

Attorney for victims Felicia Andrews, Daniel Souvinette and Kevin Brown,
Parents of Uniek Atkins and Sierra Brown

POINTS, AUTHORITIES AND ARGUMENT

The victims respectfully submit the following points and authorities in support of a Court Order to disqualify the District Attorney.

APPLICABLE LEGAL STANDARD

Crime victims in the State of California are supposed to be protected by specific enumerated rights contained within the California Constitution. These rights encompass the expectation that people who commit felonious acts causing injury to innocent victims will be appropriately and thoroughly investigated, brought before the courts, and tried in a timely manner. Victims also have the specific right to expect elected officials to act in good faith, and they are dependent on officials to properly and ethically perform their duties. "California's victims of crime are largely dependent upon the proper functioning of government, upon the criminal justice system and upon the expeditious enforcement of the rights of victims of crime described herein, in order to protect the public safety and to secure justice when the public safety has been compromised by criminal activity." California Constitution Article I, Section (a)(2).

Victims have a right to justice and due process. California Constitution Article I, Section 28(b). They also have a right to be treated with fairness and respect for his or her privacy and dignity, and to be free from intimidation, harassment, and abuse, throughout the criminal or juvenile justice process. California Constitution Article I, Section 28(b)(1).

Felicia Andrews, Daniel Souvinette and Kevin Brown are victims in this case. "[A] 'victim' is a person who suffers direct or threatened physical, psychological, or financial harm as a result of the commission or attempted commission of a crime or **delinquent act**. The term 'victim' also includes the person's spouse, parents, children, siblings, or guardian, and includes a lawful

1 representative of a crime victim who is deceased, a minor, or physically or psychologically
2 incapacitated.” California Constitution Article I, Section 28(e).

3 Importantly, the California Constitution recognizes that these are personally held and
4 enforceable rights. Article 1 Section 28(c)(1) additionally states: “A victim, the retained attorney of
5 a victim, a lawful representative of the victim, or the prosecuting attorney upon request of the
6 victim, may enforce the rights enumerated in subdivision (b) in any trial or appellate court. Article
7 1, Section 28 (a)(4) states:

9 “The rights of victims also include broader shared collective rights that are held in
10 common with all of the People of the State of California and that are enforceable
11 through the enactment of laws and through good-faith efforts and actions of
12 California's elected, appointed, and publicly employed officials. These rights
13 encompass the expectation shared with all of the people of California that persons
14 who commit felonious acts causing injury to innocent victims will be appropriately
and thoroughly investigated, appropriately detained in custody, brought before the
courts of California even if arrested outside the State, tried by the courts in a timely
manner, sentenced, and sufficiently punished so that the public safety is protected
and encouraged as a goal of highest importance.”

15 We respectfully submit that a crime victim’s Constitutional capacity to enforce his or her
16 enumerated rights should, in extreme cases, include a mechanism to move the Court to remove a
17 prosecuting agency which has flagrantly violated those rights. We do not advocate this in every
18 case, and fully agree with the reasoning contained in the authorities below that this should be an
19 exceedingly rare exercise. From the Victims’ perspective, however, Mr. Gascon’s sustained efforts,
20 both surreptitiously and overtly, have undermined his prosecutorial responsibilities to seek justice
21 and to avoid the appearance of impropriety.

22 As the Court is well aware, the traditional method for challenging a District Attorney’s
23 continued participation in a criminal prosecution is through invocation by the defendant of Penal
24 Code section 1424. This section, and the cases which interpret it, set an appropriately high bar for
25 recusal. It is only in rare cases, involving actual unfairness that manifests in an ongoing and grave
26 conflict, that recusal is merited. We submit that we meet and surpass that standard here. The
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1 interesting aspect of the present case is the shocking level of unfairness on the part of the prosecutor
2 is not directed towards the charged defendants as contemplated by 1424, but rather towards the
3 victims and towards the law-abiding community that has an interest in its laws being evenhandedly
4 enforced.

