

**S267713**

**IN THE SUPREME COURT OF THE STATE OF CALIFORNIA**

**REHAN NAZIR,  
Petitioner,**

**v.**

**LOS ANGELES COUNTY SUPERIOR COURT,  
Respondent.**

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**PEOPLE OF THE STATE OF CALIFORNIA,  
Real Party in Interest.**

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**Second Dist. Court of Appeal  
No. B310806**

**Superior Court  
No. VA 151320**

**Petition For Review**

After the Unpublished Decision of the Court of Appeal,  
Second Appellate District, Division 7

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TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF  
THE SUPREME COURT OF THE STATE OF CALIFORNIA:

Appellant REHAN NAZIR hereby petitions this court, pursuant to Rule 8.509(b), California Rules of Court, from the unpublished decision by the Court of Appeal, Second Appellate District, Division Seven filed on March 10, 2021 affirming the trial court's decision not to permit the District Attorney to dismiss all enhancements charged in the underlying case . A copy of the original opinion is attached as appendix "A."

March 19, 2021

Respectfully submitted,

*Bruce Zucker*

Bruce Zucker,  
Attorney for Petitioner

## **ISSUE PRESENTED**

Whether the trial court abused its discretion when it failed to accept the District Attorney's ("DA") Amended Information dismissing all previously filed enhancements pursuant to the DA's new Policy Directive?

## **WHY THE COURT SHOULD GRANT REVIEW**

Review should be granted pursuant to Rule 8.509, subdivision (b) because this case presents a novel issue that has not been addressed by any appellate court in California. Specifically, the issue in this case addresses the question of whether the trial courts must grant the District Attorney's motion to dismiss enhancements in pending cases when the District Attorney formally invoked a change of policy across the board requiring it.

Here, the trial court refused to allow the DA to go forward on the Amended Information, even after it gave leave for the People to amend it, and, further, the trial court denied the People's Motion to Dismiss and withdraw enhancements pursuant to Los Angeles County District Attorney George Gascón's Special Directive 20-08.

As discussed more fully below, the District Attorney's Special Directive 20-08 has directed that all Los Angeles County prosecutors drop all sentencing enhancements on criminal cases pending before Los Angeles County Superior Court and refrain from charging them in new cases going forward.

Mr. Nazir was arraigned in May 2020 and his trial date is imminent. Therefore, Mr. Nazir's case is pending and falls directly within the range of cases District Attorney Gascón was targeting with his Special Directive.

However, because Mr. Nazir's case is post-arraignment, the prosecutor must seek leave of the court to file an amended information. (Pen. Code, § 1009.) This permission was given by the trial court at the hearing on December 13, 2020 previous to the December 18, 2020 hearing. The court then rescinded its permission at the December 18, 2020 hearing after the People had already filed the Amended Information. The right of the Prosecutor to amend the information vested when leave was given by the court and thus it was an abuse of the trial court's discretion to subsequently rescind its permission once the Amended Information was subsequently filed.

Alternatively, it was an abuse of discretion for the trial court not to allow the People to withdraw and dismiss Mr. Nazir's sentencing enhancements through the People's Section 1385 motion. This was an abuse of discretion because it denied the People the prosecutorial discretion over charging decisions, raising a separation of powers issue. The trial court in denying the motion also chose to treat Mr. Nazir harsher than other similarly situated people with pending felony cases in Los Angeles County, thus denying him equal protection of the laws.

It is well settled that the prosecuting authorities, exercising executive functions, ordinarily have the sole discretion to determine whom to charge with

public offenses and what charges to bring. This prosecutorial discretion to choose, for each particular case, the actual charges from among those potentially available arises from "the complex considerations necessary for the effective and efficient administration of law enforcement." [Citations.] The prosecution's authority in this regard is founded, among other things, on the principle of separation of powers, and generally is not subject to supervision by the judicial branch. (*People v. Birks* (1998) 19 Cal.4th 108, 134.; see also *Wayte v. United States* (1985) 470 U.S. 598, 607, [subject only to constitutional restraints, prosecutors retain broad discretion in deciding whom to prosecute].) This "broad discretion" extends to "selecting the cases to be subject to a capital charge." (*People v. Lucas* (1995) 12 Cal.4th 415, 477-478)

Also, inherent in the prosecution's charging discretion is its power not to bring charges. That decision is itself "deemed [to be] a discretionary charging decision ..." (*People v. Mancebo* (2002) 27 Cal.4th 735, 749), and courts are generally powerless to compel a prosecutor to proceed in a case he believes does not warrant prosecution (*Inmates of Attica Correctional Facility v. Rockefeller* (2d Cir. 1973) 477 F.2d 375, 379-380).

As such, it is imperative that this Court grant review. If not, petitioner will be put on trial for enhancements the People did not intend to pursue and would not pursue in any other case, at the exact same time, and under the exact same facts.



