

Case No. S261827

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

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NATIONAL ASSOCIATION OF CRIMINAL DEFENSE  
LAWYERS, CALIFORNIA ATTORNEYS FOR  
CRIMINAL JUSTICE, and YOUTH JUSTICE COALITION,

*Petitioners,*

v.

GAVIN NEWSOM,  
California Governor, in His Official Capacity  
and XAVIER BECERRA,  
California Attorney General, in His Official Capacity

*Respondents.*

---

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DEFENSE LAWYERS, CALIFORNIA ATTORNEYS FOR  
CRIMINAL JUSTICE, AND YOUTH JUSTICE COALITION'S  
APPENDIX OF EXHIBITS VOLUME 2 OF 4 - PAGES 204 - 469**

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TABLE OF EXHIBITS SUPPORTING PETITION FOR WRIT OF MANDATE

<b>Ex. No.</b>	<b>DOCUMENT</b>	<b>VOL.</b>	<b>PAGE</b>
16	General Order of the Presiding Department, Order No. 041320-42 (Super. Ct., San Diego Cty, Apr. 13, 2020)	2	204
17	Transcript of Proceedings, Gray v. Riverside Cty., No. ED CV 13-444 VAP (OPx) (E.D. Cal. Apr. 13, 2020)	2	207
18	Minute Order Granting “Emergency Motion To Enforce Consent Decree,” Gray v. Cty. Of Riverside, Case No. 5:13-cv-0444-VAP-Opx (C.D. Cal., Apr. 14, 2020), ECF No. 191	2	239
19	Opinion and Order, Cameron v. Bouchard, No. 20-10949 (E.D. Mich. Apr. 17, 2020)	2	245
20	Petition for Writ of Mandate, or in the Alternative, Habeas Corpus, Hone v. Super. Ct., Sacramento Cty., No. C091834 (Cal. Ct. App. 3d Dist., Apr. 17, 2020)	2	248
21	Emergency Petition for Writ of Mandamus, People v. Defendants in Exhibit B, Case No. D077460 (Cal. Ct. App., 4th Dist., Apr. 17, 2020)	2	302
22	Letter Brief in Support of Emergency Petition for Writ of Mandate, People v. Defendants in Exhibit B, Case No. D077460 (Cal. Ct. App., 4th Dist., Apr. 18, 2020)	2	382
23	Notice of Errata in Letter Brief in Support of Emergency Petition for Writ of Mandate, People v. Defendants in Exhibit B, Case No. D077460 (Cal. Ct. App., 4th Dist., Apr. 18, 2020)	2	387
24	Order, Wilson v. Williams, No. 4:20-cv-00794 (D. Ohio Apr. 22, 2020)	2	390

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25	Proclamation of State of Emergency, Executive Department, State of California (March 4, 2020), <a href="https://www.gov.ca.gov/wp-content/uploads/2020/03/3.4.20-Coronavirus-SOE-Proclamation.pdf">https://www.gov.ca.gov/wp-content/uploads/2020/03/3.4.20-Coronavirus-SOE-Proclamation.pdf</a>	2	411
26	U.S. Centers for Disease Control and Prevention, Interim Guidance on Management of Coronavirus Disease 2019 (COVID 19) in Correctional and Detention Facilities (“CDC Guidance”) (Mar. 23, 2020), <a href="https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html">https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html</a>	2	416
27	Press Release, Stanislaus County District Attorney (Apr. 8, 2020)	2	442
28	Xavier Becerra, Cal. Atty Gen., letter to Acting Secretary of Homeland Security (Apr. 13, 2020)	2	443
29	Xavier Becerra, Cal. Atty Gen., letter to Acting Secretary of Homeland Security (Apr. 13, 2020)	2	444
30	Joseph Esposito, Chief Deputy Dist. Atty., Los Angeles Cty., General Office Memorandum 20-060: Emergency Bail Schedule - Zero Bail is Not Discretionary (Apr. 16, 2020)	2	449
31	Defendants Strategic COVID-19 Management Plan, Coleman v. Newsom, No. 2:90-cv-00520, (E.D. Cal. Apr. 16, 2020)	2	450

PROOF OF SERVICE

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Los Angeles, State of California. My business address is 350 South Grand Avenue, Fiftieth Floor, Los Angeles, CA 90071-3426.

On April 24, 2020, I served true copies of the following document(s) described as

**PETITIONERS NATIONAL ASSOCIATION OF CRIMINAL DEFENSE  
LAWYERS, CALIFORNIA ATTORNEYS FOR CRIMINAL JUSTICE,  
AND YOUTH JUSTICE COALITION'S APPENDIX OF EXHIBITS  
VOLUME 2 OF 4 - PAGES 204 - 469**

on the interested parties in this action as follows:

**SEE ATTACHED SERVICE LIST**

**BY ELECTRONIC SERVICE:** I electronically filed the document(s) with the Clerk of the Court by using the TrueFiling system. Participants in the case who are registered TrueFiling users will be served by the TrueFiling system. Participants in the case who are not registered TrueFiling users will be served by email as listed in the service list.

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

Executed on April 24, 2020, at Los Angeles, California.



Anna Velasquez

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## SERVICE LIST

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Not required until further notice from the court.

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APR 13 2020

By: C. McCoy

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8 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **IN AND FOR THE COUNTY OF SAN DIEGO**  
10

11 **IN RE: APPLICATION OF JUDICIAL**  
12 **COUNCIL EMERGENCY RULE 4**  
13 **(EMERGENCY BAIL SCHEDULE)**

) **GENERAL ORDER OF THE**  
) **PRESIDING DEPARTMENT**  
) **ORDER NO. 041320-42**  
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18 On April 6, 2020, the Judicial Council of the State of California adopted 11 temporary  
19 emergency rules relating to the COVID-19 pandemic. Emergency Rule 4 provides for an  
20 Emergency Bail Schedule (hereafter “EBS”). Pursuant to subdivision (b) of Emergency Rule 4,  
21 each superior court must apply the EBS by 5:00 p.m. April 13, 2020, (1) to every accused person  
22 arrested and in pretrial custody, and (2) to every accused person held in pretrial custody. By its  
23 own terms, Emergency Rule 4 “will remain in effect until 90 days after the Governor declares  
24 that the state of emergency related to the COVID-19 pandemic is lifted, or until amended or  
25 repealed by the Judicial Council.” (Emergency Rule 4, subd. (e).)

26 By this Order, the San Diego Superior Court hereby implements the EBS in Emergency  
27 Rule 4. The EBS shall be applied in the same manner as the regularly adopted San Diego  
28 County Bail Schedule, except as noted below.

1 1. **Previous arrests:** For persons arrested prior to the effective date and time of this order,  
2 bail shall be set in accordance with the EBS. However, the court retains the traditional  
3 authority in an individual case to depart from the bail schedule or impose conditions of  
4 bail to assure the appearance of the defendant or protect public safety. (See Pen. Code §  
5 1269c, 1270.1(e).) In that regard:

6 a. Persons whose bail is reduced to zero by the EBS shall be released from custody  
7 at 5:00 p.m. on April 15, 2020, or as soon thereafter as is feasible, unless prior to  
8 5:00 p.m. on April 15, 2020, the prosecuting agency notifies the Sheriff that it will  
9 be requesting an increase in bail, a “no bail” hold, or imposition of conditions of  
10 release. The list of the persons for whom an increase in bail, “no bail” hold, or  
11 imposition of conditions of release that has been requested by the prosecuting  
12 agency shall also be provided to defense counsel by 5:00 p.m. on April 15, 2020.

13 b. Prior to 5:00 p.m. on April 16, 2020, the parties shall meet and confer to  
14 determine (1) whether in any of the cases the parties can reach an agreement to  
15 modify bail or impose conditions of release; and (2) which cases need to be  
16 submitted to a judge for a decision.

17 c. For those cases in which the parties agree bail is to be as set at zero by the EBS,  
18 the prosecuting agency shall forthwith notify the Sheriff that the person can be  
19 released.

20 d. For those cases in which the parties agree bail shall be increased from the EBS, or  
21 that conditions of release shall be imposed, the prosecuting agency shall forthwith  
22 notify the Sheriff, and the parties shall provide to the court a stipulation and  
23 proposed order. The Sheriff shall note any conditions of release the person’s  
24 release papers.

