging document;
- Special Circumstances allegations resulting in an LWOP sentence shall not be filed, will not be used for sentencing, and shall be dismissed or withdrawn from the charging document;
- Violations of bail or O.R. 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.

II. PENDING CASES

At the first court hearing after this policy takes effect, DDAs are instructed to orally amend the charging document to dismiss or withdraw any enhancement or allegation outlined in this document.

III. SENTENCED CASES

Pursuant to PC § 1170(d)(1), if a defendant was sentenced within 120 days of December 8, 2020 they shall be eligible for resentencing under these provisions. DDAs are instructed to not oppose defense counsel’s request for resentencing in accordance with these guidelines.

APPENDIX

California has enacted over 100 sentencing enhancements, many of which are outdated, incoherent, and applied unfairly. There is no compelling evidence that their enforcement improves public safety. In fact, the opposite may be true. State law gives District Attorneys broad authority over when and whether to charge enhancements. The overriding concern is interests of justice and public safety.

The Stanford Computational Policy Lab studied San Francisco's use of sentencing enhancements from 2005 to 2017. They released their report, *Sentencing Enhancements and Incarceration: San Francisco, 2005-2017* in October of 2019. The following policy is informed by the results of the Stanford study.

As noted in the study:

“During the 1980s and 90s, enhancements became more numerous and severe. Dozens of new enhancement laws were passed in a way that critics alleged was haphazard—in “reaction to the ‘crime of the month.’”

California's massive rates of incarceration can be tied directly to the extreme sentencing laws passed by voters in the 1990's, including the 1994 Three Strikes Law. In 1980, California had a prison population of 23,264. In 1990, it was 94,122. In 1999, five years after the passage of Three Strikes, California had increased its population to a remarkable 160,000. By 2006, the prison population had ballooned to 174,000 prisoners. California now has 130,000 people in state prison and 70,000 people in local jails.

The Stanford study found that the use of sentencing enhancements in San Francisco accounted for about **1 out of 4 years** served in jail and prison. This study found that the use of sentencing enhancements -- mostly Prop. 8 priors and Three Strikes enhancements -- accounted for half of the time served for enhancements. The study concluded that we could substantially reduce incarceration by ceasing to use enhancements. These enhancements also exacerbate racial disparities in the justice system: **45% of people serving life sentences in CDCR under the Three Strikes law are black.**

Gang enhancements have been widely criticized as unfairly targeting young men of color. Recent analyses by the LA Times suggest that the CALGANG database is outdated, inaccurate and rife with abuse. According to California Department of Corrections and Rehabilitation data from 2019, more than 90 percent of adults with a gang enhancement in state prison were either black or Latinx.

According to Fordham Law Prof. John Pfaff, “There is strong empirical support for declining to charge these status enhancements. Long sentences imposed by strike laws and gang enhancements provide little additional deterrence, often incapacitate long past what is required by public safety, impose serious and avoidable financial and public health costs in the process, and may even lead to greater rates of reoffending in the long run.”

According to Pfaff, a growing body of evidence-based studies have suggested that policing deters; long sentences do little. What deters most effectively is the risk of detection and apprehension in the first place. Other studies increasingly indicate that spending more time in prison can *cause* the

risk of later reoffending; as the harms and traumas experienced in prison grow, the ability to reintegrate after release falls.

That prison may actually increase the risk of reoffending while imposing serious costs on communities starkly illuminates the need to invest in alternatives. Such options do exist. One striking example: by expanding access to (non-criminal justice based) drug treatment, the expansion of Medicaid yielded billions in reduced crime in states that participated in the expansion.

By avoiding harsh sentencing and investing in rehabilitation programs for the incarcerated, we can reduce crime *and* help people improve their lives.


The policies of this Special Directive supersede any contradictory language of the Legal Policies Manual.

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EXHIBIT B

SPECIAL DIRECTIVE 20-14

TO: ALL DEPUTY DISTRICT ATTORNEYS

FROM: GEORGE GASCÓN 
District Attorney

SUBJECT: RESENTENCING

DATE: DECEMBER 7, 2020

This Special Directive addresses issues of the Bureau of Prosecution Support Operations in Chapter 1.07.03 and Probation and Sentencing Hearings in Chapter 13 and Postconviction Proceedings in Chapter 17 of the Legal Policies Manual. Effective **December 8, 2020**, the policies outlined below supersede the relevant sections of Chapter 13 and Chapter 17 of the Legal Policies Manual.

INTRODUCTION

Today, California prisons are filled with human beings¹ charged, convicted and sentenced under prior District Attorneys' policies. Effective today, District Attorney George Gascón has adopted new charging and sentencing policies.

Justice demands that the thousands of people currently serving prison terms imposed in Los Angeles County under earlier, outdated policies, are also entitled to the benefit of these new policies. Many of these people have been incarcerated for decades or are serving a "[virtual life sentence](#)" designed to imprison them for life. The vast majority of incarcerated people are members of groups long disadvantaged under earlier systems of justice: Black people, people of color, young people, people who suffer from mental illness, and people who are poor. While resentencing alone cannot correct all inequities inherent in our system of justice, it should at least be consistent with policies designed to remedy those inequities.

The new Resentencing Policy is effective immediately and shall apply to all offices, units and attorneys in the Los Angeles County District Attorney's Office (hereinafter "Office"). While particular attention will be paid to certain people as discussed herein, every aspect of existing sentencing or resentencing policy will be subject to examination. The intent of this Resentencing Policy is that it will evolve with time to ensure that it reflects the values of the District Attorney, and by extension, the people of Los Angeles County.

¹ We will seek to avoid using dehumanizing language such as "inmate," "prisoner," "criminal," or "offender" when referencing incarcerated people.

LENGTH OF SENTENCE

The sentences we impose in this country, in this state, and in Los Angeles County are far too long. Researchers have long noted the high cost, ineffectiveness, and harm to people and communities caused by lengthy prison sentences; sentences that are longer than those of any comparable nation. DA-elect Gascón campaigned on stopping the practice of imposing excessive sentences.

With regard to resentencing, the Model Penal Code recommends judicial resentencing hearings after 15 years of imprisonment for all convicted people:

The legislature shall authorize a judicial panel or other judicial decision maker to hear and rule upon applications for modification of sentence from prisoners who have served 15 years of any sentence of imprisonment.

(American Law Institute (2017) Model Penal Code Sentencing, Proposed Final Draft, p. 681.)

National parole experts Edward Rhine, the late Joan Petersilia, and Kevin Reitz have endorsed this recommendation, adding: “We would have no argument with a shorter period such as 10 years.” ... These time frames correspond with criminological research showing that people age out of crime, with most “criminal careers” typically lasting less than ten years.” (Rhine, E. E., Petersilia, J., & Reitz, R. 2017. “The Future of Parole Release,” pp. 279-338 in Tonry, M. (Ed.) *Crime and Justice*, Vol, 46, p. 294.)

Accordingly, this Office will reevaluate and consider for resentencing people who have already served 15 years in prison. Experts on post-conviction justice recommend that resentencing be allowed for all people (not just those convicted as children or as emerging adults) and some experts recommend an earlier date for reevaluating continued imprisonment.

APPLICATION OF SENTENCE ENHANCEMENT POLICY FOR OPEN/PENDING CASES

For any case that is currently pending, meaning that judgment has not yet been entered, or where the case is pending for resentencing, or on remand from another court, the Deputy District Attorney in charge of the case shall inform the Court at the next hearing of the following:

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

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

FURTHER DIRECTIVES FOR OPEN/PENDING CASES

The following rules apply to any case where a defendant or petitioner is legally eligible for resentencing or recall of sentence, including but not limited to:

- Habeas corpus cases.
- Cases remanded to Superior Court by the Court of Appeal or Supreme Court.
- Cases referred to the Superior Court under Penal Code section 1170(d)(1).
- Cases pending resentencing under Penal Code sections 1170.126, 1170.127, 1170.18, 1170.91, and 1170.95.
- Cases pending under Penal Code section 1170(d)(2).
- All cases where the defendant was a minor at the time of the offense.
- Any other case that may be the subject of resentencing not specified here.

Any Deputy District Attorney assigned to a case pending resentencing or sentence recall consideration under any valid statute shall comply with the following directives until further notice.

- 1) If the defendant or petitioner is serving a sentence that is higher than what he/she 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 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. This policy applies even where enhancements were found true in a prior proceeding. This policy shall be liberally construed to achieve its purposes.
- 2) If the defendant or petitioner is seeking relief under Penal Code section 1170.95, the DDA may concede that the petitioner qualifies for relief. If the assigned DDA does not believe that the petitioner qualifies for relief, the DDA must request a 30 day continuance, during which time the assigned DDA shall review the case in light of the Office's specific Penal Code 1170.95 Policy, *see below*. If the DDA continues to oppose relief, the DDA shall submit the reasons in writing to the Head Deputy. The Head Deputy shall then seek approval from the District Attorney or his designee in order to determine whether the Office will continue to oppose relief.
- 3) If a defendant or petitioner would not qualify for a reduced sentence by operation of law if convicted today or under the Office's new Sentencing Policy, then the DDA in charge of the case may seek a 30-day continuance. During that time, the deputy shall evaluate whether to support or oppose the resentencing (or sentence recall) request. If the deputy believes that compelling and imminent public safety concerns justify opposition to revisiting the sentence, then the deputy must submit those concerns in writing to her Head Deputy who shall then seek approval from the District Attorney or his designee.
- 4) All laws concerning victim notification and support shall be honored.

PENAL CODE § 1170.95/SB 1437 RESENTENCING POLICY

1. We start with a position of respect for our co-equal branch of government, the legislature. Like the courts, we presume that laws passed by the legislature are constitutional. “[U]nder long-established principles, a statute, once enacted, is presumed to be constitutional.” (*Lockyer v. City and County of San Francisco* (2004) 33 Cal.4th 1055, 1119.) We will no longer seek to delay implementation of laws by making arguments that laws that provide retroactive relief are unconstitutional.
2. The Office’s position is that defense counsel should be appointed when the petition is filed and there should be no summary denials by the court. (*People v. Cooper* (2020) 54 Cal.App.5th 106; *People v. Tarkington* (2020) 49 Cal.App.5th 892, 917, review granted Aug. 12, 2020, S263219 [dis. opn. of Lavin, J.])
3. Many people accepted plea offers to manslaughter, made by this Office in order to avoid a conviction for murder. It is this Office’s policy that where a person took a plea to manslaughter or another charge in lieu of a trial at which the petitioner could have been convicted of felony murder, murder under the natural and probable consequences doctrine, attempted murder under the natural and probable consequences doctrine, or another theory covered by Senate Bill 1437, that person is eligible for relief under section 1170.95. Such a position avoids disparate results whereby a person who this Office has already determined to be less culpable -- as evidenced by allowing a plea for manslaughter -- serves a longer sentence than a similarly situated person who is now eligible for relief under section 1170.95.
4. Section 1170.95 (d)(2) states, “[I]f there was a prior finding by a court or jury that the defendant did not act with reckless indifference to human life or was not a major participant in the felony, the defendant is entitled to have his or her murder conviction vacated.” This prior finding includes cases where a magistrate found that there was insufficient evidence of major participation in a felony or reckless indifference to human life following a preliminary hearing, or at any stage in the proceedings.
5. The Office’s position is that, consistent with the definition of “prima facie,” the court must not engage in fact finding at the prima facie stage. (*People v. Drayton* (2020) 47 Cal. App. 5th 965.)
6. The Office’s position is that if the person was an accomplice to the underlying felony, and had a special circumstance finding that was decided before *People v. Banks* (2015) 61 Cal 4th 788 or *People v. Clark* (2016) 63 Cal. 4th 522, then the filing of a Penal Code section 1170.95 petition is adequate to trigger the section 1170.95 process. There is no requirement that the petitioner file a separate habeas petition first. (*People v. York* (2020) 54 Cal. App. 5th 250, 258.) The next stage is an evidentiary hearing.
7. The Office’s position is that if allegations pursuant to Penal Code section 190.2 (a) (17) were dismissed as part of plea negotiations and the petitioner was not the actual killer, this Office will not attempt to prove the individual is ineligible for resentencing. This Office will stipulate to eligibility per section 1170.95(d)(2).

8. The Office's position is that, consistent with *People v. Medrano* (2019) 42 Cal. App. 5th 1001, 1008, rev. granted, that a person who was convicted of attempted murder under the natural and probable consequences doctrine is eligible for resentencing under section 1170.95. Among other reasons, this avoids the great disparity that arises when one who was convicted of murder under the now abolished natural and probable consequences doctrine is able to be resentenced but one who was convicted of attempted murder is not.
9. If the client has previously won relief under *People v. Chiu* (2014) 59 Cal. 4th 155, the Office will not attempt to argue that the petitioner is ineligible for resentencing, or could be convicted as a direct aider and abettor.
10. If the jury was never instructed on direct aiding and abetting, implied malice murder, or any other intent-to-kill theory, or if the trial prosecutor never argued one of these theories, this Office will not argue that the petitioner can now be convicted under one of these theories during 1170.95 proceedings. Theories must remain consistent.
11. Relatedly, if a jury was not even instructed on implied malice murder or some other theory of homicide not covered by section 1170.95, the prosecution cannot now meet our burden of proof beyond a reasonable doubt that the petitioner is ineligible for resentencing.
12. If the petitioner was convicted of murder and the petitioner's jury was instructed on the natural and probable consequences theory doctrine and/or a first or second degree felony murder instruction at trial, then it may have been possible that petitioner was convicted under one of these theories and this Office will not seek to rebut petitioner's prima facie showing. The case must proceed to the evidentiary hearing.
13. Because jury deliberations are secret, in the absence of special findings, it is not possible to determine the actual basis of a jury verdict when multiple theories were before the jury. Therefore, at an evidentiary hearing, if the petitioner was convicted of murder and the petitioner's jury was instructed with a felony murder or a natural and probable consequences doctrine instruction along with other theories, there is a reasonable doubt that the jury convicted petitioner under the old felony murder rule or the now abolished doctrine of natural and probable consequences. Because the statute allows for the introduction of "new or additional evidence," the deputy district attorney may introduce evidence to show, for example, that the petitioner was the actual killer, or acted as a major participant with reckless indifference to human life, or was convicted under a still-valid theory on which the jury was instructed. See below for this Office's position on evidence that we will and will not seek to admit.
14. At an evidentiary hearing pursuant to section 1170.95 (d)(3), the prosecution must prove beyond a reasonable doubt that the petitioner is ineligible for resentencing. A deputy district attorney may not argue that the standard for the court to determine whether a petitioner is ineligible for resentencing is whether there is "sufficient evidence" to uphold the conviction. This is a standard of proof for an appellate court affirming a conviction. It is not the standard of proof for a trial court in a section 1170.95 proceeding. (*People v. Lopez* (2020) 56 Cal.App. 5th 936, 949-950.)

15. It is this Office's position that the Evidence Code applies to any evidentiary hearing pursuant to section 1170.95. Statements made after promises of leniency or threats of punishment (express or implied) are unreliable. A parole hearing is a coercive environment and therefore statements made in them are unreliable and involuntary. This Office will not seek to introduce statements by a petitioner made in parole hearing transcripts into court for any purpose.
16. As a matter of due process, it is this Office's policy that a petitioner has a right to confrontation at a hearing under section 1170.95. Accordingly, this Office will not seek to admit statements of a declarant when the petitioner did not have an opportunity to cross-examine the declarant or when a purported expert's opinion is based on inadmissible hearsay. (See *People v. Sanchez* (2016) 63 Cal.4th 665.)
17. The Office will comply with all of our obligations under *Brady v. Maryland* and its progeny during resentencing procedures.
18. The Office's position is that any defendant who was under the age of 25 when the crime occurred is entitled to present mitigation documents pursuant to *People v. Franklin* and Penal Code section 3051.
19. The Office's position is that a person's age and the "diminished culpability of youth," a person's mental illness, or cognitive impairment, or a person's intoxication is relevant to the determination whether a petitioner meets the standard of "reckless indifference to human life."
20. On resentencing, this Office will dismiss enhancements consistent with our current enhancement policies and otherwise not seek a sentence that is inconsistent with this Office's current sentencing policies.

RESENTENCING UNIT

This Office declares that new Sentencing, Enhancement and Juvenile policies must apply with equal force to sentences where the judgment is final. Accordingly, this Office commits to a comprehensive review of cases where the defendant received a sentence that was inconsistent with the charging and sentencing policies in force after Tuesday, December 8, 2020, at 12:01 AM.

In such cases, this Office shall use its powers under Penal Code section 1170(d)(1) to recommend recall and resentencing. While priority shall be given to the cases enumerated below, the ultimate goal shall be to review and remediate every sentence that does not comport with the new Sentencing, Enhancement and Juvenile Policies.

Specifically, this Office commits to an expedited review of the following categories of cases, which are themselves a subset of a universe of 20,000-30,000 cases with out-of-policy sentences:

- People who have already served 15 years or more;
- People who are currently 60 years of age or older;
- People who are at enhanced risk of COVID-19 infection;
- People who have been recommended for resentencing by CDCR;

- People who are criminalized survivors;
- People who were 17 years of age or younger at the time of the offense and were prosecuted as an adult.

In formulating this policy, we rely on current statistical data from the California Department of Corrections and Rehabilitation (CDCR). (See Appendix.) Over time, the data may be subject to change; the urgency of our mission will not be. In seeking resentencing under 1170(d)(1), this Office shall argue that resentencing is necessary to eliminate disparity of sentences and to promote uniformity of sentencing.

At all types of resentencing hearings, filing deputies shall assist the Resentencing Court by setting forth any and all postconviction factors that support resentencing, including, but not limited to: mitigation evidence; CDCR disciplinary records and record of rehabilitation and positive programming while incarcerated; evidence that reflects whether age, time served, and diminished physical condition, if any, have reduced the risk for future violence; evidence that reflects that circumstances have changed since the original sentencing so that continued incarceration is no longer in the interest of justice; and post-release reentry plans, demonstrating any family or community support that is available upon release. (See e.g. Assembly Bill 1812, Pen. Code § 1170, subd. (d).)

LIFER PAROLE HEARINGS

This Office recognizes that parole is an effective process to reduce recidivism, ensure public safety, and assist people in successfully rejoining society. The CDCR's own statistics show that people paroled from life terms have a recidivism rate of less than four percent.

We are not experts on rehabilitation. While we have information about the crime of conviction, the Board of Parole Hearings already has this information. Further, as the crime of conviction is of limited value in considering parole suitability years or decades later, (see *In re Lawrence* (2008) 44 Cal.4th 1181; *In re Shaputis* (2008) 44 Cal. 4th 1241, 1255), the value of a prosecutor's input in parole hearings is also limited. Finally, pursuant to Penal Code section 3041, there is a presumption that people shall be released on parole upon reaching the Minimum Eligible Parole Date (MEPD), their Youth Parole Eligible Date, (YEPD), or their Elderly Parole Date (EPD). Currently, sentences are being served that are much longer than the already lengthy mandatory minimum sentences imposed. Such sentences are constitutionally excessive. (See *In re Palmer* (2019) 33 Cal.App.5th 1199.)

This Office's default policy is that we will not attend parole hearings and will support in writing the grant of parole for a person who has already served their mandatory minimum period of incarceration, defined as their MEPD, YEPD or EPD. However, if the CDCR has determined in their Comprehensive Risk Assessment that a person represents a "high" risk for recidivism, the DDA may, in their letter, take a neutral position on the grant of parole.

This Office will continue to meet its obligation to notify and advise victims under California law, and is committed to a process of healing and restorative justice for all victims.

YOUTH AND CHILDREN²

Currently, there are thousands of people from Los Angeles County serving sentences in the CDCR for crimes they committed as children. As recent developments in adolescent brain science teach us, young people are uniquely capable of rehabilitation and can lead productive lives as contributing members of society without serving long sentences.

Under new Juvenile Directives, available here, people who are 17 or younger at the time of their offense, will not be transferred to adult court and will remain committed to the youth system until they are mature enough to reenter society. Accordingly, any person who was a minor at the time of the offense and meets the eligibility requirements for recall and/or resentencing in adult court, including but not limited to actions pursuant to Penal Code sections 1170(d)(2), or 1170(d)(1), falls within this Office's policy to oppose transfer of minors to adult court. In such cases, DDAs shall join in any defense motion seeking to transfer the person to juvenile court for further proceedings, and the deputy on the case shall state the reasons for supporting such transfer, consistent with this Office's policies, on the record.

² We will refer to "youth," "child," or "children" instead of "juvenile(s)." The word "juvenile" is used almost exclusively as a way to describe children who are in the criminal legal system or as police descriptors. As a result, it has become a way to mark certain children as "other." To the extent possible, we will refer to the children in the criminal legal system as we would to all children, as "young person(s)" or "children." In accordance with Penal Code § 3051, we will refer to persons age 18 to 25 as "youths."

APPENDIX

A. Current CDCR Population from Los Angeles County

Table A.1: Descriptive Statistics for Demographic and Other Data

Variable	Level	Number	Percentage
Total CDCR Prison Population Originating in Los Angeles County = 29,556* (*excluding LWOP and condemned cases)			
<i>Gender</i>			
	Female	1,078	3.65%
	Male	28,478	96.35%
<i>Race/Ethnicity</i>			
	Black	11,139	37.69%
	Latinx/Hispanic	14,683	49.68%
	White	2,263	7.66%
	Other	1,471	4.98%
<i>Age Group</i>			
	Less than 20	31	0.10%
	20-29	5,945	20.11%
	30-39	9,098	30.78%
	40-49	6,489	21.95%
	50-59	5,043	17.06%
	60+	2,950	9.98%
<i>Offense Category</i>			
	Crimes Against Persons	25,391	85.91%
	Drug Crimes	461	1.56%
	Property Crimes	2,230	7.54%
	Other Crimes	1,474	4.99%
<i>Time Served</i>			
	Less than 5	8,307	28.11%
	5 to less than 10	6,762	22.88%
	10 to less than 15	5,123	17.33%
	15 to less than 20	3,446	11.66%

	20+	5,918	20.02%
<i>Sentence Type</i>			
	2nd Strike	8,106	27.43%
	3rd Strike	2,395	8.10%
	Determinate Sentence	9,841	33.30%
	Life with Parole	9,214	31.17%

Table A.1: Time Served, Age at Time of Offense, Current Age, Classification Scores, and Serious Rules Violation Reports (RVRs) Received in Past 3 Years

	Count/ Percentage of Total LAC Prison Population
Served 20 Years or More	5,918 (20.02%)
Served 15 Years or More	9,364 (31.68%)
Served 10 Years or More	14,487 (49.02%)
Served 7 Years or More	18,206 (61.60%)
Currently 60 Years or Older	2,950 (9.98%)
Currently 65 Years or Older	1,367 (4.62%)
Age 25 or Younger at Time of Offense	13,410 (45.37%)
Age 18 or Younger at Time of Offense	3,291 (11.13%)
Age 17 or Younger (Under 18) at Time of Offense	1,557 (5.27%)

Age 16 or Younger at Time of Offense	778 (2.63%)
Age 15 or Younger at Time of Offense	255 (0.86%)
Classification Score of 25 or Below	12,297 (41.61%)
Classification Score of 19 or Below	10,700 (36.20%)
No Serious RVRs in Past 3 Years	25,501 (86.28%)
CS of 25 or Below with No Serious RVRs in Past 3 Years	12,016 (40.66%)
CS of 19 or Below with No Serious RVRs in Past 3 Years	10,490 (35.49%)

Table A.3: Eligibility by Offense Type and Time Served (mix of lower-level offenses)

Offense Type	Served 10 Years or More		Served 7 Years or More		All	
	Frequency	Percentage of Total Prison Population Originating in LAC*	Frequency	Percentage of Total Prison Population Originating in LAC*	Frequency	Percentage of Total Prison Population Originating in LAC*
Drug Offenses	132	0.45%	158	0.53%	461	1.56%
Residential Burglaries	476	1.61%	688	2.33%	1,643	5.56%
Robberies	2,045	6.92%	2,828	9.57%	5,297	17.92%
Residential Burglaries & Robberies	2,521	8.53%	3,516	11.90%	6,940	23.48%
Non-Sex Offenses	12,393	41.93%	15,618	52.84%	26,029	88.07%
Non-Murder & Non-Sex Offenses	5,731	19.39%	7,937	26.85%	17,048	57.68%
All Non-Violent, Non-Serious, Non-Sex Crimes	527	1.78%	644	2.18%	2,236	7.57%
All Non-Non-Non Crimes (with Residential Burglaries)	1,003	3.39%	1,332	4.51%	3,879	13.12%
All Non-Non-Non Crimes (with Res. Burglaries & Robberies)	3,048	10.31%	4,160	14.07%	9,176	31.05%
All Incarcerated*	14,463	48.93%	18,167	61.47%	29,556	100.00%

*The total prison population originating in LAC in this table excludes all LWOP and condemned cases.

B. Background on Our Incarceration Crisis

Our ballooning prison population [did not result from an increase in crime](#). In fact, our crime rate has declined dramatically since the early 1990's. Rather, [harsher sentencing laws like](#) Life Without the Possibility of Parole, an increase in mandatory minimum sentences for indeterminate sentences, Three Strikes sentencing, and requirements that that restrict people to complete 85% of their imposed time now keep people in prison for longer than ever before, long after they pose any safety risk to their community.

There are currently [more people serving life sentences](#) in America than were locked up in prison at all during the 1970s. [One in seven](#) people behind bars is serving a life sentence.

California has led the way in this explosion. We had [23,000 people](#) incarcerated in 1980. By 2000, [we had over 160,000](#) people. By 2010 we had 164,000. In the last 10 years, spurred by a [United States Supreme Court decision](#) holding that California's overcrowded prisons constituted cruel and unusual punishment, as well as by a growing public awareness that we are incarcerating too many people for too long, we have moved to reduce our prison population. However, we have five times as many people incarcerated as we had in 1980.

California spent [a shocking \\$15.7 billion on prisons in 2019-2020](#). This represents 7.4% of all state funds. This is occurring while people are sleeping in our streets, our parks are trash-ridden, our schools are in need of repair, our once-free public universities are underfunded and tuition rises, people are hungry, and we need major infrastructure repair to even do things like provide clean water to the people of California.

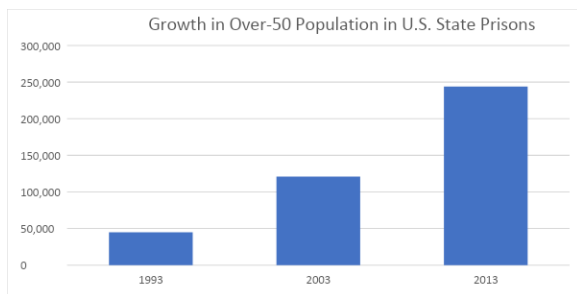
In Los Angeles County alone we currently have almost 30,000 people in CDCR.

Nationally, our criminal justice policies have disproportionately impacted minority populations. 60% of people in prison are Black, despite making up just 13% of the population. One out of every five Black persons behind bars has a life sentence.

Almost 93% of people sent to prison from Los Angeles County are Black people and people of color. Black people are approximately 9% of Los Angeles's population. They constitute 38% of Los Angeles's state prison population. We can no longer deny that our system of hyper-criminalization and incarceration is anything other than racist.

The incarceration rate of women [is also on the rise](#). In 1980, there were 13,206 women in prison; in 2017, there were 111,360.

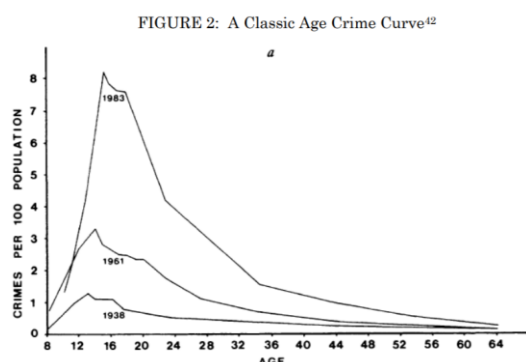
Harsh sentencing laws have also meant that the prison population is old. If we continue at current rates, [one in three people behind bars](#) in state prisons will be over 50 by 2030. In 1993, there were 45,000 people over 50 in U.S. state prisons. Twenty years later, there were 243,800. The growth in the aging prison population has continued. Since 1999, New York has decreased its prison population by 30 percent [but during that same time span saw a doubling](#) of its over 50 population. Between 2001 and 2014, [29,500 people over 55](#) died in federal and state prisons.



Current estimates show that the U.S. spends upwards of \$16 billion a year to care for its elderly population. In 2013 in Virginia, **nearly half of the Department of Corrections budget** for prisoner health care went to caring for the elderly.

Recidivism and the Age-Crime Curve

Research consistently shows that individuals age out of crime, even those convicted of the most serious offenses. By the time individuals reach their thirties, their odds of committing future crimes drop dramatically. Much of this is due to neurological changes, which take place in profound ways up until an individual turns 26. The prefrontal cortex, which is highly involved in executive functioning and behavior control, continues to develop until age 26, making it harder for young people to make what adults consider logical and appropriate decisions.



Given these changes, it makes little sense to sentence children and adolescents to lengthy terms of incarceration without any meaningful opportunity for review, as the odds are extremely high that those children can be rehabilitated and reenter society.

Likewise, incarcerating an aging population makes little penological sense. Those aged 50-64 have [far lower recidivism rates](#) than the national average: seven percent compared to 43.3 percent. And those over 54 have just a four percent recidivism rate. In other words, we are spending billions to lock up people, 96% of whom will not even commit a technical violation once released.

Jurisdictions that allow for a “second look” or increased parole opportunities

“Look back” provisions allow sentenced individuals to petition for a reduced sentence after they have shown meaningful signs of rehabilitation that indicate an ability to return to society. While several jurisdictions have parole eligibility, only California has enacted a robust “look back” Act thus far. Delaware has implemented one to address those sentenced under habitual offender laws.

Federal: Los Angeles Congresswoman Karen Bass and United States Senator Cory Booker introduced a bill for people serving in federal prison to reevaluate cases involving people [over 50 years old and for those who have served at least ten years of a sentence](#), creating a rebuttable presumption of release for those over 50.

District of Columbia: Recently, the District of Columbia passed Second Look Sentencing for youths. This month, the Council [is poised to expand this second look resentencing](#) to all who were under the age of 25 at the time of the crime.

Oregon: in January 2020, [Oregon's Second Look Resentencing](#), for minors [SB 1008](#) goes into effect.

Florida: Florida allows a second look for children who were sentenced as adults for offenses committed before their 18th birthday.

Delaware: People convicted before their 18th birthday of a first-degree murder may petition for modification after 30 years, and after 20 years for any other offense.

Colorado: Senate Bill 16-180 requires the Department of Corrections (DOC) to create a program for kids sentenced as adults for a felony and presumes release upon participation after 3 years.

California: has made many of its recent changes retroactive, including resentencing for those convicted of a third strike, Proposition 47, SB 1437, Penal Code section 1170, subsection (d), among others. California also [provides automatic parole review](#) when a person commits the crime before the age of 26 and has served 15, 20, or 25 years, depending on the controlling offense. California has also expanded elderly parole this year with [AB 3234](#) so that people who are 50 and have served at least 20 years are eligible for parole consideration.


The policies of this Special Directive supersede any contradictory language of the Legal Policies Manual.

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EXHIBIT C

SPECIAL DIRECTIVE 20-08.1

TO: ALL DEPUTY DISTRICT ATTORNEYS

FROM: GEORGE GASCÓN 
District Attorney

SUBJECT: FURTHER CLARIFICATION OF SPECIAL DIRECTIVE 20-08

DATE: DECEMBER 15, 2020

This Special Directive is intended to further supplement the language provided in SD 20-08, Section II concerning Pending Cases, issued on December 7, 2020. The introduction of that Special Directive states, "...sentence enhancements or other sentencing allegations, including under the Three Strikes law, shall not be filed in any cases and shall be withdrawn in pending matters." The language is clear that this policy is intended to put an end to the practice of alleging strike priors and all other special allegations in accordance with the constitutional authority granted solely to prosecutors across the state of California.

If a pending matter has strike priors alleged or enhancements/allegations (pursuant to SD 20-08) deputies shall make the following record:

"The People move to dismiss and withdraw any strike prior (or other enhancement) in this case. We submit that punishment provided within the sentencing triad of the substantive charge(s) in this case are sufficient to protect public safety and serve justice. Penal Code section 1385 authorizes the People to seek dismissal of all strike prior(s) (or other enhancements) when in the interests of justice. Supreme Court authority directs this Court to determine those interests by balancing the rights of the defendant and those of society 'as represented by the People.' The California Constitution and State Supreme Court precedent further vest the District Attorney with sole authority to determine whom to charge, what charges to file and pursue, and what punishment to seek. That power cannot be stripped from the District Attorney by the Legislature, Judiciary, or voter initiative without amending the California Constitution. It is the position of this office that Penal Code section 1170.12(d)(2) and Penal Code 667(f)(1) are unconstitutional and infringe on this authority. Additional punishment provided by sentencing enhancements or special allegations provide no deterrent effect or public safety benefit of incapacitation--in fact, the opposite may be true, wasting critical financial state and local resources."

Legal authority: *People v. Superior Court (Romero)* (1996) 13 Cal. 4th 497, 530 ("[T]he language of [section 1385], 'furtherance of justice,' requires consideration both of the constitutional rights of the defendant, and *the interests of society represented by the People*, in determining whether there should be a dismissal." (emphasis in original); *Dix v. Superior Court* (1991) 53 Cal. 3d at 451.

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Furthermore, if a court refuses to dismiss the prior strike allegations or other enhancements/allegations based on the People's oral request, the DDA shall seek leave of the court to file an amended charging document pursuant to Penal Code section 1009.


If a court further refuses to accept an amended charging document pursuant to Penal Code section 1009, the DDA shall provide the following information to their head deputy: Case number, date of hearing, name of the bench officer and the court's justification for denying the motion (if any). The DDA shall stipulate to any stay of proceedings if requested by the defense.

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EXHIBIT D

SPECIAL DIRECTIVE 20-08.2

TO: ALL DEPUTY DISTRICT ATTORNEYS

FROM: GEORGE GASCÓN 
District Attorney

SUBJECT: AMENDMENT TO SPECIAL DIRECTIVE 20-08

DATE: DECEMBER 18, 2020

This Office is committed to eliminating mass incarceration and fostering rehabilitation for those charged with crimes. As such, this Office will not pursue prior strike enhancements, gang enhancements, special circumstances enhancements, out on bail/O.R. enhancements, or Penal Code section 12022.53 enhancements. After listening to the community, victims, and my deputy district attorneys, I have reevaluated Special Directive 20-08 and hereby amend it to allow enhanced sentences in cases involving the most vulnerable victims and in specified extraordinary circumstances. These exceptions shall be narrowly construed.

Effective immediately, Special Directive 20-08 is amended as follows:

The following sentence enhancements and allegations shall not be pursued in any case and shall be withdrawn in pending matters:

- Any prior-strike enhancements (Penal Code section 667(d), 667(e), 1170.12(a) and 1170.12(c)) will not be used for sentencing and shall be dismissed or withdrawn from the charging document. This includes second strikes and any strikes arising from a juvenile adjudication;
- Any Prop 8 or “5-year prior” enhancements (Penal Code section 667(a)(1)) and “three-year prior” enhancements (Penal Code section 667.5(a)) will not be used for sentencing and shall be dismissed or withdrawn from the charging document;
- STEP Act enhancements (“gang enhancements”) (Penal Code section 186.22 et. seq.) will not be used for sentencing and shall be dismissed or withdrawn from the charging document;
- Special circumstances allegations resulting in an LWOP sentence shall not be filed, will not be used for sentencing, and shall be dismissed or withdrawn from the charging document;
- Violations of bail or O.R. release (Penal Code section 12022.1) shall not be filed as part of any new offense;
- Firearm allegations pursuant to Penal Code section 12022.53 shall not be filed, will not be used for sentencing, and will be dismissed or withdrawn from the charging document.

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However, where appropriate, the following allegations, enhancements and alternative sentencing schemes may be pursued:

- Hate Crime allegations, enhancements or alternative sentencing schemes pursuant to Penal Code sections 422.7 and 422.75;
- Elder and Dependent Adult Abuse allegations, enhancements, or alternative sentencing schemes pursuant to Penal Code sections 667.9, 368(b)(2)/12022.7(c);
- Child Physical Abuse allegations, enhancements or alternative sentencing schemes pursuant to Penal Code sections 12022.7(d), 12022.9, and 12022.95;
- Child and Adult Sexual Abuse allegations, enhancements or alternative sentencing schemes pursuant to Penal Code sections 667.61, 667.8(b), 667.9, 667.10 ,667.15, 674, 675, 12022.7(d), 12022.8(b), and 12022.85(b)(2);
- Human Sex Trafficking allegations, enhancements or alternative sentencing schemes pursuant to Penal Code sections 236.4(b) and 236.4(c);
- Financial crime allegations, enhancements or alternative sentencing schemes where the amount of financial loss or impact to the victim is significant, the conduct impacts a vulnerable victim population or to effectuate Penal Code section 186.11;
- Other than the enhancement or allegation prohibitions previously listed, enhancements or allegations may be filed in cases involving the following extraordinary circumstances with written Bureau Director approval upon written recommendation by the Head Deputy:
 - Where the physical injury personally inflicted upon the victim is extensive; or
 - Where the type of weapon or manner in which a deadly or dangerous weapon including firearms is used exhibited an extreme and immediate threat to human life;

Facts or circumstances that are sufficient to meet the legal definition of great bodily injury or use of a deadly or dangerous weapon alone are insufficient to warrant extraordinary circumstances. The written request and approval must be placed in the case file.

CASE SETTLEMENT

The following directives cover case settlement.

1. If the charged offense(s) is probation-eligible, probation shall be the presumptive offer.
 - a. Appropriate deviations from this presumption are as follows:
 - i. If the charged offense(s) is probation-eligible, and extraordinary circumstances exist, the Deputy District Attorney may file the basis and recommendation for a deviation in writing to their Head Deputy and the appropriate Bureau Director. Upon written approval from the Bureau Director, the Deputy District Attorney may offer a state prison sentence in accordance with this policy. The written basis for the deviation, recommendation, and approval shall be kept in the case file.
 - ii. If, but for the terms of this directive, the People could have reasonably alleged an enhancement, and defendant's conduct would have therefore been ineligible for probation, Deputy District Attorneys may file a

recommendation for a deviation in writing to their Head Deputy. Upon written approval from the Head Deputy, the Deputy District Attorney may offer a state prison sentence pursuant to the sentencing triad of the substantive offense(s). The written basis for the deviation, recommendation, and approval shall be kept in the case file.

2. If the charged offense(s) is not probation eligible, the presumptive sentence shall be the low term.
 - a. When deviating from the low term the deputy shall document the supporting reasons in the case file.

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EXHIBIT E

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT 115

HON. MARK S. ARNOLD, JUDGE

PEOPLE OF THE STATE OF CALIFORNIA,

PLAINTIFF,

VS.

RUDY DOMINGUEZ,

DEFENDANT.

SUPERIOR COURT
NO. BA466952-01

REPORTER'S TRANSCRIPT OF PROCEEDINGS

TUESDAY, DECEMBER 15, 2020

FOR THE PLAINTIFF:

OFFICE OF THE DISTRICT ATTORNEY
BY: JEFFREY HERRING, DEPUTY
211 WEST TEMPLE STREET
SUITE 200
LOS ANGELES, CALIFORNIA 90012

FOR THE DEFENDANT:

OFFICE OF THE PUBLIC DEFENDER
BY: TRACI BLACKBURN, DEPUTY
19-513 CRIMINAL COURTS BUILDING
210 WEST TEMPLE STREET
LOS ANGELES, CALIFORNIA 90012

CATHERINE A. ZINK, #9242
OFFICIAL REPORTER

1 CASE NUMBER: BA466952-01
2 CASE NAME: PEOPLE VS. RUDY DOMINGUEZ
3 LOS ANGELES, CALIFORNIA TUESDAY, DECEMBER 15, 2020
4 DEPARTMENT 115 HON. MARK S. ARNOLD, JUDGE
5 REPORTER: CATHERINE A. ZINK, CSR #9242
6 TIME: 2:50 P.M.
7

8 APPEARANCES:

9 THE DEFENDANT IS PRESENT IN COURT WITH COUNSEL,
10 TRACI BLACKBURN, BAR PANEL ATTORNEY,
11 THE PEOPLE ARE REPRESENTED BY
12 JEFFREY HERRING, DEPUTY DISTRICT ATTORNEY.
13

14 THE COURT: WE'LL GO ON THE RECORD IN RUDY
15 DOMINGUEZ, BA466952.

16 WE HAVE A NEW DEFENSE COUNSEL?

17 MS. BLACKBURN: YES. TRACI BLACKBURN, DEPUTY
18 PUBLIC DEFENDER, ON BEHALF OF MR. DOMINGUEZ. HE'S
19 PRESENT IN CUSTODY.

20 THE COURT: MR. HERRING IS HERE FOR THE PEOPLE.

21 WE'RE AT ZERO OF 60 TODAY.

22 MR. HERRING: YES, YOUR HONOR. THE PEOPLE HAVE A
23 MOTION.

24 THE COURT: WHAT'S THAT?

25 MR. HERRING: CONSISTENT -- EXCUSE ME. AT THE
26 DIRECTION OF THE LOS ANGELES COUNTY DISTRICT ATTORNEY, IN
27 ACCORDANCE WITH SPECIAL DIRECTIVE 20-08 CONCERNING
28 ENHANCEMENTS AND ALLEGATIONS, AND IN THE INTEREST OF

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1 JUSTICE, THE PEOPLE HEREBY MOVE TO DISMISS ALL ALLEGED
2 SENTENCING ENHANCEMENTS NAMED IN THE INFORMATION --
3 EXCUSE ME -- IN THE INFORMATION FOR ALL COUNTS. IN
4 ADDITION, WE MOVE TO DISMISS ANY SPECIAL CIRCUMSTANCES
5 NAMED IN THE INFORMATION AT THIS POINT, IN THE INTEREST
6 OF JUSTICE, YOUR HONOR.

7 THE COURT: AND THE INTEREST OF JUSTICE IS MET HOW?

8 MR. HERRING: YOUR HONOR, I BELIEVE IT'S THE NEW
9 D.A.'S POSITION -- THE D.A.'S OFFICE POSITION THAT
10 EXTENDED PRISON SENTENCES IN LOS ANGELES COUNTY ARE FAR
11 TOO LONG; THAT THEY ARE COSTLY AND INEFFECTIVE AND HARM
12 PEOPLE IN UNDERSERVED COMMUNITIES.

13 THE COURT: HAVE YOU CONSULTED WITH THE VICTIM'S
14 FAMILY ON THIS?

15 MR. HERRING: I HAVE DISCUSSED WHAT THE D.A.'S
16 POSITION IS WITH THE FAMILY, YES.

17 THE COURT: AND WHAT DO THEY SAY -- ARE THEY
18 PRESENT IN COURT?

19 MR. HERRING: THEY ARE PRESENT IN COURT.

20 THE COURT: ARE ALL THESE FOUR PEOPLE -- ARE THEY
21 ALL --

22 MR. HERRING: THEY'RE THE VICTIM'S FAMILY, YES,
23 YOUR HONOR.

24 THE COURT: WHAT IS YOUR NAME, SIR?

25 THE WITNESS: HERNAN ROJO.

26 THE COURT: SPELL YOUR NAME.

27 THE WITNESS: HERNAN ROJO.

28 THE COURT: MR. ROJO?

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1 HERNAN ROJO: YES.

2 THE COURT: DID MR. HERRING TELL YOU WHAT THE
3 PEOPLE ARE ASKING, TO DISMISS THE SPECIAL CIRCUMSTANCES
4 AND DISMISS ALL OF THESE SENTENCING ALLEGATIONS?

5 HERNAN ROJO: YES.

6 THE COURT: HOW DO YOU FEEL ABOUT THAT?

7 HERNAN ROJO: I DON'T KNOW.

8 THE COURT: YOU DON'T KNOW?

9 HERNAN ROJO: WELL...

10 THE COURT: WHAT'S THIS MAN'S NAME IN THE FRONT
11 ROW?

12 FERNANDO ROJO: FERNANDO ROJO.

13 MR. HERRING: SENIOR.

14 THE COURT: THIS IS THE VICTIM'S FATHER?

15 MR. HERRING: YES.

16 THE COURT: MR. ROJO, DID MR. HERRING DISCUSS WITH
17 YOU WHAT THEIR INTENT IS TODAY?

18 FERNANDO ROJO: WHAT DID YOU SAY?

19 THE COURT: DID YOU SPEAK WITH MR. HERRING TODAY?

20 FERNANDO ROJO: YES.

21 THE COURT: DO YOU NEED TO SPEAK WITH AN
22 INTERPRETER?

23 FERNANDO ROJO: YES.

24 THE COURT: I'M SORRY, I DIDN'T KNOW THAT.

25 DID MR. HERRING TELL YOU THAT HE WANTS TO
26 COME INTO THE COURTROOM AND DISMISS THE FIREARM
27 ALLEGATIONS AND THE SPECIAL CIRCUMSTANCES ALLEGATIONS AS
28 TO THE MAN WHO IS ACCUSED OF KILLING YOUR SON?

1 FERNANDO ROJO: THIS IS FOR ME?

2 THE COURT: YES.

3 FERNANDO ROJO: I DIDN'T UNDERSTAND VERY WELL.

4 THE COURT: WHAT'S THE YOUNG GIRL'S NAME, THE LADY
5 IN THE FRONT ROW -- OR SECOND ROW?

6 AMERICA ROJO: AMERICA ROJO.

7 THE COURT: DID YOU NEED THE INTERPRETER, MS. ROJO?

8 ARE YOU RELATED TO THE DECEASED?

9 AMERICA ROJO: YES.

10 THE COURT: HOW?

11 AMERICA ROJO: HE'S MY BROTHER. HE'S MY BROTHER.

12 THE COURT: DID MR. HERRING ADVISE YOU OF WHAT HE'S
13 SEEKING TODAY?

14 AMERICA ROJO: YES.

15 THE COURT: WHAT DO YOU THINK ABOUT THAT?

16 AMERICA ROJO: ABOUT THE GUN, RIGHT?

17 THE COURT: I CAN'T HEAR YOU.

18 AMERICA ROJO: ABOUT THE GUN?

19 THE COURT: ABOUT DISMISSING THE FIREARM
20 ALLEGATIONS, DISMISSING THE SPECIAL CIRCUMSTANCES, AND
21 DISMISSING THE GANG ALLEGATIONS AS WELL.

22 AMERICA ROJO: IS THAT WHERE THEY -- IS THAT LIKE
23 THEY TAKE YEARS AWAY FROM US?

24 THE COURT: I JUST CAN'T HEAR HER.

25 MR. HERRING: SHE'S ASKING IF THEY TAKE YEARS AWAY
26 FROM HIM.

27 THE COURT: IF HE'S FOUND GUILTY AND THOSE
28 ALLEGATIONS WERE TRUE, YES. IT WOULD REDUCE HIS SENTENCE

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1 SIGNIFICANTLY. A LOT. BY A LOT OF YEARS.

2 AMERICA ROJO: WELL, I FEEL LIKE -- WELL, I FEEL
3 LIKE IT'S NOT FAIR IF HE DOESN'T -- I THINK IT'S NOT FAIR
4 IF HE DOESN'T SERVE AS MUCH YEARS.

5 THE COURT: I CAN'T HEAR YOU. CAN YOU SPEAK
6 LOUDER?

7 SO WHAT DO YOU THINK ABOUT ELIMINATING ALL
8 OF THESE ALLEGATIONS THAT MR. HERRING'S OFFICE IS LOOKING
9 TO ELIMINATE?

10 AMERICA ROJO: I'M SORRY, I DON'T THINK IT'S FAIR.

11 THE COURT: DO YOU UNDERSTAND WHAT I'M ASKING YOU?

12 AMERICA ROJO: YEAH.

13 THE COURT: ARE YOU ABLE TO TELL ME?

14 ARE YOU CRYING?

15 WHY ARE YOU CRYING?

16 I'M GOING TO MAKE THIS EASIER, I'M GOING TO
17 COME DOWN.

18 WHY ARE YOU CRYING?

19 AMERICA ROJO: BECAUSE...

20 THE COURT: WHY ARE YOU CRYING?

21 AMERICA ROJO: I JUST FEEL THAT WE NEED JUSTICE AND
22 HE NEEDS -- IT'S JUST NOT FAIR THAT HE -- IF HE DOESN'T
23 GET AS MUCH YEARS.

24 THE COURT: SO YOU DON'T WANT TO SEE THESE THINGS
25 GET DISMISSED?

26 AMERICA ROJO: NO.

27 THE COURT: OKAY. THANK YOU.

28 WHO'S THE LADY?

1 AMERICA ROJO: THAT'S MY MOM.

2 MR. HERRING: DOES YOUR MOM NEED THE INTERPRETER?

3 THE COURT: MA'AM, CAN YOU COME UP HERE JUST SO
4 EVERYONE DOESN'T HAVE TO YELL?

5 WHAT'S YOUR NAME?

6 TERESA ROJO: TERESA ROJO.

7 THE COURT: MRS. ROJO, DID MR. HERRING, THE D.A.,
8 DID HE TELL YOU TODAY WHAT HE IS LOOKING TO DO BY
9 DISMISSING THE GUN ALLEGATIONS AND THE GANG ALLEGATIONS
10 AND THE SPECIAL CIRCUMSTANCES ALLEGATION?

11 TERESA ROJO: YES.

12 THE COURT: WHAT DO YOU THINK ABOUT THAT? HOW DO
13 YOU FEEL ABOUT THAT?

14 TERESA ROJO: WELL, IT'S NOT FAIR THAT THEY WOULD
15 LOWER MANY YEARS. TO ME IT DOESN'T SEEM FAIR BECAUSE --
16 BECAUSE SOMEBODY WHO IS DOING HARM TO PEOPLE, THEY SHOULD
17 PAY.

