Sacramento County
District Attorney's Office

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George Gascón
District Attorney, Los Angeles County
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Re: ***Refusal to Grant Jurisdiction under Penal Code Sections 777-795***

Dear District Attorney Gascón:

On December 7, 2020, you issued sweeping Special Directives, many of which are both illegal and unconstitutional, that have decimated the rights of crime victims in Los Angeles County.

As you should know, when crimes occur in multiple jurisdictions, the Penal Code authorizes the jurisdiction to lie within multiple counties (see Penal Code sections 777-795). In some instances, the District Attorneys of each county must agree on venue for prosecution. The following are examples of classes of crimes that may be prosecuted in multiple jurisdictions:

- Child molestation
- Sexual assault
- Domestic violence and stalking
- Human trafficking
- Elder abuse
- Carjacking, robbery and theft crimes
- Identity theft
- Murder and manslaughter

Nearly 40 years ago, in declaring the First National Crime Victims' Rights week, President Ronald Reagan said,

> For too long, the victims of crime have been the forgotten persons of our criminal justice system. Rarely do we give victims the help they need or the attention they deserve. Yet the protection of our citizens – to guard them from becoming victims – is the primary purpose of our penal laws. Thus, each new victim personally represents an instance in which our system has failed to prevent crime. Lack of concern for victims compounds that failure.

Your Special Directives are not just extreme but will undoubtedly wreak havoc on crime victims and their Constitutional rights. Your lack of concern for their rights and safety disturbs me greatly. Additionally, because crime has no boundaries, these Special Directives will have far greater impact than on Los Angeles County alone. Rather, victims across California will be negatively impacted and the safety of all Californians will be jeopardized.

Because of your Special Directives, you are hereby given notice that, as the Elected District Attorney of Sacramento County, I will never grant you jurisdiction over any crimes that involve Sacramento County while these policies of yours remain in place.

This refusal to grant you jurisdiction is based upon several of your Special Directives, and the negative impact it would have on Sacramento victims and cases if you were granted jurisdiction. The Special Directives implicated in this decision include the following:

Special Directive 20-06: Elimination of Cash Bail

Despite Californians and Los Angeles voters overwhelmingly rejecting the outright elimination of cash bail in the November 2020 election, you have unilaterally passed your own law virtually eliminating all cash bail except in very limited circumstances and without regard to victims' rights and public safety.

Our Constitution unequivocally confers crime victims with the right to have their safety considered in fixing the amount of bail and the conditions of any release. The Penal Code also provides a multitude of laws that address bail consideration, including protecting the victim and the public.[1]

Additionally, your Special Directive bars prosecutors from seeking cash bail for any "misdemeanor, non-serious, or non-violent felony offense." Further, even under the limited circumstances where cash bail may be requested for violent crimes and sexual assault, your directive dictates that the prosecutor seek bail based upon the individual's "ability to pay."

This Special Directive unilaterally attempts to usurp judicial discretion in setting bail and jeopardizes the safety of crime victims and the public at large, including Sacramento victims if you were allowed to prosecute a case which occurred in Sacramento County.

This effort to assume the authority of the judiciary has already been rebuked by Los Angeles judges. For instance, in a recent horrific child abuse case filed by your office, a mother was charged with two felony counts of child abuse for allegations of severely beating her two-year-old, including evidence of rope marks around the neck and healed burns. Under your directives, no enhancements for great bodily injury (GBI) were filed. Additionally, under your bail directive, you ordered your prosecutor to seek only $1 bail. Fortunately, the judge rejected your order and increased bail to $50,000. Presumably, the Court's decision to override your directive

[1] To be clear, I fully support bail reform and the California Supreme Court's effort in making pre-trial detention a fair and equitable system. However, until such a system has been established, the existing law must be followed.

was based upon the Constitutional mandate that the seriousness of the charge be considered in setting bail.

Your directives could clearly impact Sacramento victims. For instance, if a domestic violence victim was beaten by her abuser in Sacramento, fled for safety to family in Los Angeles, but was stalked and beaten suffering broken bones and a gun pointed at her head in Los Angeles, your directives would mandate your prosecutors refuse enhancements for infliction of GBI and the use of a firearm. They would also require the abandonment of bail since felony domestic violence is considered "non-violent" under California law. Even where your directive allows for bail due to the defendant's violent acts, mandating "ability to pay" as the basis for setting bail ignores both Constitutional law, including Marsy's Law, and statutory laws under Penal Code section 1269c.

These are stark but unfortunately common examples that demonstrate your failure to protect victims' rights when addressing bail and pre-trial detention.

Special Directive 20-08: Sentencing Enhancements

Within minutes of taking office, you issued Special Directive 20-08 banning all sentencing enhancements, stating, "Sentencing enhancements are a legacy of California's 'tough on crime' era.... Therefore, sentence enhancements or other sentencing allegations, including under the Three Strikes law, shall not be filed in any cases and shall be withdrawn in pending matters."

