S275478

IN THE SUPREME COURT OF CALIFORNIA

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

v.

GEORGE GASCÓN, AS DISTRICT ATTORNEY FOR THE COUNTY OF LOS ANGELES et al.,
Respondents and Appellants.

AFTER A DECISION BY THE COURT OF APPEAL, SECOND APPELLATE DISTRICT, DIVISION SEVEN
CASE NO. B310845

APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF AND AMICUS CURIAE BRIEF OF CRIME SURVIVORS RESOURCE CENTER, JUSTICE FOR MURDERED CHILDREN, AND BARBARA JONES

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APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF

Under California Rules of Court, rule 8.520(f)(1), Crime Survivors Resource Center, Justice For Murdered Children, and Barbara Jones request permission to file the attached amicus curiae brief in support of plaintiff and respondent Association of Deputy District Attorneys for Los Angeles County.[1]

Crime Survivors Resource Center was founded in 2003 and serves all California counties. It provides guidance and resources to victims of crimes by advocating for their rights to various government and public service offices, promoting awareness of resources available to them, and prioritizing their healing. By fostering a community for mental, physical, emotional, and financial healing, Crime Survivors Resource Center empowers victims to thrive as survivors.

Justice for Murdered Children is a crime victims' advocacy organization founded in San Pedro that seeks to protect the rights of victims' families. It strives to reduce the number of total homicides and unsolved homicides and assist families whose children have been murdered. It offers counseling and support group meetings, refers survivors to appropriate social agencies, educates the public on ways it can help community leaders

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[1] No party or counsel for a party authored this proposed brief in whole or in part, and no person or entity other than amici, their members, or their counsel made any monetary contribution intended to fund the preparation or submission of this proposed brief. (See Cal. Rules of Court, rule 8.520(f)(4).)

become more responsive to the needs of victims and their families, and educates children on how to avoid becoming a crime victim.

Barbara Jones is a "victim"[2] and the grandmother of 9 year old Trinity J. who was tortured and murdered by Emiel Hunt on March 1, 2019. Hunt was charged with Trinity's murder in Los Angeles County Superior Court Case No. KA120432. Hunt's prior strike conviction was initially alleged in the charging documents filed by the Los Angeles District Attorney. After Gascón's election, he directed that the prior strike be dismissed because of his new policy of not complying with the Three Strikes law. If Trinity was murdered in a different county, Hunt's prior strike conviction would not have been dismissed and Jones would have received the justice she and her family were entitled to under the law.

Amici work closely with victims and survivors of crime and government officials to ensure that legislation, local regulations, and law enforcement practices and policies effectively respond to and support crime victims and survivors and their families. Crime victims have a significant interest in ensuring that state law is uniformly applied to criminal sentences so that criminals and their victims are treated the same no matter where the crime was committed within California. Thus, they have a significant interest in whether the district attorney of Los Angeles can unilaterally choose to disregard California's Three Strikes

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[2] Cal. Const., art. I, § 28, subd. (e).

sentencing law that imposes additional prison terms for repeat offenders of serious and violent crimes and that is otherwise required to be followed by district attorneys in every other county in the state.

April 24, 2023

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AMICUS CURIAE BRIEF

INTRODUCTION

This appeal addresses the question whether a subordinate local public official can unilaterally decide to defy state law. The family of a murder victim who was killed in Los Angeles County will receive less justice than the family of a murder victim who was killed in Ventura County based on the unilateral decision by the district attorney of Los Angeles to boycott state law on three strikes. Sadly, this is not the only example in our long history where the rule of law has been broken by rogue officials.

On January 21, 1861, then Senator Jefferson Davis spoke for the final time on the floor of the United States Senate, arguing that secession was the only viable option to protect the "rights" of the people he represented to ignore laws they did not agree with.[3] Over 150 years later, Representative Marjorie Taylor Greene called for a "national divorce" so that her constituents would likewise be spared being subject to national laws they did not like. On a more local level, sheriffs in rural counties in Illinois have recently declared that they are not bound by and will not enforce the assault weapons ban passed by the duly elected

[3] See generally Jefferson Davis, On Retiring from the Senate (Jan. 21, 1861) pp. 413–415 <https://tinyurl.com/Senate1861> (as of Apr. 17, 2023).