18 THE COURT: THANK YOU FOR COMING IN TODAY.

19 ALL RIGHT. DO YOU HAVE ANYTHING ELSE TO
20 ADD, MR. HERRING?

21 MR. HERRING: NO.

22 THE COURT: ALL RIGHT.

23 I'VE GOT A DEFINITION OF WHAT THE INTEREST
24 OF JUSTICE MEANS PURSUANT TO PENAL CODE SECTION 1385.
25 AND THE CASE OF *PEOPLE VERSUS ORIN*, O-R-I-N, IS A 1975
26 CASE, 13 CAL.3D. 937. AT 945 THE COURT SAYS "IN
27 FURTHERANCE OF JUSTICE" MEANS, AT THE VERY LEAST, THE
28 REASON FOR DISMISSAL MUST MOTIVATE A REASONABLE JUDGE.

1 ORIN SAYS, AT PAGE 945, WHEN DETERMINING IF
2 A DISMISSAL FURTHERS THE INTEREST OF JUSTICE, THE COURT
3 MUST CONSIDER THE INTERESTS OF SOCIETY, AS WELL AS THE
4 DEFENDANT'S CONSTITUTIONAL RIGHTS. SOCIETY HAS AN
5 INTEREST IN THE FAIR PROSECUTION OF PROPERLY ALLEGED
6 CRIMES AND ENHANCEMENTS. GENERALLY, IF COURTS TERMINATED
7 PROSECUTIONS OF CRIMES OR ENHANCEMENTS UNDER PENAL CODE
8 SECTION 1385 WITHOUT ADEQUATE REASON, IT WOULD FRUSTRATE
9 THE ORDERLY AND EFFECTIVE OPERATION OF OUR CRIMINAL
10 JUSTICE PROCEDURE AS ENVISIONED BY THE LEGISLATURE.

11 AND THAT QUOTE IS FROM PAGE 947 OF ORIN.

12 THE PEOPLE ARE REQUIRED TO COMPLY WITH
13 MARSY'S LAW. THEY APPARENTLY HAVE. I HAVE LISTENED TO
14 THE DECEASED'S MOTHER AND SISTER.

15 IS THERE ANY REASON, OTHER THAN THIS SPECIAL
16 DIRECTIVE, THAT IS THE GENESIS OF YOUR MOTION?

17 IS THERE ANYTHING ELSE, ANY PROOF PROBLEMS
18 OR EVIDENCE ISSUES, ANYTHING LIKE THAT?

19 MR. HERRING: THERE ARE NO PROBLEMS WITH PROOF WITH
20 THIS CASE, YOUR HONOR. THERE ARE LEGALLY COGNIZABLE
21 MITIGATING FACTORS THAT INCLUDE LACK OF A CRIMINAL RECORD
22 AND YOUNG AGE FOR THE DEFENDANT. ASIDE FROM THAT, I
23 BELIEVE THAT IT IS MY DUTY TO PUT FORTH THE POLICIES THAT
24 ARE IN THE SPECIAL DIRECTIVE.

25 THE COURT: ALL RIGHT.

26 WELL, I HAVEN'T HEARD -- I DON'T BELIEVE
27 THAT YOUR STATED REASONS JUSTIFY DISMISSAL IN THE
28 INTEREST OF JUSTICE.

1 MS. BLACKBURN: MAY I BE HEARD?

2 THE COURT: JUST A MINUTE.

3 FIRST OF ALL, THE DEFENSE DOESN'T HAVE A
4 VOICE IN PENAL CODE SECTION 1385, IT'S MADE BY THE COURT
5 OR IT'S MADE BY THE PEOPLE. I WILL GIVE YOU A CHANCE.

6 SENTENCING ENHANCEMENTS CAN BE DISMISSED
7 WHEN THEY ARE FIREARM ALLEGATIONS UNDER PENAL CODE
8 SECTION 12022.5 SUBDIVISION (C), AND IN THIS CASE I THINK
9 IT WOULD BE PENAL CODE SECTION 12022.53 SUBDIVISION (H).
10 BUT BOTH OF THOSE SUBSECTIONS SAY THEY ALLOW FOR SUCH
11 DISMISSALS AT THE TIME OF SENTENCING.

12 IT MAY VERY WELL BE THAT THE LACK OF RECORD
13 AND THE YOUNG AGE, THAT MIGHT BE, AT THE TIME OF
14 SENTENCING, JUSTIFICATION FOR STRIKING AN ENHANCEMENT.

15 WHAT WOULD YOU LIKE TO SAY, MS. BLACKBURN?

16 MS. BLACKBURN: I WOULD LIKE TO SAY THAT THE
17 DISTRICT ATTORNEY IN THIS CASE HAS INDICATED THAT THERE
18 AREN'T ANY PROOF PROBLEMS, BUT I WOULD ARGUE THE NATURAL
19 AND PROBABLE CONSEQUENCES THEORY OF AIDING AND ABETTING A
20 GANG MURDER IS NOT HERE, SIGNIFICANTLY HAMPERS THE
21 PEOPLE'S ABILITY IT PROVE --

22 THE COURT: THEY'RE NOT GOING TO GET THAT
23 INSTRUCTION.

24 MS. BLACKBURN: I THINK THERE ARE ISSUES IN THAT
25 FIRST DEGREE MURDER INSTRUCTION. I THINK THAT THERE ARE
26 ISSUES WITH THE CASE THAT I THINK HE HAS BROUGHT UP: MY
27 CLIENT'S YOUTH, HIS COMPLETE LACK OF RECORD, HIS FAMILY
28 HISTORY, AND THOSE ARE THINGS THAT I THINK HE COULD

1 ARTICULATE.

2 BUT MORE IMPORTANTLY, EVEN IN THE CITE THAT
3 THIS COURT HAS INDICATED IS THAT THE COURT CANNOT STRIKE
4 THESE IN THE INTEREST OF JUSTICE, BUT THE DISTRICT
5 ATTORNEY'S OFFICE IS THE CHARGING AGENCY.

6 THE COURT: RIGHT.

7 MS. BLACKBURN: SO WHEN THE COURT HAS THE CASE
8 BEFORE IT, THE COURT CAN'T DISMISS THESE --

9 THE COURT: THE COURT WHAT?

10 MS. BLACKBURN: THE COURT CANNOT, OR SHOULD NOT
11 EVEN, ACCORDING TO THIS CASE, DISMISS ANY ALLEGATIONS
12 UNLESS THEY FIND IT IN THE INTEREST OF JUSTICE. BUT I
13 DON'T THINK THE COURT IS HAMPERED BY THE ORIGINAL
14 CHARGING DECISIONS OF THE DISTRICT ATTORNEY'S OFFICE.

15 IT'S BEEN MY EXPERIENCE, AND I'M SURE YOURS,
16 OVER 25 YEARS, THAT EVEN AS CASES ARE CHARGED ORIGINALLY,
17 THERE ARE ALWAYS ALTERATIONS. HAVING THE COURT DECIDE
18 THAT THE PEOPLE OF THE STATE OF CALIFORNIA CANNOT CHANGE
19 THE CHARGING DOCUMENT IS NOT WHAT THAT CASE HOLDS. IT
20 HOLDS THAT ONCE THEY ARE CHARGED, THE COURT CANNOT STEP
21 IN AND INTERPRET THAT THERE IS NO -- AND CHANGE THOSE
22 WITHOUT THE INTEREST OF JUSTICE BEING SERVED.

23 I UNDERSTAND THAT THE FAMILY IS VERY UPSET,
24 AND I UNDERSTAND AND I BELIEVE THAT THEY SHOULD BE. BUT
25 I DON'T THINK THAT THAT'S THE END OF THE INQUIRY, AND I
26 DON'T THINK THAT'S WHAT THE COURT'S BEING ASKED TO DO.

27 THE CHARGING ORGANIZATION -- THE CHARGING
28 AGENCY HAS DECIDED NOT TO CHARGE THIS CASE THIS WAY.

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1 THEY'VE CHARGED CASES FOR MANY YEARS IN WHATEVER WAY THEY
2 DECIDED AND NOW THEIR POLICIES HAVE CHANGED. AND FOR THE
3 COURT TO STEP IN, I DON'T THINK THAT'S WHAT THAT CASE
4 STANDS FOR. IF AT THE END OF THE CASE THE CHARGING
5 AGENCY -- JUST AS THE COURT CAN'T ADD CHARGES --

6 THE COURT: RIGHT.

7 MS. BLACKBURN: -- RIGHT? IF THE CHARGING AGENCY
8 SAYS THAT THEY WANT TO DELETE THE CHARGES, I THINK THAT'S
9 WITHIN THEIR PURVIEW. FOR THE COURT TO STEP IN AND SAY
10 THEY WON'T DO IT IS SEPARATE AND APART FROM WHAT I THINK
11 THE *ORIN* CASE IS TALKING ABOUT.

12 THE COURT: BUT 1385 SAYS I CAN'T DISMISS UNLESS
13 IT'S IN THE INTEREST OF JUSTICE.

14 MS. BLACKBURN: I THINK THAT CASE IS TALKING ABOUT
15 DURING THE PENDENCY OF THE COURT, NOT SEPARATE AND APART
16 FROM THE CHARGING DECISIONS OF THE PROSECUTING AGENCY.

17 THE COURT: SAY THAT AGAIN.

18 MS. BLACKBURN: I THINK IT'S SEPARATE AND APART
19 FROM THE CHARGING DECISIONS OF THE PROSECUTING AGENCY.
20 THE COURT IS BOUND BY WHAT THE PROSECUTING AGENCY
21 CHARGES, UNLESS IN THE INTEREST OF JUSTICE.

22 THE COURT: RIGHT.

23 MS. BLACKBURN: WE HAVE NOW SEEN CHANGES IN THE
24 LAW. FOR EXAMPLE, FOR MANY YEARS THE D.A. WOULD CHARGE A
25 10, 20, LIFE ALLEGATION UNDER 12022.53 AND THE COURT WAS
26 NOT ABLE TO JUST -- THE COURT WAS UNABLE TO DISMISS.
27 THEY HAD NO AUTHORITY AND THEY HAD NO ABILITY TO DO THAT.
28 THAT HAS NOW CHANGED. THE COURTS HAVE SAID IN THE

1 INTEREST OF JUSTICE, IF THE COURT FINDS THAT TO BE TRUE,
2 THEY CAN DISMISS THE ALLEGATION.

3 BUT THE REVERSE HAS NEVER BEEN TRUE, THAT
4 THE COURT CAN STAND IN THE WAY OF THE CHARGING AGENCY
5 DISMISSING ALLEGATIONS -- NOT ALLEGATIONS THAT HAVE BEEN
6 PROVEN AT TRIAL, BUT DURING THE PENDENCY OF THE CASE --
7 THE COURT CAN SAY I HAVE NOW BECOME THE CHARGING AGENCY
8 AND I'M STANDING IN THEIR STEAD AND OVERRULING THEIR
9 CHARGING DECISIONS. THE INTEREST OF JUSTICE IS FOR
10 DISMISSAL IF THE COURT IS OUTSIDE OF WHAT THE CHARGING
11 AGENCY HAS DECIDED THEY WANT TO DO.

12 I THINK THEY'RE VERY DIFFERENT THINGS. I
13 THINK THE CASE VERY STRONGLY -- OR THE CASE LAW HAS
14 PROVEN THAT.

15 THE COURT: WHAT CASE LAW?

16 MS. BLACKBURN: ANY CASE LAW.

17 THE COURT: TELL ME. TELL ME ANY CASE THAT SAYS IF
18 THE PEOPLE MOVE TO DISMISS AN ALLEGATION, IPSO FACTO THE
19 JUDGE HAS TO DO IT. WHAT CASE STANDS FOR THAT?

20 MS. BLACKBURN: I'LL FIND YOU A CASE, YOUR HONOR.

21 THE COURT: YOU FIND ME A CASE THAT SAYS THAT IF
22 THEY MOVE TO DISMISS AN ALLEGATION OR A CHARGE, THAT THAT
23 IN AND OF ITSELF JUSTIFIES DISMISSAL.

24 MS. BLACKBURN: HOW, SHORT OF A TRIAL, WOULD THE
25 COURT KNOW OR UNDERSTAND THE ORIGINAL CHARGING INTENT OF
26 THE PROSECUTING AGENCY?

27 THE COURT: HOW WHAT?

28 MS. BLACKBURN: HOW, SHORT OF A TRIAL, WOULD THE

1 COURT UNDERSTAND THE ORIGINAL MOTIVATION AND INTENT OF
2 THE PROSECUTING AGENCY, WITHOUT PROOF, THAT THESE ARE
3 THEREFORE JUST AND THAT THEY CAN'T REDUCE -- THEY CAN'T
4 DISMISS THEM WHEN THE CHARGING AGENCY SAYS THAT THEY
5 BELIEVE IT BE TRUE.

6 THE COURT: I'VE LISTENED TO WHAT HIS REASON IS AS
7 TO WHY HE'S COME FORWARD WITH THIS MOTION FOR DISMISSAL.

8 MS. BLACKBURN: BUT HAVE YOU -- HAD THERE EVER BEEN
9 A DETERMINATION THAT THE ORIGINAL REASON FOR CHARGING
10 THIS CASE THE WAY THEY DID WERE VALID?

11 THE COURT: THAT'S FOR A TRIAL. IF YOU THINK THAT
12 THE EVIDENCE WAS INSUFFICIENT, FILE A 995 MOTION.

13 MS. BLACKBURN: IT'S NOT INSUFFICIENT, I'M SAYING
14 WHETHER OR NOT IT'S JUST OR IN THE INTEREST OF JUSTICE.

15 THE COURT: ALL RIGHT.

16 MS. BLACKBURN, YOU ARE VERY ARTICULATE AND I
17 DON'T KNOW YOU, BUT YOU APPEAR TO ME TO BE A VERY, VERY
18 GOOD LAWYER. YOU AND I DON'T SEE IT THE SAME WAY. I
19 DON'T THINK IT RISES TO THE LEVEL OF THE INTEREST OF
20 JUSTICE. AS I SAID BEFORE, IT MAY VERY WELL BECOME
21 RELEVANT AT THE TIME OF SENTENCING.

22 FOR NOW, AT THIS POINT, WITHOUT PREJUDICE,
23 YOUR MOTION, MR. HERRING, IS DENIED.

24 MS. BLACKBURN: YOUR HONOR, CAN WE SET THIS CASE
25 FOR --

26 THE COURT: YES.

27 MS. BLACKBURN: -- THE 28TH?

28 THE COURT: HAVE YOU TALKED NO MR. HERRING ABOUT A

1 FUTURE DATE?

2 MS. BLACKBURN: NO. MR. HERRING IS NOT THE
3 ATTORNEY OF RECORD ON THIS CASE, IT WAS MR. TRUJILLO. WE
4 HAD DISCUSSED DISPOSITION. I THOUGHT THAT'S WHAT WE WERE
5 GOING TO DO TODAY. I WOULD ASK FOR THE 28TH.

6 THE COURT: 28TH OF DECEMBER?

7 MR. HERRING: IT'S NEWS TO ME THAT I'M NOT THE
8 ATTORNEY OF RECORD ON THIS CASE.

9 THE COURT: NO, I THINK SHE MEANS THE DEFENSE
10 ATTORNEY.

11 MR. HERRING: NO.

12 MS. BLACKBURN: NO, NO. I'M THE DEFENSE ATTORNEY.
13 I'M SORRY.

14 THERE'S AN OFFER THAT WAS CONVEYED TO ME,
15 THAT I CONVEYED TO MR. DOMINGUEZ, AND --

16 THE COURT: FROM WHO?

17 MS. BLACKBURN: FROM MR. --

18 MR. HERRING: I BELIEVE IT WAS MARIO TRUJILLO.
19 THAT'S WHAT I'VE BEEN TOLD.

20 I'VE ALSO BEEN TOLD FROM A SEPARATE SET OF
21 SUPERVISORS THERE IS NO OFFER, AND THAT'S WHY WE'RE IN A
22 CONUNDRUM TODAY.

23 THE COURT: WELL, THEN EVERYBODY NEEDS TO BE HERE
24 ON THE NEXT DAY BECAUSE AS FAR AS I KNOW, YOU'RE THE
25 REPRESENTATIVE OF THE PEOPLE. I'VE NEVER SEEN -- WHO DID
26 THE OFFER COME FROM?

27 MS. BLACKBURN: MR. TRUJILLO.

28 THE COURT: TRUJILLO? I DON'T KNOW WHO THAT IS.

1 MS. BLACKBURN: HE'S IN CHARGE OF SPECIAL
2 CIRCUMSTANCES. AT LEAST WAS IN CONTACT WITH
3 MS. BLACKNELL PRIOR TO THIS DATE AND CONVEYED AN OFFER,
4 WHICH I CONVEYED TO MY CLIENT. SO IT'S NEWS TO ME
5 THAT --

6 THE COURT: WHAT WAS THE OFFER?

7 MS. BLACKBURN: SEVEN YEARS.

8 IT'S NEWS TO ME THAT WE DIDN'T HAVE AN
9 OFFER, BUT I THINK WE DO NEED TO GET ON THE SAME PAGE.

10 THE COURT: ALL RIGHT. AND SO YOU'RE ASKING FOR
11 12-28?

12 MS. BLACKBURN: YES, PLEASE.

13 THE COURT: IS THAT OKAY?

14 THE CLERK: YES, YOUR HONOR.

15 THE COURT: DO WE WANT TO TRAIL WITHIN THE PERIOD
16 OR DO YOU WANT TO MAKE IT ANOTHER ZERO OF 60?

17 MS. BLACKBURN: TRAIL WITHIN THE PERIOD FOR NOW.

18 THE COURT: SO THAT'S GOING TO BE 13 OF 60.

19 MS. BLACKBURN: THANK YOU.

20 THE COURT: ALL RIGHT. ANYTHING ELSE?

21 DOES HE NEED ANY MEDICAL ORDERS, ANYTHING
22 ELSE WE NEED TO DO, MR. BLACKBURN?

23 MS. BLACKBURN: NO, I THINK WE'RE DONE.

24 THE COURT: ANYTHING ELSE TO TODAY, MR. HERRING?

25 MR. HERRING: NO, THANK YOU.

26 THE COURT: SEE YOU ON THE 28TH.

27 (PROCEEDINGS IN THE ABOVE-ENTITLED
28 MATTER WERE CONCLUDED.)

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 FOR THE COUNTY OF LOS ANGELES

3 DEPARTMENT 115

HON. MARK S. ARNOLD, JUDGE

4
5 PEOPLE OF THE STATE OF CALIFORNIA,)

6 PLAINTIFF,)

NO. BA466952-01

7 VS.)

REPORTER'S
CERTIFICATE

8 RUDY DOMINGUEZ,)

9 DEFENDANT.)

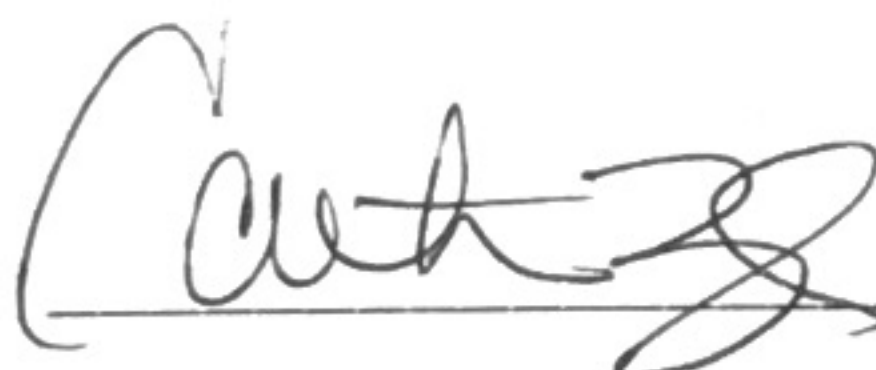
10
11 STATE OF CALIFORNIA)

) SS

12 COUNTY OF LOS ANGELES)

13 I, CATHERINE A. ZINK, CSR #9242, OFFICIAL REPORTER
14 FOR THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR
15 THE COUNTY OF LOS ANGELES, DO HEREBY CERTIFY THAT THE
16 FORGOING PAGES 1 THROUGH 14 COMPRISE A FULL, TRUE, AND
17 CORRECT TRANSCRIPT OF THE PROCEEDINGS AND TESTIMONY
18 TAKEN IN THE ABOVE-ENTITLED MATTER ON DECEMBER 15, 2020.
19
20
21

22 DATED THIS 21ST DAY OF DECEMBER, 2020.
23

24
25 

, CSR #9242

26 CATHERINE ZINK, OFFICIAL REPORTER
27
28

EXHIBIT F

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 FOR THE COUNTY OF LOS ANGELES
3 DEPARTMENT 125 HON. LAURA F. PRIVER, JUDGE

4 PEOPLE OF THE STATE OF CALIFORNIA,)
5)
6 PLAINTIFF,)
7 VS.) SUPERIOR COURT
8) NO. BA477781
9 VICTOR MACHUCA,)
10)
11)
12 DEFENDANT.)
13)
14)
15)
16)
17)
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27)
28)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

THURSDAY, DECEMBER 10, 2020

APPEARANCES:

FOR THE PLAINTIFF: OFFICE OF THE DISTRICT ATTORNEY
BY: MEGAN LOEBL, DEPUTY
211 WEST TEMPLE STREET
LOS ANGELES, CALIFORNIA 90012

FOR THE DEFENDANT: ALEX KESSEL
ATTORNEY AT LAW
15910 VENTURA BOULEVARD
SUITE 1030
ENCINO, CALIFORNIA 91436

CANDACE J. HENRY, #9311
OFFICIAL REPORTER

Document received by the CA 2nd District Court of Appeal.

1 CASE NAME: PEOPLE VS. VICTOR MACHUCA
2 CASE NUMBER: BA477781
3 LOS ANGELES, CALIFORNIA THURSDAY, DECEMBER 10, 2020
4 DEPARTMENT 125 HON. LAURA F. PRIVER, JUDGE
5 REPORTER: CANDACE J. HENRY, CSR #9311
6 TIME: 9:46 A.M.
7

8 APPEARANCES:

9 ALEX R. KESSEL, ATTORNEY AT LAW, FOR THE
10 DEFENDANT; MEGAN LOEBL, DEPUTY DISTRICT ATTORNEY,
11 FOR THE PEOPLE OF THE STATE OF CALIFORNIA;
12

13 THE COURT: MR. MACHUCA. HE'S PRESENT IN COURT
14 WITH COUNSEL. PEOPLE ARE REPRESENTED.

15 STATE YOUR APPEARANCES.

16 MR. KESSEL: GOOD MORNING TO THE COURT.
17 ALEX KESSEL FOR THE DEFENDANT.

18 MS. LOEBL: GOOD MORNING, YOUR HONOR. MEGAN LOEBL
19 FOR THE PEOPLE. WE'RE ZERO OF 45.

20 MR. KESSEL: WE'RE MAKING PROGRESS TOWARD A
21 DISPOSITION. I DON'T THINK WE HAVE ONE NOW. I CAN SAY
22 THAT, YOUR HONOR. THERE'S A FEW OTHER THINGS THAT WE
23 NEED TO DISCUSS. IT WOULD BE MY REQUEST, AND I DON'T
24 THINK THE D.A. HAS ANY OPPOSITION, TO SET ANOTHER
25 PRETRIAL.

26 MS. LOEBL: YES.

27 MR. KESSEL: I DON'T THINK IT'S THE RIGHT TIME TO
28 TRY SOMETHING RIGHT NOW JUST PERSONALLY, YOUR HONOR, BUT

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1 I DON'T THINK -- I DON'T THINK BOTH SIDES ARE PUSHING
2 TOWARD A TRIAL.

3 THE COURT: WHAT'S YOUR ACTUAL REQUEST? WHAT DATE
4 IS YOUR ACTUAL REQUEST?

5 MR. KESSEL: OKAY. THANK YOU.

6 THE COURT: I DON'T KNOW. IT DEPENDS ON WHAT IT
7 IS AND HOW MUCH TIME YOU WANT, BUT WE'RE ZERO OF 45 SO
8 YOU'RE ALREADY INTO NEXT YEAR.

9 MS. LOEBL: THE PEOPLE ALSO HAVE SOME MOTIONS TO
10 MAKE ON THIS CASE TODAY, YOUR HONOR.

11 THE COURT: OKAY. WELL, YOU CAN MAKE WHATEVER
12 MOTIONS YOU WANT, BUT I'M GOING TO INDICATE TO YOU THAT
13 THE COURT MAY NOT GRANT THEM.

14 MR. KESSEL?

15 MR. KESSEL: YOUR HONOR, JANUARY 28TH ZERO OF 30.
16 IF THE COURT CAN ACCOMMODATE US.

17 THE COURT: WE CAN ACCOMMODATE THAT BUT YOU NEED
18 TO KNOW THAT'S THE LAST PRETRIAL.

19 MS. LOEBL: DID YOU SAY THE 28TH?

20 MR. KESSEL: JANUARY 28TH. DOES THAT WORK FOR
21 YOU, MEGAN?

22 MS. LOEBL: THAT'S FINE.

23 THE COURT: AND IT NEEDS TO EITHER JUST BE
24 DISPOSED OF OR GO WITHIN THE PERIOD. OKAY? BECAUSE
25 FROM 2019, I APPRECIATE -- BUT RIGHT NOW, IT'S THE
26 HOLIDAYS, COVID IS SPIKING -- THERE'S LOTS OF ISSUES, I
27 GUESS. I UNDERSTAND WHY YOU WOULDN'T WANT TO GO OUT TO
28 TRIAL RIGHT NOW, BUT I THINK YOU HAVE TO EITHER TRY IT

1 OR DISPOSE OF IT.

2 MR. KESSEL: THIS HAS BEEN AN UNUSUAL YEAR.

3 THE COURT: THAT'S WHY YOU'VE GOTTEN ALL YOUR
4 MOTIONS GRANTED IN THIS COURT.

5 MR. KESSEL: AND IN OTHER COURTS. YOU'RE RIGHT.

6 THE COURT: YOU'RE AHEAD; RIGHT? THERE'S A --

7 MR. KESSEL: I'M GOING TO SHUT UP.

8 THE COURT: I'LL START WITH THAT.

9 THEN I'LL HEAR WHAT YOU NEED TO SAY,
10 MS. LOEBL.

11 MS. LOEBL: THANK YOU.

12 THE COURT: SIR, DO YOU AGREE TO THE DATE OF
13 JANUARY 28TH WITH THE UNDERSTANDING YOU'LL HAVE YOUR
14 TRIAL ON THAT DATE OR WITHIN 30 CALENDAR DAYS?

15 THE DEFENDANT: YES, YOUR HONOR.

16 THE COURT: OKAY. COUNSEL JOIN?

17 MR. KESSEL: YES, YOUR HONOR.

18 THE COURT: ALL RIGHT. GIVE ME ONE SECOND,
19 MS. LOEBL. I LEFT SOMETHING ON MY DESK.

20 MS. LOEBL: NO PROBLEM. THANK YOU, YOUR HONOR.

21
22 (PAUSE IN THE PROCEEDINGS.)

23
24 THE COURT: ALL RIGHT. YOU MAY BE HEARD.

25 MS. LOEBL: THANK YOU, YOUR HONOR. THE PEOPLE ARE
26 MAKING A MOTION TODAY TO DISMISS THE ALLEGATIONS FOR
27 THIS CASE IN VIOLATION OF PENAL CODE SECTION 12202.53(D)
28 AS WELL AS PENAL CODE SECTION 667.5 SUBSECTION (B) FOR

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1 THE GUN ENHANCEMENT AS WELL AS THE ONE-YEAR PRIORS
2 PURSUANT TO A SPECIAL DIRECTIVE SENT DOWN FROM
3 GEORGE GASCON.

4 MR. KESSEL: JUDGE, JUST ON THE 667(B) ONE-YEAR
5 PRIOR, THAT'S BEEN ABROGATED BY THE LEGISLATOR ANYWAY,
6 THERE IS NO ONE-YEAR PRIORS ANYMORE.

7 THE COURT: I WILL GRANT THE 667.5(B) BECAUSE
8 THAT, I AGREE WITH YOU, WAS A LEGISLATIVE CHANGE. OKAY.

9 MR. KESSEL: I'M SORRY?

10 THE COURT: THAT WAS A LEGISLATIVE CHANGE. AND I
11 WILL GRANT THE MOTION AS IT RELATES TO THE 667.5(B).

12 WITH REGARD TO THE 12022.53 ALLEGATION, THE
13 COURT WILL POINT OUT THAT THE STATUTE ITSELF DOES NOT
14 ALLOW YOU TO DISMISS THAT EXCEPT AT THE TIME OF
15 SENTENCE. AND IT IS NOT THE TIME OF SENTENCING. SO
16 THAT'S THE LEGAL REASON STATUTORILY.

17 WITH REGARD TO CASE LAW, THE COURT WILL
18 INDICATE TO THE PEOPLE, AND I ONE HUNDRED PERCENT
19 APPRECIATE THAT THE DIRECTIVE IS THE DIRECTIVE AND YOU
20 FEEL OBLIGATED -- YOU INDIVIDUAL DEPUTIES FEEL OBLIGATED
21 TO FOLLOW THE DIRECTIVES.

22 HOWEVER, THIS COURT DOES NOT BELIEVE THAT
23 THE PEOPLE ARE ENTITLED TO ABANDON THE PROSECUTION OF
24 THESE ALLEGATIONS THAT IS BASED UPON A DIRECTIVE. I
25 DON'T THINK -- I THINK YOU HAVE AN ETHICAL DUTY AND
26 OBLIGATION TO PURSUE JUSTICE AND TO PURSUE THE
27 ALLEGATIONS THAT YOU BELIEVE YOU CAN PROVE BEYOND A
28 REASONABLE DOUBT; RIGHT?

1 SO, ALSO, THE DIRECTIVE IS NOT A
2 LEGISLATIVE CHANGE. UNLIKE THE 667.5(B)(1), IT DOES NOT
3 HAVE THE AUTHORITY IN LAW THAT ALLOWS YOU REALLY TO ACT
4 IN THIS FASHION. I UNDERSTAND IT CAME FROM THE TOP. I
5 UNDERSTAND WHY YOU'RE MAKING THE MOTION, BUT THE COURT
6 WILL DENY THE MOTION AS TO EACH AND EVERY ONE OF THE
7 OTHER ALLEGATIONS. YOU HAVE AN ETHICAL DUTY TO DO YOUR
8 JOB AND PROCEED WITH PROSECUTION. YOU SHOULD NOT BE
9 ALLOWED TO ABANDON THE PROSECUTION AT THIS JUNCTURE.

10 THE COURT WILL CITE THE CASE OF *PEOPLE*
11 *VERSUS ROMAN*, IT'S 92 CAL.APP.4TH, 141, WHICH DEALS WITH
12 SPECIAL DIRECTIVES AS IT RELATES TO A CHANGE IN
13 ADMINISTRATION IN THE D.A.'S OFFICE.

14 MR. KESSEL: JUDGE, JUST SINCE IT AFFECTS MY
15 CLIENT, OBVIOUSLY, THE PEOPLE'S MOTION, I JUST WANTED TO
16 ADD, OBVIOUSLY, I DON'T KNOW IF IT'S ABANDONING
17 PROSECUTION. IT'S -- THE D.A. IS AN EXECUTIVE BRANCH
18 WHICH TYPICALLY DECIDES WHAT TO PURSUE AND, ULTIMATELY,
19 WITH THE COURT'S PERMISSION IN A SENSE, WHAT TO OFFER.
20 AND I SEE IT MORE AS A PROSECUTORIAL DECISION AS THE
21 EXECUTIVE BRANCH WHAT TO PURSUE AND NOT TO PURSUE WHICH
22 IS WITHIN THE REALM OF THAT BRANCH, YOUR HONOR.

23 SO I JUST WANT TO INDICATE, FOR WHATEVER
24 IT'S WORTH, I DON'T KNOW IF IT'S ABANDONMENT OF THE LAW
25 OR THE CASE VERSES A DECISION ABOUT WHAT IS APPROPRIATE
26 TO CHARGE, WHICH IS DONE ON A DAILY BASIS. IT ALSO
27 DECIDES WHAT'S APPROPRIATE TO CHARGE.

28 THE COURT: THE COURT UNDERSTANDS THE ROLE OF THE

1 D.A. IN TERMS OF THEIR FILING AUTHORITY AND CHOICE WHAT
2 TO FILE -- THEY CHOOSE TO FILE. ALL RIGHT? I CAN'T
3 ORDER THEM TO FILE SOMETHING. BUT IN THIS CASE, THEY
4 CHOSE TO FILE THIS. AND A CHANGE OF ADMINISTRATION
5 DOESN'T CHANGE THAT. AND, YOU KNOW, THE LAW REQUIRES
6 CERTAIN THINGS AS WELL THAT IS NOT A DIRECTIVE -- CHANGE
7 IN ADMINISTRATION.

8 MR. KESSEL: RIGHT. AND, YOU KNOW, 90 PERCENT OF
9 THE PLEA BARGAIN ENHANCEMENTS ARE DROPPED. THE CASES
10 THAT YOU SAY CANNOT BE PURSUED BEYOND A REASONABLE
11 DOUBT, CHARGES FOR PLEA BARGAIN IS DROPPED AND DISMISSED
12 AND STRICKEN ALL THE TIME, NOTWITHSTANDING THERE MIGHT
13 BE EVIDENTIARY SUPPORT FOR THOSE.

14 THE COURT: I PERFECTLY WELL UNDERSTAND THAT. AND
15 THE COURT UNDERSTANDS THAT YOU AND YOUR -- ON BEHALF OF
16 YOUR CLIENT, AND THE PEOPLE ON BEHALF OF THEIR -- THE
17 STATE OF CALIFORNIA, THE PEOPLE THEY REPRESENT, HAVE AN
18 ABSOLUTE RIGHT, OBLIGATION REALLY, TO TALK ABOUT AND SEE
19 IF YOU CAN RESOLVE THE CASE SHORT OF TRIAL.

20 IF YOU COME UP WITH A DISPOSITION, THE
21 COURT CAN EITHER CHOOSE TO ACCEPT THAT DISPOSITION AS
22 FAIR AND JUST OR NOT; RIGHT? AND, NORMALLY, THE COURT
23 -- YOU KNOW, I'VE ACCEPTED MANY DISPOSITIONS. I DON'T
24 THINK IN TERMS OF ANY OF YOUR CLIENTS HAVE I EVER, EVER
25 SAID NO. OKAY?

26 MR. KESSEL: RIGHT.

27 THE COURT: BUT THE COURT HAS TO BELIEVE THAT THE
28 DISPOSITION IS FAIR AND JUST AND CONFORMS WITH THE LAW;

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1 RIGHT?

2 AND I'LL ALSO POINT OUT THE COURT FEELS
3 THAT WHERE THE DIRECTIVE FAILS, IF YOU WILL, IS IN
4 PROTECTING THE RIGHTS OF VICTIMS. AND THE VICTIMS OF
5 THE STATE OF CALIFORNIA HAVE A CONSTITUTIONAL RIGHT TO
6 BE HEARD IN ALL PROSECUTIONS. AND I DON'T -- I DON'T
7 HAVE ANY INFORMATION ABOUT THE VICTIMS IN THIS CASE OR
8 HOW THEY FEEL ABOUT THIS MOTION. AND THIS COURT WILL
9 CONTINUE TO ACCEPT DISPOSITIONS AND PLEA AGREEMENTS THAT
10 IT FEELS ARE APPROPRIATE AND JUST.

11 MR. KESSEL: UNDERSTOOD. WELL, WE'RE STILL
12 WORKING ON A DISPOSITION, YOUR HONOR.

13 SO YOUR HONOR ALREADY SET THE DATE OF THE
14 28TH?

15 THE COURT: YES. AND I TOOK THE TIME WAIVER.

16 MR. KESSEL: YOU DID.

17 THE COURT: DID YOU JOIN IN THIS TIME WAIVER?

18 MR. KESSEL: YES.

19 MS. LOEBL: I BELIEVE SO.

20 THE COURT: THANK YOU.

21 MR. KESSEL: THANK YOU, YOUR HONOR.

22 HAVE A NICE DAY AND HOLIDAYS IF I DON'T SEE
23 YOU.

24 THE COURT: OKAY.

25
26 (AT 9:55 A.M., AN ADJOURNMENT WAS TAKEN
27 UNTIL THURSDAY, JANUARY 28, 2021,
28 DEPARTMENT 125 AT 8:30 A.M.)

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA

2 FOR THE COUNTY OF LOS ANGELES

3 DEPARTMENT 125

HON. LAURA F. PRIVER, JUDGE

4
5 PEOPLE OF THE STATE OF CALIFORNIA,)

6 PLAINTIFF,) NO. BA477781

7 VS.)

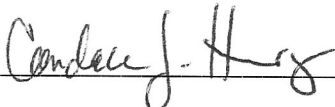
) REPORTER'S
) CERTIFICATE

8 VICTOR MACHUCA,)

9 DEFENDANT.)
10 _____)

11
12 I, CANDACE J. HENRY, CSR #9311, OFFICIAL REPORTER
13 OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF
14 LOS ANGELES, DO HEREBY CERTIFY THAT THE FOREGOING PAGES
15 1 THROUGH 7 COMPRISE A FULL, TRUE, AND CORRECT
16 TRANSCRIPT OF THE PROCEEDINGS AND TESTIMONY TAKEN IN THE
17 MATTER OF THE ABOVE-ENTITLED CAUSE ON THURSDAY,
18 DECEMBER 10, 2020.

19 DATED THIS 14TH DAY OF DECEMBER, 2020.

20
21  , CSR #9311
22 OFFICIAL REPORTER
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EXHIBIT G

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 FOR THE COUNTY OF LOS ANGELES
3 DEPARTMENT 125 HON. LAURA F. PRIVER, JUDGE

4 PEOPLE OF THE STATE OF CALIFORNIA,)
5)
6 PLAINTIFF,)
7 VS.) SUPERIOR COURT
8 THOMAS HELO,) NO. PA090826
9 DEFENDANT.) ORIGINAL

10
11 REPORTER'S TRANSCRIPT OF PROCEEDINGS

12 THURSDAY, DECEMBER 10, 2020

13
14
15 APPEARANCES:

16 FOR THE PLAINTIFF: OFFICE OF THE DISTRICT ATTORNEY
17 BY: JANE BROWNSTONE, DEPUTY
18 211 WEST TEMPLE STREET
LOS ANGELES, CALIFORNIA 90012

19 FOR THE DEFENDANT: HEDDING LAW FIRM
20 BY: RONALD HEDDING
21 16000 VENTURA BOULEVARD
22 SUITE 1208
23 ENCINO, CALIFORNIA 91436

24
25 CANDACE J. HENRY, #9311
26 OFFICIAL REPORTER
27
28

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1 CASE NAME: PEOPLE VS. THOMAS HELO
2 CASE NUMBER: PA090826
3 LOS ANGELES, CALIFORNIA THURSDAY, DECEMBER 10, 2020
4 DEPARTMENT 125 HON. LAURA F. PRIVER, JUDGE
5 REPORTER: CANDACE J. HENRY, CSR #9311
6 TIME: 9:14 A.M.
7

8 APPEARANCES:

9 RONALD HEDDING, ATTORNEY AT LAW, FOR THE
10 DEFENDANT; JANE BROWNSTONE, DEPUTY DISTRICT
11 ATTORNEY, FOR THE PEOPLE OF THE STATE OF
12 CALIFORNIA;
13

14 THE COURT: ALL RIGHT. NUMBER THREE ON THE
15 COURT'S CALENDAR. MR. HELO IS PRESENT IN COURT IN
16 CUSTODY WITH COUNSEL. PEOPLE ARE REPRESENTED.

17 STATE YOUR APPEARANCES.

18 MR. HEDDING: GOOD MORNING, YOUR HONOR.
19 RONALD HEDDING ON HIS BEHALF.

20 MS. BROWNSTONE: GOOD MORNING, YOUR HONOR.
21 JANE BROWNSTONE, DEPUTY DISTRICT ATTORNEY, FOR THE
22 PEOPLE.

23 THE COURT: IT'S HERE FOR PRETRIAL. WHAT ARE YOU
24 -- WHAT WOULD YOU LIKE TO DO?

25 MS. BROWNSTONE: YOUR HONOR, THE DISTRICT
26 ATTORNEY, GASCON ISSUED SPECIAL DIRECTIVE 20-08 STATING
27 THAT OUR OFFICE WILL NO LONGER BE PROCEEDING ON
28 ALLEGATIONS AND SENTENCE ENHANCEMENTS. THERE IS A GREAT

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1 BODILY INJURY ENHANCEMENT ATTACHED TO THIS CASE.

2 PURSUANT TO MARCY'S LAW, I SPOKE TO THE
3 VICTIM. AND THE VICTIM -- WELL, THE VICTIM'S MOTHER ON
4 BEHALF OF THE VICTIM.

5 THE COURT: ALL RIGHT.

6 MS. BROWNSTONE: THE VICTIM'S MOTHER INDICATED
7 THAT EVEN THOUGH THIS CASE IS OVER TWO YEARS OLD, HER
8 FAMILY IS STILL SUFFERING THE RAMIFICATIONS OF THIS
9 CASE. AND THAT HER SON RECENTLY LOST HIS JOB DUE TO THE
10 PHYSICAL EFFECTS OF THIS ACCIDENT WHERE THE DEFENDANT
11 MOWED DOWN THE VICTIM ON FOOT WHILE IN THE CAR.

12 PURSUANT TO SPECIAL DIRECTIVE 20-08, I
13 WOULD MAKE A MOTION TO REQUEST THE COURT TO DISMISS THE
14 GREAT BODILY INJURY.

15 THE COURT: THAT REQUEST IS DENIED, ESPECIALLY IN
16 LIGHT OF THE FACT THAT THE VICTIMS ARE OBJECTING TO
17 THIS.

18 THE PEOPLE HAVE FILED THIS ALLEGATION AND
19 THE COURT BELIEVES YOU CANNOT ABANDON THE PROSECUTION OF
20 THIS MATTER AT THIS TIME BASED UPON CHANGE OF
21 ADMINISTRATION IN THE D.A.'S OFFICE. THE COURT IS NOT
22 GOING TO ALLOW -- I DON'T THINK IT'S JUST IF THE VICTIMS
23 ARE OBJECTING. AND I THINK IT'S INAPPROPRIATE.

24 AND I ALSO THINK THAT ALTHOUGH I UNDERSTAND
25 YOU'RE OPERATING UNDER YOUR DIRECTIVES, I THINK IT'S
26 UNETHICAL. SO THE COURT IS RELYING UPON *PEOPLE VERSUS*
27 *ROMAN* WHICH IS FOUND AT 92 CAL.APP.4TH, 141, WHICH
28 INDICATES THAT CHANGE IN ADMINISTRATION, NEW DIRECTIVE,

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1 IS NOT A CHANGE IN THE LAW. AND THAT YOU SHOULD NOT
2 ABANDON THE PROSECUTION BASED UPON NEW DIRECTIVE. IT'S
3 NOT A LEGISLATIVE CHANGE. SO THAT REQUEST IS DENIED.

4 MR. HEDDING: YOUR HONOR, WITH THE COURT'S
5 PERMISSION, CAN WE SET THE MATTER FOR ONE MORE PRETRIAL
6 DATE? I'M REQUESTING, IF IT'S A GOOD DATE FOR THE
7 COURT, 1/21.

8 THE COURT: ONE TWENTY-ONE.

9 THE CLERK: YOUR HONOR, WE HAVE ANOTHER WHEELCHAIR
10 ALREADY ON THAT DATE.

11 THE COURT: WE SET IT YESTERDAY. DO YOU HAVE A
12 DIFFERENT DATE AROUND THERE? JUST NOT THAT DATE.

13 MR. HEDDING: HOW ABOUT 1/25?

14 THE CLERK: THAT'S FINE.

15 THE COURT: OKAY. THAT WORKS FOR US. THANK YOU.

16 MR. HEDDING: THANK YOU.

17 THE COURT: I'M SORRY ABOUT THAT, BUT, YOU KNOW,
18 WITH THE WHEELCHAIRS, WE HAVE TO MANAGE.

19 MR. HEDDING: NO PROBLEM.

20 THE COURT: SO YOU WANT TO MAKE THAT ZERO OF 30?

21 MR. HEDDING: THAT'S FINE, YOUR HONOR.

22 THE COURT: MR. HELO, DO YOU AGREE TO THE DATE OF
23 JANUARY 25TH WITH THE UNDERSTANDING YOU'LL HAVE YOUR
24 JURY TRIAL ON THAT DATE OR WITHIN 30 CALENDAR DAYS?

25 THE DEFENDANT: YES, YOUR HONOR.

26 THE COURT: JOIN?

27 MR. HEDDING: YES.

28 THE COURT: OKAY. THAT WILL BE THE ORDER.

1 MR. HEDDING: THANK YOU.

2 THE COURT: THANK YOU.

3
4 (AT 9:17 A.M., AN ADJOURNMENT WAS TAKEN
5 UNTIL MONDAY, JANUARY 25, 2020,
6 DEPARTMENT 125 AT 8:30 A.M.)
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1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 FOR THE COUNTY OF LOS ANGELES
3 DEPARTMENT 125 HON. LAURA F. PRIVER, JUDGE
4

5 PEOPLE OF THE STATE OF CALIFORNIA,)
6 PLAINTIFF,) NO. PA090826
7 VS.) REPORTER'S
8 THOMAS HELO,) CERTIFICATE
9 DEFENDANT.)
10 _____)
11

12 I, CANDACE J. HENRY, CSR #9311, OFFICIAL REPORTER
13 OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF
14 LOS ANGELES, DO HEREBY CERTIFY THAT THE FOREGOING PAGES
15 1 THROUGH 4 COMPRISE A FULL, TRUE, AND CORRECT
16 TRANSCRIPT OF THE PROCEEDINGS AND TESTIMONY TAKEN IN THE
17 MATTER OF THE ABOVE-ENTITLED CAUSE ON THURSDAY,
18 DECEMBER 10, 2020.

19 DATED THIS 14TH DAY OF DECEMBER, 2020.
20

21 Candace J. Henry, CSR #9311
22 OFFICIAL REPORTER
23
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EXHIBIT H

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THE PEOPLE OF THE STATE OF CALIFORNIA,)
)
 PLAINTIFF,)
)
)
 VS.)
)
)
 01) FRANKY PROVENCIO,)
)
)
 DEFENDANT.)

CASE NO. KA120979-01

DECEMBER 16, 2020

FOR PLAINTIFF:

FOR DEFENDANT:

RICARDO GARCIA, PUBLIC DEFENDER
BY: ANNA ARMENTA-RIGOR
210 WEST TEMPLE STREET, 19TH FLOOR
LOS ANGELES, CALIFORNIA 90012

JILL PINCIN, CSR #10135
OFFICIAL REPORTER

1 CASE NAME: PEOPLE VS. PROVENCIO
2 CASE NUMBER: KA120979-01
3 LOS ANGELES, CALIFORNIA HON. DOUGLAS SORTINO, JUDGE
4 DEPT. EA-N DECEMBER 16, 2020
5 REPORTER: JILL PINCIN, CSR #10135
6 TIME: A.M. SESSION

7
8 APPEARANCES:

9 DEFENDANT PROVENCIO, PRESENT IN
10 COURT, IN CUSTODY, BEING REPRESENTED BY
11 ANNA ARMENTA-RIGOR, DEPUTY PUBLIC DEFENDER;
12 YOOBIN KANG-HERNANDEZ, DEPUTY DISTRICT ATTORNEY,
13 REPRESENTING THE PEOPLE OF THE STATE OF CALIFORNIA.

14
15 THE COURT: PEOPLE VS. FRANKY PROVENCIO, CASE
16 NUMBER KA120979. MS. KANG-HERNANDEZ FOR THE PEOPLE.
17 MS. ARMENTA-RIGOR FOR THE DEFENDANT.

18 THE DEFENDANT IS PRESENT 0 OF 60 FOR
19 TRIAL. THE PEOPLE HAVE FILED, TODAY'S DATE, A PEOPLE'S
20 MOTION TO DISMISS ALL THE ALLEGATIONS ALLEGED IN THE CASE,
21 WHICH WOULD BE A 12022.7 ON COUNT 2, WHICH IS A 23153; A
22 PRIOR DUI FROM 2019 UNDER 23152(F).

23 IS THAT THE VARIOUS -- IS THAT ALL THE
24 ALLEGATIONS THAT ARE INVOLVED IN THIS CASE,
25 MS. KANG-HERNANDEZ?

26 MS. KANG-HERNANDEZ: YES, YOUR HONOR. SO IT WOULD
27 JUST BE THE GBI ALLEGATION AS TO COUNT 2. AND I WOULD LIKE
28 TO STATE ON THE RECORD --

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1 THE COURT: WHAT ABOUT COUNT 1? IT'S CHARGED AS A
2 MURDER. NOTHING IS GOING TO HAPPEN TO THAT; RIGHT?

3 MS. KANG-HERNANDEZ: YES.

4 THE COURT: THIS IS A WATSON MURDER, BASED UPON THE
5 PRIOR?

6 MS. KANG-HERNANDEZ: YES, YOUR HONOR. HOWEVER,
7 COUNT 1 GOES TO THE DECEASED VICTIM, JULIENNE. COUNT 2 IS A
8 SEPARATE VICTIM, WHICH IS HIS FATHER. HE'S PRESENT IN THE
9 COURT AND WOULD LIKE TO BE HEARD BY THE COURT PURSUANT TO
10 MARSY'S LAW.

11 THE COURT: THAT'S FINE.

12 WHAT WERE THE INJURIES TO THE VICTIM
13 IN COUNT 2?

14 MS. KANG-HERNANDEZ: HE WAS IN A COMA FOR TWO
15 WEEKS, AND MORE, AND HE IS PERMANENTLY DISABLED.

16 THE COURT: DISABLED IN WHAT MANNER?

17 MS. KANG-HERNANDEZ: HE WILL BE ABLE TO TELL YOU
18 THAT, YOUR HONOR.

19 THE COURT: AND YOU'RE SEEKING TO STRIKE THE PRIOR
20 DUI, WHICH IS ONLY FROM 2019?

21 MS. KANG-HERNANDEZ: NO, YOUR HONOR. I AM NOT
22 SEEKING TO --

23 THE COURT: JUST THE GBI ALLEGATION?

24 MS. KANG-HERNANDEZ: YES, YOUR HONOR. THE ORDER
25 FROM THE D.A. ONLY ASKS ME TO STRIKE THE ENHANCEMENTS AS IT
26 IS ALLEGED IN COUNT 2.

