

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
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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

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Sent: Tuesday, December 29, 2020 9:41 AM
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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.

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Attached please find a letter of today's date sent on behalf of Eric George.

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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

- 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.
- 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:

- 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)

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
- Recoverable cost Per CCP 1033.5(a)(4)(B)
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.

12/29/2020

(Date)



(Signature)



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.

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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

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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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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

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.

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.

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.

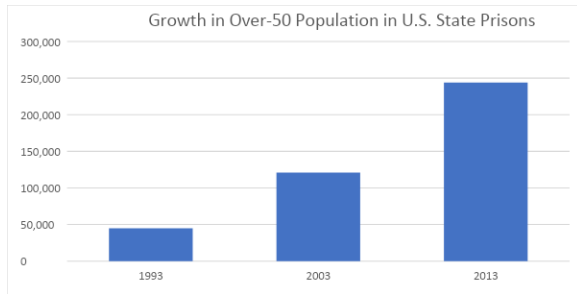
In Los Angeles County alone we currently have almost 30,000 people in CDCR.

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.

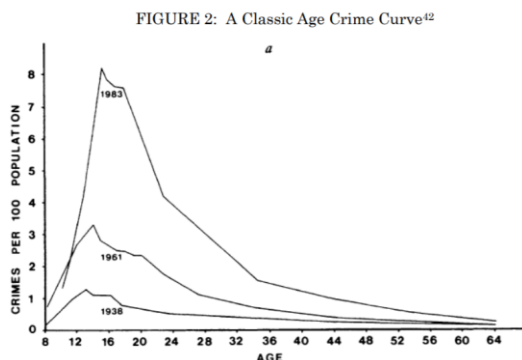
Harsh sentencing laws have also meant that the prison population is old. If we continue at current rates, [one in three people behind bars](#) in state prisons will be over 50 by 2030. In 1993, there were 45,000 people over 50 in U.S. state prisons. Twenty years later, there were 243,800. The growth 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.

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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 PEOPLE OF THE STATE OF CALIFORNIA,)

5 PLAINTIFF,)

6 VS.)

7 VICTOR MACHUCA,)

8 DEFENDANT.)

SUPERIOR COURT
NO. BA477781

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
BY: MEGAN LOEBL, DEPUTY
211 WEST TEMPLE STREET
LOS ANGELES, CALIFORNIA 90012

19 FOR THE DEFENDANT:

ALEX KESSEL
ATTORNEY AT LAW
15910 VENTURA BOULEVARD
SUITE 1030
ENCINO, CALIFORNIA 91436

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

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

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?

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;

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.

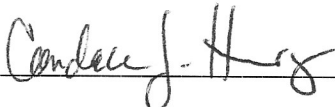
20
21  , CSR #9311
22 OFFICIAL REPORTER
23
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25
26
27
28

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 --

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

MS. KANG-HERNANDEZ: YES.

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

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

THE COURT: THAT'S FINE.

WHAT WERE THE INJURIES TO THE VICTIM
IN COUNT 2?

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

THE COURT: DISABLED IN WHAT MANNER?

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

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

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

THE COURT: JUST THE GBI ALLEGATION?

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

THE COURT: OKAY.

YOU FILED A DOCUMENT TODAY'S DATE -- A

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

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

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.

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.

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

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,

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.

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.

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14 **(MATTER WAS CONCLUDED)**
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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 PLAINTIFF,)

6 VS.)

7 THOMAS HELO,)

8 DEFENDANT.)

SUPERIOR COURT
NO. PA090826

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
BY: JANE BROWNSTONE, DEPUTY
211 WEST TEMPLE STREET
LOS ANGELES, CALIFORNIA 90012

17
18
19 FOR THE DEFENDANT:

HEDDING LAW FIRM
BY: RONALD HEDDING
16000 VENTURA BOULEVARD
SUITE 1208
ENCINO, CALIFORNIA 91436

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25 CANDACE J. HENRY, #9311
26 OFFICIAL REPORTER
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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

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,

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
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EXHIBIT 9

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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

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?

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.

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.)

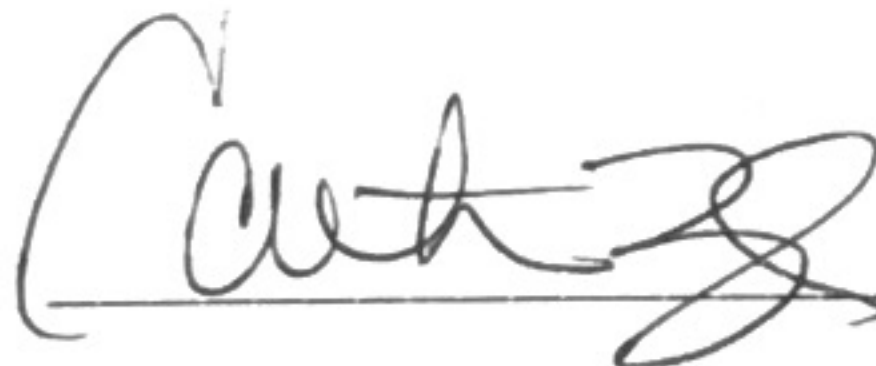
10
11 STATE OF CALIFORNIA)

) 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 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.

