



MALDEF

The Latino Legal Voice for Civil Rights in America.

National Headquarters
MALDEF Nonprofit Center
634 S. Spring Street, 12th Fl.
Los Angeles, CA 90014
TEL: 213.629.2512
Fax: 213.629.0266

**Atlanta
Program Office**
500 West Lanier Avenue
Suite 908
Fayetteville, GA 30215
Tel: 678.559.1071
Fax: 678.559.1079

**Chicago
Regional Office**
11 East Adams Street
Suite 700
Chicago, IL 60603
TEL: 312.427.0701
Fax: 312.427.0691

**Los Angeles
Regional Office**
634 S. Spring Street,
11th Fl.
Los Angeles, CA 90014
TEL: 213.629.2512
Fax: 213.629.0266

**Sacramento
Program Office**
1512 14th Street
Sacramento, CA 95814
Tel: 916.444.3031
Fax: 916.444.7207

**San Antonio
Regional Office**
110 Broadway
Suite 300
San Antonio, TX 78205
TEL: 210.224.5476
Fax: 210.224.5382

**Washington, D.C.
Regional Office**
1016 16th Street, NW
Suite 100
Washington, DC 20036
Tel: 202.293.2828

July 19, 2018

VIA EMAIL & USPS MAIL

The Honorable Xavier Becerra
Attorney General of California
Office of the Attorney General
1300 "I" Street
Sacramento, CA 95814-2919

Re: Request to Investigate Kern County District Attorney Prosecution

Dear Mr. Becerra,

MALDEF requests that you investigate the Kern County District Attorney's Office in connection with the recent filing of misdemeanor charges against Kern County Supervisor Leticia Perez. MALDEF asks for your supervisory intervention under the authority and duties of your office in Cal. Const., art V, § 13.

We are concerned that the recently-filed charges may be motivated by pressure from other County officials who seek to retaliate against Supervisor Perez as a result of her trial testimony on behalf of plaintiffs in *Luna v. Kern County Board of Supervisors*. MALDEF represented the *Luna* plaintiffs in a successful voting rights challenge that recently culminated in a federal court finding that the Kern County Board of Supervisors electoral plan violated Section 2 of the federal Voting Rights Act. The case concluded with the adoption of a redrawn districting plan that includes two Latino majority districts, the cancellation of the June primary election, and three seats up for election on the November 2018 ballot. This has affected the future electoral prospects of one or more currently sitting supervisors.

Supervisor Perez is charged with violation of Gov't Code § 81700 for an alleged conflict of interest in casting a vote against a ban on marijuana dispensaries, and Gov't Code § 87203 for alleged failure to report an item of income on form 700. The following facts are among those that prompt our concern about potential retaliation for Supervisor Perez' testimony in our case:

- 1) During a July 17, 2018 press conference held to announce the charges, District Attorney Lisa Green acknowledged that her office has never before prosecuted an elected official for conflict of interest violations.¹
- 2) Prior to the October 24, 2017 vote underlying the criminal charges, Supervisor Perez asked County Counsel Mark Nations whether her husband's consulting contracts with cannabis advocates presented any conflict of interest for her that