27 THE COURT: OKAY.

28 YOU FILED A DOCUMENT TODAY'S DATE -- A

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1 WRITTEN DOCUMENT TO DISMISS THE GBI ALLEGATION. IT RECITES
2 MR. GASCON'S DIRECTIVE, 20 - 08. CORRECT ME IF I'M WRONG; MY
3 UNDERSTANDING, THOUGH, IS THAT THAT DIRECTIVE APPLIES TO ALL
4 FELONY CASES AND ENHANCEMENTS, REGARDLESS OF THE PARTICULAR
5 FACTS AND CIRCUMSTANCES OF THE CASE OR OF THE INDIVIDUAL
6 DEFENDANT.

7 IS THAT CORRECT?

8 MS. KANG-HERNANDEZ: THAT IS CORRECT, YOUR HONOR.
9 HOWEVER, THERE IS A CAVEAT WHEN THE CHARGE ITSELF REQUIRES
10 THE PRIOR TO BE ALLEGED AS A DUI WITH A PRIOR, THAT IT HAS AN
11 EXCEPTION. THAT IS MY UNDERSTANDING.

12 THE COURT: ALL RIGHT.

13 BUT IN TERMS OF THE GBI ALLEGATION,
14 YOU'RE SEEKING TO DISMISS THAT PURSUANT TO THE SPECIAL
15 DIRECTIVE; AND IT APPEARS, BASED UPON YOUR MOTION THAT YOU
16 HAVE FILED, WHICH INCLUDES IT AS AN EXHIBIT, THAT THIS IS A
17 BLANKET DIRECTIVE DIRECTED TO ALL D.A.'S TO STRIKE ANY STRIKE
18 PRIORS OR ANY ENHANCEMENTS WITHOUT REGARD TO THE INDIVIDUAL
19 FACTS AND CIRCUMSTANCES OF THE INDIVIDUAL CASE, OR OF THE
20 INDIVIDUAL DEFENDANT; AND THAT IS BEING MADE AS A REQUEST
21 PURSUANT TO 1385, IN THE INTEREST OF JUSTICE.

22 IS THAT CORRECT?

23 MS. KANG-HERNANDEZ: THAT IS CORRECT.

24 THE COURT: ALL RIGHT.

25 I'LL HEAR FROM THE VICTIM WHO IS THE
26 SUBJECT OF THE DUI.

27 MS. KANG-HERNANDEZ: THAT IS MR. PETER GEORGE.

28 THE BAILIFF: YOU KNOW WHAT? I'LL HAVE HIM STAND

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1 HERE.

2 THE COURT: ALL RIGHT.

3 MR. GEORGE, YOU WERE IN THE VEHICLE WHEN
4 THE ACCIDENT OCCURRED?

5 THE WITNESS: YES.

6 THE COURT: AND YOU WERE INJURED?

7 THE WITNESS: YES.

8 THE COURT: HOW LONG WERE YOU IN A COMA?

9 THE WITNESS: TWO WEEKS.

10 THE COURT: DO YOU HAVE ANY REMAINING OR LASTING
11 INJURIES FROM THIS INCIDENT?

12 THE WITNESS: TWO STROKES, AND EVERY BONE IN MY
13 LEFT LEG WAS BROKEN.

14 THE COURT: YOU'VE YOU HAD TWO STROKES BECAUSE OF
15 THE TIME IN THE COMA?

16 THE WITNESS: YES, BECAUSE OF THE ACCIDENT.

17 THE COURT: YOU HAD HEAD INJURIES?

18 THE WITNESS: YEAH. I HAD A CONCUSSION.

19 THE COURT: I'M NOT MEANING TO BE DEMEANING TO YOU.
20 I'M JUST TRYING TO GET THIS ON THE RECORD.

21 THE WITNESS: NO, NO, NO.

22 THE COURT: SO YOU HAD HEAD INJURIES AND BROKEN
23 BONES IN YOUR LEGS?

24 THE WITNESS: YEAH. EVERY BONE IN MY LEFT LEG
25 BROKE; TIBIA, FIBULA, CALCANEUS.

26 THE COURT: ANY LONG-TERM MENTAL ISSUES BECAUSE OF
27 THE STROKES?

28 THE WITNESS: WELL, NO. THEY SAY YOU HAVE TO WAIT

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1 FOR THREE YEARS TO KNOW WHERE YOU'RE AT.

2 THE COURT: OKAY.

3 SO AT THIS POINT, YOU'RE NOT SURE, BUT
4 YOUR HOPEFUL?

5 THE WITNESS: TRYING TO BE, YEAH.

6 THE COURT: HOW ABOUT ANY PHYSICAL INCAPACITY FROM
7 THE INJURIES TO THE LEG?

8 THE WITNESS: I'LL LIMP FOR THE REST OF MY LIFE,
9 AND I'LL HAVE POST-TRAUMATIC ARTHRITIS, BECAUSE OF THE INJURY
10 TO THE CALCANEUS.

11 THE COURT: BECAUSE OF THE DAMAGE TO THE BONE AND
12 THE JOINT, YOU'RE LIKELY TO HAVE ARTHRITIS?

13 THE WITNESS: YEAH. IMMEDIATELY.

14 THE COURT: ANYTHING ELSE YOU WANT TO TELL ME ABOUT
15 THE INJURIES YOU SUFFERED?

16 THE WITNESS: YEAH. MY STERNUM BROKE, AND DAMAGE
17 TO THE HEART.

18 THE COURT: IS THE DAMAGE TO YOUR HEART LONG TERM?

19 THE WITNESS: LOOKS LIKE IT.

20 THE COURT: ALL RIGHT.

21 HAS IT CAUSED YOU ANY INABILITY TO
22 PERFORM WORK OR ANY OTHER ACTIVITIES THAT YOU USED TO
23 PERFORM?

24 THE WITNESS: YEAH.

25 THE COURT: WHAT'S THAT?

26 THE WITNESS: I CAN'T WALK VERY FAR. AND THE
27 MENTAL STUFF, WITH STROKES -- I CAN'T REMEMBER EVERYTHING. I
28 USED TO HAVE A PHOTOGRAPHIC MEMORY.

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1 THE COURT: ALL RIGHT.

2 MISTER -- OR JULIENNE G., THE PERSON YOU
3 WERE WITH, WHO WAS KILLED; WHAT WAS YOUR RELATIONSHIP TO THAT
4 PERSON?

5 THE WITNESS: I WAS HIS FATHER.

6 THE COURT: THIS WAS YOUR CHILD?

7 THE WITNESS: YES.

8 THE COURT: HOW OLD WAS YOUR CHILD?

9 THE WITNESS: HE WAS SIX.

10 THE COURT: I AM TERRIBLY SORRY. MY SYMPATHIES TO
11 YOU. I DON'T MEAN THAT IN ANY WAY OTHER THAN WITH GREAT
12 SINCERITY. I'M REALLY SORRY. I CANNOT EVEN IMAGINE WHAT
13 YOU'RE GOING THROUGH.

14 ANYTHING ELSE YOU WANT TO ADD?

15 WHAT WAS THE BLOOD ALCOHOL IN THIS CASE,
16 MS. KANG-HERNANDEZ?

17 MS. KANG-HERNANDEZ: YOUR HONOR, THIS IS
18 METHAMPHETAMINE CASE.

19 THE COURT: DRIVING WHILE UNDER THE INFLUENCE OF
20 DRUGS?

21 MS. KANG-HERNANDEZ: YES, YOUR HONOR.

22 THE COURT: HAVE THE PEOPLE DONE A FINAL ANALYSIS?
23 IS IT A BLOOD SAMPLE?

24 MS. KANG-HERNANDEZ: YES, YOUR HONOR.

25 THE COURT: DO YOU KNOW WHAT THE LEVEL OF
26 METHAMPHETAMINE WAS?

27 MS. KANG-HERNANDEZ: OFF THE TOP OF MY HEAD, IT'S
28 IN THE HUNDREDS.

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1 THE COURT: ALL RIGHT.

2 ANYTHING ELSE YOU'D LIKE TO ADD,

3 MS. ARMENTA-RIGOR?

4 MS. ARMENTA-RIGOR: NO.

5 THE COURT: ALL RIGHT.

6 MOTION IS DENIED. THIS REQUEST IS NOT
7 MADE -- IT MAY BE FACIALLY MADE IN THE INTEREST OF JUSTICE,
8 BUT MR. GASCON'S DIRECTIVE IS A BLANKET DIRECTIVE THAT
9 APPLIES TO ALL CASES AND ALL CIRCUMSTANCES, REGARDLESS OF THE
10 DEFENDANT, OR THE FACTS AND CIRCUMSTANCES OF THE CASE. IT
11 DOES NOT INDIVIDUALIZE THE CASES PURSUANT TO THEIR FACTS AND
12 CIRCUMSTANCES, OR INDIVIDUALIZE THE DEFENDANT, IN TERMS OF
13 HIS PRIOR HISTORY. I THINK UNDER THOSE CIRCUMSTANCES, IT IS
14 NOT A SUFFICIENT BASIS UNDER 1385 TO ARTICULATE OR SUPPORT A
15 FINDING OF A DISMISSAL IN THE INTEREST OF JUSTICE.

16 ADDITIONALLY, I WOULD INDICATE THAT IN
17 THIS CASE, HE HAS A PRIOR ALCOHOL OR DRUG RELATED DRIVING
18 CONVICTION WHICH AGGRAVATES THIS CASE. ONE VICTIM, A CHILD,
19 WAS KILLED. MR. GEORGE, THE FATHER, IS AT LEAST SOMEWHAT
20 PERMANENTLY DISABLED.

21 FOR ALL THOSE REASONS, LOOKING AT THE
22 FACTS OF THE CASE, IT IS NOT IN THE INTEREST OF JUSTICE TO
23 STRIKE ANY ALLEGATION OR ENHANCEMENT. AND MR. GASCON'S
24 DIRECTIVE, IN MY OPINION, ON ITS FACE, IS INSUFFICIENT TO
25 PROVIDE THAT; AND IN FACT, IS CONTRARY TO WHAT THE FACTS AND
26 CIRCUMSTANCES ARE AS DESCRIBED BY MS. KANG-HERNANDEZ AND WHAT
27 MR. GEORGE INDICATED. THE MOTION WILL BE DENIED.

28 MS. KANG-HERNANDEZ: YOUR HONOR, I MUST STATE ON

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1 THE RECORD, PER THE DIRECTIVE, THAT THE D.D.A. IS ORDERED,
2 AND I QUOTE, "THE SPECIAL DIRECTIVE THAT THE D.D.A., UPON THE
3 COURT'S UNWILLINGNESS TO DISMISS THE ENHANCEMENT, THAT THE
4 D.D.A. SHALL SEEK LEAVE OF THE COURT TO FILE AN AMENDED
5 CHARGING DOCUMENT PURSUANT TO PENAL CODE SECTION 1009.

6 THE COURT: 1009 INDICATES AS FOLLOWS:

7 AN INDICTMENT, ACCUSATION OR INFORMATION
8 MAY BE AMENDED BY THE DISTRICT ATTORNEY, AND AN AMENDED
9 COMPLAINT MAY BE FILED BY THE PROSECUTING ATTORNEY WITHOUT
10 LEAVE OF COURT AT ANY TIME BEFORE THE DEFENDANT PLEADS, OR A
11 MERGE TO THE ORIGINAL PLEADING IS SUSTAINED.

12 THE COURT IN WHICH AN ACTION IS PENDING
13 MAY ORDER OR PERMIT AN AMENDMENT OR INDICTMENT ACCUSATION OR
14 INFORMATION, OR THE FILING OF AN AMENDED COMPLAINT, QUOTE,
15 FOR ANY DEFECT OR INSUFFICIENCY AT ANY STAGE OF THE
16 PROCEEDINGS.

17 HE'S ALREADY ENTERED A PLEA, WHICH I
18 THINK ELIMINATES YOUR RIGHT WITHOUT LEAVE OF THE COURT TO
19 FILE AN AMENDED CHARGING DOCUMENT IN THIS CASE, WHICH WAS THE
20 INFORMATION. I SUPPOSE I CAN'T STOP YOU FROM FILING AN
21 AMENDED INFORMATION, BUT ONCE FILED, I CAN REFUSE TO ACCEPT
22 IT OR ARRAIGN THE DEFENDANT ON IT, UNLESS THE PURPOSE OF THE
23 AMENDED DOCUMENT IS TO CORRECT, QUOTE, A DEFECT OR
24 INSUFFICIENCY.

25 IS THERE ANY DEFECT OR INSUFFICIENCY IN
26 THE CURRENT INFORMATION THAT YOU ARE SEEKING TO REMEDY WITH
27 AN AMENDED INFORMATION?

28 MS. KANG-HERNANDEZ: AS AN OFFICER OF THE COURT,

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1 NO.

2 THE COURT: ALL RIGHT.

3 ANYTHING YOU WANT TO ADD,

4 MS. AMENTA-RIGOR?

5 MS. ARMENTA-RIGOR: NO.

6 THE COURT: THE CLERK HAS ADVISED ME THAT I CANNOT
7 PREVENT THE D.A. FROM FILING THAT DOCUMENT. SO FILE IT, IF
8 YOU WISH TO. BUT I WILL NOT ACCEPT IT, NOR WILL I ARRAIGN
9 THE DEFENDANT ON IT, IN LIGHT OF THE FACT THAT YOUR
10 STATEMENT, AS AN OFFICER OF THE COURT, THE PURPOSE OF IT IS
11 NOT TO REMEDY ANY DEFECT OR INSUFFICIENCY. SO FILE IT, IF
12 YOU NEED TO. I WILL NOT ACCEPT IT ON THE CURRENT RECORD, NOR
13 WILL I ARRAIGN THE DEFENDANT ON IT ON THE CURRENT RECORD.
14 THAT REQUEST IS DENIED.

15 MS. KANG-HERNANDEZ: MAY I RETURN THE SDT DOCUMENTS
16 TO THE COURT FILE?

17 THE COURT: YES.

18 WHAT DO YOU WANT TO DO ABOUT A TRIAL
19 DATE?

20 MS. ARMENTA-RIGOR: YOUR HONOR, REQUESTING ONE
21 FURTHER PRETRIAL DATE IN FEBRUARY.

22 THE COURT: ALL RIGHT.

23 WHEN DO YOU WANT TO COME BACK?

24 MS. ARMENTA-RIGOR: CAN WE HAVE FEBRUARY 18TH?

25 THE COURT: GIVE ME ONE SECOND. THE 18TH IS HEAVY.
26 CAN WE DO THE 17TH?

27 MS. ARMENTA-RIGOR: YES.

28 THE COURT: ALL RIGHT. FEBRUARY 17TH.

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1 MR. PROVENCIO, YOU HAVE A RIGHT TO TRIAL
2 WITHIN 60 DAYS. DO YOU GIVE THAT RIGHT UP AND AGREE IT MAY
3 GO TO FEBRUARY 16TH, OR WITHIN 60 -- FEBRUARY 17. DO YOU
4 GIVE UP YOUR RIGHT TO TRIAL WITHIN OF 60 DAYS, AND AGREE IT
5 CAN GO TO FEBRUARY 17TH OR WITHIN 60 DAYS?

6 THE DEFENDANT: YES.

7 THE COURT: COUNSEL JOIN?

8 MS. ARMENTA-RIGOR: YES.

9 THE COURT: 0 OF 60 ON THE 17TH.

10 AND MR. GEORGE, MY SYMPATHIES TO YOU AND
11 YOUR FAMILY.
12
13

14 **(MATTER WAS CONCLUDED)**
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SUPERIOR COURT FOR THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

DEPARTMENT EA-N

HON. DOUG SORTINO, JUDGE

THE PEOPLE OF THE STATE
OF CALIFORNIA,

PLAINTIFF,

VS.

01) FRANKY PROVENCIO,

DEFENDANT.

CASE NO. KA120979-01
REPORTER'S CERTIFICATE

I, JILL PINCIN, CSR NO. 10135, OFFICIAL REPORTER
OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE
COUNTY OF LOS ANGELES, DO HEREBY CERTIFY THAT THE FOREGOING
PAGES, 1 THROUGH 10, INCLUSIVE, COMPRISE A FULL, TRUE AND
CORRECT TRANSCRIPT OF THE PROCEEDINGS HELD IN THE
ABOVE-ENTITLED MATTER ON DECEMBER 16, 2020.

DATED THIS 23RD DAY OF DECEMBER, 2020.

Jill M. Pincin

JILL M. PINCIN, CSR NO. 10135
OFFICIAL REPORTER

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EXHIBIT I

George Gascón's plans to overhaul prosecutions meet early resistance from judges, others

On his first day in office, Los Angeles County Dist. Atty. George Gascón announced [sweeping changes](#) that he promised would dramatically alter how justice is delivered in the county.

But in the week since his heady proclamations, Gascón's reform plans have been met with resistance from judges, his own prosecutors and crime victims, who are challenging both the ethics of his vision and whether he has the authority to carry out one of its main components.

That Gascón has run into pushback comes as no surprise, as a clash between his progressive agenda and more traditional law enforcement strategies seemed inevitable. But the friction has heated up with startling speed and intensity, affording the district attorney no honeymoon period as he tries to reimagine how an office that files more than 100,000 criminal cases each year carries out its mission.

Gascón has succeeded in quickly locking in several significant policy changes, including barring prosecutors from seeking the death penalty or trying juveniles as adults. And defendants facing a number of misdemeanor crimes can now avoid prosecutions by enrolling in diversion programs. Starting in January, prosecutors will no longer be allowed to seek cash bails.

But his attempt to eliminate sentencing enhancements has met significant resistance. Enhancements can add several years to prison terms for defendants who meet certain conditions, such as being ex-felons or gang members, or those who committed hate crimes or attack police.

Gascón has long argued that penalties for underlying crimes are significant

on their own and that sentencing enhancements lead to excessive prison terms that disproportionately affect Black and Latino defendants, while not deterring crime.

"People that commit a crime ... they are going to face accountability. And that accountability will be proportionate to the crime," he said.

"Enhancements do not have anything to do with accountability."

Gascón, however, relented somewhat Friday. In a memo to prosecutors, he reinstated the use of sentencing enhancements "in cases involving the most vulnerable victims and in specified extraordinary circumstances," according to a copy of the memo obtained by The Times.

Prosecutors now are allowed to seek enhancements in hate-motivated attacks, cases of elder and child abuse, sex abuse and sex trafficking, the memo said. With the approval of a supervisor, enhancements can also be sought in cases where a victim suffers "extensive" physical injuries or a weapon is used in a way that threatens a victim's life during a crime, according to interim Chief Deputy Dist. Atty. Joseph Iniguez.

The backtracking came a day after Gascón vowed at a news conference that he would not relax the policy banning sentencing enhancements because he worried doing so would give prosecutors too much latitude to seek excessive prison terms.

That hardline stance softened after a meeting Thursday night with members of the LGBTQ community and experts on hate crimes, according to Brian Levin, director of the Center for the Study of Hate and Extremism at Cal State San Bernardino, who attended the meeting.

Through the first two weeks of his term, judges have emerged as a significant roadblock to Gascón's enhancement policies.

After a deputy district attorney sought to dismiss an enhancement against a

defendant with a prior felony conviction last week, Superior Court Judge Alison Estrada said the prosecutor had "no independent authority" to do so unless the dismissal was in the interest of justice or due to a lack of evidence.

When the prosecutor said he was only acting on Gascón's order, Estrada denied the motion, drawing a cheer from two LAPD detectives sitting in the back of the courtroom. Judges in other courthouses around the county, including Long Beach, Inglewood and the Antelope Valley, have made similar decisions, attorneys said.

Gascón tried to fashion a workaround to the judges' objections Tuesday, instructing prosecutors to tell judges that dismissing enhancements is, in fact, in the interest of justice because the sentences imposed for the underlying crimes are "sufficient to protect public safety."

If a judge still refuses, the order directs prosecutors to file amended charging documents that do not include the sentencing enhancements, according to a copy of the order reviewed by The Times. Gascón also wants prosecutors to alert their supervisors when a judge refuses to throw out an enhancement.

Some prosecutors have raised objections as well, questioning the ethics of Gascón's order that they say requires them to make representations in court that they don't believe in.

Deputy Dist. Atty. Richard Ceballos, who is prosecuting a group charged in [a series of brutal stabbings of transgender women](#) and made an [unsuccessful bid](#) for D.A., asked a judge to dismiss hate crime enhancements in the case Tuesday, but refused to say doing so would be in the interest of justice. The judge ultimately blocked the motion to dismiss.

"He clearly has a right to make these motions," Ceballos said of Gascón. "We have to follow them; however, we cannot represent to the court that it is in

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the interest of justice if we don't believe it. That would violate the rules of professional responsibility."

On Wednesday, Gascón scoffed at that idea.

"What we're doing is certainly not unlawful and not unethical. Prosecutors are sworn to follow the directives of the elected D.A. as long as he or she is working within the law, and I firmly believe that I am," he said.

In a bruising race against longtime Dist. Atty. Jackie Lacey, Gascón was clear that if he won the election he intended to overhaul criminal justice in L.A. County. He earned the enthusiastic backing of L.A.'s increasingly powerful progressive bloc and received major financial backing from wealthy supporters of criminal justice reform.

Now he is under pressure to deliver on his promises as some victims' rights activists and law enforcement officials are pushing back. Gascón said Wednesday he understands the changes he's making have unnerved some prosecutors in his office.

"When you have such a radical change within a line of work and within an organization, there is going to be a lot of uneasiness and there are going to be people that feel very unsettled by this," he said. "The one thing I'm convinced of is that the men and women of the L.A. D.A.'s office came into work for the same reasons I did 40 years ago. To make sure that our communities are protected."

The union representing rank-and-file deputy district attorneys — one of many [law enforcement unions that spent millions opposing Gascón's candidacy](#) — issued a memo this week expressing concern that some of the district attorney's directives would require prosecutors "to violate the law and our duty of candor to the court" and expressed concern that some would face discipline or termination.

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Those fears were fueled when Gascón disciplined the head prosecutor in the Compton courthouse, Richard Doyle, after he refused an order to withdraw charges against a man who had participated in recent protests against police.

Doyle, according to two law enforcement officials with knowledge of the situation, was issued a letter of reprimand last week for refusing to dismiss the case against Emanuel Padilla, who was charged with [attempting to derail a city commuter train during a protest by dragging metal cables](#) across the train's tracks. The charge carried a maximum sentence of life in prison.

In one of his first acts as district attorney, Gascón [ordered charges against Padilla to be dropped](#).

Max Szabo, a spokesman for Gascón's transition team, said video of the incident made it clear there was insufficient evidence to support the charges against Padilla.

"The video evidence we have seen does not show Mr. Padilla placing, dropping or otherwise putting any object in the path of a train," he said, adding that many sheriff's deputies were at the protest and did not see reason to arrest Padilla.

After Doyle refused to dismiss the case, a member of Gascón's executive team appeared in Compton to drop the charges, according to the officials, who spoke on the condition of anonymity because they were not authorized to speak to the media.

Szabo declined to comment further because the issue was a personnel matter. Attempts to contact Doyle were not successful.

A Google document seeking to collect information on "non-compliant" deputy district attorneys also circulated in recent days. The document was reviewed by The Times last week, and several public defenders confirmed

they had received the link as well.

Both a spokeswoman for the public defender's office and Szabo said no one in their offices had created the document. The link was disabled shortly after The Times began asking questions about it.

The fight over sentencing enhancements underscores the challenges Gascón faces as he tries to address what he and others say are deep-seated inequities that have arisen out of the office's long-running focus on seeking heavy sentences on behalf of crime victims.

Gascón and his supporters point to research that shows enhancements disproportionately affect Black and Latino communities and have questioned whether they serve any public safety purpose.

Roughly 90% of defendants from L.A. County sent to prison under sentencing enhancements were people of color, said Michael Romano, director of the Three Strikes Project at Stanford Law School and chair of Gov. Gavin Newsom's penal code revision committee.

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People convicted of serious violence such as murder or attempted murder will receive lengthy prison sentences that make enhancements unnecessary, Romano said. The men accused of attacking the transgender women, for example, face multiple charges of attempted murder, which could carry a sentence of life in prison. The hate crime enhancements they each face would add a maximum of three years each to a sentence.

"In many, many cases, the enhancement results in a sentence that is far longer than the underlying criminal conduct, and it becomes the tail wagging the dog," Romano said. "There is still ample room to impose long sentences in crimes, especially violent crimes."

Times staff writer Matt Hamilton contributed to this report.

EXHIBIT J

INDEX

<u>Cal. Penal Code</u>	<u>Title</u>
<u>186.22</u>	<u>Participation in criminal street gang; penalty</u>
<u>190.1</u>	<u>Death penalty cases; procedures</u>
<u>190.2</u>	<u>Death penalty or life imprisonment without parole; special circumstances</u>
<u>190.25</u>	<u>Murder of transportation personnel; penalty; special circumstances</u>
<u>190.3</u>	<u>Determination of death penalty or life imprisonment; evidence of aggravating and mitigating circumstances; considerations</u>
<u>190.4</u>	<u>Special findings on truth of each of alleged special circumstance; penalty hearing; application for modification</u>
<u>190.6</u>	<u>Penalty for persons under 18; imposition of death penalty prohibited</u>
<u>667</u>	<u>Habitual criminals; enhancement of sentence; amendment of section</u>
<u>667.5</u>	<u>Prior prison terms; enhancement of prison terms of new offenses</u>
<u>1009</u>	<u>Amendment of accusatory pleading before plea or sustaining of demurrer; subsequent amendments; resubmission or new information; pleading to amendment; amendments not permitted; verification</u>
<u>1170.12</u>	<u>Aggregate and consecutive terms for multiple convictions; prior conviction as prior felony; commitment and other enhancements or punishment</u>
<u>1385</u>	<u>Dismissal on judge or magistrate's own motion or application of prosecuting attorney; statement of reasons; ground of demurrer; authority to strike or dismiss enhancement</u>
<u>1385.1</u>	<u>Special circumstances; strike or dismissal; prohibition</u>
<u>1386</u>	<u>Nolle prosequi abolished</u>
<u>12022.1</u>	<u>Felony committed while released on bail or recognizance; primary and second offense; additional punishment</u>
<u>12022.53</u>	<u>Sentence enhancements for persons convicted of enumerated felonies who use firearm in commission of the crime; limitations</u>

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KeyCite Yellow Flag - Negative Treatment

Unconstitutional or Preempted Limitation Recognized by [People v. Strike](#), Cal.App. 4 Dist., Feb. 11, 2020

[West's Annotated California Codes](#)

[Penal Code \(Refs & Annos\)](#)

[Part 1. Of Crimes and Punishments \(Refs & Annos\)](#)

[Title 7. Of Crimes Against Public Justice \(Refs & Annos\)](#)

[Chapter 11. Street Terrorism Enforcement and Prevention Act \(Refs & Annos\)](#)

West's Ann.Cal.Penal Code § 186.22

§ 186.22. Participation in criminal street gang; penalty

Effective: January 1, 2018

[Currentness](#)

<Section operative until Jan. 1, 2022. See, also, [§ 186.22](#) operative Jan. 1, 2022.>

(a) Any person who actively participates in any criminal street gang with knowledge that its members engage in, or have engaged in, a pattern of criminal gang activity, and who willfully promotes, furthers, or assists in any felonious criminal conduct by members of that gang, shall be punished by imprisonment in a county jail for a period not to exceed one year, or by imprisonment in the state prison for 16 months, or two or three years.

(b)(1) Except as provided in paragraphs (4) and (5), any person who is convicted of a felony committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall, upon conviction of that felony, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which he or she has been convicted, be punished as follows:

(A) Except as provided in subparagraphs (B) and (C), the person shall be punished by an additional term of two, three, or four years at the court's discretion.

(B) If the felony is a serious felony, as defined in [subdivision \(c\) of Section 1192.7](#), the person shall be punished by an additional term of five years.

(C) If the felony is a violent felony, as defined in [subdivision \(c\) of Section 667.5](#), the person shall be punished by an additional term of 10 years.

(2) If the underlying felony described in paragraph (1) is committed on the grounds of, or within 1,000 feet of, a public or private elementary, vocational, junior high, or high school, during hours in which the facility is open for classes or school-related programs or when minors are using the facility, that fact shall be a circumstance in aggravation of the crime in imposing a term under paragraph (1).

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(3) The court shall select the sentence enhancement that, in the court's discretion, best serves the interests of justice and shall state the reasons for its choice on the record at the time of the sentencing in accordance with the provisions of [subdivision \(d\) of Section 1170.1](#).

(4) Any person who is convicted of a felony enumerated in this paragraph committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall, upon conviction of that felony, be sentenced to an indeterminate term of life imprisonment with a minimum term of the indeterminate sentence calculated as the greater of:

(A) The term determined by the court pursuant to [Section 1170](#) for the underlying conviction, including any enhancement applicable under Chapter 4.5 (commencing with [Section 1170](#)) of Title 7 of Part 2, or any period prescribed by [Section 3046](#), if the felony is any of the offenses enumerated in subparagraph (B) or (C) of this paragraph.

(B) Imprisonment in the state prison for 15 years, if the felony is a home invasion robbery, in violation of [subparagraph \(A\) of paragraph \(1\) of subdivision \(a\) of Section 213](#); carjacking, as defined in [Section 215](#); a felony violation of [Section 246](#); or a violation of [Section 12022.55](#).

(C) Imprisonment in the state prison for seven years, if the felony is extortion, as defined in [Section 519](#); or threats to victims and witnesses, as defined in [Section 136.1](#).

(5) Except as provided in paragraph (4), any person who violates this subdivision in the commission of a felony punishable by imprisonment in the state prison for life shall not be paroled until a minimum of 15 calendar years have been served.

(c) If the court grants probation or suspends the execution of sentence imposed upon the defendant for a violation of subdivision (a), or in cases involving a true finding of the enhancement enumerated in subdivision (b), the court shall require that the defendant serve a minimum of 180 days in a county jail as a condition thereof.

(d) Any person who is convicted of a public offense punishable as a felony or a misdemeanor, which is committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall be punished by imprisonment in a county jail not to exceed one year, or by imprisonment in a state prison for one, two, or three years, provided that any person sentenced to imprisonment in the county jail shall be imprisoned for a period not to exceed one year, but not less than 180 days, and shall not be eligible for release upon completion of sentence, parole, or any other basis, until he or she has served 180 days. If the court grants probation or suspends the execution of sentence imposed upon the defendant, it shall require as a condition thereof that the defendant serve 180 days in a county jail.

(e) As used in this chapter, “pattern of criminal gang activity” means the commission of, attempted commission of, conspiracy to commit, or solicitation of, sustained juvenile petition for, or conviction of two or more of the following offenses, provided at least one of these offenses occurred after the effective date of this chapter and the last of those offenses occurred within three years after a prior offense, and the offenses were committed on separate occasions, or by two or more persons:

(1) Assault with a deadly weapon or by means of force likely to produce great bodily injury, as defined in [Section 245](#).

- (2) Robbery, as defined in Chapter 4 (commencing with [Section 211](#)) of Title 8.
- (3) Unlawful homicide or manslaughter, as defined in Chapter 1 (commencing with [Section 187](#)) of Title 8.
- (4) The sale, possession for sale, transportation, manufacture, offer for sale, or offer to manufacture controlled substances as defined in [Sections 11054, 11055, 11056, 11057, and 11058 of the Health and Safety Code](#).
- (5) Shooting at an inhabited dwelling or occupied motor vehicle, as defined in [Section 246](#).
- (6) Discharging or permitting the discharge of a firearm from a motor vehicle, as defined in [subdivisions \(a\) and \(b\) of Section 12034](#) until January 1, 2012, and, on or after that date, [subdivisions \(a\) and \(b\) of Section 26100](#).
- (7) Arson, as defined in Chapter 1 (commencing with [Section 450](#)) of Title 13.
- (8) The intimidation of witnesses and victims, as defined in [Section 136.1](#).
- (9) Grand theft, as defined in [subdivision \(a\) or \(c\) of Section 487](#).
- (10) Grand theft of any firearm, vehicle, trailer, or vessel.
- (11) Burglary, as defined in [Section 459](#).
- (12) Rape, as defined in [Section 261](#).
- (13) Looting, as defined in [Section 463](#).
- (14) Money laundering, as defined in [Section 186.10](#).
- (15) Kidnapping, as defined in [Section 207](#).
- (16) Mayhem, as defined in [Section 203](#).
- (17) Aggravated mayhem, as defined in [Section 205](#).
- (18) Torture, as defined in [Section 206](#).

- (19) Felony extortion, as defined in [Sections 518 and 520](#).
- (20) Felony vandalism, as defined in [paragraph \(1\) of subdivision \(b\) of Section 594](#).
- (21) Carjacking, as defined in [Section 215](#).
- (22) The sale, delivery, or transfer of a firearm, as defined in [Section 12072](#) until January 1, 2012, and, on or after that date, Article 1 (commencing with [Section 27500](#)) of Chapter 4 of Division 6 of Title 4 of Part 6.
- (23) Possession of a pistol, revolver, or other firearm capable of being concealed upon the person in violation of [paragraph \(1\) of subdivision \(a\) of Section 12101](#) until January 1, 2012, and, on or after that date, [Section 29610](#).
- (24) Threats to commit crimes resulting in death or great bodily injury, as defined in [Section 422](#).
- (25) Theft and unlawful taking or driving of a vehicle, as defined in [Section 10851 of the Vehicle Code](#).
- (26) Felony theft of an access card or account information, as defined in [Section 484e](#).
- (27) Counterfeiting, designing, using, or attempting to use an access card, as defined in [Section 484f](#).
- (28) Felony fraudulent use of an access card or account information, as defined in [Section 484g](#).
- (29) Unlawful use of personal identifying information to obtain credit, goods, services, or medical information, as defined in [Section 530.5](#).
- (30) Wrongfully obtaining Department of Motor Vehicles documentation, as defined in [Section 529.7](#).
- (31) Prohibited possession of a firearm in violation of [Section 12021](#) until January 1, 2012, and on or after that date, Chapter 2 (commencing with [Section 29800](#)) of Division 9 of Title 4 of Part 6.
- (32) Carrying a concealed firearm in violation of [Section 12025](#) until January 1, 2012, and, on or after that date, [Section 25400](#).
- (33) Carrying a loaded firearm in violation of [Section 12031](#) until January 1, 2012, and, on or after that date, [Section 25850](#).
- (f) As used in this chapter, “criminal street gang” means any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more of the criminal acts enumerated in paragraphs (1) to (25), inclusive, or (31) to (33), inclusive, of subdivision (e), having a common name or

common identifying sign or symbol, and whose members individually or collectively engage in, or have engaged in, a pattern of criminal gang activity.

(g) Notwithstanding any other law, the court may strike the additional punishment for the enhancements provided in this section or refuse to impose the minimum jail sentence for misdemeanors in an unusual case where the interests of justice would best be served, if the court specifies on the record and enters into the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

(h) Notwithstanding any other law, for each person committed to the Department of Corrections and Rehabilitation, Division of Juvenile Facilities for a conviction pursuant to subdivision (a) or (b) of this section, the offense shall be deemed one for which the state shall pay the rate of 100 percent of the per capita institutional cost of the Department of Corrections and Rehabilitation, Division of Juvenile Facilities, pursuant to former Section 912.5 of the Welfare and Institutions Code.

(i) In order to secure a conviction or sustain a juvenile petition, pursuant to subdivision (a) it is not necessary for the prosecution to prove that the person devotes all, or a substantial part, of his or her time or efforts to the criminal street gang, nor is it necessary to prove that the person is a member of the criminal street gang. Active participation in the criminal street gang is all that is required.

(j) A pattern of gang activity may be shown by the commission of one or more of the offenses enumerated in paragraphs (26) to (30), inclusive, of subdivision (e), and the commission of one or more of the offenses enumerated in paragraphs (1) to (25), inclusive, or (31) to (33), inclusive, of subdivision (e). A pattern of gang activity cannot be established solely by proof of commission of offenses enumerated in paragraphs (26) to (30), inclusive, of subdivision (e), alone.

(k) This section shall remain in effect only until January 1, 2022, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2022, deletes or extends that date.

Credits

(Added by Stats.1989, c. 930, § 5.1, operative Jan. 1, 1993. Amended by Stats.1991, c. 201 (A.B.1135), § 1, operative Jan. 1, 1993; Stats.1991, c. 661 (A.B.1866), § 2, operative Jan. 1, 1993; Stats.1993, c. 601 (S.B.724), § 1; Stats.1993, c. 610 (A.B.6), § 3, eff. Oct. 1, 1993; Stats.1993, c. 611 (S.B.60), § 3, eff. Oct. 1, 1993; Stats.1993, c. 1125 (A.B.1630), § 3; Stats.1994, c. 47 (S.B.480), § 1, eff. April 19, 1994; Stats.1994, c. 451 (A.B.2470), § 1; Stats.1995, c. 377 (S.B.1095), § 2; Stats.1996, c. 630 (S.B.1701), § 1; Stats.1996, c. 873 (S.B.318), § 1; Stats.1996, c. 982 (A.B.2035), § 1; Stats.1997, c. 500 (S.B.940), § 2; Initiative Measure (Prop. 21, § 4, approved March 7, 2000, eff. March 8, 2000); Stats.2001, c. 854 (S.B.205), § 22; Stats.2005, c. 482 (S.B.444), § 1; Stats.2006, c. 596 (S.B.1222), § 1; Stats.2009, c. 171 (S.B.150), § 1; Stats.2010, c. 256 (A.B.2263), § 1; Stats.2011, c. 15 (A.B.109), § 275, eff. April 4, 2011, operative Oct. 1, 2011; Stats.2011, c. 39 (A.B.117), § 6, eff. June 30, 2011, operative Oct. 1, 2011; Stats.2011, c. 361 (S.B.576), § 1, eff. Sept. 29, 2011; Stats.2013, c. 508 (S.B.463), § 1; Stats.2016, c. 887 (S.B.1016), § 1, eff. Jan. 1, 2017; Stats.2017, c. 561 (A.B.1516), § 178, eff. Jan. 1, 2018.)

Editors' Notes

REPEAL

<For repeal of this section, see its terms.>

Document received by the CA 2nd District Court of Appeal.

[Notes of Decisions \(959\)](#)

West's Ann. Cal. Penal Code § 186.22, CA PENAL § 186.22
Current with all laws through Ch. 372 of 2020 Reg.Sess.

End of Document

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Unconstitutional or Preempted Prior Version Recognized as Unconstitutional by [People v. Seumanu](#), Cal., Aug. 24, 2015

[West's Annotated California Codes](#)

[Penal Code \(Refs & Annos\)](#)

[Part 1. Of Crimes and Punishments \(Refs & Annos\)](#)

[Title 8. Of Crimes Against the Person](#)

[Chapter 1. Homicide \(Refs & Annos\)](#)

West's Ann.Cal.Penal Code § 190.1

§ 190.1. Death penalty cases; procedures

[Currentness](#)

A case in which the death penalty may be imposed pursuant to this chapter shall be tried in separate phases as follows:

(a) The question of the defendant's guilt shall be first determined. If the trier of fact finds the defendant guilty of first degree murder, it shall at the same time determine the truth of all special circumstances charged as enumerated in [Section 190.2](#) except for a special circumstance charged pursuant to [paragraph \(2\) of subdivision \(a\) of Section 190.2](#) where it is alleged that the defendant had been convicted in a prior proceeding of the offense of murder in the first or second degree.

(b) If the defendant is found guilty of first degree murder and one of the special circumstances is charged pursuant to [paragraph \(2\) of subdivision \(a\) of Section 190.2](#) which charges that the defendant had been convicted in a prior proceeding of the offense of murder of the first or second degree, there shall thereupon be further proceedings on the question of the truth of such special circumstance.

(c) If the defendant is found guilty of first degree murder and one or more special circumstances as enumerated in [Section 190.2](#) has been charged and found to be true, his sanity on any plea of not guilty by reason of insanity under [Section 1026](#) shall be determined as provided in [Section 190.4](#). If he is found to be sane, there shall thereupon be further proceedings on the question of the penalty to be imposed. Such proceedings shall be conducted in accordance with the provisions of [Section 190.3](#) and [190.4](#).

Credits

(Added by § 4 of Initiative Measure approved Nov. 7, 1978, eff. Nov. 8, 1978.)

[Notes of Decisions \(242\)](#)

West's Ann. Cal. Penal Code § 190.1, CA PENAL § 190.1

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Unconstitutional or Preempted Prior Version Held Unconstitutional by [People v. Sanders](#), Cal., Sep. 27, 1990

West's Annotated California Codes

Penal Code (Refs & Annos)

Part 1. Of Crimes and Punishments (Refs & Annos)

Title 8. Of Crimes Against the Person

Chapter 1. Homicide (Refs & Annos)

West's Ann.Cal.Penal Code § 190.2

§ 190.2. Death penalty or life imprisonment without parole; special circumstances

Effective: January 1, 2019

[Currentness](#)

(a) The penalty for a defendant who is found guilty of murder in the first degree is death or imprisonment in the state prison for life without the possibility of parole if one or more of the following special circumstances has been found under [Section 190.4](#) to be true:

- (1) The murder was intentional and carried out for financial gain.
- (2) The defendant was convicted previously of murder in the first or second degree. For the purpose of this paragraph, an offense committed in another jurisdiction, which if committed in California would be punishable as first or second degree murder, shall be deemed murder in the first or second degree.
- (3) The defendant, in this proceeding, has been convicted of more than one offense of murder in the first or second degree.
- (4) The murder was committed by means of a destructive device, bomb, or explosive planted, hidden, or concealed in any place, area, dwelling, building, or structure, and the defendant knew, or reasonably should have known, that his or her act or acts would create a great risk of death to one or more human beings.
- (5) The murder was committed for the purpose of avoiding or preventing a lawful arrest, or perfecting or attempting to perfect, an escape from lawful custody.
- (6) The murder was committed by means of a destructive device, bomb, or explosive that the defendant mailed or delivered, attempted to mail or deliver, or caused to be mailed or delivered, and the defendant knew, or reasonably should have known, that his or her act or acts would create a great risk of death to one or more human beings.
- (7) The victim was a peace officer, as defined in [Section 830.1](#), [830.2](#), [830.3](#), [830.31](#), [830.32](#), [830.33](#), [830.34](#), [830.35](#), [830.36](#), [830.37](#), [830.4](#), [830.5](#), [830.6](#), [830.10](#), [830.11](#), or [830.12](#), who, while engaged in the course of the performance of his or her duties, was intentionally killed, and the defendant knew, or reasonably should have known, that the victim was a peace officer

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engaged in the performance of his or her duties; or the victim was a peace officer, as defined in the above-enumerated sections, or a former peace officer under any of those sections, and was intentionally killed in retaliation for the performance of his or her official duties.

(8) The victim was a federal law enforcement officer or agent who, while engaged in the course of the performance of his or her duties, was intentionally killed, and the defendant knew, or reasonably should have known, that the victim was a federal law enforcement officer or agent engaged in the performance of his or her duties; or the victim was a federal law enforcement officer or agent, and was intentionally killed in retaliation for the performance of his or her official duties.

(9) The victim was a firefighter, as defined in [Section 245.1](#), who, while engaged in the course of the performance of his or her duties, was intentionally killed, and the defendant knew, or reasonably should have known, that the victim was a firefighter engaged in the performance of his or her duties.

(10) The victim was a witness to a crime who was intentionally killed for the purpose of preventing his or her testimony in any criminal or juvenile proceeding, and the killing was not committed during the commission or attempted commission, of the crime to which he or she was a witness; or the victim was a witness to a crime and was intentionally killed in retaliation for his or her testimony in any criminal or juvenile proceeding. As used in this paragraph, “juvenile proceeding” means a proceeding brought pursuant to [Section 602](#) or [707 of the Welfare and Institutions Code](#).

(11) The victim was a prosecutor or assistant prosecutor or a former prosecutor or assistant prosecutor of any local or state prosecutor's office in this or any other state, or of a federal prosecutor's office, and the murder was intentionally carried out in retaliation for, or to prevent the performance of, the victim's official duties.

(12) The victim was a judge or former judge of any court of record in the local, state, or federal system in this or any other state, and the murder was intentionally carried out in retaliation for, or to prevent the performance of, the victim's official duties.

(13) The victim was an elected or appointed official or former official of the federal government, or of any local or state government of this or any other state, and the killing was intentionally carried out in retaliation for, or to prevent the performance of, the victim's official duties.

(14) The murder was especially heinous, atrocious, or cruel, manifesting exceptional depravity. As used in this section, the phrase “especially heinous, atrocious, or cruel, manifesting exceptional depravity” means a conscienceless or pitiless crime that is unnecessarily torturous to the victim.

(15) The defendant intentionally killed the victim by means of lying in wait.

(16) The victim was intentionally killed because of his or her race, color, religion, nationality, or country of origin.

(17) The murder was committed while the defendant was engaged in, or was an accomplice in, the commission of, attempted commission of, or the immediate flight after committing, or attempting to commit, the following felonies:

- (A) Robbery in violation of [Section 211](#) or [212.5](#).
- (B) Kidnapping in violation of [Section 207](#), [209](#), or [209.5](#).
- (C) Rape in violation of [Section 261](#).
- (D) Sodomy in violation of [Section 286](#).
- (E) The performance of a lewd or lascivious act upon the person of a child under the age of 14 years in violation of [Section 288](#).
- (F) Oral copulation in violation of [Section 287](#) or former Section 288a.
- (G) Burglary in the first or second degree in violation of [Section 460](#).
- (H) Arson in violation of [subdivision \(b\) of Section 451](#).
- (I) Train wrecking in violation of [Section 219](#).
- (J) Mayhem in violation of [Section 203](#).
- (K) Rape by instrument in violation of [Section 289](#).
- (L) Carjacking, as defined in [Section 215](#).
- (M) To prove the special circumstances of kidnapping in subparagraph (B), or arson in subparagraph (H), if there is specific intent to kill, it is only required that there be proof of the elements of those felonies. If so established, those two special circumstances are proven even if the felony of kidnapping or arson is committed primarily or solely for the purpose of facilitating the murder.
- (18) The murder was intentional and involved the infliction of torture.
- (19) The defendant intentionally killed the victim by the administration of poison.
- (20) The victim was a juror in any court of record in the local, state, or federal system in this or any other state, and the murder was intentionally carried out in retaliation for, or to prevent the performance of, the victim's official duties.

(21) The murder was intentional and perpetrated by means of discharging a firearm from a motor vehicle, intentionally at another person or persons outside the vehicle with the intent to inflict death. For purposes of this paragraph, “motor vehicle” means any vehicle as defined in [Section 415 of the Vehicle Code](#).

(22) The defendant intentionally killed the victim while the defendant was an active participant in a criminal street gang, as defined in [subdivision \(f\) of Section 186.22](#), and the murder was carried out to further the activities of the criminal street gang.

(b) Unless an intent to kill is specifically required under subdivision (a) for a special circumstance enumerated therein, an actual killer, as to whom the special circumstance has been found to be true under [Section 190.4](#), need not have had any intent to kill at the time of the commission of the offense which is the basis of the special circumstance in order to suffer death or confinement in the state prison for life without the possibility of parole.

(c) Every person, not the actual killer, who, with the intent to kill, aids, abets, counsels, commands, induces, solicits, requests, or assists any actor in the commission of murder in the first degree shall be punished by death or imprisonment in the state prison for life without the possibility of parole if one or more of the special circumstances enumerated in subdivision (a) has been found to be true under [Section 190.4](#).

(d) Notwithstanding subdivision (c), every person, not the actual killer, who, with reckless indifference to human life and as a major participant, aids, abets, counsels, commands, induces, solicits, requests, or assists in the commission of a felony enumerated in paragraph (17) of subdivision (a) which results in the death of some person or persons, and who is found guilty of murder in the first degree therefor, shall be punished by death or imprisonment in the state prison for life without the possibility of parole if a special circumstance enumerated in paragraph (17) of subdivision (a) has been found to be true under [Section 190.4](#).

The penalty shall be determined as provided in this section and [Sections 190.1, 190.3, 190.4, and 190.5](#).

Credits

(Added by § 6 of Initiative Measure approved Nov. 7, 1978, eff. Nov. 8, 1978. Amended by [Stats.1989, c. 1165, § 16, \(Prop.114\) approved June 5, 1990](#), eff. June 6, 1990; [Initiative Measure \(Prop.115\), approved June 5, 1990](#), eff. June 6, 1990; [Stats.1995, c. 477 \(S.B.32\), § 1 \(Prop. 195, approved March 26, 1996, eff. March 27, 1996\)](#); [Stats.1995, c. 478 \(S.B.9\), § 2 \(Prop. 196, approved March 26, 1996, eff. March 27, 1996\)](#); [Stats.1998, c. 629, § 2 \(Prop. 18, approved March 7, 2000, eff. March 8, 2000\)](#); [Initiative Measure \(Prop. 21, § 11, approved March 7, 2000, eff. March 8, 2000\)](#); [Stats.2018, c. 423 \(S.B.1494\), § 43, eff. Jan. 1, 2019](#).)

Editors' Notes

VALIDITY

Terms of subd. (a)(14) of this section (“heinous, atrocious, or cruel” special circumstances) were held unconstitutionally vague in the case of [People v. Sanders \(1990\) 273 Cal.Rptr. 537, 51 Cal.3d 471, 797 P.2d 561](#), certiorari denied [111 S.Ct. 2249, 114 L.Ed.2d 490](#), rehearing denied [112 S.Ct. 13, 115 L.Ed.2d 1098](#).

[Notes of Decisions \(2720\)](#)

West's Ann. Cal. Penal Code § 190.2, CA PENAL § 190.2

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Unconstitutional or Preempted Unconstitutional as Applied by [Belmontes v. Woodford](#), 9th Cir.(Cal.), July 15, 2003

[West's Annotated California Codes](#)

[Penal Code \(Refs & Annos\)](#)

[Part 1. Of Crimes and Punishments \(Refs & Annos\)](#)

[Title 8. Of Crimes Against the Person](#)

[Chapter 1. Homicide \(Refs & Annos\)](#)

West's Ann.Cal.Penal Code § 190.3

§ 190.3. Determination of death penalty or life imprisonment;
evidence of aggravating and mitigating circumstances; considerations

[Currentness](#)

If the defendant has been found guilty of murder in the first degree, and a special circumstance has been charged and found to be true, or if the defendant may be subject to the death penalty after having been found guilty of violating [subdivision \(a\) of Section 1672 of the Military and Veterans Code](#) or [Sections 37, 128, 219, or 4500](#) of this code, the trier of fact shall determine whether the penalty shall be death or confinement in state prison for a term of life without the possibility of parole. In the proceedings on the question of penalty, evidence may be presented by both the people and the defendant as to any matter relevant to aggravation, mitigation, and sentence including, but not limited to, the nature and circumstances of the present offense, any prior felony conviction or convictions whether or not such conviction or convictions involved a crime of violence, the presence or absence of other criminal activity by the defendant which involved the use or attempted use of force or violence or which involved the express or implied threat to use force or violence, and the defendant's character, background, history, mental condition and physical condition.

