

George Gascón: A Rogue Prosecutor Whose Extreme Policies Undermine the Rule of Law and Make Los Angeles Less Safe

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KEY TAKEAWAYS

Financial backing by George Soros and Soros-affiliated organizations has led to a rise in rogue prosecutors, including George Gascon.

Gascón's radical, pro-criminal, anti-prosecution policies make him a "gold standard" for rogue prosecutors.

Gascón's dangerous policies will impact public safety for decades to come.

The rogue prosecutor movement, which some, mostly liberals, call the "progressive prosecutor" movement, has made significant electoral strides in the past year—in large part because of overwhelming financial backing by George Soros, Soros-affiliated organizations, and other far-left mega-donors.¹ In recent election cycles, several rogue challengers won their races against independent, traditional prosecutors, many of whom are from the same political party as these new challengers.²

These elected rogue prosecutors occupy the offices of the district attorney (DA), but their goal is not to be the best prosecutors they can be, nor to "increase public safety," as outlined under the American Bar Association's professional standards for a prosecutor.³ Rather, their goals, dressed up in deceptive Orwellian language, is much more sinister: to "fundamentally reverse engineer" the role of the prosecutor.⁴ In

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practice, that results in favoring and benefitting defendants, attacking police officers, shunning victims, and cozying up to criminal defense attorneys and radical decarceration zealots.⁵

Earlier Rogue Prosecutors

Until November 2020, the most radical rogue prosecutors, like Boston's Rachael Rollins,⁶ Baltimore's Marilyn Mosby,⁷ Philadelphia's Larry Krasner,⁸ and Chicago's Kim Foxx,⁹ implemented policies that favored defendants, ignored drug laws, prohibited prosecutors from filing certain misdemeanor charges, and cut sweetheart deals with defense attorneys, all of which contributed to spikes in crime (including homicides) in their cities and damaged their relationships with local police and victims' rights groups.

But their policies, which have resulted in more deaths and victims, have not eviscerated the entire architecture of the prosecutor's office and powers—not yet anyway. In most instances, they continue to prosecute violent felons and seek lengthy sentences for the worst of the worst. Though some, like Chicago's Foxx, are not even doing that as well as their predecessors.¹⁰ They defend the cases in which they earned convictions on appeal. They use the laws, passed by their state legislatures, to protect the vulnerable and special categories of victims, like children and the elderly. They seek enhanced sentences when appropriate, charge recidivists with long criminal records accordingly (most of the time), and do not seek to unwind prior convictions won years or decades before. And as much as career prosecutors in their offices may disagree with the policy choices of their rogue bosses, they are not forced to side with defendants, ignore victims and state laws, and violate their oaths of office.¹¹

That changed when George Gascón, the Soros-backed former District Attorney of San Francisco, was elected District Attorney for Los Angeles (LA) County, California, in November 2020. The breadth and scope of his radical policies, imposed by diktat his first day in office, are breathtaking.

Gascón's Special Directives and Their Impact

Gascón's policies, issued in a series of Special Directives, which all prosecutors in the office are required to read and know and which have been incorporated into the office's *Legal Policies Manual*, are nothing short of nuclear explosions aimed at his own office and prosecutors, undercutting and undermining them in the performance of their duties. Written by or with the assistance of his "transition team" or "public policy

advisors”—virtually all of whom are criminal defense attorneys or radical pro-criminal activists—these policies benefit murderers, cop killers, child and adult rapists, career felons, and other dangerous criminals. None of his policies benefits victims of crime.

While this might sound hyperbolic, unfortunately, it is not. Gascón is a rogue among rogues.

Unlike all the other elected rogue prosecutors, Gascón’s policies apply not only to future cases, but also to all ongoing and even *past* cases. Let that sink in. And once it does, it becomes obvious that the cumulative effect of Gascón’s radical new policies is to eviscerate the ability of the District Attorney’s office to protect the public, to defang the enforcement of criminal law in Los Angeles County, to let many criminals (including violent ones), go free—and even to unwind many past convictions. If the goal of a prosecutor is to seek justice, Gascón certainly has a perverted sense of it.

If Gascón’s policies remain in force, other rogue prosecutors currently in office, and those running in the future, may well adopt the Gascón playbook, to the detriment of public safety around the country.

But more immediately, the residents of Los Angeles will suffer in ways no modern American city has suffered. Don’t believe us? Just ask those who lived in San Francisco while Gascón served as DA there—and that was before he went fully rogue.

A Horrendous Track Record as San Francisco DA

If accomplishments mattered, Gascón would never have been elected as the Los Angeles DA in the first place. Gascón was DA in San Francisco from 2011–2019.¹² Under his tenure as the San Francisco DA, crime exploded. He was, on the merits, a complete failure. Ask virtually any resident of San Francisco, and they will tell you how dangerous the city became under Gascón’s tenure.¹³

Gascón was a rape victim’s nightmare in San Francisco.

Rape. In the five years before he took office in San Francisco, there were 757 reported rapes—an average of 151 per year.¹⁴ In his last five years in office, after his policies had time to take root, there were a stunning 1,731 rapes, an average of 346 per year. In 2017 alone, there were 367 rapes, and every year from 2014 to 2019, when he left office, there were more than 300 rapes per year. Gascón cannot explain why rapes went up under his tenure,¹⁵ but there is little doubt that anything other than his lax policies are to blame.

Keep in mind that nationwide, all crime, including violent crime, had been going down for decades.¹⁶ But not in George Gascón’s San Francisco.

Aggravated Assault. Need more proof? Aggravated assaults also went up dramatically under Gascón’s watch as San Francisco DA. In the five years before he took office, there were 11,921 aggravated assaults, an average of 2,384 per year. In his last five years in office, there were 13,070 aggravated assaults—an average of 2,614 per year.¹⁷ Again, Gascón has no explanation for why aggravated assaults went up during his tenure.

But in city after city governed by rogue prosecutors, violent crime goes up, directly because of their pro-criminal policies.¹⁸ There is no other plausible explanation.

Gascón Targeted a True Progressive Prosecutor

Jackie Lacey was a highly successful elected district attorney, and the first African American female district attorney in Los Angeles. She presided over the largest DA’s office in the country, with nearly 1,000 attorneys.¹⁹ By all accounts, she enforced the law as written, fairly, with compassion and prudence. She had a solid working relationship with the Los Angeles Police Department and worked cooperatively with the Office of the Public Defender, the Presiding Judge of the Los Angeles Superior Court, and other key stakeholders.

She was a prosecutor’s prosecutor. Independent, progressive (in the true sense of the word²⁰), fair, pro-victim, but most importantly, pro-justice, she was respected by her deputies. She rose from within the ranks of the office, tried hundreds of cases, and knew a good case from a bad case, a good cop from a dirty cop, and a good outcome from a bad one.

But because Lacey was not willing to adopt the radical policies advocated by the rogue prosecutor movement, she became a target. Nonetheless, she stood her ground.²¹ She was not willing to jettison her independence, even in the face of massive amounts of Soros money.²² To George Soros and other liberal elites, including some tech titans, Gascón’s track record as the San Francisco DA was a plus. Furthermore, since he was willing to implement policies promoted by Soros and other radical groups like Fair & Just Prosecution (they are neither),²³ he was the perfect Manchurian candidate. Many of these rogue prosecutors have been successful in large part because the overwhelming percentage of campaign money they receive (we cannot use the word “raise”) comes from Soros-backed entities.²⁴

Gone are the days of liberal denunciations of “too much money” in political campaigns and their calls for campaign finance reform. Now, many cheer as Soros spends vast sums to promote district attorneys who are willing to flout the rule of law, and Gascón is Soros’s latest prize. Gascón won his race

against Lacey by 53 percent to 46 percent.²⁵ Despite his supposed progressive policies, Gascón targeted the first African American female Los Angeles DA because she was not radical enough.

Radical Transition and Advisory Teams

After Gascón was elected, he announced an impressive “all-star” transition team—stellar, that is, for a public defender’s office.²⁶ A real all-star transition team for a district attorney’s office would include multiple former prosecutors, former judges, law enforcement personnel, and other community leaders who would help the incoming district attorney to assess the efficacy of current policies and programs designed to protect victims and keep the community safe.

But not George Gascón. The members of his transition team, many with direct ties to Soros, are anti-law-and-order activists and zealots. Of the 38 people on his transition team, only one is a career prosecutor, and only one is a former judge. None work for, or have worked for, pro-prosecution organizations, such as the California District Attorneys Association,²⁷ the National District Attorneys Association,²⁸ the Association of Prosecuting Attorneys,²⁹ or any of the dozens of other law-and-order organizations in California and across the country.³⁰ That is because Gascón and his team are not prosecutors by background and do not associate with career professional prosecutors. Dangerously, Gascón and his ilk have bought into the idea of Larry Krasner, the rogue Philadelphia DA, that prosecutors are, and ought to be, “public defender[s] with power.”³¹

Gascón’s Committees. Who is guiding Gascón’s transition into heading the country’s largest district attorney’s office? In addition to a lone career prosecutor, two others have some prosecutorial experience, one worked for Gascón in San Francisco, and the other is a Deputy DA in the Los Angeles DA’s office, who previously ran against Jackie Lacey to be district attorney. Three are public defenders. Some are communications and public relations specialists. But most troublingly, as delineated below, the transition team is littered with leading proponents of ending cash bail, ending the death penalty, anti-incarceration zealots, pro-illegal alien leaders, prison abolition activists, and more. The transition team is organized into 13 teams.³²

Steering Committee. The Steering Committee is composed of four people, none of whom has extensive managerial experience as a prosecutor or extensive ties to law enforcement or other pro-prosecution organizations.

- Christine Soto DeBerry is the Executive Director of Prosecutors Alliance, a California-based nonprofit that “supports and amplifies the voices of” California’s rogue prosecutors.³³
- Jamarah Hayner is a public affairs consultant, who previously worked for then–San Francisco DA Kamala Harris.³⁴
- Joseph Iniguez is a Deputy District Attorney in the Los Angeles DA’s office. He ran against Jackie Lacey and lost.³⁵ According to those familiar with his work, he has far less prosecutorial experience than the average Deputy District Attorney in his pay grade, having tried only four felony cases, two of which he lost. He has no significant managerial experience.
- Max Szabo is a lawyer who works as a communications professional. He was “previously a senior adviser to [Gascón in San Francisco] where he served as an Assistant District Attorney and Director of Communications and Legislative Affairs.”³⁶

Bail Committee. The Bail Committee is composed of two individuals vehemently opposed to cash bail, each of whom has dedicated part of his or her professional career to ending cash bail and championing more permissive standards for pretrial release—meaning more individuals, *even dangerous ones*, will be released on nothing more than their word that they will show up to court and not commit any additional crimes.

1. Dolores Canales is the Community Outreach Director for the Bail Project, an organization dedicated to eliminating bail for all criminals. She was previously a Soros Justice Fellow.³⁷
2. Robin Steinberg is the Founder and CEO of the Bail Project. She was a public defender for 35 years and hopes to transform “the pretrial system in the US.”³⁸

Conviction Review Committee. The Conviction Review Committee is composed of two individuals.

1. Franky Carrillo is a wrongly convicted person, who was later exonerated and is now the star of a Netflix docuseries called “The Innocence Files.”³⁹

2. Paula Mitchell is the Executive Director of Project for the Innocent at Loyola Law School.⁴⁰

Death Penalty Committee. The Death Penalty Committee is composed of three individuals who are hostile to the death penalty, no matter how heinous someone's crime.

1. Stephanie Faucher is the Deputy Director of the 8th Amendment Project, an organization founded in 2014 to end the death penalty.⁴¹ She works in communications and previously worked at MoveOn.org, which has also been funded by George Soros.⁴²
2. Sean Kennedy is the Executive Director of The Center for Juvenile Law and Policy at Loyola Law School and a former federal public defender.⁴³
3. Natasha Minsker is a consultant, former American Civil Liberties Union (ACLU) attorney, and former Director of the ACLU of California Center for Advocacy and Policy.⁴⁴

Diversion, Re-Entry, and Behavioral Health Committee. This committee is composed of two individuals who favor releasing large swaths of currently incarcerated criminals.