## STATEMENT OF THE UNDERLYING PROCEEDINGS

Petitioner Rehan Nazir was arrested on or about July 23, 2019 and initially arraigned on July 26, 2019. On May 4, 2020, in the Fourth Amended Complaint, the prosecution charged Mr. Nazir with thirty-five (35) counts of various offenses, including one or more counts each of Penal Code section 215, subd. (a): Carjacking; Penal Code section 207, subd. (a): Kidnapping; Penal Code section 487(d)(1): Grand theft auto; Penal Code section 140, subd. (a): Threatening a witness; Penal Code section 422, subd. (a): Criminal threats; Penal Code section 245(a)(2): Assault with a firearm; Penal Code section 236: False imprisonment; Penal Code section 518: Extortion; Business and Professions Code section 2052(b): Conspiracy to practice medicine without a certificate; Penal Code section 459: Burglary; Penal Code section 148.9(a): False information to a peace officer; and Penal Code section 29825(a): Purchase firearm with temporary restraining order in place. From May 4, 2020 through May 7, 2020, a preliminary hearing was held before Judge Roger Ito.

In addition, the People alleged various enhancements, including but not limited to, the following: Penal Code section 12022.5(a): Personal Use of Firearm -- AR-15 Rifle (Counts 29 and 30); Penal Code section 1203.06(a)(1): Personal Use of Firearm -- Semi-Automatic (Counts 1, 5, 11, 22 and 30); Penal Code section 12022.53(b): Use of Firearm -- Handgun (Counts 1, 5, 11, 22, 30); Penal Code section 12022.5(a): Personal Use of Firearm -- Semi-Automatic (Counts 1, 5, 7, 9, 11, 13, 14, 16, 17, 19, 21, 22, 23, 24, 27, 29 and 30); Penal Code section

12022.5(a)/(d): Personal Use of Firearm -- Semi-Automatic (Counts 6, 8, 12, 15, 18, 20). The Court made the following findings:

<b>Count</b>	<b>Charge</b>	<b>Ruling</b>
1	PC § 215: Carjacking	Insufficient Evidence
2	PC § 487(d)(1): Grand Theft Auto	Held to Answer
3	PC § 140(a): Threatening Witness	Held to Answer
4	PC § 422: Criminal Threats	Held to Answer
5	PC § 207(a): Kidnapping	Held to Answer
6	PC § 245(A)(2): Assault with a Firearm	Held to Answer
7	PC § 236: False Imprisonment by Violence	Held to Answer
8	PC § 245(a)(2): Assault with a Firearm	Held to Answer
9	PC § 518: Extortion	Held to Answer
10	PC § 518: Extortion	Held to Answer
11	PC § 207(a): Kidnapping	Held to Answer
12	PC § 245(a)(2): Assault with a Firearm	Held to Answer
13	PC § 518: Extortion	Held to Answer
14	PC § 236: False Imprisonment by Violence	Held to Answer
15	PC § 245(a)(2): Assault with a Firearm	Held to Answer
16	PC § 236: False Imprisonment by	Insufficient Evidence (Ruling reversed and

	Violence	Nazir Held to Answer on 12/18/2020 by Judge Lee Tsao)
17	PC § 518: Extortion	Held to Answer
18	PC § 245(a)(2): Assault with a Firearm	Insufficient Evidence
19	PC § 236: False Imprisonment by Violence	Insufficient Evidence (Ruling reversed and Nazir Held to Answer on 12/18/2020 by Judge Lee Tsao)
20	PC § 245(a)(2): Assault with a Firearm	Held to Answer
21	PC § 236: False Imprisonment by Violence	Insufficient Evidence (Ruling reversed and Nazir Held to Answer on 12/18/2020 by Judge Lee Tsao)
22	PC § 207(a): Kidnapping	Held to Answer
23	PC § 236: False Imprisonment by Violence	Held to Answer
24	PC § 518: Extortion	Held to Answer
25	B&P § 2052(b): Conspiring, Aiding or Abetting Another to Practice Medicine without a Certificate	Held to Answer
26	B&P § 2054(a): Use of Term Dr./M.D. Initials without Certificate	Dismissed by the People
27	PC § 422: Criminal Threats	Held to Answer
28	PC § 518: Extortion	Held to Answer
29	PC § 236: False Imprisonment by	Held to Answer

	Violence	
30	PC § 215(a): Carjacking – Personal Use of a Deadly Weapon	Held to Answer
31	PC § 459: First Degree Burglary, Person Present	Held to Answer
32	PC § 148.9: Giving False Information to a Police Officer	Dismissed by the People
33	PC § 459: First Degree Burglary, Person Present	Held to Answer
34	PC § 29825(a): Purchase or Receive Firearm with Temporary Restraining Order	Held to Answer
35	PC § 29825(a): Purchase or Receive Firearm with Temporary Restraining Order	Held to Answer

On or about December 7, 2020, Los Angeles County District Attorney George Gascón issued Special Directive 20-08 entitled, “Special Enhancements Allegations,” which is directly relevant and has a direct impact on Mr. Nazir’s pending case because it directs his prosecutors to no longer pursue sentencing enhancements and prior strikes on any pending case. More specifically, Special Directive 20-08 states the following:

Sentencing enhancements are a legacy of California’s “tough on crime” era. It shall be the policy of the Los Angeles County District Attorney’s Office that the current statutory ranges for criminal offenses alone, without enhancements, are sufficient to both hold people accountable

and also to protect public safety. While initial incarceration prevents crime through incapacitation, studies show that each additional sentence year causes a four (4) to seven (7) percent increase in recidivism that eventually outweighs the incapacitation benefit. 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.

