

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

**Rehan Nazir,**  
Petitioner,  
  
v.  
**Superior Court of  
Los Angeles County,**  
Respondent,  
**The People,**  
Real Party in Interest.

**Case No. S267713**  
  
2d Dist. No. B310806  
L.A.S.C. No. VA151320

**Answer to Petition for Review**

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**SUMMARY OF ISSUES AND ARGUMENT**

The District Attorney submits this Answer, joining in part, in the Petition for Review filed by Rehan Nazir who is charged in a multiple count information with several offenses, some of which included allegations that he personally used a firearm.

On December 11, 2020, the People moved to dismiss the pending firearm enhancements pursuant to the policy of the newly elected District Attorney that the current statutory ranges for criminal offenses alone, without enhancements, are sufficient to both hold people accountable and also to protect public safety. This policy is based on studies which show that each additional sentence year imposed pursuant to enhancements actually increases recidivism. The trial court denied the motion, but granting leave to amend, invited the People to file an amended charging document reflecting the proposed changes.

On December 18, 2020, the People, in accordance with the trial court's request, filed an Amended Information without the enhancements. However, the trial court reversed course and

declined to accept the amended charging document. Nazir petitioned the Court of Appeal for a writ of mandate challenging this denial, which it summarily denied. He now petitions this Court for review.

On March 26, 2021, this court requested an answer to the petition for review from the People. The People's position here is that the petition for review should be granted because the trial court exceeded its scope and role in denying the People's motion to dismiss enhancements it deemed unnecessary and in refusing to accept the People's filed amended charging document. The trial court's ruling raises fundamental separation of powers questions between the executive and judicial branches of government, improperly infringes on the People's authority to file an amended charging document under Penal Code section 1009 and amounts to an abuse of discretion.

The justice system depends on independent prosecutors. As such, elected prosecutors cannot effectively carry out their constitutional responsibilities if they are forced to charge enhancements and seek penalties that, in the elected prosecutor's judgment, do not advance public safety or serve the interests of justice.

Review is necessary by this court to settle this important issue of law.

## STATEMENT OF THE CASE AND FACTS

In 2019, the People charged Nazir with criminal threats, kidnapping, six counts of assault with a firearm, several counts of extortion, and carjacking. (Exh. A,<sup>1</sup> pp. 1–16.) As to many of the counts, the information further alleged that Nazir personally used a firearm within the meaning of Penal Code<sup>2</sup> sections 1203.06, 12022.5, and 12022.53. (Exh. A, pp. 17–18.)

On December 7, 2020, the newly sworn in District Attorney of Los Angeles County, George Gascón, promulgated several policies, including Special Directive 20-08 at issue here. (Exh. B.) This directive calls on prosecutors to move to dismiss or withdraw sentence enhancements alleged in pending cases. (Exh. B, p. 2.) The directive outlines why dismissal of sentencing enhancements is indeed in the interest of justice. The directive states that “[i]t shall be the policy of the Los Angeles County District Attorney’s Office that the current statutory ranges for the criminal offenses alone, without enhancements, are sufficient to both hold people accountable and also to protect public safety.” (Exh. B, p. 1.)

The directive goes on to explain the rationale for the policy as follows: “While initial incarceration prevents crime through incapacitation, studies show that each additional sentence year causes a 4 to 7 percent increase in recidivism that eventually outweighs the incapacitation benefit.” (Exh. B, p. 1, cited studies

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<sup>1</sup> Lettered exhibit references are to the exhibits Nazir filed in support of his petition in the Court of Appeal. For the charges, Nazir included as an exhibit the fourth amended complaint, not the currently filed information, but it is sufficient for present purposes.

<sup>2</sup> Further statutory references are to the Penal Code unless otherwise indicated.

omitted.) Moreover, sentencing enhancements provide little deterrence, decrease the ability of the offender to reintegrate after imprisonment, and impose serious costs to the community that can instead be invested in more effective alternatives. Ultimately, by not pursuing sentencing enhancements, the People “can reduce crime *and* help people improve their lives.” (*Id.* at pp. 3-4.)