Illinois Legislature and signed into law by the Governor.[4] In California, many counties defied Governor Newsom's COVID-19 health directives and refused to comply with state laws on curfews and mask mandates.[5]

Whether it is a Southern politician trying to preserve slavery, a conservative politician who opposes abortion and LGBTQ+ rights, a conservative rural sheriff who likes guns, a county that did not think COVID-19 was a serious health issue, or a progressive urban district attorney who does not want to punish dangerous serial criminal offenders, they are each subject to the rule of law. They must comply with the laws to which they are subject even if they do not like them and even if they conflict with their professed values.

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[4] Danesh, *Illinois County Sheriffs Refuse to Enforce Assault Weapons Ban, Deem Law Unconstitutional* (Jan. 11, 2023) CIProud.com <https://tinyurl.com/CIProud011123> (as of Apr. 17, 2023).

[5] Cremen, *13 Law Enforcement Agencies that Refuse to Enforce California's New Curfew and Why* (Nov. 20, 2020) abc10 <https://tinyurl.com/abc10112020> (as of Apr. 17, 2023) (Sacramento Police Department and County Sheriff's Office, Stanislaus County Sheriff's Office, Stockton Police Department, Ceres Police Department, Placer County Sheriff's Office, Sutter County Sheriff's Office, El Dorado County Sheriff's Office, Solano County Sheriff's Office, and Folsom Police Department); Carlton, *Mandatory Mask Laws Aren't Enforced as Coronavirus Continues to Spread* (July 17, 2020) Wall Street Journal <https://tinyurl.com/WSJ071720> (as of Apr. 17, 2023) (Citrus Heights Police Department; selective enforcement in Beverly Hills, Santa Monica, and West Hollywood).

Ultimately, this case has nothing to do with one's views on the merits of District Attorney George Gascón's progressive policies. The rule of law is neutral on ideology and policy. Gascón has remedies for the laws he does not like, just as we all do—he can challenge them in court if he believes they are unconstitutional, or he can vote to change the direction of state law and urge others to follow his lead. But he cannot unilaterally refuse to follow the law. In doing so, he is no better than those lawless individuals who came before him. Until state law is declared by a court of competent jurisdiction to be unconstitutional or is changed by the Legislature or the people, it should be applied uniformly throughout the state. The application of state law should not depend on where you happen to live. A crime victim in Los Angeles should receive the same justice from state law as a crime victim in Ventura or Fresno or Palo Alto.

The Court of Appeal's opinion by Justice Segal, on behalf of Justice Perluss and Judge Wise, eloquently explains why the rule of law does not permit Gascón to flout the law simply because he does not like it: "The district attorney overstates his authority. He is an elected official who must comply with the law, not a sovereign with absolute, unreviewable discretion." (*Association of Deputy District Attorneys for Los Angeles County v. Gascón* (2022) 79 Cal.App.5th 503, 521.)

LEGAL ARGUMENT

I. Rule of law principles require consistent application of state law throughout the state.

A. Gascón refuses to follow state law on three strikes.

The Legislature enacted the Three Strikes law "to ensure longer prison sentences and greater punishment for those who commit a felony and have been previously convicted of one or more serious or violent felony offenses." (Pen. Code, § 667, subd. (b).) The Legislature made clear that "[n]otwithstanding any other law [this three strikes statute] shall be applied in every case in which a defendant has one or more prior serious or violent felony convictions as defined in subdivision (d). The prosecuting attorney shall plead and prove each prior serious or violent felony conviction except as provided in paragraph (2)." (Pen. Code, § 667, subd. (f)(1).)

It was "the intent of both the Legislature and the drafters of the initiative version of the Three Strikes law to punish repeat criminal offenders severely, to drastically curtail a sentencing court's ability to reduce the severity of a sentence by eliminating alternatives to prison incarceration, and to limit an offender's ability to reduce his or her sentence by earning credits . . . ." (*People v. Vargas* (2014) 59 Cal.4th 635, 641.)