On December 11, 2020 respondent court heard argument on the People's motion to dismiss the above referenced enhancements pursuant to the Directive. The court erroneously denied the motion because it believed it did not have the authority to grant the dismissal because, the Court opined, "the courts are clear that the exercise of discretion under 1385 must be based on individualized consideration of the offense and the offender and not on any antipathy or disagreement with the statutory scheme." (Id. at 7.) The court then noted that "should the People file an amended Information, then we can go forward." (Id. at 6, 7) The court then added that the People were invited to file an Amended Information, which It would then proceed on. (Id. at 7.)

On December 18, 2020, respondent court heard argument on the People's motion to dismiss the above referenced counts and enhancements. The People also informed the court that based on permission of the court from the December 11, 2020 hearing to file an amended information, they had thus filed an Amended

Information. The Court then informed the People it would not accept the Amended Information.

On March 8, 2021, Petitioner filed the underlying Petition for Writ of Mandamus in Division 7 of the Second District Court of Appeal seeking an order directing the trial court to set aside its December 18, 2020 ruling denying the People's Motion to Dismiss the Amended Information. On March 10, 2021, the Court of Appeal summarily denied the Petition. (Exhibit "A")

The trial court's decision is contrary to law and an abuse of the trial court's discretion. As discussed in this pleading, the trial court erred when it refused to dismiss the enhancements pursuant to the Directive and permit the People to proceed on the Fifth Amended Information, which omitted the enhancements.

### **STATEMENT OF FACTS**

Defendant Rehan Nazir is a former Torrance Police Department police officer. At the time of the allegations in the Fourth Amended Complaint, he owned Highlow Bail Bonds; and Mr. Nazir was accused of using his position to commit various offenses, as delineated in this petition. For simplicity, this Statement of Facts is presented by counts charged in the Complaint and grouped accordingly.

#### **Counts 1 and 2**

On September 28, 2018, the People allege that Mr. Nazir and others, dressed as "repo" people, arrived at to Shannon Sophia Van Heynangen's home in Lakewood at approximately 1:30 a.m. seeking her 2012 Toyota Tacoma. (RT

180.) She took them to a location in Long Beach, where the car was located, and the men took the car.

The court made the finding that the car was not taken by “force or fear,” so it dismissed Count 1 (Carjacking). Specifically, the Court ruled that Ms. Van Heynangen did not claim until several months later that she felt intimidated or threatened. “But on the date of the incident itself there is evidence in [the Court’s opinion] that shows that she just believed that they were repossessing the vehicle for a legitimate reason. It was later determined it was not a legitimate reason.” (RT 434) As such, the Court held Mr. Nazir to answer as to Count 2 (Grand Theft). (RT 434)

#### Counts 3 and 4

At some time after Mr. Nazir allegedly took the car belonging to Ms. Van Heynangen, she posted “wanted” posters at his place of business. In response, on January 1, 2019, at about 2:08 in the afternoon, the People allege that Mr. Nazir called Ms. Van Heynangen while she was at work, identified himself, then called her a “fat fucking bitch” and said he would file a restraining order against her. (RT 228-229.) He allegedly told Ms. Van Heynangen that he knew where she lived and that he could shoot her and no one would know. (RT 228.)

On July 15, 2019, almost seven months after the alleged threatening phone call, Mr. Nazir filed a civil complaint against Ms. Van Heynangen in response to the “wanted” poster. (RT 459)

The court held Mr. Nazir to answer on Count 3 (Threatening Witness) and Count 4 (Criminal Threats).

Counts 5 through 10

The People allege as follows. On November 1, 2017, three males with firearms, including Mr. Nazir, confronted Mr. Nickolas Portune and his girlfriend, Megan Ritchie in the parking lot of the McDonald's at 1852 Manhattan Beach Boulevard. Mr. Nazir had acted as a bail agent for Mr. Portune. (RT 280.) Mr. Portune was detained and handcuffed by Mr. Nazir. (RT 282.) Ms. Ritchie gave Mr. Nazir \$400 toward the money Mr. Portune owed Mr. Nazir. Mr. Portune was taken to Mr. Nazir's office, Highlow Bail Bonds, by one of the men with Mr. Nazir. (RT 283.) After Mr. Portune arrived at the office, his girlfriend arrived with additional cash for Mr. Nazir. Mr. Portune was asked to turn over his vehicle to Mr. Nazir, and Mr. Portune did. (RT 284.) The next day, November 2, 2019, Linda Portune, Mr. Portune's mother, went to the Highlow Bail Bonds office to pay the remainder of Nickolas's debt to Mr. Nazir. (RT 287.) Mr. Portune's car was then returned.

The court held Mr. Nazir to answer on Counts 5 (Kidnapping), 6 (Assault with a Firearm), and 7 (False Imprisonment). On each of those counts, the court found true the allegations that Mr. Nazir personally used a firearm in violation of 12022.53, 12022.5 and 12022.53. (RT 435.)

The court held Mr. Nazir to answer on Counts 8 (Assault with a Firearm) and 9 (Extortion) against Ms. Ritchie. On both of those charges, the court found



there was insufficient evidence of personal use of a firearm. (RT 435.) The court held Mr. Nazir to answer on Count 10 (Extortion) against Ms. Portune.