25 e. For disputed cases in which the defendant has not yet been arraigned, the  
26 prosecuting agency shall put the matter on the video-court calendar commencing  
27 Monday, April 20, 2020, or as soon as practical thereafter, for arraignment and  
28 bail review.

1 f. For all other disputed cases, the matter will be reviewed by a judicial officer via  
2 telephone conference as soon as practical.<sup>1</sup>

3  
4 2. **New Arrests:** For persons arrested on or after the effective date and time of this order,  
5 bail shall be set in accordance with the EBS. Requests for a modification of the bail  
6 amount, or for conditions of release, shall be made to the daytime or after-hours duty  
7 judge. If bail is modified, or conditions imposed, the court will notify the Sheriff's  
8 Watch Commander at the detention facility where the defendant is housed, and the  
9 Sheriff shall note the change on defendant's paperwork, including any release papers.

10  
11 The San Diego Superior Court Temporary Emergency Modification to the Bail Schedule  
12 adopted April 2, 2020, is rescinded.

13  
14 THIS ORDER IS EFFECTIVE AT 5:00 P.M. ON APRIL 13, 2020.

15 IT IS SO ORDERED.

16  
17 DATED: \_\_\_\_\_

4-13-2020



HON. LORNA A. ALKSNE  
PRESIDING JUDGE

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1 The phone number and email of the judge hearing these requests will be provided to counsel by separate email.

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION  
HONORABLE VIRGINIA A. PHILLIPS, U.S. CHIEF DISTRICT JUDGE

QUINTON GRAY, et al., )  
 )  
 Plaintiffs, )  
 )  
 vs. ) Case No.  
 ) ED CV 13-444 VAP (OPx)  
 COUNTY OF RIVERSIDE, )  
 )  
 Defendant. )  
 )

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REPORTER'S TRANSCRIPT OF PROCEEDINGS  
TELEPHONIC HEARING RE: MOTION  
MONDAY, APRIL 13, 2020  
2:07 P.M.  
LOS ANGELES, CALIFORNIA

---

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MONDAY, APRIL 13, 2020; 2:07 P.M.

LOS ANGELES, CALIFORNIA

-oOo-

THE COURTROOM DEPUTY: Calling Item No. 1,  
ED CV 13-00444-VAP-OP, Quinton Gray, et al., v. County of  
Riverside.

Counsel, please state your appearances.

MS. NORMAN: Good afternoon, Your Honor.  
Sara Norman from the Prison Law Office for the plaintiff.

MR. SPECTER: Donald Specter --

THE COURT: Thank you.

MR. SPECTER: Donald Specter from the Prison Law  
Office for plaintiffs.

THE COURT: Thank you.

MR. BROWN: Good afternoon, Your Honor. Jeb Brown,  
Riverside County Counsel's Office on behalf of defendant.

THE COURT: Thank you.

MR. CUNNINGHAM: Good afternoon --

MS. MORAN: Good afternoon, Your Honor --

MR. CUNNINGHAM: Go ahead, Kelly.

MS. MORAN: Thank you.

Good afternoon, Your Honor. Kelly Moran on behalf  
of defendants.

MR. CUNNINGHAM: Arthur Cunningham, Lewis, Brisbois,  
Bisgaard & Smith, on behalf of the County.

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1 THE COURT: Thank you.

2 MR. LOCKWOOD: Chris Lockwood for the County.

3 THE COURT: Thank you.

4 Is that all the appearances?

5 MR. BROWN: I believe so, Your Honor.

6 THE COURT: All right. Thank you.

7 First of all, you should have gotten the minute  
8 order informing you that this matter is being conducted  
9 telephonically. The local rules prohibit the recording or  
10 broadcasting. So if anyone's attempting to record the  
11 conference, you must stop doing that. And, of course, nothing  
12 can be broadcast.

13 We made arrangements to have the hearing accessible  
14 to the public and the press in a courtroom in the George Brown  
15 Courthouse in Riverside where it's essentially being  
16 transmitted on a closed feed there.

17 Every time you speak, please state your name so that  
18 the court reporter can make an accurate record because this  
19 hearing is being reported. And please mute your phones when  
20 you are not speaking, so that will help us avoid who's there.

21 All right. Turning to the matter that's on the  
22 calendar. I first want to say that it's procedurally improper  
23 There's no such thing as an emergency motion. So what the  
24 plaintiffs' counsel should have done to get this before the  
25 Court in an expedited fashion is to file an ex parte

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1 application for an order shortening time for hearing, attaching  
2 the motion.

3 But in the interest of justice, I'm going to go  
4 ahead and treat this as though it has been filed in that  
5 fashion because, clearly, there are emergency circumstances  
6 here. But in the future, that's the way -- if one side or the  
7 other feels there's a need for an expedited hearing, that's the  
8 way it's supposed to be presented to the Court.

9 To address some of the arguments made by both sides,  
10 before I -- before I get to the questions that I have for both  
11 sides and an indication of which way I'm inclined to go here,  
12 the -- to the extent that the PLRA, the Prison Litigation  
13 Reform Act, which is federal legislation, applies in a case  
14 seeking relief for prisoners in a sheriff's custody, which is  
15 the situation here, the Sheriff does have the authority either  
16 to transfer or release prisoners.

17 And at least one other jurisdiction in California  
18 has invoked California Government Code Section 86 -- 8658 for  
19 COVID response. And that was Sacramento County Superior Court

20 A single district judge has the authority to order  
21 the Sheriff to use 8658 to transfer prisoners, perhaps not to  
22 release prisoners but certainly to transfer prisoners.

23 So the arguments about whether a three-judge panel  
24 needs to be convened isn't necessarily at issue here for the  
25 urgency considering the transfer.

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1           And furthermore, transfer can include, not just  
2 transfer to another custodial facility, a prison or a jail in  
3 this case, but to a halfway house. So that's something that  
4 I'm considering doing as well because a relocation to a halfway  
5 house is likely -- is considered a transfer because the PLRA  
6 defines a residential re-entry center as a form of pre-release  
7 custody.

8           As to what the standard is for enforcing a transfer  
9 order or making a transfer order, looking at the -- at  
10 Judge Henderson's decision in *Plata v. Brown*, he declined to  
11 consider which standard governed such a request for transfer  
12 because he found that the plaintiffs in that case could satisfy  
13 the most burdensome standard, which would require them to  
14 demonstrate that the transfer policy had to be enforced because  
15 failure to do so would result in deliberate indifference under  
16 the Eighth Amendment.

17           So turning to some of the County's arguments, the  
18 County lists the steps that it has taken in general with  
19 respect to the COVID-19 pandemic and argues that provision, for  
20 example, of -- well, let me back up.

21           Many of the things the County argues shows that it  
22 has made a very strong response are completely irrelevant. For  
23 example, the cancelation of the Coachella Music Festival, I  
24 don't think, shows -- or has anything to do with the situation  
25 that is before the Court and, likewise, with almost all of the

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1 steps that they've outlined that they've taken.

2 What's relevant is what steps they have taken or  
3 declined to take with respect to the housing of prisoners in  
4 the jails.

5 There's apparently a dispute between the parties  
6 that I'll ask you to address in a moment about whether free  
7 soap is being given. I think the plaintiffs are arguing that  
8 free soap is not being given. The defendants, in their  
9 declarations, say that there is free soap available.

10 But the other things that the County is arguing is  
11 sufficient and would defeat a claim of deliberate indifference,  
12 in my view, do not meet that standard.

13 For example, advising the prisoners that they should  
14 remain six feet apart is futile if they're confined in a space  
15 that makes it impossible to stay six feet apart. So the mere  
16 fact that -- whoever is supervising the inmates, for example,  
17 in the dayroom, it tells them to stay six feet apart. If  
18 that's not physically feasible, then that is not a sufficient  
19 response.

20 So I have a number of -- and then, furthermore, in  
21 terms of the deliberate indifference standard, this goes  
22 somewhat outside the record. But I note that in yesterday's  
23 *Press Enterprise*, in an article about this, the Sheriff was  
24 quoted as saying that the best way for people -- or to control  
25 the pandemic in the jails is for people not to get arrested or

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1 not to commit crimes and then end up there.

2 I'm very troubled by that. I think that if that is  
3 confirmed, that that certainly casts -- well, that would weigh  
4 in favor of a finding of deliberate indifference.