On his first day in office, Gascón issued Special Directive 20-08 on special enhancements and allegations, which provided that his office would no longer seek any sentencing enhancements under the Three Strikes law and would withdraw any enhancements sought in any pending matters. (ABOM 18–

19.) Because of that unilateral decision, crime victims in Los Angeles receive less justice as defined by state law than crime victims in the rest of the state, and duly enacted state law is no longer uniformly applied throughout the state.

B. Predictability and uniformity are key hallmarks of the rule of law.

"The Rule of Law is one of the most important political ideals of our time. It is one of a cluster of ideals constitutive of modern political morality, the others being human rights, democracy, and perhaps also the principles of free market economy." (Waldron, *The Concept and the Rule of Law* (2008) 43 Ga. L.Rev. 1, 3, fn. omitted.) Indeed, "[l]aw can do its job of constraining abuse of power only if there exists a wider culture or, as Aristotle insisted, *ethos* of the rule of law." (Postema, *Law's Ethos: Reflections on a Public Practice of Illegality* (2010) 90 B.U. L.Rev. 1847, 1852–1853.)

While defining the rule of law is challenging, most agree on certain key elements: "(1) limitations on the arbitrary use of power, (2) supremacy of law, (3) equality of application of the law, and (4) respect for universally accepted human rights." (Brand, *Promoting the Rule of Law: Cooperation and Competition in the EU-US Relationship* (2010) 72 U.Pitt. L.Rev. 163, 168.) Put another way, at its core, a system founded on the rule of law requires clear and stable legal principles that people can follow and obey with impartial courts enforcing the supreme legal authority in any jurisdiction. (Fallon, Jr., *"The Rule of Law" as a Concept in Constitutional Discourse* (1997) 97 Colum. L.Rev. 1, 8–

9.) Indeed, "few would deny that predictability is a vital rule of law ingredient." (Killian, *Dicta and the Rule of Law* (2013) 41 Pepperdine L.Rev. 1, 6.)

In different contexts, commentators and courts often speak to the importance of uniformity of the law. One context is the role of supreme courts to ensure the uniformity of decisions within their jurisdiction by resolving conflicts in the law. (See, e.g., Narechania, *Certiorari, Universality, and a Patent Puzzle* (2018) 116 Mich. L.Rev. 1345, 1360–1362; see also Cal. Rules of Court, rule 8.500(b)(1) [this Court may grant review "[w]hen necessary to secure uniformity of decision or to settle an important question of law"]; Eisenberg, Cal. Practice Guide: Civil Appeals and Writs (The Rutter Group 2022) ¶ 13:1, p. 13-1 ["the *supreme court's* purpose is to decide important legal questions and maintain statewide harmony and uniformity of decision"].)

"The Court's emphasis on geographic uniformity reflects a bundle of underlying concerns. First, uniformity helps to ensure that the law treats citizens equally. In *Nichols v. United States* [(2016) 578 U.S. 104 [136 S.Ct. 1113, 194 L.Ed.2d 324]], for example, the Court granted certiorari to resolve a circuit conflict that subjected a resident of Kansas City, Missouri, and a resident of Kansas City, Kansas, to two different legal rules. Moreover, such equal treatment may help to protect the legitimacy of the law and of the federal courts by avoiding a public impression of arbitrariness. Second, uniformity facilitates predictability. Third, uniformity dampens forum shopping. Finally, uniformity reduces

costs for multistate actors." (Narechania, *supra*, 116 Mich. L.Rev. at pp. 1361–1362, fns. omitted.)