Counts 11 through 21

The People allege as follows. On November 2, 2017, Mr. Nazir and others entered a garage in Torrance where Matthew Pacheco and his girlfriend, Sara Simpkins, resided. (RT 415.) Mr. Nazir and his team escorted Mr. Pacheco out of the garage. Mr. Pacheco asked Ms. Simpkins to provide \$300 to Mr. Nazir, and she did. (RT 416.) Mr. Nazir had a “1300 affidavit,” giving him the authority to apprehend Mr. Pacheco. (RT 355.) Mr. Nazir and his team left, taking Mr. Pacheco with them. Rt 416. Later, Mr. Pacheco called Ms. Simpkins and asked her to bring her rented U-Haul to the Highlow Bail Bonds office. She did. (RT 416-417.) Once there, she gave Mr. Nazir the keys to the U-Haul, and Mr. Nazir returned Ms. Simpkins’ money to her. Mr. Pacheco and Mr. Nazir removed a divider from the U-Haul and placed it in the Highlow office. (RT 417.) Then, Mr. Pacheco was told he was free to leave. (RT 418.)

Further, the People allege that after Mr. Pacheco was detained, Mr. Nazir and others entered the house attached to the garage, owned by Mr. Pacheco’s mother, Elisa Gallagher. (RT 43.) Ms. Gallagher’s granddaughter, Carla Palmas, answered the door and told the men not to come in. Ms. Palmas was then ordered at gunpoint to get to her knees and then she was searched. (RT 308.) Mr. Nazir and those accompanying him entered the home. Two of the people had guns

drawn. (RT 45.) Ms. Gallagher asked who they were, and she testified that they responded they were a SWAT team. (RT 48.) Mr. Nazir and the others looked through each room of the house.

The court held Mr. Nazir to answer on Counts 11 (Kidnapping), 12 (Assault with a Firearm), 13 (Extortion), 14 (False Imprisonment), 15 (Assault with a Firearm), 17 (Extortion), and 20 (Assault with a Firearm). The court found sufficient evidence of personal use of a firearm on Count 11, but not Counts 12, 13, 14, 15, 17, or 20. The court found insufficient evidence for Count 16 (False Imprisonment) and insufficient evidence of personal use. The court found insufficient evidence to support Counts 18 (Assault with a Firearm) and 19 (False Imprisonment by Violence). The Court found insufficient evidence to support Count 21 (Assault with a Firearm) and the personal use allegation. (RT 435 – 438.)

#### Counts 22, 23, and 24

The People alleged as follows. Robert Neal used Highlow Bail Bonds to secure bail in January 2018. (RT 316.) The People allege that on January 11, 2018, Mr. Nazir went to Mr. Neal's room at the Motel 6 located at 111 West Albertoni Street in Gardena, kicked in the door, and then put a gun to Mr. Neal's head and threatened to kill Mr. Neal for not paying him. (RT 319 - 320.) Mr. Nazir searched through Mr. Neal's things and found and took \$40. (RT 321.) Mr. Nazir then handcuffed Mr. Neal and transported him to the Highlow Bail Bonds office. (RT 322.) Later, Mr. Nazir and others took Mr. Neal from the office to a Hyatt hotel,

where Mr. Neal had another hotel room. (RT 324.) Mr. Nazir and the others searched through Mr. Neal's belongings in that room. (RT 325.) Mr. Neal provided Mr. Nazir with credit card numbers that he had obtained via the "dark web," and then Mr. Neal was unhandcuffed and free to leave the hotel. (RT 326.)

The court held Mr. Nazir to answer on Count 22 (Kidnapping), Count 23 (False Imprisonment), and Count 24 (Extortion) and that there was sufficient evidence to sustain the personal use allegation on all three counts. (RT 438)

Counts 25 through 28

The People allege as follows. On or about August 26, 2018, Mr. Nazir entered Las Encinas Hospital falsely claiming to be a physician working with UCLA, the Los Angeles County Sheriff, and the federal government, seeking patient Oliver Kwon's discharge from the facility to him because Mr. Kwon was "involved in a crime." (RT 94-95.) (Mr. Kwon was admitted on August 24, 2018 on a "5150" hold on the basis of bi-polar disorder.) (RT 94.) Mr. Nazir allegedly threatened Cecilia Que, a nurse working in the facility, that if she did not release Mr. Kwon, she would be charged for obstruction and go to jail. (RT 102.) Mr. Nazir also allegedly made reference to Ms. Que going home "late at night." (RT 103. When asked whether she "got the impression" that she might be physically harmed, Ms. Que responded, "Yeah. He can do something, you know. You never know." (RT 110, 111)

The court held Mr. Nazir to answer on Counts 25 (Conspiring, Aiding or Abetting Another to Practice Medicine without a Certificate), 27 (Criminal

Threats), and 28 (Extortion). The People dismissed Count 26 (Use of Term Dr./M.D. Initials without Certificate). (RT 438.)

#### Counts 29 and 30

The People allege that on August 26, 2018, after Mr. Nazir secured Mr. Kwon's discharge from Las Encinas Hospital, Mr. Nazir instructed Mr. Kwon to go to the Highlow Bail Bonds office the following day. Mr. Nazir asked Mr. Kwon for somewhere between \$30,000 and \$300,000 for the release from Las Encinas. At the time Mr. Nazir made this request, he had two firearms with him: one placed on the desk and one in Mr. Nazir's hands. Mr. Nazir asked for Mr. Kwon to arrange to have one of the luxury vehicles registered in Mr. Kwon's name, and leased out, delivered to Mr. Nazir's office. (RT 273-274.) Mr. Kwon arranged to have a Porsche dropped off at Mr. Nazir's office. (RT 276.) Afterward, Mr. Nazir told Mr. Kwon to come back the next day with another luxury vehicle. (RT 276.) Mr. Kwon agreed but did not return the following day. (RT 277.)