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6 “Historically, courts have recognized their power to recuse in order both to assure fairness to
7 the accused and to sustain public confidence in the integrity and impartiality of the criminal justice
8 system.” People v. Conner (1983) 34 Cal.3d 141 at 146 citing People v. Rhodes (1974) 12 Cal.3d
9 180, 185. A conflict of interest disqualifies a District Attorney from prosecuting a case if the
10 conflict either affects or appears to affect his ability to faithfully perform the discretionary function
11 of his office. Conner, supra, at p. 147. A “conflict” exists whenever the circumstances of a case
12 evidence a reasonable possibility that the District Attorney’s Office may not exercise its
13 discretionary function in an evenhanded manner. Id. at p. 148.

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15 “The first, best, and most effective shield against injustice for . . . society in general, must
16 be found not in the persons of defense counsel, trial judge, or appellate jurist, *but in the integrity of*
17 *the prosecutor.*” People v. Dekraai (2016) 5 Cal. App. 5th 1110 at 1116 citing Corrigan, *On*
18 *Prosecutorial Ethics* (1986) 13 Hastings Const. L.Q. 537 (italics added.) No one factor will compel
19 disqualification of a prosecutor in all cases; rather, the entire complex of facts must be reviewed to
20 determine whether the conflict of interest exists. Hambarian v. Superior Court (2002) 27 Cal.4th
21 826.

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24 As discussed above, recusal of a District Attorney’s Office is generally governed by Penal
25 Code section 1424, which contemplates conflicts of interest affecting fairness to a criminal
26 defendant. Interestingly, both section 1424, and the *Connor* decision predate the enactment of the
27 Victims Rights and Protection Act of 2008 otherwise known as Marsy’s Law as set forth in the
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1 California Constitution Article I, Section 28. We respectfully submit that the goals and reasoning of
2 these authorities should logically extend to the victims of violent crime. If a District Attorney
3 suffers from a conflict, so extreme that they manifest a fundamental inability to be fair to a
4 defendant, or a victim, the District Attorney should be disqualified.

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6 In People v. Dekraai (supra), the Court discussed removal of the District Attorney's Office
7 under Penal Code section 1424.

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9 [R]ecusal of an entire prosecutorial office is a serious step, imposing a substantial
10 burden on the People, and the Legislature and courts may reasonably insist upon a
11 showing that such a step is necessary to assure a fair trial. . . If a defendant seeks to
12 recuse an entire office, the record must demonstrate 'that the conduct of any deputy
13 district attorney assigned to the case, or of the office as a whole, would likely be
14 influenced by the personal interest of the district attorney or an employee. (citations
15 omitted)

16 People v. Dekraai at p. 1139.

17 In this case, DA Gascon has ordered that all Deputy District Attorneys must follow his
18 blanket policy. The Youth Justice Policy does not allow any exceptions and further does not
19 provide for any discretion in how juveniles are treated based on an independent evaluation of each
20 individual case. Because of his mandatory policies which govern each Deputy District Attorney,
21 and order them to withdraw each and every Motion to Transfer without exception, we submit that
22 this is such an extreme case as to merit disqualification, and are hereby moving, under the rights
23 enumerated in the California Constitution, to disqualify and remove the entire District Attorney
24 Office from prosecuting this case.¹

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27 ¹ We do not in any way mean to suggest that the Deputy District Attorneys who have handled this case so far,
28 specifically Courtney Dyer and R.J. Dreiling, have been anything but dedicated and professional. Their conduct has
been beyond reproach and, but for, the mandates of DA Gascon which they are obligated to follow, we would never ask
the court to disqualify them from prosecuting this case.

1 **THE VICTIMS AND THE PEOPLE CAN HAVE NO CONFIDENCE IN THE**
2 **INTEGRITY AND IMPARTIALITY OF THE DISTRICT ATTORNEY**

3 On December 7, 2020 Los Angeles County District Attorney Gascon was sworn into office
4 as the Los Angeles County District Attorney. On the date, and literally the time, of his swearing in,
5 he issued 61 pages of unintelligible sweeping policy directives <http://da.lacounty.gov/policies> some
6 of which have now been determined to be unlawful.²
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8 Although DA Gascon had access to experts in gang crime, sex crime, major narcotic crime,
9 cyber crime, asset forfeiture, juvenile, mental health, victims of crime, Brady compliance, ethics,
10 conviction review, re-sentencing of violent offenders, and Habeas practice, he did not consult any of
11 them in developing sweeping policies that literally gut the criminal justice system in Los Angeles
12 County and decimate victims' rights. Instead, he enlisted criminal defense attorneys, even those
13 with pending cases whose criminal clients directly benefitted from directives they wrote for him.
14 One of those policies was the "Youth Justice" policy which states:
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16 **The office will immediately END the practice of sending youth to the adult court**
17 **system. All pending motions to transfer youth to adult court jurisdiction shall**
18 **be withdrawn at the soonest available court date, including agreeing to defense**
19 **counsel's request to advance.**

20 ...