1. Songhai Armstead is the Executive Director of Alternatives to Incarceration, an organization whose motto is "care first, jails last."⁴⁵
2. Eunisses Hernandez is the Co-Executive Director for La Defensa, a project of Tides Advocacy, which is a Soros-funded liberal organization.⁴⁶ The mission of La Defensa is "to decarcerate the largest jail population in the United States."⁴⁷

Of note, Tides Advocacy is a social justice organization with over \$29 million in total assets at the end of 2019, according to their audited financial statements, and total revenue in 2019 of over \$52,000,000.⁴⁸ Tides Advocacy is an affiliate of Tides. Tides is comprised of five separate legal entities: Tides Network, Tides Center, Tides Foundation, Tides Two Rivers Fund, and Tides Inc. Tides had \$711,763,331 in assets as of the end of 2019, according to their consolidated financial statements, and had revenue of \$717,991,216 that year alone.⁴⁹

Enhancements, Three Strikes, and Charging Committee. This single-member committee focuses on furthering the policy of not charging or alleging certain crimes in order to not trigger enhanced penalties—penalties that were designed to protect the public.

- Michael Romano is the Founder and Director of The Three Strikes and Justice Advocacy Project at Stanford Law School.⁵⁰

Environmental Justice. This committee, which has an odd focus for a local elected DA's office, seems designed more to send political signals to liberal supporters than to focus on issues that those working in the DA's office are likely to encounter on a day-to-day basis.

- Michael Kadish is the President of the Los Angeles League of Conservation Voters, which is “the only environmental Political Action Committee (PAC) in Los Angeles County” with a mission to “endorse and support candidates...who exhibit a knowledge of, and commitment to, preserving and protecting the environment.”⁵¹
- Angelo Logan is the Campaign Director for Moving Forward Network, which is “a national network of over 50 member organizations” that focuses on “the negative impacts of the global freight transportation system.”⁵²
- Mary Nemick is the Director of Communications for the City of Los Angeles' Public Works Department, Bureau of Engineering, and serves on the board of the Los Angeles League of Conservation Voters.⁵³
- Aura Vasquez was a commissioner on the Los Angeles Department of Water and Power's Board. She is an environmental and political consultant.⁵⁴

Immigration Committee. This committee features three individuals to help further Gascón's goal of undermining enforcement of current immigration policies and charging immigrants in such a way so as not to trigger immigration consequences when possible.

1. Maritza Agundez is part of the Coalition for Humane Immigrant Rights, where she is a managing attorney.⁵⁵

2. Rose Cahn is a senior staff attorney at the Immigrant Legal Defense Resource Center. She was previously a Senior Soros Fellow at the Lawyers Committee for Civil Rights.⁵⁶
3. Marissa Montes is the Clinic Director for the Loyola Immigrant Justice Center at Loyola Law School.⁵⁷

Juvenile Committee. This committee is designed to further Gascón's radical goals of charging no juveniles as adults—no matter how heinous or depraved their crimes—as well as other policies that will neither help juveniles nor keep the community safe.

- Frankie Guzman is the Director of Youth Justice Initiative at the National Center for Youth Law and was a recipient of a Soros Justice Fellowship.⁵⁸
- Michael Mendoza is the Director of National Advocacy for the Anti-Recidivism Coalition.⁵⁹
- Maureen Pacheco is a trainer for the Juvenile Division of the Alternate Public Defender's Office of Los Angeles and a former public defender.⁶⁰
- Patricia Soung is an attorney at the Pacific Juvenile Defender Center, where she is the Director of Youth Justice Policy. She was a Soros Justice Fellow at Northwestern University Law School.⁶¹

Law Enforcement Accountability. This two-person committee notably contains no one with actual law enforcement experience.

1. Erwin Chemerinsky is the Dean of the U.C. Berkeley Law School, distinguished law professor, and long-time liberal activist.⁶²
2. Je Yon Jung is an attorney who previously worked in the U.S. Department of Justice and the Consumer Financial Protection Bureau.⁶³

Law Enforcement Relations. Given Gascón's radical policies, this committee certainly has its work cut out for it.

- Kevin Jablonski is a current executive and performance coach. He retired in September 2020 as the Chief Police Psychologist for the Los Angeles Police Department.⁶⁴

- Rebecca Neusteter is the Executive Director of the Health Lab of the University of Chicago's Urban Labs.⁶⁵
- Jacqueline Seabrooks is the Chief of Police with the Santa Monica Police Department.⁶⁶

Re-Sentencing. The policies put in place by this committee will have far-reaching consequences because they will seek to align the sentences of those prosecuted by Gascón's predecessors with his new anti-crime, pro-criminal policies.

- Hillary Blout is the Founder and Executive Director of For the People and the Sentence Review Project. She worked briefly as Deputy District Attorney in San Francisco for both Gascón and Kamala Harris when each was the district attorney.⁶⁷ She also worked for the anti-prosecution organization ironically called Fair & Just Prosecution.⁶⁸
- Kate Chatfield is the Director of Audience Engagement and Senior Legal Analyst at The Appeal. She was formerly the Director of Policy at The Justice Collaborative, former policy director at Restore Justice, and a former public defender.⁶⁹
- Christopher Hawthorne is a law professor and Director of the Juvenile Innocence and Fair Sentencing Clinic at Loyola Law School and a former criminal defense attorney.⁷⁰
- Jennifer Hansen is a staff attorney at the California Appellate Project.⁷¹
- Paula Mitchell and Michael Romano, mentioned above, also serve on this Committee.⁷²

Trauma-Informed Approach to Victims Committee. Like the Law Enforcement Relations Committee, this committee too has its work cut out for it because crime *victims* are the real forgotten people under Gascón's new administration.

- Ivette Ale is a grassroots organizer and LGBTQ community leader who grew up as an illegal alien and is affiliated with Dignity and Power NOW, which "fights for the dignity and power of all incarcerated people, their families, and communities," according to its website.⁷³

- Lanaisha Edwards is a member of Trauma Informed LA and works with “Crime Survivors for Safety and Justice as the Los Angeles Chapter Coordinator and is working with [the] Volunteers of America [Gang Reduction Youth Development] program as a Lead Case Manager.”⁷⁴ She is the sister of a person who was murdered.⁷⁵
- Dr. Gena Castro Rodriguez is a psychologist and Chief of Victim Services for the San Francisco District Attorney’s Office.⁷⁶
- Bamby Salcedo is a Latina transgender speaker and advocate.⁷⁷

Radical Policy Directives

Gascón issued nine sweeping “Special Directives” to all deputy district attorneys to supersede entire chapters of the office’s existing legal policy manual. Issued literally *one minute* after he was sworn into office on December 7, and effective the next day, the diktats from the front office apply to virtually all potential cases, incoming cases, ongoing cases—and to those cases that have already been completed in which a defendant was convicted and is serving a sentence.

One of the hallmarks of the rogue prosecutor movement is the use of feel-good phrases, repeated *ad nauseam* in the media and academia, meant to drum up support for their radical, pro-criminal policy preferences. Examples include “mass incarceration,” “correctional-free lunch,” “institutional change,” “over-policing,” “unnecessary incarceration,” “excessive sentences,” “two-tiered system of justice,” and more. They frame their efforts in fuzzy-sounding aspirational phrases like “reimagining prosecution”; factually misleading and inflammatory statements like “structural racism”; and confidence-inspiring terms like “conviction integrity units.” Not surprisingly, these and other phrases favored by rogue prosecutors are littered throughout Gascón’s special directives.

When read together, it is clear that the new special directives are designed to benefit criminal defendants, undercut hard-fought convictions, and prevent the fair application of the criminal law to most crimes going forward. If you had asked the criminal defense bar to craft special directives for a DA’s office to benefit their clients, this is what they would look like.

And in all likelihood, given the people on the transition team, that is exactly what happened: The criminal defense bar, essentially, wrote these directives to benefit their clients.

Pretrial Release. Special Directive 20–06 is entitled “Pretrial Release Policy.”⁷⁸ A more accurate title would be “Let Everyone Out of Jail and End Cash Bail.”

In a subsection entitled The Unfairness of Cash Bail, the directive notes that even though the legislation to eliminate cash bail in the state failed, “[W]e will not wait for statewide reform before imposing meaningful changes in the use of cash bail.”⁷⁹ Cash bail, according to the directive, creates a “two-tied system of justice,” and leads to “unnecessary incarceration” that harms “individuals, families and communities.”⁸⁰ In other words, Gascón is saying that even though Californians just voted to keep cash bail, he will not obey the will of the voters and will not follow the law.

The directive states, “Unaffordable cash bail eviscerates the bedrock of our democracy and undermines our principles of justice, fairness and equality under the law.”⁸¹ According to Gascón, “freedom should be free.”⁸²

What the directive does not mention is that certain criminals—especially career felons—can pose a significant risk of danger to the community; that cash bail is a tool that works to ensure their appearance at future court dates; and that, in appropriate cases, pre-trial detention keeps them off the streets pending trial or case disposition. Like all these directives, this one makes definitive or overbroad statements that are not backed up by any serious studies.

For example, this directive states that it is “exceptionally rare that individuals willfully flee prosecution or commit violent felony offense while released pretrial.”⁸³ This statement cites no data—and runs counter to what prosecutors, judges, courtroom clerks, and police see in courtrooms across the country every day when defendants fail to appear for court appearances.

And since “freedom should be free,” and Gascón cannot tolerate “unaffordable bail,” the directive requires there to be a presumption in favor of pretrial release. Everyone arrested “shall receive a presumption of own recognizance release without conditions.”⁸⁴ Pretrial detention “shall only be considered” when “clear and convincing evidence” shows a substantial likelihood that the defendant’s release would result in great bodily harm to others or his flight to avoid prosecution.⁸⁵

Prosecutors are prohibited, regardless of the extent of an accused’s criminal history, from requesting cash bail for any misdemeanor, non-serious felony, or non-violent offense. And in the event that a deputy district attorney gets supervisor approval to request cash bail, the prosecutor must presume a defendant is indigent.⁸⁶ Prosecutors may not rely solely on scores from risk-assessment tools for detention,⁸⁷ even though such tools have been used for decades, are quite sophisticated, and are part of the First Step Act passed by Congress last year.⁸⁸

To make matters worse, prosecutors are not allowed to oppose a defense counsel's motion to remove or modify a defendant's conditions of release,⁸⁹ nor can prosecutors oppose a defense counsel's request to waive a client's appearance at "non-essential" court appearances,⁹⁰ nor can prosecutors oppose a defense counsel's request that a judge not issue a bench warrant against the defendant for not showing up.⁹¹ This last directive is bad policy because each court appearance gives the defendant's lawyer, the judge, and pre-trial supervision officers another chance to make contact with the defendant and to ensure any issues are being addressed. And while a defendant may not need to be present for every court hearing, that issue typically is, and should be, resolved in advance. If something does happen in which a defendant does not appear without prior notice, in our experience, prosecutors typically do not immediately ask a judge to issue a bench warrant for the absent defendant.

To top it off, these policies apply *retroactively*, to anyone currently incarcerated in Los Angeles County on cash bail.⁹² Furthermore, prosecutors are prohibited from objecting to their release.⁹³

Misdemeanor Case Management. Special Directive 20-07 is entitled "Misdemeanor Case Management."⁹⁴ A more accurate title would be "Thirteen Crimes You Can Commit in Los Angeles With Impunity, Thanks to George Gascón."