The court found sufficient evidence of Count 29 (False Imprisonment) and Count 30 (Carjacking), along with the allegation that a compatriot was armed. (RT 439.)

#### Counts 31 and 32

The People allege as follows. On August 31, 2018, at approximately 11:30 pm, Mr. Nazir knocked on the door of Jean Yoon Kwon and David Soonhoo Kwon's home at in Rolling Hills Estates. (RT 14-15.) Mr. Kwon called the

Sheriff's Department, explained the situation, and asked that a deputy be sent to the residence. (RT 18) Once a deputy sheriff arrived, Mr. Kwon opened the door, and Mr. Nazir (or one of the men he was with) asked the deputy to help him enter the home's garage. (RT 19) Once there, Mr. Nazir noticed a Ferrari and arranged for a tow truck to remove it. (RT 25.) Mr. Nazir handed Mr. Kwon a paper saying that Mr. Kwon's son, Oliver Kwon, had identified the car as collateral for bail money. (RT 27.)

The deputy sent by the Sheriff's Department, Sergeant Cedano, asked Mr. Nazir to identify himself. (RT 145.) Mr. Nazir presented a business card that listed him as a doctor. (RT 146.) Mr. Nazir also explained that he owned a bail bonds company and was there to collect the Ferrari that had been given up as collateral. (RT 146.) He showed Sergeant Cedano the paper he showed Mr. Kwon stating that he had permission from Oliver Kwon to access the Ferrari as collateral. (RT 147)

The Court held Mr. Nazir to answer on Count 31 (Burglary, Person Present). The People dismissed Count 32 because it is a misdemeanor (Giving False Information to a Police Officer) and had not been filed within the one-year statute of limitations. (RT 105.)

### Count 33

The People allege as follows. On July 23, 2019, Mr. Nazir and another man knocked on the door of David and Jean Kwon's home in Rolling Hills Estates at 3:03 PM. Mr. and Mrs. Kwon did not answer. They called the police and looked

on at Mr. Nazir's activity from the second story of the home. (RT 31-32.) Mr. Nazir retrieved a toolbox to remove the screen door to the Kwons' master bedroom. (RT 33-35.) Upon detention by police, Mr. Nazir told police he was there to serve civil process paperwork. (RT 157). The court held Mr. Nazir to answer on Count 33 (Burglary). (RT 440.)

#### Counts 34 and 35

The People allege as follows. On May 29, 2018, Audulia Pozos contacted Detective Wessels of the Torrance Police Department. (RT 207.) Ms. Pozos told Detective Wessels that she had a restraining order against Mr. Nazir, who operated Highlow Bail Bonds near Ms. Pozos' home. RT 208. Mrs. Pozos later sent Detective Wessels an email with evidence of Mr. Nazir conducting his bail bonds business, including evidence of Mr. Nazir with firearms, although the terms of Ms. Pozos' restraining order against Mr. Nazir restricted his access to firearms. (RT 209-210.) The court held Mr. Nazir to answer on Counts 34 and 35. (RT 440.)

### ARGUMENT

#### **THE COURT ABUSED ITS DISCRETION WHEN IT BASED ITS DECISION NOT TO ACCEPT THE AMENDED INFORMATION DISMISSING ALL ENHANCEMENTS BECAUSE OF THE COURT'S DISLIKE OF THE DISTRICT ATTORNEY'S NEW COUNTY-WIDE POLICY**

When making the ruling to refuse the District Attorney to proceed on the amended information and to deny its Section 1385 motion (deleting all enhancements), the trial court was presumably referring to language in *People v.*

*Romero*, which states, “Antipathy of the law, as the court stated, cannot be a justification for allowing a dismissal under Section 1385.” (*People v. Superior Court (Romero)* (1996) 13 Cal. 4th 497, 530-531 (italics in original) (citations omitted); *accord, People v. Dent* (1995) 38 Cal. App. 4th 1726, 1731.)

But this so-called “antipathy of the law” concept restrains the court, not the District Attorney, from dismissing charges or enhancements in a pending case. In other words, Section 1385 does not allow courts to dismiss charges or enhancements in the “interest of justice” merely because the court does not like the sentence that it would be bound to impose. But that is irrelevant here because it is the District Attorney, not the Court, that is moving to eliminate all sentencing enhancements, pursuant to its newly enacted county-wide directive.<sup>1</sup>

Moreover, in *People v. Smith*, (1996) 50 Cal. App. 4th 1194, the Court of Appeal held that a disagreement with a prosecutor over countywide policies is *not* a reason to deny a Section 1385 motion in the “interest of justice.” “Nor can a

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<sup>1</sup> Petitioner notes parenthetically that the trial court was apparently confused with the mandatory language of the three-strikes law, requiring the People to “plead and prove” the three strike enhancements with those at bar. Enhancements in the instant case do not have such mandatory language and are discretionary in nature. As such, they can be dismissed pursuant to Section 1385 by the trial court without running afoul of the “plead and prove” requirements of the three-strikes law. (*See, e.g., People v. Superior Court (Romero)* (1996) 13 Cal. 4th 497) As such, it appears that the trial court was mistaken as to the scope of his authority (mandatory language of three-strike law verses discretionary language of the enhancements in the instant case). The trial court properly invited the People to file the Fifth Amended Information, without enhancements, but incorrectly refused to allow the People to proceed on it based upon an incorrect assumption of the enhancement law.

trial court ignore the interest of the public acting through the prosecutor in the enforcement of the penal provisions of the law. Rather, a decision to strike . . . must be based on those considerations as would motivate any reasonable judge to make such decision. *Disagreement with . . . the policies of the prosecutor on a countywide basis are not valid reasons to make a decision to strike a prior.*” (*Id.* at p. 1198 [citations omitted]).