On December 11, 2020, the prosecutor in this case orally moved to dismiss the firearm enhancements pursuant to the special directive. (Exh. C, Transcript p. 3.) The court denied the motion because it was based on the directive but indicated that “the people may file an amended information omitting the enhancements that are at issue here, and if they do that, we can proceed . . . .” (Exh. C, Transcript p. 5.) The court further noted “that the exercise of discretion under 1385 must be based on an individualized consideration of the offense and the offender” and not what the court characterized as antipathy or disagreement with the statutory scheme. (Exh. C, Transcript p. 6.)

On the next court date, December 18, 2020, in conformance with the trial court’s direction on the prior court date, the prosecutor filed an amended information omitting the enhancements. The trial court acknowledged it had previously indicated the People could file an amended information without the enhancements. However, the court went on to state as follows: “I have since rethought my position and indicated to counsel that I would be inclined to deny the leave to amend, but I’d hear arguments from counsel on that issue.” (Exh. D, Transcript p. 2.)



The People renewed their motion by filing a written motion to dismiss the enhancements. (Motion to Dismiss or Withdraw any Strike Prior or other Enhancement in this Case, attached hereto as Exhibit 1, hereafter “Exh. 1.”) In addition to the arguments previously raised during the hearing on the oral motion, the People argued that: (1) “The California Constitution and State Supreme Court precedent further vest the District Attorney with sole authority to determine whom to charge, what charges to file and pursue, and what punishment to seek;” and (2) a determination under section 1385 “requires consideration both of the constitutional rights of the defendant, and the interests of society represented by the People . . . .” (Exh. 1, pp. 1-2, citing *People v. Superior Court (Romero)* (1996) 13 Cal4th 497, 530.) Additionally, the defense cited *People v. Dent* (1995) 38 Cal.App.4th 1726 and *People v. Romero, supra*, the Equal Protection Clause, and section 1385 as grounds to grant the People’s motion to dismiss. (Exh. D, Transcript p. 6.)

The trial court rejected these arguments, stating as follows:

So just a few observations. The people’s discretion in deciding what charges to file is not subject to the supervision of the courts, and it’s entirely within their discretion; however, once charges are filed, amendments to those charges are subject to judicial supervision.

And if the people are displeased with the court’s ruling denying their motion to dismiss, they have a remedy. They can dismiss and refile to eliminate the

disparity that you refer to. So it's an option that they have.

They can also, to the extent they are permitted to do so, they can appeal the court's denial of their motion to dismiss. So they have -- there are remedies here.

You've drawn a distinction between the rationale offered by District Attorney Gascón and the court's own analysis of a 1385 motion. In denying the motion to dismiss, I'm not expressing any antipathy towards the law, but the only justification for the motion to dismiss that's been offered to this court is the special directive.

There has been no discussion of the circumstances of the offense, the background and character of Mr. Nazir. The exclusive basis for this motion to dismiss is this special directive, and in order to grant it on that basis, I would have to adopt his rationale, and that's not a permissible basis for me to -- this court to dismiss under 1385.

(Exh. D, Transcript pp. 17–18.)

In addition to rejecting the rationale put forward by both the prosecution and the defense, the court went on to state that it was denying the motion based upon the facts of the crime presented at the preliminary hearing and information in the probation report. (Exh. D, Transcript p. 18.) The court also refused to allow the prosecutor to proceed with the filed amended information. (Exh. D, Transcript p. 19–20.)

On March 8, 2021, Nazir petitioned the Court of Appeal for a writ of mandate, which it summarily denied on March 10, 2021. He now petitions this Court for review and the People hereby join in that request.

## ARGUMENT

### I. THE DISTRICT ATTORNEY'S EXECUTIVE AUTHORITY GRANTS HIM DISCRETION TO DISMISS THE FIREARM ENHANCEMENTS

The District Attorney's discretion to dismiss enhancements is rooted in the executive function of their inherent power to file charges. Discussion of a prosecutor's duties begins with the United States Supreme Court's description of the role of the United States Attorney in *Berger v. United States* (1935) 295 U.S. 78. A United States Attorney is the representative of a sovereignty whose obligation is to govern impartially. (*Id.* at p. 88.) The prosecutor's interest in a criminal prosecution is not that he shall win a case, but that justice be done. (*Ibid.*)