Dressed up in the same psycho-babble fuzzy language endemic to the rogue prosecutor movement, this directive implores the reader to "reimagine public safety,"⁹⁵ which, as we have discussed at length in our research,⁹⁶ is tantamount to ending public safety as we know it, favoring criminals, targeting police, and shunning victims. To that end, this directive states that "prosecution of low-level offenses will now be governed by this data-driven misdemeanor reform policy directive."⁹⁷

The phrase "data-driven" is one that other rogue prosecutors use, too. They want voters to believe that if you refuse to prosecute scores of crimes that crime will actually go *down*, and they have the "data" to prove it. But they usually do not.⁹⁸ And on those rare occasions when they actually do produce some data, a closer look behind how that "data" was generated, calculated, and interpreted often leads to vastly different conclusions.⁹⁹

Rachael Rollins, the rogue prosecutor in Boston, for example, uses the same "data driven" language in her "Rollins Policy Memo," which lists 15 crimes you can now commit with impunity in Boston.¹⁰⁰ While she claims that ignoring these offenses will actually lead to less crime, the opposite has proven to be the case, according to recent crime statistics. The same is true in other cities with rogue prosecutors. This should hardly come as a

surprise. Tell criminals they can commit certain crimes and that they will not be charged, and criminals will commit those crimes.¹⁰¹

Like Rollins, Gascón has decreed that 13 misdemeanor offenses that are still on the books in California “shall be declined or dismissed before arraignment and without conditions,”¹⁰² unless certain “exceptions” or other “factors” exist.¹⁰³ To make matters worse, the directive states that “these charges do not constitute an exhaustive list,” and each prosecutor in Gascón’s office is ordered to “exercise his discretion” to identify other offenses—out of the hundreds of misdemeanors in the California Penal Code—that fall within “the spirit” of this directive and to proceed accordingly.¹⁰⁴

The 13 crimes the directive mentions by name that you can commit with impunity in Los Angeles as of December 8, 2020, are:¹⁰⁵

- Trespass,
- Disturbing the peace,
- Driving without a license,
- Driving on a suspended license,
- Criminal threats,
- All drug possession,
- All drug paraphernalia possession,
- Minor in possession of alcohol,
- Drinking in public,
- Under the influence of a controlled substance,
- Public intoxication,
- Loitering,
- Loitering to Commit Prostitution, and
- Resisting Arrest.

If the charge is not declined because it falls into a narrow exception, then prosecutors must follow a three-step process until the case is ultimately dismissed.¹⁰⁶ This process includes:

1. Pre-arraignment diversion via an administrative hearing, then upon compliance with specified conditions, the charge will be formally dismissed.
2. Post-arraignment, pretrial plea diversion. Once the criminal complies with conditions, the charge is dismissed without entry of a plea.
3. Post-arraignment, post-plea diversion. Once the criminal complies with the conditions imposed pretrial, the charge is dismissed after the criminal withdraws his plea of guilty.

For those misdemeanors not on the list of 13, pretrial diversion “shall be presumptively granted” for a period of six months, and in no circumstance longer than 18 months.

For those few misdemeanor cases that are not declined or subject to pretrial diversion, prosecutors are required to follow these rules when making plea offers:

1. No offer can require a defendant to do jail time and community labor.
2. No offer can require a defendant to do more than 15 days of community labor.
3. No offer can require a defendant to register on a public registry unless required by statute.
4. Once a prosecutor makes an offer to a defendant, who then refuses the offer, the prosecutor cannot up the ante if the defendant decides to roll the dice by filing a pretrial motion (and loses) or decides he wants a jury trial, and then changes his mind once he gets closer to trial.

With respect to fines and fees, prosecutors are required to presume that *all* criminals are indigent and unable to pay a fine or fee.¹⁰⁷ Prosecutors must “actively support” a request by a criminal or his attorney to waive a fine or fee.¹⁰⁸

When a defendant receives probation, and, as a condition of probation, is required to pay a fine or fee or to participate in a program and then fails to

make the payment or participate in the program, prosecutors are prohibited from arguing that the defendant violated the terms of his probation.¹⁰⁹

Sentencing Enhancements and Allegations. Special Directive 20–08 is called Sentencing Enhancements/Allegations.¹¹⁰ A more accurate title would be “Don’t Worry, Violent Felons and Gang Members, You Won’t Go to Prison.”

The most controversial aspect of Gascón’s radical directives is the elimination of most sentencing enhancements, special circumstances, life-without-parole-eligible sentences, and the death penalty. The Association of Deputy District Attorneys for Los Angeles County, which sued Gascón over his new policy directives, argues that some of those enhancements are required by law, and it is questionable whether Gascón has the legal authority to order his prosecutors—each of whom is an officer of the court and member of the California bar—not to file those enhancements. The association argues that the law enacting the enhancements “made the prosecutor’s duty to seek the Three Strikes enhancement absolute. In cases where the Three Strike Law applies, the prosecutor has no discretion to refuse to seek the enhancement—he or she is bound by law to do so.”¹¹¹

That presents a question of California state law that the California courts must resolve. But first, some background.

Over the years, the California legislature has passed dozens of sentencing enhancements, providing for harsher penalties or mandatory incarceration when someone commits a crime against specific classes of individuals, such as children, women, the elderly, and others; when certain aggravating circumstances, such as using a firearm, are present; or when someone is a repeat offender.

In 1994, in response to rampant crime and gang activity in the state by career violent felons, the legislature passed The Three Strikes Law,¹¹² which gave prosecutors the ability to seek a life sentence for anyone who committed a qualifying offense and had two qualifying prior convictions. The legislature also passed laws detailing the gruesome special circumstances of the most violent cases that would make a criminal eligible for life without parole (LWOP) or the death penalty.¹¹³ California prosecutors, including deputy district attorneys in the Los Angeles DA’s office, exercised their discretion accordingly, added enhancements when appropriate, and when necessary, sought guidance from supervisors in the most violent cases to decide whether to seek LWOP or the death penalty. In exercising this discretion, the death penalty was sought in only a small percentage of death-eligible cases.

The directive starts with the bold, yet dubious, assertion that the statutory sentencing ranges for criminal offenses “alone, without enhancements, are sufficient to both hold people accountable and also protect public safety.”¹¹⁴ The directive references “studies” that purport to conclude that each “additional sentence year causes a 4 to 7 percent increase in recidivism.”¹¹⁵ But one of the research papers cited to support this assertion was written by an economist (about criminals in only one county in Texas) who applied economic theory to modest sentences to see if the benefits of incarcerating people for shorter periods of time outweighed the costs of longer-term incarceration, including post-release higher recidivism rates and increased dependence on the government.¹¹⁶ In short, the paper does not say what Gascón asserts it says.

The directive makes no mention of the groundbreaking study by the National Bureau of Economic Research entitled *Using Sentencing Enhancements to Distinguish between Deterrence and Incapacitation*, which demonstrated that California sentence enhancements had a substantial deterrent effect and were cost effective.¹¹⁷

Professors Daniel Kessler and Steven Levitt of Stanford University and University of Chicago, respectively, tested their model using California’s Proposition 8, which imposed sentence enhancements for a select group of crimes. They found that in “the year following its passage, crimes covered by Proposition 8 fell by more than 10 percent relative to similar crimes not affected by the law, suggesting a large deterrent effect.”¹¹⁸ More strikingly, they found that “three years after the law comes into effect, eligible crimes have fallen roughly 20–40 percent compared to non-eligible crimes.”¹¹⁹ They concluded that California sentence enhancements had a large deterrent effect and “may be more cost-effective than is generally thought.”¹²⁰

Those inconvenient facts aside, the directive prohibits prosecutors from seeking the application of sentence enhancements or the Three Strikes Law, or asserting sentence allegations in the charging documents that would trigger any such enhancement upon conviction. It further forces them to *withdraw* such allegations in all pending cases.

Despite the fact that enhancements, special allegations, and the Three Strikes law keep violent, career felons off the streets for decades, thus protecting society from the worst of the worst, Special Directive 20–08 undercuts the California legislature’s laws, and outright bans their use. Prosecutors cannot allege any “5-Year Priors” under California Penal Code § 667(a)(1) or “3-Year Priors” under California Penal Code § 667.5(a) and are required to dismiss such allegations in pending cases—nor can they add “gang enhancements” against known violent gang members pursuant to California Penal Code § 186.22 and must dismiss such charges in pending cases.¹²¹

In contrast to these new proposals, the *Legal Policy Manual* that was in effect under former District Attorney Jackie Lacey included reasonable charging policy guidance for prosecutors in their use of enhancements and special circumstances. For example, Chapter 2.10 (Charging Special Allegations), now rescinded by Gascón, stated:

When a complaint is filed, a deputy shall charge all applicable special allegations that enhance the penalty or result in the mandatory denial of probation (e.g., all prior serious or violent felony convictions, possession or use of weapons and the infliction of great bodily injury) whenever the policies on evidentiary sufficiency have been satisfied.¹²²

Prosecutors were required, under Jackie Lacey, to file all applicable special allegations. Gascón has taken the opposite approach, banning the filing of special allegations.

Similarly, Chapter 3.02 (Three Strikes), now rescinded by Gascón, took a measured approach to filing three strikes in cases, stating:

The Three Strikes law, Penal Code §§ 1170.12(a)–(d), provides a powerful tool for obtaining life sentences in cases involving habitual criminal offenders. However, unless used judiciously, it also has the potential for injustice and abuse in the form of disproportionately harsh sentences for relatively minor crimes. The Three Strikes statutory scheme appropriately authorizes the use of prosecutorial discretion in its implementation. Deputies have a legal and ethical obligation to exercise this discretion in a manner that assures proportionality, evenhanded application, predictability and consistency. Moreover, the potential for coercive plea bargaining must be avoided.¹²³

Section 12.05 (Three Strikes) in the Lacey Legal Policy Memo, now rescinded, stated:

All qualifying prior felony convictions shall be alleged in the pleadings pursuant to Penal Code § 1170.12(d)(1). Prior to seeking dismissal of any strike, the prior strike case files shall be reviewed, if available, in order to fairly evaluate mitigating and aggravating factors. If it is determined that proof of a prior strike cannot be obtained or that the alleged strike is inapplicable, dismissal of the strike shall be sought after obtaining Head Deputy approval.¹²⁴

Gascón’s termination of the Three Strikes policy is not judicious, proportional, or evenhanded. It is reckless, especially because Los Angeles has

a major gang and violent crime problem. The district attorney is the office charged with holding criminals, especially violent criminals, accountable. Keeping particularly dangerous criminals off the streets, for long periods of time, keeps the community safer from such offenders.

Now prosecutors cannot file special circumstance allegations that would result in an LWOP sentence and must dismiss or withdraw such allegations in pending cases. And, unlike other rogue prosecutors, Gascón has mandated that these rules apply *retroactively*. For defendants sentenced within 120 days of December 8, 2020, prosecutors are not allowed to oppose a request from defense counsel for resentencing in “accordance with these guidelines.”¹²⁵

Deputy district attorneys, victims, and victims’ groups reacted with horror at this directive and spoke out repeatedly against it to the media and anyone who would listen. At first, Gascón stood his ground, but within 11 days, he issued an amendment to Special Directive 20–08.2.¹²⁶ The amended directive allows for allegations, enhancements, and alternative sentencing schemes in a small handful of classes of cases with special victims, such as hate crimes, elder and dependent abuse, child physical and sexual abuse, adult sexual abuse, human sex trafficking and financial crimes, or in cases in which there is extensive physical injury or when a dangerous weapon was used and “exhibited an extreme and immediate threat to human life”—but only after getting a supervisor’s permission.¹²⁷

Given that there are over 100 sentencing enhancements, allegations, and special circumstance laws in California, the vast majority of eligible criminals will now not be held to account under the full force of the law as passed by the California legislature, and Los Angelenos will suffer as a result.

Youth Justice. Special Directive 20-09 is entitled Youth Justice.¹²⁸ A more accurate title would be “Violent Teens Never Go to Jail” or, alternatively, “The Gang Improvement and Recruiting Act” as the policies create incentives for gangs to enlist even more youth under 18 years old to commit violent crimes.

Dressed up in more bumper sticker feel-good language like “care over cages” and “need over deed”—dog whistles to the Woke—the directive makes diversion the default for those under 18 who commit crimes, with a goal of “keeping youth out of the juvenile justice system.” Of course, the way Gascón keeps youth out of the juvenile justice system is simple: Ignore their criminality and order his prosecutors to do the same.

The most radical aspect of this directive is this: Prosecutors are prohibited from transferring youthful offenders to adult court, no matter what crime they commit. That means that a 6’3”, 210-pound gang member who

is 17 years old who murders someone and later gets caught is given an “adjudication” in juvenile court—and can be set free. All pending motions to transfer youthful offenders to adult court are required to be withdrawn.

Furthermore, all youth accused of misdemeanors will not be prosecuted, unless it is “deemed necessary,” and in those cases, they go to diversion programs. Youth who damage property and get in a “minor altercation with group home staff, foster parents and other youth” will not be charged. Undoubtedly, this will have a negative impact on whether people want to work in group homes or foster kids in LA.¹²⁹ The directive also disbands the school truancy unit and programs associated with chronic truancy. So much for encouraging kids to attend and stay in school in Los Angeles County.