It therefore follows that the court’s “disagreement” with the “policies of the prosecutor on a countywide basis” are similarly not valid reasons not to deny the district attorney the ability to dismiss enhancements in a pending case in order to bring it into conformity with the county-wide directive.

Penal Code section 1385 permits a dismissal by the trial court "in furtherance of justice." As recently stated by our Supreme Court, “[T]he language of section 1385, ‘in furtherance of justice,’ requires consideration both of the constitutional rights of the defendant, and *the interests of society represented by the People, in determining whether there should be a dismissal . . . .* Courts have recognized that society, represented by the People, has a legitimate interest in ‘the fair prosecution of crimes properly alleged.’” (*Romero*, 13 Cal.4<sup>th</sup> at 530-531[emphasis added] [citations omitted].)

Here, the Court seems to ignore the fact that the District Attorney has set forth a Directive that defines the “interests of society represented by the People.” (*Id.*) On or about December 7, 2020, Los Angeles County District Attorney



George Gascón issued Special Directive 20-08 entitled, “Special Enhancements Allegations.” The Special Directive includes empirical studies for why the enhancements are actually detrimental to public safety, which the trial court in this case failed to reference or consider.

This directive required all Los Angeles County prosecutors to no longer pursue sentencing enhancements and prior strikes on any pending or future case. The trial court may not like the policy, as evidenced by the fact that it was systematically refusing to grant section 1385 motions in numerous other cases, presumably on the basis that it disagrees with this countywide policy promulgated by the District Attorney. But such a disagreement may not form the basis to refuse to dismiss the enhancements in this case. (*Smith*, 50 Cal. App. 4th at 1198.)

According to the Fourteenth Amendment’s Equal Protection Clause and California’s equivalent provision (Cal. Const. Art I., sec. 7(a)), laws applied to criminal defendants may not be applied in a manner that deprives a person similarly situated to someone else in a disparate manner. For example, in *People v. Olivas* (1976) 17 Cal.3d 236, 251, in overturning a sentencing scheme on equal protection grounds, the California Supreme Court held that “personal liberty is a fundamental interest, second only to life itself, as an interest protected under both the California and United States Constitutions.” And in *People v. Williams* (1983) 140 Cal. App. 3d 445, 450, the Court of Appeal opined that an “enhancement of a crime for purposes of punishment involves the deprivation of a fundamental

liberty interest to the end the state must show a compelling interest for any disparity in treatment of prisoners similarly situated." (*Id.*) Further, in *People v. Cruz* (2012) 207 Cal.app.4th 664, 674, the court expounds on what equal protection of the law means. Holding that an equal protection argument rests on the showing that a similarly situated groups are treated unequally based on the law challenged. (*Id.*) Further, equal protection requires rational basis review, is there a legitimate state interest in treating these individual, or groups differently. (*See Lawrence v. Texas* (2003) 539 U.S. 558, 593.)

Here, recently elected Los Angeles County District Attorney George Gascón authored and disseminated Special Directive 20-08, in his executive power to affect all pending criminal cases before the Los Angeles County Superior Court. The Special Directive declared that enhancements should not be filed on new cases and should be withdrawn on all pending cases. (*Id.* at p. 2) District Attorney Gascón then explained his reasoning for the directive based on studies that show how charging the statutory offenses alone without adding enhancements are sufficient to hold people accountable and protect public safety. (*Id.* at pp. 1-4) Further, the Directive opined, that increased sentences actually increase recidivism and have a disparate impact on communities of color. (*Id.*) Moreover, enhanced sentences do not have a favorable impact on deterrence and increased incarceration time causes unnecessary financial and public health costs. (*Id.*) The Special Directive also draws a bright line for which cases this directive will affect: all pending cases currently before the Los Angeles Superior Court. (*Id.* at p. 2)

As discussed above, the People moved to dismiss enhancements in this case pursuant to Penal Code section 1385 and Special Directive 20-08, and filed its Fifth Amended Information reflecting this. Because this is a pending case, and because the District Attorney's policy is not to charge enhancements in any new or pending case, the People properly made the motion. (*Id.*) But, the Court denied the motion, holding that it was not in the interest of justice to grant it. For the reasons discussed above, this is wrong.

It is crucial that Special Directive 20-08 be followed because failure to do so will result in an arbitrary and capricious outcome when looked at with all other cases pending before the court at that time, including that of Petitioner. Although presumably all deputy district attorneys in this county will move their respective courts in pending cases (where Special Directive 20-08 is applicable) for Section 1385 dismissals of enhancements in cases still pending at the time Special Directive 20-08 was enacted, the fact that some judges will deny the requests for vague and unspecified reasons, such as was done here,<sup>2</sup> and others will follow the directive, will result in wildly disparate results between the courtrooms, creating equal protection violations galore.