In adopting this unilateral and sweeping policy, you announced to the media that there would be "no exceptions" because any exceptions "would swallow the rule." However, following community backlash of this policy, you then decided it was appropriate to swallow at least some of the rule, authorizing a very limited number of enhancements in cases which involve the most "vulnerable." Apparently, you do not consider domestic violence or human trafficking victims as vulnerable since they were not included in this new exception.

Even now, your amended Special Directive retains prohibitions from charging the following enhancements and/or special allegations:

- Prior strikes (despite the law mandating such filing)
- Three or five-year priors
- Gang enhancements
- Special circumstances (thereby barring life without possibility of parole sentences)
- Out on bail enhancements
- Gun enhancements

In justifying this policy, and responding to community outrage, you stated that the current statutory range for crimes is sufficient to hold people accountable and to protect the public. For instance, in several high-profile murder cases, you attempted to justify dropping special circumstances and implied to the public that these killers will never be released from prison. As you stated,

> The man alleged to have killed two people, including a police officer, and that attempted to kill another is not getting a hall pass. He is 31 years old and faces at least 72 years to life in prison. The individual who allegedly callously killed his two children[2] and abused two others is 34 years old and is facing a sentence of at least 50 years to life in prison. The man alleged to have shot a woman in the face eight times is facing at least 25 years to life in prison.

This statement is grossly misleading to the public because it fails to inform them of various early release programs from prison. Most significant is California's elder parole law, which would make these accused killers eligible for parole after serving only 20 years.

Furthermore, your Special Directive prohibiting the filing of strikes (and dismissing all pending strikes) is a clear violation of the Three Strikes law. Settled caselaw establishes that prosecutors are required to file all such strikes.

Like your bail directive, this Special Directive seeks to usurp judicial authority. Penal Code section 1385 provides that the judge may dismiss allegations if done in "the furtherance of justice." Your attempt to unilaterally change the law has been rejected many times on pending cases where the court has found such wholesale dismissals of enhancements and special circumstances are not in the interests of justice. The facts of these cases demonstrate an attempt to completely disregard victims' rights. For instance, in *People v. Franky Provencio (KA 120979)*, you sought to dismiss the GBI allegation on a murder case where the defendant is alleged to have killed a six-year-old boy and permanently disabled the child's father. Fortunately, after hearing from the father, the judge ruled that such a dismissal was not in the interest of justice.

Undoubtedly, there are thousands of violent crime cases pending in your office that are impacted by your Special Directive, including murder, robbery, carjacking, rape, child abuse and domestic violence. Your adoption of this Special Directive abandons your Constitutional and legal duties to protect crime victims.

Unfortunately, Sacramento has many cases involving violent crimes that would be impacted by this Special Directive should jurisdiction lie with both counties. A few examples demonstrate why I will never grant you jurisdiction to prosecute any case having dual jurisdiction while these policies of yours remain in effect:

- *People v. Joseph DeAngelo/The Golden State Killer*: Joseph DeAngelo murdered 13 innocent people and raped upwards of 50 women across California. DeAngelo recently pled guilty to all charges and was sentenced to life without possibility of parole (LWOP) after an excruciating week of victim impact statements.

  Under your Special Directive, the prosecution team would have been ordered to drop all special circumstances and enhancements, thereby eliminating an LWOP sentence.

[2] The accused decapitated these children.

While DeAngelo will hopefully die in prison, reducing this to a life sentence rather than LWOP would be an outrageous abuse of power rendering victims to wonder if this sociopath could someday be granted release from prison.

- *People v. Grosvenor (20FE006982)*: The defendant was charged with vehicular homicide, driving under the influence causing injury with a GBI enhancement, and with a prior strike alleged. The defendant, on active parole for a first-degree burglary strike, was driving a car while high on meth when he slammed into a tree. The collision killed one passenger and severely injured the other. The surviving passenger was in a coma for approximately five months, suffered traumatic brain injury, had countless broken bones, and will require physical and psychological assistance for the remainder of his life. The deceased victim left behind two children and a husband. Under the charges my office filed, his maximum sentence was 12 years 4 months in *state prison* (to be served at 80%). The defendant pled guilty and was sentenced to 12 years 4 months.

  Under your Special Directive, WITHOUT any sentencing enhancements, the defendant's maximum sentence would be 4 years in *county jail* prison (to be served at 50%). Such a sentence would be nothing short of a travesty of justice.

- *People v. Johnson (15FE03124):* The defendant was charged with multiple counts of robbery with use of a gun and prior strikes, including carjacking, robbery and terrorist threats. Johnson had been released from prison a month before this robbery spree. The prior strike involved an 84-year-old man who he carjacked at knifepoint while the victim waited for his wife to get her nails done. During the robbery crime spree, Johnson shot the store clerk, fracturing his arm and requiring multiple surgeries to repair the damage. The victim suffered long term emotional and physical disability from this incident and reported that he would never return to work due to the trauma inflicted.