5 So turning to my questions. My first question is --  
6 because as you can probably tell, I'm leaning towards not  
7 ordering a release but, rather, transfer -- why can't people be  
8 transferred into the Benoit -- the new Benoit Detention Center  
9 in Indio?

10 The only thing the defendant has offered is saying  
11 that they're in the midst of a 90-day period -- I don't know  
12 whether that means that they're at Day 89 or Day 1 before  
13 transferring. And the only thing that's offered in the papers  
14 on that subject is that that jail has got technical  
15 specifications that are different than any other facilities.  
16 But I need far more information than that to understand why  
17 prisoners are not being transferred forthwith into the new  
18 center.

19 So, Mr. Brown or someone else from the County, do  
20 you wish to address that?

21 MR. BROWN: Yes, Your Honor. Jeb Brown, Riverside  
22 County Counsel's Office on behalf of the defendants.

23 With regard to the John Benoit Detention Center in  
24 Indio, the construction was recently completed and the  
25 transition period in having the sheriff -- sheriff's department

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1 essentially test out the facility is ongoing. I believe that  
2 that --

3 THE COURT: Well, wait -- wait. Excuse me. Let me  
4 interrupt you.

5 When you say it was recently completed, when?

6 MR. BROWN: The --

7 THE COURT: What date was it completed?

8 MR. BROWN: The -- I don't know the exact date,  
9 Your Honor, but the keys were handed over, I believe, in  
10 February.

11 THE COURT: Is it as though -- why -- why have these  
12 prisoners not yet been transferred?

13 MR. BROWN: Because the facility is not ready for  
14 occupancy by inmates --

15 THE COURT: Why -- how is it not ready? Give me the  
16 specifics of why it's not ready.

17 MR. BROWN: Specifically it's not ready because, as  
18 I understand it, the testing period that the sheriff's  
19 department was undertaking to receive this new facility was  
20 just recently completed. There's been no training --

21 THE COURT: Okay. When you say "recently  
22 completed," what was the testing for and when was it completed?  
23 And if it's been completed, why aren't there inmates in there?

24 MR. BROWN: As I understand it, Your Honor, the  
25 testing process included making sure that all of the functions

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1 of the jail were appropriate and appropriate to receive  
2 inmates, in particular the security systems, making sure those  
3 are all appropriate and functional and ready to go.

4 The reason -- one of the reasons that that facility  
5 is not prepared to accept inmates at this point is because that  
6 testing period has just recently concluded last week, as I  
7 understand it, and there's been no training of any sheriff's  
8 deputies at this point on the operations of that facility.

9 Each of the five jails in the county are different,  
10 and the operational training that has to go on at each jail  
11 facility is going to be different in how the various mechanisms  
12 work --

13 THE COURT: Well, it seems to me that it would be a  
14 priority, given that we knew about the pandemic sometime in  
15 January, that this might have been a priority. So --

16 MR. BROWN: Your Honor, I think that it definitely  
17 has been a priority. And that's why the --

18 THE COURT: That's why --

19 MR. BROWN: -- the testing was completed more  
20 quickly than initially anticipated. Pursuant to the  
21 construction contract, there was a 90-day period allowed for  
22 that testing. And I believe that that -- the testing period  
23 was concluded within half of that time, roughly. And so now  
24 the next step will be to train inmates to operate that  
25 facility.

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1 THE COURT: You mean train deputies?

2 MR. BROWN: Yes.

3 THE COURT: Well, I think the Sheriff is going to be  
4 facing a choice of releasing people, transferring them to a  
5 halfway house, or getting them into that facility. I'm  
6 assuming that the latter is the choice that the Sheriff would  
7 prefer.

8 MR. BROWN: I'm not speaking for the Sheriff, but I  
9 would probably agree with you, yes.

10 THE COURT: Well, those -- even what's going on and  
11 given the danger of the current overcrowding and lack of  
12 appropriate steps, the danger to the community -- the deputy  
13 sheriffs working at the current facility, to the inmates, to  
14 members of the public who -- when their loved one who is a  
15 staff member or a deputy at one of the facilities comes home  
16 after his or her shift, I just don't see why things like that  
17 don't move far more quickly. And there are inmates already in  
18 the Indio facility.

19 You've got an empty jail, and you've got  
20 overcrowding, according to the County -- what? -- 160 percent  
21 in some of these jails, inmates.

22 MR. BROWN: Well, Your Honor, actually, I believe --  
23 I believe that we are at the population limit for -- that was  
24 imposed by the prior federal lawsuit. I believe that we are at  
25 that number now. So there isn't overcrowding requiring that

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1 release currently.

2 THE COURT: There isn't overcrowding?

3 MR. BROWN: My understanding is we are at the  
4 population number. We're not beyond that population number.

5 THE COURT: So there is a bed in a cell for every  
6 inmate in all of these facilities?

7 MR. BROWN: That's required by the prior federal  
8 legis- -- or federal litigation, Your Honor, so yes.

9 THE COURT: So then why -- why am I hearing from the  
10 plaintiff that there are people who are sleeping on the floor?

11 MR. BROWN: My understanding is there's a bed for  
12 every inmate.

13 THE COURT: Well, plaintiffs' counsel, do you want  
14 to address that?

15 MS. NORMAN: Yes, Your Honor. This is Sara Norman  
16 for plaintiffs.

17 There has been consistent floor sleeping in the  
18 Riverside jails for the years that I've been going in. And the  
19 evidence in the record that demonstrates floor sleeping at  
20 those jails in plastic boats, they call them, is from the  
21 state's -- I'm sorry, I'm going to use the former name, Board  
22 of Corrections. I believe that's the BFFC. It's the state  
23 entity that investigates and monitors jail conditions.

24 And they were present at the Riverside jails in  
25 December. And they documented floor sleeping and overcrowding

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1 in multiple jails in Riverside. That is consistent with my  
2 observation over the years, that I hear from people, that I see  
3 people consistently sleeping on the floors.

4 THE COURT: So the people who are sleeping on the  
5 floors, during the day, are those the same -- are those the  
6 inmates that are going into the dayroom?

7 MS. NORMAN: Sara Norman again.

8 My understanding is yes, Your Honor.

9 THE COURT: So what does the County mean when it  
10 proposes -- or says that they've alleviated overcrowding in the  
11 dayroom by putting one-fourth of the tier at a time?

12 MS. NORMAN: I see. Your Honor, my understanding

13 MR. BROWN: Your Honor --

14 MS. NORMAN: Oh. Please. Please, Jeb, go ahead.

15 MR. BROWN: Go ahead, Sara.

16 THE COURT: Please refer to counsel by surnames.

17 MR. BROWN: My apologies.

18 MS. NORMAN: My apologies. This is Sara Norman.

19 I believe the County is speaking about bringing  
20 people out for just general indoor recreation time in the  
21 dayroom. And instead of bringing the entire population of that  
22 housing unit out at the same time, they're bringing smaller  
23 proportions. So everybody is in their cell more and mixing  
24 with other people less.

25 THE COURT: So if people -- are the people who are

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1 sleeping in the -- on the floor or in the makeshift things that  
2 you've described, is it -- how many people per cell when that  
3 occurs?

4 MS. NORMAN: This is Sara Norman.

5 I don't have complete information on that. I have  
6 been mostly aware of people sleeping in the plastic structures  
7 they call "boats" on the floor in dorm rooms so that they  
8 simply add more people to the -- the population in the dorm.  
9 Instead of sleeping in bunk beds, they're sleeping on the  
10 floor.

11 But perhaps the -- counsel for defendant has more  
12 information on that.

13 MR. BROWN: Your Honor, Jeb Brown.

14 I don't have any further current information as to  
15 what is going on today. My understanding, more generally, is  
16 that the population count within all of the five jails is  
17 generally down.

18 THE COURT: Well, that's not the same as saying that  
19 it's -- there is no overcrowding or there is no people sleeping  
20 in these boats. If there's -- if it's in a dorm sort of area  
21 and people are sleeping in boats, are they sleeping six feet  
22 apart from one another?

23 MR. BROWN: I don't know the answer to that  
24 question, Your Honor. I can tell you when I have seen those  
25 boats be implemented, they did appear more than six feet apart

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1 from each other. But as to the current practice, in light of  
2 what's currently going on, I'm not sure.

3 I believe that, pursuant to all of the instruction  
4 and education that's been given by staff to the inmates, that  
5 they've got those boats -- to the extent they're being used,  
6 they're separated by more than six feet.

