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MEDIA CONTACT
Miriam Krinsky
krinskym@krinsky.la
818-416-5218

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Nearly 70 Current and Former Elected Prosecutors and Attorneys General From Across the U.S. File Amicus Letter Brief In Support of Los Angeles DA George Gascón’s Prosecutorial Discretion

Criminal justice leaders urge the California Supreme Court to review decision undermining DA’s directive to limit use of sentencing enhancements that harm community safety and have a racially disparate impact

SAN FRANCISCO, CA – Today, a bipartisan group of 69 current and former elected prosecutors and Attorneys General – including California District Attorneys Chesa Boudin and Diana Becton; two former Los Angeles District Attorneys; and current Attorneys General Hector Balderas (New Mexico), Keith Ellison (Minnesota) and Karl Racine (District of Columbia) – filed an amicus letter brief in the California Supreme Court in support of review in Nazir v. Los Angeles. In Nazir, the trial court denied a motion from the Los Angeles County District Attorney’s office to dismiss and withdraw sentencing enhancements filed under the previous District Attorney (DA). The defendant challenged the decision, and the California Supreme Court is considering whether to review that ruling.

The amicus letter brief argues that the trial court’s decision improperly infringed on policy decisions entrusted to the elected DA, George Gascón, and that are integral to the exercise of his prosecutorial discretion. Amici emphasize that Gascón’s efforts to end the use of sentencing enhancements reflect the exact platform that he was elected to carry out, which included his promise to roll back harsh prosecutorial practices that contributed to excessive incarceration rates, particularly for people of color, and did little to improve public safety.

“George Gascón was elected with a mandate to transform the criminal legal system in Los Angeles County,” said Miriam Krinsky, Executive Director of Fair and Just Prosecution (the organization that organized the letter brief) and a former federal prosecutor in Los Angeles, as well as the former President of LA’s Ethics Commission. “The trial court’s ruling reflects the latest attempt by those committed to failed ‘tough on crime’ policies of the past to infringe on prosecutorial discretion and usurp the will of the people. The foundational sanctity of separation of powers and prosecutorial discretion cannot be violated simply because the court or others disagree with the voters’ and the elected DA’s approach to the pursuit of justice.”

In the letter brief, amici underscore the fundamental obligation of elected prosecutors to carry out their role in ways that take into account the interests of justice and the prudent use of limited resources. The ability of the elected prosecutor to decide which cases to try, what offenses to charge and what penalties and sentences to seek – including whether to pursue available sentencing
Enhancements – is within the purview of prosecutorial discretion “enshrined in separation of powers principles included in most state constitutions, including California’s.”

“As an elected Attorney General and prosecutor, I am accountable to my community,” said Minnesota Attorney General Keith Ellison, a signatory to the letter brief. “My community entrusted me to use my discretion to pursue justice, and DA Gascón’s community similarly has put their faith in him to make the tough decisions about how and when to prosecute cases. No court should have the ability to infringe on his discretion and subvert the will of the people.”

The amicus letter brief explains that DA Gascón is just one of the many elected prosecutors across the country who are declining to prosecute classes of alleged offenses or refraining from seeking certain sentences as matters of office policy. While the trial court denied the motion on the grounds that discretion must be based on an individualized assessment, amici stress that centralized office policies – especially in a large office where the case outcome should not be based on the fortuity of the individual prosecutor – are critical and fully appropriate: “There is no constitutional or legal doctrine that permits the court to subvert these decisions simply because they are ‘blanket’ policies with broad application, rather than the result of a case-by-case analysis. The discretionary determinations that underlie them are no less reasoned, thoughtful, or valid than those that are specific to the precise facts of a given case.”

“For many decades, the courts have stood by and respected prosecutorial discretion when elected prosecutors sought harsh sentences that studies show disproportionately impacted communities of color; there is no reasonable explanation as to why the judicial branch should erode that separation of powers now and intrude on decisions clearly within the district attorney’s purview,” said former Los Angeles County District Attorney Gil Garcetti, a signatory on the letter brief. “The people of Los Angeles elected DA Gascón based on his commitment to end the practices that led to mass incarceration, including the use of harsh sentencing enhancements. He should not be prevented from carrying out this vision for his community.”

“We know that sentencing enhancements have fueled mass incarceration without making our communities safer, and DA Gascón was elected by his community to chart a new path forward,” said Erwin Chemerinsky, Dean of the University of California at Berkeley School of Law and one of the counsel who assisted with the letter brief. “If upheld, the trial court’s decision would set a dangerous precedent of allowing courts to intrude into the authority uniquely vested in elected prosecutors. The California Supreme Court should review this case and ensure that the discretion granted to district attorneys in our state’s constitution is protected and upheld.”

Read the letter brief here; for a complete list of amici, see below.