However, no evidence shall be admitted regarding other criminal activity by the defendant which did not involve the use or attempted use of force or violence or which did not involve the express or implied threat to use force or violence. As used in this section, criminal activity does not require a conviction.

However, in no event shall evidence of prior criminal activity be admitted for an offense for which the defendant was prosecuted and acquitted. The restriction on the use of this evidence is intended to apply only to proceedings pursuant to this section and is not intended to affect statutory or decisional law allowing such evidence to be used in any other proceedings.

Except for evidence in proof of the offense or special circumstances which subject a defendant to the death penalty, no evidence may be presented by the prosecution in aggravation unless notice of the evidence to be introduced has been given to the defendant within a reasonable period of time as determined by the court, prior to trial. Evidence may be introduced without such notice in rebuttal to evidence introduced by the defendant in mitigation.

The trier of fact shall be instructed that a sentence of confinement to state prison for a term of life without the possibility of parole may in future after sentence is imposed, be commuted or modified to a sentence that includes the possibility of parole by the Governor of the State of California.

In determining the penalty, the trier of fact shall take into account any of the following factors if relevant:

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- (a) The circumstances of the crime of which the defendant was convicted in the present proceeding and the existence of any special circumstances found to be true pursuant to [Section 190.1](#).
- (b) The presence or absence of criminal activity by the defendant which involved the use or attempted use of force or violence or the express or implied threat to use force or violence.
- (c) The presence or absence of any prior felony conviction.
- (d) Whether or not the offense was committed while the defendant was under the influence of extreme mental or emotional disturbance.
- (e) Whether or not the victim was a participant in the defendant's homicidal conduct or consented to the homicidal act.
- (f) Whether or not the offense was committed under circumstances which the defendant reasonably believed to be a moral justification or extenuation for his conduct.
- (g) Whether or not defendant acted under extreme duress or under the substantial domination of another person.
- (h) Whether or not at the time of the offense the capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was impaired as a result of mental disease or defect, or the affects of intoxication.
- (i) The age of the defendant at the time of the crime.
- (j) Whether or not the defendant was an accomplice to the offense and his participation in the commission of the offense was relatively minor.
- (k) Any other circumstance which extenuates the gravity of the crime even though it is not a legal excuse for the crime.

After having heard and received all of the evidence, and after having heard and considered the arguments of counsel, the trier of fact shall consider, take into account and be guided by the aggravating and mitigating circumstances referred to in this section, and shall impose a sentence of death if the trier of fact concludes that the aggravating circumstances outweigh the mitigating circumstances. If the trier of fact determines that the mitigating circumstances outweigh the aggravating circumstances the trier of fact shall impose a sentence of confinement in state prison for a term of life without the possibility of parole.

Credits

(Added by § 8 of Initiative Measure approved Nov. 7, 1978, eff. Nov. 8, 1978.)

[Notes of Decisions \(7973\)](#)

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West's Ann. Cal. Penal Code § 190.3, CA PENAL § 190.3
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Title 8. Of Crimes Against the Person
Chapter 1. Homicide (Refs & Annos)

West's Ann.Cal.Penal Code § 190.4

§ 190.4. Special findings on truth of each alleged special
circumstance; penalty hearing; application for modification

Currentness

(a) Whenever special circumstances as enumerated in [Section 190.2](#) are alleged and the trier of fact finds the defendant guilty of first degree murder, the trier of fact shall also make a special finding on the truth of each alleged special circumstance. The determination of the truth of any or all of the special circumstances shall be made by the trier of fact on the evidence presented at the trial or at the hearing held pursuant to [Subdivision \(b\) of Section 190.1](#).

In case of a reasonable doubt as to whether a special circumstance is true, the defendant is entitled to a finding that is not true.¹ The trier of fact shall make a special finding that each special circumstance charged is either true or not true. Whenever a special circumstance requires proof of the commission or attempted commission of a crime, such crime shall be charged and proved pursuant to the general law applying to the trial and conviction of the crime.

If the defendant was convicted by the court sitting without a jury, the trier of fact shall be a jury unless a jury is waived by the defendant and by the people, in which case the trier of fact shall be the court. If the defendant was convicted by a plea of guilty, the trier of fact shall be a jury unless a jury is waived by the defendant and by the people.

If the trier of fact finds that any one or more of the special circumstances enumerated in [Section 190.2](#) as charged is true, there shall be a separate penalty hearing, and neither the finding that any of the remaining special circumstances charged is not true, nor if the trier of fact is a jury, the inability of the jury to agree on the issue of the truth or untruth of any of the remaining special circumstances charged, shall prevent the holding of a separate penalty hearing.

In any case in which the defendant has been found guilty by a jury, and the jury has been unable to reach an unanimous verdict that one or more of the special circumstances charged are true, and does not reach a unanimous verdict that all the special circumstances charged are not true, the court shall dismiss the jury and shall order a new jury impaneled to try the issues, but the issue of guilt shall not be tried by such jury, nor shall such jury retry the issue of the truth of any of the special circumstances which were found by an unanimous verdict of the previous jury to be untrue. If such new jury is unable to reach the unanimous verdict that one or more of the special circumstances it is trying are true, the court shall dismiss the jury and in the court's discretion shall either order a new jury impaneled to try the issues the previous jury was unable to reach the unanimous verdict on, or impose a punishment of confinement in state prison for a term of 25 years.

(b) If defendant was convicted by the court sitting without a jury the trier of fact at the penalty hearing shall be a jury unless a jury is waived by the defendant and the people, in which case the trier of fact shall be the court. If the defendant was convicted by a plea of guilty, the trier of fact shall be a jury unless a jury is waived by the defendant and the people.

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If the trier of fact is a jury and has been unable to reach a unanimous verdict as to what the penalty shall be, the court shall dismiss the jury and shall order a new jury impaneled to try the issue as to what the penalty shall be. If such new jury is unable to reach a unanimous verdict as to what the penalty shall be, the court in its discretion shall either order a new jury or impose a punishment of confinement in state prison for a term of life without the possibility of parole.

(c) If the trier of fact which convicted the defendant of a crime for which he may be subject to the death penalty was a jury, the same jury shall consider any plea of not guilty by reason of insanity pursuant to [Section 1026](#), the truth of any special circumstances which may be alleged, and the penalty to be applied, unless for good cause shown the court discharges that jury in which case a new jury shall be drawn. The court shall state facts in support of the finding of good cause upon the record and cause them to be entered into the minutes.

(d) In any case in which the defendant may be subject to the death penalty, evidence presented at any prior phase of the trial, including any proceeding under a plea of not guilty by reason of insanity pursuant to [Section 1026](#) shall be considered an any subsequent phase of the trial, if the trier of fact of the prior phase is the same trier of fact at the subsequent phase.

(e) In every case in which the trier of fact has returned a verdict or finding imposing the death penalty, the defendant shall be deemed to have made an application for modification of such verdict or finding pursuant to [Subdivision 7 of Section 11](#).² In ruling on the application, the judge shall review the evidence, consider, take into account, and be guided by the aggravating and mitigating circumstances referred to in [Section 190.3](#), and shall make a determination as to whether the jury's findings and verdicts that the aggravating circumstances outweigh the mitigating circumstances are contrary to law or the evidence presented. The judge shall state on the record the reasons for his findings.

The judge shall set forth the reasons for his ruling on the application and direct that they be entered on the Clerk's minutes. The denial of the modification of the death penalty verdict pursuant to [subdivision \(7\) of Section 1181](#) shall be reviewed on the defendant's automatic appeal pursuant to [subdivision \(b\) of Section 1239](#). The granting of the application shall be reviewed on the People's appeal pursuant to paragraph (6).

Credits

(Added by § 10 of Initiative Measure approved Nov. 7, 1978, eff. Nov. 8, 1978.)

[Notes of Decisions \(804\)](#)

Footnotes

¹ So in copy. Probably should read "...that it is not true."

² Probably should read "Section 1181".

West's Ann. Cal. Penal Code § 190.4, CA PENAL § 190.4

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Unconstitutional or Preempted Limited on Constitutional Grounds by [People v. Gutierrez](#), Cal., May 05, 2014

[West's Annotated California Codes](#)

[Penal Code \(Refs & Annos\)](#)

[Part 1. Of Crimes and Punishments \(Refs & Annos\)](#)

[Title 8. Of Crimes Against the Person](#)

[Chapter 1. Homicide \(Refs & Annos\)](#)

West's Ann.Cal.Penal Code § 190.5

§ 190.5. Penalty for persons under 18; imposition of death penalty prohibited

[Currentness](#)

(a) Notwithstanding any other provision of law, the death penalty shall not be imposed upon any person who is under the age of 18 at the time of the commission of the crime. The burden of proof as to the age of such person shall be upon the defendant.

(b) The penalty for a defendant found guilty of murder in the first degree, in any case in which one or more special circumstances enumerated in [Section 190.2](#) or [190.25](#) has been found to be true under [Section 190.4](#), who was 16 years of age or older and under the age of 18 years at the time of the commission of the crime, shall be confinement in the state prison for life without the possibility of parole or, at the discretion of the court, 25 years to life.

(c) The trier of fact shall determine the existence of any special circumstance pursuant to the procedure set forth in [Section 190.4](#).

Credits

(Added by § 12 of Initiative Measure approved Nov. 7, 1978, eff. Nov. 8, 1978. Amended by [Initiative Measure \(Prop.115\)](#), approved June 5, 1990, eff. June 6, 1990.)

[Notes of Decisions \(92\)](#)

West's Ann. Cal. Penal Code § 190.5, CA PENAL § 190.5

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Unconstitutional or Preempted Prior Version Held Unconstitutional as Applied by [Pinkston v. Lamarque](#), N.D.Cal., Feb. 18, 2003

[West's Annotated California Codes](#)

[Penal Code \(Refs & Annos\)](#)

[Part 1. Of Crimes and Punishments \(Refs & Annos\)](#)

[Title 16. General Provisions](#)

West's Ann.Cal.Penal Code § 667

§ 667. Habitual criminals; enhancement of sentence; amendment of section

Effective: January 1, 2020

[Currentness](#)

(a)(1) Any person convicted of a serious felony who previously has been convicted of a serious felony in this state or of any offense committed in another jurisdiction which includes all of the elements of any serious felony, shall receive, in addition to the sentence imposed by the court for the present offense, a five-year enhancement for each such prior conviction on charges brought and tried separately. The terms of the present offense and each enhancement shall run consecutively.

(2) This subdivision shall not be applied when the punishment imposed under other provisions of law would result in a longer term of imprisonment. There is no requirement of prior incarceration or commitment for this subdivision to apply.

(3) The Legislature may increase the length of the enhancement of sentence provided in this subdivision by a statute passed by majority vote of each house thereof.

(4) As used in this subdivision, “serious felony” means a serious felony listed in [subdivision \(c\) of Section 1192.7](#).

(5) This subdivision does not apply to a person convicted of selling, furnishing, administering, or giving, or offering to sell, furnish, administer, or give to a minor any methamphetamine-related drug or any precursors of methamphetamine unless the prior conviction was for a serious felony described in subparagraph (24) of [subdivision \(c\) of Section 1192.7](#).

(b) It is the intent of the Legislature in enacting subdivisions (b) to (i), inclusive, to ensure longer prison sentences and greater punishment for those who commit a felony and have been previously convicted of one or more serious or violent felony offenses.

(c) Notwithstanding any other law, if a defendant has been convicted of a felony and it has been pled and proved that the defendant has one or more prior serious or violent felony convictions as defined in subdivision (d), the court shall adhere to each of the following:

(1) There shall not be an aggregate term limitation for purposes of consecutive sentencing for any subsequent felony conviction.

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(2) Probation for the current offense shall not be granted, nor shall execution or imposition of the sentence be suspended for any prior offense.

(3) The length of time between the prior serious or violent felony conviction and the current felony conviction shall not affect the imposition of sentence.

(4) There shall not be a commitment to any other facility other than the state prison. Diversion shall not be granted nor shall the defendant be eligible for commitment to the California Rehabilitation Center as provided in [Article 2 \(commencing with Section 3050\) of Chapter 1 of Division 3 of the Welfare and Institutions Code](#).

(5) The total amount of credits awarded pursuant to Article 2.5 (commencing with [Section 2930](#)) of Chapter 7 of Title 1 of Part 3 shall not exceed one-fifth of the total term of imprisonment imposed and shall not accrue until the defendant is physically placed in the state prison.

(6) If there is a current conviction for more than one felony count not committed on the same occasion, and not arising from the same set of operative facts, the court shall sentence the defendant consecutively on each count pursuant to subdivision (e).

(7) If there is a current conviction for more than one serious or violent felony as described in paragraph (6), the court shall impose the sentence for each conviction consecutive to the sentence for any other conviction for which the defendant may be consecutively sentenced in the manner prescribed by law.

(8) Any sentence imposed pursuant to subdivision (e) will be imposed consecutive to any other sentence which the defendant is already serving, unless otherwise provided by law.

(d) Notwithstanding any other law and for the purposes of subdivisions (b) to (i), inclusive, a prior conviction of a serious or violent felony shall be defined as:

(1) Any offense defined in [subdivision \(c\) of Section 667.5](#) as a violent felony or any offense defined in [subdivision \(c\) of Section 1192.7](#) as a serious felony in this state. The determination of whether a prior conviction is a prior felony conviction for purposes of subdivisions (b) to (i), inclusive, shall be made upon the date of that prior conviction and is not affected by the sentence imposed unless the sentence automatically, upon the initial sentencing, converts the felony to a misdemeanor. The following dispositions shall not affect the determination that a prior conviction is a prior felony for purposes of subdivisions (b) to (i), inclusive:

(A) The suspension of imposition of judgment or sentence.

(B) The stay of execution of sentence.

(C) The commitment to the State Department of Health Care Services as a mentally disordered sex offender following a conviction of a felony.

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(D) The commitment to the California Rehabilitation Center or any other facility whose function is rehabilitative diversion from the state prison.

(2) A prior conviction in another jurisdiction for an offense that, if committed in California, is punishable by imprisonment in the state prison constitutes a prior conviction of a particular serious or violent felony if the prior conviction in the other jurisdiction is for an offense that includes all of the elements of a particular violent felony as defined in [subdivision \(c\) of Section 667.5](#) or serious felony as defined in [subdivision \(c\) of Section 1192.7](#).

(3) A prior juvenile adjudication constitutes a prior serious or violent felony conviction for purposes of sentence enhancement if:

(A) The juvenile was 16 years of age or older at the time the juvenile committed the prior offense.

(B) The prior offense is listed in [subdivision \(b\) of Section 707 of the Welfare and Institutions Code](#) or described in paragraph (1) or (2) as a serious or violent felony.

(C) The juvenile was found to be a fit and proper subject to be dealt with under the juvenile court law.

(D) The juvenile was adjudged a ward of the juvenile court within the meaning of [Section 602 of the Welfare and Institutions Code](#) because the person committed an offense listed in [subdivision \(b\) of Section 707 of the Welfare and Institutions Code](#).

(e) For purposes of subdivisions (b) to (i), inclusive, and in addition to any other enhancement or punishment provisions which may apply, the following apply if a defendant has one or more prior serious or violent felony convictions:

(1) If a defendant has one prior serious or violent felony conviction as defined in subdivision (d) that has been pled and proved, the determinate term or minimum term for an indeterminate term shall be twice the term otherwise provided as punishment for the current felony conviction.

(2)(A) Except as provided in subparagraph (C), if a defendant has two or more prior serious or violent felony convictions as defined in subdivision (d) that have been pled and proved, the term for the current felony conviction shall be an indeterminate term of life imprisonment with a minimum term of the indeterminate sentence calculated as the greatest of:

(i) Three times the term otherwise provided as punishment for each current felony conviction subsequent to the two or more prior serious or violent felony convictions.

(ii) Imprisonment in the state prison for 25 years.

(iii) The term determined by the court pursuant to [Section 1170](#) for the underlying conviction, including any enhancement applicable under Chapter 4.5 (commencing with [Section 1170](#)) of Title 7 of Part 2, or any period prescribed by [Section 190](#) or [3046](#).

(B) The indeterminate term described in subparagraph (A) shall be served consecutive to any other term of imprisonment for which a consecutive term may be imposed by law. Any other term imposed subsequent to any indeterminate term described in subparagraph (A) shall not be merged therein but shall commence at the time the person would otherwise have been released from prison.

(C) If a defendant has two or more prior serious or violent felony convictions as defined in [subdivision \(c\) of Section 667.5](#) or [subdivision \(c\) of Section 1192.7](#) that have been pled and proved, and the current offense is not a serious or violent felony as defined in subdivision (d), the defendant shall be sentenced pursuant to paragraph (1) of subdivision (e) unless the prosecution pleads and proves any of the following:

(i) The current offense is a controlled substance charge, in which an allegation under [Section 11370.4](#) or [11379.8 of the Health and Safety Code](#) was admitted or found true.

(ii) The current offense is a felony sex offense, defined in [subdivision \(d\) of Section 261.5](#) or [Section 262](#), or any felony offense that results in mandatory registration as a sex offender pursuant to [subdivision \(c\) of Section 290](#) except for violations of [Sections 266 and 285, paragraph \(1\) of subdivision \(b\) and subdivision \(e\) of Section 286, paragraph \(1\) of subdivision \(b\) and subdivision \(e\) of Section 288a, Section 311.11, and Section 314.](#)

(iii) During the commission of the current offense, the defendant used a firearm, was armed with a firearm or deadly weapon, or intended to cause great bodily injury to another person.

(iv) The defendant suffered a prior serious or violent felony conviction, as defined in subdivision (d) of this section, for any of the following felonies:

(I) A “sexually violent offense” as defined in [subdivision \(b\) of Section 6600 of the Welfare and Institutions Code](#).

(II) Oral copulation with a child who is under 14 years of age, and who is more than 10 years younger than the defendant as defined by [Section 288a](#), sodomy with another person who is under 14 years of age and more than 10 years younger than the defendant as defined by [Section 286](#), or sexual penetration with another person who is under 14 years of age, and who is more than 10 years younger than the defendant, as defined by [Section 289](#).

(III) A lewd or lascivious act involving a child under 14 years of age, in violation of [Section 288](#).

(IV) Any homicide offense, including any attempted homicide offense, defined in [Sections 187 to 191.5](#), inclusive.

(V) Solicitation to commit murder as defined in [Section 653f](#).

(VI) Assault with a machine gun on a peace officer or firefighter, as defined in [paragraph \(3\) of subdivision \(d\) of Section 245](#).

(VII) Possession of a weapon of mass destruction, as defined in [paragraph \(1\) of subdivision \(a\) of Section 11418](#).

(VIII) Any serious or violent felony offense punishable in California by life imprisonment or death.

(f)(1) Notwithstanding any other law, subdivisions (b) to (i), inclusive, shall be applied in every case in which a defendant has one or more prior serious or violent felony convictions as defined in subdivision (d). The prosecuting attorney shall plead and prove each prior serious or violent felony conviction except as provided in paragraph (2).

(2) The prosecuting attorney may move to dismiss or strike a prior serious or violent felony conviction allegation in the furtherance of justice pursuant to [Section 1385](#), or if there is insufficient evidence to prove the prior serious or violent felony conviction. If upon the satisfaction of the court that there is insufficient evidence to prove the prior serious or violent felony conviction, the court may dismiss or strike the allegation. This section shall not be read to alter a court's authority under [Section 1385](#).

(g) Prior serious or violent felony convictions shall not be used in plea bargaining as defined in [subdivision \(b\) of Section 1192.7](#). The prosecution shall plead and prove all known prior felony serious or violent convictions and shall not enter into any agreement to strike or seek the dismissal of any prior serious or violent felony conviction allegation except as provided in paragraph (2) of subdivision (f).

(h) All references to existing statutes in subdivisions (c) to (g), inclusive, are to statutes as they existed on November 7, 2012.

(i) If any provision of subdivisions (b) to (h), inclusive, or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of those subdivisions which can be given effect without the invalid provision or application, and to this end the provisions of those subdivisions are severable.

(j) The provisions of this section shall not be amended by the Legislature except by statute passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electors.

Credits

(Added by Initiative Measure, approved by the people, June 8, 1982. Amended by Stats.1986, c. 85, § 1.5, eff. May 6, 1986; Stats.1989, c. 1043, § 1; Stats.1994, c. 12 (A.B.971), § 1, eff. March 7, 1994; Initiative Measure (Prop. 36, § 2, approved Nov. 6, 2012, eff. Nov. 7, 2012); Stats.2018, c. 423 (S.B.1494), § 64, eff. Jan. 1, 2019; Stats.2018, c. 1013 (S.B.1393), § 1, eff. Jan. 1, 2019; Stats.2019, c. 497 (A.B.991), § 195, eff. Jan. 1, 2020.)

[Notes of Decisions \(1607\)](#)

West's Ann. Cal. Penal Code § 667, CA PENAL § 667
Current with all laws through Ch. 372 of 2020 Reg.Sess.



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Proposed Legislation

West's Annotated California Codes
Penal Code (Refs & Annos)
Part 1. Of Crimes and Punishments (Refs & Annos)
Title 16. General Provisions

West's Ann.Cal.Penal Code § 667.5

§ 667.5. Prior prison terms; enhancement of prison terms for new offenses

Effective: January 1, 2020

[Currentness](#)

Enhancement of prison terms for new offenses because of prior prison terms shall be imposed as follows:

(a) Where one of the new offenses is one of the violent felonies specified in subdivision (c), in addition to and consecutive to any other prison terms therefor, the court shall impose a three-year term for each prior separate prison term served by the defendant where the prior offense was one of the violent felonies specified in subdivision (c). However, no additional term shall be imposed under this subdivision for any prison term served prior to a period of 10 years in which the defendant remained free of both prison custody and the commission of an offense which results in a felony conviction.

(b) Except where subdivision (a) applies, where the new offense is any felony for which a prison sentence or a sentence of imprisonment in a county jail under [subdivision \(h\) of Section 1170](#) is imposed or is not suspended, in addition and consecutive to any other sentence therefor, the court shall impose a one-year term for each prior separate prison term for a sexually violent offense as defined in [subdivision \(b\) of Section 6600 of the Welfare and Institutions Code](#), provided that no additional term shall be imposed under this subdivision for any prison term served prior to a period of five years in which the defendant remained free of both the commission of an offense which results in a felony conviction, and prison custody or the imposition of a term of jail custody imposed under [subdivision \(h\) of Section 1170](#) or any felony sentence that is not suspended.

(c) For the purpose of this section, “violent felony” shall mean any of the following:

(1) Murder or voluntary manslaughter.

(2) Mayhem.

(3) Rape as defined in [paragraph \(2\) or \(6\) of subdivision \(a\) of Section 261](#) or [paragraph \(1\) or \(4\) of subdivision \(a\) of Section 262](#).

(4) Sodomy as defined in [subdivision \(c\) or \(d\) of Section 286](#).

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- (5) Oral copulation as defined in [subdivision \(c\) or \(d\) of Section 287](#) or of former Section 288a.
- (6) Lewd or lascivious act as defined in [subdivision \(a\) or \(b\) of Section 288](#).
- (7) Any felony punishable by death or imprisonment in the state prison for life.
- (8) Any felony in which the defendant inflicts great bodily injury on any person other than an accomplice which has been charged and proved as provided for in [Section 12022.7](#), [12022.8](#), or [12022.9](#) on or after July 1, 1977, or as specified prior to July 1, 1977, in [Sections 213](#), [264](#), and [461](#), or any felony in which the defendant uses a firearm which use has been charged and proved as provided in [subdivision \(a\) of Section 12022.3](#), or [Section 12022.5](#) or [12022.55](#).
- (9) Any robbery.
- (10) Arson, in violation of [subdivision \(a\) or \(b\) of Section 451](#).
- (11) Sexual penetration as defined in [subdivision \(a\) or \(j\) of Section 289](#).
- (12) Attempted murder.
- (13) A violation of [Section 18745](#), [18750](#), or [18755](#).
- (14) Kidnapping.
- (15) Assault with the intent to commit a specified felony, in violation of [Section 220](#).
- (16) Continuous sexual abuse of a child, in violation of [Section 288.5](#).
- (17) Carjacking, as defined in [subdivision \(a\) of Section 215](#).
- (18) Rape, spousal rape, or sexual penetration, in concert, in violation of [Section 264.1](#).
- (19) Extortion, as defined in [Section 518](#), which would constitute a felony violation of [Section 186.22](#).
- (20) Threats to victims or witnesses, as defined in [Section 136.1](#), which would constitute a felony violation of [Section 186.22](#).
- (21) Any burglary of the first degree, as defined in [subdivision \(a\) of Section 460](#), wherein it is charged and proved that another person, other than an accomplice, was present in the residence during the commission of the burglary.

(22) Any violation of [Section 12022.53](#).

(23) A violation of [subdivision \(b\)](#) or [\(c\) of Section 11418](#). The Legislature finds and declares that these specified crimes merit special consideration when imposing a sentence to display society's condemnation for these extraordinary crimes of violence against the person.

(d) For the purposes of this section, the defendant shall be deemed to remain in prison custody for an offense until the official discharge from custody, including any period of mandatory supervision, or until release on parole or postrelease community supervision, whichever first occurs, including any time during which the defendant remains subject to reimprisonment or custody in county jail for escape from custody or is reimprisoned on revocation of parole or postrelease community supervision. The additional penalties provided for prior prison terms shall not be imposed unless they are charged and admitted or found true in the action for the new offense.

(e) The additional penalties provided for prior prison terms shall not be imposed for any felony for which the defendant did not serve a prior separate term in state prison or in county jail under [subdivision \(h\) of Section 1170](#).

(f) A prior conviction of a felony shall include a conviction in another jurisdiction for an offense which, if committed in California, is punishable by imprisonment in the state prison or in county jail under [subdivision \(h\) of Section 1170](#) if the defendant served one year or more in prison for the offense in the other jurisdiction. A prior conviction of a particular felony shall include a conviction in another jurisdiction for an offense which includes all of the elements of the particular felony as defined under California law if the defendant served one year or more in prison for the offense in the other jurisdiction.

(g) A prior separate prison term for the purposes of this section shall mean a continuous completed period of prison incarceration imposed for the particular offense alone or in combination with concurrent or consecutive sentences for other crimes, including any reimprisonment on revocation of parole which is not accompanied by a new commitment to prison, and including any reimprisonment after an escape from incarceration.

(h) Serving a prison term includes any confinement time in any state prison or federal penal institution as punishment for commission of an offense, including confinement in a hospital or other institution or facility credited as service of prison time in the jurisdiction of the confinement.

(i) For the purposes of this section, a commitment to the State Department of Mental Health, or its successor the State Department of State Hospitals, as a mentally disordered sex offender following a conviction of a felony, which commitment exceeds one year in duration, shall be deemed a prior prison term.

(j) For the purposes of this section, when a person subject to the custody, control, and discipline of the Secretary of the Department of Corrections and Rehabilitation is incarcerated at a facility operated by the Division of Juvenile Justice, that incarceration shall be deemed to be a term served in state prison.

(k)(1) Notwithstanding subdivisions (d) and (g) or any other provision of law, where one of the new offenses is committed while the defendant is temporarily removed from prison pursuant to [Section 2690](#) or while the defendant is transferred to a

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community facility pursuant to [Section 3416](#), [6253](#), or [6263](#), or while the defendant is on furlough pursuant to [Section 6254](#), the defendant shall be subject to the full enhancements provided for in this section.

(2) This subdivision shall not apply when a full, separate, and consecutive term is imposed pursuant to any other provision of law.

Credits

(Added by Stats.1976, c. 1139, p. 5137, § 268, operative July 1, 1977. Amended by Stats.1977, c. 2, p. 4, § 1, eff. Dec. 16, 1976, operative July 1, 1977; Stats.1977, c. 165, p. 644, § 13, eff. June 29, 1977, operative July 1, 1977; Stats.1980, c. 587, p. 1596, § 3; Stats.1983, c. 229, § 1; Stats.1985, c. 402, § 1; Stats.1986, c. 645, § 1; [Stats.1987, c. 611, § 1](#); [Stats.1988, c. 70, § 1](#); [Stats.1988, c. 89, § 1.5](#); [Stats.1988, c. 432, § 1](#); [Stats.1988, c. 1484, § 1](#); [Stats.1988, c. 1487, § 1.1](#); [Stats.1989, c. 1012, § 1](#); [Stats.1990, c. 18 \(A.B.662\), § 1](#); [Stats.1991, c. 451 \(A.B.1393\), § 1](#); [Stats.1993, c. 162 \(A.B.112\), § 3](#); [Stats.1993, c. 298 \(A.B.31\), § 2](#); [Stats.1993, c. 610 \(A.B.6\), § 10](#), eff. Oct. 1, 1993; [Stats.1993, c. 611 \(S.B.60\), § 11](#), eff. Oct. 1, 1993; [Stats.1994, c. 1188 \(S.B.59\), § 6](#); [Stats.1997, c. 371 \(A.B.793\), § 1](#); [Stats.1997, c. 504 \(A.B.115\), § 2](#); Initiative Measure (Prop.21, § 15, approved March 7, 2000, eff. March 8, 2000); [Stats.2002, c. 606 \(A.B.1838\), § 2](#), eff. Sept. 17, 2002; [Stats.2006, c. 337 \(S.B.1128\), § 30](#), eff. Sept. 20, 2006; Initiative Measure (Prop. 83, § 9, approved Nov. 7, 2006, eff. Nov. 8, 2006); [Stats.2010, c. 178 \(S.B.1115\), § 63](#), operative Jan. 1, 2012; [Stats.2011, c. 15 \(A.B.109\), § 443](#), eff. April 4, 2011, operative Jan. 1, 2012; [Stats.2011, c. 39 \(A.B.117\), § 23](#), eff. June 30, 2011, operative Jan. 1, 2012; [Stats.2011-2012, 1st Ex.Sess., c. 12 \(A.B.17\), § 10](#), eff. Sept. 21, 2011, operative Jan. 1, 2012; [Stats.2012, c. 24 \(A.B.1470\), § 19](#), eff. June 27, 2012; [Stats.2012, c. 43 \(S.B.1023\), § 22](#), eff. June 27, 2012; [Stats.2014, c. 442 \(S.B.1465\), § 10](#), eff. Sept. 18, 2014; [Stats.2018, c. 423 \(S.B.1494\), § 65](#), eff. Jan. 1, 2019; [Stats.2019, c. 590 \(S.B.136\), § 1](#), eff. Jan. 1, 2020.)

Editors' Notes

LAW REVISION COMMISSION COMMENTS

2010 Amendment

Subdivision (c) of Section 667.5 is amended to reflect nonsubstantive reorganization of the statutes governing control of deadly weapons.

For guidance in applying this section, see [Section 16015](#) (determining existence of prior conviction). [38 Cal.L.Rev.Comm. Reports 217 (2009)].

[Notes of Decisions \(544\)](#)

West's Ann. Cal. Penal Code § 667.5, CA PENAL § 667.5

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West's Annotated California Codes
 Penal Code (Refs & Annos)
 Part 2. Of Criminal Procedure
 Title 6. Pleadings and Proceedings Before Trial (Refs & Annos)
 Chapter 3. Demurrer and Amendment (Refs & Annos)

West's Ann.Cal.Penal Code § 1009

§ 1009. Amendment of accusatory pleading before plea or sustaining of demurrer; subsequent amendments; resubmission or new information; pleading to amendment; amendments not permitted; verification

Currentness

An indictment, accusation or information may be amended by the district attorney, and an amended complaint may be filed by the prosecuting attorney, without leave of court at any time before the defendant pleads or a demurrer to the original pleading is sustained. The court in which an action is pending may order or permit an amendment of an indictment, accusation or information, or the filing of an amended complaint, for any defect or insufficiency, at any stage of the proceedings, or if the defect in an indictment or information be one that cannot be remedied by amendment, may order the case submitted to the same or another grand jury, or a new information to be filed. The defendant shall be required to plead to such amendment or amended pleading forthwith, or, at the time fixed for pleading, if the defendant has not yet pleaded and the trial or other proceeding shall continue as if the pleading had been originally filed as amended, unless the substantial rights of the defendant would be prejudiced thereby, in which event a reasonable postponement, not longer than the ends of justice require, may be granted. An indictment or accusation cannot be amended so as to change the offense charged, nor an information so as to charge an offense not shown by the evidence taken at the preliminary examination. A complaint cannot be amended to charge an offense not attempted to be charged by the original complaint, except that separate counts may be added which might properly have been joined in the original complaint. The amended complaint must be verified but may be verified by some person other than the one who made oath to the original complaint.

Credits

(Enacted in 1872. Amended by Code Am.1880, c. 47, p. 18, § 49; Stats.1935, c. 657, p. 1813, § 2; Stats.1951, c. 1674, p. 3842, § 77; Stats.1998, c. 931 (S.B.2139), § 383, eff. Sept. 28, 1998.)

Editors' Notes

LAW REVISION COMMISSION COMMENTS

1998 Amendment

Section 1009 is amended to accommodate unification of the municipal and superior courts in a county. [Cal. Const. art. VI, § 5\(e\)](#). Cf. [Section 691](#) & Comment. [28 Cal.L.Rev.Comm. Reports 51 (1998)].

[Notes of Decisions \(318\)](#)

West's Ann. Cal. Penal Code § 1009, CA PENAL § 1009
 Current with all laws through Ch. 372 of 2020 Reg.Sess.

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Unconstitutional or Preempted Prior Version Held Unconstitutional as Applied by [Pinkston v. Lamarque](#), N.D.Cal., Feb. 18, 2003

[West's Annotated California Codes](#)

[Penal Code \(Refs & Annos\)](#)

[Part 2. Of Criminal Procedure](#)

[Title 7. Of Proceedings After the Commencement of the Trial and Before Judgment](#)

[Chapter 4.5. Trial Court Sentencing \(Refs & Annos\)](#)

[Article 1. Initial Sentencing \(Refs & Annos\)](#)

West's Ann.Cal.Penal Code § 1170.12

§ 1170.12. Aggregate and consecutive terms for multiple convictions; prior conviction as prior felony; commitment and other enhancements or punishment. ¹

Effective: January 1, 2020

[Currentness](#)

(a) Notwithstanding any other law, if a defendant has been convicted of a felony and it has been pled and proved that the defendant has one or more prior serious or violent felony convictions, as defined in subdivision (b), the court shall adhere to each of the following:

(1) There shall not be an aggregate term limitation for purposes of consecutive sentencing for any subsequent felony conviction.

(2) Probation for the current offense shall not be granted, nor shall execution or imposition of the sentence be suspended for any prior offense.

(3) The length of time between the prior serious or violent felony conviction and the current felony conviction shall not affect the imposition of sentence.

(4) There shall not be a commitment to any other facility other than the state prison. Diversion shall not be granted nor shall the defendant be eligible for commitment to the California Rehabilitation Center as provided in [Article 2 \(commencing with Section 3050\) of Chapter 1 of Division 3 of the Welfare and Institutions Code](#).

(5) The total amount of credits awarded pursuant to Article 2.5 (commencing with [Section 2930](#)) of Chapter 7 of Title 1 of Part 3 shall not exceed one-fifth of the total term of imprisonment imposed and shall not accrue until the defendant is physically placed in the state prison.

(6) If there is a current conviction for more than one felony count not committed on the same occasion, and not arising from the same set of operative facts, the court shall sentence the defendant consecutively on each count pursuant to this section.

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(7) If there is a current conviction for more than one serious or violent felony as described in subdivision (b), the court shall impose the sentence for each conviction consecutive to the sentence for any other conviction for which the defendant may be consecutively sentenced in the manner prescribed by law.

(b) Notwithstanding any other law and for the purposes of this section, a prior serious or violent conviction of a felony is defined as:

(1) Any offense defined in [subdivision \(c\) of Section 667.5](#) as a violent felony or any offense defined in [subdivision \(c\) of Section 1192.7](#) as a serious felony in this state. The determination of whether a prior conviction is a prior serious and/or violent felony conviction for purposes of this section shall be made upon the date of that prior conviction and is not affected by the sentence imposed unless the sentence automatically, upon the initial sentencing, converts the felony to a misdemeanor. The following dispositions shall not affect the determination that a prior serious or violent conviction is a serious or violent felony for purposes of this section:

(A) The suspension of imposition of judgment or sentence.

(B) The stay of execution of sentence.

(C) The commitment to the State Department of Health Services as a mentally disordered sex offender following a conviction of a felony.

(D) The commitment to the California Rehabilitation Center or any other facility whose function is rehabilitative diversion from the state prison.

(2) A prior conviction in another jurisdiction for an offense that, if committed in California, is punishable by imprisonment in the state prison constitutes a prior conviction of a particular serious or violent felony if the prior conviction in the other jurisdiction is for an offense that includes all of the elements of the particular violent felony as defined in [subdivision \(c\) of Section 667.5](#) or serious felony as defined in [subdivision \(c\) of Section 1192.7](#).

(3) A prior juvenile adjudication constitutes a prior serious or violent felony conviction for the purposes of sentence enhancement if:

(A) The juvenile was 16 years of age or older at the time the juvenile committed the prior offense, and

(B) The prior offense is

(i) listed in [subdivision \(b\) of Section 707 of the Welfare and Institutions Code](#), or

(ii) listed in this subdivision as a serious or violent felony, and

(C) The juvenile was found to be a fit and proper subject to be dealt with under the juvenile court law, and

(D) The juvenile was adjudged a ward of the juvenile court within the meaning of [Section 602 of the Welfare and Institutions Code](#) because the person committed an offense listed in [subdivision \(b\) of Section 707 of the Welfare and Institutions Code](#).

(c) For purposes of this section, and in addition to any other enhancements or punishment provisions which may apply, the following apply if a defendant has one or more prior serious or violent felony convictions:

(1) If a defendant has one prior serious or violent felony conviction as defined in subdivision (b) that has been pled and proved, the determinate term or minimum term for an indeterminate term shall be twice the term otherwise provided as punishment for the current felony conviction.

(2)(A) Except as provided in subparagraph (C), if a defendant has two or more prior serious or violent felony convictions, as defined in subdivision (b), that have been pled and proved, the term for the current felony conviction shall be an indeterminate term of life imprisonment with a minimum term of the indeterminate sentence calculated as the greatest of:

(i) three times the term otherwise provided as punishment for each current felony conviction subsequent to the two or more prior serious or violent felony convictions, or

(ii) twenty-five years or

(iii) the term determined by the court pursuant to [Section 1170](#) for the underlying conviction, including any enhancement applicable under Chapter 4.5 (commencing with [Section 1170](#)) of Title 7 of Part 2, or any period prescribed by [Section 190](#) or [3046](#).

(B) The indeterminate term described in subparagraph (A) of paragraph (2) of this subdivision shall be served consecutive to any other term of imprisonment for which a consecutive term may be imposed by law. Any other term imposed subsequent to any indeterminate term described in subparagraph (A) of paragraph (2) of this subdivision shall not be merged therein but shall commence at the time the person would otherwise have been released from prison.

(C) If a defendant has two or more prior serious or violent felony convictions as defined in [subdivision \(c\) of Section 667.5](#) or [subdivision \(c\) of Section 1192.7](#) that have been pled and proved, and the current offense is not a felony described in paragraph (1) of subdivision (b) of this section, the defendant shall be sentenced pursuant to paragraph (1) of subdivision (c) of this section, unless the prosecution pleads and proves any of the following:

(i) The current offense is a controlled substance charge, in which an allegation under [Section 11370.4](#) or [11379.8 of the Health and Safety Code](#) was admitted or found true.

(ii) The current offense is a felony sex offense, defined in [subdivision \(d\) of Section 261.5](#) or [Section 262](#), or any felony offense that results in mandatory registration as a sex offender pursuant to [subdivision \(c\) of Section 290](#) except for violations of

Sections 266 and 285, paragraph (1) of subdivision (b) and subdivision (e) of Section 286, paragraph (1) of subdivision (b) and subdivision (e) of Section 287, Section 314, and Section 311.11.

(iii) During the commission of the current offense, the defendant used a firearm, was armed with a firearm or deadly weapon, or intended to cause great bodily injury to another person.

(iv) The defendant suffered a prior conviction, as defined in subdivision (b) of this section, for any of the following serious or violent felonies:

(I) A “sexually violent offense” as defined by subdivision (b) of Section 6600 of the Welfare and Institutions Code.

(II) Oral copulation with a child who is under 14 years of age, and who is more than 10 years younger than the defendant as defined by Section 287 or former Section 288a, sodomy with another person who is under 14 years of age and more than 10 years younger than the defendant as defined by Section 286 or sexual penetration with another person who is under 14 years of age, and who is more than 10 years younger than the defendant, as defined by Section 289.

(III) A lewd or lascivious act involving a child under 14 years of age, in violation of Section 288.

(IV) Any homicide offense, including any attempted homicide offense, defined in Sections 187 to 191.5, inclusive.

(V) Solicitation to commit murder as defined in Section 653f.

(VI) Assault with a machinegun on a peace officer or firefighter, as defined in paragraph (3) of subdivision (d) of Section 245.

(VII) Possession of a weapon of mass destruction, as defined in paragraph (1) of subdivision (a) of Section 11418.

(VIII) Any serious or violent felony offense punishable in California by life imprisonment or death.

(d)(1) Notwithstanding any other law, this section shall be applied in every case in which a defendant has one or more prior serious and/or violent felony convictions as defined in this section. The prosecuting attorney shall plead and prove each prior serious or violent felony conviction except as provided in paragraph (2).

(2) The prosecuting attorney may move to dismiss or strike a prior serious or violent felony conviction allegation in the furtherance of justice pursuant to Section 1385, or if there is insufficient evidence to prove the prior serious or violent conviction. If upon the satisfaction of the court that there is insufficient evidence to prove the prior serious or violent felony conviction, the court may dismiss or strike the allegation. This section shall not be read to alter a court's authority under Section 1385.

(e) Prior serious or violent felony convictions shall not be used in plea bargaining, as defined in subdivision (b) of Section 1192.7. The prosecution shall plead and prove all known prior serious or violent felony convictions and shall not enter into

any agreement to strike or seek the dismissal of any prior serious or violent felony conviction allegation except as provided in paragraph (2) of subdivision (d).

(f) If any provision of subdivisions (a) to (e), inclusive, or of Section 1170.126, or the application thereof to any person or circumstance is held invalid, that invalidity does not affect other provisions or applications of those subdivisions which can be given effect without the invalid provision or application, and to this end the provisions of those subdivisions are severable.

(g) The provisions of this section shall not be amended by the Legislature except by statute passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electors.

Credits

(Added by Initiative Measure (Prop. 184, § 1, approved Nov. 8, 1994). Amended by Initiative Measure (Prop. 36, § 4, approved Nov. 6, 2012, eff. Nov. 7, 2012); Stats.2018, c. 423 (S.B.1494), § 85, eff. Jan. 1, 2019; Stats.2019, c. 497 (A.B.991), § 204, eff. Jan. 1, 2020.)

[Notes of Decisions \(576\)](#)

Footnotes

¹ Section caption supplied by Stats.2019, c. 497 (S.B.991).
West's Ann. Cal. Penal Code § 1170.12, CA PENAL § 1170.12
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West's Annotated California Codes

Penal Code (Refs & Annos)

Part 2. Of Criminal Procedure

Title 10. Miscellaneous Proceedings

Chapter 8. Dismissal of the Action for Want of Prosecution or Otherwise (Refs & Annos)

West's Ann.Cal.Penal Code § 1385

§ 1385. Dismissal on judge or magistrate's own motion or application of prosecuting attorney;
statement of reasons; ground of demurrer; authority to strike or dismiss enhancement

Effective: January 1, 2019

[Currentness](#)

(a) The judge or magistrate may, either of his or her own motion or upon the application of the prosecuting attorney, and in furtherance of justice, order an action to be dismissed. The reasons for the dismissal shall be stated orally on the record. The court shall also set forth the reasons in an order entered upon the minutes if requested by either party or in any case in which the proceedings are not being recorded electronically or reported by a court reporter. A dismissal shall not be made for any cause that would be ground of demurrer to the accusatory pleading.

(b)(1) If the court has the authority pursuant to subdivision (a) to strike or dismiss an enhancement, the court may instead strike the additional punishment for that enhancement in the furtherance of justice in compliance with subdivision (a).

(2) This subdivision does not authorize the court to strike the additional punishment for any enhancement that cannot be stricken or dismissed pursuant to subdivision (a).

Credits

(Enacted in 1872. Amended by Stats.1951, c. 1674, p. 3857, § 141; Stats.1980, c. 938, § 7; Stats.1986, c. 85, § 2, eff. May 6, 1986; Stats.2000, c. 689 (A.B.1808), § 3; Stats.2014, c. 137 (S.B.1222), § 1, eff. Jan. 1, 2015; Stats.2018, c. 1013 (S.B.1393), § 2, eff. Jan. 1, 2019.)

[Notes of Decisions \(891\)](#)

West's Ann. Cal. Penal Code § 1385, CA PENAL § 1385

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West's Annotated California Codes

Penal Code (Refs & Annos)

Part 2. Of Criminal Procedure

Title 10. Miscellaneous Proceedings

Chapter 8. Dismissal of the Action for Want of Prosecution or Otherwise (Refs & Annos)

West's Ann.Cal.Penal Code § 1385.1

§ 1385.1. Special circumstances; strike or dismissal; prohibition

Currentness

Notwithstanding [Section 1385](#) or any other provision of law, a judge shall not strike or dismiss any special circumstance which is admitted by a plea of guilty or nolo contendere or is found by a jury or court as provided in [Sections 190.1](#) to [190.5](#), inclusive.

Credits

(Added by [Initiative Measure \(Prop. 115\)](#), approved [June 5, 1990](#), eff. June 6, 1990.)

Notes of Decisions (4)

West's Ann. Cal. Penal Code § 1385.1, CA PENAL § 1385.1

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West's Annotated California Codes
Penal Code (Refs & Annos)
Part 2. Of Criminal Procedure
Title 10. Miscellaneous Proceedings
Chapter 8. Dismissal of the Action for Want of Prosecution or Otherwise (Refs & Annos)

West's Ann.Cal.Penal Code § 1386

§ 1386. Nolle prosequi abolished

[Currentness](#)

The entry of a nolle prosequi is abolished, and neither the Attorney General nor the district attorney can discontinue or abandon a prosecution for a public offense, except as provided in Section 1385.

Credits

(Enacted in 1872. Amended by [Stats.1987, c. 828, § 93.](#))

[Notes of Decisions \(5\)](#)

West's Ann. Cal. Penal Code § 1386, CA PENAL § 1386
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West's Annotated California Codes
Penal Code (Refs & Annos)
Part 1. Of Crimes and Punishments (Refs & Annos)
Title 8. Of Crimes Against the Person
Chapter 1. Homicide (Refs & Annos)

West's Ann.Cal.Penal Code § 190.25

§ 190.25. Murder of transportation personnel; penalty; special circumstances

Currentness

(a) The penalty for a defendant found guilty of murder in the first degree shall be confinement in state prison for a term of life without the possibility of parole in any case in which any of the following special circumstances has been charged and specially found under [Section 190.4](#), to be true: the victim was the operator or driver of a bus, taxicab, streetcar, cable car, trackless trolley, or other motor vehicle operated on land, including a vehicle operated on stationary rails or on a track or rail suspended in the air, used for the transportation of persons for hire, or the victim was a station agent or ticket agent for the entity providing such transportation, who, while engaged in the course of the performance of his or her duties was intentionally killed, and such defendant knew or reasonably should have known that such victim was the operator or driver of a bus, taxicab, streetcar, cable car, trackless trolley, or other motor vehicle operated on land, including a vehicle operated on stationary rails or on a track or rail suspended in the air, used for the transportation of persons for hire, or was a station agent or ticket agent for the entity providing such transportation, engaged in the performance of his or her duties.

(b) Every person whether or not the actual killer found guilty of intentionally aiding, abetting, counseling, commanding, inducing, soliciting, requesting, or assisting any actor in the commission of murder in the first degree shall suffer confinement in state prison for a term of life without the possibility of parole, in any case in which one or more of the special circumstances enumerated in subdivision (a) of this section has been charged and specially found under [Section 190.4](#) to be true.

(c) Nothing in this section shall be construed to prohibit the charging or finding of any special circumstance pursuant to [Sections 190.1, 190.2, 190.3, 190.4, and 190.5](#).

Credits

(Added by Stats.1982, c. 172, p. 548, § 1, eff. April 27, 1982.)

[Notes of Decisions \(2\)](#)

West's Ann. Cal. Penal Code § 190.25, CA PENAL § 190.25
Current with all laws through Ch. 372 of 2020 Reg.Sess.

West's Annotated California Codes

Penal Code (Refs & Annos)

Part 4. Prevention of Crimes and Apprehension of Criminals (Refs & Annos)

Title 2. Sentence Enhancements (Refs & Annos)

West's Ann.Cal.Penal Code § 12022.1

§ 12022.1. Felony committed while released on bail or recognizance;
primary offense and secondary offense; additional punishment

Effective: January 1, 2014

[Currentness](#)

(a) For the purposes of this section only:

(1) "Primary offense" means a felony offense for which a person has been released from custody on bail or on his or her own recognizance prior to the judgment becoming final, including the disposition of any appeal, or for which release on bail or his or her own recognizance has been revoked. In cases where the court has granted a stay of execution of a county jail commitment or state prison commitment, "primary offense" also means a felony offense for which a person is out of custody during the period of time between the pronouncement of judgment and the time the person actually surrenders into custody or is otherwise returned to custody.

(2) "Secondary offense" means a felony offense alleged to have been committed while the person is released from custody for a primary offense.

(b) Any person arrested for a secondary offense that was alleged to have been committed while that person was released from custody on a primary offense shall be subject to a penalty enhancement of an additional two years, which shall be served consecutive to any other term imposed by the court.