Prosecutors are prohibited from filing (in juvenile court) any “potential strike offense” for 16- and 17-year-old criminals, with the exception of forcible rape and murder. And even here, George Gascón’s nomenclature is deceptively misleading, hiding the true impact of his directive. His exception specifies “rape” as a carve-out, but “rape” under California law means vaginal penetration of a female victim. Forcible sodomy and forcible oral copulation are different code sections, meaning they are different offenses that would not be subject to the carve-out. Details matter.

Therefore, a dangerous 16- or 17-year-old who is a gang member or has a long criminal record, who shoots someone but does not kill him, or who engages in physical or sexual abuse of a child, or who forcibly sodomizes a victim, or who commits another violent crime, will not have to face a “strike” allegation and will have his case adjudicated in juvenile court, where the maximum punishment is being held in juvenile detention until the age of 21. This creates a perverse incentive for gangs to step up their ongoing recruiting efforts to youth to carry out murders and other heinous crimes on their behalf.

Prosecutors are prohibited from filing child pornography charges against youth who “consensually own or send sexually explicit photos” to others, which deputy DAs had not been doing anyway. Prosecutors are required to “structure charges, filing and prosecution” to avoid triggering sex offender registration requirements, even though federal law requires sex offender registration for people convicted of certain sex crimes, including those under the age of 18.

Prosecutors are prohibited from objecting to a defense attorney’s request to remove a client from the national sex offender public website if the offender was a youth at the time he committed the qualifying sex offense(s).¹³⁰ So a 17-year-old convicted of rape, child molestation, or any other qualifying violent sex offense, who has a history of deviant sexual

assault, and is on the sex offender registry, will not need to worry about a prosecutor objecting to him coming off the registry. Once he is off the registry, the public, including potential employers or landlords, will not have any way of knowing his criminal past unless he voluntarily discloses it, which is highly unlikely to happen.

The directive decrees that the “presumption shall be against detention.”¹³¹ Detention can only be sought where the accused (“child” in their lingo) “poses an immediate danger to others,” and then only “for as long as the child represents a danger to others.”¹³² Prosecutors are prohibited from seeking detention for probation violations unless the youth commits a new, serious qualifying crime.¹³³ For youthful offenders who are illegal aliens, prosecutors “shall seek to avoid immigration consequences,”¹³⁴ and cannot object when defense attorneys seek to seal the record, thereby virtually ensuring that no illegal alien criminal gets deported from LA and no one will have knowledge about his or her crimes because the records are sealed.

Habeas Corpus Litigation Unit. Special Directive 20–10 is called the Habeas Corpus Litigation Unit.¹³⁵ It should be called “Unwind All Prior Convictions by Our Office Unit.” The directive, naturally, starts with the presumption one would expect from a public defender’s office, namely, that “wrongful convictions occur with unacceptable frequency.”¹³⁶ While wrongful convictions do occur, and any wrongful conviction is, of course, a tragedy, this phrasing suggests that wrongful convictions are a frequent and common occurrence, which is a highly debatable, if not downright inflammatory, proposition.

The mission of the Habeas Corpus Litigation Unit (HABLIT) is to “ensure that justice is done in every case filed in the unit.”¹³⁷ The HABLIT is charged to look for all cases of “injustice,” including “racial injustice,”¹³⁸—regardless of whether there were any constitutional violations. When the unit finds those “injustices,” they are required to “take steps to find a remedial solution to bring the conviction and sentence into line with today’s standards.”¹³⁹ And just in case the attorneys in the unit do not understand their marching orders, the directive states that the “HABLIT shall not, as a policy, defend every conviction or raise every conceivable procedural challenge with equal fervor.”¹⁴⁰

So, after line prosecutors engage in pre-trial litigation for weeks or months, disclose discovery required by law, go to trial and earn a conviction, lawyers in their own office have marching orders not to defend the conviction, to look for “racial injustice” (not merely instances of outright innocence or misconduct by the police or a prosecutor), and to “remedy” the situation by either moving to vacate the conviction, agreeing to a re-trial,

or some other pro-defendant scheme. The impact of this policy change will become clear in the months and years to come, as hundreds, if not thousands, of criminal convictions are scrutinized, and possibly reversed, by the attorneys in the HABLIT unit.

This special directive also directs Deputy DAs to concede claims of factual innocence when the conviction was overturned, the charges have been dismissed, the LA District Attorney does not intend to appeal the court's ruling, and there no longer exists admissible evidence to prove guilt. So, by way of example, under George Gascón's new standard, in a case in which the murder weapon was excluded for violation of search and seizure requirements and the conviction is overturned, deputy DAs now have to concede that the murderer is, in fact, *innocent*—as opposed to conceding that, without the ability to introduce this critical evidence during a retrial, he cannot be found guilty beyond a reasonable doubt. This is significant because people who are found factually innocent are entitled under California law to money from a state fund. They also typically sue the county and often succeed in getting very large settlements or judgments in the millions of dollars.¹⁴¹

Death Penalty Policy. Special Directive 20–11 is entitled Death Penalty Policy.¹⁴² It should be called the “No-Death-Penalty-Ever Policy.” Like any policy document from a public defender's office, this directive states that “a sentence of death is never an appropriate resolution in any case.”¹⁴³ This, despite the fact that the California legislature and California voters authorized the death penalty for persons convicted of qualifying offenses. Nearly all death penalty law in California is by voter initiative, and every time California voters have voted on whether to abolish or retain the death penalty, they chose to keep it.

Of the 711 people currently on death row in California, 215 were sentenced to death as a result of capital prosecutions in Los Angeles County.¹⁴⁴ According to the directive, 85 percent of those 215 criminals are people of color. This is proof, according to the directive, that the imposition of the death penalty in Los Angeles County resulted from racism.

The directive prohibits prosecutors from seeking the death penalty in all cases, including pending cases, and disbands the Special Circumstances Committee which determined when to seek capital punishment.¹⁴⁵ Prosecutors are prohibited from seeking an execution date for any person currently sentenced to death, and prosecutors are also prohibited from defending existing death sentences.¹⁴⁶

Furthermore, prosecutors are instructed to review all prior death sentences handed down in Los Angeles County with “the goal of removing

the death sentence.”¹⁴⁷ To be clear, this includes serial killers like Chester Turner, who was convicted of raping and murdering ten women in Los Angeles. He also killed a victim’s unborn baby and was subsequently convicted in 2014 of four additional killings.¹⁴⁸

And for those death sentence cases in which the DA’s office is not a party and the death judgment arose within Los Angeles County, the office will “consult with the [California] Attorney General and seek his assistance with implementing the goals of this office.”¹⁴⁹ Over time, if fully implemented, Gascón’s directive could result in most, if not all, 215 LA County death sentences being reversed, despite the fact that many of their direct appeals were rejected years or decades ago.

Victim Services. Special Directive 20–12 is entitled Victim Services.¹⁵⁰ It should be called “We Don’t Care About Victims.” It speaks of “services to facilitate their re-entry into the community.” When did victims leave the community? This term is generally used in relation to incarcerated individuals leaving prison and re-entering the community and makes no sense here.

Not surprisingly, this directive is the shortest in length, coming in at less than two pages, compared to the directives on the death penalty (four pages), habeas (14 pages), youth (six pages), sentencing enhancements (seven pages), misdemeanors (six pages), or pretrial release (six pages). It directs the victims’ services division (BVS) of the DA’s office to contact victims of violent crime within 24 hours of receiving notification, which they were already doing. The only new policy with respect to “victims” is contained in paragraph two, and it is shocking. It directs BVS to contact families of individuals killed by police and provide “support services including funeral, burial and mental health services immediately following the death—regardless of the state of the investigation or charging decision.”¹⁵¹

In other words, if a police officer is attacked by an armed violent felon who shoots at the police officer, and the police officer returns fire in self-defense and kills the assailant, the DA’s office is required to help the felon’s family, and the taxpayers will pay for the felon’s funeral expenses. And here is the kicker: This is required “regardless of the state of the investigation or charging decision.”¹⁵²

In other words, even if the police officer was completely justified—which is the situation in most cases—the DA’s office *prioritizes the criminals’ family over the victims*. So, even if the individual was guilty of murdering police officers or others during a shootout that resulted in his death after being shot by another police officer, the DA’s office still prioritizes the criminal’s family over the victims and their families. It is tragic whenever anyone is killed, and none begrudge grieving family members from receiving help. But

to see a DA's office prioritizing and allocating resources to someone killed by the police—regardless of the circumstances—while not providing that same level of support to other victims, or even the officers themselves, is shocking.

The directive also prohibits prosecutors from securing the testimony of reluctant victims. In some cases, it is difficult to ensure the presence of victims to testify. They are afraid to come to court for fear of retribution by the defendant, a gang, or for some other reason such as the psychological trauma of reliving the events in question. Unfortunately, in order to prevent greater harm to the community by having a dangerous individual walk scot free, it is occasionally necessary for prosecutors to force a reluctant witness to testify. In those instances, prosecutors often need to seek a court order to get the reluctant victim to come to court. The court orders a “body attachment,” which allows the authorities to bring the victim into court to testify under oath, whether the victim wants to or not.

This directive prohibits prosecutors from seeking body attachments, making it much harder to prosecute gang members, rapists, and other dangerous individuals.¹⁵³ And it is particularly problematic for domestic violence cases and human trafficking cases, in which it is often the case that the victim is already under the emotional control of his or her abuser.

Conviction Integrity Unit. Special Directive 20–13 is entitled Conviction Integrity Unit.¹⁵⁴ It should be called the “Public Defender’s Office within the DA’s Office,” the “Fox Guarding the Henhouse Unit,” or the “Unwind Most Convictions Unit.”

Many rogue prosecutors crow about their conviction integrity units (CIU), and pretend that they came up with the idea.¹⁵⁵ As we have previously written, these units were the brainchild of traditional, independent law-and-order prosecutors years ago, who wanted to make sure that hard-fought convictions stood up over time, and that in those rare cases where there were mistakes by police, expert witnesses, the evidence, or prosecutors, corrective action would be taken consistent with the law.¹⁵⁶ It is these prosecutors who created these innovative units years ago who are the real “progressives.”

Rogue prosecutors have a totally different purpose for conviction integrity units. They see police and traditional, independent prosecutors as the enemy, and defendants as victims of a systemically racist criminal justice system. As such, they use conviction integrity units to chip away at convictions. But no rogue prosecutor has empowered a conviction integrity unit to do what Gascón has charged his CIU to do.

Per this directive, the CIU operates “independently” from the rest of the office and reports directly to Gascón.¹⁵⁷ Per footnote one of the directive, the

CIU will work with “defense organizations and members of the post-conviction legal community, including innocence organizations...to develop and implement trainings on best practices for conducting post-conviction investigations.”¹⁵⁸ The CIU has a “broad mandate” and will not reject any case “because a conviction is based on a guilty plea.”¹⁵⁹

Guilty pleas are the highest form of proof known in the law. When someone enters a plea of guilty, a judge can find a person guilty based on that plea. As a safeguard, though, under state and federal law, judges are required to ensure that pleas of guilty are knowing, voluntary, and have a factual basis. Judges cannot accept pleas of guilty unless they are convinced that the person is actually guilty. This functions as a safeguard against coerced pleas or guilty pleas in which someone may be confessing for other reasons, such as to protect a family member. While there have been instances when people have pled guilty to crimes they did not commit, these procedures seek to avoid that. And the reality is that most people who plead guilty do so in exchange for a lesser sentence and/or charge, and are, in fact, guilty of the lesser included or alternative offense, at the very least.

Yet this directive gives rogue prosecutors in the CIU the license to unwind guilty pleas.

The directive lays out three criteria to review cases but reserves to the CIU the right to review any case in the “interest of justice,”¹⁶⁰ which in practical terms means review any case the boss wants them to.

One of the factors that can trigger the “interest of justice” exception is a case in which a prosecution or conviction was “tainted by racial discrimination”—even if a court previously rejected a defendant’s claim of selective prosecution based on racial discrimination.¹⁶¹ And who gets to decide if there is evidence of such taint? Rogue prosecutors in the CIU.

CIU attorneys and investigators are required to pay special attention to any conviction that was based on “high-risk factors”¹⁶² or “common causes of wrongful convictions,”¹⁶³ including:¹⁶⁴

- Eyewitness identification evidence or testimony.
- Stranger identification or cross-racial identification.
- Where the defendant confessed, and later claims the confession was false or coerced.
- Testimony that is later recanted, false, or coerced.