This Court also speaks to the importance of predictability and stability in the law as a reason why the Court is reluctant to overrule its past precedents even if it disagrees with them. " 'It is . . . a fundamental jurisprudential policy that prior applicable precedent usually must be followed even though the case, if considered anew, might be decided differently by the current justices. This policy . . . "is based on the assumption that certainty, predictability and stability in the law are the major objectives of the legal system; i.e., that parties should be able to regulate their conduct and enter into relationships with reasonable assurance of the governing rules of law." ' " (*Trope v. Katz* (1995) 11 Cal.4th 274, 288; see *Vaughn v. LJ Internat., Inc.* (2009) 174 Cal.App.4th 213, 226 [" 'certainty, predictability and uniformity of result' " are important factors in choice of law analysis].)

A Court of Appeal has also noted the general unfairness for litigants stemming from conflicting applications of the law if similarly situated litigants could have different results in their cases depending on which court happens to decide the case: "[i]t should offend our sense of basic fairness to think that one plaintiff would have his case dismissed where on exactly the same set of facts, another plaintiff before a different trial judge would be allowed to proceed to trial." (*Hurtado v. Statewide Home Loan Co.* (1985) 167 Cal.App.3d 1019, 1027, disapproved on

another ground in *Shamblin v. Brattain* (1988) 44 Cal.3d 474, 479, fn. 4.)

In short, to enhance the rule of law and to generally ensure the just application of the law within a single jurisdiction, the law should be applied consistently throughout the state. Thus, applying the state's Three Strikes law should not depend on where the crime victim happen to be murdered, assaulted, or raped.

C. Gascón is a subordinate political official who must follow state law.

Gascón notes that California law gives the Attorney General the power (and, indeed, the obligation) to supervise him, and argues that this power implicitly limits judicial power over him through mandamus. (OBOM 28, 31, 54–56; RBOM 25.) That argument does not assist him. The Attorney General's constitutional power to supervise district attorneys in no way limits the courts' constitutional power to ensure district attorneys comply with the law or to prevent district attorneys from directing their subordinates to violate the law.

In particular, Gascón argues that "[t]he Attorney General is the executive official responsible for supervising district attorneys and ensuring they adequately enforce the law—not a subset of the District Attorney's valued (but unelected) employees." (RBOM 25; see Cal. Const., art. V, § 13 [the Attorney General is "the chief law officer" of the state and "shall . . . see that" the laws are "uniformly and adequately enforced"].) As Gascón notes, this gives the Attorney General "an affirmative

duty" to ensure that District Attorneys "exercise[] [their] discretion in a satisfactory manner." (OBOM 55.) According to Gascón, "[u]sing mandamus to compel prosecutors to plead and prior strikes would impermissibly shift this supervisory power to the judicial branch." (*Ibid.*)

There is no question that the Attorney General has general supervisory powers over district attorneys, and can override their discretionary calls—for example, whether or how to prosecute a particular case. Courts have no such discretionary oversight power. Rather, courts can issue a writ of mandate "to compel a public entity to perform a legal, and typically ministerial, duty when 'the petitioner has no plain, speedy and adequate alternative remedy' and 'the petitioner has a clear, present and beneficial—or in this case statutory—right to performance.' " (*Athletics Investment Group LLC v. Department of Toxic Substances Control* (2022) 83 Cal.App.5th 953, 967.) The Attorney General's power to oversee discretionary functions of district attorneys in no way limits the courts' mandamus power over district attorneys to ensure that they do not transgress the lawful limits on their discretion. Indeed, nothing in law or logic suggests that the Attorney General's supervisory power limits the courts' traditional mandamus power to ensure that the law is properly enforced as required.

If anything, Gascón's status as a district attorney rather than the Attorney General only underscores that he is not the right person to challenge the constitutionality of the Three Strikes Law's "plead and prove" provision. If the Attorney

General, rather than a local elected official, decided not to enforce the law on constitutional grounds, the issues raised by a raft of local officials unilaterally nullifying state laws on constitutional grounds would not be presented. (See *Lockyer v. City and County of San Francisco* (2004) 33 Cal.4th 1055, 1068 (*Lockyer*).) For an official to unilaterally refuse to enforce state law on constitutional grounds is a matter of the utmost gravity, and should not be countenanced. The refusal to comply with state law by a local official is made worse when, as here, there is another official, the Attorney General, who is better situated to address the situation. As the chief law officer of the state, the Attorney General likewise cannot violate state law, but can seek to vindicate any institutional or structural interest of the Executive Branch through proper channels.