(c) The enhancement allegation provided in subdivision (b) shall be pleaded in the information or indictment which alleges the secondary offense, or in the information or indictment of the primary offense if a conviction has already occurred in the secondary offense, and shall be proved as provided by law. The enhancement allegation may be pleaded in a complaint but need not be proved at the preliminary hearing or grand jury hearing.

(d) Whenever there is a conviction for the secondary offense and the enhancement is proved, and the person is sentenced on the secondary offense prior to the conviction of the primary offense, the imposition of the enhancement shall be stayed pending imposition of the sentence for the primary offense. The stay shall be lifted by the court hearing the primary offense at the time of sentencing for that offense and shall be recorded in the abstract of judgment. If the person is acquitted of the primary offense the stay shall be permanent.

(e) If the person is convicted of a felony for the primary offense, is sentenced to state prison for the primary offense, and is convicted of a felony for the secondary offense, any sentence for the secondary offense shall be consecutive to the primary

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sentence and the aggregate term shall be served in the state prison, even if the term for the secondary offense specifies imprisonment in county jail pursuant to [subdivision \(h\) of Section 1170](#).

(f) If the person is convicted of a felony for the primary offense, is granted probation for the primary offense, and is convicted of a felony for the secondary offense, any sentence for the secondary offense shall be enhanced as provided in subdivision (b).

(g) If the primary offense conviction is reversed on appeal, the enhancement shall be suspended pending retrial of that felony. Upon retrial and reconviction, the enhancement shall be reimposed. If the person is no longer in custody for the secondary offense upon reconviction of the primary offense, the court may, at its discretion, reimpose the enhancement and order him or her recommitted to custody.

Credits

(Added by [Stats.2010, c. 711 \(S.B.1080\)](#), § 5, operative Jan. 1, 2012. Amended by [Stats.2012, c. 43 \(S.B.1023\)](#), § 62, eff. June 27, 2012; [Stats.2013, c. 76 \(A.B.383\)](#), § 167.)

Editors' Notes

LAW REVISION COMMISSION COMMENTS

2010 Addition

Section 12022.1 continues former Section 12022.1 without change. [38 Cal.L.Rev.Comm. Reports 217 (2009)].

[Notes of Decisions \(105\)](#)

West's Ann. Cal. Penal Code § 12022.1, CA PENAL § 12022.1
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Unconstitutional or Preempted Limitation Recognized by [People v. Fuimaono](#), Cal.App. 3 Dist., Feb. 08, 2019

[West's Annotated California Codes](#)

[Penal Code \(Refs & Annos\)](#)

[Part 4. Prevention of Crimes and Apprehension of Criminals \(Refs & Annos\)](#)

[Title 2. Sentence Enhancements \(Refs & Annos\)](#)

West's Ann.Cal.Penal Code § 12022.53

§ 12022.53. Sentence enhancements for persons convicted of enumerated felonies who use firearm in commission of the crime; limitations

Effective: January 1, 2019

[Currentness](#)

(a) This section applies to the following felonies:

- (1) [Section 187](#) (murder).
- (2) [Section 203](#) or [205](#) (mayhem).
- (3) [Section 207](#), [209](#), or [209.5](#) (kidnapping).
- (4) [Section 211](#) (robbery).
- (5) [Section 215](#) (carjacking).
- (6) [Section 220](#) (assault with intent to commit a specified felony).
- (7) [Subdivision \(d\) of Section 245](#) (assault with a firearm on a peace officer or firefighter).
- (8) [Section 261](#) or [262](#) (rape).
- (9) [Section 264.1](#) (rape or sexual penetration in concert).
- (10) [Section 286](#) (sodomy).
- (11) [Section 287](#) or former Section 288a (oral copulation).

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(12) [Section 288](#) or [288.5](#) (lewd act on a child).

(13) [Section 289](#) (sexual penetration).

(14) [Section 4500](#) (assault by a life prisoner).

(15) [Section 4501](#) (assault by a prisoner).

(16) [Section 4503](#) (holding a hostage by a prisoner).

(17) Any felony punishable by death or imprisonment in the state prison for life.

(18) Any attempt to commit a crime listed in this subdivision other than an assault.

(b) Notwithstanding any other provision of law, any person who, in the commission of a felony specified in subdivision (a), personally uses a firearm, shall be punished by an additional and consecutive term of imprisonment in the state prison for 10 years. The firearm need not be operable or loaded for this enhancement to apply.

(c) Notwithstanding any other provision of law, any person who, in the commission of a felony specified in subdivision (a), personally and intentionally discharges a firearm, shall be punished by an additional and consecutive term of imprisonment in the state prison for 20 years.

(d) Notwithstanding any other provision of law, any person who, in the commission of a felony specified in [subdivision \(a\)](#), [Section 246](#), or [subdivision \(c\) or \(d\) of Section 26100](#), personally and intentionally discharges a firearm and proximately causes great bodily injury, as defined in [Section 12022.7](#), or death, to any person other than an accomplice, shall be punished by an additional and consecutive term of imprisonment in the state prison for 25 years to life.

(e)(1) The enhancements provided in this section shall apply to any person who is a principal in the commission of an offense if both of the following are pled and proved:

(A) The person violated [subdivision \(b\) of Section 186.22](#).

(B) Any principal in the offense committed any act specified in subdivision (b), (c), or (d).

(2) An enhancement for participation in a criminal street gang pursuant to Chapter 11 (commencing with [Section 186.20](#)) of Title 7 of Part 1 shall not be imposed on a person in addition to an enhancement imposed pursuant to this subdivision, unless the person personally used or personally discharged a firearm in the commission of the offense.

(f) Only one additional term of imprisonment under this section shall be imposed per person for each crime. If more than one enhancement per person is found true under this section, the court shall impose upon that person the enhancement that provides the longest term of imprisonment. An enhancement involving a firearm specified in [Section 12021.5](#), [12022](#), [12022.3](#), [12022.4](#), [12022.5](#), or [12022.55](#) shall not be imposed on a person in addition to an enhancement imposed pursuant to this section. An enhancement for great bodily injury as defined in [Section 12022.7](#), [12022.8](#), or [12022.9](#) shall not be imposed on a person in addition to an enhancement imposed pursuant to subdivision (d).

(g) Notwithstanding any other provision of law, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, any person found to come within the provisions of this section.

(h) The court may, in the interest of justice pursuant to [Section 1385](#) and at the time of sentencing, strike or dismiss an enhancement otherwise required to be imposed by this section. The authority provided by this subdivision applies to any resentencing that may occur pursuant to any other law.

(i) The total amount of credits awarded pursuant to Article 2.5 (commencing with [Section 2930](#)) of Chapter 7 of Title 1 of Part 3 or pursuant to [Section 4019](#) or any other provision of law shall not exceed 15 percent of the total term of imprisonment imposed on a defendant upon whom a sentence is imposed pursuant to this section.

(j) For the penalties in this section to apply, the existence of any fact required under subdivision (b), (c), or (d) shall be alleged in the accusatory pleading and either admitted by the defendant in open court or found to be true by the trier of fact. When an enhancement specified in this section has been admitted or found to be true, the court shall impose punishment for that enhancement pursuant to this section rather than imposing punishment authorized under any other provision of law, unless another enhancement provides for a greater penalty or a longer term of imprisonment.

(k) When a person is found to have used or discharged a firearm in the commission of an offense that includes an allegation pursuant to this section and the firearm is owned by that person, a coparticipant, or a coconspirator, the court shall order that the firearm be deemed a nuisance and disposed of in the manner provided in [Sections 18000](#) and [18005](#).

(l) The enhancements specified in this section shall not apply to the lawful use or discharge of a firearm by a public officer, as provided in [Section 196](#), or by any person in lawful self-defense, lawful defense of another, or lawful defense of property, as provided in [Sections 197](#), [198](#), and [198.5](#).

Credits

(Added by [Stats.2010, c. 711 \(S.B.1080\)](#), § 5, operative Jan. 1, 2012. Amended by [Stats.2017, c. 682 \(S.B.620\)](#), § 2, eff. Jan. 1, 2018; [Stats.2018, c. 423 \(S.B.1494\)](#), § 114, eff. Jan. 1, 2019.)

Editors' Notes

LAW REVISION COMMISSION COMMENTS

2010 Addition

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Section 12022.53 continues former Section 12022.53 without change, except that subdivision (d) is revised to correct a cross-reference to former Section 12034(c)-(d) and subdivision (k) is revised to correct a cross-reference to former Section 12028.

See also [Section 12001](#) (“firearm” defined). [38 Cal.L.Rev.Comm. Reports 217 (2009)].

[Notes of Decisions \(324\)](#)

West's Ann. Cal. Penal Code § 12022.53, CA PENAL § 12022.53

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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF LOS ANGELES
14

15 ASSOCIATION OF DEPUTY DISTRICT
ATTORNEYS FOR LOS ANGELES
16 COUNTY,

17 Plaintiff and Petitioner,

18 vs.

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

22 Defendants and Respondents.
23
24
25
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27
28

Case No.

**PETITIONER'S *EX PARTE*
APPLICATION FOR A TEMPORARY
RESTRAINING ORDER AND AN ORDER
TO SHOW CAUSE; DECLARATION OF
ERIC M. GEORGE; DECLARATION OF
MICHELE HANISEE**

***[Proposed Order Filed Concurrently
Herewith]***

Date: December 30, 2020
Time: 8:30 a.m.
Dept.: TBD (82 / 85 / 86)

1 **TO THE HONORABLE COURT AND ALL PARTIES:**

2 **PLEASE TAKE NOTICE** that, on December 30, 2020, at 8:30 a.m., in Department 82,
3 85, or 86 of the Los Angeles Superior Court, 111 North Hill Street, Los Angeles, California
4 90012, Plaintiff and Petitioner Association of Deputy District Attorneys for Los Angeles County
5 will apply *ex parte* for a temporary restraining order enjoining Defendants and Respondents
6 George Gascón and the Los Angeles County District Attorney’s Office from forcing compliance
7 by this County’s Deputy District Attorneys with unlawful portions of recently-enacted Special
8 Directives 20-08, 20-08.1, 20-08.2, and 20-14. The offending portions of these Special Directives
9 are attached as **Exhibits 2 to 5**, and are more specifically described as follows:

10 1. Any portion of the Special Directives that prohibit the Los Angeles County District
11 Attorney’s Office, or any of its Deputy District Attorneys or prosecutors, from pleading and
12 proving prior strikes under California’s Three Strikes Sentencing Initiative (Penal Code
13 §§ 667(b)–(i), 1170.12);

14 2. Any portion of the Special Directives that require the Los Angeles County District
15 Attorney’s Office, or any of its Deputy District Attorneys or prosecutors, to move to dismiss from
16 any pending criminal action any of the following:

- 17 a. Any prior-strike enhancements (Penal Code section 667(d), 667(e),
18 1170.12(a) and 1170.12(c)), including any second strikes and any strikes
19 arising from a juvenile adjudication;
- 20 b. Any Prop 8 or “5-year prior” enhancements (Penal Code section 667(a)(1)),
21 and “three-year prior” enhancements (Penal Code section 667.5(a));
- 22 c. STEP Act enhancements (“gang enhancements”) (Penal Code section
23 186.22 et. seq.);
- 24 d. Special circumstances allegations resulting in an LWOP sentence;
- 25 e. Violations of bail or O.R. release (Penal Code section 12022.1); and
- 26 f. Firearm allegations pursuant to Penal Code section 12022.53;

27 3. Any portion of the Special Directives that require the Los Angeles County District
28 Attorney’s Office, or any of its Deputy District Attorneys or prosecutors, to make a post-

1 conviction motion to dismiss from any pending criminal action special circumstances allegations
2 under Penal Code section 190.1 to 190.5; and

3 4. Any portion of the Special Directives that require the Los Angeles County District
4 Attorney's Office, or any of its Deputy District Attorneys or prosecutors, to move for leave to
5 amend the charging document in any pending criminal action for the purpose of removing any
6 allegations that they would otherwise be restrained and enjoined from moving to dismiss under
7 Paragraphs 2 and 3.

8 Through these Special Directives, Respondents have mandated that all Deputy District
9 Attorneys in the Los Angeles County District Attorney's Office ("DDAs") act in a manner
10 contrary to law, contrary to their oaths and duties as prosecutors, and contrary to their ethical
11 responsibilities as officers of the courts. Specifically, Respondents have issued a blanket
12 prohibition on DDAs seeking or presenting evidence supporting the application of six types of
13 sentencing enhancements in any criminal prosecution, and requiring them to abandon any such
14 preexisting enhancements. This prohibition violates both Respondents' and Petitioner's
15 mandatory duties because (1) DDAs are statutorily obligated to plead and prove sentencing
16 enhancements under California's Three Strikes Law; (2) DDAs are obligated to exercise case-by-
17 case discretion as to what charges to seek – or to move to dismiss – rather than to rubber stamp
18 blanket prosecutorial policies barring the wholesale enforcement of a class of criminal laws; (3)
19 courts cannot dismiss certain special circumstances allegations that the Special Directives purport
20 to require DDAs to move to dismiss; and (4) DDAs may not dismiss a prosecution without the
21 Court's permission. An immediate restraining order enjoining the enforcement of the offending
22 portions of Special Directives 20-08, 20-08.1, 20-08.2, and 20-14 is therefore necessary.
23 Petitioner further applies for an order to show cause as to why a preliminary injunction granting
24 the foregoing relief should not issue for the duration of this action.

25 This application is made pursuant to Code of Civil Procedure sections 526, 527, and 1085
26 et seq., as well as California Rules of Court, rule 3.1150 and 3.1200 et seq. This application is
27 based on the attached memorandum of points and authorities, the declaration of Eric M. George
28 and all exhibits attached thereto, the declaration of Michele Hanisee and all exhibits attached

1 thereto, the Verified Petition for Writ of Mandate and/or Prohibition and all exhibits thereto, all
2 other documents and records on file in this action, and any other evidence or argument that the
3 Court may accept at any hearing on this application.

4 On December 29, 2020, before 10:00 a.m., counsel for Petitioner provided notice to
5 Respondents of their intent to file this application, the relief sought and basis for that relief, and
6 the date, time, and place for the presentation of the application. George Decl. ¶¶ 2–3, Ex. 1.
7 Respondents stated that they intend to appear at this hearing and to oppose the relief sought herein.
8 *Id.* ¶ 4.

9
10 DATED: December 29, 2020

Respectfully submitted,

11 BROWNE GEORGE ROSS
12 O'BRIEN ANNAGUEY & ELLIS LLP

13 Eric M. George
14 Thomas P. O'Brien
15 David J. Carroll
16 Matthew O. Kussman



17 By: _____

Eric M. George

18 Attorneys for Plaintiff and Petitioner Association of
19 Deputy District Attorneys for Los Angeles County
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27
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TABLE OF CONTENTS

		<u>Page</u>
1		
2		
3	I. INTRODUCTION.....	1
4	II. FACTUAL BACKGROUND	2
5	A. Special Directive 20-08	2
6	B. Special Directive 20-14	2
7	C. Special Directive 20-08.1	3
8	D. Special Directive 20-08.02	4
9	III. LEGAL STANDARD	5
10	IV. ARGUMENT	5
11	A. Mandamus and Prohibition Are Appropriate Remedies to Prevent Irreparable Harm to Petitioner.....	5
12	B. The Special Directives Require DDAs to Violate a Plain Statutory Directive to Plead and Prove Sentencing Enhancements Under the Three Strikes Law	7
13	1. Pleading and Proving Strikes is Mandatory	7
14	2. The Court of Appeal Has Repeatedly Rejected Respondents’ Position that the Three Strikes Law is Unconstitutional	7
15	C. The Special Directives Impermissibly Mandate That DDAs Indiscriminately Abandon All Preexisting Enhancement Allegations	7
16	1. The Special Directives Impermissibly Bar DDAs From Exercising Prosecutorial Discretion in Considering Whether To Move To Dismiss Preexisting Enhancement Allegations	7
17	2. The Special Directives Require DDAs to Seek Dismissal of Special Circumstance Allegations that Cannot Be Dismissed	7
18	3. The Special Directives Attempt to Force DDAs to Unlawfully Abandon Prosecutions	7
19		
20		
21		
22	V. CONCLUSION	17
23		
24		
25		
26		
27		
28		

Document received by the CA 2nd District Court of Appeal:

TABLE OF AUTHORITIES

Page

CASES

<i>AIDS Healthcare Found. v. Los Angeles Cty. Dep't of Pub. Health,</i> 197 Cal. App. 4th 693 (2011).....	5
<i>Am. Fed'n of State, Cty. & Mun. Employees v. Metro. Water Dist.,</i> 126 Cal. App. 4th 247 (2005).....	5
<i>People ex rel. Becerra v. Superior Court,</i> 29 Cal. App. 5th 486 (2018).....	5, 10
<i>Butt v. State of California,</i> 4 Cal.4th 668 (1992).....	5
<i>City of Merced v. Merced Cty.,</i> 240 Cal. App. 2d 763 (1966).....	10
<i>Doe v. Albany Unified Sch. Dist.,</i> 190 Cal. App. 4th 668 (2010).....	
<i>In re Minnis,</i> 7 Cal. 3d 639 (1972).....	11
<i>In re Morrall,</i> 102 Cal. App. 4th 280 (2002).....	11, 17
<i>Jamison v. Dep't of Trans.,</i> 4 Cal. App. 5th 356 (2016).....	
<i>Lockyer v. City & Cty. of San Francisco,</i> 33 Cal. 4th 1055 (2004).....	
<i>Manduley v. Superior Court,</i> 27 Cal. 4th 537 (2002).....	11
<i>Owen v. Superior Court,</i> 54 Cal. App. 3d 928 (1976).....	
<i>People v. Butler,</i> 43 Cal. App. 4th 1224 (1996).....	
<i>People v. Dent,</i> 38 Cal. App. 4th 1726 (1995).....	11

TABLE OF AUTHORITIES
(Continued)

	<u>Page</u>
<i>People v. Gray</i> , 66 Cal. App. 4th 973 (1998).....	9
<i>People v. Kilborn</i> , 41 Cal. App. 4th 1325 (1996).....	8, 9
<i>People v. Roman</i> , 92 Cal. App. 4th 141 (2001).....	8, 9, 14
<i>People v. Vera</i> , 122 Cal. App. 4th 970 (2004).....	8
<i>People v. Williams</i> , 17 Cal. 4th 148 (1998).....	12
<i>Prop. Owners of Whispering Palms, Inc. v. Newport Pac., Inc.</i> , 132 Cal. App. 4th 666 (2005).....	6
<i>Roberts v. Duffy</i> , 167 Cal. 629 (1914).....	1
<i>Smith v. Adventist Health System/West</i> , 182 Cal. App. 4th 729 (2010).....	1
<i>State v. City Court of City of Tucson</i> , 150 Ariz. 99 (1986)	1
<i>State v. Pettitt</i> , 93 Wash. 2d 288 (1980)	1
<u>STATUTES</u>	
Bus. & Prof. Code § 6068(a).....	1
Code of Civil Procedure section 1085.....	1
Gov. Code § 26500.....	1
Penal Code § 186.22 et. seq.	1
Penal Code § 190.2(a), (c), (d)	1
Penal Code § 190.5(b).....	1
Penal Code § 667.....	4, 7,

Document received by the CA 2nd District Court of Appeal.

TABLE OF AUTHORITIES
(Continued)

	<u>Page</u>
Penal Code § 667.5.....	4
Penal Code § 1009.....	14
Penal Code § 1170.12.....	4, 7, 8
Penal Code § 1385.....	3, 7, 10 12, 13
Penal Code § 1385.1.....	13
Penal Code § 1386.....	14
Penal Code § 12022.1.....	4
Penal Code § 12022.53.....	4
STEP Act.....	4
Three Strikes Law	passim.
<u>OTHER AUTHORITIES</u>	
Cal. Const. Art. XX, § 3.....	7,
Cal. Rules Prof. Conduct, rule 3.1(a)(2)	1
Cal. Rules Prof. Conduct, rule 3.3(a)(2)	1
California Constitution	1
Constitution of the United States	1

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

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

7 • With respect to *future* cases, the Special Directives prohibit DDAs from charging
8 mandatory criminal sentencing enhancements under the Three Strikes Law, which California
9 enacted to protect its citizens from previously-convicted serious and violent felons; and

10 • With respect to *pending* cases, the Special Directives require DDAs to withdraw all
11 pre-existing enhancement allegations for six different types of sentencing enhancements.

12 These provisions are plainly illegal. DDAs cannot be commanded to violate the very
13 sentencing enhancements that California law mandates.

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

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

28 This Court can and must, consistent with California's separation of powers doctrine, issue

1 immediate relief: (i) to declare illegal and unenforceable those offending portions of the Special
2 Directives as identified in Exhibits 2 through 5, and more thoroughly described in the proposed
3 order attached hereto; (ii) to enjoin Respondents from commanding DDAs to enforce such
4 offending portions; and (iii) to restore to the DDAs the *status quo ante* by which the DDAs may
5 continue to charge – and not be compelled to move to dismiss – those sentencing enhancements
6 mandated by California law.

7 **II. FACTUAL BACKGROUND**

8 On December 7, 2020, Respondent Gascón assumed the office of the Los Angeles District
9 Attorney. Verified Petition for Writ of Mandate (“Petition”) ¶ 13. That same day, Respondent
10 Gascón issued multiple Special Directives, including Special Directives 20-08 and 20-14.

11 **A. Special Directive 20-08**

12 Special Directive 20-08 requires that “sentence enhancements or other sentencing
13 allegations, including under the Three Strikes law, shall not be filed in any cases and shall be
14 withdrawn in pending matters.” Hanisee Decl. ¶ 3, Ex. 2. Respondent Gascón sought to justify
15 this blanket prohibition as follows:

16 Sentencing enhancements are a legacy of California’s “tough on crime” era. (See
17 Appendix.) It shall be the policy of the Los Angeles County District Attorney’s
18 Office that the current statutory ranges for criminal offenses alone, without
19 enhancements, are sufficient to both hold people accountable and also to protect
20 public safety. While initial incarceration prevents crime through incapacitation,
studies show that each additional sentence year causes a 4 to 7 percent increase in
recidivism that eventually outweighs the incapacitation benefit. Therefore, sentence
enhancements or other sentencing allegations, including under the Three Strikes
law, shall not be filed in any cases and shall be withdrawn in pending matters.

21 *Id.*, Ex. 2.

22 **B. Special Directive 20-14**

23 On the same day that he issued Special Directive 20-08, Respondent Gascón also issued
24 Special Directive 20-14. Hanisee Decl. ¶ 3, Ex. 5. This directive, among other things, instructs
25 DDAs on how to apply and carry out Respondent Gascón’s new sentencing and enhancements
26 policies. In particular, Special Directive 20-14 provides as follows:

27 For any case that is currently pending, meaning that judgment has not yet been
28 entered, or where the case is pending for resentencing, or on remand from another
court, the Deputy District Attorney in charge of the case shall inform the Court at

1 the next hearing of the following:

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

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

7 *Id.*, Ex. 5.

8 **C. Special Directive 20-08.1**

9 On December 15, 2020, Respondent Gascón issued Special Directive 20-08.1, which
10 imposed additional requirements on DDAs relative to sentencing enhancements. Hanisee Decl.
11 ¶ 3, Ex. 3. That Special Directive requires DDAs to move to dismiss and withdraw all pre-
12 existing enhancement allegations in all cases under Penal Code section 1385. The Special
13 Directive includes a script for the DDA to follow verbatim, pursuant to which the DDA is to assert
14 that mandatory sentencing enhancements under the Three Strikes Law unconstitutionally usurp
15 prosecutorial discretion – even though the California Court of Appeal has rejected this position at
16 least four times. *Id.*, Ex. 3. Nowhere does the Special Directive instruct DDAs to cite this binding
17 adverse authority to the court in accordance with an attorney’s ethical duty of candor to the
18 tribunal.¹ In the event that the court refuses to dismiss the allegation, the Special Directive
19 requires DDAs to seek leave to file an amended charging document, ostensibly to eliminate the
20 enhancement allegations that the court had already refused to dismiss. *Id.*, Ex. 3. And where the
21 court does not grant such leave, the Special Directive requires DDAs to provide to their head
22 deputy the “[c]ase number, date of hearing, name of the bench officer and the court’s justification
23 for denying the motion (if any).” *Id.*, Ex. 3.

24
25
26 _____
27 ¹ See Cal. Rules Prof. Conduct, rule 3.3(a)(2) (“A lawyer shall not fail to disclose to the
28 tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to
the position of the client and not disclosed by opposing counsel.”).

1 **D. Special Directive 20-08.02**

2 The foregoing Special Directives elicited an immediate backlash from the public, from
3 prosecutors, and from judges. Petition ¶ 18. In numerous cases where DDAs moved to withdraw
4 sentencing enhancements, the presiding judge refused to grant the motion. *See, e.g.*, Hanisee
5 Decl. ¶¶ 6–9, Exs. 6–9. In at least two cases, the presiding judge not only denied the motions, but
6 admonished the assigned DDAs that it was unethical for them to abandon a prosecution based
7 solely on a blanket directive issued by a new administration. *Id.*, Exs. 6, 8.

8 On December 17, 2020, Respondent Gascón partially backtracked, issuing Special
9 Directive 20-08.2. Therein, DDAs may assert certain enumerated sentencing enhancements—
10 such as hate crime enhancements, elder abuse enhancements, and others—and seek their head
11 deputy’s approval to assert any other unenumerated enhancement. Hanisee Decl. ¶ 3, Ex. 4. But
12 Respondent Gascón maintained that the following six enhancements “shall not be pursued in any
13 case and shall be withdrawn in pending matters” (a compendium of those Penal Code sections
14 flouted by the Special Directives is set forth in Exhibit J, attached to the accompanying Petition):

- 15 (1) Any prior-strike enhancements (Penal Code section 667(d), 667(e), 1170.12(a) and
16 1170.12(c)) will not be used for sentencing and shall be dismissed or withdrawn
17 from the charging document. This includes second strikes and any strikes arising
18 from a juvenile adjudication;
- 19 (2) Any Prop 8 or “5-year prior” enhancements (Penal Code section 667(a)(1)) and
20 “three-year prior” enhancements (Penal Code section 667.5(a)) will not be used for
21 sentencing and shall be dismissed or withdrawn from the charging document;
- 22 (3) STEP Act enhancements (“gang enhancements”) (Penal Code section 186.22 et.
23 seq.) will not be used for sentencing and shall be dismissed or withdrawn from the
24 charging document;
- 25 (4) Special circumstances allegations resulting in an LWOP sentence shall not be filed
26 will not be used for sentencing, and shall be dismissed or withdrawn from the
27 charging document;
- 28 (5) Violations of bail or O.R. release (Penal Code section 12022.1) shall not be filed as
 part of any new offense;
- (6) Firearm allegations pursuant to Penal Code section 12022.53 shall not be filed, will
 not be used for sentencing, and will be dismissed or withdrawn from the charging
 document.

27 Hanisee Decl. ¶ 3, Ex. 4.

1 **III. LEGAL STANDARD**

2 Petitioner seeks to temporarily restrain Respondents from enforcing the offending portions
3 of Special Directives 20-08, 20-08.1, 20-08.2, and 20-14 while Petitioner’s Petition for Writ of
4 Mandate is pending. In ruling on an application for a temporary restraining order, the Court must
5 consider and balance two interrelated factors: (1) the balance of interim harms, *Smith v. Adventist*
6 *Health System/West*, 182 Cal. App. 4th 729, 749 (2010); and (2) whether there is “some
7 possibility” that plaintiff will ultimately prevail on the merits of the claim. *Jamison v. Dep’t of*
8 *Trans.*, 4 Cal. App. 5th 356, 362 (2016). A greater showing on one of the factors requires less of a
9 showing on the other. *Butt v. State of California*, 4 Cal.4th 668, 678 (1992).

10 **IV. ARGUMENT**

11 **A. Mandamus and Prohibition Are Appropriate Remedies to Prevent Irreparable**
12 **Harm to Petitioner**

13 “A traditional writ of mandate under Code of Civil Procedure section 1085 is a method for
14 compelling a public entity to perform a legal and usually ministerial duty.” *Am. Fed’n of State,*
15 *Cty. & Mun. Employees v. Metro. Water Dist.*, 126 Cal. App. 4th 247, 261 (2005). Generally,
16 “[t]he petitioner must demonstrate the public official or entity had a ministerial duty to perform,
17 and the petitioner had a clear and beneficial right to performance.” *AIDS Healthcare Found. v.*
18 *Los Angeles Cty. Dep’t of Pub. Health*, 197 Cal. App. 4th 693, 700 (2011). Mandamus is
19 appropriate where the agency’s action is “arbitrary, capricious, or entirely lacking in evidentiary
20 support, contrary to established public policy, unlawful, procedurally unfair, or [where] the agency
21 failed to follow the procedure and give the notices the law requires.” *Am. Fed’n of State, Cty.*, 126
22 Cal. App. 4th at 261. Similarly, while “[m]andamus does not lie to compel a public agency to
23 exercise discretionary powers in a particular manner,” it may be used “to compel it to exercise its
24 discretion in some manner.” *AIDS Healthcare Found.*, 197 Cal. App. 4th at 700–01. Thus, as the
25 Court of Appeal has observed, while “mandate cannot be used to compel a district attorney to
26 exercise his or her prosecutorial discretion in any particular way,” it would be proper where “a
27 district attorney failed and refused to prosecute any crimes whatsoever.” *People ex rel. Becerra v.*
28 *Superior Court*, 29 Cal. App. 5th 486 (2018).

1 As outlined below, issuance of mandamus or a writ of prohibition is appropriate because,
2 under the Special Directives, Respondent Gascón has purported to prohibit this County's DDAs
3 from complying with certain of their ministerial prosecutorial duties in violation of the law, their
4 oaths of office, and their ethical responsibilities as officers of the Court.² The unlawful directive
5 purports to bar DDAs from charging statutorily-mandated enhancements, and, in other instances,
6 from complying with their ministerial duty to exercise case-by-case discretion as to appropriate
7 charges to maintain or dismiss. Hanisee Decl. ¶¶ 4-5.

8 The necessity of the relief sought by this proceeding is underscored by the crisis now
9 unfolding in this County's criminal courts. Judges have scolded DDAs for following Respondent
10 Gascón's Special Directives instead of their obligations under the law. *See* Hanisee Decl. ¶ 6, Ex.
11 6 (Hon. Judge Laura F. Priver stating to prosecutor: "I understand it came from the top. I
12 understand why you're making the motion, but the Court will deny the motion as to each and
13 every one of the other allegations. You have an ethical duty to do your job and proceed with
14 prosecution. You should not be allowed to abandon the prosecution at this juncture."). DDAs
15 now risk being held in contempt of court, or being disciplined by the State Bar, for following the
16 orders given to them by their employer. *Id.* ¶¶ 4-5. This harm is immediate and irreparable.³

17 No permissible justification exists for the unlawful directives. It is no answer for
18 Respondent Gascón to claim publicly – as he has been quoted – that "[p]rosecutors are sworn to
19 follow the directives of the elected D.A." *See* Hanisee Decl. ¶ 10, Ex. 10. Nonsense! Los
20 Angeles County has not vested its district attorney with such power. DDAs – like all county
21

22 ² Petitioner is the certified exclusive bargaining representative for Bargaining Unit 801,
23 which consists of Deputy District Attorneys I, II, III, and IV in Los Angeles County, pursuant to
24 Employee Relations Ordinance of the County of Los Angeles. Bargaining Unit 801 consists of
25 approximately 800 DDAs. Petitioner therefore has organizational standing to assert the interests
26 of its members in this action. *See, e.g., Prop. Owners of Whispering Palms, Inc. v. Newport Pac.,*
27 *Inc.*, 132 Cal. App. 4th 666, 672–73 (2005).

28 ³ By contrast, any interim harm to Respondents from granting a temporary restraining
order would be slight. If it later appears that a preliminary injunction should not issue, the only
interim harm to Respondents would be a short delay in, for example, dismissing preexisting
enhancements.

1 prosecutors within the State – swear an oath only to defend and uphold the Constitution. Cal.
2 Const. Art. XX, § 3.

3 For these reasons, only the issuance of immediate relief by this Court will stem the
4 unlawful and indelible consequences flowing from unrestrained enforcement of the Special
5 Directives.

6 **B. The Special Directives Require DDAs to Violate a Plain Statutory Directive to**
7 **Plead and Prove Sentencing Enhancements Under the Three Strikes Law**

8 **1. Pleading and Proving Strikes is Mandatory**

9 In adopting the Three Strikes Law, the People of California mandated increased
10 punishment for repeat offenders to effectuate the goals of sentencing and to protect the public
11 from violent criminals. Respondent Gascón, by prohibiting DDAs from seeking Three Strike
12 enhancements, has by fiat required DDAs to violate the law, their oaths, and their ethical duties as
13 officers of the Court.

14 Under California law, a prosecutor’s implementation of the Three Strikes Law involves a
15 two-step process: First, “[t]he prosecuting attorney *shall* plead and prove each prior serious or
16 violent felony conviction.” Penal Code §§ 667(f)(1), 1170.12(d)(1) (emphasis added). Second,
17 “[t]he prosecuting attorney may move to dismiss or strike a prior serious or violent felony
18 conviction allegation in the furtherance of justice pursuant to Section 1385, or if there is
19 insufficient evidence to prove the prior serious or violent felony conviction.” *Id.* §§ 667(f)(2),
20 1170.12(d)(2); *see also id.* § 1385(a) (“The judge or magistrate may, either of his or her own
21 motion or upon the application of the prosecuting attorney, and in furtherance of justice, order an
22 action to be dismissed.”).⁴

23 The first step of the Three Strikes Law, therefore, obligates the prosecuting attorney to
24 “plead and prove” prior felonies: “Notwithstanding any other law, subdivisions (b) to (i),

25 ⁴ As explained in Section IV.C.1, dismissals under this second step are not left to the
26 unbridled discretion of the district attorney or even the court. Rather, as with dismissals of all
27 charges or enhancements, they require an assessment of each defendant’s individual
28 circumstances, which Respondents’ Special Directives expressly prohibit. Respondents’ blanket
directive to dismiss *all* three-strike enhancements under this second step is thus unlawful as well.

1 inclusive, *shall* be applied in every case in which a defendant has one or more prior serious or
2 violent felony convictions as defined in subdivision (d). The prosecuting attorney *shall* plead and
3 prove each prior serious or violent felony conviction except as provided in paragraph (2).” Penal
4 Code §§ 667(f)(1), 1170.12(d)(1) (emphasis added); *see also Doe v. Albany Unified Sch. Dist.*,
5 190 Cal. App. 4th 668, 676 (2010) (“It is a well-settled principle of statutory construction that the
6 word . . . ‘shall’ is ordinarily construed as mandatory.”). Thus, while “the selection of criminal
7 charges is [generally] a matter subject to prosecutorial discretion[,] the Three Strikes Law limits
8 that discretion and requires the prosecutor to plead and prove each prior serious felony
9 conviction.” *People v. Roman*, 92 Cal. App. 4th 141, 145 (2001); *see also, e.g., People v. Vera*,
10 122 Cal. App. 4th 970, 982 (2004) (“The Three Strikes statutes, enacted in 1994, require
11 prosecutors to plead and prove each prior felony conviction.”); *People v. Kilborn*, 41 Cal. App.
12 4th 1325, 1332 (1996) (“The Three Strikes law requires the prosecutor to plead and prove all prior
13 serious and violent felony convictions.”).

14 Notwithstanding this plain requirement of California law, the Special Directives purport to
15 mandate that DDAs – regardless of the evidence or other considerations – “shall not . . . pursue in
16 any case” any sentencing enhancements under the Three Strikes Law, even though DDAs are in
17 fact statutorily required to do so. By forcing DDAs not to pursue these sentencing enhancements,
18 Respondent Gascón is not only forcing them to violate the law, but to violate the solemn oath
19 required of all prosecutors to “bear true faith and allegiance to the Constitution of the United
20 States and of the State of California,” and to “well and faithfully discharge the duties” of their
21 office. Cal. Const. Art. XX, § 3. California statutes, too, provide that “[i]t is the duty of an
22 attorney to . . . support the Constitution and laws of the United States and of this state.” Bus. &
23 Prof. Code § 6068(a). The Special Directives would have the DDAs violate both of these
24 provisions.

25 **2. The Court of Appeal Has Repeatedly Rejected Respondents’ Position**
26 **that the Three Strikes Law is Unconstitutional**

27 Special Directive 20-08.1 requires DDAs to spurn their mandatory obligation to plead and
28 prove strikes. In purporting to do so on the theory that pleading and proving prior strikes is

1 unconstitutional, the Special Directives ignore binding precedent that rejects separation of powers
2 challenges to the law’s limitation on discretion. *See, e.g., Kilborn*, 41 Cal. App. 4th at 1333 (“We
3 conclude that the enactment of the Three Strikes initiative did not violate the separation of powers
4 provision of the State Constitution.”); *Roman*, 92 Cal. App. 4th at 145 n.2 (“This limitation on
5 prosecutorial discretion does not violate the separation of powers doctrine.”); *People v. Gray*, 66
6 Cal. App. 4th 973, 995 (1998) (“We . . . conclude that the section 1170.12, subdivision (d)(1) does
7 not violate the separation of powers doctrine enactment of the three strikes law.”); *People v.*
8 *Butler*, 43 Cal. App. 4th 1224, 1247–48 (1996) (“Defendant also argues that the three strikes law
9 . . . violates the princip[le] of separation of powers because it unlawfully usurps prosecutorial
10 discretion. These arguments were rejected in . . . *Kilborn* . . . for reasons we find persuasive.”).
11 Hence, DDAs have a ministerial duty – held four times by binding authority to be constitutional –
12 to plead and prove prior strikes.

13 Nor would Respondent Gascón – even were the constitutionality of the Three Strikes Law
14 untested – be empowered to preclude DDAs from complying with their ministerial duties to plead
15 and prove strikes. “[A] local executive official, charged with a ministerial duty, generally lacks
16 authority to determine that a statute is unconstitutional and on that basis refuse to apply the
17 statute.” *Lockyer v. City & Cty. of San Francisco*, 33 Cal. 4th 1055, 1086 (2004). Instead, “the
18 determination whether a statute is unconstitutional and need not be obeyed is an exercise of
19 judicial power and thus is reserved to those officials or entities that have been granted such power
20 by the California Constitution,” *id.* at 1092-93; “[a] public official does not honor his or her oath
21 to defend the Constitution by taking action in contravention of the restrictions of his or her office
22 or authority and justifying such action by reference to his or her personal constitutional views,” *id.*
23 at 1119. Respondent Gascón, a local executive branch official who does not wield any judicial
24 power, cannot excuse enforcement of those ministerial duties that the law imposes on DDAs. His
25 personal views of what is or is not constitutional – let alone his views on what is or is not good
26 policy – are legally irrelevant.

27 An immediate injunction against Respondents’ directives is therefore necessary to enjoin
28 their unlawful directives to DDAs to violate their mandatory and ministerial prosecutorial duties.

1 **C. The Special Directives Impermissibly Mandate That DDAs Indiscriminately**
2 **Abandon All Preexisting Enhancement Allegations**

3 **1. The Special Directives Impermissibly Bar DDAs From Exercising**
4 **Prosecutorial Discretion in Considering Whether To Move To Dismiss**
5 **Preexisting Enhancement Allegations**

6 The Special Directives purport to require DDAs to seek dismissals of *all* preexisting
7 enhancement allegations in *every* pending case (including those alleged under the Three Strikes
8 Law), notwithstanding that such dismissals by law may only be effectuated when “in the
9 furtherance of justice.” Penal Code § 1385(a). Respondents’ blanket prosecutorial policy, by
10 eschewing any case-by-case assessment, impermissibly prevents DDAs from exercising any
11 discretion. Since DDAs are duty bound to in fact exercise their discretion in such circumstances,
12 Respondents’ Special Directives contravene California law.

13 While the scope of prosecutorial discretion is broad,⁵ a DDA must perform certain
14 ministerial and mandatory duties in exercising their discretion. “The district attorney is the public
15 prosecutor, except as otherwise provided by law. The public prosecutor *shall* attend the courts,
16 and within his or her discretion *shall* initiate and conduct on behalf of the people all prosecutions
17 for public offenses.” Gov. Code § 26500 (emphasis added). For example, “a district attorney’s
18 ‘mandatory’ duty is to exercise his or her *discretion* to prosecute crimes.” *People ex rel. Becerra*
19 *v. Superior Court*, 29 Cal. App. 5th 486, 504 (2018) (emphasis in original). Thus, while the court
20 held that “mandate cannot be used to compel a district attorney to exercise his or her prosecutorial
21 discretion in any particular way,” mandate could be employed to compel the district attorney to
22 take certain action “if a district attorney failed and refused to prosecute any crimes whatsoever.”
23 *Id.* Simply stated, under Government Code section 26500, “district attorneys of the state . . . have
24 the specific duty to prosecute such violations of general laws. This duty is mandatory, and not
25 discretionary.” *City of Merced v. Merced Cty.*, 240 Cal. App. 2d 763, 766 (1966).

26 Other courts, too, have concluded that blanket prosecutorial policies that do not allow for

27 ⁵ For example, “the prosecuting authorities, exercising executive functions, ordinarily have
28 the sole discretion to determine whom to charge with public offenses and what charges to bring.”
 Manduley v. Superior Court, 27 Cal. 4th 537, 552 (2002).

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

19 California has also held impermissible similar blanket refusals to exercise discretion
20 conferred on executive branch officials. In *In re Morrall*, 102 Cal. App. 4th 280 (2002), the Court
21 of Appeal considered a challenge to the Governor’s refusal to grant an inmate parole. The court
22 recited the well-established rule that there is no right to parole before the expiration of the
23 defendant’s sentence; that “[t]he decision [whether to grant parole], and the discretion implicit in
24 it, are expressly committed to the executive branch”; and that, “[i]n this respect, the discretion of
25 the parole authority has been described as ‘great’ and ‘almost unlimited.’” *Id.* at 287.
26 Nonetheless, the court squarely held that “[i]t is without doubt that a blanket no-parole policy
27 would be contrary to the law,” because the Governor is required to make an “individualized
28 [determination] of an inmate’s suitability for parole.” *Id.* at 291 (citing *Roberts v. Duffy*, 167 Cal.

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

4 California’s standard for dismissal under Section 1385 directly mirrors a prosecutor’s
5 obligation to employ case-by-case discretion rather than to operate under blanket policies.
6 Dismissals under Section 1385, which may be granted only “in the furtherance of justice,” must
7 consider “whether, in light of the nature and circumstances of *his* present felonies and prior serious
8 and/or violent felony convictions, and the *particulars* of his background, character, and prospects,
9 the defendant may be deemed outside the scheme’s spirit.” *People v. Williams*, 17 Cal. 4th 148,
10 161 (1998) (emphases added). Such dismissals may not be based on “bare antipathy to the
11 consequences [of nondismissal] for any given defendant.” *Id.* Indeed, *People v. Dent*, 38 Cal.
12 App. 4th 1726 (1995), vacated the dismissal of a prior strike precisely because the dismissal was
13 “guided solely by a personal antipathy for the effect that the three strikes law would have on
14 defendant.” *Id.* at 1731. A dismissal, the court held, cannot simply “reason[] backwards from the
15 sentence [the court] wishe[s] to avoid,” because “[a] sentence based on such an approach
16 constitutes a failure to exercise discretion as required by the law.” *Id.* Rather, there must be a
17 consideration of the defendant’s individual circumstances. *Id.* The court therefore remanded the
18 case so that the trial court could “resentence defendant on an individualized basis, rather than
19 impose a sentence predicated solely upon a desire to avoid the consequences of the three strikes
20 law.” *Id.*

21 Here, Respondent Gascón’s blanket policy barring the enforcement of six sentencing
22 enhancements in all cases – and requiring their abandonment in all cases in which they are already
23 alleged – is analytically indistinguishable from the same refusal to exercise discretion that multiple
24 courts in multiple states have found unlawful. It also squarely contradicts the Supreme Court’s
25 instruction that Section 1385 dismissals *must* account for a particular defendant’s individual
26 circumstances, and not simply “reason backwards” from the very type of enhanced sentences that
27 Respondent Gascón now unilaterally wishes to eliminate. District attorneys owe statutory and
28 ministerial obligations to employ their discretion on a case-by-case basis, and the Special

1 Directives plainly violate those obligations.

2 **2. The Special Directives Require DDAs to Seek Dismissal of Special**
3 **Circumstance Allegations that Cannot Be Dismissed**

4 Respondents' Special Directives also require that DDAs move to dismiss allegations that a
5 judge has no discretion to dismiss. Special Directive No. 20.08-2 requires that "[s]pecial
6 circumstances allegations resulting in an LWOP [life without possibility of parole] sentence shall
7 not be filed, will not be used for sentencing, and shall be dismissed or withdrawn from the
8 charging document." But while judges generally have discretion to dismiss criminal prosecutions,
9 or portions thereof, "in the furtherance of justice," Penal Code § 1385(a), the People of California
10 – through Proposition 115 – specifically abrogated this discretion for certain special circumstances
11 allegations: "Notwithstanding Section 1385 or any other provision of law, a judge shall not strike
12 or dismiss any special circumstance which is admitted by a plea of guilty or nolo contendere or is
13 found by a jury or court as provided in Sections 190.1 to 190.5, inclusive." Penal Code § 1385.1.
14 Section 190.1 to 190.5, in turn, relate to special circumstances allegations that would result in a
15 sentence of LWOP. For example, section 190.2 mandates a sentence of either death or LWOP if
16 any one of twenty-two special circumstance allegations is found to be true. Penal Code
17 § 190.2(a), (c), (d). Similarly, section 190.5 mandates a sentence of LWOP if any of those special
18 circumstance allegations is found to be true. Penal Code § 190.5(b).

19 Thus, under Penal Code section 1385.1, a judge has no discretion to dismiss post-
20 conviction such allegations that the Special Directives require to be dismissed. By requiring
21 DDAs to move to dismiss a special circumstance allegation where there is no basis in law to make
22 such a motion, the Special Directives force DDAs not merely to violate California law,⁶ but to
23 violate legal ethics. Cal. Rules Prof. Conduct, rule 3.1(a)(2) ("A lawyer shall not present a claim
24 or defense in litigation that is not warranted under existing law . . .").

25 _____
26 ⁶ Indeed, even the Legislature cannot repeal a voter initiative absent a supermajority vote,
27 let alone a local executive branch official. *See People v. Solis*, 46 Cal. App. 5th 762, 773 (2020)
28 ("Proposition 115 specifically permitted amendment by the Legislature, but only if approved by
a supermajority of both houses.").

1 **3. The Special Directives Attempt to Force DDAs to Unlawfully Abandon**
2 **Prosecutions**

3 Finally, the Special Directives unlawfully attempt to wrest from the judiciary its
4 legislatively-mandated role to determine whether enhancements may be dismissed “in furtherance
5 of justice.” When a prosecutor moves to strike a prior conviction, ultimately the Court – not the
6 prosecutor – decides whether doing so would be in the interests of justice. *See People v. Roman*,
7 92 Cal. App. 4th 141, 148 (2001). If the Court denies a motion to dismiss an enhancement in the
8 furtherance of justice, the Special Directives seek to circumvent the court by requiring DDAs to
9 file an amended charging document – ostensibly to eliminate the enhancement allegation that the
10 court has already refused to dismiss. This tactic runs afoul of section 1386, which provides that
11 once a prosecution has been initiated, “neither the Attorney General nor the district attorney can
12 discontinue or abandon a prosecution for a public offense” without permission of the Court. Penal
13 Code § 1386. It also runs afoul of Penal Code section 1009, which permits amendment only to
14 cure a “defect or insufficiency” in the charging document; it cannot be used to “change the offenses
15 charged.” *Owen v. Superior Court*, 54 Cal. App. 3d 928, 934 (1976). Respondents have a
16 ministerial duty to proceed with a prosecution once it has been initiated unless the Court permits it
17 to be dismissed. Respondents have failed, and are failing, to perform this duty.

18 **V. CONCLUSION**

19 Each day that passes, this County’s prosecutors are forced either to follow the Special
20 Directives and act unlawfully, unethically, and in violation of their oaths, or to act lawfully and
21 ethically but in disobedience to their employer. This Hobson’s choice cannot endure. Immediate
22 relief is needed from this Court: (i) to declare illegal and unenforceable those offending portions
23 of the Special Directives; (ii) to enjoin Respondents from commanding DDAs to enforce such
24 offending portions; and (iii) to restore to the DDAs the *status quo ante* by which the DDAs may
25 continue to charge – and not be compelled to abandon – those sentencing enhancements mandated
26 by California law.

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DATED: December 29, 2020

Respectfully submitted,

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 Association of
Deputy District Attorneys for Los Angeles County

Document received by the CA 2nd District Court of Appeal.

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1 relief that Petitioners would seek in the application; and (4) inquiring whether Respondents
2 intended to appear and/or oppose the application.

3 c. On Tuesday, December 29, 2020, before 10:00 a.m., a process server
4 attempted to personally deliver the letter identified in paragraph 2(a) above to the office of the
5 Chief Executive Officer for the County of Los Angeles, who is the appropriate agent for service of
6 process for the County of Los Angeles pursuant to Code of Civil Procedure 416.50(a). At that
7 time, the process server was informed that no one was available to physically accept service of the
8 letter, and that the server should reattempt service at approximately 1:00 p.m. The letter was
9 personally served at 2:28 p.m.

10 3. Attached hereto as **Exhibit 1** is a true and correct copy of the letter, e-mails, and
11 proof of personal service providing *ex parte* notice under Paragraph 2 above.

12 4. On Tuesday, December 29, 2020, Robert Dugdale of Kendall Brill & Kelly LLP e-
13 mailed my office to inform us that they have been retained to represent Respondents in this matter.
14 Mr. Dugdale stated that he intended to appear and oppose this *ex parte* application.

15
16 I declare under penalty of perjury under the laws of the State of California that the
17 foregoing is true and correct. Executed on December 29, 2020, at Los Angeles, California.

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Eric M. George

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1 California Rules of Professional Conduct provide that “[a] lawyer shall not present a claim or
2 defense in litigation that is not warranted under existing law” Cal. Rules Prof. Conduct, rule
3 3.1(a)(2).