- The defendant’s conviction is “alleged” to have been borne from official misconduct.
- The law enforcement personnel involved in the investigation or arrest of the criminal were subsequently discharged or relieved of duties.
- The law enforcement personnel involved in the investigation or arrest of a defendant were later adjudicated by a court or internal investigation to have committed an act of dishonesty or sexual assault.
- The defendant was convicted based on any of the following forensic evidence:
 - Bloodstain pattern analysis,
 - Comparative bullet lead analysis,
 - Forensic odontology (bite marks),
 - Hair microscopy, or
 - Shaken baby syndrome.
- Forensic evidence that the DA’s office has generally accepted as reliable but exceeds “the bounds of what is now recognized to be valid science.”
- A conviction corroborated by a jailhouse informant or by an informant used by law enforcement more than once.
- A conviction based in whole or in part on the testimony of witnesses who received benefits from the DA’s office or law enforcement (even when this information was disclosed to the defense prior to trial and counsel was afforded the opportunity to cross-examine the witness about such benefits).
- A gang allegation was found true by a jury when the only evidence of gang membership was presented by a gang expert.

- The criminal was convicted after one or more retrials, following a hung jury.

These criteria cover hundreds, likely thousands, of cases and have a potentially breathtaking reach.

The CIU is required to allow the criminal defense attorney to conduct forensic testing of evidence, and prosecutors cannot raise procedural objections or oppose requests for forensic testing to DNA, fingerprint analysis, firearms comparison, gunshot residue, toxicology, or other evidence.¹⁶⁵ The directive provides that in cases in which a government expert who testified at trial and used the phrase “reasonable degree of scientific certainty,” the CIU should “carefully scrutinize” those cases because, according to the directive, the term has “no accepted scientific meaning” and can convey “an unsupported measure of reliability...to the factfinder.”¹⁶⁶

This is a particularly pernicious in practice. While there may be some cases in which a particular expert or a particular field of study has been called into question, the CIU must be judicious in reviewing these cases because many experts, whether they testify for the government or the defense, use the time-honored phrase “within a reasonable degree of scientific certainty” when they testify.

Of course, this directive only applies to the government’s expert witnesses, not defense expert witnesses.

And since Gascón’s directive applies to incoming, ongoing, and past cases, the CIU is required to review “every case previously rejected by the former”¹⁶⁷ case review unit. If relief is “warranted,” the CIU is empowered to “consider all available and appropriate remedies” to include dismissal of the case, a sentence reduction, or joining forces with the criminal defense attorney to get the criminal out of prison,¹⁶⁸ which in itself is not necessarily bad, but when coupled with the CIU’s broad mandate and emphasis on so-called racial-injustice issues means the many well-deserved sentences of convicted criminals may be in jeopardy.

Finally, since the CIU is essentially a tool of the DA to assist defendants and the criminal defense bar, it is tasked with creating and maintaining a database to “track official misconduct” of law enforcement officers, prosecutors, crime lab analysts, and expert witnesses who have committed misconduct.¹⁶⁹ And once a year, the CUI will “use the data” and review each and every case that any person on the list was involved in and notify the criminal and his defense counsel that the case is being reviewed and why.¹⁷⁰

Again, while in itself not a bad thing, what constitutes “misconduct” must be carefully and reasonably circumscribed since the CIU will likely be the

final arbiter of this ill-defined term. Committing a crime, lying under oath, and the like are all clearly official misconduct. But the CIU must carefully lay out the facts and its reasoning so that officers who simply disagree with Gascón's policies or who make tough, split-second decisions are not unnecessarily targeted for review.

Resentencing. Special Directive 20–14 is entitled Resentencing.¹⁷¹ One of the most dangerous and irresponsible of Gascón's directives, it should be called “We Love Murderers,” “Fifteen Years Is the Most Time You'll Ever Serve,” or “We Stand With Criminals.” This directive has several disturbing edicts.

First, prosecutors are required to “reevaluate and consider for resentencing people who have already served 15 years in prison.”¹⁷² No other rogue prosecutor has gone this far—and for good reason.

Second, for pending cases that have sentence enhancements, prosecutors are required to “join in the Defendant's motion to strike all alleged sentence enhancements.”¹⁷³ It is bad enough to force career prosecutors not to object to a defense motion to strike all alleged sentence enhancements when the defendant is eligible for each one based on his criminal conduct. It is offensive and insulting to order prosecutors to *join* in such a motion. In all cases in which a defendant is eligible for resentencing or recall of a sentence, prosecutors are prohibited from opposing the resentencing or sentence recall.¹⁷⁴

If a criminal who has been convicted of felony murder¹⁷⁵ seeks relief under Penal Code § 1170.95,¹⁷⁶ prosecutors who oppose sentencing relief “shall submit the reasons in writing to the Head Deputy” who will then consult with Gascón, who will make the final decision in accordance with his directive.

What does that mean in practice? For criminals who killed someone and pled guilty pursuant to a plea agreement to a lesser charge of manslaughter, but who could have been convicted of the more serious murder or attempted murder charges under certain theories (including felony murder), the directive makes them eligible for relief.¹⁷⁷ Essentially, they receive a double break. A person convicted of participating in a murder will have the murder charges, as well as all sentencing enhancements, dismissed. What remains, if anything, will be any sentence for a lower-level crime committed during the course of conduct, such as robbery or burglary. The shorter length of these sentences will often result in the offender being eligible for *immediate release* based upon time already served.

Third, the directive states that the “default policy” of the office is that prosecutors “will not attend parole hearings and will support in writing the

grant of parole” for every person who has “already served their mandatory minimum period of incarceration.” If the person represents a “high” risk for recidivism, as determined by the California Department of Corrections and Rehabilitation, prosecutors “may, in their letter, take a neutral position on the grant of parole.”

Not only are prosecutors now prohibited from attending parole hearings, thus depriving the parole board of the prosecutor’s point of view on the grant of parole, the directive prevents prosecutors from using anything said by the convict at his own parole hearing—even if it is false—in future court proceedings. The directive states that parole hearings are “coercive”¹⁷⁸ environments, and, as such, statements during them are “unreliable and involuntary.”¹⁷⁹ Therefore, the argument goes, prosecutors cannot introduce statements made by criminals during parole hearings in court for any purpose.

Any criminal who comes up for parole who was under 25 years old when he committed his crime will now be allowed to present mitigating evidence at his parole hearing, something criminals were already allowed to do.¹⁸⁰

Fourth, perhaps the most radical aspect of this directive, and the one that has prosecutors, police, and victims’ rights’ groups up in arms, is the establishment of a Resentencing Unit. The unit is charged with a “comprehensive review” of cases in which a defendant received a sentence that is “inconsistent” with the office’s new policies.¹⁸¹ Specifically, the unit is charged with an expedited review of a “universe of 20,000 to 30,000 cases with out-of-policy sentences,”¹⁸² which are defined as:

- Criminals who have already served 5 years or more;
- Criminals who are currently 60 years of age or older;
- Criminals who are at enhanced risk of COVID-19 infection;
- Criminals who have been recommended for resentencing by California Department of Corrections and Rehabilitation, as allowed by a recent amendment to the California Penal Code, which extended the time for certain individuals and entities to request a recall of a sentence and for resentencing of an inmate;
- Criminals who were also victims of a crime; and
- Criminals who were under 18 at the time they committed their crimes and were tried as adults in adult court.¹⁸³

The directive also benefits—of all people—criminals sentenced to life without parole. In language that only a criminal defense attorney could write, the directive states that “parole is an effective process to reduce recidivism.”¹⁸⁴ To ensure that the worst of the worst get out of prison, the directive states that “prosecutor’s input at parole hearings” is limited, and as such, prosecutors not only are prohibited from attending parole hearings, but they are now *required to support*—in writing—parole for any thug who has served his mandatory minimum period of incarceration.¹⁸⁵ The Manson family members and Sirhan Sirhan thank him.

Gascón is forcing career prosecutors, who have dedicated their careers to protecting the residents of Los Angeles County, to actively work to release violent criminals sentenced to life without parole.

Conclusion

George Gascón’s policies are outrageous, dangerous, pro-criminal, and according to the association representing many of his deputies, against state law. The Los Angeles County Association of Deputy District Attorneys, headed by Deputy DA Michele Hanisee, has filed suit in Superior Court attempting to prevent Gascón’s policies, which the organization alleges violate state law, from going into effect.¹⁸⁶

And Gascón has only been in office for a short period of time. The impact of his reckless and dangerous policies is just starting to be felt and will come into full bloom in the months and years ahead. Whether voters in Los Angeles wake up to the reality that George Gascón is among the most, if not *the most*, radical rogue prosecutor remains to be seen.

Regardless of whether Gascón remains in office or is recalled, he has put into place the most radical, pro-criminal, anti-prosecution policies we have seen to date. He is, in a twisted way, the gold standard for rogue prosecutors.