The trial court gave very vague and inexplicit reasons in its ruling to

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<sup>2</sup> The trial court declared that it did not deny the People's Section 1385 motion for "antipathy for the law." Rather, it stated that it denied the motion based upon the "nature of the offense" and the "background and character of the defendant." This reasoning is too vague and provided no specifics whatsoever, and District Attorney Gascon seeks to eliminate enhancements across the board for all defendants in all cases, irrespective of the "nature of the offense" or "background of the defendant."

require the enhancements to remain. It also incorrectly applied the relevant law defining Section 1385, as discussed above.

In doing so, the trial court treats Mr. Nazir *worse* than other criminal defendants similarly situated in cases that are currently pending in the Los Angeles County Superior Court and where judges there opt to follow District Attorney Gascon's Special Directive, resulting in an equal protection violation.

Case law is clear that when new laws or policies are initiated, there needs to be a line drawn for purposes of deciding retroactivity. This is a common issue that occurs when the Legislature amends or promulgates a new statute that lessens punishment. But, the California Supreme Court held that a new law that benefits a defendant while his case is pending and is not yet deemed legally "final" must be applied to him. (*See, e.g., In re Estrada* (1965) 63 Cal.2d 740), [if an amendatory statute that lessens punishment becomes operative prior to the date the judgment of conviction becomes final, the amended version of the statute applies.] This conclusion was warranted by factors indicating that, consistent with the common law rule, the Legislature must have intended the amendatory statute to apply in "all prosecutions not reduced to final judgment" at the time of its passage. (*People v McKenzie* (2020) 9 Cal.5th 40, 44)

However, the Special Directive itself provides that line -- all currently pending cases and newly filed cases going forward. It is cases such as Mr. Nazir's that have been ordered to be included in these new charging decisions. However, the trial court has arbitrarily rejected that line, and singled Mr. Nazir out for more

punitive treatment than anyone else who is similarly situated, who under the same facts would not be charged with enhancements. There is no legitimate state purpose for imposing the harsher enhancements the court decided on. In fact the science says the state has a legitimate interest in striking the enhancements and the failure to do so violates Mr. Nazir's constitutional right to receive equal protection of the laws.

Penal Code section 1009 allows for the amending of an information by the District Attorney at any time before arraignment or after arraignment with leave of the court. This requirement for judicial leave after arraignment is meant to be a protective measure, protecting a defendant from "harassing amendments" by the prosecutor. (*See People v. Flowers* (1971) 14 Cal.App.3d 1017, 1021.) Further, the Court's protective role is to shield the Defendant from unfair amendments. (*See Short v. Superior Court* (2019) 42 Cal.App.5th 905, 913).

The trial court's discretion to allow amendment is broad and is almost invariably upheld. (Witkin, Cal. Criminal Procedure (1963) Proceedings before trial § 210, p. 198.) "However, no discretion is boundless." (*See People v. Superior Court (Alvarado)* (1989) 207 Cal.App.3d 464, 477.) "Although precise definition is difficult, it is generally accepted that the appropriate test of abuse of discretion is whether or not the trial court exceeded the bounds of reason, all the circumstances before it being considered." (*In re Marriage of Connolly* (1979) 23 Cal.3d. 590, 598.)

Here, the People originally filed charges that included enhancements. After the initial arraignment, the People notably amended the information three times, each time resulting in more and more serious charges to the defendant. At a hearing on December 11, 2020 the People were given leave by the court to amend the information a fifth time to take off the alleged enhancements. The People filed the Fifth Amended Information before the hearing on December 18, 2020. The court then rescinded its permission and refused to proceed on the Fifth Amended Information which did not have enhancements, making the Fourth Amended Information, with enhancements, the operative Information.

Case law is clear that the legislative purpose of requiring judicial leave after arraignment to charging amendments is to *protect* the defendant from harassing, unfair, and unrelenting charging additions from overzealous prosecutors. (*See Short v. Superior Court* (2019) 42 Cal.App.5th 905, 913; *People v. Flowers* (1971) 14 Cal.App.3d 1017, 1021). Ironically, here the court is not functioning in a protective capacity for the defendant. Rather, in rescinding the court's previously granted leave to amend, it is essentially acting as a "protector" of the people against the prosecutor's more lenient charging request, but that is not the court's role. In fact it is the role of the prosecutor to represent and protect the interest of the people, not the court. (*See Smith*, 50 Cal. App. 4th at 1198.) It is only reasonable that where a court has permitted three amendments to the defendant's detriment, it is unreasonable to deny leave when it favors the defendant,

particularly one that is made subject to policy changes by the District Attorney.

Furthermore, once permission is given, there appears to be no legal authority allowing the court to withdraw that permission. In this case, the permission was given by the court with full knowledge that the purpose of the amendment was to eliminate the alleged enhancements

Here, there were no intervening circumstances or changed circumstances. Surely, once permission is on the record and acted upon in good faith by the parties, that permission becomes a vested interest that the parties can rely on and thus cannot be withdrawn arbitrarily.

That is precisely what happened here, it was unreasonable, and therefore an abuse of discretion. Thus, this court should issue a peremptory writ of mandamus directing and compelling respondent court to vacate its order denying the People's Fifth Amended Information.