21 **Filings will consist of the lowest potential code section that corresponds to the**
22 **alleged conduct and mandate one count per incident.**
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25 ² On February 8, 2021, the Honorable Judge James Chalfant granted a preliminary injunction enjoining DA Gascon
26 from requiring deputy district attorneys to ask for courts to take action in criminal cases without a lawful basis. Judge
27 Chalfant wrote, "The District Attorney's disregard of the Three Strikes "plead and prove" requirement is unlawful, as is
28 requiring deputy district attorneys to seek dismissal of pending sentencing enhancements without a lawful basis."
<https://www.laadda.com/wp-content/uploads/2021/02/20STCP04250-Gascon-prelim-inj.pdf> One of the main concerns
that Judge Chalfant raised was the blanket nature of any policy which does not allow for prosecutorial discretion which
considers an individualized review and analysis of each case.

1 There are no listed exceptions to this blanket policy. This policy violates victims' rights
2 because it mandates that prosecutors make motions at the next court appearance with no regard for
3 notifying victims, allowing them an opportunity to confer, or safeguarding their right to attend and
4 be heard at the court proceeding.³

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6 One of the defense attorneys that the District Attorney enlisted was and is Alisa Blair. **Ms.**
7 **Blair's last official day with the Los Angeles County Public Defender's Office was January 29,**
8 **2021.** Her last assignment in the Public Defender's Office was Inglewood Adult which is housed in
9 the same office as Inglewood Juvenile, the same office that is currently representing Minor
10 Cruikshank.

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12 On January 15, 2021, the Los Angeles County District Attorney's Office issued a General
13 Office Memorandum (GOM) 21-05 announcing Executive Staff Assignments "Alisa Blair is
14 serving as a Special Advisor to the District Attorney. In this role, Ms. Blair will advise the District
15 Attorney on juvenile, diversion, collaborative courts, and all related matters. Ms. Blair comes to the
16 District Attorney's Office from the Office of the Public Defender. She brings 18 years of criminal
17 justice experience in capacities including adult and juvenile trial work, new lawyer training, law
18 clerk recruitment, and juvenile unit supervisor. Ms. Blair is published on issues of race, juvenile
19 interrogations, and cash bail and frequently speaks on adolescent brain development and the impact
20 of trauma on youth development."

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23 Ms. Blair is not a sworn Deputy District Attorney who is familiar with the ethical
24 obligations of prosecutors.

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26 ³ The differences between the juvenile court and sentence in adult court are monumental. Whether the minor is
27 prosecuted in juvenile or adult court has a direct correlation to the sentence that the minor will receive. If the
28 disposition is in juvenile court, he can only remain in custody until he is 25 years old. Whether the minor is prosecuted
in juvenile or adult court also affects the victims' right to restitution. Because of this, any court hearing on whether there
will be a fitness hearing is a hearing at which the right of a victim is at issue.

1 Ms. Blair has a history which raises serious concerns about not just the appearance of, but
2 actual impropriety.

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4 Ms. Blair herself has recognized the importance of the appearance of impropriety in public
5 service. In fact, Ms. Blair criticized the Board of Supervisors for their decision to appoint Nicole
6 Davis Tinkham as the 2018 interim Public Defender because of Ms. Tinkham's prior work as a
7 County Counsel defending members of the Sheriff's Department. The 2/12/2018 San Diego Union
8 Valley Tribune reported, "Alisa Blair, the deputy in charge of the public defender's unit at Los
9 Padrinos Juvenile Courthouse, said she was concerned Tinkham's history with the Sheriff's
10 Department would damage her ability to build trust with her clients. 'They're going to say, you're
11 representing the body that mistreats us in the jails, that polices our neighborhoods unnecessarily,'"
12 said Blair, a 15-year veteran of the office.