  After trial, the judge sentenced the defendant to first serve a determinate term of 15 years 4 months, to then be followed by an indeterminate term of 25 years to life.

  Under your Special Directive, this Defendant's maximum sentence would have only been 7 years.

  Such a lenient sentence does not adequately address the harm inflicted by nor the violent background of this defendant.

- *People v. Rivera (15FE03256)*: The defendant convinced his mentally challenged girlfriend to check herself into a mental hospital, so he could watch her six-year-old daughter. He kept this child all to himself for five days and then reported her missing. Her burned body was found dumped in Glenn County. She had been beaten to death. The defendant's DNA was found in the child's mouth; her underwear had been laundered but still had the defendant's semen in them.

  The defendant was charged with murder and the special circumstances of a lewd act with a child. He pled guilty and was sentenced to LWOP.

Under your Special Directive, the special circumstances would be dropped, and the defendant would be eligible for parole after age 50 and serving 20 years.

This would be a wholly unacceptable sentence given the facts and circumstances of the crime.

Special Directive 20-09: Crimes Involving Juveniles

Among the various sweeping changes to juvenile prosecution, your Special Directive orders the following:

- No prosecution of juveniles in adult court
- Charging the "lowest potential code section" for the crime committed
- Prohibition on all enhancements
- No objection of removal from sex offender registry

At the outset, it is important to emphasize that the Welfare and Institutions Code clearly delineates the obligations of those responsible for implementing juvenile law. As set forth in Welfare and Institutions Code section 202(d):

> Juvenile courts and other public agencies charged with enforcing, interpreting, and administering the juvenile court law shall consider the safety and protection of the public, the importance of redressing injuries to victims, and the best interests of the minor in all deliberations pursuant to this chapter. Participants in the juvenile justice system shall hold themselves accountable for its results. They shall act in conformity with a comprehensive set of objectives established to improve system performance in a vigorous and ongoing manner.

Your Special Directive fails to comply with his mandate.

The prosecution of juveniles in adult court is and always should be a rare event. In fact, the law has been reformed over the years to limit the types of cases that would even qualify, including such crimes as murder and rape. In Sacramento County, we have gone further in reforming our juvenile policies to additionally limit the number of juveniles tried in adult court. As a result, the number of cases in which our office seeks a transfer to adult court is *extremely* rare. For instance, in 2019, my office filed 1624 juvenile petitions; in only 14 did we seek adult court prosecution. This is *less than 1%* of all juvenile cases.

However, some cases are so egregious that justice demands filing a case in adult court. The following examples demonstrate why these cases deserved adult prosecution and why I will not grant you jurisdiction, while your policies are in effect, on any cases that involve Sacramento:

- *People v. Siackasorn (07F11789)*: On December 19, 2007, Siackasorn (two months shy of his 17th birthday) got into a foot pursuit with Sacramento Sheriff's gang detective Vu Nguyen. Siackasorn had absconded from a juvenile placement facility with an outstanding arrest warrant. During the 56 months of juvenile court wardship, Siackasorn

had absconded over a dozen times from eight separate placements. On several occasions, he threatened to kill probation officers and staff by shooting them. On December 19, 2007, he followed through with those threats and murdered Detective Nguyen during a foot pursuit. After being arrested, he told a CSI officer that he would have killed him as well if given the opportunity. Siackasorn was convicted by jury in adult court and sentenced to LWOP.

As a result of *Miller v. Alabama,* Siackasorn's case was remanded to the trial court for resentencing. There, the court found that Siackasorn's "rejection of all interventions of the juvenile justice system speak toward his strong resistance towards any true rehabilitation or any true sense of remorse." The court went on to find that Siackasorn was the rare juvenile, irreparably corrupt beyond redemption, and thus unfit to ever reenter society.

Siackasorn's case is now pending a transfer hearing as a result of Proposition 57. Needless to say, Detective Nguyen's family has been devastated by the continued litigation over this case.

While Siackasorn has been incarcerated in state prison, he has continued his criminal behavior similar to that which he committed while in the community.

Under your Special Directive, no adult court prosecution for Siackasorn would ever have occurred for the murder of this police officer. Additionally, your orders would mandate the "lowest crime" for this conduct without any enhancements. With that order, it seems the most Siackasorn would have faced would be manslaughter for the premeditated murder of a police officer. As a result, he would have been released from juvenile detention within a matter of a few years of confinement.

Additionally, if this case were currently pending in your county for a transfer hearing, your directives would abandon such efforts and result in immediate release of this murderer.