In fulfilling these duties, prosecutors in every jurisdiction of the United States have considerable discretion. An elected prosecutor's duty is to utilize this discretion to pursue justice and protect public safety. An elected prosecutor also has a duty as a "minister[] of justice" to go beyond seeking convictions and legislatively authorized sentences in individual cases, and to think about the delivery of criminal justice on a systemic level, promoting criminal justice policies that further broader societal ends." (R. Michael Cassidy, *(Ad)ministering Justice: A Prosecutor's Ethical Duty to Support Sentencing Reform*, 45 Loyola Univ. of Chicago L.J. 981, 983 (2014).)

Moreover, a district attorney's authority is at its strongest when it comes to alleging sentencing enhancements. "The decision of what charges to bring (or not to bring)—and, more to the point here, which sentencing enhancement to allege (or not to allege)—ordinarily belongs to the prosecutors who are charged

with executing our state’s criminal law.” (*People v. Garcia* (2020) 46 Cal. App. 5th 786, 791.)

In the instant matter, the trial court exercised discretion outside its scope and infringed on the executive powers bestowed upon the District Attorney. “Because this question involves the scope of a trial court’s discretion rather than its exercise, it is a question of law reviewed de novo rather than a question of discretion reviewed solely for an abuse of discretion.” (*People v. Garcia, supra*, 46 Cal.App.5th at p. 790.)

In California, prosecutorial discretion is “basic to the framework of the California criminal justice system.” (*Gananian v. Wagstaffe* (“*Ganania*”) (2011) 199 Cal.App.4th 1532, 1543, quoting *People v. Valli* (2010) 187 Cal.App.4th 786, 801.) Prosecutorial discretion is derived from the doctrine of separation of powers codified in Article III, section 3 of the California Constitution, which provides that “[t]he powers of state government are legislative, executive, and judicial. Persons charged with the exercise of one power may not exercise either of the others except as permitted by this Constitution.”

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. [Citations.] Judges must be as vigilant to preserve from judicial encroachment those powers constitutionally committed to the executive as they are to preserve their own constitutional powers from infringement by the coordinate branches of government. [Citations.] *Thus, courts generally may not review, for abuse of prosecutorial discretion, a*

*prosecutor's decision as to the type and number of offenses to charge. [Citations.]*

(*People v. Henson* (2018) 28 Cal.App.5th 490, 512 [emphasis added], citing and quoting *People v. Birks* (1998) 19 Cal.4th 108, 134 and *People v. Superior Court (Greer)* (1977) 19 Cal.3d 255, 262.)

“California district attorneys ‘are given complete authority to enforce the state criminal law in their counties.’” (*Pitts v. Cty. Of Kern* (1998) 17 Cal.4th 340, 358). The prosecutor’s authority is codified in Government Code section 26500: “The district attorney is the public prosecutor, except as otherwise provided by law. The public prosecutor shall attend the courts, and within his or her discretion shall initiate and conduct on behalf of the people all prosecutions for public offenses.” (Gov, Code, § 26500.) Government Code section 26500 grants “the district attorney *discretion both to initiate and conduct the prosecutions*. This is undoubtedly the intention of the statute, insofar as it means *that it is the district attorney’s prerogative to determine whether to file charges and whether to continue a prosecution.*” (*People ex rel. Kottmeier v. Municipal Court* (1990) 220 Cal.App.3d 602, 609, citing *People v. Adams* (1974) 43 Cal.App.3d 697, 707-708 [emphasis added].)

Hence, the prosecution has discretion to elect not simply what charges and cases to prosecute, but also which charges or enhancements to continue to pursue. The trial court’s refusal to grant the prosecutor’s dismissal motion raises serious constitutional separation of powers questions. The People have searched but have been unable to locate any cases wherein a trial

court denied a prosecutor's motion to dismiss a firearm enhancement.

Here, where there are no express statutory restrictions on prosecutorial discretion to dismiss firearm enhancements, the trial court's refusal to grant the motion to dismiss the enhancements is violative of a prosecutor's discretion and the doctrine of separation of powers. This is particularly so given that a prosecutor is vested with complete discretion on whether to charge enhancements at all.