4 5. The offending portions of Special Directives 20-08, 20-08.1, 20-08.2, and 20-14,
5 prohibit this County’s DDAs from complying with certain ministerial prosecutorial duties in
6 violation of the law, their oaths of office, and their ethical responsibilities as officers of the Court.
7 The unlawful conduct includes barring DDAs from charging enhancements that they are
8 statutorily obligated to charge; barring DDAs from complying with their ministerial duty to
9 exercise case-by-case discretion as to appropriate charges to maintain or move to dismiss;
10 mandating that DDAs move to dismiss special circumstance allegations that by statute cannot be
11 dismissed; and mandating that DDAs persist in attempting to unilaterally abandon a prosecution
12 where a judge has previously denied a motion to dismiss. DDAs thus risk being held in contempt
13 of court, or being disciplined by the State Bar, each time they undertake this conduct.

14 6. Judges have scolded DDAs for following Respondent Gascón’s Special Directives
15 instead of their obligations under the law. For example, attached hereto as **Exhibit 6** is a true and
16 correct copy of a transcript that I received from a hearing in *People v. Machuca*, Case No.
17 BA477781, before the Honorable Laura F. Priver. In that hearing, where an assigned DDA moved
18 to dismiss a sentencing enhancement allegation pursuant to Special Directive 20-08, Judge Priver
19 denied the motion and informed an assigned DDA as follows: “I understand it came from the top
20 I understand why you’re making the motion, but the Court will deny the motion as to each and
21 every one of the other allegations. ***You have an ethical duty to do your job and proceed with***
22 ***prosecution. You should not be allowed to abandon the prosecution at this juncture.***”

23 7. Attached hereto as **Exhibit 7** is a true and correct copy of a transcript that I
24 received from a hearing in *People v. Provencio*, Case No. KA120979-01, before the Honorable
25 Douglas Sortino. In that hearing, Judge Sortino denied a motion to dismiss the great bodily injury
26 enhancement from the information that was brought solely on the basis of Special Directive 20-08
27 stating as follows: “Mr. Gascon’s directive is a blanket directive that applies to all cases and all
28 circumstances, regardless of the defendant, or the facts and circumstances of the case. It does not

1 individualize the cases pursuant to their facts and circumstances, or individualize the defendant, in
2 terms of his prior history. I think under those circumstances, it is not a sufficient basis under
3 [Penal Code section] 1385 to articulate or support a finding of a dismissal in the interest of
4 justice.”

5 8. Attached hereto as **Exhibit 8** is a true and correct copy of a transcript that I
6 received from a hearing in *People v. Helo*, Case No. PA090826, before the Honorable Laura F.
7 Priver. In that hearing, Judge Priver denied a motion to dismiss the great bodily injury
8 enhancement from the information that was brought solely on the basis of Special Directive 20-08,
9 stating as follows: “The People have filed this allegation and the Court believes you cannot
10 abandon the prosecution of this matter at this time based upon change of administration in the
11 D.A.’s Office. . . . And I also think that although I understand you’re operating under your
12 directives, *I think it’s unethical.*”

13 9. Attached hereto as **Exhibit 9** is a true and correct copy of a transcript that I
14 received from a hearing in *People v. Dominguez*, Case No. BA466952-01, before the Honorable
15 Mark S. Arnold. In that hearing, Judge Arnold denied a motion to dismiss all enhancement and
16 special circumstances alleged in the information that was brought solely on the basis of Special
17 Directive 20-08, stating as follows: “[I]f Courts terminated prosecutions of crimes or
18 enhancements under Penal Code section 1385 without adequate reason, it would frustrate the
19 orderly and effective operation of our criminal justice procedure as envisioned by the Legislature

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1 10. Attached hereto as **Exhibit 10** is a true and correct copy of an article from the Los
2 Angeles Times. Therein, Respondent Gascón publicly, but incorrectly, claimed that
3 “[p]rosecutors are sworn to follow the directives of the elected D.A.” DDAs swear an oath only to
4 defend and uphold the California Constitution and the United States Constitution. Cal. Const. Art.
5 XX, § 3. DDAs do not swear an oath to “follow the directives of the elected D.A.”
6

7 I declare under penalty of perjury under the laws of the State of California that the
8 foregoing is true and correct. Executed on December 29, 2020, at Los Angeles, California.
9

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11 Michele Hanisee
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PROOF OF SERVICE

Ass'n of Assistant District Attorneys for Los Angeles County v. George Gascon, et al.

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 801 S. Figueroa Street, Suite 2000, Los Angeles, CA 90017.

On December 29, 2020, I served true copies of the following document(s) described as **PETITIONER'S EX PARTE APPLICATION FOR A TEMPORARY RESTRAINING ORDER; DECLARATION OF ERIC M. GEORGE; DECLARATION OF MICHELE HANISEE** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY E-MAIL OR ELECTRONIC TRANSMISSION: On December 29, 2020, I caused a copy of the document(s) to be sent from e-mail address dcarroll@bgrfirm.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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

Executed on December 29, 2020, at Los Angeles, California.



David J. Carroll

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SERVICE LIST

Robert Dugdale	Attorneys for Defendants and Respondents
Kendall Brill & Kelly LLP	George Gascon and the Los Angeles County
10100 Santa Monica Blvd., Suite 1725	District Attorney's Office
Los Angeles, California 90067	
Tel: (310) 556-2700	
Fax: (310) 556-2705	
E-mail: rdugdale@kbkfirm.com	

Document received by the CA 2nd District Court of Appeal.

1 BROWNE GEORGE ROSS
O'BRIEN ANNAGUEY & ELLIS LLP
2 Eric M. George (State Bar No. 166403)
egeorge@bgrfirm.com
3 Thomas P. O'Brien (State Bar No. 166369)
tobrien@bgrfirm.com
4 David J. Carroll (State Bar No. 291665)
dcarroll@bgrfirm.com
5 Matthew O. Kussman (State Bar No. 313669)
mkussman@bgrfirm.com
6 2121 Avenue of the Stars, Suite 2800
Los Angeles, California 90067
7 Telephone: (310) 274-7100
Facsimile: (310) 275-5697

8 Attorneys for Petitioner
9 The Association of Deputy District
Attorneys for Los Angeles County
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.

**TABLE OF EXHIBITS IN SUPPORT OF
PETITIONER'S *EX PARTE*
APPLICATION FOR TEMPORARY
RESTRAINING ORDER AND ORDER TO
SHOW CAUSE**

TABLE OF EXHIBITS

<u>Exhibit No.</u>	<u>Supporting Declaration</u>	<u>Description</u>
<u>Ex. 1</u>	George Decl. ¶ 2	<i>Ex Parte</i> Notice
<u>Ex. 2</u>	Hanisee Decl. ¶ 3	Special Directive 20-08
<u>Ex. 3</u>	Hanisee Decl. ¶ 3	Special Directive 20-08.1
<u>Ex. 4</u>	Hanisee Decl. ¶ 3	Special Directive 20-08.2
<u>Ex. 5</u>	Hanisee Decl. ¶ 3	Special Directive 20-14
<u>Ex. 6</u>	Hanisee Decl. ¶ 6	Transcript of <i>People v. Machuca</i>
<u>Ex. 7</u>	Hanisee Decl. ¶ 7	Transcript of <i>People v. Provenio</i>
<u>Ex. 8</u>	Hanisee Decl. ¶ 8	Transcript of <i>People v. Helo</i>
<u>Ex. 9</u>	Hanisee Decl. ¶ 9	Transcript of <i>People v. Dominguez</i>
<u>Ex. 10</u>	Hanisee Decl. ¶ 10	<i>George Gascon's Plans to Overhaul Prosecutions Meet Early Resistance from Judges, Others</i> , LOS ANGELES TIMES

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DATED: December 29, 2020

Respectfully submitted,

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 Petitioner Association of Deputy District
Attorneys for Los Angeles County

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PROOF OF SERVICE

Ass'n of Assistant District Attorneys for Los Angeles County v. George Gascon, et al.

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 801 S. Figueroa Street, Suite 2000, Los Angeles, CA 90017.

On December 29, 2020, I served true copies of the following document(s) described as **TABLE OF EXHIBITS IN SUPPORT OF PETITIONER'S *EX PARTE* APPLICATION FOR TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY E-MAIL OR ELECTRONIC TRANSMISSION: On December 29, 2020, I caused a copy of the document(s) to be sent from e-mail address dcarroll@bgrfirm.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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

Executed on December 29, 2020, at Los Angeles, California.



David J. Carroll

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SERVICE LIST

Robert Dugdale	Attorneys for Defendants and Respondents
Kendall Brill & Kelly LLP	George Gascon and the Los Angeles County
10100 Santa Monica Blvd., Suite 1725	District Attorney's Office
Los Angeles, California 90067	
Tel: (310) 556-2700	
Fax: (310) 556-2705	
E-mail: rdugdale@kbkfirm.com	

Document received by the CA 2nd District Court of Appeal.

EXHIBIT 1

Corinne Ubence

From: Corinne Ubence
Sent: Tuesday, December 29, 2020 9:41 AM
To: ggascon@da.lacounty.gov; jiniguez@da.lacounty.gov; info@da.lacounty.gov; rcastro-silva@counsel.lacounty.gov; contact_us@counsel.lacounty.gov
Cc: Eric M. George; Thomas P. O'Brien; David J. Carroll; Matthew O. Kussman; Jeanne Arias; Claudia Bonilla
Subject: Ass'n of Deputy District Attorneys for L.A. County v. George Gascon, et al.
Attachments: Ltr re Ex Parte TRO Notice.pdf

Counsel:

Attached please find a letter of today's date sent on behalf of Eric George.

Regards,

Corinne Ubence

Legal Assistant to Carl A. Roth,
David Carroll, Matthew Kussman,
and Luke Fiedler

BGR | **BROWNE GEORGE ROSS**
O'BRIEN ANNAGUEY & ELLIS LLP

801 S. Figueroa Street, Suite 2000
Los Angeles, California 90017
Main 213.725.9800 | Fax 213.725.9808
cubence@bgrfirm.com
www.bgrfirm.com

Document received by the CA 2nd District Court of Appeal.

Corinne Ubence

From: Corinne Ubence
Sent: Tuesday, December 29, 2020 10:51 AM
To: jiniguez@da.lacounty.gov
Cc: Eric M. George; Thomas P. O'Brien; David J. Carroll; Matthew O. Kussman; Jeanne Arias; Claudia Bonilla
Subject: FW: Ass'n of Deputy District Attorneys for L.A. County v. George Gascon, et al.
Attachments: Ltr re Ex Parte TRO Notice.pdf

From: Corinne Ubence
Sent: Tuesday, December 29, 2020 9:41 AM
To: ggascon@da.lacounty.gov; jiniguez@da.lacounty.gov; info@da.lacounty.gov; rcastro-silva@counsel.lacounty.gov; contact_us@counsel.lacounty.gov
Cc: Eric M. George <egeorge@bgrfirm.com>; Thomas P. O'Brien <tobrien@bgrfirm.com>; David J. Carroll <dcarroll@bgrfirm.com>; Matthew O. Kussman <mkussman@bgrfirm.com>; Jeanne Arias <jarias@bgrfirm.com>; Claudia Bonilla <CBonilla@bgrfirm.com>
Subject: Ass'n of Deputy District Attorneys for L.A. County v. George Gascon, et al.

Counsel:

Attached please find a letter of today's date sent on behalf of Eric George.

Regards,

Corinne Ubence

Legal Assistant to Carl A. Roth,
David Carroll, Matthew Kussman,
and Luke Fiedler

BGR | **BROWNE GEORGE ROSS**
O'BRIEN ANNAGUEY & ELLIS LLP

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cubence@bgrfirm.com
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Attorney or Party without Attorney: Eric M. George (#166403) BROWNE GEORGE ROSS O'BRIEN, ET AL. 2121 Avenue of the Stars, Suite 2800 Los Angeles, CA 90067 Telephone No: 310-274-7100 Attorney For:				For Court Use Only
Ref. No. or File No.:				
Insert name of Court, and Judicial District and Branch Court:				
Plaintiff: Defendant:				
AFFIDAVIT OF DUE DILIGENCE	Hearing Date:	Time:	Dept/Div:	Case Number:

- I, Douglas Forrest 5141, Los Angeles, and any employee or independent contractors retained by FIRST LEGAL are and were on the dates mentioned herein over the age of eighteen years and not a party to this action. Personal service was attempted on subject Fesia Davenport, Acting Chief Executive Officer County of Los Angeles as follows:
- Documents:* Letter Dated December 29, 2020 (re: Notice of Ex Parte Application for Temporary Restraining Order)

Attempt Detail

1) Unsuccessful Attempt by: Douglas Forrest (5141, Los Angeles) on: Dec 29, 2020, 9:55 am PST at 500 W Temple St Room 358, Los Angeles, CA 90012

Location is closed until further notice due to covid-19. Protocol for service is to call the Board of Supervisors office and have them come down to receive. According to Clayton Liang deputy clerk, no one is on site to receive due to staff shortage. Server was instructed to call back this afternoon to see if anyone is available.

2) Successful Attempt by: Douglas Forrest (5141, Los Angeles) on: Dec 29, 2020, 2:28 pm PST at 500 W Temple St Room 358, Los Angeles, CA 90012 received by Fesia Davenport, Acting Chief Executive Officer County of Los Angeles. Gabby Lozano, Executive Secretary for Davenport.

Recoverable cost Per CCP 1033.5(a)(4)(B)

3. Person Who Served Papers:

- Douglas Forrest (5141, Los Angeles)
- FIRST LEGAL**
1517 W. Beverly Blvd.
LOS ANGELES, CA 90026
- (213) 250-1111

d. The Fee for Service was:

e. I am: A Registered California Process Server

- I declare under penalty of perjury under the laws of the State of California and under the laws of the United States of America that the foregoing is true and correct.

12/29/2020

(Date)



(Signature)



AFFIDAVIT OF
DUE DILIGENCE

5205904
(4539836)

A202

Document received by the CA 2nd District Court of Appeal.

Attorney or Party without Attorney: Eric M. George (#166403) BROWNE GEORGE ROSS O'BRIEN, ET AL. 2121 Avenue of the Stars, Suite 2800 Los Angeles, CA 90067 Telephone No: 310-274-7100 Attorney For:				For Court Use Only
Ref. No. or File No.:				
Insert name of Court, and Judicial District and Branch Court:				
Plaintiff: Defendant:				
PROOF OF SERVICE	Hearing Date:	Time:	Dept/Div:	Case Number:

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of the Letter Dated December 29, 2020 (re: Notice of Ex Parte Application for Temporary Restraining Order)
3.
 - a. Party served: Fesia Davenport, Acting Chief Executive Officer County of Los Angeles
 - b. Person served: Gabby Lozano, Executive Secretary for Davenport
4. Address where the party was served: 500 W Temple St Room 358, Los Angeles, CA 90012
5. I served the party:
 - a. **by personal service.** I personally delivered the documents listed in item 2 to the party or person authorized to receive process for the party (1) on: Tue, Dec 29 2020 (2) at: 02:28 PM
6. **Person Who Served Papers:**
 - a. Douglas Forrest (5141, Los Angeles)
 - b. **FIRST LEGAL**
1517 W. Beverly Blvd.
LOS ANGELES, CA 90026
 - c. (213) 250-1111
 - d. **The Fee for Service was:**
e. I am: A Registered California Process Server
7. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Recoverable cost Per CCP 1033.5(a)(4)(B)

12/29/2020

(Date)



(Signature)



Judicial Council Form
Rule 2.150.(a)&(b) Rev January 1, 2007

**PROOF OF
SERVICE**

520590
(4539838)

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December 29, 2020

Via Electronic Mail

George Gascón, District Attorney
Jose Iniguez, Interim Chief Deputy District Attorney
Los Angeles County District Attorney's Office
211 West Temple Street, Suite 1200
Los Angeles, CA 90012
E-Mail: ggascon@da.lacounty.gov
jiniguez@da.lacounty.gov
info@da.lacounty.gov

Via Electronic Mail

Rodrigo Castro-Silva, Interim Los Angeles
County Counsel
Kenneth Hahn Hall of Administration
500 West Temple Street #648
Los Angeles, CA 90012
E-Mail: rcastro-silva@counsel.lacounty.gov
contact_us@counsel.lacounty.gov

Via Personal Service

Fesia Davenport, Acting Chief Executive Officer
County of Los Angeles
Kenneth Hahn Hall of Administration
500 West Temple Street, Room 358
Los Angeles, CA 90012

Re: Ass'n of Deputy District Attorneys for L.A. County v. George Gascón, et al.

***Notice of Ex Parte Application for Temporary Restraining Order
(Cal. Rules of Court, rules 3.1150 and 3.1200 et seq.)***

To Whom it May Concern:

We are counsel for Petitioner Association of Deputy District Attorneys for Los Angeles County in a civil action for writ of mandate, declaratory relief, and injunctive relief that will be filed against Respondents George Gascón and the Los Angeles County District Attorney's Office shortly. Please allow this to serve as notice that, on **December 30, 2020, at 8:30 a.m.**, in Department 82, 85, or 86 of the Los Angeles Superior Court, located at 111 North Hill Street, Los Angeles, California 90012, Petitioner will appear *ex parte* for a temporary restraining order and an order to show cause against Respondents. Please let us know at or before **3:30 p.m. today** whether or not Respondents intend to appear and/or oppose this *ex parte* application.

**BROWNE GEORGE ROSS
O'BRIEN ANNAGUEY & ELLIS LLP**

George Gascón
Jose Iniguez
Rodrigo Castro-Silva
December 29, 2020
Page 2

Relief Sought

Petitioner intends to seek a temporary restraining order enjoining Respondents from enforcing the following portions of Special Directives 20-08, 20-08.1, 20-08.2, and 20-14 issued by the Los Angeles County District Attorney's Office:

1. Any portion of the Special Directives that prohibit the Los Angeles County District Attorney's Office, or any of its Deputy District Attorneys or prosecutors, from pleading and proving prior strikes under California's Three Strikes Sentencing Initiative (Penal Code §§ 667(b)-(i), 1170.12);

2. Any portion of the Special Directives that require the Los Angeles County District Attorney's Office, or any of its Deputy District Attorneys or prosecutors, to move to dismiss from any pending criminal action any of the following:

- a. Any prior-strike enhancements (Penal Code section 667(d), 667(e), 1170.12(a) and 1170.12(c)), including any second strikes and any strikes arising from a juvenile adjudication;
- b. Any Prop 8 or "5-year prior" enhancements (Penal Code section 667(a)(1)) and "three-year prior" enhancements (Penal Code section 667.5(a));
- c. STEP Act enhancements ("gang enhancements") (Penal Code section 186.22 et. seq.);
- d. Special circumstances allegations resulting in an LWOP sentence;
- e. Violations of bail or O.R. release (Penal Code section 12022.1); and
- f. Firearm allegations pursuant to Penal Code section 12022.53;

3. Any portion of the Special Directives that require the Los Angeles County District Attorney's Office, or any of its Deputy District Attorneys or prosecutors, to move to dismiss from any pending criminal action special circumstances allegations under Penal Code section 190.1 to 190.5; and

Document received by the CA 2nd District Court of Appeal.

**BROWNE GEORGE ROSS
O'BRIEN ANNAGUEY & ELLIS LLP**

George Gascón
Jose Iniguez
Rodrigo Castro-Silva
December 29, 2020
Page 3

4. Any portion of the Special Directives that require the Los Angeles County District Attorney's Office, or any of its Deputy District Attorneys or prosecutors, to move for leave to amend the charging document in any pending criminal action for the purpose of removing any allegations that they would otherwise be prohibited from moving to dismiss under Paragraphs 2 and 3 above.

Petitioner will further seek an order to show cause re: why a preliminary injunction should not issue enjoining Respondents from enforcing the Special Directives as specified above for the duration of this action.

Basis for Relief

Petitioner seeks the foregoing relief on the basis that the offending portions of the Special Directives violate both Respondents' mandatory duties, and the mandatory duties of this County's Deputy District Attorneys, to plead, prove, maintain, and/or prosecute criminal charges as follows:

- Prosecutors in California have a mandatory duty to plead and prove prior strikes under the Three Strikes Sentencing Initiative. *See* Penal Code §§ 667(f)(1), 1170.12(d)(1); *People v. Roman*, 92 Cal. App. 4th 141, 145 (2001); *People v. Vera*, 122 Cal. App. 4th 970, 982 (2004).
- The requirement that prosecutors plead and prove prior strikes under the Three Strikes Sentencing Initiative has been upheld as a constitutional limitation on prosecutorial discretion. *People v. Kilborn*, 41 Cal. App. 4th 1325, 1332 (1996); *Roman*, 92 Cal. App. 4th at 145 n.2; *People v. Gray*, 66 Cal. App. 4th 973, 995 (1998); *People v. Butler*, 43 Cal. App. 4th 1224, 1247–48 (1996).
- Respondent Gascón, as a local executive branch official, does not have authority not to follow his mandatory duty to plead and prove prior strikes based on his belief as to the constitutionality of that mandatory duty. *Lockyer v. City & Cty. of San Francisco*, 33 Cal. 4th 1055, 1086 (2004).
- Prosecutors have a mandatory duty to exercise case-by-case discretion in charging and prosecuting criminal cases, and the Special Directives unlawfully prohibit prosecutors from exercising that discretion. Gov. Code § 26500; *People ex rel.*

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George Gascón
Jose Iniguez
Rodrigo Castro-Silva
December 29, 2020
Page 4

Becerra v. Superior Court, 29 Cal. App. 5th 486 (2018); *City of Merced v. Merced Cty.*, 240 Cal. App. 2d 763, 766 (1966).

- Dismissals under Penal Code section 1385 must be based on a defendant's individual circumstances and cannot be based on a blanket policy. *People v. Williams*, 17 Cal. 4th 148, 161 (1998); *People v. Dent*, 38 Cal. App. 4th 1726 (1995).
- Special circumstance allegations resulting in a sentence of life without the possibility of parole pursuant to Penal Code section 190.1 to 190.5 cannot be dismissed under Penal Code section 1385.1.
- By directing prosecutors to amend a charging document to remove an enhancement that the Court has already declined to dismiss, the Special Directives unlawfully attempt to wrest from the judiciary its legislatively-mandated role to determine whether enhancements should be dismissed "in furtherance of justice." Penal Code §§ 1385, 1386.

Ex parte relief is necessary because the foregoing Special Directives require, on a daily basis, that this County's Deputy District Attorneys violate the law, violate their oaths and prosecutors, and violate their ethical duties as officers of the courts.

Please do not hesitate to contact me if you wish to discuss this matter. Thank you.

Sincerely,



Eric M. George


EMG:djc

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EXHIBIT 2

SPECIAL DIRECTIVE 20-08

TO: ALL DEPUTY DISTRICT ATTORNEYS

FROM: GEORGE GASCÓN 
District Attorney

SUBJECT: SENTENCING ENHANCEMENTS/ALLEGATIONS

DATE: DECEMBER 7, 2020

This Special Directive addresses the following chapters in the Legal Policies Manual:

Chapter 2	Crime Charging - Generally
Chapter 3	Crime Charging - Special Policies
Chapter 7	Special Circumstances
Chapter 12	Felony Case Settlement Policy
Chapter 13	Probation and Sentencing Hearings

Effective **December 8, 2020**, the policies outlined below supersede the relevant sections of the abovementioned chapters of the Legal Policies Manual. Additionally, the following sections of the Legal Policies Manual are removed in their entirety. Chapter 2.10 - Charging Special Allegations, Chapter 3.02 - Three Strikes, Chapter 7 - Special Circumstances, Chapter 12.05 - Three Strikes, Chapter 12.06 - Controlled Substances.

INTRODUCTION

Sentencing enhancements are a legacy of California's "tough on crime" era. (See Appendix.) It shall be the policy of the Los Angeles County District Attorney's Office that the current statutory ranges for criminal offenses alone, without enhancements, are sufficient to both hold people accountable and also to protect public safety. While initial incarceration prevents crime through incapacitation, studies show that each additional sentence year causes a 4 to 7 percent increase in recidivism that eventually outweighs the incapacitation benefit.¹ Therefore, sentence enhancements or other sentencing allegations, including under the Three Strikes law, shall not be filed in any cases and shall be withdrawn in pending matters.

This policy does not affect the decision to charge crimes where a prior conviction is an element of the offense [i.e., felon in possession of a firearm (Penal Code § 29800(a)(1)), driving under the influence with a prior (Vehicle Code § 23152), domestic violence with a prior (Penal Code §

¹ Mueller-Smith, Michael (2015) "The Criminal and Labor Market Impacts of Incarceration.", *available at* <https://sites.lsa.umich.edu/mgms/wp-content/uploads/sites/283/2015/09/incar.pdf>.

273.5(f)(1)), etc.], nor does it affect Evidence Code provisions allowing for the introduction of prior conduct (i.e., Evidence Code §1101, 1108, and 1109).

The specified allegations/enhancements identified in this policy directive are not an exhaustive list of all allegations/enhancements that will no longer be pursued by this office; however, these are the most commonly used allegations/enhancements.

POLICY

- Any prior-strike enhancements (Penal Code § 667(d), 667(e); 1170.12(a) and 1170.12 (c)) will not be used for sentencing and shall be dismissed or withdrawn from the charging document. This includes second strikes and any strikes arising from a juvenile adjudication;
- Any Prop 8 or “5 year prior” enhancements (Penal Code §667(a)(1)) and “3 year prior” enhancements (Penal Code §667.5(a)) will not be used for sentencing and shall be dismissed or withdrawn from the charging document;
- STEP Act enhancements (“gang enhancements”) (Penal Code § 186.22 et. seq.) will not be used for sentencing and shall be dismissed or withdrawn from the charging document;
- Special Circumstances allegations resulting in an LWOP sentence shall not be filed, will not be used for sentencing, and shall be dismissed or withdrawn from the charging document;
- Violations of bail or O.R. 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.

II. PENDING CASES

At the first court hearing after this policy takes effect, DDAs are instructed to orally amend the charging document to dismiss or withdraw any enhancement or allegation outlined in this document.

III. SENTENCED CASES

Pursuant to PC § 1170(d)(1), if a defendant was sentenced within 120 days of December 8, 2020 they shall be eligible for resentencing under these provisions. DDAs are instructed to not oppose defense counsel’s request for resentencing in accordance with these guidelines.

APPENDIX

California has enacted over 100 sentencing enhancements, many of which are outdated, incoherent, and applied unfairly. There is no compelling evidence that their enforcement improves public safety. In fact, the opposite may be true. State law gives District Attorneys broad authority over when and whether to charge enhancements. The overriding concern is interests of justice and public safety.

The Stanford Computational Policy Lab studied San Francisco's use of sentencing enhancements from 2005 to 2017. They released their report, *Sentencing Enhancements and Incarceration: San Francisco, 2005-2017* in October of 2019. The following policy is informed by the results of the Stanford study.

As noted in the study:

“During the 1980s and 90s, enhancements became more numerous and severe. Dozens of new enhancement laws were passed in a way that critics alleged was haphazard—in “reaction to the ‘crime of the month.’”

California's massive rates of incarceration can be tied directly to the extreme sentencing laws passed by voters in the 1990's, including the 1994 Three Strikes Law. In 1980, California had a prison population of 23,264. In 1990, it was 94,122. In 1999, five years after the passage of Three Strikes, California had increased its population to a remarkable 160,000. By 2006, the prison population had ballooned to 174,000 prisoners. California now has 130,000 people in state prison and 70,000 people in local jails.

The Stanford study found that the use of sentencing enhancements in San Francisco accounted for about **1 out of 4 years** served in jail and prison. This study found that the use of sentencing enhancements -- mostly Prop. 8 priors and Three Strikes enhancements -- accounted for half of the time served for enhancements. The study concluded that we could substantially reduce incarceration by ceasing to use enhancements. These enhancements also exacerbate racial disparities in the justice system: **45% of people serving life sentences in CDCR under the Three Strikes law are black.**

Gang enhancements have been widely criticized as unfairly targeting young men of color. Recent analyses by the LA Times suggest that the CALGANG database is outdated, inaccurate and rife with abuse. According to California Department of Corrections and Rehabilitation data from 2019, more than 90 percent of adults with a gang enhancement in state prison were either black or Latinx.

According to Fordham Law Prof. John Pfaff, “There is strong empirical support for declining to charge these status enhancements. Long sentences imposed by strike laws and gang enhancements provide little additional deterrence, often incapacitate long past what is required by public safety, impose serious and avoidable financial and public health costs in the process, and may even lead to greater rates of reoffending in the long run.”

According to Pfaff, a growing body of evidence-based studies have suggested that policing deters; long sentences do little. What deters most effectively is the risk of detection and apprehension in the first place. Other studies increasingly indicate that spending more time in prison can *cause* the

risk of later reoffending; as the harms and traumas experienced in prison grow, the ability to reintegrate after release falls.

That prison may actually increase the risk of reoffending while imposing serious costs on communities starkly illuminates the need to invest in alternatives. Such options do exist. One striking example: by expanding access to (non-criminal justice based) drug treatment, the expansion of Medicaid yielded billions in reduced crime in states that participated in the expansion.

By avoiding harsh sentencing and investing in rehabilitation programs for the incarcerated, we can reduce crime *and* help people improve their lives.


The policies of this Special Directive supersede any contradictory language of the Legal Policies Manual.

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EXHIBIT 3

SPECIAL DIRECTIVE 20-08.1

TO: ALL DEPUTY DISTRICT ATTORNEYS

FROM: GEORGE GASCÓN 
District Attorney

SUBJECT: FURTHER CLARIFICATION OF SPECIAL DIRECTIVE 20-08

DATE: DECEMBER 15, 2020

This Special Directive is intended to further supplement the language provided in SD 20-08, Section II concerning Pending Cases, issued on December 7, 2020. The introduction of that Special Directive states, "...sentence enhancements or other sentencing allegations, including under the Three Strikes law, shall not be filed in any cases and shall be withdrawn in pending matters." The language is clear that this policy is intended to put an end to the practice of alleging strike priors and all other special allegations in accordance with the constitutional authority granted solely to prosecutors across the state of California.

If a pending matter has strike priors alleged or enhancements/allegations (pursuant to SD 20-08) deputies shall make the following record:

"The People move to dismiss and withdraw any strike prior (or other enhancement) in this case. We submit that punishment provided within the sentencing triad of the substantive charge(s) in this case are sufficient to protect public safety and serve justice. Penal Code section 1385 authorizes the People to seek dismissal of all strike prior(s) (or other enhancements) when in the interests of justice. Supreme Court authority directs this Court to determine those interests by balancing the rights of the defendant and those of society 'as represented by the People.' The California Constitution and State Supreme Court precedent further vest the District Attorney with sole authority to determine whom to charge, what charges to file and pursue, and what punishment to seek. That power cannot be stripped from the District Attorney by the Legislature, Judiciary, or voter initiative without amending the California Constitution. It is the position of this office that Penal Code section 1170.12(d)(2) and Penal Code 667(f)(1) are unconstitutional and infringe on this authority. Additional punishment provided by sentencing enhancements or special allegations provide no deterrent effect or public safety benefit of incapacitation--in fact, the opposite may be true, wasting critical financial state and local resources."

Legal authority: *People v. Superior Court (Romero)* (1996) 13 Cal. 4th 497, 530 ("[T]he language of [section 1385], 'furtherance of justice,' requires consideration both of the constitutional rights of the defendant, and *the interests of society represented by the People*, in determining whether there should be a dismissal." (emphasis in original); *Dix v. Superior Court* (1991) 53 Cal. 3d at 451.

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Furthermore, if a court refuses to dismiss the prior strike allegations or other enhancements/allegations based on the People's oral request, the DDA shall seek leave of the court to file an amended charging document pursuant to Penal Code section 1009.


If a court further refuses to accept an amended charging document pursuant to Penal Code section 1009, the DDA shall provide the following information to their head deputy: Case number, date of hearing, name of the bench officer and the court's justification for denying the motion (if any). The DDA shall stipulate to any stay of proceedings if requested by the defense.

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EXHIBIT 4

SPECIAL DIRECTIVE 20-08.2

TO: ALL DEPUTY DISTRICT ATTORNEYS

FROM: GEORGE GASCÓN 
District Attorney

SUBJECT: AMENDMENT TO SPECIAL DIRECTIVE 20-08

DATE: DECEMBER 18, 2020

This Office is committed to eliminating mass incarceration and fostering rehabilitation for those charged with crimes. As such, this Office will not pursue prior strike enhancements, gang enhancements, special circumstances enhancements, out on bail/O.R. enhancements, or Penal Code section 12022.53 enhancements. After listening to the community, victims, and my deputy district attorneys, I have reevaluated Special Directive 20-08 and hereby amend it to allow enhanced sentences in cases involving the most vulnerable victims and in specified extraordinary circumstances. These exceptions shall be narrowly construed.

Effective immediately, Special Directive 20-08 is amended as follows:

The following sentence enhancements and allegations shall not be pursued in any case and shall be withdrawn in pending matters:

- Any prior-strike enhancements (Penal Code section 667(d), 667(e), 1170.12(a) and 1170.12(c)) will not be used for sentencing and shall be dismissed or withdrawn from the charging document. This includes second strikes and any strikes arising from a juvenile adjudication;
- Any Prop 8 or “5-year prior” enhancements (Penal Code section 667(a)(1)) and “three-year prior” enhancements (Penal Code section 667.5(a)) will not be used for sentencing and shall be dismissed or withdrawn from the charging document;
- STEP Act enhancements (“gang enhancements”) (Penal Code section 186.22 et. seq.) will not be used for sentencing and shall be dismissed or withdrawn from the charging document;
- Special circumstances allegations resulting in an LWOP sentence shall not be filed, will not be used for sentencing, and shall be dismissed or withdrawn from the charging document;
- Violations of bail or O.R. release (Penal Code section 12022.1) shall not be filed as part of any new offense;
- Firearm allegations pursuant to Penal Code section 12022.53 shall not be filed, will not be used for sentencing, and will be dismissed or withdrawn from the charging document.

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However, where appropriate, the following allegations, enhancements and alternative sentencing schemes may be pursued:

- Hate Crime allegations, enhancements or alternative sentencing schemes pursuant to Penal Code sections 422.7 and 422.75;
- Elder and Dependent Adult Abuse allegations, enhancements, or alternative sentencing schemes pursuant to Penal Code sections 667.9, 368(b)(2)/12022.7(c);
- Child Physical Abuse allegations, enhancements or alternative sentencing schemes pursuant to Penal Code sections 12022.7(d), 12022.9, and 12022.95;
- Child and Adult Sexual Abuse allegations, enhancements or alternative sentencing schemes pursuant to Penal Code sections 667.61, 667.8(b), 667.9, 667.10 ,667.15, 674, 675, 12022.7(d), 12022.8(b), and 12022.85(b)(2);
- Human Sex Trafficking allegations, enhancements or alternative sentencing schemes pursuant to Penal Code sections 236.4(b) and 236.4(c);
- Financial crime allegations, enhancements or alternative sentencing schemes where the amount of financial loss or impact to the victim is significant, the conduct impacts a vulnerable victim population or to effectuate Penal Code section 186.11;
- Other than the enhancement or allegation prohibitions previously listed, enhancements or allegations may be filed in cases involving the following extraordinary circumstances with written Bureau Director approval upon written recommendation by the Head Deputy:
 - Where the physical injury personally inflicted upon the victim is extensive; or
 - Where the type of weapon or manner in which a deadly or dangerous weapon including firearms is used exhibited an extreme and immediate threat to human life;

Facts or circumstances that are sufficient to meet the legal definition of great bodily injury or use of a deadly or dangerous weapon alone are insufficient to warrant extraordinary circumstances. The written request and approval must be placed in the case file.

CASE SETTLEMENT

The following directives cover case settlement.

1. If the charged offense(s) is probation-eligible, probation shall be the presumptive offer.
 - a. Appropriate deviations from this presumption are as follows:
 - i. If the charged offense(s) is probation-eligible, and extraordinary circumstances exist, the Deputy District Attorney may file the basis and recommendation for a deviation in writing to their Head Deputy and the appropriate Bureau Director. Upon written approval from the Bureau Director, the Deputy District Attorney may offer a state prison sentence in accordance with this policy. The written basis for the deviation, recommendation, and approval shall be kept in the case file.
 - ii. If, but for the terms of this directive, the People could have reasonably alleged an enhancement, and defendant's conduct would have therefore been ineligible for probation, Deputy District Attorneys may file a

recommendation for a deviation in writing to their Head Deputy. Upon written approval from the Head Deputy, the Deputy District Attorney may offer a state prison sentence pursuant to the sentencing triad of the substantive offense(s). The written basis for the deviation, recommendation, and approval shall be kept in the case file.

2. If the charged offense(s) is not probation eligible, the presumptive sentence shall be the low term.
 - a. When deviating from the low term the deputy shall document the supporting reasons in the case file.


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EXHIBIT 5

SPECIAL DIRECTIVE 20-14

TO: ALL DEPUTY DISTRICT ATTORNEYS

FROM: GEORGE GASCÓN 
District Attorney

SUBJECT: RESENTENCING

DATE: DECEMBER 7, 2020

This Special Directive addresses issues of the Bureau of Prosecution Support Operations in Chapter 1.07.03 and Probation and Sentencing Hearings in Chapter 13 and Postconviction Proceedings in Chapter 17 of the Legal Policies Manual. Effective **December 8, 2020**, the policies outlined below supersede the relevant sections of Chapter 13 and Chapter 17 of the Legal Policies Manual.

INTRODUCTION

Today, California prisons are filled with human beings¹ charged, convicted and sentenced under prior District Attorneys' policies. Effective today, District Attorney George Gascón has adopted new charging and sentencing policies.

Justice demands that the thousands of people currently serving prison terms imposed in Los Angeles County under earlier, outdated policies, are also entitled to the benefit of these new policies. Many of these people have been incarcerated for decades or are serving a "[virtual life sentence](#)" designed to imprison them for life. The vast majority of incarcerated people are members of groups long disadvantaged under earlier systems of justice: Black people, people of color, young people, people who suffer from mental illness, and people who are poor. While resentencing alone cannot correct all inequities inherent in our system of justice, it should at least be consistent with policies designed to remedy those inequities.

The new Resentencing Policy is effective immediately and shall apply to all offices, units and attorneys in the Los Angeles County District Attorney's Office (hereinafter "Office"). While particular attention will be paid to certain people as discussed herein, every aspect of existing sentencing or resentencing policy will be subject to examination. The intent of this Resentencing Policy is that it will evolve with time to ensure that it reflects the values of the District Attorney, and by extension, the people of Los Angeles County.

¹ We will seek to avoid using dehumanizing language such as "inmate," "prisoner," "criminal," or "offender" when referencing incarcerated people.

LENGTH OF SENTENCE

The sentences we impose in this country, in this state, and in Los Angeles County are far too long. Researchers have long noted the high cost, ineffectiveness, and harm to people and communities caused by lengthy prison sentences; sentences that are longer than those of any comparable nation. DA-elect Gascón campaigned on stopping the practice of imposing excessive sentences.

With regard to resentencing, the Model Penal Code recommends judicial resentencing hearings after 15 years of imprisonment for all convicted people:

The legislature shall authorize a judicial panel or other judicial decision maker to hear and rule upon applications for modification of sentence from prisoners who have served 15 years of any sentence of imprisonment.

(American Law Institute (2017) Model Penal Code Sentencing, Proposed Final Draft, p. 681.)

National parole experts Edward Rhine, the late Joan Petersilia, and Kevin Reitz have endorsed this recommendation, adding: “We would have no argument with a shorter period such as 10 years.” ... These time frames correspond with criminological research showing that people age out of crime, with most “criminal careers” typically lasting less than ten years.” (Rhine, E. E., Petersilia, J., & Reitz, R. 2017. “The Future of Parole Release,” pp. 279-338 in Tonry, M. (Ed.) *Crime and Justice*, Vol, 46, p. 294.)

Accordingly, this Office will reevaluate and consider for resentencing people who have already served 15 years in prison. Experts on post-conviction justice recommend that resentencing be allowed for all people (not just those convicted as children or as emerging adults) and some experts recommend an earlier date for reevaluating continued imprisonment.

APPLICATION OF SENTENCE ENHANCEMENT POLICY FOR OPEN/PENDING CASES

For any case that is currently pending, meaning that judgment has not yet been entered, or where the case is pending for resentencing, or on remand from another court, the Deputy District Attorney in charge of the case shall inform the Court at the next hearing of the following:

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

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

FURTHER DIRECTIVES FOR OPEN/PENDING CASES

The following rules apply to any case where a defendant or petitioner is legally eligible for resentencing or recall of sentence, including but not limited to:

- Habeas corpus cases.
- Cases remanded to Superior Court by the Court of Appeal or Supreme Court.
- Cases referred to the Superior Court under Penal Code section 1170(d)(1).
- Cases pending resentencing under Penal Code sections 1170.126, 1170.127, 1170.18, 1170.91, and 1170.95.
- Cases pending under Penal Code section 1170(d)(2).
- All cases where the defendant was a minor at the time of the offense.
- Any other case that may be the subject of resentencing not specified here.

Any Deputy District Attorney assigned to a case pending resentencing or sentence recall consideration under any valid statute shall comply with the following directives until further notice.

- 1) If the defendant or petitioner is serving a sentence that is higher than what he/she 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 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. This policy applies even where enhancements were found true in a prior proceeding. This policy shall be liberally construed to achieve its purposes.
- 2) If the defendant or petitioner is seeking relief under Penal Code section 1170.95, the DDA may concede that the petitioner qualifies for relief. If the assigned DDA does not believe that the petitioner qualifies for relief, the DDA must request a 30 day continuance, during which time the assigned DDA shall review the case in light of the Office's specific Penal Code 1170.95 Policy, *see below*. If the DDA continues to oppose relief, the DDA shall submit the reasons in writing to the Head Deputy. The Head Deputy shall then seek approval from the District Attorney or his designee in order to determine whether the Office will continue to oppose relief.
- 3) If a defendant or petitioner would not qualify for a reduced sentence by operation of law if convicted today or under the Office's new Sentencing Policy, then the DDA in charge of the case may seek a 30-day continuance. During that time, the deputy shall evaluate whether to support or oppose the resentencing (or sentence recall) request. If the deputy believes that compelling and imminent public safety concerns justify opposition to revisiting the sentence, then the deputy must submit those concerns in writing to her Head Deputy who shall then seek approval from the District Attorney or his designee.
- 4) All laws concerning victim notification and support shall be honored.

PENAL CODE § 1170.95/SB 1437 RESENTENCING POLICY

1. We start with a position of respect for our co-equal branch of government, the legislature. Like the courts, we presume that laws passed by the legislature are constitutional. “[U]nder long-established principles, a statute, once enacted, is presumed to be constitutional.” (*Lockyer v. City and County of San Francisco* (2004) 33 Cal.4th 1055, 1119.) We will no longer seek to delay implementation of laws by making arguments that laws that provide retroactive relief are unconstitutional.
2. The Office’s position is that defense counsel should be appointed when the petition is filed and there should be no summary denials by the court. (*People v. Cooper* (2020) 54 Cal.App.5th 106; *People v. Tarkington* (2020) 49 Cal.App.5th 892, 917, review granted Aug. 12, 2020, S263219 [dis. opn. of Lavin, J.])
3. Many people accepted plea offers to manslaughter, made by this Office in order to avoid a conviction for murder. It is this Office’s policy that where a person took a plea to manslaughter or another charge in lieu of a trial at which the petitioner could have been convicted of felony murder, murder under the natural and probable consequences doctrine, attempted murder under the natural and probable consequences doctrine, or another theory covered by Senate Bill 1437, that person is eligible for relief under section 1170.95. Such a position avoids disparate results whereby a person who this Office has already determined to be less culpable -- as evidenced by allowing a plea for manslaughter -- serves a longer sentence than a similarly situated person who is now eligible for relief under section 1170.95.
4. Section 1170.95 (d)(2) states, “[I]f there was a prior finding by a court or jury that the defendant did not act with reckless indifference to human life or was not a major participant in the felony, the defendant is entitled to have his or her murder conviction vacated.” This prior finding includes cases where a magistrate found that there was insufficient evidence of major participation in a felony or reckless indifference to human life following a preliminary hearing, or at any stage in the proceedings.
5. The Office’s position is that, consistent with the definition of “prima facie,” the court must not engage in fact finding at the prima facie stage. (*People v. Drayton* (2020) 47 Cal. App. 5th 965.)
6. The Office’s position is that if the person was an accomplice to the underlying felony, and had a special circumstance finding that was decided before *People v. Banks* (2015) 61 Cal 4th 788 or *People v. Clark* (2016) 63 Cal. 4th 522, then the filing of a Penal Code section 1170.95 petition is adequate to trigger the section 1170.95 process. There is no requirement that the petitioner file a separate habeas petition first. (*People v. York* (2020) 54 Cal. App. 5th 250, 258.) The next stage is an evidentiary hearing.
7. The Office’s position is that if allegations pursuant to Penal Code section 190.2 (a) (17) were dismissed as part of plea negotiations and the petitioner was not the actual killer, this Office will not attempt to prove the individual is ineligible for resentencing. This Office will stipulate to eligibility per section 1170.95(d)(2).

8. The Office's position is that, consistent with *People v. Medrano* (2019) 42 Cal. App. 5th 1001, 1008, rev. granted, that a person who was convicted of attempted murder under the natural and probable consequences doctrine is eligible for resentencing under section 1170.95. Among other reasons, this avoids the great disparity that arises when one who was convicted of murder under the now abolished natural and probable consequences doctrine is able to be resentenced but one who was convicted of attempted murder is not.
9. If the client has previously won relief under *People v. Chiu* (2014) 59 Cal. 4th 155, the Office will not attempt to argue that the petitioner is ineligible for resentencing, or could be convicted as a direct aider and abettor.
10. If the jury was never instructed on direct aiding and abetting, implied malice murder, or any other intent-to-kill theory, or if the trial prosecutor never argued one of these theories, this Office will not argue that the petitioner can now be convicted under one of these theories during 1170.95 proceedings. Theories must remain consistent.
11. Relatedly, if a jury was not even instructed on implied malice murder or some other theory of homicide not covered by section 1170.95, the prosecution cannot now meet our burden of proof beyond a reasonable doubt that the petitioner is ineligible for resentencing.
12. If the petitioner was convicted of murder and the petitioner's jury was instructed on the natural and probable consequences theory doctrine and/or a first or second degree felony murder instruction at trial, then it may have been possible that petitioner was convicted under one of these theories and this Office will not seek to rebut petitioner's prima facie showing. The case must proceed to the evidentiary hearing.
13. Because jury deliberations are secret, in the absence of special findings, it is not possible to determine the actual basis of a jury verdict when multiple theories were before the jury. Therefore, at an evidentiary hearing, if the petitioner was convicted of murder and the petitioner's jury was instructed with a felony murder or a natural and probable consequences doctrine instruction along with other theories, there is a reasonable doubt that the jury convicted petitioner under the old felony murder rule or the now abolished doctrine of natural and probable consequences. Because the statute allows for the introduction of "new or additional evidence," the deputy district attorney may introduce evidence to show, for example, that the petitioner was the actual killer, or acted as a major participant with reckless indifference to human life, or was convicted under a still-valid theory on which the jury was instructed. See below for this Office's position on evidence that we will and will not seek to admit.
14. At an evidentiary hearing pursuant to section 1170.95 (d)(3), the prosecution must prove beyond a reasonable doubt that the petitioner is ineligible for resentencing. A deputy district attorney may not argue that the standard for the court to determine whether a petitioner is ineligible for resentencing is whether there is "sufficient evidence" to uphold the conviction. This is a standard of proof for an appellate court affirming a conviction. It is not the standard of proof for a trial court in a section 1170.95 proceeding. (*People v. Lopez* (2020) 56 Cal.App. 5th 936, 949-950.)

15. It is this Office's position that the Evidence Code applies to any evidentiary hearing pursuant to section 1170.95. Statements made after promises of leniency or threats of punishment (express or implied) are unreliable. A parole hearing is a coercive environment and therefore statements made in them are unreliable and involuntary. This Office will not seek to introduce statements by a petitioner made in parole hearing transcripts into court for any purpose.
16. As a matter of due process, it is this Office's policy that a petitioner has a right to confrontation at a hearing under section 1170.95. Accordingly, this Office will not seek to admit statements of a declarant when the petitioner did not have an opportunity to cross-examine the declarant or when a purported expert's opinion is based on inadmissible hearsay. (See *People v. Sanchez* (2016) 63 Cal.4th 665.)
17. The Office will comply with all of our obligations under *Brady v. Maryland* and its progeny during resentencing procedures.
18. The Office's position is that any defendant who was under the age of 25 when the crime occurred is entitled to present mitigation documents pursuant to *People v. Franklin* and Penal Code section 3051.
19. The Office's position is that a person's age and the "diminished culpability of youth," a person's mental illness, or cognitive impairment, or a person's intoxication is relevant to the determination whether a petitioner meets the standard of "reckless indifference to human life."
20. On resentencing, this Office will dismiss enhancements consistent with our current enhancement policies and otherwise not seek a sentence that is inconsistent with this Office's current sentencing policies.

RESENTENCING UNIT

This Office declares that new Sentencing, Enhancement and Juvenile policies must apply with equal force to sentences where the judgment is final. Accordingly, this Office commits to a comprehensive review of cases where the defendant received a sentence that was inconsistent with the charging and sentencing policies in force after Tuesday, December 8, 2020, at 12:01 AM.

In such cases, this Office shall use its powers under Penal Code section 1170(d)(1) to recommend recall and resentencing. While priority shall be given to the cases enumerated below, the ultimate goal shall be to review and remediate every sentence that does not comport with the new Sentencing, Enhancement and Juvenile Policies.

Specifically, this Office commits to an expedited review of the following categories of cases, which are themselves a subset of a universe of 20,000-30,000 cases with out-of-policy sentences:

- People who have already served 15 years or more;
- People who are currently 60 years of age or older;
- People who are at enhanced risk of COVID-19 infection;
- People who have been recommended for resentencing by CDCR;

- People who are criminalized survivors;
- People who were 17 years of age or younger at the time of the offense and were prosecuted as an adult.

In formulating this policy, we rely on current statistical data from the California Department of Corrections and Rehabilitation (CDCR). (See Appendix.) Over time, the data may be subject to change; the urgency of our mission will not be. In seeking resentencing under 1170(d)(1), this Office shall argue that resentencing is necessary to eliminate disparity of sentences and to promote uniformity of sentencing.