D. Gascón's directive has created significant deviances in how victims of crime are treated simply based on where they were victimized.

Because each state legislature passes its own laws, in our federal system with 50 laboratories of democracy, there is criticism in the criminal law context that the same crime can be subject to very different consequences depending on which state has jurisdiction to prosecute it. (See, e.g., Logan, *Horizontal Federalism in an Age of Criminal Justice Interconnectedness* (2005) 154 U.Pa. L.Rev. 257, 257–263.) The situation here is worse as criminals and crime victims both receive disparate treatment of the same law depending where along the I-5 the crime occurs in this state.

In his Special Directive 20-8, Gascón asserted that the Three Strikes sentence enhancements do not work. In doing so, Gascón relied on incomplete studies and ignored the comprehensive study completed by the National Bureau of Economic Research entitled "Using Sentencing Enhancements to Distinguish between Deterrence and Incarceration" which concluded that the Three Strikes law was providing cost effective deterrence. (Smith & Stimson, Rogue Prosecutors: How Radical Progressive Lawyers are Destroying America's Communities (forthcoming 2023), ch. 3.) The approach of an ethical prosecutor is a balanced one requiring prosecutors to be "judicious, proportional, [and] evenhanded" in their approach to Three Strikes cases. (*Ibid.*)

These differences in how sentences are given out are not merely academic issues. They affect crime victims in real ways. As just one example, Emiel Lamar Hunt abused his three-year-old son, putting him into a coma and was sentenced to 12 years in prison. (Smith & Stimson, *supra*, ch. 3.) In 2019, after his release from prison, Hunt and his girlfriend murdered his girlfriend's 9 year old daughter, Trinity, and dumped her body on the side of the road. (*Ibid.*) Because Gascón would not permit the use of his prior strike for his 2005 assault, Hunt faced 25 years to life rather than 50 years to life for premeditated murder. (*Ibid.*) Had Hunt committed this murder in any other county in the state, he would have been subject, appropriately so, to the higher sentence

based on his prior violent felony strike.[6] This kind of inconsistency in the application of state law should not be tolerated.

These differential sentences based solely on the happenstance of geography flout the rule of law's emphasis on predictability, consistency, and actual adherence to the law set by higher governmental authorities. Besides a basic violation of the rule of law, as we next explain, Gascón's unilateral decision usurps the legislative power in violation of the separation of powers.

II. Gascón's refusal to enforce the Three Strikes law violates the separation of powers which give the Legislature power over criminal penalties.

Gascón takes the view his prosecutorial discretion includes the power to decide whether sentencing enhancements are appropriate punishment. (RBOM 25.) Gascón is wrong. Separation of powers principles vests the power to set criminal punishments with the Legislature.

"The powers of state government are legislative, executive, and judicial. Persons charged with the exercise of one power may not exercise either of the others except as permitted by this Constitution." (Cal. Const., art. III, § 3.) "The legislative power of this State is vested in the California Legislature which consists of

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[6] With the prior strike conviction, he would not qualify for elderly parole. (Pen. Code, § 3055, subd. (g).) Because his strike allegation was dismissed, the defendant will now qualify for elderly parole. (*Id.*, § 3055.)

the Senate and Assembly, but the people reserve to themselves the powers of initiative and referendum." (Cal. Const., art. IV, § 1.)

It has long been established that "the power of punishment is vested in the legislative, not in the judicial department. It is the legislature, not the Court, which is to define a crime, and ordain its punishment." (*U.S. v. Wiltberger* (1820) 18 U.S. 76, 95 [5 L.Ed. 37].) Indeed, under the "firmly entrenched" separation of powers in California, "the definition of crime and determination of punishment" are "the domain of the Legislature." (*People v. Wingo* (1975) 14 Cal.3d 169, 174; see *People v. Anderson* (2009) 47 Cal.4th 92, 118–119 [" '[I]t is the function of the legislative branch to define crimes and prescribe punishments' "]; *People v. Bauer* (1969) 1 Cal.3d 368, 375 ["the Legislature has the power to prescribe punishment for crime"].) "It is the peculiar province of the legislature to prescribe general rules for the government of society; the application of those rules to individuals in society would seem to be the duty of other departments." (*Fletcher v. Peck* (1810) 10 U.S. 87, 136 [3 L.Ed. 162].)