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Fair and Just Prosecution is a national network of elected prosecutors working towards common-sense, compassionate criminal justice reforms. To learn more about FJP’s work, visit our website and follow us on Facebook, Twitter, and LinkedIn.
List of Amici

Jean Peters Baker  
Prosecuting Attorney, Jackson County, Missouri

Hector Balderas  
Attorney General, New Mexico

Diana Becton  
District Attorney, Contra Costa County, California

Wesley Bell  
Prosecuting Attorney, St. Louis County, Missouri

Buta Biberaj  
Commonwealth’s Attorney, Loudoun County, Virginia

Sherry Boston  
District Attorney, DeKalb County, Georgia

Chesa Boudin  
District Attorney, City and County of San Francisco, California

Aisha Braveboy  
State’s Attorney, Prince George’s County, Maryland

John Choi  
County Attorney, Ramsey County, Minnesota

Darcel Clark  
District Attorney, Bronx County, New York

Dave Clegg  
District Attorney, Ulster County, New York

Shameca Collins  
District Attorney, Sixth Judicial District, Mississippi

Scott Colom  
District Attorney, Sixteenth Judicial District, Mississippi

John Creuzot  
District Attorney, Dallas County, Texas
Satana Deberry  
District Attorney, Durham County, North Carolina

Parisa Dehghani-Tafti  
Commonwealth’s Attorney, Arlington County and the City of Falls Church, Virginia

Steve Descano  
Commonwealth’s Attorney, Fairfax County, Virginia

Michael Dougherty  
District Attorney, Twentieth Judicial District, Colorado

Mark Dupree  
District Attorney, Wyandotte County, Kansas

Matthew Ellis  
District Attorney, Wasco County, Oregon

Keith Ellison  
Attorney General, Minnesota

Kimberly M. Foxx  
State’s Attorney, Cook County, Illinois

Glenn Funk  
District Attorney, Twentieth Judicial District, Tennessee

Gil Garcetti  
Former District Attorney, Los Angeles County, California

Kimberly Gardner  
Circuit Attorney, City of St. Louis, Missouri

José Garza  
District Attorney, Travis County, Texas

Sarah F. George  
State’s Attorney, Chittenden County, Vermont

Sim Gill  
District Attorney, Salt Lake County, Utah
Joe Gonzales
District Attorney, Bexar County, Texas

Deborah Gonzalez
District Attorney, Western Judicial Circuit, Georgia

Eric Gonzalez
District Attorney, Kings County, New York

Mark Gonzalez
District Attorney, Nueces County, Texas

Christian Gossett
District Attorney, Winnebago County, Wisconsin

Andrea Harrington
District Attorney, Berkshire County, Massachusetts

Jim Hingeley
Commonwealth’s Attorney, Albemarle County, Virginia

John Hummel
District Attorney, Deschutes County, Oregon

Natasha Irving
District Attorney, Sixth Prosecutorial District, Maine

Shalena Cook Jones
District Attorney, Chatham County, Georgia

Justin F. Kollar
Prosecuting Attorney, Kauai County, Hawaii

Lawrence S. Krasner
District Attorney, Philadelphia, Pennsylvania

Brian S. Mason
District Attorney, Seventeenth Judicial District, Colorado

Beth McCann
District Attorney, Second Judicial District, Colorado
Karen McDonald  
Prosecuting Attorney, Oakland County, Michigan

Ryan Mears  
Prosecuting Attorney, Marion County, Indiana

Brian Middleton  
District Attorney, Fort Bend County, Texas

Stephanie Morales  
Commonwealth’s Attorney, City of Portsmouth, Virginia

Marilyn J. Mosby  
State’s Attorney, Baltimore City, Maryland

Jody Owens  
District Attorney, Hinds County, Mississippi

Alonzo Payne  
District Attorney, Twelfth Judicial District, Colorado

Jim Petro  
Former Attorney General, Ohio

Joseph Platania  
Commonwealth’s Attorney, City of Charlottesville, Virginia

Karl A. Racine  
Attorney General, District of Columbia

Ira Reiner  
Former District Attorney, Los Angeles County, California  
Former City Attorney, Los Angeles, California

Mimi Rocah  
District Attorney, Westchester County, New York

Rachael Rollins  
District Attorney, Suffolk County, Massachusetts

Stephen Rosenthal  
Former Attorney General, Virginia
Marian T. Ryan  
District Attorney, Middlesex County, Massachusetts

Dan Satterberg  
Prosecuting Attorney, King County, Washington

Eli Savit  
Prosecuting Attorney, Washtenaw County, Michigan

Mike Schmidt  
District Attorney, Multnomah County, Oregon

Carol A. Siemon  
Prosecuting Attorney, Ingham County, Michigan

David E. Sullivan  
District Attorney, Northwestern District, Massachusetts

Raúl Torrez  
District Attorney, Bernalillo County, New Mexico

Gregory Underwood  
Commonwealth’s Attorney, City of Norfolk, Virginia

Matthew Van Houten  
District Attorney, Tompkins County, New York

Cyrus R. Vance  
District Attorney, New York County, New York

Andrew H. Warren  
State Attorney, Thirteenth Judicial Circuit, Florida

Lynneice Washington  
District Attorney, Jefferson County, Bessemer District, Alabama

Monique H. Worrell  
State Attorney, Ninth Judicial Circuit, Florida