## **II. THE DISTRICT ATTORNEY HAS DISCRETION TO AMEND A COMPLAINT OR INFORMATION IN THE INTEREST OF JUSTICE TO ELIMINATE FIREARMS ENHANCEMENTS**

The District Attorney has discretion to amend a complaint or information to eliminate firearm enhancements. California law has long held that District Attorneys may set the policies for pleading sentencing enhancements, and that courts may not compel District Attorneys to plead particular sentencing enhancements. Courts have "uniformly recognized" the "unlimited discretion in the crime-charging function" as the province of the prosecutor. (*People v. Wallace* (1985) 169 Cal.App.3d 406, 409.)

As discussed above with regard to motions to dismiss firearms enhancements, a prosecutor's authority is founded on the principle of separation of powers, and generally is not subject to supervision by the judicial branch. (*People v. Wallace, supra*, 169 Cal.App.3d at p. 409.) "The authority is even greater when it comes to alleging sentencing enhancements: Although a prosecutor's discretion to seek the maximum sentence by only charging the criminal offense with the highest sentence is curtailed to some

degree by the sua sponte judicial duty to instruct on lesser included offenses so as to avoid putting the jury to an ‘all-or-nothing’ choice. (*Schad v. Arizona* (1991) 501 U.S. 624, 646-647), there is no such duty when it comes to “lesser included [sentencing] enhancements” (*People v. Majors* (1998) 18 Cal.4th 385, 410-411), such that, absent a constitutional violation, the prosecutor's decision not to charge a particular enhancement ‘generally is not subject to supervision’—or second guessing—‘by the judicial branch’ (*People v. Mancebo* (2002) 27 Cal.4th 735, 749 [‘the People's failure to include a [particular] allegation must be deemed a discretionary charging decision.’]).” (*People v. Garcia, supra*, 46 Cal.App.5th at p. 792.)

Consequently, a court lacks authority to prevent the prosecution from amending a complaint or an information when the amendment does not prejudice the defendant. “[T]he power to dispose of charges is judicial in nature, but . . . it is ordinarily the prosecution’s function to select and propose the charges.” (*People v. Birks, supra*, 19 Cal.4th at p. 136.) The judiciary is therefore only authorized to reject amendments that prejudice a defendant.

As set forth in Penal Code section 1009, an information may be amended “for any defect or insufficiency, at any stage of the proceedings,” so long as the amended information does not “charge an offense not shown by the evidence taken at the preliminary examination.” “If the substantial rights of the defendant would be prejudiced by the amendment, a reasonable postponement not longer than the ends of justice require may be granted. [Citation.] If there is no prejudice, an amendment may be granted ‘up to and including the close of trial.’ [Citations.]” (*People v. Goolsby* (2015) 62 Cal.4th 360, 367-368.)

Stated another way, section 1009 ensures that safeguards are in place to protect the Due Process rights of defendants. Discretion is vested in the court to safeguard against the prosecutor filing vexing amendments against the defendant. Discretion is not vested in the court to prevent the prosecution from amending an information which does not prejudice a defendant. Additionally, discretion is not vested in the court to prevent a prosecutor from amending an information to dismiss sentencing enhancements simply because the Court disagrees with the District Attorney's policies, which are rooted in concern for public safety.

On December 18, 2020, the prosecutor, acting on the court's invitation to file an amended information omitting the enhancements, filed an amended information. The rationale for the amended filing was that sentencing enhancements provide little deterrence, decrease the ability of the offender to reintegrate after imprisonment, increase recidivism and impose serious costs to the community that can instead be invested in more effective alternatives. (See Exh. 1.) The trial court, however, withdrew its leave to amend because the reasons articulated by the prosecution for filing the amended information focused on the interests of society as a whole and not on the defendant in particular. The court completely disregarded the fact that the amendment did not prejudice the defendant.