7 THE COURT: And how many persons, for example, in  
8 the Riverside -- in the Presley Center jail? How many  
9 inmates -- those are not dorm facilities, those are cells for  
10 the most part; correct?

11 MR. BROWN: Jeb Brown, Your Honor.

12 Yes, that's correct.

13 THE COURT: And how many persons per cell?

14 MR. BROWN: Your Honor, Jeb Brown.

15 Typically two.

16 THE COURT: And are they -- are their cells of a  
17 size that means that they're six feet apart when they're  
18 sleeping?

19 MR. BROWN: When there's two -- Your Honor, this is  
20 Jeb Brown.

21 When there's two inmates in a cell, they sleep in  
22 bunk beds that are affixed to the wall. Those bunk beds are  
23 not six feet apart. My understanding is there's been  
24 instruction to sleep alternating head to feet so that the feet  
25 and heads of the two occupants of the cell are separated as

1 much as can be possible in a bunk bed setting.

2 THE COURT: And in none of those cells there are  
3 more than two people?

4 MR. BROWN: That's my understanding of the  
5 individual cell, yes.

6 THE COURT: Plaintiffs' counsel, do you want to --  
7 do you have any response to that?

8 MS. NORMAN: Yes, Your Honor. My understanding is  
9 that, while the Presley facility is largely celled housing,  
10 several of the other jails --

11 And I apologize. This is Sara Norman.

12 -- several of the other jails are primarily or  
13 exclusively dormitories. And I have seen many of those  
14 dormitories. And the beds are not six feet apart, including  
15 bunk beds where there's somebody over your head, closer than  
16 six feet, and people on either side of you.

17 Some of the dormitories have four or six people.  
18 Some of the dormitories have many dozens of people.

19 The documented evidence that gives some information  
20 about the size of these various congregate living quarters is,  
21 um, from the -- and I want to correct the record on this. The  
22 Board of State and Community Correction, BSCC. And we put that  
23 into evidence, their December report. And I can -- that was an  
24 exhibit to a declaration that I provided in support of the  
25 original motion. And I can pull that number up for the Court.

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1 That has the information about how many dormitories there are  
2 and what the size of the congregate living is.

3 THE COURT: So it sounds as though people are not --  
4 inmates are not six feet apart when they're housed in the  
5 dormitory styled housing; correct?

6 MS. NORMAN: Sara Norman, Your Honor.

7 That is my observation and understanding.

8 THE COURT: What can the County tell me about what  
9 efforts it has made to find other housing for inmates, such as  
10 halfway houses or some of the other types of facilities that  
11 other counties have used, like recreation centers, hotels,  
12 et cetera?

13 MR. BROWN: Your Honor, Jeb Brown on behalf of the  
14 County.

15 I don't know to what extent there have been any  
16 review of any sort of alternate living facilities other than  
17 the five custody facilities. Rather, the sheriff's department  
18 has attempted to use those facilities in accordance with social  
19 distancing, to the extent physically possible, to keep the  
20 inmates at an appropriate distance from each other.

21 But I don't know to what extent there's been any  
22 investigation regarding any alternative living quarters for  
23 those that are in custody.

24 THE COURT: What about halfway houses?

25 MR. BROWN: Your Honor, I don't know to what extent

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1 Riverside County even uses halfway houses. I'd have to inquire  
2 of the client.

3 THE COURT: Has the County made -- what efforts has  
4 the County made, if any, to sort the inmates by what medical  
5 authorities have identified as the risk factors for this  
6 outbreak, in other words, AIDS, autoimmune disorders,  
7 underlying health conditions?

8 MR. BROWN: As I understand it, Your Honor, those  
9 that are not symptomatic have not been quarantined or  
10 separated. Those inmates that are symptomatic have been  
11 quarantined, either in a single-person cell or in a two-person  
12 cell with another cohort that is also infected so that the  
13 focus --

14 THE COURT: I'm sorry. I'm sorry. That's not my  
15 question. I'm not asking about -- I'm not asking about those  
16 who have been infected or exposed.

17 I'm saying overall of the inmates hasn't there been  
18 any attempt to find out which inmates, whether or not they've  
19 yet been exposed or infected, are of an age that is over 60,  
20 they have an underlying medical condition, such as diabetes or  
21 an autoimmune disorder, asthma, all of those things that the  
22 NIH and the CDC have identified as risk factors, has the County  
23 made any effort to ascertain of the population those who are  
24 most at risk?

25 MR. BROWN: Your Honor, I know that the County --

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1 this is Jeb Brown again.

2 I don't know -- I know that the County has that  
3 medical information with regard to those that are high risk. I  
4 don't know to what extent there's been any discussion regarding  
5 essentially trying to quarantine the high-risk inmates in  
6 separate quarters.

7 THE COURT: No, I'm not asking if they've been  
8 quarantined. I'm asking if the County has identified how many  
9 high-risk, vulnerable inmates -- I guess you're telling me they  
10 haven't.

11 MR. BROWN: Your Honor, Jeb Brown again.

12 I know that the County has that information, and I  
13 believe that they have identified those inmates. But I don't  
14 know that they've handled them any differently than the general  
15 population.

16 THE COURT: Well, has the County -- what efforts has  
17 the County made to ascertain the inmates who are in one of  
18 these facilities but either are pretrial -- being held pretrial  
19 on a not serious charge or serving what would have to be a  
20 misdemeanor sentence of less than one year on a not serious  
21 charge?

22 MR. BROWN: I'm sorry, Your Honor. Jeb Brown again.  
23 This is -- you were breaking up. Can you repeat that, please?

24 THE COURT: Sure. What efforts has the County made  
25 to determine, out of its population of inmates, which are being

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1 held either pretrial on a not serious charge or are being held  
2 after conviction on a misdemeanor because they only really  
3 house people who have been convicted on misdemeanors in the  
4 jail?

5 MR. BROWN: Jeb Brown on behalf of the County,  
6 Your Honor.

7 I know that the sheriff's department reviews that on  
8 a constant basis and has -- has looked at that very critically  
9 regarding whether any of those people would be appropriate for  
10 any sort of release.

11 So as I understand it, the sheriff's department has  
12 done that analysis and continues to do that analysis.

13 THE COURT: And as a result of that analysis, this  
14 is the Sheriff saying yesterday that they've decided that there  
15 is nobody who should be released?

16 MR. BROWN: I can't speak to what the Sheriff may  
17 have said yesterday in the media, Your Honor. But as I  
18 understand it, the determination regarding who's in the jail  
19 has been made by the Sheriff and all the people that are  
20 currently housed in the jail are there for public safety  
21 reasons.

22 MR. CUNNINGHAM: Your Honor, Art Cunningham. If I  
23 can interject just briefly.

24 Because of realignment, there are not just  
25 misdemeanor convictees who are serving sentences but there are

1 also persons who are serving shorter felony sentences who are  
2 confined in the county jails.

3 THE COURT: Well --

4 MR. CUNNINGHAM: Just as a clarification.

5 THE COURT: Well, thank you. But even so, that  
6 entire -- what's the population? I think I read in the papers  
7 it's about 4,000 inmates all together?

8 MR. BROWN: Jeb Brown for the County, Your Honor.

9 That's right. It's approximately 4,000.

10 THE COURT: Well, it doesn't seem to me that it  
11 would be all that burdensome for the County to have done an  
12 analysis of that population, who is medically vulnerable and  
13 who is incarcerated or being held on a less serious charge.  
14 But it sounds like that hasn't been done.

15 MR. BROWN: Jeb Brown, Your Honor, for the County.

16 I believe that that analysis has been done and the  
17 determination has been made that those that are currently in  
18 custody need to remain in custody for public safety reasons.

19 THE COURT: Every single one of them?

20 MR. BROWN: That's my understanding, Your Honor.

21 But I'd be happy to check that again with the client and report  
22 back to the Court.

23 THE COURT: All right. Well, there are several open  
24 questions here. One is the availability of other space,  
25 including the Indio facility, for immediate transfer of

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1 prisoners. Second, is there other available housing resources,  
2 such as halfway houses. And if not, why not? And what efforts  
3 have been made to explore other types of housing to alleviate  
4 the situation where people are not six feet apart.

5 And what analysis has been done -- I mean, the fact  
6 that the County has the medical records. Counsel stated they  
7 did an analysis as to who is medically vulnerable and under  
8 what circumstances are they being held rather than released on  
9 conditions -- or bail, in other words.