At all types of resentencing hearings, filing deputies shall assist the Resentencing Court by setting forth any and all postconviction factors that support resentencing, including, but not limited to: mitigation evidence; CDCR disciplinary records and record of rehabilitation and positive programming while incarcerated; evidence that reflects whether age, time served, and diminished physical condition, if any, have reduced the risk for future violence; evidence that reflects that circumstances have changed since the original sentencing so that continued incarceration is no longer in the interest of justice; and post-release reentry plans, demonstrating any family or community support that is available upon release. (See e.g. Assembly Bill 1812, Pen. Code § 1170, subd. (d).)

LIFER PAROLE HEARINGS

This Office recognizes that parole is an effective process to reduce recidivism, ensure public safety, and assist people in successfully rejoining society. The CDCR's own statistics show that people paroled from life terms have a recidivism rate of less than four percent.

We are not experts on rehabilitation. While we have information about the crime of conviction, the Board of Parole Hearings already has this information. Further, as the crime of conviction is of limited value in considering parole suitability years or decades later, (see *In re Lawrence* (2008) 44 Cal.4th 1181; *In re Shaputis* (2008) 44 Cal. 4th 1241, 1255), the value of a prosecutor's input in parole hearings is also limited. Finally, pursuant to Penal Code section 3041, there is a presumption that people shall be released on parole upon reaching the Minimum Eligible Parole Date (MEPD), their Youth Parole Eligible Date, (YEPD), or their Elderly Parole Date (EPD). Currently, sentences are being served that are much longer than the already lengthy mandatory minimum sentences imposed. Such sentences are constitutionally excessive. (See *In re Palmer* (2019) 33 Cal.App.5th 1199.)

This Office's default policy is that we will not attend parole hearings and will support in writing the grant of parole for a person who has already served their mandatory minimum period of incarceration, defined as their MEPD, YEPD or EPD. However, if the CDCR has determined in their Comprehensive Risk Assessment that a person represents a "high" risk for recidivism, the DDA may, in their letter, take a neutral position on the grant of parole.

This Office will continue to meet its obligation to notify and advise victims under California law, and is committed to a process of healing and restorative justice for all victims.

YOUTH AND CHILDREN²

Currently, there are thousands of people from Los Angeles County serving sentences in the CDCR for crimes they committed as children. As recent developments in adolescent brain science teach us, young people are uniquely capable of rehabilitation and can lead productive lives as contributing members of society without serving long sentences.

Under new Juvenile Directives, available here, people who are 17 or younger at the time of their offense, will not be transferred to adult court and will remain committed to the youth system until they are mature enough to reenter society. Accordingly, any person who was a minor at the time of the offense and meets the eligibility requirements for recall and/or resentencing in adult court, including but not limited to actions pursuant to Penal Code sections 1170(d)(2), or 1170(d)(1), falls within this Office's policy to oppose transfer of minors to adult court. In such cases, DDAs shall join in any defense motion seeking to transfer the person to juvenile court for further proceedings, and the deputy on the case shall state the reasons for supporting such transfer, consistent with this Office's policies, on the record.

² We will refer to "youth," "child," or "children" instead of "juvenile(s)." The word "juvenile" is used almost exclusively as a way to describe children who are in the criminal legal system or as police descriptors. As a result, it has become a way to mark certain children as "other." To the extent possible, we will refer to the children in the criminal legal system as we would to all children, as "young person(s)" or "children." In accordance with Penal Code § 3051, we will refer to persons age 18 to 25 as "youths."

APPENDIX

A. Current CDCR Population from Los Angeles County

Table A.1: Descriptive Statistics for Demographic and Other Data

Variable	Level	Number	Percentage
Total CDCR Prison Population Originating in Los Angeles County = 29,556* (*excluding LWOP and condemned cases)			
<i>Gender</i>			
	Female	1,078	3.65%
	Male	28,478	96.35%
<i>Race/Ethnicity</i>			
	Black	11,139	37.69%
	Latinx/Hispanic	14,683	49.68%
	White	2,263	7.66%
	Other	1,471	4.98%
<i>Age Group</i>			
	Less than 20	31	0.10%
	20-29	5,945	20.11%
	30-39	9,098	30.78%
	40-49	6,489	21.95%
	50-59	5,043	17.06%
	60+	2,950	9.98%
<i>Offense Category</i>			
	Crimes Against Persons	25,391	85.91%
	Drug Crimes	461	1.56%
	Property Crimes	2,230	7.54%
	Other Crimes	1,474	4.99%
<i>Time Served</i>			
	Less than 5	8,307	28.11%
	5 to less than 10	6,762	22.88%
	10 to less than 15	5,123	17.33%
	15 to less than 20	3,446	11.66%

	20+	5,918	20.02%
<i>Sentence Type</i>			
	2nd Strike	8,106	27.43%
	3rd Strike	2,395	8.10%
	Determinate Sentence	9,841	33.30%
	Life with Parole	9,214	31.17%

Table A.1: Time Served, Age at Time of Offense, Current Age, Classification Scores, and Serious Rules Violation Reports (RVRs) Received in Past 3 Years

	Count/ Percentage of Total LAC Prison Population
Served 20 Years or More	5,918 (20.02%)
Served 15 Years or More	9,364 (31.68%)
Served 10 Years or More	14,487 (49.02%)
Served 7 Years or More	18,206 (61.60%)
Currently 60 Years or Older	2,950 (9.98%)
Currently 65 Years or Older	1,367 (4.62%)
Age 25 or Younger at Time of Offense	13,410 (45.37%)
Age 18 or Younger at Time of Offense	3,291 (11.13%)
Age 17 or Younger (Under 18) at Time of Offense	1,557 (5.27%)

Age 16 or Younger at Time of Offense	778 (2.63%)
Age 15 or Younger at Time of Offense	255 (0.86%)
Classification Score of 25 or Below	12,297 (41.61%)
Classification Score of 19 or Below	10,700 (36.20%)
No Serious RVRs in Past 3 Years	25,501 (86.28%)
CS of 25 or Below with No Serious RVRs in Past 3 Years	12,016 (40.66%)
CS of 19 or Below with No Serious RVRs in Past 3 Years	10,490 (35.49%)

Table A.3: Eligibility by Offense Type and Time Served (mix of lower-level offenses)

Offense Type	Served 10 Years or More		Served 7 Years or More		All	
	Frequency	Percentage of Total Prison Population Originating in LAC*	Frequency	Percentage of Total Prison Population Originating in LAC*	Frequency	Percentage of Total Prison Population Originating in LAC*
Drug Offenses	132	0.45%	158	0.53%	461	1.56%
Residential Burglaries	476	1.61%	688	2.33%	1,643	5.56%
Robberies	2,045	6.92%	2,828	9.57%	5,297	17.92%
Residential Burglaries & Robberies	2,521	8.53%	3,516	11.90%	6,940	23.48%
Non-Sex Offenses	12,393	41.93%	15,618	52.84%	26,029	88.07%
Non-Murder & Non-Sex Offenses	5,731	19.39%	7,937	26.85%	17,048	57.68%
All Non-Violent, Non-Serious, Non-Sex Crimes	527	1.78%	644	2.18%	2,236	7.57%
All Non-Non-Non Crimes (with Residential Burglaries)	1,003	3.39%	1,332	4.51%	3,879	13.12%
All Non-Non-Non Crimes (with Res. Burglaries & Robberies)	3,048	10.31%	4,160	14.07%	9,176	31.05%
All Incarcerated*	14,463	48.93%	18,167	61.47%	29,556	100.00%

*The total prison population originating in LAC in this table excludes all LWOP and condemned cases.

B. Background on Our Incarceration Crisis

Our ballooning prison population [did not result from an increase in crime](#). In fact, our crime rate has declined dramatically since the early 1990's. Rather, [harsher sentencing laws like](#) Life Without the Possibility of Parole, an increase in mandatory minimum sentences for indeterminate sentences, Three Strikes sentencing, and requirements that that restrict people to complete 85% of their imposed time now keep people in prison for longer than ever before, long after they pose any safety risk to their community.

There are currently [more people serving life sentences](#) in America than were locked up in prison at all during the 1970s. [One in seven](#) people behind bars is serving a life sentence.

California has led the way in this explosion. We had [23,000 people](#) incarcerated in 1980. By 2000, [we had over 160,000](#) people. By 2010 we had 164,000. In the last 10 years, spurred by a [United States Supreme Court decision](#) holding that California's overcrowded prisons constituted cruel and unusual punishment, as well as by a growing public awareness that we are incarcerating too many people for too long, we have moved to reduce our prison population. However, we have five times as many people incarcerated as we had in 1980.

California spent [a shocking \\$15.7 billion on prisons in 2019-2020](#). This represents 7.4% of all state funds. This is occurring while people are sleeping in our streets, our parks are trash-ridden, our schools are in need of repair, our once-free public universities are underfunded and tuition rises, people are hungry, and we need major infrastructure repair to even do things like provide clean water to the people of California.

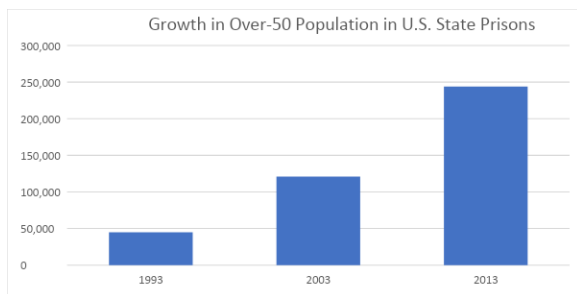
In Los Angeles County alone we currently have almost 30,000 people in CDCR.

Nationally, our criminal justice policies have disproportionately impacted minority populations. 60% of people in prison are Black, despite making up just 13% of the population. One out of every five Black persons behind bars has a life sentence.

Almost 93% of people sent to prison from Los Angeles County are Black people and people of color. Black people are approximately 9% of Los Angeles's population. They constitute 38% of Los Angeles's state prison population. We can no longer deny that our system of hyper-criminalization and incarceration is anything other than racist.

The incarceration rate of women [is also on the rise](#). In 1980, there were 13,206 women in prison; in 2017, there were 111,360.

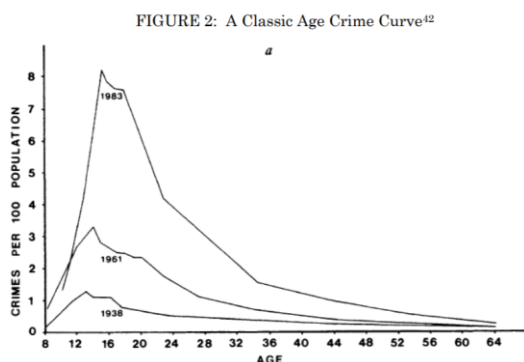
Harsh sentencing laws have also meant that the prison population is old. If we continue at current rates, [one in three people behind bars](#) in state prisons will be over 50 by 2030. In 1993, there were 45,000 people over 50 in U.S. state prisons. Twenty years later, there were 243,800. The growth in the aging prison population has continued. Since 1999, New York has decreased its prison population by 30 percent [but during that same time span saw a doubling](#) of its over 50 population. Between 2001 and 2014, [29,500 people over 55](#) died in federal and state prisons.



Current estimates show that the U.S. spends upwards of \$16 billion a year to care for its elderly population. In 2013 in Virginia, **nearly half of the Department of Corrections budget** for prisoner health care went to caring for the elderly.

Recidivism and the Age-Crime Curve

Research consistently shows that individuals age out of crime, even those convicted of the most serious offenses. By the time individuals reach their thirties, their odds of committing future crimes drop dramatically. Much of this is due to neurological changes, which take place in profound ways up until an individual turns 26. The prefrontal cortex, which is highly involved in executive functioning and behavior control, continues to develop until age 26, making it harder for young people to make what adults consider logical and appropriate decisions.



Given these changes, it makes little sense to sentence children and adolescents to lengthy terms of incarceration without any meaningful opportunity for review, as the odds are extremely high that those children can be rehabilitated and reenter society.

Likewise, incarcerating an aging population makes little penological sense. Those aged 50-64 have [far lower recidivism rates](#) than the national average: seven percent compared to 43.3 percent. And those over 54 have just a four percent recidivism rate. In other words, we are spending billions to lock up people, 96% of whom will not even commit a technical violation once released.

Jurisdictions that allow for a “second look” or increased parole opportunities

“Look back” provisions allow sentenced individuals to petition for a reduced sentence after they have shown meaningful signs of rehabilitation that indicate an ability to return to society. While several jurisdictions have parole eligibility, only California has enacted a robust “look back” Act thus far. Delaware has implemented one to address those sentenced under habitual offender laws.

Federal: Los Angeles Congresswoman Karen Bass and United States Senator Cory Booker introduced a bill for people serving in federal prison to reevaluate cases involving people [over 50 years old and for those who have served at least ten years of a sentence](#), creating a rebuttable presumption of release for those over 50.

District of Columbia: Recently, the District of Columbia passed Second Look Sentencing for youths. This month, the Council [is poised to expand this second look resentencing](#) to all who were under the age of 25 at the time of the crime.

Oregon: in January 2020, [Oregon's Second Look Resentencing](#), for minors [SB 1008](#) goes into effect.

Florida: Florida allows a second look for children who were sentenced as adults for offenses committed before their 18th birthday.

Delaware: People convicted before their 18th birthday of a first-degree murder may petition for modification after 30 years, and after 20 years for any other offense.

Colorado: Senate Bill 16-180 requires the Department of Corrections (DOC) to create a program for kids sentenced as adults for a felony and presumes release upon participation after 3 years.

California: has made many of its recent changes retroactive, including resentencing for those convicted of a third strike, Proposition 47, SB 1437, Penal Code section 1170, subsection (d), among others. California also [provides automatic parole review](#) when a person commits the crime before the age of 26 and has served 15, 20, or 25 years, depending on the controlling offense. California has also expanded elderly parole this year with [AB 3234](#) so that people who are 50 and have served at least 20 years are eligible for parole consideration.

The policies of this Special Directive supersede any contradictory language of the Legal Policies Manual.

gg

EXHIBIT 6

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 FOR THE COUNTY OF LOS ANGELES
3 DEPARTMENT 125 HON. LAURA F. PRIVER, JUDGE
4
5 PEOPLE OF THE STATE OF CALIFORNIA,)
6 PLAINTIFF,)
7 VS.) SUPERIOR COURT
8 VICTOR MACHUCA,) NO. BA477781
9 DEFENDANT.)
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REPORTER'S TRANSCRIPT OF PROCEEDINGS

THURSDAY, DECEMBER 10, 2020

APPEARANCES:

FOR THE PLAINTIFF: OFFICE OF THE DISTRICT ATTORNEY
BY: MEGAN LOEBL, DEPUTY
211 WEST TEMPLE STREET
LOS ANGELES, CALIFORNIA 90012

FOR THE DEFENDANT: ALEX KESSEL
ATTORNEY AT LAW
15910 VENTURA BOULEVARD
SUITE 1030
ENCINO, CALIFORNIA 91436

CANDACE J. HENRY, #9311
OFFICIAL REPORTER

Document received by the CA 2nd District Court of Appeal.

1 CASE NAME: PEOPLE VS. VICTOR MACHUCA
2 CASE NUMBER: BA477781
3 LOS ANGELES, CALIFORNIA THURSDAY, DECEMBER 10, 2020
4 DEPARTMENT 125 HON. LAURA F. PRIVER, JUDGE
5 REPORTER: CANDACE J. HENRY, CSR #9311
6 TIME: 9:46 A.M.
7

8 APPEARANCES:

9 ALEX R. KESSEL, ATTORNEY AT LAW, FOR THE
10 DEFENDANT; MEGAN LOEBL, DEPUTY DISTRICT ATTORNEY,
11 FOR THE PEOPLE OF THE STATE OF CALIFORNIA;
12

13 THE COURT: MR. MACHUCA. HE'S PRESENT IN COURT
14 WITH COUNSEL. PEOPLE ARE REPRESENTED.

15 STATE YOUR APPEARANCES.

16 MR. KESSEL: GOOD MORNING TO THE COURT.
17 ALEX KESSEL FOR THE DEFENDANT.

18 MS. LOEBL: GOOD MORNING, YOUR HONOR. MEGAN LOEBL
19 FOR THE PEOPLE. WE'RE ZERO OF 45.

20 MR. KESSEL: WE'RE MAKING PROGRESS TOWARD A
21 DISPOSITION. I DON'T THINK WE HAVE ONE NOW. I CAN SAY
22 THAT, YOUR HONOR. THERE'S A FEW OTHER THINGS THAT WE
23 NEED TO DISCUSS. IT WOULD BE MY REQUEST, AND I DON'T
24 THINK THE D.A. HAS ANY OPPOSITION, TO SET ANOTHER
25 PRETRIAL.

26 MS. LOEBL: YES.

27 MR. KESSEL: I DON'T THINK IT'S THE RIGHT TIME TO
28 TRY SOMETHING RIGHT NOW JUST PERSONALLY, YOUR HONOR, BUT

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1 I DON'T THINK -- I DON'T THINK BOTH SIDES ARE PUSHING
2 TOWARD A TRIAL.

3 THE COURT: WHAT'S YOUR ACTUAL REQUEST? WHAT DATE
4 IS YOUR ACTUAL REQUEST?

5 MR. KESSEL: OKAY. THANK YOU.

6 THE COURT: I DON'T KNOW. IT DEPENDS ON WHAT IT
7 IS AND HOW MUCH TIME YOU WANT, BUT WE'RE ZERO OF 45 SO
8 YOU'RE ALREADY INTO NEXT YEAR.

9 MS. LOEBL: THE PEOPLE ALSO HAVE SOME MOTIONS TO
10 MAKE ON THIS CASE TODAY, YOUR HONOR.

11 THE COURT: OKAY. WELL, YOU CAN MAKE WHATEVER
12 MOTIONS YOU WANT, BUT I'M GOING TO INDICATE TO YOU THAT
13 THE COURT MAY NOT GRANT THEM.

14 MR. KESSEL?

15 MR. KESSEL: YOUR HONOR, JANUARY 28TH ZERO OF 30.
16 IF THE COURT CAN ACCOMMODATE US.

17 THE COURT: WE CAN ACCOMMODATE THAT BUT YOU NEED
18 TO KNOW THAT'S THE LAST PRETRIAL.

19 MS. LOEBL: DID YOU SAY THE 28TH?

20 MR. KESSEL: JANUARY 28TH. DOES THAT WORK FOR
21 YOU, MEGAN?

22 MS. LOEBL: THAT'S FINE.

23 THE COURT: AND IT NEEDS TO EITHER JUST BE
24 DISPOSED OF OR GO WITHIN THE PERIOD. OKAY? BECAUSE
25 FROM 2019, I APPRECIATE -- BUT RIGHT NOW, IT'S THE
26 HOLIDAYS, COVID IS SPIKING -- THERE'S LOTS OF ISSUES, I
27 GUESS. I UNDERSTAND WHY YOU WOULDN'T WANT TO GO OUT TO
28 TRIAL RIGHT NOW, BUT I THINK YOU HAVE TO EITHER TRY IT

1 OR DISPOSE OF IT.

2 MR. KESSEL: THIS HAS BEEN AN UNUSUAL YEAR.

3 THE COURT: THAT'S WHY YOU'VE GOTTEN ALL YOUR
4 MOTIONS GRANTED IN THIS COURT.

5 MR. KESSEL: AND IN OTHER COURTS. YOU'RE RIGHT.

6 THE COURT: YOU'RE AHEAD; RIGHT? THERE'S A --

7 MR. KESSEL: I'M GOING TO SHUT UP.

8 THE COURT: I'LL START WITH THAT.

9 THEN I'LL HEAR WHAT YOU NEED TO SAY,
10 MS. LOEBL.

11 MS. LOEBL: THANK YOU.

12 THE COURT: SIR, DO YOU AGREE TO THE DATE OF
13 JANUARY 28TH WITH THE UNDERSTANDING YOU'LL HAVE YOUR
14 TRIAL ON THAT DATE OR WITHIN 30 CALENDAR DAYS?

15 THE DEFENDANT: YES, YOUR HONOR.

16 THE COURT: OKAY. COUNSEL JOIN?

17 MR. KESSEL: YES, YOUR HONOR.

18 THE COURT: ALL RIGHT. GIVE ME ONE SECOND,
19 MS. LOEBL. I LEFT SOMETHING ON MY DESK.

20 MS. LOEBL: NO PROBLEM. THANK YOU, YOUR HONOR.

21
22 (PAUSE IN THE PROCEEDINGS.)

23
24 THE COURT: ALL RIGHT. YOU MAY BE HEARD.

25 MS. LOEBL: THANK YOU, YOUR HONOR. THE PEOPLE ARE
26 MAKING A MOTION TODAY TO DISMISS THE ALLEGATIONS FOR
27 THIS CASE IN VIOLATION OF PENAL CODE SECTION 12202.53(D)
28 AS WELL AS PENAL CODE SECTION 667.5 SUBSECTION (B) FOR

1 THE GUN ENHANCEMENT AS WELL AS THE ONE-YEAR PRIORS
2 PURSUANT TO A SPECIAL DIRECTIVE SENT DOWN FROM
3 GEORGE GASCON.

4 MR. KESSEL: JUDGE, JUST ON THE 667(B) ONE-YEAR
5 PRIOR, THAT'S BEEN ABROGATED BY THE LEGISLATOR ANYWAY,
6 THERE IS NO ONE-YEAR PRIORS ANYMORE.

7 THE COURT: I WILL GRANT THE 667.5(B) BECAUSE
8 THAT, I AGREE WITH YOU, WAS A LEGISLATIVE CHANGE. OKAY.

9 MR. KESSEL: I'M SORRY?

10 THE COURT: THAT WAS A LEGISLATIVE CHANGE. AND I
11 WILL GRANT THE MOTION AS IT RELATES TO THE 667.5(B).

12 WITH REGARD TO THE 12022.53 ALLEGATION, THE
13 COURT WILL POINT OUT THAT THE STATUTE ITSELF DOES NOT
14 ALLOW YOU TO DISMISS THAT EXCEPT AT THE TIME OF
15 SENTENCE. AND IT IS NOT THE TIME OF SENTENCING. SO
16 THAT'S THE LEGAL REASON STATUTORILY.

17 WITH REGARD TO CASE LAW, THE COURT WILL
18 INDICATE TO THE PEOPLE, AND I ONE HUNDRED PERCENT
19 APPRECIATE THAT THE DIRECTIVE IS THE DIRECTIVE AND YOU
20 FEEL OBLIGATED -- YOU INDIVIDUAL DEPUTIES FEEL OBLIGATED
21 TO FOLLOW THE DIRECTIVES.

22 HOWEVER, THIS COURT DOES NOT BELIEVE THAT
23 THE PEOPLE ARE ENTITLED TO ABANDON THE PROSECUTION OF
24 THESE ALLEGATIONS THAT IS BASED UPON A DIRECTIVE. I
25 DON'T THINK -- I THINK YOU HAVE AN ETHICAL DUTY AND
26 OBLIGATION TO PURSUE JUSTICE AND TO PURSUE THE
27 ALLEGATIONS THAT YOU BELIEVE YOU CAN PROVE BEYOND A
28 REASONABLE DOUBT; RIGHT?

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1 SO, ALSO, THE DIRECTIVE IS NOT A
2 LEGISLATIVE CHANGE. UNLIKE THE 667.5(B)(1), IT DOES NOT
3 HAVE THE AUTHORITY IN LAW THAT ALLOWS YOU REALLY TO ACT
4 IN THIS FASHION. I UNDERSTAND IT CAME FROM THE TOP. I
5 UNDERSTAND WHY YOU'RE MAKING THE MOTION, BUT THE COURT
6 WILL DENY THE MOTION AS TO EACH AND EVERY ONE OF THE
7 OTHER ALLEGATIONS. YOU HAVE AN ETHICAL DUTY TO DO YOUR
8 JOB AND PROCEED WITH PROSECUTION. YOU SHOULD NOT BE
9 ALLOWED TO ABANDON THE PROSECUTION AT THIS JUNCTURE.

10 THE COURT WILL CITE THE CASE OF *PEOPLE*
11 *VERSUS ROMAN*, IT'S 92 CAL.APP.4TH, 141, WHICH DEALS WITH
12 SPECIAL DIRECTIVES AS IT RELATES TO A CHANGE IN
13 ADMINISTRATION IN THE D.A.'S OFFICE.

14 MR. KESSEL: JUDGE, JUST SINCE IT AFFECTS MY
15 CLIENT, OBVIOUSLY, THE PEOPLE'S MOTION, I JUST WANTED TO
16 ADD, OBVIOUSLY, I DON'T KNOW IF IT'S ABANDONING
17 PROSECUTION. IT'S -- THE D.A. IS AN EXECUTIVE BRANCH
18 WHICH TYPICALLY DECIDES WHAT TO PURSUE AND, ULTIMATELY,
19 WITH THE COURT'S PERMISSION IN A SENSE, WHAT TO OFFER.
20 AND I SEE IT MORE AS A PROSECUTORIAL DECISION AS THE
21 EXECUTIVE BRANCH WHAT TO PURSUE AND NOT TO PURSUE WHICH
22 IS WITHIN THE REALM OF THAT BRANCH, YOUR HONOR.

23 SO I JUST WANT TO INDICATE, FOR WHATEVER
24 IT'S WORTH, I DON'T KNOW IF IT'S ABANDONMENT OF THE LAW
25 OR THE CASE VERSES A DECISION ABOUT WHAT IS APPROPRIATE
26 TO CHARGE, WHICH IS DONE ON A DAILY BASIS. IT ALSO
27 DECIDES WHAT'S APPROPRIATE TO CHARGE.

28 THE COURT: THE COURT UNDERSTANDS THE ROLE OF THE

1 D.A. IN TERMS OF THEIR FILING AUTHORITY AND CHOICE WHAT
2 TO FILE -- THEY CHOOSE TO FILE. ALL RIGHT? I CAN'T
3 ORDER THEM TO FILE SOMETHING. BUT IN THIS CASE, THEY
4 CHOSE TO FILE THIS. AND A CHANGE OF ADMINISTRATION
5 DOESN'T CHANGE THAT. AND, YOU KNOW, THE LAW REQUIRES
6 CERTAIN THINGS AS WELL THAT IS NOT A DIRECTIVE -- CHANGE
7 IN ADMINISTRATION.

8 MR. KESSEL: RIGHT. AND, YOU KNOW, 90 PERCENT OF
9 THE PLEA BARGAIN ENHANCEMENTS ARE DROPPED. THE CASES
10 THAT YOU SAY CANNOT BE PURSUED BEYOND A REASONABLE
11 DOUBT, CHARGES FOR PLEA BARGAIN IS DROPPED AND DISMISSED
12 AND STRICKEN ALL THE TIME, NOTWITHSTANDING THERE MIGHT
13 BE EVIDENTIARY SUPPORT FOR THOSE.

14 THE COURT: I PERFECTLY WELL UNDERSTAND THAT. AND
15 THE COURT UNDERSTANDS THAT YOU AND YOUR -- ON BEHALF OF
16 YOUR CLIENT, AND THE PEOPLE ON BEHALF OF THEIR -- THE
17 STATE OF CALIFORNIA, THE PEOPLE THEY REPRESENT, HAVE AN
18 ABSOLUTE RIGHT, OBLIGATION REALLY, TO TALK ABOUT AND SEE
19 IF YOU CAN RESOLVE THE CASE SHORT OF TRIAL.

20 IF YOU COME UP WITH A DISPOSITION, THE
21 COURT CAN EITHER CHOOSE TO ACCEPT THAT DISPOSITION AS
22 FAIR AND JUST OR NOT; RIGHT? AND, NORMALLY, THE COURT
23 -- YOU KNOW, I'VE ACCEPTED MANY DISPOSITIONS. I DON'T
24 THINK IN TERMS OF ANY OF YOUR CLIENTS HAVE I EVER, EVER
25 SAID NO. OKAY?

26 MR. KESSEL: RIGHT.

27 THE COURT: BUT THE COURT HAS TO BELIEVE THAT THE
28 DISPOSITION IS FAIR AND JUST AND CONFORMS WITH THE LAW;

Document received by the CA 2nd District Court of Appeal.

1 RIGHT?

2 AND I'LL ALSO POINT OUT THE COURT FEELS
3 THAT WHERE THE DIRECTIVE FAILS, IF YOU WILL, IS IN
4 PROTECTING THE RIGHTS OF VICTIMS. AND THE VICTIMS OF
5 THE STATE OF CALIFORNIA HAVE A CONSTITUTIONAL RIGHT TO
6 BE HEARD IN ALL PROSECUTIONS. AND I DON'T -- I DON'T
7 HAVE ANY INFORMATION ABOUT THE VICTIMS IN THIS CASE OR
8 HOW THEY FEEL ABOUT THIS MOTION. AND THIS COURT WILL
9 CONTINUE TO ACCEPT DISPOSITIONS AND PLEA AGREEMENTS THAT
10 IT FEELS ARE APPROPRIATE AND JUST.

11 MR. KESSEL: UNDERSTOOD. WELL, WE'RE STILL
12 WORKING ON A DISPOSITION, YOUR HONOR.

13 SO YOUR HONOR ALREADY SET THE DATE OF THE
14 28TH?

15 THE COURT: YES. AND I TOOK THE TIME WAIVER.

16 MR. KESSEL: YOU DID.

17 THE COURT: DID YOU JOIN IN THIS TIME WAIVER?

18 MR. KESSEL: YES.

19 MS. LOEBL: I BELIEVE SO.

20 THE COURT: THANK YOU.

21 MR. KESSEL: THANK YOU, YOUR HONOR.

22 HAVE A NICE DAY AND HOLIDAYS IF I DON'T SEE
23 YOU.

24 THE COURT: OKAY.

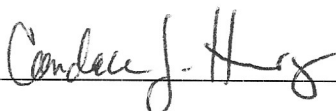
25
26 (AT 9:55 A.M., AN ADJOURNMENT WAS TAKEN
27 UNTIL THURSDAY, JANUARY 28, 2021,
28 DEPARTMENT 125 AT 8:30 A.M.)

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 FOR THE COUNTY OF LOS ANGELES
3 DEPARTMENT 125 HON. LAURA F. PRIVER, JUDGE
4

5 PEOPLE OF THE STATE OF CALIFORNIA,)
6 PLAINTIFF,) NO. BA477781
7 VS.) REPORTER'S
8 VICTOR MACHUCA,) CERTIFICATE
9 DEFENDANT.)
10 _____)
11

12 I, CANDACE J. HENRY, CSR #9311, OFFICIAL REPORTER
13 OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF
14 LOS ANGELES, DO HEREBY CERTIFY THAT THE FOREGOING PAGES
15 1 THROUGH 7 COMPRISE A FULL, TRUE, AND CORRECT
16 TRANSCRIPT OF THE PROCEEDINGS AND TESTIMONY TAKEN IN THE
17 MATTER OF THE ABOVE-ENTITLED CAUSE ON THURSDAY,
18 DECEMBER 10, 2020.

19 DATED THIS 14TH DAY OF DECEMBER, 2020.
20

21  , CSR #9311
22 OFFICIAL REPORTER
23
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25
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27
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Document received by the CA 2nd District Court of Appeal.

EXHIBIT 7

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

DEPARTMENT HON. DOUGLAS SORTINO, JUDGE PRESIDING

THE PEOPLE OF THE STATE OF CALIFORNIA,)
)
 PLAINTIFF,)

VS.

CASE NO. KA120979-01

01) FRANKY PROVENCIO,
DEFENDANT.

REPORTER'S TRANSCRIPT OF COURT PROCEEDINGS

DECEMBER 16, 2020

APPEARANCES:

FOR PLAINTIFF: GEORGE GASCON, DISTRICT ATTORNEY
BY: YOOBIN KANG-HERNANDEZ, DEPUTY
211 WEST TEMPLE STREET, SUITE 200
LOS ANGELES, CALIFORNIA 90012

FOR DEFENDANT: RICARDO GARCIA, PUBLIC DEFENDER
BY: ANNA ARMENTA-RIGOR
210 WEST TEMPLE STREET, 19TH FLOOR
LOS ANGELES, CALIFORNIA 90012

JILL PINCIN, CSR #10135
OFFICIAL REPORTER

1 CASE NAME: PEOPLE VS. PROVENCIO
2 CASE NUMBER: KA120979-01
3 LOS ANGELES, CALIFORNIA HON. DOUGLAS SORTINO, JUDGE
4 DEPT. EA-N DECEMBER 16, 2020
5 REPORTER: JILL PINCIN, CSR #10135
6 TIME: A.M. SESSION
7

8 APPEARANCES:

9 DEFENDANT PROVENCIO, PRESENT IN
10 COURT, IN CUSTODY, BEING REPRESENTED BY
11 ANNA ARMENTA-RIGOR, DEPUTY PUBLIC DEFENDER;
12 YOOBIN KANG-HERNANDEZ, DEPUTY DISTRICT ATTORNEY,
13 REPRESENTING THE PEOPLE OF THE STATE OF CALIFORNIA.
14

15 THE COURT: PEOPLE VS. FRANKY PROVENCIO, CASE
16 NUMBER KA120979. MS. KANG-HERNANDEZ FOR THE PEOPLE.
17 MS. ARMENTA-RIGOR FOR THE DEFENDANT.

18 THE DEFENDANT IS PRESENT 0 OF 60 FOR
19 TRIAL. THE PEOPLE HAVE FILED, TODAY'S DATE, A PEOPLE'S
20 MOTION TO DISMISS ALL THE ALLEGATIONS ALLEGED IN THE CASE,
21 WHICH WOULD BE A 12022.7 ON COUNT 2, WHICH IS A 23153; A
22 PRIOR DUI FROM 2019 UNDER 23152(F).

23 IS THAT THE VARIOUS -- IS THAT ALL THE
24 ALLEGATIONS THAT ARE INVOLVED IN THIS CASE,
25 MS. KANG-HERNANDEZ?

26 MS. KANG-HERNANDEZ: YES, YOUR HONOR. SO IT WOULD
27 JUST BE THE GBI ALLEGATION AS TO COUNT 2. AND I WOULD LIKE
28 TO STATE ON THE RECORD --

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1 THE COURT: WHAT ABOUT COUNT 1? IT'S CHARGED AS A
2 MURDER. NOTHING IS GOING TO HAPPEN TO THAT; RIGHT?

3 MS. KANG-HERNANDEZ: YES.

4 THE COURT: THIS IS A WATSON MURDER, BASED UPON THE
5 PRIOR?

6 MS. KANG-HERNANDEZ: YES, YOUR HONOR. HOWEVER,
7 COUNT 1 GOES TO THE DECEASED VICTIM, JULIENNE. COUNT 2 IS A
8 SEPARATE VICTIM, WHICH IS HIS FATHER. HE'S PRESENT IN THE
9 COURT AND WOULD LIKE TO BE HEARD BY THE COURT PURSUANT TO
10 MARSY'S LAW.

11 THE COURT: THAT'S FINE.

12 WHAT WERE THE INJURIES TO THE VICTIM
13 IN COUNT 2?

14 MS. KANG-HERNANDEZ: HE WAS IN A COMA FOR TWO
15 WEEKS, AND MORE, AND HE IS PERMANENTLY DISABLED.

16 THE COURT: DISABLED IN WHAT MANNER?

17 MS. KANG-HERNANDEZ: HE WILL BE ABLE TO TELL YOU
18 THAT, YOUR HONOR.

19 THE COURT: AND YOU'RE SEEKING TO STRIKE THE PRIOR
20 DUI, WHICH IS ONLY FROM 2019?

21 MS. KANG-HERNANDEZ: NO, YOUR HONOR. I AM NOT
22 SEEKING TO --

23 THE COURT: JUST THE GBI ALLEGATION?

24 MS. KANG-HERNANDEZ: YES, YOUR HONOR. THE ORDER
25 FROM THE D.A. ONLY ASKS ME TO STRIKE THE ENHANCEMENTS AS IT
26 IS ALLEGED IN COUNT 2.

27 THE COURT: OKAY.

28 YOU FILED A DOCUMENT TODAY'S DATE -- A

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1 WRITTEN DOCUMENT TO DISMISS THE GBI ALLEGATION. IT RECITES
2 MR. GASCON'S DIRECTIVE, 20 - 08. CORRECT ME IF I'M WRONG; MY
3 UNDERSTANDING, THOUGH, IS THAT THAT DIRECTIVE APPLIES TO ALL
4 FELONY CASES AND ENHANCEMENTS, REGARDLESS OF THE PARTICULAR
5 FACTS AND CIRCUMSTANCES OF THE CASE OR OF THE INDIVIDUAL
6 DEFENDANT.

7 IS THAT CORRECT?

8 MS. KANG-HERNANDEZ: THAT IS CORRECT, YOUR HONOR.
9 HOWEVER, THERE IS A CAVEAT WHEN THE CHARGE ITSELF REQUIRES
10 THE PRIOR TO BE ALLEGED AS A DUI WITH A PRIOR, THAT IT HAS AN
11 EXCEPTION. THAT IS MY UNDERSTANDING.

12 THE COURT: ALL RIGHT.

13 BUT IN TERMS OF THE GBI ALLEGATION,
14 YOU'RE SEEKING TO DISMISS THAT PURSUANT TO THE SPECIAL
15 DIRECTIVE; AND IT APPEARS, BASED UPON YOUR MOTION THAT YOU
16 HAVE FILED, WHICH INCLUDES IT AS AN EXHIBIT, THAT THIS IS A
17 BLANKET DIRECTIVE DIRECTED TO ALL D.A.'S TO STRIKE ANY STRIKE
18 PRIORS OR ANY ENHANCEMENTS WITHOUT REGARD TO THE INDIVIDUAL
19 FACTS AND CIRCUMSTANCES OF THE INDIVIDUAL CASE, OR OF THE
20 INDIVIDUAL DEFENDANT; AND THAT IS BEING MADE AS A REQUEST
21 PURSUANT TO 1385, IN THE INTEREST OF JUSTICE.

22 IS THAT CORRECT?

23 MS. KANG-HERNANDEZ: THAT IS CORRECT.

24 THE COURT: ALL RIGHT.

25 I'LL HEAR FROM THE VICTIM WHO IS THE
26 SUBJECT OF THE DUI.

27 MS. KANG-HERNANDEZ: THAT IS MR. PETER GEORGE.

28 THE BAILIFF: YOU KNOW WHAT? I'LL HAVE HIM STAND

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1 HERE.

2 THE COURT: ALL RIGHT.

3 MR. GEORGE, YOU WERE IN THE VEHICLE WHEN
4 THE ACCIDENT OCCURRED?

5 THE WITNESS: YES.

6 THE COURT: AND YOU WERE INJURED?

7 THE WITNESS: YES.

8 THE COURT: HOW LONG WERE YOU IN A COMA?

9 THE WITNESS: TWO WEEKS.

10 THE COURT: DO YOU HAVE ANY REMAINING OR LASTING
11 INJURIES FROM THIS INCIDENT?

12 THE WITNESS: TWO STROKES, AND EVERY BONE IN MY
13 LEFT LEG WAS BROKEN.

14 THE COURT: YOU'VE YOU HAD TWO STROKES BECAUSE OF
15 THE TIME IN THE COMA?

16 THE WITNESS: YES, BECAUSE OF THE ACCIDENT.

17 THE COURT: YOU HAD HEAD INJURIES?

18 THE WITNESS: YEAH. I HAD A CONCUSSION.

19 THE COURT: I'M NOT MEANING TO BE DEMEANING TO YOU.
20 I'M JUST TRYING TO GET THIS ON THE RECORD.

21 THE WITNESS: NO, NO, NO.

22 THE COURT: SO YOU HAD HEAD INJURIES AND BROKEN
23 BONES IN YOUR LEGS?

24 THE WITNESS: YEAH. EVERY BONE IN MY LEFT LEG
25 BROKE; TIBIA, FIBULA, CALCANEUS.

26 THE COURT: ANY LONG-TERM MENTAL ISSUES BECAUSE OF
27 THE STROKES?

28 THE WITNESS: WELL, NO. THEY SAY YOU HAVE TO WAIT

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1 FOR THREE YEARS TO KNOW WHERE YOU'RE AT.

2 THE COURT: OKAY.

3 SO AT THIS POINT, YOU'RE NOT SURE, BUT
4 YOUR HOPEFUL?

5 THE WITNESS: TRYING TO BE, YEAH.

6 THE COURT: HOW ABOUT ANY PHYSICAL INCAPACITY FROM
7 THE INJURIES TO THE LEG?

8 THE WITNESS: I'LL LIMP FOR THE REST OF MY LIFE,
9 AND I'LL HAVE POST-TRAUMATIC ARTHRITIS, BECAUSE OF THE INJURY
10 TO THE CALCANEUS.

11 THE COURT: BECAUSE OF THE DAMAGE TO THE BONE AND
12 THE JOINT, YOU'RE LIKELY TO HAVE ARTHRITIS?

13 THE WITNESS: YEAH. IMMEDIATELY.

14 THE COURT: ANYTHING ELSE YOU WANT TO TELL ME ABOUT
15 THE INJURIES YOU SUFFERED?

16 THE WITNESS: YEAH. MY STERNUM BROKE, AND DAMAGE
17 TO THE HEART.

18 THE COURT: IS THE DAMAGE TO YOUR HEART LONG TERM?

19 THE WITNESS: LOOKS LIKE IT.

20 THE COURT: ALL RIGHT.

21 HAS IT CAUSED YOU ANY INABILITY TO
22 PERFORM WORK OR ANY OTHER ACTIVITIES THAT YOU USED TO
23 PERFORM?

24 THE WITNESS: YEAH.

25 THE COURT: WHAT'S THAT?

26 THE WITNESS: I CAN'T WALK VERY FAR. AND THE
27 MENTAL STUFF, WITH STROKES -- I CAN'T REMEMBER EVERYTHING. I
28 USED TO HAVE A PHOTOGRAPHIC MEMORY.

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1 THE COURT: ALL RIGHT.

2 MISTER -- OR JULIENNE G., THE PERSON YOU
3 WERE WITH, WHO WAS KILLED; WHAT WAS YOUR RELATIONSHIP TO THAT
4 PERSON?

5 THE WITNESS: I WAS HIS FATHER.

6 THE COURT: THIS WAS YOUR CHILD?

7 THE WITNESS: YES.

8 THE COURT: HOW OLD WAS YOUR CHILD?

9 THE WITNESS: HE WAS SIX.

10 THE COURT: I AM TERRIBLY SORRY. MY SYMPATHIES TO
11 YOU. I DON'T MEAN THAT IN ANY WAY OTHER THAN WITH GREAT
12 SINCERITY. I'M REALLY SORRY. I CANNOT EVEN IMAGINE WHAT
13 YOU'RE GOING THROUGH.

14 ANYTHING ELSE YOU WANT TO ADD?

15 WHAT WAS THE BLOOD ALCOHOL IN THIS CASE,
16 MS. KANG-HERNANDEZ?

17 MS. KANG-HERNANDEZ: YOUR HONOR, THIS IS
18 METHAMPHETAMINE CASE.

19 THE COURT: DRIVING WHILE UNDER THE INFLUENCE OF
20 DRUGS?

21 MS. KANG-HERNANDEZ: YES, YOUR HONOR.

22 THE COURT: HAVE THE PEOPLE DONE A FINAL ANALYSIS?
23 IS IT A BLOOD SAMPLE?

24 MS. KANG-HERNANDEZ: YES, YOUR HONOR.

25 THE COURT: DO YOU KNOW WHAT THE LEVEL OF
26 METHAMPHETAMINE WAS?

27 MS. KANG-HERNANDEZ: OFF THE TOP OF MY HEAD, IT'S
28 IN THE HUNDREDS.

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1 THE COURT: ALL RIGHT.

2 ANYTHING ELSE YOU'D LIKE TO ADD,

3 MS. ARMENTA-RIGOR?

4 MS. ARMENTA-RIGOR: NO.

5 THE COURT: ALL RIGHT.

6 MOTION IS DENIED. THIS REQUEST IS NOT
7 MADE -- IT MAY BE FACIALLY MADE IN THE INTEREST OF JUSTICE,
8 BUT MR. GASCON'S DIRECTIVE IS A BLANKET DIRECTIVE THAT
9 APPLIES TO ALL CASES AND ALL CIRCUMSTANCES, REGARDLESS OF THE
10 DEFENDANT, OR THE FACTS AND CIRCUMSTANCES OF THE CASE. IT
11 DOES NOT INDIVIDUALIZE THE CASES PURSUANT TO THEIR FACTS AND
12 CIRCUMSTANCES, OR INDIVIDUALIZE THE DEFENDANT, IN TERMS OF
13 HIS PRIOR HISTORY. I THINK UNDER THOSE CIRCUMSTANCES, IT IS
14 NOT A SUFFICIENT BASIS UNDER 1385 TO ARTICULATE OR SUPPORT A
15 FINDING OF A DISMISSAL IN THE INTEREST OF JUSTICE.

16 ADDITIONALLY, I WOULD INDICATE THAT IN
17 THIS CASE, HE HAS A PRIOR ALCOHOL OR DRUG RELATED DRIVING
18 CONVICTION WHICH AGGRAVATES THIS CASE. ONE VICTIM, A CHILD,
19 WAS KILLED. MR. GEORGE, THE FATHER, IS AT LEAST SOMEWHAT
20 PERMANENTLY DISABLED.

21 FOR ALL THOSE REASONS, LOOKING AT THE
22 FACTS OF THE CASE, IT IS NOT IN THE INTEREST OF JUSTICE TO
23 STRIKE ANY ALLEGATION OR ENHANCEMENT. AND MR. GASCON'S
24 DIRECTIVE, IN MY OPINION, ON ITS FACE, IS INSUFFICIENT TO
25 PROVIDE THAT; AND IN FACT, IS CONTRARY TO WHAT THE FACTS AND
26 CIRCUMSTANCES ARE AS DESCRIBED BY MS. KANG-HERNANDEZ AND WHAT
27 MR. GEORGE INDICATED. THE MOTION WILL BE DENIED.

28 MS. KANG-HERNANDEZ: YOUR HONOR, I MUST STATE ON

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1 THE RECORD, PER THE DIRECTIVE, THAT THE D.D.A. IS ORDERED,
2 AND I QUOTE, "THE SPECIAL DIRECTIVE THAT THE D.D.A., UPON THE
3 COURT'S UNWILLINGNESS TO DISMISS THE ENHANCEMENT, THAT THE
4 D.D.A. SHALL SEEK LEAVE OF THE COURT TO FILE AN AMENDED
5 CHARGING DOCUMENT PURSUANT TO PENAL CODE SECTION 1009.

6 THE COURT: 1009 INDICATES AS FOLLOWS:

7 AN INDICTMENT, ACCUSATION OR INFORMATION
8 MAY BE AMENDED BY THE DISTRICT ATTORNEY, AND AN AMENDED
9 COMPLAINT MAY BE FILED BY THE PROSECUTING ATTORNEY WITHOUT
10 LEAVE OF COURT AT ANY TIME BEFORE THE DEFENDANT PLEADS, OR A
11 MERGE TO THE ORIGINAL PLEADING IS SUSTAINED.

12 THE COURT IN WHICH AN ACTION IS PENDING
13 MAY ORDER OR PERMIT AN AMENDMENT OR INDICTMENT ACCUSATION OR
14 INFORMATION, OR THE FILING OF AN AMENDED COMPLAINT, QUOTE,
15 FOR ANY DEFECT OR INSUFFICIENCY AT ANY STAGE OF THE
16 PROCEEDINGS.

17 HE'S ALREADY ENTERED A PLEA, WHICH I
18 THINK ELIMINATES YOUR RIGHT WITHOUT LEAVE OF THE COURT TO
19 FILE AN AMENDED CHARGING DOCUMENT IN THIS CASE, WHICH WAS THE
20 INFORMATION. I SUPPOSE I CAN'T STOP YOU FROM FILING AN
21 AMENDED INFORMATION, BUT ONCE FILED, I CAN REFUSE TO ACCEPT
22 IT OR ARRAIGN THE DEFENDANT ON IT, UNLESS THE PURPOSE OF THE
23 AMENDED DOCUMENT IS TO CORRECT, QUOTE, A DEFECT OR
24 INSUFFICIENCY.

25 IS THERE ANY DEFECT OR INSUFFICIENCY IN
26 THE CURRENT INFORMATION THAT YOU ARE SEEKING TO REMEDY WITH
27 AN AMENDED INFORMATION?

28 MS. KANG-HERNANDEZ: AS AN OFFICER OF THE COURT,

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1 NO.

2 THE COURT: ALL RIGHT.

3 ANYTHING YOU WANT TO ADD,

4 MS. AMENTA-RIGOR?

5 MS. ARMENTA-RIGOR: NO.

6 THE COURT: THE CLERK HAS ADVISED ME THAT I CANNOT
7 PREVENT THE D.A. FROM FILING THAT DOCUMENT. SO FILE IT, IF
8 YOU WISH TO. BUT I WILL NOT ACCEPT IT, NOR WILL I ARRAIGN
9 THE DEFENDANT ON IT, IN LIGHT OF THE FACT THAT YOUR
10 STATEMENT, AS AN OFFICER OF THE COURT, THE PURPOSE OF IT IS
11 NOT TO REMEDY ANY DEFECT OR INSUFFICIENCY. SO FILE IT, IF
12 YOU NEED TO. I WILL NOT ACCEPT IT ON THE CURRENT RECORD, NOR
13 WILL I ARRAIGN THE DEFENDANT ON IT ON THE CURRENT RECORD.
14 THAT REQUEST IS DENIED.