Consequently, the trial court infringed upon the prosecutor's right to amend the information to omit firearm enhancements, the dismissal of which did not prejudice the defendant. Moreover, as in the above argument, the People have searched but have been unable to locate any cases wherein a trial



court denied a prosecutor's motion to amend an information to omit previously charged firearm enhancements. All of the cases reviewed interpreting section 1009 assert that the trial court either erred in refusing to allow an amendment which was deemed prejudicial to a defendant or allowed an amendment which the defense argued should not have been permitted because it was prejudicial.

### **III. PENAL CODE SECTION 1385 REQUIRES THE COURT TO CONSIDER THE INTERESTS OF SOCIETY REPRESENTED BY THE PEOPLE**

Assuming, arguendo, the trial court did have discretion to deny the People's motion to dismiss and to deny leave to amend the information, the trial court here abused its discretion because it did not consider the interests of the community, as represented by the duly elected District Attorney. The trial court's power to dismiss under section 1385 is guided by the amorphous concept that the dismissal be "in furtherance of justice." "From the case law, several general principles emerge. Paramount among them is the rule 'that the language of that section, "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.'" (*People v. Orin* (1975) 13 Cal.3d 937, 945, quoting *People v. Beasley* (1970) 5 Cal.App.3d 617, 636 [emphasis in original].)

An order of dismissal in furtherance of justice is a matter of public concern, as "furtherance of justice" means justice to society and the People, as well as to a criminal defendant. Therefore, whether on its own motion or upon application of a prosecuting attorney, the trial court's order to dismiss requires consideration

both of the constitutional rights of the defendant, and the interests of society represented by the People.

In *People v. Smith* (1996) 50 Cal.App.4th 1194, 1198, the court specifically held that a trial court cannot ignore the interest of the public acting through the prosecutor. “Disagreement with the statute as passed or the policies of the prosecutor on a countywide basis is not a valid reason to make a decision to strike a prior.” (*Ibid.*) By this same logic, the trial court’s disagreement with the District Attorney’s special directive and/or the rationale contained therein for dismissing the enhancements in this case, is not a valid reason to refuse to grant the prosecutor’s motion to dismiss them.

As discussed above, the law clearly permits a trial court to consider the public’s safety and interest as set forth by a duly elected District Attorney. The trial court in this case, however, mistakenly believed it was not permissible to do so. In its ruling denying the renewed motion to dismiss the enhancements, the trial court specifically stated it could not dismiss the enhancements under section 1385 based on the rationale in the Special Directives. (Exh. D, Transcript at pp. 17–18.) The rationale in the Special Directives, however, clearly set forth a myriad of reasons why it was in the interest of justice to dismiss the enhancements and how dismissal of the enhancements served the interests of the public.

Instead, however, the trial court believed it could only dismiss the enhancements or allow the filing of the amended information based on factors specific to the defendant’s conduct in this case. The trial court’s failure to take into consideration the interests of society -- as represented by the People and as

required under section 1385 -- therefore amounted to an abuse of discretion.

### **CONCLUSION**

The Court should grant the petition for review to settle an important question of law relating to a prosecutor's discretion and power to pursue criminal justice reforms which are in the interests of society.

Respectfully submitted,

George Gascón  
District Attorney of  
Los Angeles County

By

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Diana M. Teran  
Deputy District Attorney  
Attorneys for Real Party in  
Interest

## CERTIFICATE OF COMPLIANCE

Counsel of Record hereby certifies that pursuant to Rule 8.504(d)(1) of the California Rules of Court, the enclosed **Answer to Petition for Review** is produced using 13-point Roman type, and contains approximately 3,562 words, including footnotes, which is less than the 8,400 words permitted by this rule. This count excludes signature lines and the verification. Counsel relies on the word count of the computer program used to prepare this brief.

Dated: This 3rd day of May, 2021

Los Angeles County  
District Attorney's Office

---

Diana M. Teran  
Deputy District Attorney  
Attorney for Real Party in Interest

Exhibit 1

Motion to Dismiss or Withdraw any Strike Prior or  
other Enhancement in this Case

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12/18/2020  
Sup. Ct. Clerk

DEC 18 2020

Sherrill  
Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES**

PEOPLE OF THE STATE OF CALIFORNIA, ) **Case No. VA151320**  
)  
Plaintiff, )  
) **MOTION TO DISMISS AND WITHDRAW**  
) **ANY STRIKE PRIOR OR OTHER**  
v. ) **ENHANCEMENT IN THIS CASE**  
)  
REHAN NAZIR, )  
)  
)  
Defendant. )