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Endnotes

1. See, e.g., Charles D. Stimson and Zack Smith, “*Progressive*” Prosecutors Sabotage the Rule of Law, Raise Crime Rates, and Ignore Victims, HERITAGE FOUND. LEGAL MEMORANDUM No. 275, 18–25 (Oct. 29, 2020) (discussing the funding of rogue prosecutor candidates), <https://www.heritage.org/crime-and-justice/report/progressive-prosecutors-sabotage-the-rule-law-raise-crime-rates-and-ignore> [hereinafter Stimson and Smith, “*Progressive*” Prosecutors Sabotage the Rule of Law].
2. See, e.g., Zack Smith and Cully Stimson, *Meet Steve Descano, the Rogue Prosecutor Whose Policies Are Wreaking Havoc in Fairfax County, Virginia*, DAILY SIGNAL (Dec. 14, 2020), <https://www.dailysignal.com/2020/12/14/meet-steve-descano-the-rogue-prosecutor-whose-policies-are-wreaking-havoc-in-fairfax-county-virginia/>; Cully Stimson and Zack Smith, *Meet Rachael Rollins, the Rogue Prosecutor Whose Policies Are Wreaking Havoc in Boston*, DAILY SIGNAL (Nov. 12, 2020), <https://www.dailysignal.com/2020/11/12/meet-rachael-rollins-the-rogue-prosecutor-whose-policies-are-wreaking-havoc-in-boston/>; Zack Smith and Cully Stimson, *Meet Kim Foxx, the Rogue Prosecutor Whose Policies are Wreaking Havoc in Chicago*, DAILY SIGNAL (Nov. 2, 2020), <https://www.dailysignal.com/2020/11/02/meet-kim-foxx-the-rogue-prosecutor-whose-policies-are-wreaking-havoc-in-chicago/>; Cully Stimson and Zack Smith, *Meet Larry Krasner, the Rogue Prosecutor Wreaking Havoc in Philadelphia*, DAILY SIGNAL (Oct. 29, 2020), <https://www.dailysignal.com/2020/10/29/meet-larry-krasner-the-rogue-prosecutor-wreaking-havoc-in-philadelphia/>; Cully Stimson and Zack Smith, *Meet Marilyn Mosby, the Rogue Prosecutor Wreaking Havoc in Baltimore*, DAILY SIGNAL (Oct. 27, 2020), <https://www.dailysignal.com/2020/10/27/meet-marilyn-mosby-the-rogue-prosecutor-wreaking-havoc-in-baltimore/>. See also Stimson and Smith, “*Progressive*” Prosecutors Sabotage the Rule of Law, at 19, 26 (discussing other rogue prosecutors, such as Monique Worrell in Orlando, Florida; Kim Gardner in St. Louis, Missouri; and Eric Gonzalez in Brooklyn, New York). This list is not exhaustive of all rogue prosecutors around the country.
3. See STANDARD 3-1.2, FUNCTION AND DUTIES OF THE PROSECUTOR (AM. BAR ASS’N 4th ed. 2017), [HTTPS://WWW.AMERICANBAR.ORG/GROUPS/CRIMINAL_JUSTICE/STANDARDS/PROSECUTIONFUNCTIONFOURTHEDITION/](https://www.americanbar.org/groups/criminal_justice/standards/prosecutionfunctionfourthedition/).
4. See, e.g., Rachel E. Barkow, *Three Lessons for Criminal Law Reformers from Locking Up Our Own*, 107 CALIF. L. REV. 1967, 1968 (2019).
5. See Stimson and Smith, “*Progressive*” Prosecutors Sabotage the Rule of Law, *supra* note 1.
6. See Stimson and Smith, *Meet Rachael Rollins*, *supra* note 2.
7. See Stimson and Smith, *Meet Marilyn Mosby*, *supra* note 2.
8. See Stimson and Smith, *Meet Larry Krasner*, *supra* note 2.
9. See Smith and Stimson, *Meet Kim Foxx*, *supra* note 2.
10. David Jackson, Todd Lightly, Gary Marx, and Alex Richards, *Kim Foxx Drops More Felony Cases as Cook County State’s Attorney Than Her Predecessor, Tribune Analysis Shows*, CHICAGO TRIBUNE (Aug. 10, 2020) (showing that Foxx’s office won felony convictions at a lower rate than her predecessor), <https://www.chicagotribune.com/investigations/ct-kim-foxx-felony-charges-cook-county-20200810-1dvrmqv6bd3hpsuqha4duehmu-story.html>.
11. Of course, that could be because many assistant or deputy district attorneys in some of these offices do not enjoy any type of civil service protection and can be forced out by these newly elected DAs. See Stimson and Smith, “*Progressive*” Prosecutors Sabotage the Rule of Law, *supra* note 1, at 9 (citations omitted) (noting that “Immediately after he was elected and sworn into office, [newly elected Philadelphia DA Larry] Krasner fired 31 career prosecutors in the office, many of whom were in the homicide division and highly experienced”).
12. See Evan Sernoffsky, *SF District Attorney George Gascón Decides Not to Seek Re-Election*, S.F. CHRON. (Oct. 1, 2018), <https://www.sfchronicle.com/bayarea/article/San-Francisco-District-Attorney-George-Gasc-n-13276393.php>.
13. See, e.g., Jason McGahan, *Why Do Officials Who Worked with George Gascón in S.F. Appear to Be Snubbing Him Now?*, L.A. MAG. (Nov. 23, 2019) (noting that the San Francisco Mayor’s and elected City Attorney’s endorsement of Gascón’s opponent in Los Angeles served as a tacit rebuke of his positions and performance as San Francisco’s District Attorney), <https://www.lamag.com/citythinkblog/george-gascon-london-breed-snub/>; Erin Stone, *SF District Attorney Hosts Symposium on Drug-Facilitated Sexual Assault*, S.F. CHRON. (Aug. 2, 2018) (noting that “Advocates and victims have criticized the district attorney’s office handling of sexual assault cases”), <https://www.sfchronicle.com/crime/article/SF-district-attorney-hosts-symposium-on-13127817.php>; Jonah Owen Lamb, *SF Prosecutor Dedicated Solely to Stalking Cases Reassigned*, S.F. EXAM. (Jun. 9, 2016) (noting that while he was San Francisco District Attorney, Gascón reassigned his office’s only assistant dedicated to handling stalking cases, a move which caused police officials concern), <https://www.sfoxaminer.com/news/sf-prosecutor-dedicated-solely-to-stalking-cases-reassigned/>.
14. Federal Bureau of Investigation, Crime in the U.S., 2010, <https://ucr.fbi.gov/crime-in-the-u.s/2010/crime-in-the-u.s.-2010/tables/10tbl05.xls> (last visited Jan. 11, 2021); Federal Bureau of Investigation, Crime in the U.S., 2009, <https://ucr.fbi.gov/crime-in-the-u.s/2009> (last visited Jan. 11, 2021); Federal Bureau of Investigation, Crime in the U.S., 2008, <https://ucr.fbi.gov/crime-in-the-u.s/2008> (last visited Jan. 11, 2021); Federal Bureau of Investigation, Crime in the U.S., 2007, <https://ucr.fbi.gov/crime-in-the-u.s/2007> (last visited Jan. 11, 2021); Federal Bureau of Investigation, Crime in the U.S., 2006, <https://ucr.fbi.gov/crime-in-the-u.s/2006> (last visited Jan. 11, 2021).

15. Federal Bureau of Investigation, Crime in the United States, 2019, <https://ucr.fbi.gov/crime-in-the-u.s/2019/crime-in-the-u.s.-2019/tables/table-5> (last visited Jan. 11, 2021); Federal Bureau of Investigation, Crime in the United States, 2018, <https://ucr.fbi.gov/crime-in-the-u.s/2018/crime-in-the-u.s.-2018/tables/table-8/table-8-state-cuts/california.xls> (last visited Jan. 11, 2021); Federal Bureau of Investigation, Crime in the United States, 2017, <https://ucr.fbi.gov/crime-in-the-u.s/2017/crime-in-the-u.s.-2017/tables/table-6> (last visited Jan. 11, 2021); Federal Bureau of Investigation, Crime in the United States, 2016, <https://ucr.fbi.gov/crime-in-the-u.s/2016/crime-in-the-u.s.-2016/tables/table-6/table-6-state-cuts/california.xls> (last visited Jan. 11, 2021); Federal Bureau of Investigation, Crime in the United States, 2015, https://ucr.fbi.gov/crime-in-the-u.s/2015/crime-in-the-u.s.-2015/tables/table-8/table-8-state-pieces/table_8_offenses_known_to_law_enforcement_california_by_city_2015.xls (last visited Jan. 11, 2021); Federal Bureau of Investigation, Crime in the United States, 2014, <https://ucr.fbi.gov/crime-in-the-u.s/2014/crime-in-the-u.s.-2014/tables/table-6> (last visited Jan. 11, 2021); Federal Bureau of Investigation, Crime in the United States, 2013, https://ucr.fbi.gov/crime-in-the-u.s/2013/crime-in-the-u.s.-2013/tables/table-8/table-8-state-cuts/table_8_offenses_known_to_law_enforcement_california_by_city_2013.xls (last visited Jan. 11, 2021); Federal Bureau of Investigation, Crime in the United States, 2012, https://ucr.fbi.gov/crime-in-the-u.s/2012/crime-in-the-u.s.-2012/tables/8tabledatadecpdf/table-8-state-cuts/table_8_offenses_known_to_law_enforcement_by_california_by_city_2012.xls (last visited Jan. 11, 2021); Federal Bureau of Investigation, Crime in the United States, 2011, https://ucr.fbi.gov/crime-in-the-u.s/2011/crime-in-the-u.s.-2011/tables/table8statecuts/table_8_offenses_known_to_law_enforcement_california_by_city_2011.xls (last visited Jan. 11, 2021).
16. See, e.g., John Gramlich, *What the Data Says (and Doesn't Say) About Crime in the United States*, PEW RESEARCH CENTER (Nov. 20, 2020), <https://www.pewresearch.org/fact-tank/2020/11/20/facts-about-crime-in-the-u-s/> (last visited Jan. 11, 2021); see also Press Release, Office of Public Affairs, Dept. of Justice, *FBI Report on Crime Shows Decline in Violent Crime Rate for Third Consecutive Year* (Sept. 28, 2020), <https://www.justice.gov/opa/pr/fbi-report-crime-shows-decline-violent-crime-rate-third-consecutive-year>.
17. See *supra* notes 14 and 15.
18. See *supra* notes 1 and 2.
19. See Office Overview, Los Angeles County District Attorney's Office, <https://da.lacounty.gov/about/office-overview> (last visited Jan. 11, 2021).
20. See Stimson and Smith, "Progressive" Prosecutors Sabotage the Rule of Law, *supra* note 1 at 7 (noting that "real progressives are the independent progressive and traditional prosecutors who have created thousands of new diversionary programs across the country...[and who are] constantly trying new ways to tackle old problems in a better, more cost-effective way within the bounds of the law").
21. See McGahan, *Why Do Officials Who Worked with George Gascón in S.F. Appear to Be Snubbing Him Now?* *supra* note 11; see also Stephanie Elam and Jason Kravarik, *Black Lives Matter's Surprising Target: Los Angeles County's First Black District Attorney*, CNN (Jul. 15, 2020), <https://www.cnn.com/2020/07/10/us/jackie-lacey-la-da-black-lives-matter/index.html>; Jason McGahan, *L.A.'s Controversial DA Jackie Lacey Takes on Her Critics: "I Think Prosecutor Is an Honorable Job,"* L.A. MAG. (Jan. 6, 2020), <https://www.lamag.com/mag-features/jackie-lacey-interview/>; Jessica Pishko, *How District Attorney Jackie Lacey Failed Los Angeles*, APPEAL (Nov. 12, 2019), <https://theappeal.org/how-district-attorney-jackie-lacey-failed-los-angeles/>.
22. Maloy Moore, Ryan Menezes, and James Queally, *Here Are the Mega-Donors and Police Unions Pouring Millions into the L.A. County District Attorney Race*, L.A. TIMES (Nov. 3, 2020), <https://www.latimes.com/projects/la-district-attorney-race-top-donors/>.
23. See Stimson and Smith, "Progressive" Prosecutors Sabotage the Rule of Law, *supra* note 1 at 21 (citations omitted).
24. *Id.* at 18–21.
25. Priya Krishnakumar and Iris Less, *How George Gascón Unseated L.A. County Dist. Atty. Jackie Lacey*, L.A. TIMES (Nov. 6, 2020), <https://www.latimes.com/projects/2020-la-da-race-gascon-lacey-vote-analysis/>.
26. See *George Gascón Announces Transition Team* (Nov. 19, 2020), <https://www.georgegascon.org/campaign-news/george-gascon-announces-transition-team/>.
27. See *California District Attorneys Association (CDA)*, <https://www.cdaa.org/> (last visited Jan. 11, 2021).
28. See *National District Attorneys Association (NDA)*, <https://ndaa.org/> (last visited Jan. 11, 2021).
29. See *Association of Prosecuting Attorneys*, <https://www.apainc.org/> (last visited Jan. 11, 2021).
30. See, e.g., Zero Abuse Project (a 501(c)(3) "committed to transforming institutions in order to effectively prevent, recognize, and respond to child sexual abuse"), <https://www.zeroabuseproject.org/about/> (last visited Jan. 11, 2021); International Association of Prosecutors (IAP) (an organization "committed to setting and raising standards of professional conduct and ethics for Prosecutors worldwide"), <https://www.iap-association.org/About> (last visited Jan. 11, 2021).
31. See Stimson and Smith, "Progressive" Prosecutors Sabotage the Rule of Law, *supra* note 1 at 23 (citations omitted).
32. See *George Gascón Announces Transition Team*, *supra* note 26.
33. ABOUT PROSECUTORS ALLIANCE, PROSECUTORS ALLIANCE OF CALIFORNIA, <https://prosecutorsalliance.org/about/> (last visited Jan. 11, 2021).
34. ABOUT, JKH CONSULTING SERVICES, <https://jkhconsultingservices.com/about/> (last visited Jan. 11, 2021).
35. James Queally, *Deputy D.A. Becomes Latest to Challenge Jackie Lacey*, L.A. TIMES (April 10, 2019), <https://www.latimes.com/local/lanow/la-me-ln-joseph-iniguez-district-attorney-20190410-story.html>.
36. MAX SZABO, SZABO AND ASSOCIATES, <https://szaboandassociates.com/#MAX> (last visited Jan. 11, 2021).