¹ <https://www.facebook.com/BakersfieldCalifornian/videos/10155730859704021/>

- might affect her ability to vote on cannabis-related matters that come before the Board. Mr. Nations reviewed the consulting contracts and said that he saw no conflict of interest. As recently as April of this year, Mr. Nations confirmed this meeting and confirmed that he concluded there was no conflict.²
- 3) On October 24, 2017, Supervisor Perez cast her vote against the proposal to ban cannabis dispensaries. The vote was 4-1 in favor of the ban.³
 - 4) On December 11, 2017, Supervisor Perez testified on behalf of the plaintiffs in federal court in *Luna v. Kern County Board of Supervisors*, Case no. 1:16-cv-00568-DAD-JLT, E.D. CA.⁴
 - 5) In January of 2018, shortly after the December 19, 2017 close of trial, but nearly three months after the October cannabis vote, Supervisor Mike Maggard publicly accused Supervisor Perez of a conflict of interest with regard to that vote.⁵
 - 6) On March 30, 2018, the Board approved a final districting plan as a resolution of the *Luna v. Kern County* voting rights lawsuit, following a February 23, 2018 finding of liability and a March 28, 2018 settlement meeting before U.S. Magistrate Judge Jennifer Thurston - negotiations led by Supervisor Perez and Supervisor Mack Scrivner. Supervisor David Couch sought to attend the mediation but was not authorized to do so by the Board and therefore was not permitted to enter the negotiations. The final map and resolution shortened Supervisor Couch's term of office by two years, and significantly changed the geography and voter composition of his district from less than one third Latino eligible voters to over two thirds Latino eligible voters. Supervisor Maggard's district was also substantially revised, geographically if not demographically.
 - 7) At the very next Board meeting, on April 10, 2018, David Brust -- a member of Supervisor Couch's campaign staff and former employee -- publicly accused Supervisor Perez of a conflict of interest for casting the October 2017 vote. Following that Board meeting, County Counsel Mark Nations confirmed to a reporter that he spoke with Perez before the October cannabis vote and was not concerned about any potential conflicts of interest. Mr. Nations suggested that if he was still concerned, Mr. Brust should take his evidence to the Fair Political Practices Commission.⁶
 - 8) The District Attorney does not, and has never before, prosecuted a case under the Political Reform Act, even when the FPPC refers a case to the office. For example, Bob Smith, Bakersfield City Councilmember, Ward 4, was fined in 2016 by the Fair Political Practices Commission ("FPPC") for a conflict of interest for using his official position to

² <https://bakersfieldnow.com/news/local/leticia-perez-fires-back-at-critics-who-say-she-broke-rules-ahead-of-big-pot-vote>

³ <https://www.kerncounty.com/bos/AgendaMinutesVideo.aspx>

⁴ *Luna v. County of Kern*, 291 F. Supp.3d 1088, 1109, 1115, 1126-27, 1139 (E.D. CA 2018)

⁵ http://www.bakersfield.com/news/dramatic-pot-conspiracy-claims-roil-political-battle-for-supervisor-maggard/article_d7d638ae-f743-11e7-b657-f7fd541d3f60.html

⁶ <https://bakersfieldnow.com/news/local/leticia-perez-fires-back-at-critics-who-say-she-broke-rules-ahead-of-big-pot-vote>

influence a governmental decision in which he had a financial interest, in violation of Government Code Section 87100.⁷ The FPPC referred the case to the Kern County District Attorney in 2015. Kern County District Attorney Lisa Green did not investigate or prosecute Mr. Smith for that admitted violation.⁸

As you know, intimidation and retaliation for participation in civil rights violation presents a severe danger to the future enforcement of civil rights guarantees by chilling participation in such litigation by critical witnesses. To ensure that the civil rights laws of the State of California and of the United States are uniformly and fairly enforced, MALDEF requests that your office conduct an immediate inquiry into any improper connection between the Kern County District Attorney Office's unprecedented charges against Supervisor Perez and her exercise of her First Amendment right to testify for Plaintiffs in a successful federal voting rights case against the Board of Supervisors.

Please feel free to contact either of us if you need further information.

Sincerely yours,



Thomas A. Saenz
President and General Counsel



Denise Hulett
National Senior Counsel
Lead counsel in *Luna v. Kern County Board of Supervisors*

cc: Mark Nations, County Counsel
Lisa Green, District Attorney

⁷ <http://www.fppc.ca.gov/enforcement/EnfDivCaseResults/stipulated-agreements/2016-sdo/may-sdo/robert-smith.html>

⁸ <https://bakersfieldnow.com/news/local/attorneys-dispute-unprecedented-criminal-charges-for-peres>