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14 [https://www.sandiegouniontribune.com/news/california/la-me-ln-public-defenders-rally-20180212-](https://www.sandiegouniontribune.com/news/california/la-me-ln-public-defenders-rally-20180212-story.html)
15 [story.html](https://www.sandiegouniontribune.com/news/california/la-me-ln-public-defenders-rally-20180212-story.html)

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17 On January 17, 2020, during his campaign, Gascon announced a public policy committee
18 which included "Alisa Blair is a native Angelino and has been an attorney with the Los Angeles
19 County Public Defender's Office since 2003. During that time Ms. Blair has been lead trial counsel
20 in over 50 jury trials for charges ranging from resisting arrest to first degree murder, as well as a
21 supervisor in the office's juvenile division. Until December of 2019, Alisa Blair most recently
22 handled juvenile "transfer" cases, where the District Attorney is seeking to transfer minors to adult
23 court. In 2018, Alisa was successful in keeping two juvenile clients under juvenile court
24 jurisdiction after contested hearings. Both minors were charged with violent murders. These
25 successes were instrumental in Ms. Blair being the 2018 recipient of the Judi Schecter Juvenile
26 Lawyer of the Year award." [https://georgegascon.org/campaign-news/team-gascon-announces-](https://georgegascon.org/campaign-news/team-gascon-announces-public-policy-committee/)
27 [public-policy-committee/](https://georgegascon.org/campaign-news/team-gascon-announces-public-policy-committee/)
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1 On July 20, 2020, Voyage LA reported Ms. Blair's comments: "Society has become far too
2 comfortable seeing Black folks in chains." "I represent the accused and defend the constitution. I
3 am a check in a racist system. I am most proud of advocating fiercely for my clients and being able
4 to restore their sense of dignity and make clear their humanity."

5 [http://voyagela.com/interview/meet-alisa-blair-los-angeles-county-public-defender-work-
6 inglewood-courthouse/](http://voyagela.com/interview/meet-alisa-blair-los-angeles-county-public-defender-work-inglewood-courthouse/)

8 On August 10, 2020, During LA County Public Defender's first Open House Deputy Public
9 Defender Alisa Blair gave the community a "reality check." When she has cases in which the only
10 alleged crime is resisting arrest, she knows that often her client was simply trying assert his or her
11 rights. "The assumption is that you should have done something where an arrest was warranted and
12 then you resisted it," she said. "But a lot of times it's just because you're asserting your rights. So it
13 does break my heart to say these are your rights but don't say anything. Be quiet don't assert them.
14 But the reality is you want to come home." [https://pubdef.lacounty.gov/know-your-rights-more-
15 complicated-than-it-appears/](https://pubdef.lacounty.gov/know-your-rights-more-complicated-than-it-appears/)

17 George Floyd was killed on May 25, 2020 in Minneapolis, Minnesota, while in police
18 custody. There were protests in Los Angeles County in response to Mr. Floyd's murder. Some of
19 those protests turned violent and included arson. On August 25, 2020, Alisa Blair tweeted
20 #GeorgeFloydProtest "Burn that Shit down." [https://www.foxla.com/news/la-district-attorney-
21 lacey-slams-controversial-tweets-allegedly-from-gascons-public-policy-committee](https://www.foxla.com/news/la-district-attorney-lacey-slams-controversial-tweets-allegedly-from-gascons-public-policy-committee)

23 Ms. Blair has met with a number of murder victims' families in juvenile cases with the
24 families pro bono attorneys providing Marsy's Law representation to victims in response to
25 Gascon's policies. Some of the Zoom calls and emails regarding these meetings took place while
26 she was still employed with the Public Defender's Office. In these zoom calls, Ms. Blair has
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1 asserted that she wrote most of the Youth Policy. **This is the same Youth Justice policy which**
2 **was issued on December 8, 2020 when she was still a Deputy Public Defender.** The import of
3 this lack of impartiality cannot be overstated. Ms. Blair wrote the policy which governs the entire
4 District Attorney's Office handling of juvenile cases while still employed by the Office that
5 represented this minor. **She was employed by the Public Defender's Office who is ethically**
6 **bound to zealously represent every client, working in the same office that was and currently is**
7 **representing this Minor.**

9 She has also confirmed that she, in her role as Special Advisor to the District Attorney, not a
10 sworn Deputy District Attorney representing the People of the State of California, is the person who
11 decides whether a juvenile case qualifies for exception to the Youth Justice Policy. She, who is not
12 a Deputy District Attorney and would not be permitted to represent the People of the State of
13 California in court, is the person who decides whether a case warrants an exception to the policy she
14 penned while a Deputy Public Defender.