37. DOLORES CANALES, THE BAIL PROJECT, [HTTPS://BAILPROJECT.ORG/TEAM/DOLORES-CANALES/](https://bailproject.org/team/dolores-canales/) (last visited Jan. 11, 2021).
38. ROBIN STEINBERG, THE BAIL PROJECT, [HTTPS://BAILPROJECT.ORG/TEAM/ROBIN-STEINBERG/](https://bailproject.org/team/robin-steinberg/) (last visited Jan. 11, 2021).
39. INNOCENCE STAFF, *California Exoneree Franky Carrillo Featured in Netflix's "The Innocence Files,"* INNOCENCE PROJECT (Apr. 1, 2020), [HTTPS://INNOCENCEPROJECT.ORG/CALIFORNIA-EXONEREE-FRANKY-CARRILLO-NETFLIX-SERIES-THE-INNOCENCE-FILES/](https://innocenceproject.org/california-exoneree-franky-carrillo-netflix-series-the-innocence-files/).
40. *Distinguished Appellate Attorney Paula Mitchell Appointed to Lead Project for the Innocent at Loyola Law School, Los Angeles,* LOYOLA LAW SCHOOL, [HTTPS://WWW.LLS.EDU/THELLSDIFFERENCE/FACESOFLLS/PAULAMITCHELL/](https://www.lls.edu/theLLSDifference/facesoflls/paulamitchell/) (last visited Jan. 11, 2021).
41. ABOUT, 8TH AMENDMENT PROJECT, [HTTP://WWW.8THAMENDMENT.ORG/ABOUT/](http://www.8thamendment.org/about/) (last visited Jan. 11, 2021).
42. *Id.*; see also Dan Gainor, *A Day in the Life of the Soros Empire*, WALL ST. J. (Mar. 8, 2011) (noting the funding provided by George Soros to MoveOn.org), [HTTPS://WWW.WSJ.COM/ARTICLES/SB10001424052748703386704576186624219408298](https://www.wsj.com/articles/SB10001424052748703386704576186624219408298).
43. SEAN KENNEDY, LOYOLA LAW SCHOOL, [HTTPS://WWW.LLS.EDU/FACULTY/FACULTYLSTH-K/SEANKENNEDY/](https://www.lls.edu/faculty/facultylisth-k/seankennedy/) (last visited Jan. 11, 2021).
44. NATASHA MINSKER, LINKEDIN, [HTTPS://WWW.LINKEDIN.COM/IN/NATASHA-MINSKER-77427019/](https://www.linkedin.com/in/natasha-minsker-77427019/) (last visited Jan. 11, 2021).
45. *WJC Program Advisory Council Member Selected to Head Los Angeles County's Groundbreaking Alternatives to Incarceration Initiative,* WESTERN JUSTICE CENTER (Sept. 14, 2020), [HTTPS://WWW.WESTERNJUSTICE.ORG/NEWS/SONGHAIR-ARMSTEAD](https://www.westernjustice.org/news/songhai-armstead).
46. See Stimson and Smith, *"Progressive" Prosecutors Sabotage the Rule of Law,* *supra* note 1 at 20 (discussing Soros's reliance on organizations like the Tides Foundation to fund the rogue prosecutor movement).
47. EUNISSES HERNANDEZ, LA DEFENSA, [HTTPS://WWW.LADEFENSA.ORG/ABOUT-US](https://www.ladefensa.org/about-us) (last visited Jan. 12, 2021).
48. REPORT OF INDEPENDENT AUDITORS AND FINANCIAL STATEMENTS FOR YEAR ENDED DECEMBER 31, 2019, TIDES ADVOCACY, MOSS ADAMS ACCOUNTING, [HTTPS://TIDESADVOCACY.ORG/WP-CONTENT/UPLOADS/2020/12/2019-AUDITED-FINANCIALS-TA.PDF](https://tidesadvocacy.org/wp-content/uploads/2020/12/2019-Audited-Financials-TA.pdf) (last visited Jan. 12, 2021).
49. REPORT OF INDEPENDENT AUDITORS AND CONSOLIDATED FINANCIAL STATEMENTS WITH SUPPLEMENTARY INFORMATION FOR DEC. 31, 2019 AND 2018, TIDES ORGANIZATIONS, MOSS ADAMS ACCOUNTING, [HTTP://WWW.TIDES.ORG/WP-CONTENT/UPLOADS/2020/07/TIDES-ORGANIZATIONS-12-19-FINAL-FINANCIAL-STATEMENTS-ISSUED-07-01-2020.PDF](http://www.tides.org/wp-content/uploads/2020/07/TIDES-ORGANIZATIONS-12-19-FINAL-FINANCIAL-STATEMENTS-ISSUED-07-01-2020.pdf) (last visited Jan. 12, 2021).
50. MICHAEL ROMANO, STANFORD LAW SCHOOL, [HTTPS://LAW.STANFORD.EDU/DIRECTORY/MICHAEL-ROMANO/](https://law.stanford.edu/directory/michael-romano/) (last visited Jan. 12, 2021).
51. ABOUT US, LOS ANGELES LEAGUE OF CONSERVATION VOTERS, [HTTPS://LALCV.ORG/ABOUT-US/](https://lalcv.org/about-us/) (last visited Jan. 12, 2021).
52. ABOUT MOVING FORWARD NETWORK, [HTTP://WWW.MOVINGFORWARDNETWORK.COM/ABOUT-US-2/](http://www.movingforwardnetwork.com/about-us-2/) (last visited Jan. 12, 2021).
53. MARY NEMICK, LOS ANGELES LEAGUE OF CONSERVATION VOTERS, [HTTP://LALCV.ORG/BOARD-MEMBERS/MARY-NEMICK/](http://lalcv.org/board-members/mary-nemick/) (last visited Jan. 12, 2021).
54. Ivan Penn, *How I Made It: She Began Fighting Climate Change as a Child. Now She Sits on the DWP Board,* L.A. TIMES (Oct. 20, 2017), [HTTPS://WWW.LATIMES.COM/BUSINESS/LA-FI-HIMI-VASQUEZ-20171020-HTMLSTORY.HTML](https://www.latimes.com/business/la-fi-himi-vasquez-20171020-htmlstory.html).
55. COALITION FOR HUMANE IMMIGRANT RIGHTS, [HTTPS://LEGAL.CHIRLA.ORG/](https://legal.chirla.org/) (last visited Jan. 12, 2021).
56. ROSE CAHN, IMMIGRANT LEGAL RESOURCE CENTER, [HTTPS://WWW.ILRC.ORG/ROSE-CAHN](https://www.ilrc.org/rose-cahn) (last visited Jan. 12, 2021).
57. MARISSA MONTES, LOYOLA IMMIGRANT JUSTICE CLINIC DIRECTOR, LOYOLA LAW SCHOOL, [HTTPS://WWW.LLS.EDU/ACADEMICS/EXPERIENTIALEARNING/CLINICS/LOYOLAIMMIGRANTJUSTICECLINIC/LIJCDIRECTOR/](https://www.lls.edu/academics/experientialearning/clinics/loyolaimmigrantjusticeclinic/lijcdirector/) (last visited Jan. 12, 2021).
58. FRANKIE GUZMAN, NATIONAL CENTER FOR YOUTH LAW, [HTTPS://YOUTHLAW.ORG/STAFF-BIOGRAPHIES/#GUZMAN](https://youthlaw.org/staff-biographies/#Guzman) (last visited Jan. 12, 2021).
59. MEET THE ARC TEAM, ANTI-RECIDIVISM COALITION (ARC), [HTTPS://ANTIRECIDIVISM.ORG/MEET-THE-ARC-TEAM/](https://antirecidivism.org/meet-the-arc-team/) (last visited Jan. 12, 2021).
60. MAUREEN PACHECO, PACIFIC JUVENILE DEFENDER CENTER, [HTTPS://WWW.PJDC.ORG/BOARD-MEMBER/MAUREEN-PACHECO/](https://www.pjdc.org/board-member/maureen-pacheco/) (last visited Jan. 12, 2021).
61. PATRICIA SOUNG, PACIFIC JUVENILE DEFENDER CENTER, [HTTPS://WWW.PJDC.ORG/BOARD-MEMBER/PATRICIA-SOUNG/](https://www.pjdc.org/board-member/patricia-soung/) (last visited Jan. 12, 2021).
62. ERWIN CHERMERINSKY, BERKELEY LAW, [HTTPS://WWW.LAW.BERKELEY.EDU/OUR-FACULTY/FACULTY-PROFILES/ERWIN-CHEMERINSKY/](https://www.law.berkeley.edu/our-faculty/faculty-profiles/erwin-chermerinsky/) (last visited Jan. 12, 2021).
63. JE YON JUNG, MAY LIGHTFOOT PLLC, [HTTPS://WWW.MAYLIGHTFOOTLAW.COM/ATTORNEYS/JE-YON-JUNG/](https://www.maylightfootlaw.com/attorneys/je-yon-jung/) (last visited Jan. 12, 2021).
64. KEVIN JABLONSKI, LINKEDIN, [HTTPS://WWW.LINKEDIN.COM/IN/KEVIN-J-JABLONSKI-61271445/](https://www.linkedin.com/in/kevin-j-jablonski-61271445/) (last visited Jan. 12, 2021).
65. REBECCA NEUSTETER, HEALTH LAB, URBAN LABS, UNIV. OF CHICAGO, [HTTPS://URBANLABS.UCHICAGO.EDU/PEOPLE/REBECCA-NEUSTETER#](https://urbanlabs.uchicago.edu/people/rebecca-neusteter#) (last visited Jan. 12, 2021).
66. JACQUELINE SEABROOKS, CSU DOMINGUEZ HILLS, [HTTPS://WWW.CSUDH.EDU/ALUMNI/IM-A-TORO/SEABROOKS-JACQUELINE](https://www.csudh.edu/alumni/im-a-toro/seabrooks-jacqueline) (last visited Jan. 12, 2021).
67. HILLARY BLOUT, FOR THE PEOPLE, [HTTPS://WWW.FORTHEPEPL.ORG/HILLARY-BLOUT](https://www.forthethepl.org/hillary-blout) (last visited Jan. 12, 2021).
68. CURRENT FELLOWS, LEADERSHIP IN GOVERNMENT FELLOWSHIP, OPEN SOCIETY FOUNDATIONS, [HTTPS://WWW.OPENSOCIETYFOUNDATIONS.ORG/GRANTS/LEADERSHIP-IN-GOVERNMENT-FELLOWSHIP](https://www.opensocietyfoundations.org/grants/leadership-in-government-fellowship) (last visited Jan. 12, 2021).
69. KATE CHATFIELD, THE APPEAL, [HTTPS://THEAPPEAL.ORG/AUTHORS/KATE-CHATFIELD/](https://theappeal.org/authors/kate-chatfield/) (last visited Jan. 12, 2021).
70. CHRISTOPHER HAWTHORNE, LOYOLA LAW SCHOOL, [HTTPS://WWW.LLS.EDU/FACULTY/FACULTYLSTH-K/CHRISTOPHERHAWTHORNE/](https://www.lls.edu/faculty/facultylisth-k/christopherhawthorne/) (last visited Jan. 12, 2021).
71. ATTORNEYS & STAFF, CALIFORNIA APPELLATE PROJECT, LOS ANGELES, [HTTP://CAP-LA.ORG/CONTACT](http://cap-la.org/contact) (last visited Jan. 12, 2021).
72. See *supra* notes 42 and 52.