### **CONCLUSION**

The trial court said it was not in the interest of justice to strike the enhancements in Mr. Nazir's case. But the case law is clear that a trial court's power to dismiss (or, for that matter, not to dismiss) under Section 1385, although broad, is by no means absolute. Rather, it is limited by the amorphous concept which requires that the dismissal be "in furtherance of justice." This expression requires that in determining whether or not to dismiss, both the defendant's constitutional rights and the interests of society represented by the People be

considered. At the very least, the reason for dismissal must be that which would motivate a reasonable judge. *People v. Orin* (1975), 13 Cal. 3d 937.

Here, it is most definitely in the interest of justice and, just as important, the interest of society as proffered by Special Directive 20-08, that Mr. Nazir be treated equally to others similarly situated to him. It is also in the interest of justice that charging and sentencing decisions align with the science that shows empirically what actually will contribute to the safety of the public. Therefore, it is respectfully requested that the Court grant review, issue a stay of proceedings; and ultimately vacate the trial court's ruling, denying the People's Amended Information, or in the alternative, vacate its decision denying the People's motion to dismiss and enhancements.

Dated: March 19, 2021

Respectfully submitted,

OKABE & HAUSHALTER

KRAVIS, GRAHAM, & ZUCKER LLP

*Bruce Zucker*

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By: Bruce Zucker

Attorneys for Petitioner, Rehan Nazir



**CERTIFICATION OF WORD COUNT IN THIS PETITION**

Pursuant to California Rules of Court, Rule 8.504(d), I, Bruce Zucker, certify under penalty of perjury that, according to my word processing program, Microsoft Word for Office 365, there are 6,472 words in this petition for review filed on behalf of petitioner.

DATED: March 19, 2021

*Bruce Zucker*  
\_\_\_\_\_  
Bruce Zucker

# APPENDIX A

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION SEVEN

REHAN NAZIR,  
Petitioner,

v.

THE SUPERIOR COURT OF LOS  
ANGELES COUNTY,  
Respondent.

THE PEOPLE OF THE STATE OF  
CALIFORNIA,  
Real Party in Interest.

B310806

(Super. Ct. No. VA151320)

(Lee W. Tsao, Judge)

**COURT OF APPEAL - SECOND DIST.**

**FILED**

Mar 10, 2021




DANIEL P. POTTER, Clerk

mgudiel Deputy Clerk

ORDER

THE COURT:

The court has read and considered the petition for writ of  
mandate filed on March 8, 2021. The petition is denied.

    
PERLUSS, P. J.      FEUER, J      McCORMICK, J. (Assigned)

## PROOF OF SERVICE

I am over the age of 18, am an active member of the State Bar of California and not a party to the within action. My business address is 401 Wilshire Blvd. 12th Floor Penthouse, Santa Monica, CA 90401. On March 19, 2021, I deposited in a post office facility regularly maintained by the United States Postal Service at Calabasas, California a copy of the attached **Petition for Review** in a sealed envelope with postage fully prepaid, addressed to each the following:

**Monique Annette Preoteasa, Depty. Dist. Atty.**  
**Robert Villa, Dept. Dist. Atty.**  
**Office of the L.A. County District Attorney**  
**211 W Temple St, Ste 200**  
**Los Angeles, CA 90012**  
**For the People and for**  
**Los Angeles County Sheriff Alex Villanueva**

**Lee W. Tsao, Judge**  
**Los Angeles County Superior Court**  
**Norwalk Courthouse**  
**12720 Norwalk Blvd., Department "N"**  
**Norwalk, CA 90650**

**Xavier Becerra, Attorney General**  
**State of California**  
**300 South Spring Street, Suite 1700**  
**Los Angeles, CA 90013**

**Rehan Nazir, Petitioner**

My electronic service address is [bruce@kgzlaw.net](mailto:bruce@kgzlaw.net). My business address is the same as above. On March 19, 2021 I transmitted a PDF version of **Petition for Review** electronically to the parties identified below using the e-mail service addresses/websites indicated:

**California Court of Appeal**  
**Second District, Division Seven**  
**300 South Spring Street**  
**Los Angeles, CA 90012**

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on March 19, 2021 at Calabasas, California.

*Bruce Zucker*

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BRUCE ZUCKER

**STATE OF CALIFORNIA**  
Supreme Court of California

**PROOF OF SERVICE**

**STATE OF CALIFORNIA**  
Supreme Court of California

Case Name: **Rehan Nazir v Los Angeles County Superior Court (People of the State of California Real Party in Interest)**

Case Number: **TEMP-OQ35SY96**

Lower Court Case Number:

1. At the time of service I was at least 18 years of age and not a party to this legal action.
2. My email address used to e-serve: **bruce@kgzlaw.net**
3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

<b>Filing Type</b>	<b>Document Title</b>
ISI_CASE_INIT_FORM_DT	Case Initiation Form
PETITION FOR REVIEW	nazir.pet.review.1385.final.3.19.2021

Service Recipients:

<b>Person Served</b>	<b>Email Address</b>	<b>Type</b>	<b>Date / Time</b>
Monique Preoteasa	mpreoteasa@da.lacounty.gov	e-Serve	3/19/2021 10:00:42 AM
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Mark Haushalter	mhaushalte@aol.com	e-Serve	3/19/2021 10:00:42 AM

This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

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

3/19/2021

Date

/s/Bruce Zucker

Signature

Zucker, Bruce (170331)

Last Name, First Name (PNum)

Kravis, Graham, & Zucker LLP

Law Firm