16 How can the victims and the public have confidence that the policy authored by Ms. Blair is
17 being implemented fairly; with the respect and concern for victims' rights; and with the public
18 safety of the People of the State of California, and not just to benefit juveniles charged with
19 committing crimes, in this case Minor Cruikshank.

21 The victims and their attorney met with DA Gascon and his acting Chief Deputy on January
22 4, 2021. During the call, they were asked about the policy which mandated only one count per
23 incident and which daughter's murder they would pursue, and which daughter's murder they would
24 dismiss. Both Gascon and his acting Chief Deputy looked perplexed and said that the policy didn't
25 say only one count per incident, indicating that both of them were unfamiliar with what is actually
26 included in the policy issued on December 7.

1 Neither Gascon nor his Chief Deputy would discuss his policy or whether he would make an
2 exception to the blanket policy precluding transfer to adult court in this case. Iniguez told Ms. Cady
3 that the meeting was not the appropriate format for such questions and said that he would contact
4 Ms. Cady "off line" to answer those questions. On January 5, 2021, Victims' Rights Attorney
5 Kathy Cady sent the following email:

7 Mr. Gascon:

8 I am following up after our meeting yesterday with Felicia Andrews, Daniel
9 Souvinette and Kevin Brown.

10 The family was somewhat taken aback that you would not answer questions about
11 the case, your policy, and their request that you make an exception given the
12 calculated premeditation, planning, and cover up by the man who murdered their
13 daughters. The victims have Constitutional right to "confer" with you. The plain
14 meaning, and indeed definition, of "confer" is "to consult or discuss something
15 together; compare ideas or opinions." Yesterday was the appropriate format to
16 discuss the case with you, not to hear that you are "sorry for their loss." Your
17 agreement to listen to them but refuse to answer questions does not begin to honor
18 their right to confer with you about the case and charges against the man who
19 murdered their daughters.

20 Please advise when the family can expect to **actually confer** with you and learn
21 personally from you how you have considered their remarks and wishes and your
22 final decision on justice for their daughters.

23 Neither the victims nor the victim' attorney have received any communication from DA
24 Gascon answering the victims' questions or offering to confer as promised. Instead, last week the
25 victims were informed that an exception would not be made to the policy. We were also informed
26 that Ms. Blair was involved in that decision.

27 Alisa Blair is a former colleague with actual Deputy Public Defender who is now
28 representing defendant Cruikshank.

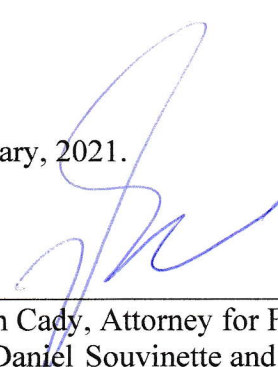
All of the above illustrates a shocking departure from a prosecutor's sacrosanct obligation to
ethically defend victims of violent crime. The impropriety of Mr. Gascon's actions, therefore,

1 cannot be overstated. We have a sitting District Attorney who actively colluded with an employee
2 of the Public Defender's Office to write and now implement policy which undermines the efficacy
3 of prosecutions a serious and violent felonies committed by juveniles.

4 5 **CONCLUSION**

6 We respectfully submit that the duty of a prosecutor to protect the rights of victims in
7 juvenile cases is one of the utmost importance. The opportunity to fairly and ethically champion
8 these rights, under challenging circumstances, is at the very essence of being a true prosecutor. This
9 solemn obligation, we submit, is simply not an option to be disregarded at the whim of political
10 convenience. Victims have a right to have a sworn prosecutor exercise discretion in their cases.
11 They have right to know that the person who is making decisions about their case be dedicated to
12 justice and safeguarding their Constitutional Rights. For all of the above stated reasons, we ask this
13 Court to disqualify the District Attorney's Office and allow for a competent and professional review
14 by another prosecutorial agency.
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17 Respectfully submitted this 24th day of February, 2021.

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20 Kathleen Cady, Attorney for Felicia Andrews,
21 Daniel Souvinette and Kevin Brown
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