15 MS. KANG-HERNANDEZ: MAY I RETURN THE SDT DOCUMENTS
16 TO THE COURT FILE?

17 THE COURT: YES.

18 WHAT DO YOU WANT TO DO ABOUT A TRIAL
19 DATE?

20 MS. ARMENTA-RIGOR: YOUR HONOR, REQUESTING ONE
21 FURTHER PRETRIAL DATE IN FEBRUARY.

22 THE COURT: ALL RIGHT.

23 WHEN DO YOU WANT TO COME BACK?

24 MS. ARMENTA-RIGOR: CAN WE HAVE FEBRUARY 18TH?

25 THE COURT: GIVE ME ONE SECOND. THE 18TH IS HEAVY.
26 CAN WE DO THE 17TH?

27 MS. ARMENTA-RIGOR: YES.

28 THE COURT: ALL RIGHT. FEBRUARY 17TH.

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1 MR. PROVENCIO, YOU HAVE A RIGHT TO TRIAL
2 WITHIN 60 DAYS. DO YOU GIVE THAT RIGHT UP AND AGREE IT MAY
3 GO TO FEBRUARY 16TH, OR WITHIN 60 -- FEBRUARY 17. DO YOU
4 GIVE UP YOUR RIGHT TO TRIAL WITHIN OF 60 DAYS, AND AGREE IT
5 CAN GO TO FEBRUARY 17TH OR WITHIN 60 DAYS?

6 THE DEFENDANT: YES.

7 THE COURT: COUNSEL JOIN?

8 MS. ARMENTA-RIGOR: YES.

9 THE COURT: 0 OF 60 ON THE 17TH.

10 AND MR. GEORGE, MY SYMPATHIES TO YOU AND
11 YOUR FAMILY.
12
13

14 **(MATTER WAS CONCLUDED)**
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SUPERIOR COURT FOR THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

DEPARTMENT EA-N

HON. DOUG SORTINO, JUDGE

THE PEOPLE OF THE STATE
OF CALIFORNIA,

PLAINTIFF,

VS.

01) FRANKY PROVENCIO,

DEFENDANT.

CASE NO. KA120979-01
REPORTER'S CERTIFICATE

I, JILL PINCIN, CSR NO. 10135, OFFICIAL REPORTER
OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE
COUNTY OF LOS ANGELES, DO HEREBY CERTIFY THAT THE FOREGOING
PAGES, 1 THROUGH 10, INCLUSIVE, COMPRISE A FULL, TRUE AND
CORRECT TRANSCRIPT OF THE PROCEEDINGS HELD IN THE
ABOVE-ENTITLED MATTER ON DECEMBER 16, 2020.

DATED THIS 23RD DAY OF DECEMBER, 2020.

Jill M. Pincin

JILL M. PINCIN, CSR NO. 10135
OFFICIAL REPORTER

Document received by the CA 2nd District Court of Appeal.

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Document received by the CA 2nd District Court of Appeal.

EXHIBIT 8

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 FOR THE COUNTY OF LOS ANGELES
3 DEPARTMENT 125 HON. LAURA F. PRIVER, JUDGE

4 PEOPLE OF THE STATE OF CALIFORNIA,)
5)
6 PLAINTIFF,)
7 VS.) SUPERIOR COURT
8 THOMAS HELO,) NO. PA090826
9 DEFENDANT.)
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REPORTER'S TRANSCRIPT OF PROCEEDINGS

THURSDAY, DECEMBER 10, 2020

APPEARANCES:

FOR THE PLAINTIFF: OFFICE OF THE DISTRICT ATTORNEY
BY: JANE BROWNSTONE, DEPUTY
211 WEST TEMPLE STREET
LOS ANGELES, CALIFORNIA 90012

FOR THE DEFENDANT: HEDDING LAW FIRM
BY: RONALD HEDDING
16000 VENTURA BOULEVARD
SUITE 1208
ENCINO, CALIFORNIA 91436

CANDACE J. HENRY, #9311
OFFICIAL REPORTER

Document received by the CA 2nd District Court of Appeal.

1 CASE NAME: PEOPLE VS. THOMAS HELO
2 CASE NUMBER: PA090826
3 LOS ANGELES, CALIFORNIA THURSDAY, DECEMBER 10, 2020
4 DEPARTMENT 125 HON. LAURA F. PRIVER, JUDGE
5 REPORTER: CANDACE J. HENRY, CSR #9311
6 TIME: 9:14 A.M.
7

8 APPEARANCES:

9 RONALD HEDDING, ATTORNEY AT LAW, FOR THE
10 DEFENDANT; JANE BROWNSTONE, DEPUTY DISTRICT
11 ATTORNEY, FOR THE PEOPLE OF THE STATE OF
12 CALIFORNIA;
13

14 THE COURT: ALL RIGHT. NUMBER THREE ON THE
15 COURT'S CALENDAR. MR. HELO IS PRESENT IN COURT IN
16 CUSTODY WITH COUNSEL. PEOPLE ARE REPRESENTED.

17 STATE YOUR APPEARANCES.

18 MR. HEDDING: GOOD MORNING, YOUR HONOR.
19 RONALD HEDDING ON HIS BEHALF.

20 MS. BROWNSTONE: GOOD MORNING, YOUR HONOR.
21 JANE BROWNSTONE, DEPUTY DISTRICT ATTORNEY, FOR THE
22 PEOPLE.

23 THE COURT: IT'S HERE FOR PRETRIAL. WHAT ARE YOU
24 -- WHAT WOULD YOU LIKE TO DO?

25 MS. BROWNSTONE: YOUR HONOR, THE DISTRICT
26 ATTORNEY, GASCON ISSUED SPECIAL DIRECTIVE 20-08 STATING
27 THAT OUR OFFICE WILL NO LONGER BE PROCEEDING ON
28 ALLEGATIONS AND SENTENCE ENHANCEMENTS. THERE IS A GREAT

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1 BODILY INJURY ENHANCEMENT ATTACHED TO THIS CASE.

2 PURSUANT TO MARCY'S LAW, I SPOKE TO THE
3 VICTIM. AND THE VICTIM -- WELL, THE VICTIM'S MOTHER ON
4 BEHALF OF THE VICTIM.

5 THE COURT: ALL RIGHT.

6 MS. BROWNSTONE: THE VICTIM'S MOTHER INDICATED
7 THAT EVEN THOUGH THIS CASE IS OVER TWO YEARS OLD, HER
8 FAMILY IS STILL SUFFERING THE RAMIFICATIONS OF THIS
9 CASE. AND THAT HER SON RECENTLY LOST HIS JOB DUE TO THE
10 PHYSICAL EFFECTS OF THIS ACCIDENT WHERE THE DEFENDANT
11 MOWED DOWN THE VICTIM ON FOOT WHILE IN THE CAR.

12 PURSUANT TO SPECIAL DIRECTIVE 20-08, I
13 WOULD MAKE A MOTION TO REQUEST THE COURT TO DISMISS THE
14 GREAT BODILY INJURY.

15 THE COURT: THAT REQUEST IS DENIED, ESPECIALLY IN
16 LIGHT OF THE FACT THAT THE VICTIMS ARE OBJECTING TO
17 THIS.

18 THE PEOPLE HAVE FILED THIS ALLEGATION AND
19 THE COURT BELIEVES YOU CANNOT ABANDON THE PROSECUTION OF
20 THIS MATTER AT THIS TIME BASED UPON CHANGE OF
21 ADMINISTRATION IN THE D.A.'S OFFICE. THE COURT IS NOT
22 GOING TO ALLOW -- I DON'T THINK IT'S JUST IF THE VICTIMS
23 ARE OBJECTING. AND I THINK IT'S INAPPROPRIATE.

24 AND I ALSO THINK THAT ALTHOUGH I UNDERSTAND
25 YOU'RE OPERATING UNDER YOUR DIRECTIVES, I THINK IT'S
26 UNETHICAL. SO THE COURT IS RELYING UPON *PEOPLE VERSUS*
27 *ROMAN* WHICH IS FOUND AT 92 CAL.APP.4TH, 141, WHICH
28 INDICATES THAT CHANGE IN ADMINISTRATION, NEW DIRECTIVE,

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1 IS NOT A CHANGE IN THE LAW. AND THAT YOU SHOULD NOT
2 ABANDON THE PROSECUTION BASED UPON NEW DIRECTIVE. IT'S
3 NOT A LEGISLATIVE CHANGE. SO THAT REQUEST IS DENIED.

4 MR. HEDDING: YOUR HONOR, WITH THE COURT'S
5 PERMISSION, CAN WE SET THE MATTER FOR ONE MORE PRETRIAL
6 DATE? I'M REQUESTING, IF IT'S A GOOD DATE FOR THE
7 COURT, 1/21.

8 THE COURT: ONE TWENTY-ONE.

9 THE CLERK: YOUR HONOR, WE HAVE ANOTHER WHEELCHAIR
10 ALREADY ON THAT DATE.

11 THE COURT: WE SET IT YESTERDAY. DO YOU HAVE A
12 DIFFERENT DATE AROUND THERE? JUST NOT THAT DATE.

13 MR. HEDDING: HOW ABOUT 1/25?

14 THE CLERK: THAT'S FINE.

15 THE COURT: OKAY. THAT WORKS FOR US. THANK YOU.

16 MR. HEDDING: THANK YOU.

17 THE COURT: I'M SORRY ABOUT THAT, BUT, YOU KNOW,
18 WITH THE WHEELCHAIRS, WE HAVE TO MANAGE.

19 MR. HEDDING: NO PROBLEM.

20 THE COURT: SO YOU WANT TO MAKE THAT ZERO OF 30?

21 MR. HEDDING: THAT'S FINE, YOUR HONOR.

22 THE COURT: MR. HELO, DO YOU AGREE TO THE DATE OF
23 JANUARY 25TH WITH THE UNDERSTANDING YOU'LL HAVE YOUR
24 JURY TRIAL ON THAT DATE OR WITHIN 30 CALENDAR DAYS?

25 THE DEFENDANT: YES, YOUR HONOR.

26 THE COURT: JOIN?

27 MR. HEDDING: YES.

28 THE COURT: OKAY. THAT WILL BE THE ORDER.

Document received by the CA 2nd District Court of Appeal.

1 MR. HEDDING: THANK YOU.

2 THE COURT: THANK YOU.

3
4 (AT 9:17 A.M., AN ADJOURNMENT WAS TAKEN
5 UNTIL MONDAY, JANUARY 25, 2020,
6 DEPARTMENT 125 AT 8:30 A.M.)
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Document received by the CA 2nd District Court of Appeal.

1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 FOR THE COUNTY OF LOS ANGELES
3 DEPARTMENT 125 HON. LAURA F. PRIVER, JUDGE
4

5 PEOPLE OF THE STATE OF CALIFORNIA,)
6 PLAINTIFF,) NO. PA090826
7 VS.) REPORTER'S
8 THOMAS HELO,) CERTIFICATE
9 DEFENDANT.)
10 _____)
11

12 I, CANDACE J. HENRY, CSR #9311, OFFICIAL REPORTER
13 OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF
14 LOS ANGELES, DO HEREBY CERTIFY THAT THE FOREGOING PAGES
15 1 THROUGH 4 COMPRISE A FULL, TRUE, AND CORRECT
16 TRANSCRIPT OF THE PROCEEDINGS AND TESTIMONY TAKEN IN THE
17 MATTER OF THE ABOVE-ENTITLED CAUSE ON THURSDAY,
18 DECEMBER 10, 2020.

19 DATED THIS 14TH DAY OF DECEMBER, 2020.
20

21 Candace J. Henry, CSR #9311
22 OFFICIAL REPORTER
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Document received by the CA 2nd District Court of Appeal.

EXHIBIT 9

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT 115

HON. MARK S. ARNOLD, JUDGE

PEOPLE OF THE STATE OF CALIFORNIA,)

PLAINTIFF,)

VS.)

RUDY DOMINGUEZ,)

DEFENDANT.)

SUPERIOR COURT
NO. BA466952-01

REPORTER'S TRANSCRIPT OF PROCEEDINGS

TUESDAY, DECEMBER 15, 2020

FOR THE PLAINTIFF:

OFFICE OF THE DISTRICT ATTORNEY
BY: JEFFREY HERRING, DEPUTY
211 WEST TEMPLE STREET
SUITE 200
LOS ANGELES, CALIFORNIA 90012

FOR THE DEFENDANT:

OFFICE OF THE PUBLIC DEFENDER
BY: TRACI BLACKBURN, DEPUTY
19-513 CRIMINAL COURTS BUILDING
210 WEST TEMPLE STREET
LOS ANGELES, CALIFORNIA 90012

CATHERINE A. ZINK, #9242
OFFICIAL REPORTER

Document received by the CA 2nd District Court of Appeal.

1 CASE NUMBER: BA466952-01
2 CASE NAME: PEOPLE VS. RUDY DOMINGUEZ
3 LOS ANGELES, CALIFORNIA TUESDAY, DECEMBER 15, 2020
4 DEPARTMENT 115 HON. MARK S. ARNOLD, JUDGE
5 REPORTER: CATHERINE A. ZINK, CSR #9242
6 TIME: 2:50 P.M.

7
8 APPEARANCES:

9 THE DEFENDANT IS PRESENT IN COURT WITH COUNSEL,
10 TRACI BLACKBURN, BAR PANEL ATTORNEY,
11 THE PEOPLE ARE REPRESENTED BY
12 JEFFREY HERRING, DEPUTY DISTRICT ATTORNEY.

13
14 THE COURT: WE'LL GO ON THE RECORD IN RUDY
15 DOMINGUEZ, BA466952.

16 WE HAVE A NEW DEFENSE COUNSEL?

17 MS. BLACKBURN: YES. TRACI BLACKBURN, DEPUTY
18 PUBLIC DEFENDER, ON BEHALF OF MR. DOMINGUEZ. HE'S
19 PRESENT IN CUSTODY.

20 THE COURT: MR. HERRING IS HERE FOR THE PEOPLE.

21 WE'RE AT ZERO OF 60 TODAY.

22 MR. HERRING: YES, YOUR HONOR. THE PEOPLE HAVE A
23 MOTION.

24 THE COURT: WHAT'S THAT?

25 MR. HERRING: CONSISTENT -- EXCUSE ME. AT THE
26 DIRECTION OF THE LOS ANGELES COUNTY DISTRICT ATTORNEY, IN
27 ACCORDANCE WITH SPECIAL DIRECTIVE 20-08 CONCERNING
28 ENHANCEMENTS AND ALLEGATIONS, AND IN THE INTEREST OF

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1 JUSTICE, THE PEOPLE HEREBY MOVE TO DISMISS ALL ALLEGED
2 SENTENCING ENHANCEMENTS NAMED IN THE INFORMATION --
3 EXCUSE ME -- IN THE INFORMATION FOR ALL COUNTS. IN
4 ADDITION, WE MOVE TO DISMISS ANY SPECIAL CIRCUMSTANCES
5 NAMED IN THE INFORMATION AT THIS POINT, IN THE INTEREST
6 OF JUSTICE, YOUR HONOR.

7 THE COURT: AND THE INTEREST OF JUSTICE IS MET HOW?

8 MR. HERRING: YOUR HONOR, I BELIEVE IT'S THE NEW
9 D.A.'S POSITION -- THE D.A.'S OFFICE POSITION THAT
10 EXTENDED PRISON SENTENCES IN LOS ANGELES COUNTY ARE FAR
11 TOO LONG; THAT THEY ARE COSTLY AND INEFFECTIVE AND HARM
12 PEOPLE IN UNDERSERVED COMMUNITIES.

13 THE COURT: HAVE YOU CONSULTED WITH THE VICTIM'S
14 FAMILY ON THIS?

15 MR. HERRING: I HAVE DISCUSSED WHAT THE D.A.'S
16 POSITION IS WITH THE FAMILY, YES.

17 THE COURT: AND WHAT DO THEY SAY -- ARE THEY
18 PRESENT IN COURT?

19 MR. HERRING: THEY ARE PRESENT IN COURT.

20 THE COURT: ARE ALL THESE FOUR PEOPLE -- ARE THEY
21 ALL --

22 MR. HERRING: THEY'RE THE VICTIM'S FAMILY, YES,
23 YOUR HONOR.

24 THE COURT: WHAT IS YOUR NAME, SIR?

25 THE WITNESS: HERNAN ROJO.

26 THE COURT: SPELL YOUR NAME.

27 THE WITNESS: HERNAN ROJO.

28 THE COURT: MR. ROJO?

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1 HERNAN ROJO: YES.

2 THE COURT: DID MR. HERRING TELL YOU WHAT THE
3 PEOPLE ARE ASKING, TO DISMISS THE SPECIAL CIRCUMSTANCES
4 AND DISMISS ALL OF THESE SENTENCING ALLEGATIONS?

5 HERNAN ROJO: YES.

6 THE COURT: HOW DO YOU FEEL ABOUT THAT?

7 HERNAN ROJO: I DON'T KNOW.

8 THE COURT: YOU DON'T KNOW?

9 HERNAN ROJO: WELL...

10 THE COURT: WHAT'S THIS MAN'S NAME IN THE FRONT
11 ROW?

12 FERNANDO ROJO: FERNANDO ROJO.

13 MR. HERRING: SENIOR.

14 THE COURT: THIS IS THE VICTIM'S FATHER?

15 MR. HERRING: YES.

16 THE COURT: MR. ROJO, DID MR. HERRING DISCUSS WITH
17 YOU WHAT THEIR INTENT IS TODAY?

18 FERNANDO ROJO: WHAT DID YOU SAY?

19 THE COURT: DID YOU SPEAK WITH MR. HERRING TODAY?

20 FERNANDO ROJO: YES.

21 THE COURT: DO YOU NEED TO SPEAK WITH AN
22 INTERPRETER?

23 FERNANDO ROJO: YES.

24 THE COURT: I'M SORRY, I DIDN'T KNOW THAT.

25 DID MR. HERRING TELL YOU THAT HE WANTS TO
26 COME INTO THE COURTROOM AND DISMISS THE FIREARM
27 ALLEGATIONS AND THE SPECIAL CIRCUMSTANCES ALLEGATIONS AS
28 TO THE MAN WHO IS ACCUSED OF KILLING YOUR SON?

1 FERNANDO ROJO: THIS IS FOR ME?

2 THE COURT: YES.

3 FERNANDO ROJO: I DIDN'T UNDERSTAND VERY WELL.

4 THE COURT: WHAT'S THE YOUNG GIRL'S NAME, THE LADY
5 IN THE FRONT ROW -- OR SECOND ROW?

6 AMERICA ROJO: AMERICA ROJO.

7 THE COURT: DID YOU NEED THE INTERPRETER, MS. ROJO?

8 ARE YOU RELATED TO THE DECEASED?

9 AMERICA ROJO: YES.

10 THE COURT: HOW?

11 AMERICA ROJO: HE'S MY BROTHER. HE'S MY BROTHER.

12 THE COURT: DID MR. HERRING ADVISE YOU OF WHAT HE'S
13 SEEKING TODAY?

14 AMERICA ROJO: YES.

15 THE COURT: WHAT DO YOU THINK ABOUT THAT?

16 AMERICA ROJO: ABOUT THE GUN, RIGHT?

17 THE COURT: I CAN'T HEAR YOU.

18 AMERICA ROJO: ABOUT THE GUN?

19 THE COURT: ABOUT DISMISSING THE FIREARM
20 ALLEGATIONS, DISMISSING THE SPECIAL CIRCUMSTANCES, AND
21 DISMISSING THE GANG ALLEGATIONS AS WELL.

22 AMERICA ROJO: IS THAT WHERE THEY -- IS THAT LIKE
23 THEY TAKE YEARS AWAY FROM US?

24 THE COURT: I JUST CAN'T HEAR HER.

25 MR. HERRING: SHE'S ASKING IF THEY TAKE YEARS AWAY
26 FROM HIM.

27 THE COURT: IF HE'S FOUND GUILTY AND THOSE
28 ALLEGATIONS WERE TRUE, YES. IT WOULD REDUCE HIS SENTENCE

1 SIGNIFICANTLY. A LOT. BY A LOT OF YEARS.

2 AMERICA ROJO: WELL, I FEEL LIKE -- WELL, I FEEL
3 LIKE IT'S NOT FAIR IF HE DOESN'T -- I THINK IT'S NOT FAIR
4 IF HE DOESN'T SERVE AS MUCH YEARS.

5 THE COURT: I CAN'T HEAR YOU. CAN YOU SPEAK
6 LOUDER?

7 SO WHAT DO YOU THINK ABOUT ELIMINATING ALL
8 OF THESE ALLEGATIONS THAT MR. HERRING'S OFFICE IS LOOKING
9 TO ELIMINATE?

10 AMERICA ROJO: I'M SORRY, I DON'T THINK IT'S FAIR.

11 THE COURT: DO YOU UNDERSTAND WHAT I'M ASKING YOU?

12 AMERICA ROJO: YEAH.

13 THE COURT: ARE YOU ABLE TO TELL ME?

14 ARE YOU CRYING?

15 WHY ARE YOU CRYING?

16 I'M GOING TO MAKE THIS EASIER, I'M GOING TO
17 COME DOWN.

18 WHY ARE YOU CRYING?

19 AMERICA ROJO: BECAUSE...

20 THE COURT: WHY ARE YOU CRYING?

21 AMERICA ROJO: I JUST FEEL THAT WE NEED JUSTICE AND
22 HE NEEDS -- IT'S JUST NOT FAIR THAT HE -- IF HE DOESN'T
23 GET AS MUCH YEARS.

24 THE COURT: SO YOU DON'T WANT TO SEE THESE THINGS
25 GET DISMISSED?

26 AMERICA ROJO: NO.

27 THE COURT: OKAY. THANK YOU.

28 WHO'S THE LADY?

1 AMERICA ROJO: THAT'S MY MOM.

2 MR. HERRING: DOES YOUR MOM NEED THE INTERPRETER?

3 THE COURT: MA'AM, CAN YOU COME UP HERE JUST SO
4 EVERYONE DOESN'T HAVE TO YELL?

5 WHAT'S YOUR NAME?

6 TERESA ROJO: TERESA ROJO.

7 THE COURT: MRS. ROJO, DID MR. HERRING, THE D.A.,
8 DID HE TELL YOU TODAY WHAT HE IS LOOKING TO DO BY
9 DISMISSING THE GUN ALLEGATIONS AND THE GANG ALLEGATIONS
10 AND THE SPECIAL CIRCUMSTANCES ALLEGATION?

11 TERESA ROJO: YES.

12 THE COURT: WHAT DO YOU THINK ABOUT THAT? HOW DO
13 YOU FEEL ABOUT THAT?

14 TERESA ROJO: WELL, IT'S NOT FAIR THAT THEY WOULD
15 LOWER MANY YEARS. TO ME IT DOESN'T SEEM FAIR BECAUSE --
16 BECAUSE SOMEBODY WHO IS DOING HARM TO PEOPLE, THEY SHOULD
17 PAY.

18 THE COURT: THANK YOU FOR COMING IN TODAY.

19 ALL RIGHT. DO YOU HAVE ANYTHING ELSE TO
20 ADD, MR. HERRING?

21 MR. HERRING: NO.

22 THE COURT: ALL RIGHT.

23 I'VE GOT A DEFINITION OF WHAT THE INTEREST
24 OF JUSTICE MEANS PURSUANT TO PENAL CODE SECTION 1385.
25 AND THE CASE OF *PEOPLE VERSUS ORIN*, O-R-I-N, IS A 1975
26 CASE, 13 CAL.3D. 937. AT 945 THE COURT SAYS "IN
27 FURTHERANCE OF JUSTICE" MEANS, AT THE VERY LEAST, THE
28 REASON FOR DISMISSAL MUST MOTIVATE A REASONABLE JUDGE.

1 ORIN SAYS, AT PAGE 945, WHEN DETERMINING IF
2 A DISMISSAL FURTHERS THE INTEREST OF JUSTICE, THE COURT
3 MUST CONSIDER THE INTERESTS OF SOCIETY, AS WELL AS THE
4 DEFENDANT'S CONSTITUTIONAL RIGHTS. SOCIETY HAS AN
5 INTEREST IN THE FAIR PROSECUTION OF PROPERLY ALLEGED
6 CRIMES AND ENHANCEMENTS. GENERALLY, IF COURTS TERMINATED
7 PROSECUTIONS OF CRIMES OR ENHANCEMENTS UNDER PENAL CODE
8 SECTION 1385 WITHOUT ADEQUATE REASON, IT WOULD FRUSTRATE
9 THE ORDERLY AND EFFECTIVE OPERATION OF OUR CRIMINAL
10 JUSTICE PROCEDURE AS ENVISIONED BY THE LEGISLATURE.

11 AND THAT QUOTE IS FROM PAGE 947 OF ORIN.

12 THE PEOPLE ARE REQUIRED TO COMPLY WITH
13 MARSY'S LAW. THEY APPARENTLY HAVE. I HAVE LISTENED TO
14 THE DECEASED'S MOTHER AND SISTER.

15 IS THERE ANY REASON, OTHER THAN THIS SPECIAL
16 DIRECTIVE, THAT IS THE GENESIS OF YOUR MOTION?

17 IS THERE ANYTHING ELSE, ANY PROOF PROBLEMS
18 OR EVIDENCE ISSUES, ANYTHING LIKE THAT?

19 MR. HERRING: THERE ARE NO PROBLEMS WITH PROOF WITH
20 THIS CASE, YOUR HONOR. THERE ARE LEGALLY COGNIZABLE
21 MITIGATING FACTORS THAT INCLUDE LACK OF A CRIMINAL RECORD
22 AND YOUNG AGE FOR THE DEFENDANT. ASIDE FROM THAT, I
23 BELIEVE THAT IT IS MY DUTY TO PUT FORTH THE POLICIES THAT
24 ARE IN THE SPECIAL DIRECTIVE.

25 THE COURT: ALL RIGHT.

26 WELL, I HAVEN'T HEARD -- I DON'T BELIEVE
27 THAT YOUR STATED REASONS JUSTIFY DISMISSAL IN THE
28 INTEREST OF JUSTICE.

1 MS. BLACKBURN: MAY I BE HEARD?

2 THE COURT: JUST A MINUTE.

3 FIRST OF ALL, THE DEFENSE DOESN'T HAVE A
4 VOICE IN PENAL CODE SECTION 1385, IT'S MADE BY THE COURT
5 OR IT'S MADE BY THE PEOPLE. I WILL GIVE YOU A CHANCE.

6 SENTENCING ENHANCEMENTS CAN BE DISMISSED
7 WHEN THEY ARE FIREARM ALLEGATIONS UNDER PENAL CODE
8 SECTION 12022.5 SUBDIVISION (C), AND IN THIS CASE I THINK
9 IT WOULD BE PENAL CODE SECTION 12022.53 SUBDIVISION (H).
10 BUT BOTH OF THOSE SUBSECTIONS SAY THEY ALLOW FOR SUCH
11 DISMISSALS AT THE TIME OF SENTENCING.

12 IT MAY VERY WELL BE THAT THE LACK OF RECORD
13 AND THE YOUNG AGE, THAT MIGHT BE, AT THE TIME OF
14 SENTENCING, JUSTIFICATION FOR STRIKING AN ENHANCEMENT.

15 WHAT WOULD YOU LIKE TO SAY, MS. BLACKBURN?

16 MS. BLACKBURN: I WOULD LIKE TO SAY THAT THE
17 DISTRICT ATTORNEY IN THIS CASE HAS INDICATED THAT THERE
18 AREN'T ANY PROOF PROBLEMS, BUT I WOULD ARGUE THE NATURAL
19 AND PROBABLE CONSEQUENCES THEORY OF AIDING AND ABETTING A
20 GANG MURDER IS NOT HERE, SIGNIFICANTLY HAMPERS THE
21 PEOPLE'S ABILITY IT PROVE --

22 THE COURT: THEY'RE NOT GOING TO GET THAT
23 INSTRUCTION.

24 MS. BLACKBURN: I THINK THERE ARE ISSUES IN THAT
25 FIRST DEGREE MURDER INSTRUCTION. I THINK THAT THERE ARE
26 ISSUES WITH THE CASE THAT I THINK HE HAS BROUGHT UP: MY
27 CLIENT'S YOUTH, HIS COMPLETE LACK OF RECORD, HIS FAMILY
28 HISTORY, AND THOSE ARE THINGS THAT I THINK HE COULD

1 ARTICULATE.

2 BUT MORE IMPORTANTLY, EVEN IN THE CITE THAT
3 THIS COURT HAS INDICATED IS THAT THE COURT CANNOT STRIKE
4 THESE IN THE INTEREST OF JUSTICE, BUT THE DISTRICT
5 ATTORNEY'S OFFICE IS THE CHARGING AGENCY.

6 THE COURT: RIGHT.

7 MS. BLACKBURN: SO WHEN THE COURT HAS THE CASE
8 BEFORE IT, THE COURT CAN'T DISMISS THESE --

9 THE COURT: THE COURT WHAT?

10 MS. BLACKBURN: THE COURT CANNOT, OR SHOULD NOT
11 EVEN, ACCORDING TO THIS CASE, DISMISS ANY ALLEGATIONS
12 UNLESS THEY FIND IT IN THE INTEREST OF JUSTICE. BUT I
13 DON'T THINK THE COURT IS HAMPERED BY THE ORIGINAL
14 CHARGING DECISIONS OF THE DISTRICT ATTORNEY'S OFFICE.

15 IT'S BEEN MY EXPERIENCE, AND I'M SURE YOURS,
16 OVER 25 YEARS, THAT EVEN AS CASES ARE CHARGED ORIGINALLY,
17 THERE ARE ALWAYS ALTERATIONS. HAVING THE COURT DECIDE
18 THAT THE PEOPLE OF THE STATE OF CALIFORNIA CANNOT CHANGE
19 THE CHARGING DOCUMENT IS NOT WHAT THAT CASE HOLDS. IT
20 HOLDS THAT ONCE THEY ARE CHARGED, THE COURT CANNOT STEP
21 IN AND INTERPRET THAT THERE IS NO -- AND CHANGE THOSE
22 WITHOUT THE INTEREST OF JUSTICE BEING SERVED.

23 I UNDERSTAND THAT THE FAMILY IS VERY UPSET,
24 AND I UNDERSTAND AND I BELIEVE THAT THEY SHOULD BE. BUT
25 I DON'T THINK THAT THAT'S THE END OF THE INQUIRY, AND I
26 DON'T THINK THAT'S WHAT THE COURT'S BEING ASKED TO DO.

27 THE CHARGING ORGANIZATION -- THE CHARGING
28 AGENCY HAS DECIDED NOT TO CHARGE THIS CASE THIS WAY.

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1 THEY'VE CHARGED CASES FOR MANY YEARS IN WHATEVER WAY THEY
2 DECIDED AND NOW THEIR POLICIES HAVE CHANGED. AND FOR THE
3 COURT TO STEP IN, I DON'T THINK THAT'S WHAT THAT CASE
4 STANDS FOR. IF AT THE END OF THE CASE THE CHARGING
5 AGENCY -- JUST AS THE COURT CAN'T ADD CHARGES --

6 THE COURT: RIGHT.

7 MS. BLACKBURN: -- RIGHT? IF THE CHARGING AGENCY
8 SAYS THAT THEY WANT TO DELETE THE CHARGES, I THINK THAT'S
9 WITHIN THEIR PURVIEW. FOR THE COURT TO STEP IN AND SAY
10 THEY WON'T DO IT IS SEPARATE AND APART FROM WHAT I THINK
11 THE *ORIN* CASE IS TALKING ABOUT.

12 THE COURT: BUT 1385 SAYS I CAN'T DISMISS UNLESS
13 IT'S IN THE INTEREST OF JUSTICE.

14 MS. BLACKBURN: I THINK THAT CASE IS TALKING ABOUT
15 DURING THE PENDENCY OF THE COURT, NOT SEPARATE AND APART
16 FROM THE CHARGING DECISIONS OF THE PROSECUTING AGENCY.

17 THE COURT: SAY THAT AGAIN.

18 MS. BLACKBURN: I THINK IT'S SEPARATE AND APART
19 FROM THE CHARGING DECISIONS OF THE PROSECUTING AGENCY.
20 THE COURT IS BOUND BY WHAT THE PROSECUTING AGENCY
21 CHARGES, UNLESS IN THE INTEREST OF JUSTICE.

22 THE COURT: RIGHT.

23 MS. BLACKBURN: WE HAVE NOW SEEN CHANGES IN THE
24 LAW. FOR EXAMPLE, FOR MANY YEARS THE D.A. WOULD CHARGE A
25 10, 20, LIFE ALLEGATION UNDER 12022.53 AND THE COURT WAS
26 NOT ABLE TO JUST -- THE COURT WAS UNABLE TO DISMISS.
27 THEY HAD NO AUTHORITY AND THEY HAD NO ABILITY TO DO THAT.
28 THAT HAS NOW CHANGED. THE COURTS HAVE SAID IN THE

1 INTEREST OF JUSTICE, IF THE COURT FINDS THAT TO BE TRUE,
2 THEY CAN DISMISS THE ALLEGATION.

3 BUT THE REVERSE HAS NEVER BEEN TRUE, THAT
4 THE COURT CAN STAND IN THE WAY OF THE CHARGING AGENCY
5 DISMISSING ALLEGATIONS -- NOT ALLEGATIONS THAT HAVE BEEN
6 PROVEN AT TRIAL, BUT DURING THE PENDENCY OF THE CASE --
7 THE COURT CAN SAY I HAVE NOW BECOME THE CHARGING AGENCY
8 AND I'M STANDING IN THEIR STEAD AND OVERRULING THEIR
9 CHARGING DECISIONS. THE INTEREST OF JUSTICE IS FOR
10 DISMISSAL IF THE COURT IS OUTSIDE OF WHAT THE CHARGING
11 AGENCY HAS DECIDED THEY WANT TO DO.

12 I THINK THEY'RE VERY DIFFERENT THINGS. I
13 THINK THE CASE VERY STRONGLY -- OR THE CASE LAW HAS
14 PROVEN THAT.

15 THE COURT: WHAT CASE LAW?

16 MS. BLACKBURN: ANY CASE LAW.

17 THE COURT: TELL ME. TELL ME ANY CASE THAT SAYS IF
18 THE PEOPLE MOVE TO DISMISS AN ALLEGATION, IPSO FACTO THE
19 JUDGE HAS TO DO IT. WHAT CASE STANDS FOR THAT?

20 MS. BLACKBURN: I'LL FIND YOU A CASE, YOUR HONOR.

21 THE COURT: YOU FIND ME A CASE THAT SAYS THAT IF
22 THEY MOVE TO DISMISS AN ALLEGATION OR A CHARGE, THAT THAT
23 IN AND OF ITSELF JUSTIFIES DISMISSAL.

24 MS. BLACKBURN: HOW, SHORT OF A TRIAL, WOULD THE
25 COURT KNOW OR UNDERSTAND THE ORIGINAL CHARGING INTENT OF
26 THE PROSECUTING AGENCY?

27 THE COURT: HOW WHAT?

28 MS. BLACKBURN: HOW, SHORT OF A TRIAL, WOULD THE

1 COURT UNDERSTAND THE ORIGINAL MOTIVATION AND INTENT OF
2 THE PROSECUTING AGENCY, WITHOUT PROOF, THAT THESE ARE
3 THEREFORE JUST AND THAT THEY CAN'T REDUCE -- THEY CAN'T
4 DISMISS THEM WHEN THE CHARGING AGENCY SAYS THAT THEY
5 BELIEVE IT BE TRUE.

6 THE COURT: I'VE LISTENED TO WHAT HIS REASON IS AS
7 TO WHY HE'S COME FORWARD WITH THIS MOTION FOR DISMISSAL.

8 MS. BLACKBURN: BUT HAVE YOU -- HAD THERE EVER BEEN
9 A DETERMINATION THAT THE ORIGINAL REASON FOR CHARGING
10 THIS CASE THE WAY THEY DID WERE VALID?

11 THE COURT: THAT'S FOR A TRIAL. IF YOU THINK THAT
12 THE EVIDENCE WAS INSUFFICIENT, FILE A 995 MOTION.

13 MS. BLACKBURN: IT'S NOT INSUFFICIENT, I'M SAYING
14 WHETHER OR NOT IT'S JUST OR IN THE INTEREST OF JUSTICE.

15 THE COURT: ALL RIGHT.

16 MS. BLACKBURN, YOU ARE VERY ARTICULATE AND I
17 DON'T KNOW YOU, BUT YOU APPEAR TO ME TO BE A VERY, VERY
18 GOOD LAWYER. YOU AND I DON'T SEE IT THE SAME WAY. I
19 DON'T THINK IT RISES TO THE LEVEL OF THE INTEREST OF
20 JUSTICE. AS I SAID BEFORE, IT MAY VERY WELL BECOME
21 RELEVANT AT THE TIME OF SENTENCING.

22 FOR NOW, AT THIS POINT, WITHOUT PREJUDICE,
23 YOUR MOTION, MR. HERRING, IS DENIED.

24 MS. BLACKBURN: YOUR HONOR, CAN WE SET THIS CASE
25 FOR --

26 THE COURT: YES.

27 MS. BLACKBURN: -- THE 28TH?

28 THE COURT: HAVE YOU TALKED NO MR. HERRING ABOUT A

1 FUTURE DATE?

2 MS. BLACKBURN: NO. MR. HERRING IS NOT THE
3 ATTORNEY OF RECORD ON THIS CASE, IT WAS MR. TRUJILLO. WE
4 HAD DISCUSSED DISPOSITION. I THOUGHT THAT'S WHAT WE WERE
5 GOING TO DO TODAY. I WOULD ASK FOR THE 28TH.

6 THE COURT: 28TH OF DECEMBER?

7 MR. HERRING: IT'S NEWS TO ME THAT I'M NOT THE
8 ATTORNEY OF RECORD ON THIS CASE.

9 THE COURT: NO, I THINK SHE MEANS THE DEFENSE
10 ATTORNEY.

11 MR. HERRING: NO.

12 MS. BLACKBURN: NO, NO. I'M THE DEFENSE ATTORNEY.
13 I'M SORRY.

14 THERE'S AN OFFER THAT WAS CONVEYED TO ME,
15 THAT I CONVEYED TO MR. DOMINGUEZ, AND --

16 THE COURT: FROM WHO?

17 MS. BLACKBURN: FROM MR. --

18 MR. HERRING: I BELIEVE IT WAS MARIO TRUJILLO.
19 THAT'S WHAT I'VE BEEN TOLD.

20 I'VE ALSO BEEN TOLD FROM A SEPARATE SET OF
21 SUPERVISORS THERE IS NO OFFER, AND THAT'S WHY WE'RE IN A
22 CONUNDRUM TODAY.

23 THE COURT: WELL, THEN EVERYBODY NEEDS TO BE HERE
24 ON THE NEXT DAY BECAUSE AS FAR AS I KNOW, YOU'RE THE
25 REPRESENTATIVE OF THE PEOPLE. I'VE NEVER SEEN -- WHO DID
26 THE OFFER COME FROM?

27 MS. BLACKBURN: MR. TRUJILLO.

28 THE COURT: TRUJILLO? I DON'T KNOW WHO THAT IS.

1 MS. BLACKBURN: HE'S IN CHARGE OF SPECIAL
2 CIRCUMSTANCES. AT LEAST WAS IN CONTACT WITH
3 MS. BLACKNELL PRIOR TO THIS DATE AND CONVEYED AN OFFER,
4 WHICH I CONVEYED TO MY CLIENT. SO IT'S NEWS TO ME
5 THAT --

6 THE COURT: WHAT WAS THE OFFER?

7 MS. BLACKBURN: SEVEN YEARS.

8 IT'S NEWS TO ME THAT WE DIDN'T HAVE AN
9 OFFER, BUT I THINK WE DO NEED TO GET ON THE SAME PAGE.

10 THE COURT: ALL RIGHT. AND SO YOU'RE ASKING FOR
11 12-28?

12 MS. BLACKBURN: YES, PLEASE.

13 THE COURT: IS THAT OKAY?

14 THE CLERK: YES, YOUR HONOR.

15 THE COURT: DO WE WANT TO TRAIL WITHIN THE PERIOD
16 OR DO YOU WANT TO MAKE IT ANOTHER ZERO OF 60?

17 MS. BLACKBURN: TRAIL WITHIN THE PERIOD FOR NOW.

18 THE COURT: SO THAT'S GOING TO BE 13 OF 60.

19 MS. BLACKBURN: THANK YOU.

20 THE COURT: ALL RIGHT. ANYTHING ELSE?

21 DOES HE NEED ANY MEDICAL ORDERS, ANYTHING
22 ELSE WE NEED TO DO, MR. BLACKBURN?

23 MS. BLACKBURN: NO, I THINK WE'RE DONE.

24 THE COURT: ANYTHING ELSE TO TODAY, MR. HERRING?

25 MR. HERRING: NO, THANK YOU.

26 THE COURT: SEE YOU ON THE 28TH.

27 (PROCEEDINGS IN THE ABOVE-ENTITLED
28 MATTER WERE CONCLUDED.)

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT 115

HON. MARK S. ARNOLD, JUDGE

PEOPLE OF THE STATE OF CALIFORNIA,

PLAINTIFF,

VS.

RUDY DOMINGUEZ,

DEFENDANT.

NO. BA466952-01

REPORTER'S
CERTIFICATE

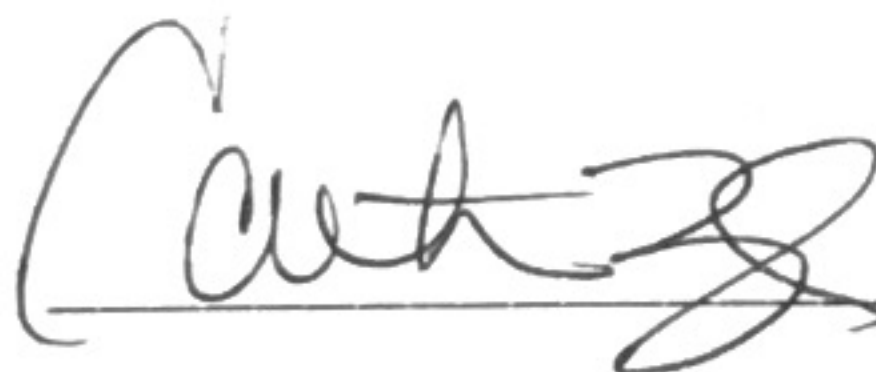
STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

SS

I, CATHERINE A. ZINK, CSR #9242, OFFICIAL REPORTER
FOR THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR
THE COUNTY OF LOS ANGELES, DO HEREBY CERTIFY THAT THE
FORGOING PAGES 1 THROUGH 14 COMPRISE A FULL, TRUE, AND
CORRECT TRANSCRIPT OF THE PROCEEDINGS AND TESTIMONY
TAKEN IN THE ABOVE-ENTITLED MATTER ON DECEMBER 15, 2020.

DATED THIS 21ST DAY OF DECEMBER, 2020.



, CSR #9242

CATHERINE ZINK, OFFICIAL REPORTER

EXHIBIT 10

George Gascón's plans to overhaul prosecutions meet early resistance from judges, others

On his first day in office, Los Angeles County Dist. Atty. George Gascón announced [sweeping changes](#) that he promised would dramatically alter how justice is delivered in the county.

But in the week since his heady proclamations, Gascón's reform plans have been met with resistance from judges, his own prosecutors and crime victims, who are challenging both the ethics of his vision and whether he has the authority to carry out one of its main components.

That Gascón has run into pushback comes as no surprise, as a clash between his progressive agenda and more traditional law enforcement strategies seemed inevitable. But the friction has heated up with startling speed and intensity, affording the district attorney no honeymoon period as he tries to reimagine how an office that files more than 100,000 criminal cases each year carries out its mission.

Gascón has succeeded in quickly locking in several significant policy changes, including barring prosecutors from seeking the death penalty or trying juveniles as adults. And defendants facing a number of misdemeanor crimes can now avoid prosecutions by enrolling in diversion programs. Starting in January, prosecutors will no longer be allowed to seek cash bails.

But his attempt to eliminate sentencing enhancements has met significant resistance. Enhancements can add several years to prison terms for defendants who meet certain conditions, such as being ex-felons or gang members, or those who committed hate crimes or attack police.

Gascón has long argued that penalties for underlying crimes are significant

on their own and that sentencing enhancements lead to excessive prison terms that disproportionately affect Black and Latino defendants, while not deterring crime.

"People that commit a crime ... they are going to face accountability. And that accountability will be proportionate to the crime," he said.

"Enhancements do not have anything to do with accountability."

Gascón, however, relented somewhat Friday. In a memo to prosecutors, he reinstated the use of sentencing enhancements "in cases involving the most vulnerable victims and in specified extraordinary circumstances," according to a copy of the memo obtained by The Times.

Prosecutors now are allowed to seek enhancements in hate-motivated attacks, cases of elder and child abuse, sex abuse and sex trafficking, the memo said. With the approval of a supervisor, enhancements can also be sought in cases where a victim suffers "extensive" physical injuries or a weapon is used in a way that threatens a victim's life during a crime, according to interim Chief Deputy Dist. Atty. Joseph Iniguez.

The backtracking came a day after Gascón vowed at a news conference that he would not relax the policy banning sentencing enhancements because he worried doing so would give prosecutors too much latitude to seek excessive prison terms.

That hardline stance softened after a meeting Thursday night with members of the LGBTQ community and experts on hate crimes, according to Brian Levin, director of the Center for the Study of Hate and Extremism at Cal State San Bernardino, who attended the meeting.

Through the first two weeks of his term, judges have emerged as a significant roadblock to Gascón's enhancement policies.

After a deputy district attorney sought to dismiss an enhancement against a

defendant with a prior felony conviction last week, Superior Court Judge Alison Estrada said the prosecutor had "no independent authority" to do so unless the dismissal was in the interest of justice or due to a lack of evidence.

When the prosecutor said he was only acting on Gascón's order, Estrada denied the motion, drawing a cheer from two LAPD detectives sitting in the back of the courtroom. Judges in other courthouses around the county, including Long Beach, Inglewood and the Antelope Valley, have made similar decisions, attorneys said.

Gascón tried to fashion a workaround to the judges' objections Tuesday, instructing prosecutors to tell judges that dismissing enhancements is, in fact, in the interest of justice because the sentences imposed for the underlying crimes are "sufficient to protect public safety."

If a judge still refuses, the order directs prosecutors to file amended charging documents that do not include the sentencing enhancements, according to a copy of the order reviewed by The Times. Gascón also wants prosecutors to alert their supervisors when a judge refuses to throw out an enhancement.

Some prosecutors have raised objections as well, questioning the ethics of Gascón's order that they say requires them to make representations in court that they don't believe in.

Deputy Dist. Atty. Richard Ceballos, who is prosecuting a group charged in [a series of brutal stabbings of transgender women](#) and made an [unsuccessful bid](#) for D.A., asked a judge to dismiss hate crime enhancements in the case Tuesday, but refused to say doing so would be in the interest of justice. The judge ultimately blocked the motion to dismiss.

"He clearly has a right to make these motions," Ceballos said of Gascón. "We have to follow them; however, we cannot represent to the court that it is in

the interest of justice if we don't believe it. That would violate the rules of professional responsibility."

On Wednesday, Gascón scoffed at that idea.

"What we're doing is certainly not unlawful and not unethical. Prosecutors are sworn to follow the directives of the elected D.A. as long as he or she is working within the law, and I firmly believe that I am," he said.

In a bruising race against longtime Dist. Atty. Jackie Lacey, Gascón was clear that if he won the election he intended to overhaul criminal justice in L.A. County. He earned the enthusiastic backing of L.A.'s increasingly powerful progressive bloc and received major financial backing from wealthy supporters of criminal justice reform.

Now he is under pressure to deliver on his promises as some victims' rights activists and law enforcement officials are pushing back. Gascón said Wednesday he understands the changes he's making have unnerved some prosecutors in his office.

"When you have such a radical change within a line of work and within an organization, there is going to be a lot of uneasiness and there are going to be people that feel very unsettled by this," he said. "The one thing I'm convinced of is that the men and women of the L.A. D.A.'s office came into work for the same reasons I did 40 years ago. To make sure that our communities are protected."

The union representing rank-and-file deputy district attorneys — one of many [law enforcement unions that spent millions opposing Gascón's candidacy](#) — issued a memo this week expressing concern that some of the district attorney's directives would require prosecutors "to violate the law and our duty of candor to the court" and expressed concern that some would face discipline or termination.

Those fears were fueled when Gascón disciplined the head prosecutor in the Compton courthouse, Richard Doyle, after he refused an order to withdraw charges against a man who had participated in recent protests against police.

Doyle, according to two law enforcement officials with knowledge of the situation, was issued a letter of reprimand last week for refusing to dismiss the case against Emanuel Padilla, who was charged with [attempting to derail a city commuter train during a protest by dragging metal cables](#) across the train's tracks. The charge carried a maximum sentence of life in prison.

In one of his first acts as district attorney, Gascón [ordered charges against Padilla to be dropped](#).

Max Szabo, a spokesman for Gascón's transition team, said video of the incident made it clear there was insufficient evidence to support the charges against Padilla.

"The video evidence we have seen does not show Mr. Padilla placing, dropping or otherwise putting any object in the path of a train," he said, adding that many sheriff's deputies were at the protest and did not see reason to arrest Padilla.

After Doyle refused to dismiss the case, a member of Gascón's executive team appeared in Compton to drop the charges, according to the officials, who spoke on the condition of anonymity because they were not authorized to speak to the media.

Szabo declined to comment further because the issue was a personnel matter. Attempts to contact Doyle were not successful.

A Google document seeking to collect information on "non-compliant" deputy district attorneys also circulated in recent days. The document was reviewed by The Times last week, and several public defenders confirmed

they had received the link as well.

Both a spokeswoman for the public defender's office and Szabo said no one in their offices had created the document. The link was disabled shortly after The Times began asking questions about it.

The fight over sentencing enhancements underscores the challenges Gascón faces as he tries to address what he and others say are deep-seated inequities that have arisen out of the office's long-running focus on seeking heavy sentences on behalf of crime victims.

Gascón and his supporters point to research that shows enhancements disproportionately affect Black and Latino communities and have questioned whether they serve any public safety purpose.

Roughly 90% of defendants from L.A. County sent to prison under sentencing enhancements were people of color, said Michael Romano, director of the Three Strikes Project at Stanford Law School and chair of Gov. Gavin Newsom's penal code revision committee.

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People convicted of serious violence such as murder or attempted murder will receive lengthy prison sentences that make enhancements unnecessary, Romano said. The men accused of attacking the transgender women, for example, face multiple charges of attempted murder, which could carry a sentence of life in prison. The hate crime enhancements they each face would add a maximum of three years each to a sentence.

"In many, many cases, the enhancement results in a sentence that is far longer than the underlying criminal conduct, and it becomes the tail wagging the dog," Romano said. "There is still ample room to impose long sentences in crimes, especially violent crimes."

Times staff writer Matt Hamilton contributed to this report.