Here, Gascón's discretion as a prosecutor rests with selecting who to prosecute and what charges to bring. (Cf. Bjerk, *Making the Crime Fit the Penalty: The Role of Prosecutorial Discretion Under Mandatory Minimum Sentencing* (2005) 48 J.L. & Econ. 591, 603–609 [data in California confirms that prosecutors' discretion in cases subject to three strikes sentencing is often to prosecute misdemeanor charges instead of felonies].) But once those discretionary prosecutorial decisions are made,

the Legislature sets the definition of the crime and its appropriate punishment.

Gascón's rejoinder collapses down to relying on the argument that the "plead and prove" language of the Three Strikes law is unconstitutional. (OBOM 35–37; RBOM 12–17.) He is wrong for the reasons explained in the Answer Brief. (ABOM 13, citing *People v. Gray* (1998) 66 Cal.App.4th 973, 994–996; *People v. Butler* (1996) 43 Cal.App.4th 1224, 1247; *People v. Kilborn* (1996) 41 Cal.App.4th 1325, 1332–1333; see *People v. Cartwright* (1995) 39 Cal.App.4th 1123, 1133–1134.)

In reply, Gascón asserts that "ADDA cannot even point to another statute that uses the term 'shall prove,' . . . ." (RBOM 15.) A few minutes of legal research shows that Gascón's assumption is incorrect. The Legislature has routinely enacted Penal Code provisions directing prosecutors and others about what they "shall prove" in connection with criminal litigation. (E.g., Pen. Code, §§ 261, subd. (a)(1), 286, subds. (g) & (h), 287, subds. (d)(1), (g) & (h), 289, subds. (b) & (c), 324, 382, 1328d, subd. (b), 1417.6, subd. (a)(2), 2602, subds. (d)(3) & (g)(5), 2603, subds. (d)(5) & (h)(5), 4903, subd. (a).) And the Legislature has enacted many other laws directing litigants what they "shall prove" outside the criminal context. (E.g., Bus. & Prof. Code, § 7639.06, subd. (c); Cal. U. Com. Code, § 3309, subd. (b); Fin. Code, § 22109.2, subd. (f); Food & Agr. Code, §§ 5920, subd. (d), 6047.11, 48003, subd. (d); Gov. Code, § 11450.20, subd. (b); Health & Saf. Code, §§ 1424, subd. (c)(1), 25358.3, subd. (g), 78660, subd. (c), 121366; Ins. Code, § 1765.4; Sts. & Hy. Code, § 27563.)

The common statutory term "shall prove" mandates which party *bears the burden of proving* the particular issue, but it does not mandate any prosecutor or litigant must *succeed in proving* that issue. Gascón spilled a lot of ink in his reply brief arguing that use of the term "shall prove" in the Three Strikes law (a term that he erroneously claimed was unprecedented) somehow makes the law unconstitutional. His argument falls apart given the authority demonstrating how routinely that term is used throughout the Penal Code and elsewhere.

Finally, this Court's decision in *Lockyer, supra,* 33 Cal.4th at page 1068 likewise makes clear that "[w]hen, however, a duly enacted statute imposes a ministerial duty upon an executive official to follow the dictates of the statute in performing a mandated act, the official generally has no authority to disregard the statutory mandate based on the official's own determination that the statute is unconstitutional."