Detective Nguyen was five years old when his family escaped Vietnam with the assistance of the United States military. This experience became a foundation for his decision to become a Sheriff's deputy. His murder has devastated his family. The continued post-conviction litigation has further traumatized them.

The concept that Siackasorn would be immediately released for the murder of a police officer should your office have jurisdiction is unconscionable.

- *People v. Davis* (13F02253): Sixteen-year-old Davis broke into the home of the 65-year-old victim, hid in her closet until he attacked her, and forcibly raped her while threatening to slit her throat. After repeated sexual assaults, he robbed her of money and a laptop. At the time of this attack, the defendant was on juvenile felony probation for residential burglary, attempted residential burglary, and multiple violations of probation.
  He was charged in adult court with multiple counts, including rape, burglary, assault by

means of force likely to commit GBI, terrorist threats, and robbery. Allegations pursuant to PC 667.61(e)(2) were also alleged authorizing a potential life sentence under the "One Strike" for sex offenders law.

Davis pled guilty to the crimes and was sentenced to 24 years and 4 months in state prison.

Under your Special Directive, no adult court prosecution for Davis would ever have occurred for these horrific crimes involving an elderly woman. Additionally, your orders would mandate the "lowest crime" for this conduct without any enhancements. With that order, it seems the most Davis would have faced would be a few years in juvenile detention before being released back into our community.

These facts demonstrate why your Special Directive abandons victims' rights and fails to comply with the mandates of Welfare and Institutions Code section 202(d) as it fails to consider the safety and protection of the public and the importance of redressing injuries to the victims.

Special Directive 20-14: Resentencing

Among your various orders regarding sentencing, which ignore victims' rights, is the order that prosecutors are barred from attending parole hearings and will support the minimal amount of incarceration.

Victims and family members of life sentence crimes depend on the public prosecutor to be their advocate in the parole process. In fact, the prosecutor "shall be the sole representative of the interests of the people." (Penal Code section 3041.7) Further, it is the *prosecutor's* duty to comment on the facts of the case and present an opinion about the appropriate disposition. (Cal. Code Regs. Title 15, section 2030(d)(2).)

Further, your order violates victims' rights by mandating the prosecutor take a neutral position on parole, even if the inmate presents a danger to the public for reoffending if released. Victims, who often have no understanding of the parole process, are left abandoned to fill the void of the District Attorney's job. This void would further widen because victims are not entitled to review the Risk Assessment of the inmate. As such, a victim would be alone in front of a parole board without any meaningful information to provide on the suitability of parole.

This order is shocking and contemptable. Under it, even if the inmate has behaved poorly in prison, has done *nothing* to rehabilitate himself and presents a *high risk* of victimizing again if released, your office will stand silent, leaving the victims and the community to fend for themselves and with no practical or legal ability to do so.

This Special Directive fails in every conceivable way to comply with the Constitutional rights of victims under Marsy's Law, including:

- The right that crime victims be treated with respect and dignity, and the right to depend

upon a proper functioning government

- The right to the enforcement of laws and *good faith* actions of elected, appointed, and publicly employed officials
- The right to expect that persons convicted of committing criminal acts are sufficiently punished and victims' rights are not undercut or diminished by granting inmates rights not constitutionally or legally required.
- The right to have the safety of the victim, the victim's family, and the general public considered before any parole or other post-judgment release decision is made.

Given your refusal to appear at parole hearings, the taking of a neutral position even where the inmate presents a serious danger to the community, and the abandonment of the prosecutorial duty to protect victims' rights, I will never grant your office authority over any Sacramento case.

My refusal to grant you jurisdiction should not be interpreted as a lack of support for criminal justice reforms. In fact, I support meaningful and balanced reforms and have advocated for many. As you may recall, while you were still the San Francisco District Attorney, we both attended a conference hosted by Scott Budnick at the Lancaster state prison. There, we met with many incarcerated and formerly incarcerated individuals. I was truly moved by the experience. Not long after, I advocated to then Governor Brown in a meeting that the felony murder rule should be reformed. Within a few short months of that, legislation was introduced, and my office consulted with the author and staff, including Hilary Blount, to provide input on this reform.

Additionally, since being elected District Attorney, my office has implemented many programs designed to enhance the criminal justice system, including a multitude of community outreach and prevention programs. While there is much work to be done, I am proud of the efforts in my county to enhance the lives of everyone.

I do not equate the abandonment of the duties of a prosecutor to protect the safety of victims and the public at large with criminal justice reform or those who do so as "progressive." Our continued efforts at reform must be mindful of the rights of all parties, including the Constitutional rights of victims as well as the public's right to be adequately protected from violent criminals.

Sincerely,

Anne Marie Schubert
Sacramento County District Attorney

Cc:

Los Angeles Association of Deputy District Attorneys

California District Attorneys Association

All California Elected District Attorneys