10 So it does appear the County is in a position to  
11 answer many of those questions.

12 Another question I have is, if you're putting people  
13 in what you're calling a dayroom in quarter-tier increments,  
14 how big is the dayroom and how many inmates is that? In other  
15 words, are there so many inmates being put in the dayroom that  
16 they're not able to maintain a six-foot distance?

17 MR. BROWN: Jeb Brown on behalf of the County,  
18 Your Honor.

19 And I believe that that's why the County is -- has  
20 modified the release of the inmates from their cells to the  
21 dayrooms. By turning that time period over more quickly, fewer  
22 people are in the dayroom so that they can maintain that  
23 distance.

24 THE COURT: I understand that, but you're not -- I  
25 guess you're not able to tell me the specifics, that is, the

1 facts of the dayroom and the number of inmates in there at any  
2 given time.

3 MR. BROWN: I'm sorry, Your Honor -- this is  
4 Jeb Brown again.

5 I'm sorry, Your Honor, I don't have that specific  
6 information as to each dayroom in each of the five facilities.

7 THE COURT: All right. Well, let me ask plaintiffs'  
8 counsel, at this point, if -- at this point, what is the  
9 specific release -- relief that you're asking for? I don't  
10 think that under the PLRA the Court, without convening a  
11 special three court -- excuse me -- three-judge panel can order  
12 release of prisoners.

13 And there's also the issue of whether the prior  
14 consent judgment in this case satisfies the requirement that  
15 there be a previous order. I think it probably does. But  
16 given that this is not before a three-judge panel and so we're  
17 really looking at transfer of prisoners, what is the plaintiff  
18 seeking today?

19 MS. NORMAN: Thank you, Your Honor. This is  
20 Sara Norman.

21 We're seeking several things. Primarily, we're  
22 seeking Defendant to submit an adequate plan to implement  
23 physical distancing in the jails. And that plan must include  
24 answers to all of the questions the Court has been asking. How  
25 big are the dorms? How big are the dayrooms? How many people

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1 fit in there? How many people could fit in there if they  
2 maintained six feet distance?

3 That -- those are the questions and the hard data  
4 that would go into the County taking a look at who's living  
5 there, what the physical facility is like, and how many people  
6 they can actually safely house.

7 If they have more people than they can safely house,  
8 then the plan would need to turn to the options that the Court  
9 has identified. But all of the thinking, all of the questions  
10 that have been asked at the hearing today would have to go into  
11 an adequate plan.

12 So we're seeking the Court to order Defendant to  
13 come up with a plan to safely house the population during the  
14 pandemic, including its obligation to prevent transmission of  
15 infectious diseases and set parameters for the County's  
16 consideration.

17 Secondly, the plan would also have to include  
18 adequate measures for hygiene and for the care of the  
19 vulnerable populations, as the Court has been asking about.

20 So we've outlined the various gaps in Defendant's  
21 plan, and the gaps essentially need to be filled in with a  
22 databased plan to safely house people with parameters set by  
23 the Court.

24 Further, what Plaintiffs seek is information, is an  
25 avenue to get the kind of data that is so necessary to

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1 determine the adequacy of Defendant's planning. And one  
2 request that I -- that has emerged from this hearing that is  
3 quite clearly needed would be to have Defendants provide data  
4 on the people who are in their custody, the 4,000-some people.  
5 What are their charges? If they're presentenced? What are  
6 their sentences, if they have been sentenced? What is the  
7 various information -- and Plaintiffs are happy to compile a  
8 list. What is the various information we need to know to  
9 determine what is their risk level to the community.

10 It's extremely odd to hear the County say that not a  
11 single person can be safely released on an early basis when  
12 counties all over California have done exactly that. Hundreds  
13 of people have been released early -- from Sacramento, from  
14 Contra Costa, from Santa Clara, from counties all over the  
15 state.

16 The California Department of Corrections and  
17 Rehabilitation has moved up people who are within 60 days of  
18 release and is processing them for as close to immediate  
19 release as they can get because they've determined -- because  
20 expert testimony is quite clear that these people don't present  
21 any greater risk to the community if you let them out 30 days  
22 early, 60 days early. And that data is there, those expert  
23 opinions are there.

24 So it's highly suspicious that this is the single  
25 county that can't do that within any of their population. And

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1 Plaintiffs seek the data that would allow us to determine  
2 whether that's a valid conclusion.

3 THE COURT: Well, what about the timing of the --  
4 the compilation of such information? If this community -- we  
5 ought to go forward on a two-track basis now: One, that the  
6 parties will commence the mediation on Friday; but at the same  
7 time, the County will compile this information and a new plan.

8 So it's going to require a lot of work on behalf of  
9 the County right away to both meaningfully participate in a  
10 mediation starting on Friday and also to compile this  
11 information.

12 What is the plaintiffs' request in terms of timing?

13 MS. NORMAN: Your Honor, we think that this  
14 information is -- this is information that they have. They  
15 don't need to -- they don't need to look too far. They must  
16 know -- they know where their population is. They must have  
17 schematics of the dorms. They know the charges and the  
18 sentences of everyone in their custody.

19 We don't think that it would be unreasonable for  
20 them to have to provide this information by the end of the  
21 week, by Friday.

22 THE COURT: What do you propose in terms of  
23 protection -- privacy protection for the inmates whose  
24 sentences, charges, and health you're proposing be released?

25 MS. NORMAN: There -- again, this is Sara Norman for

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1 plaintiff.

2           There is a protective order in this case that would  
3 govern all of that information. Plaintiffs already have access  
4 to healthcare information, medical files, medical records. And  
5 this information would be no different. It would be subject to  
6 that protective order.

7           THE COURT: All right. Mr. Brown, what's your  
8 response?

9           MR. BROWN: Your Honor, while we have all this  
10 information, I'm not sure that it can be pulled together before  
11 the end of the week. We would obviously, if it's the Court's  
12 order, would work as diligently as possible to pull this  
13 information together, um, and would provide it to plaintiffs'  
14 counsel on a rolling basis as we get this information together

15           I think that some of the information may be easier  
16 to obtain and other information may be more difficult to  
17 obtain. I'm not sure that -- I'm not sure how easily  
18 accessible the square footage of each dayroom across the  
19 multiple facilities exist. I know it must exist somewhere, but  
20 I don't know how readily available that is.

21           Obviously, the information regarding the population  
22 of the jail would be easier to obtain. But I'm not sure that  
23 there's one document that -- one master document that would  
24 have all of the information regarding the particular data  
25 points that we're looking for regarding each inmate.

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1           What I mean by that is there is probably one  
2 document that has the identity of the inmate and the charges,  
3 but the documents that may have the medical information is  
4 maybe housed in a separate location and that information would  
5 then have to somehow be synthesized. That -- that process  
6 would take additional time.

7           THE COURT: Well, when you say it's at a different  
8 location -- well, let me point out a couple of things. We're  
9 talking about five different jails; right?

10          MR. BROWN: Yes, Your Honor.

11          THE COURT: Okay. So -- and people work in those  
12 jails. So we're talking about getting the measurements of  
13 rooms in five locations, which, it seems to me, you should be  
14 able to get by the end of the day today. I mean, you ask  
15 somebody to go out and measure or find the plan. That doesn't  
16 seem like it would take all that much logistically.

17                 And in terms of the location of health records  
18 versus location of the records of charges and sentencings, I  
19 would suggest that those are all located on what's called a  
20 computer. Right? I mean, we're not talking about having  
21 anybody go through someone's file cabinet and rifle through it  
22 and laboriously copy out the information.

23                 So they may be in different databases, but they're  
24 all available electronically, I'm assuming.

25          MR. BROWN: Jeb Brown for the County, Your Honor.

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1           Yes. And that was what I meant, was that these --  
2 this information would be in different databases on different  
3 computers. But, yes, it's all computerized.

4           THE COURT: All right. So I don't think it's --  
5 we're talking about 4,000 people. We're not talking about  
6 40,000 or 400,000. So that doesn't seem, to me, to be that  
7 difficult a task.

8           So the County -- I'm going to ask plaintiffs'  
9 counsel to submit a proposed order that includes the provision  
10 that the parties participate in mediation.