73. IVETTE ALE, DIGNITY & POWER NOW, [HTTP://DIGNITYANDPOWERNOW.ORG/IVETTE-ALE/](http://dignityandpowernow.org/ivette-ale/) (last visited Jan. 12, 2021).
74. LANAISHA EDWARDS, STEERING COMMITTEE MEMBER, TRAUMA INFORMED LA, [HTTPS://TRAUMAINFORMEDLA.ORG/ABOUT/LEADERSHIP-TEAM/LANAISHA-EDWARDS/](https://traumainformedla.org/about/leadership-team/lanaisha-edwards/) (last visited Jan. 12, 2021).
75. *Id.*
76. ABOUT DR. CASTRO RODRIGUEZ, [HTTPS://CASTRORODRIGUEZ.COM/ABOUT](https://castrorodriguez.com/about) (last visited Jan. 12, 2021).
77. BAMBY SALCEDO, [HTTP://BAMBYSALCEDO.COM/](http://bambysalcedo.com/) (last visited Jan. 12, 2021).
78. See Special Directive 20-06, Pretrial Release Policy, from Los Angeles District Attorney George Gascón to All Deputy District Attorneys (Dec. 7, 2020), [HTTPS://DA.LACOUNTY.GOV/SITES/DEFAULT/FILES/PDF/SPECIAL-DIRECTIVE-20-06.PDF](https://da.lacounty.gov/sites/default/files/pdf/SPECIAL-DIRECTIVE-20-06.pdf).
79. *Id.* at 1.
80. *Id.*
81. *Id.* at 2.
82. *Id.*
83. *Id.*
84. *Id.* at 3.
85. *Id.*
86. *Id.* at 4.
87. *Id.* at 4, § I. F; *Id.* at 4, fn. 4.
88. See generally Charles D. Stimson, *The First Step Act's Risk and Needs Assessment Program: A Work In Progress*, HERITAGE FOUND. LEGAL MEMORANDUM NO. 265 (June 8, 2020), [HTTPS://WWW.HERITAGE.ORG/SITES/DEFAULT/FILES/2020-06/LM265_0.PDF](https://www.heritage.org/sites/default/files/2020-06/LM265_0.pdf).
89. See Special Directive 20-06, Pretrial Release Policy, *supra* note 78.
90. *Id.* at 5.
91. *Id.*
92. *Id.*
93. *Id.*
94. See Special Directive 20-07, Misdemeanor Case Management, from Los Angeles District Attorney George Gascón, to All Deputy District Attorneys (Dec. 7, 2020), [HTTPS://DA.LACOUNTY.GOV/SITES/DEFAULT/FILES/PDF/SPECIAL-DIRECTIVE-20-07.PDF](https://da.lacounty.gov/sites/default/files/pdf/SPECIAL-DIRECTIVE-20-07.pdf).
95. *Id.* at 1.
96. See Stimson and Smith, *"Progressive" Prosecutors Sabotage the Rule of Law*, *supra* note 1.
97. See Special Directive 20-07, Misdemeanor Case Management, *supra* note 96 at 1.
98. See Stimson and Smith, *"Progressive" Prosecutors Sabotage the Rule of Law*, *supra* note 1 at 21-26 (citations omitted) (discussing the increase in violent crimes in Philadelphia, San Francisco, Boston, Chicago, and other cities where rogue prosecutors have been elected).
99. See, e.g., Paul G. Cassell and Richard Fowles, *Does Bail Reform Increase Crime? An Empirical Assessment of the Public Safety Implications of Bail Reform in Cook County, Illinois*, 56 WAKE FOREST L. REV. (forthcoming 2021) (disputing the data and conclusions of a study commissioned by the Chief Judge of the Cook County Circuit Court, which asserted that new, more generous pretrial release policies did not lead to an increase in overall crime or to an increase in violent crime and instead concluding that the "[s]tudy's methodology and data significantly undercount the number of defendants who committed violent crimes after the changes").
100. See *The Rachael Rollins Policy Memo*, Appendix D (D-1), [HTTP://FILES.SUFFOLKDISTRICTATTORNEY.COM/THE-RACHAEL-ROLLINS-POLICY-MEMO.PDF](http://files.suffolkdistrictattorney.com/The-Rachael-Rollins-Policy-Memo.pdf) (last visited Jan. 11, 2021); see also Smith and Stimson, *Meet Steve Descano*, *supra* note 2 (discussing Descano's refusal to prosecute most misdemeanors in Fairfax County, Virginia, though he offers the excuse that his office is not staffed to handle misdemeanors and that he is not statutorily obligated to prosecute them—though the local prosecutors before him did so).
101. See Stimson and Smith, *"Progressive" Prosecutors Sabotage the Rule of Law*, *supra* note 1 at 24 (citations omitted) (noting that "[a]s of August 2020, the number of shootings in Boston was up 29 percent compared to the same time last year. More tragically, 'Deadly shootings [were] up 34 [percent], jumping from 23 victims in 2019 to 31 victims in 2020.'").
102. See Special Directive 20-07, Misdemeanor Case Management, *supra* note 96 at 2.
103. *Id.*
104. *Id.*
105. *Id.* at 2-4.

106. *Id.* at 4.
107. *Id.* at 5.
108. *Id.*
109. *Id.*
110. See Special Directive 20-08, Sentencing Enhancements/Allegations, from Los Angeles District Attorney George Gascón, to All Deputy District Attorneys (Dec. 7, 2020), <https://da.lacounty.gov/sites/default/files/pdf/SPECIAL-DIRECTIVE-20-08.pdf>.
111. Verified Petition for Writ of Mandate and/or Prohibition and Complaint for Declaratory and Injunctive Relief at 8, The Ass'n of Deputy District Att'ys for Los Angeles Cnty. v. Gascón, et al. (Dec. 30, 2020), available at <https://www.laadda.com/wp-content/uploads/2020/12/2020.12.29-Writ-Petition.pdf>.
112. See CAL. PENAL CODE § 1170.12 (West).
113. See CAL. PENAL CODE § 190.2 (West).
114. See Special Directive 20-08, Sentencing Enhancements/Allegations, *supra* note 112 at 1.
115. *Id.*
116. *Id.*; see also Michael Mueller-Smith, *The Criminal and Labor Market Impacts of Incarceration* (Aug. 18, 2015), <https://sites.lsa.umich.edu/mgms/wp-content/uploads/sites/283/2015/09/incar.pdf>.
117. See Daniel Kessler and Steven D. Levitt, *Using Sentence Enhancements to Distinguish Between Deterrence and Incapacitation*, NATIONAL BUREAU OF ECONOMIC RESEARCH, WORKING PAPER 6484 (March 1998), <https://www.nber.org/papers/w6484>; see also David S. Abrams, *Estimating the Deterrent Effect of Incarceration Using Sentencing Enhancements*, INSTITUTE FOR LAW AND ECONOMICS, UNIV. OF PENN. LAW SCHOOL, RESEARCH PAPER No. 11-13 (Jan. 2011) (taking a “similar methodological approach to Kessler and Levitt” and finding “evidence for a deterrent effect of sentence enhancement in the form of add-on gun laws”), https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1360&context=faculty_scholarship.
118. Kessler and Levitt, *supra* note 117.
119. *Id.*
120. *Id.*
121. See Special Directive 20-08, Sentencing Enhancements/Allegations, *supra* note 110 at 2.
122. COUNTY OF LOS ANGELES DISTRICT ATTORNEY’S LEGAL POLICIES MANUAL at 40 (Nov. 12, 2020) (on file with authors).
123. *Id.* at 51.
124. *Id.* at 232.
125. *Id.*
126. See Special Directive 20-08.2, Amendment to Special Directive 20-08 (Dec. 18, 2020), <https://da.lacounty.gov/sites/default/files/policies/SD-20-08-2.pdf>.
127. *Id.* at 2.
128. See Special Directive 20-09, Youth Justice, from Los Angeles District Attorney George Gascón, to all Deputy District Attorneys (Dec. 7, 2020), <https://da.lacounty.gov/sites/default/files/pdf/SPECIAL-DIRECTIVE-20-09.pdf>.
129. See, e.g., *Youth Counselor Beaten to Death by Teens at Los Angeles Group Home, Officials Say*, ABC 7 (Jan. 5, 2021), <https://abc7.com/wayfinder-family-services-david-mcknight-hillman-youth-counselor-beaten-to-death-fatal-attack/9356808/>.
130. See THE DRU SJODIN NATIONAL SEX OFFENDER PUBLIC WEBSITE (NSOPW), U.S. DEP’T. OF JUSTICE, <https://www.nsopw.gov/> (last visited Jan. 11, 2021).
131. See Special Directive 20-09, Youth Justice, *supra* note 130 at 4.
132. *Id.*
133. *Id.*
134. *Id.* at 5.
135. See Special Directive 20-10, Habeas Corpus Litigation Unit, from Los Angeles District Attorney George Gascón, to All Deputy District Attorneys (Dec. 7, 2020), <https://da.lacounty.gov/sites/default/files/pdf/SPECIAL-DIRECTIVE-20-10.pdf>.
136. *Id.* at 1.
137. *Id.*
138. *Id.*
139. *Id.*
140. *Id.*

141. See, e.g., Miriam Hernandez and Lisa Bartley, *LA County to Pay \$15 Million to Man Wrongfully Imprisoned for 27 Years*, ABC 7 (Nov. 22, 2017), <https://abc7.com/wrongful-conviction-los-angeles-county-sheriffs-department-settlement-lawsuit-frank-oconnell/2681233/>; *LA to Pay \$8.3 Million Settlement to Obie Anthony, Wrongly Convicted Man*, ABC 7 (Apr. 14, 2015), <https://abc7.com/obie-anthony-wrongful-conviction-la-convictions/656569/>.
142. See Special Directive 20-11, Death Penalty Policy, from Los Angeles District Attorney George Gascón, to All Deputy District Attorneys (Dec. 7, 2020), <https://da.lacounty.gov/sites/default/files/pdf/SPECIAL-DIRECTIVE-20-11.pdf>.
143. *Id.* at 1.
144. *Id.*; see also FACTS ABOUT THE DEATH PENALTY, DEATH PENALTY INFORMATION CENTER (Jan. 8, 2021), <https://documents.deathpenaltyinfo.org/pdf/FactSheet.pdf>.
145. See Special Directive 20-11, Death Penalty Policy, from Los Angeles District Attorney George Gascon, to All Deputy District Attorneys (Dec. 7, 2020), <https://da.lacounty.gov/sites/default/files/pdf/SPECIAL-DIRECTIVE-20-11.pdf>.
146. *Id.*
147. *Id.*
148. *California High Court Upholds Death Penalty for Man Convicted of Raping, Strangling 10 Women in L.A.*, KTLA 5 (updated Nov. 30, 2020, 9:24 PM PST), <https://ktla.com/news/local-news/california-high-court-upholds-death-penalty-for-man-convicted-of-raping-strangling-10-women-in-l-a/>.
149. See Special Directive 20-11, Death Penalty Policy, *supra* note 144 at 4.
150. See Special Directive 20-12, Victim Services, from Los Angeles District Attorney George Gascón, to All Deputy District Attorneys (Dec. 7, 2020), <https://da.lacounty.gov/sites/default/files/pdf/SPECIAL-DIRECTIVE-20-12.pdf>.
151. *Id.* at 2.
152. *Id.*
153. *Id.*
154. See Special Directive 20-13, Conviction Integrity Unit, from Los Angeles District Attorney George Gascón, to All Deputy District Attorneys (Dec. 7, 2020), <https://da.lacounty.gov/sites/default/files/pdf/Special-Directive-20-13.pdf>.
155. See Rollins Policy Memo, *supra* note 102; see also Stimson and Smith, “Progressive” Prosecutors Sabotage the Rule of Law, *supra* note 1.
156. 156Stimson and Smith, “Progressive” Prosecutors Sabotage the Rule of Law, *supra* note 1 at 7, 26–29.
157. See Special Directive 20-13, Conviction Integrity Unit, *supra* note 156 at 1.
158. *Id.* at 2, n.1.
159. *Id.*
160. *Id.* at 3.
161. *Id.*
162. *Id.*
163. *Id.*
164. *Id.* at 3–5.
165. *Id.* at 6.
166. *Id.*
167. *Id.* at 8.
168. *Id.*
169. *Id.* at 12.
170. *Id.*
171. See Special Directive 20-14, Resentencing, from Los Angeles District Attorney George Gascón, to All Deputy District Attorneys (Dec. 7, 2020), <https://da.lacounty.gov/sites/default/files/pdf/SPECIAL-DIRECTIVE-20-14.pdf>.
172. *Id.* at 3.
173. *Id.*
174. *Id.* at 4; see also CAL. PENAL CODE § 1170(d) (providing for recall of sentence, which essentially allows a judge to resentence a defendant within a specified time period if specified conditions are met).

175. See *Felony Murder Doctrine*, LEGAL INFORMATION INSTITUTE (explaining that this rule allows someone to be charged with murder for a death, even an accidental death, that occurs during the course of a dangerous felony, even if the felon is not the killer), https://www.law.cornell.edu/wex/felony_murder_doctrine (last visited Jan. 19, 2021); see also *People v. Chun*, 203 P.3d 425 (Cal. 2009) (discussing California’s interpretation and adaptation of the felony murder rule).
176. CAL. PENAL CODE § 1170.95 (allowing a “person convicted of felony murder or murder under a natural and probable consequences theory” to “file a petition with the court that sentenced the petitioner to have the petitioner’s murder conviction vacated and to be resentenced on any remaining counts” when certain conditions are met).
177. See Special Directive 20-14, Resentencing, *supra* note 173, <https://da.lacounty.gov/sites/default/files/pdf/SPECIAL-DIRECTIVE-20-14.pdf>.
178. *Id.* at 7.
179. *Id.*
180. *Id.*
181. *Id.*
182. *Id.*
183. *Id.* at 7–8.
184. *Id.* at 8.
185. *Id.*
186. See Dennis Romero, *Los Angeles County Prosecutors File Lawsuit Against New District Attorney Over Justice Reform Efforts*, NBC NEWS (Jan. 1, 2021, 11:22 PM ET), <https://www.nbcnews.com/news/us-news/los-angeles-county-prosecutors-file-lawsuit-against-new-district-attorney-n1252655>; see also 2020 ADDA BOARD OF DIRECTORS, ASSOCIATION OF DEPUTY DISTRICT ATTORNEYS (ADDA), <https://www.laadda.com/board/> (last visited Jan. 11, 2021).