**TO THE HONORABLE JUDGE OF THE SUPERIOR COURT OF THE STATE  
OF CALIFORNIA, IN AND FOR THE COUNTY OF LOS ANGELES:**

At the direction of the Los Angeles District Attorney, George Gascón, and in accordance with District Attorney's Special Directives 20-08 and 20-08.1:

"The People move to dismiss and withdraw any strike prior (or other enhancement) in this case. We submit that punishment provided within the sentencing triad of the substantive charge(s) in this case are sufficient to protect public safety and serve justice. Penal Code section 1385 authorizes the People to seek dismissal of all strike prior(s) (or other enhancements) when in the interests of justice. Supreme Court authority directs this Court to determine those interests by balancing the rights of the defendant and those of society 'as represented by the People.' The California Constitution and State Supreme Court precedent further vest the District Attorney with

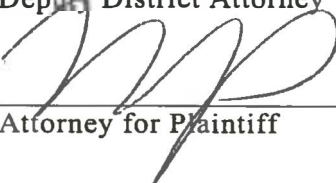
sole authority to determine whom to charge, what charges to file and pursue, and what punishment to seek. That power cannot be stripped from the District Attorney by the Legislature, Judiciary, or voter initiative without amending the California Constitution. It is the position of this office that Penal Code section 1170.12(d)(2) and Penal Code 667(f)(1) are unconstitutional and infringe on this authority. Additional punishment provided by sentencing enhancements or special allegations provide no deterrent effect or public safety benefit of incapacitation--in fact, the opposite may be true, wasting critical financial state and local resources.”

This motion is based on the following legal authority, as set forth in the District Attorney’s Special Directive 20.08.1: *People v. Superior Court (Romero)* (1996) 13 Cal. 4th 497, 530 (“[T]he language of [section 1385], ‘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.” (emphasis in original); *Dix v. Superior Court* (1991) 53 Cal. 3d at 451.

The People respectfully request this motion be made part of the record in this case.

Dated: December 18, 2020

Respectfully submitted,  
GEORGE GASCÓN  
District Attorney  
By: MONIQUE PREOTEASA  
Deputy District Attorney



Attorney for Plaintiff

## DECLARATION OF SERVICE

*Nazir v. Superior Court (People)*  
*Case No. S267713 (2d Dist. No. B310806; LASC No. VA151320)*

The undersigned declares under the penalty of perjury that the following is true and correct:

I am over 18 years of age, not a party to the within cause, and employed in the Office of the District Attorney of Los Angeles County with offices at 211 West Temple Street, 12<sup>th</sup> Floor, Los Angeles, California 90012. I am readily familiar with my office's business practice for collection and processing of correspondences for mailing with the United States Postal Service, and that correspondences are ordinarily deposited with the USPS the same day. On the date of execution hereof, and at the above-stated location, I served the attached document entitled **Answer to Petition for Review** by placing a true copy thereof for collection, with postage fully prepaid, for deposit with the USPS according to our ordinary business practices, in a sealed envelope addressed as follows:

Hon. Lee W. Tsao  
Norwalk Courthouse  
12720 Norwalk Blvd.,  
Department "N"  
Norwalk, CA 90650

The following parties were electronically served via TrueFiling (with separate proof of service also generated by TrueFiling):

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Executed on May 3, 2021, at Los Angeles, California

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Ronald Geltz



**STATE OF CALIFORNIA**  
Supreme Court of California

***PROOF OF SERVICE***

**STATE OF CALIFORNIA**  
Supreme Court of California

Case Name: **NAZIR v. S.C.**  
**(PEOPLE)**

Case Number: **S267713**

Lower Court Case Number: **B310806**

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: **dteran@da.lacounty.gov**
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>
ANSWER TO PETITION FOR REVIEW	S267713_APR_People

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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.

5/3/2021

Date

/s/Ronald Geltz

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Signature

Teran, Diana (138936)

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Last Name, First Name (PNum)

Los Angeles County District Attorney's Office

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Law Firm