11           What's the name of the judge who's been mediating  
12 this?

13           MS. NORMAN: Your Honor, that's Raul Ramirez.

14           MR. CUNNINGHAM: This is Arthur Cunningham.

15           THE COURT: I'm sorry?

16           MR. CUNNINGHAM: Arthur Cunningham.

17           It's Raul Ramirez, Your Honor.

18           THE COURT: Ramirez. I thought it was Ramirez, but  
19 I wasn't quite sure.

20           So you're to go forward with that at the same time  
21 that the County is preparing its revised plan and providing the  
22 information. And that should all be prepared in an order.

23           So I would grant the motion for relief to the extent  
24 that it seeks the preparation of this plan, the disclosure of  
25 this information, and that the parties begin the mediation



1 process forthwith.

2 And I'm going to set the matter for a further  
3 hearing, probably a telephonic hearing again, one day next  
4 week. But I'll set the date after I get the proposed order  
5 from plaintiffs' counsel.

6 MS. NORMAN: Thank you, Your Honor.

7 MR. CUNNINGHAM: And, Your Honor, this is  
8 Art Cunningham again.

9 Will the defense have an opportunity to take a look  
10 at the proposed order before it's executed by the Court?

11 THE COURT: Absolutely. So once it's been  
12 submitted -- let's see. Either -- I think the best thing would  
13 be for plaintiffs' counsel to submit it to defense counsel  
14 first, and then it's either approved as to form and content or  
15 your objections submitted to the Court thereafter.

16 MR. CUNNINGHAM: Art Cunningham.

17 Thank you, Your Honor.

18 THE COURT: All right. Thank you, Counsel, very  
19 much. And we will let you know about the next hearing date.

20 If any of you want -- let's see. I know plaintiffs  
21 counsel is in Northern California. If defense counsel wants to  
22 participate at the courthouse in Riverside, we should be able  
23 to set it up, as we did this time. So if anyone wants to  
24 participate from there telephonically, you can do so. But  
25 we'll look into that when we have a little more time to figure

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1 out the logistics.

2 MR. BROWN: Thank you, Your Honor.

3 MR. CUNNINGHAM: Thank you, Your Honor.

4 THE COURT: All right. Thank you very much.

5 (Proceedings concluded at 2:51 p.m.)

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**CERTIFICATE OF OFFICIAL REPORTER**

COUNTY OF LOS ANGELES )  
 )  
STATE OF CALIFORNIA )

I, MYRA L. PONCE, FEDERAL OFFICIAL REALTIME COURT REPORTER, IN AND FOR THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA, DO HEREBY CERTIFY THAT PURSUANT TO SECTION 753, TITLE 28, UNITED STATES CODE THAT THE FOREGOING IS A TRUE AND CORRECT TRANSCRIPT OF THE STENOGRAPHICALLY REPORTED PROCEEDINGS HELD IN THE ABOVE-ENTITLED MATTER AND THAT THE TRANSCRIPT PAGE FORMAT IS IN CONFORMANCE WITH THE REGULATIONS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES.

DATED THIS 15TH DAY OF APRIL, 2020.

/S/ MYRA L. PONCE

---

MYRA L. PONCE, CSR NO. 11544, CRR, RDR  
FEDERAL OFFICIAL COURT REPORTER

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UNITED STATES DISTRICT COURT  
 CENTRAL DISTRICT OF CALIFORNIA  
**CIVIL MINUTES – GENERAL**

Case No. 5:13-cv-0444-VAP-OPx Date April 14, 2020

Title Quinton Gray v. County of Riverside

Present: The Honorable VIRGINIA A. PHILLIPS, CHIEF UNITED STATES DISTRICT JUDGE

CHRISTINE CHUNG

Deputy Clerk

Not Reported

Court Reporter

Attorney(s) Present for Plaintiff(s):

None Present

Attorney(s) Present for Defendant(s):

None Present

**Proceedings: (IN CHAMBERS) MINUTE ORDER GRANTING “EMERGENCY MOTION TO ENFORCE CONSENT DECREE” [DKT. 177]**

On April 6, 2020, Plaintiff Quinton Gray (“Plaintiff”) filed a document captioned “Emergency Motion<sup>1</sup> to Enforce Consent Decree.” (“Motion,” Dkt. 177). Pursuant to this Court’s April 8, 2020 Minute Order, (Dkt. 182), Defendant County of Riverside (“Defendant”) opposed the Motion on April 10, 2020 (“Opp.,” Dkt. 183). After considering all papers submitted in support of, and in opposition to, the Motion, as well as the arguments advanced during the telephonic hearing on April 13, 2020, the Court GRANTS the Motion.

In 2016, the Parties entered into a Consent Decree “to ensure the provision of constitutional health care and to ensure non-discrimination for inmates with disabilities in the Riverside County Jails.” (Dkt. 173 ¶ 1). The plaintiff class includes three distinct subclasses: the medical subclass, which comprises “[a]ll prisoners who are now, or will in the future be, subjected to the medical care policies and practices of the Riverside

<sup>1</sup> The Court notes that an “Emergency Motion” is procedurally improper. Plaintiff should have filed an ex parte application to shorten time for hearing on a motion, in conformance with Local Rule 7-19. In the interests of justice, the Court will treat Plaintiff’s Motion as though it had been filed properly.

Jails”; the mental health subclass, which comprises “[a]ll prisoners who are now, or will in the future be, subjected to the mental health care policies and practices of the Riverside Jails”; and the disability subclass, which comprises “all prisoners who are now, or will be in the future, subjected to policies and practices of the Riverside jails regarding specialized or sheltered housing for prisoners due to their mobility impairments and need for assistive devices, and the provision and confiscation of accommodations for prisoners with mobility impairments[.]” (Dkt. 173 ¶ 3).

The Parties to the Consent Decree negotiated a Remedial Plan, which “is designed to meet the minimum level of health care necessary to fulfill Defendant’s obligations under the Eighth and Fourteenth Amendments, as well as to ensure non-discrimination against inmates with disabilities in the areas addressed by the Plan, as required by the ADA and Section 504 of the Rehabilitation Act.” (Dkt. 173 ¶ 9). In light of the coronavirus (“COVID-19”) pandemic<sup>2</sup>, “Plaintiffs seek to enforce the Consent Decree by requiring the County to submit a plan to the Court to implement the Governor’s order for physical distancing for all Californians housed in the jails and to provide sanitation and other essential services generally accepted as necessary in correctional facilities to provide for the basic health needs of incarcerated people.” (Motion at 3-4).

As Defendant argues, the Consent Decree specifies a dispute resolution process which provides that the Parties first conduct negotiations to resolve informally matters in dispute, then, if they are unable to resolve the dispute, to request that the Relevant Court experts evaluate the issue and prepare a report. Following preparation of this report, if the parties still are unable to resolve the issue, they may request mediation with Judge Raul Ramirez. Only after having mediated are the parties to file a motion for relief with this Court. (Dkt. 173 ¶¶ 26–29). Here, the parties have conducted the first two steps, but have not yet mediated. Nevertheless, “[g]iven the urgent nature of the proceedings, Plaintiffs request the Court modify the Consent Decree to allow for urgent appeal for enforcement directly to the Court.” (Motion at 17 n.2).

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<sup>2</sup> The pandemic has caused unprecedented disruption to daily life. On March 13, 2020, the President of the United States declared a National Emergency in response to the Coronavirus Disease- 2019 (“COVID-19”) pandemic pursuant to the National Emergencies Act (50 U.S.C. § 1601, et seq.). California Governor Gavin Newsom has declared a state of emergency in response to the COVID-19 outbreak and, in his March 19, 2020 Executive Order N-33-20, “require[d] physical distancing to keep Californians at least six feet apart at all times and to prepare hospitals and health care workers for the coming surge in cases.” (Motion at 2).

The Court finds good cause to modify the Consent Decree to permit appeal to this Court. “[A] party seeking modification of a consent decree bears the burden of establishing that a significant change in circumstances warrants revision of the decree. . . . A party seeking modification of a consent decree may meet its initial burden by showing either a significant change either in factual conditions or in law.” *Rufo v. Inmates of Suffolk Cty. Jail*, 502 U.S. 367, 383–84 (1992). The party seeking modification need not prove the change in circumstance was “unforeseen and unforeseeable” at the time of entering into the consent decree, but “[o]rdinarily, . . . modification should not be granted where a party relies upon events that *actually were anticipated* at the time it entered into a decree.” *Id.* at 385 (emphasis added). Here, clearly, the emergency resulting from the pandemic constitutes a “significant change in circumstances” that was not actually foreseen at the time the parties entered into the Consent Decree. *Id.* at 383.