Gascón argues that this argument has been forfeited. (RBOM 31–32.) But as a purely legal question implicated by the issues under review, this Court can and should resolve it. (Cal. Rules of Court, rule 8.516(b)(2); see, e.g., *Today's Fresh Start, Inc. v. Los* Angeles *County Office of Education* (2013) 57 Cal.4th 197, 215 ["Though Today's Fresh Start makes financial bias a centerpiece of its due process argument before us, the school concedes it did not raise the issue below. While that omission would be grounds to consider the issue forfeited, we have discretion to consider on appeal purely legal issues raised in a petition for review or answer [citations] . . . ."]; *Broughton v.*

Cigna Healthplans of California (1999) 21 Cal.4th 1066, 1078, fn. 4 ["This court is empowered to decide issues necessary for the proper resolution of the case before it, whether or not raised in the courts below"], superseded by statute on another ground as stated in *Ferguson v. Corinthian Colleges, Inc.* (9th Cir. 2013) 733 F.3d 928, 930–931.)

Moreover, the critical need to ensure that crime victims are fairly treated throughout California and receive equally the benefits due to them under California sentencing law, favors having this issue resolved now. Gascón also argues that this situation differs from *Lockyer* because there is no such mandatory duty under the Three Strikes law. (RBOM 33–38.) Gascón is wrong for the reasons set forth in the answer brief. (See ABOM 23–30.)

Gascón's remedy if he does not like the law is to seek to change it through advocacy and the ballot box. Indeed, the Three Strikes law has already been modified multiple times, including by Proposition 47 which gave prosecutors more discretion to charge various drug offenses as misdemeanors rather than felonies. (Krisberg, *How Do You Eat an Elephant? Reducing Mass Incarceration in California One Small Bite at a Time* (2016) 664 Annals Am. Acad. Pol. & Soc. Sci. 136, 138.) Proposition 36 also reformed the Three Strikes law by permitting prisoners with three strikes sentences to petition to alter their original sentence, and also by limiting the ability of prosecutors to apply a third strike for a nonviolent crime. (*Id.* at p. 140.) These reform efforts represent the appropriate way, consistent with the rule of law

and separation of powers, for changes to be made to the Three Strikes law.

Ultimately, whether Three Strikes law is good or bad public policy is irrelevant to the issues presented in this case. The sole question is whether Gascón has the power himself to alter state law because he does not like it. He does not.

CONCLUSION

This Court should confirm that no one is above the law including District Attorney Gascón.

April 24, 2023

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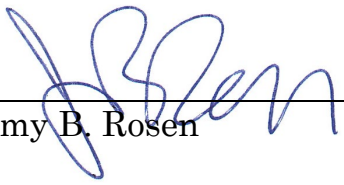
CERTIFICATE OF WORD COUNT
(Cal. Rules of Court, rule 8.204(c)(1).)

The text of this brief consists of 4,089 words as counted by the program used to generate the brief.

Dated: April 24, 2023



Jeremy B. Rosen

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 3601 West Olive Avenue, 8th Floor, Burbank, CA 91505-4681.

On April 24, 2023, I served true copies of the following document(s) described as **APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF AND AMICUS CURIAE BRIEF OF CRIME SURVIVORS RESOURCE CENTER, JUSTICE FOR MURDERED CHILDREN, AND BARBARA JONES** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Horvitz & Levy LLP's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

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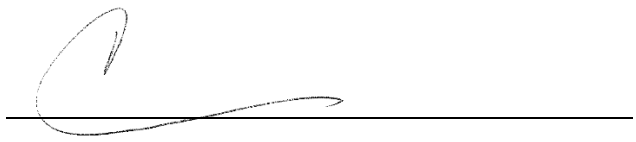
I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on April 24, 2023, at Burbank, California.



SERVICE LIST

The Association of Deputy District Attorneys for Los Angeles County v. Gascon

Case Number S275478

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California Court of Appeal Second District, Div. Seven 300 S. Spring Street 2nd Floor, North Tower Los Angeles, CA 90013	Case No. B310845 [*Via: TrueFiling*]
Hon. James Chalfant Los Angeles Superior Court 111 North Hill Street Department 85 Los Angeles, California 90012-3117	Trial Judge Case No. 20STCP04250 [*Via: US Mail*]