The parties therefore meet the standard to modify the Consent Decree to permit appeal to this Court. In light of the urgency of the matter, the Court orders a two-track dispute resolution mechanism. The Parties are to proceed with mediation before Judge Ramirez on April 17, 2020, or an earlier date, if possible. (See Opp. at 10). The Court simultaneously assumes jurisdiction to enforce the Consent Decree to the extent specified in this Order.

The Court next turns to Defendant’s obligations under the Consent Decree. Plaintiff seeks to enforce the Consent Decree’s mandate to “meet the minimum level of health care necessary to fulfill Defendant’s obligations under the Eighth and Fourteenth Amendments,” (Dkt. 173 ¶ 9), by ensuring that Defendants implement the physical distancing recommendations made by the Court’s experts, (see Dkt. 178, Ex. J, Allen Expert Report, ¶¶ 9-10, 14-16; Dkt. 178, Ex. K, Gage Expert Report, ¶¶ 5-10.). Plaintiff argues that the County has several options available to limit the spread of the disease within the jails, including transferring prisoners to new, currently empty, John J. Benoit Detention Center (“JJBDC”) in Indio, California; relocating particularly vulnerable prisoners; and even release people to allow for physical distancing. (Motion at 4). At the hearing, Defendant did not have information regarding conditions in the existing county jail facilities, insisted that moving prisoners to a newly completed, empty jail in Indio was not feasible, and admitted that it had not researched alternative housing options such as recreation centers, halfway houses, and hotels. Rather than having created a plan to safeguard those most vulnerable to the COVID-19 virus, Defendant conceded that it has not conducted an analysis of its own records to identify particularly vulnerable prisoners. It also has not conducted an analysis of its jail population to determine whether there are any low-level offenders who might be eligible for early release.

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Despite Defendant's insistence that conditions in the Riverside County jails are compliant with public health recommendations regarding social distancing, its counsel lacked information to respond to the Court's questions regarding the ability to maintain 6 feet distance between all prisoners in the jail, at all times, its plan for doing so, the size of cells and dormitories, and the number of prisoners per room.

Defendant failed to provide satisfactory information about the feasibility of transfer of prisoners to other jail or non-jail facilities, including transfers of prisoners currently confined in crowded jails to the new, empty, John J. Benoit Detention Center ("JJBDC") in Indio, California. The County states that it is "not-yet-ready to be populated" but provides no details as to why. (Opp. at 13). The County stated at the hearing that the facility was completed in February 2020, but maintained that it is not yet ready for prisoners. In their papers and at the hearing, Defendant argued that "[t]he Sheriff's Department is currently in the midst of a ninety day 'transition period' of the facility to determine whether any issues arise that will need to be resolved before JJBDC can be populated with inmates." (Dkt. 183-4, "Graves Decl." ¶ 4). The County states that the technology used in the JJBDC facility differs from that of other County facilities, but did not explain, in its papers or at the hearing, why this would prevent the transfer of inmates in an emergency situation. (Graves Decl. ¶ 5).

Should the County be unable to implement adequate social distancing within its existing jail facilities and take other necessary steps to decrease risk of infection, this Court has the authority to order the transfer of prisoners to different facilities. Under California law, the Sheriff has the authority to relocate prisoners to respond to emergency situations:

In any case in which an emergency endangering the lives of inmates of a state, county, or city penal or correctional institution has occurred or is imminent, the person in charge of the institution may remove the inmates from the institution. He shall, if possible, remove them to a safe and convenient place and there confine them as long as may be necessary to avoid the danger, or, if that is not possible, may release them.

Other courts, including the Superior Court for the County of Sacramento County, already have ordered the Sheriff to use its authority under Cal. Gov't Code § 8658 to respond to the coronavirus emergency. See Order Authorizing Sacramento County Sheriff's Department to Grant Release (Cal. Super. Ct., Sac. Cty., Mar. 25, 2020).

Defendant argues that the Prison Litigation Reform Act ("PLRA") precludes this Court from ordering the release of prisoners. Even assuming this is true, nothing in the

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PLRA prohibits a district judge from ordering the transfer of prisoners in response to violations of their constitutional rights, as the district court did in *Brown v. Plata*, 2013 WL 3200587, No. C01-1351 TEH (N.D. Cal. June 24, 2013), nor would it prohibit the Court from ordering the Sheriff to use his authority under § 8658 to transfer prisoners.

“[A]n order to transfer any single inmate out of a prison to correct the violation of a constitutional right” where a “transfer was necessary for the inmate to obtain appropriate medical care” is not a “prisoner release order,” but rather a transfer. *Plata v. Brown*, 2013 WL 3200587 at \*8. The same is true of “a policy that would result in transfer of a large group of inmates.” *Id.* Indeed, several potential courses of action qualify as “transfer” for the purposes of the PLRA. Relocation to halfway houses, for example, is a “transfer” rather than “release.” The PLRA defines a “residential reentry center” as a form of “prerelease custody.” See 18 U.S.C. § 3624(g)(2)(B) (“A prisoner placed in prerelease custody pursuant to this subsection who is placed at a residential reentry center shall be subject to such conditions as the Director of the Bureau of Prisons [(BOP)] determines appropriate.”). Ninth Circuit case law assumes that a person in a “residential reentry center” is a “prisoner” and subject to BOP control. See, e.g., *Bottinelli v. Salazar*, 929 F.3d 1196, 1200 (9th Cir. 2019) (citing 18 U.S.C. § 3624(c)(1) as “requiring that the BOP, ‘to the extent practicable, ensure that a prisoner serving a term of imprisonment spends a portion of the final months of that term’ in prerelease custody”).

In *Plata v. Brown*, the court declined to decide which standard governs the court’s review of such requests for transfer, finding that the *Plata* plaintiffs could satisfy the most burdensome standard. That standard “would require [them] to demonstrate that the [transfer] policy must be enforced because failure to do so would result in deliberate indifference under the Eighth Amendment.” *Id.* at \*10. The Court makes no determination here as to whether Plaintiff has met this standard, but notes that the County’s recitation of “aggressive and swift” measures it has taken in response to COVID-19, none of which concern jails, suggests that the County’s failure to act to protect inmates does indeed constitute deliberate indifference. (Opp. at 16). The County’s assurances that it has provided unlimited free soap to prisoners and advised prisoners to remain physically distant—without establishing that it is physically possible to do so—is unlikely to be sufficient to defeat a claim of deliberate indifference (or sufficient to defeat the request to transfer prisoners for health reasons).

In sum, Defendant has failed to demonstrate that it is currently taking adequate precautions to protect the health of the prisoners in the county jails. Plaintiff’s request that Defendant be required “to submit a plan to the Court to implement the Governor’s order for physical distancing for all Californians housed in the jails” (Motion at 3-4), is therefore GRANTED.

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Plaintiffs are instructed to submit a proposed order detailing the findings and outstanding questions from the April 13, 2020 hearing no later than 4:00 p.m. on April 15, 2020. Prior to submission to the Court, Plaintiff shall share the proposed order with Defendant, who may approve the it as to form and content or submit objections to Court thereafter.

**IT IS SO ORDERED.**

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2020 WL 1929876

Only the Westlaw citation is currently available.

United States District Court, E.D.

Michigan, Southern Division.

Jamaal CAMERON, Richard Briggs, Raj Lee, Michael Cameron, and Matthew Saunders, individually and on behalf of all others similarly situated, Plaintiffs,

v.

Michael BOUCHARD, Curtis D. Childs, and Oakland County, Defendants.

Civil Case No. 20-10949

Signed 04/17/2020

Attorneys and Law Firms

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Peter L. Menna, Oakland County Corporation Counsel, Pontiac, MI, Robert C. Clark, Steven M. Potter, Thomas M. DeAgostino, Potter DeAgostino O'Dea & Patterson, Auburn Hills, MI, for Defendants.

AMENDED OPINION AND ORDER

LINDA V. PARKER, U.S. DISTRICT JUDGE

\*1 On this date, Plaintiffs filed a putative class action complaint, raising grave concerns about the conditions in the Oakland County Jail in the face of the novel coronavirus (COVID-19) pandemic. Plaintiffs are Oakland County Jail pretrial or convicted detainees. Plaintiffs seek to represent a class of all current and future Oakland County Jail (hereafter also "Jail") detainees, as well as the following sub-classes:

- The First Subclass ("Pre-trial Subclass") is defined as "All current and future persons detained at the Oakland County Jail during the course of the COVID-19 pandemic who have not yet been convicted of the offense for which they are currently held in the Jail."

- The Second Subclass ("Post-conviction Subclass") is defined as "All current and future persons detained at the Oakland County Jail during the course of the COVID-19 pandemic who have been sentenced to serve time in the Jail or who are otherwise in the Jail as the result of an offense for which they have already been convicted."
- The Third Subclass ("Medically-Vulnerable Subclass") is defined as: "All members of the Jail class who are also over the age of fifty or who, regardless of age, experience an underlying medical condition that places them at particular risk of serious illness or death from COVID-19...."

Plaintiffs also filed an emergency motion for temporary restraining order ("TRO") in which they ask the Court to order (a) the release of members of the Medically-Vulnerable Subclass pending briefing and argument and (b) the undertaking of certain measures to improve hygiene and safety at the Jail.

Having reviewed Plaintiffs' Complaint and pending motion, the Court is granting at this time Plaintiffs' request for a TRO requiring Defendants to utilize the measures set forth below to improve hygiene and safety at the Jail.<sup>1</sup> The Court, however, is without sufficient information to rule on Plaintiffs' request to release all members of the Medically-Vulnerable Subclass and is scheduling a hearing to address that request. The Court has considered the following factors in deciding whether to issue the TRO:

- (1) whether the movant has a strong likelihood of success on the merits,
- (2) whether the movant would suffer irreparable injury absent a stay,
- (3) whether granting the stay would cause substantial harm to others, and
- (4) whether the public interest would be served by granting the stay.

Ohio Republic Party v. Brunner, 543 F.3d 357, 361 (6th Cir. 2008).

For purposes of this decision, the Court is accepting the allegations in Plaintiffs' Complaint and its attachments as true without briefing or evidentiary submissions by Defendants.

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The Court is not making a finding of wrongdoing on the part of any defendant and no defendant is deemed to have waived any defenses to this action. The Court is acting without notice to Defendants because it finds that any delay will increase the risk of serious physical harm to Plaintiffs.

\*2 The Court finds that Plaintiffs are likely to succeed on the merits of their claim alleging that jail conditions violate their Eighth and Fourteenth Amendment rights. Plaintiffs' allegations reflect that Oakland County has not imposed even the most basic safety measures recommended by health experts, the Centers for Disease Control and Prevention, and Michigan's Governor to reduce the spread of COVID-19 in detention facilities. It cannot be **disputed** that COVID-19 poses a serious health risk to Plaintiffs and the putative class.<sup>2</sup>

Plaintiffs also are likely to suffer irreparable harm absent an injunction, as they face a heightened risk of contracting this life-threatening virus simply as incarcerated individuals and even more so without the imposition of these cautionary measures. Entering an injunction requiring Defendants to adopt the safety precautions set forth below poses no harm to them other than potentially increased costs and energy, which are insufficient to justify a denial of Plaintiffs' motion. See *Mich. Coalition of Radioactive Material Users, Inc. v. Griepentrog*, 945 F.2d 150, 154 (6th Cir. 1991). "[I]t is always in the public interest to prevent the violation of a party's constitutional rights." *G & V Lounge, Inc. v. Mich. Liquor Control Comm'n*, 23 F.3d 1071, 1079 (6th Cir. 1994).

Accordingly,

**IT IS ORDERED** that Defendants shall as soon as practicable, or at least within ten (10) days of this Opinion and Order, undertake the following minimum measures:

- (1) Ensure that each incarcerated person receives, free of charge: (a) an individual supply of liquid hand soap and paper towels sufficient to allow regular hand washing and drying each day, and (b) an adequate supply of disinfectant hand wipes or disinfectant products effective against the COVID-19 virus for daily cleanings;
- (2) Ensure that all incarcerated people have no-cost access to hand sanitizer containing at least 60% alcohol where permissible based on security restrictions;

- (3) Provide access to showers and clean laundry, including clean personal towels on a regular basis, but at a minimum on a weekly basis;<sup>3</sup>

- (4) Ensure that, to the fullest extent possible, all Jail staff wear personal protective equipment, including masks, when interacting with any person or when touching surfaces in cells or common areas;

- (5) Ensure, to the fullest extent possible, that all Jail staff wash their hands with soap and water or use hand sanitizer containing at least 60% alcohol both before and after touching any person or any surface in cells or common areas. Consider allowing staff to carry individual sized bottles while on duty;

- (6) Establish protocol through which an incarcerated person may self-report symptoms of COVID-19 infection and to evaluate those symptoms, including temperature monitoring;

- (7) Conduct immediate testing for anyone displaying known symptoms of COVID-19;

- (8) Provide adequate spacing of six feet or more between people incarcerated, to the maximum extent possible, so that social distancing can be accomplished;

- (9) Ensure that individuals identified as having COVID-19, with symptoms of COVID-19, or having been exposed to COVID-19 receive adequate medical care and are properly quarantined in a non-punitive setting, with continued access to showers, mental health services, reading materials, phone and video calling with loved ones, communications with counsel, and personal property (to the extent reasonable and necessary to the inmate's physical and mental well-being). Such individuals shall remain in quarantine and wear face masks when interacting with other individuals until they are no longer at risk of infecting other people;

\*3 (10) Respond to all COVID-19 related emergencies (as defined by the medical community) within an hour;

- (11) Provide sufficient disinfecting supplies, without cost, so incarcerated people can clean high-touch areas or items (including, but not limited to, phones and headphones) between each use;

- (12) Effectively communicate to all people incarcerated, including low-literacy and non-English-speaking people,

sufficient information about COVID-19, measures taken to reduce the risk of transmission, and any changes in policies or practices to reasonably ensure that individuals are able to take precautions to prevent infection;

(13) Train all staff regarding measures to identify inmates with COVID-19, measures to reduce transmission, and the Jail’s policies and procedures during this crisis (including those measures contained in this Order);

(14) Refrain from charging medical co-pays before treatment is provided to those experiencing COVID-19-related symptoms, including testing;<sup>4</sup>

(15) Waive all charges for medical grievances during this pandemic until further order of the Court<sup>5</sup>;

(16) Cease and desist (a) all use of punitive transfers or threats of transfers to areas of the jail that have higher infection rates (or any other form of threat involving increased exposure to infection) for any infraction whatsoever; and (b) all retaliation in any form, against class members who raise concerns either formally or informally about the health and safety conditions in the Jail.<sup>6</sup>

**IT IS FURTHER ORDERED**, that Defendants shall take the following measures in preparation for the TRO hearing:

(1) Promptly provide Plaintiffs and the Court with a list of all individuals who are members of the Medically-Vulnerable Subclass as defined in paragraph 94 of Plaintiffs’ Complaint, which includes their location, charge and bond status; and,

(2) Promptly thereafter provide Plaintiffs and the Court with a list of any individuals in the Medically-Vulnerable Subclass who Defendants object to releasing and the basis for that objection.

**IT IS FURTHER ORDERED** that the parties shall appear before the undersigned for a telephonic conference call **on Monday, April 20, 2020 at 11:00 a.m.**, and for a telephonic hearing **on Friday, April 24, 2020 at 11:00 a.m.** For both the conference and hearing, Counsel shall call the Court’s toll-free conference line at 1-888-808-6929 and use Access Code 8141695.

**\*4 IT IS SO ORDERED.**

**All Citations**

Slip Copy, 2020 WL 1929876

**Footnotes**

- 1 The Court is not imposing all of the measures requested by Plaintiffs and will discuss those measures that are omitted with the parties during the hearing scheduled *infra*.
- 2 A spread of the virus among incarcerated persons also poses a grave risk of harm to the jail employees with whom they interact.
- 3 At the hearing, the Court will address whether it should set forth a specific frequency for these items after weighing regular Jail practices and any information reflecting the need for more frequency during the COVID-19 pandemic.
- 4 The Court will consider at the hearing whether co-pays may be charged if payment is not required before treatment or testing.
- 5 The Court will address at the hearing whether charges for medical grievances should be allowed if payment is not required before a grievance is accepted and addressed.
- 6 At the hearing, the Court will address Plaintiffs’ request for an injunction restraining Defendants from taking “all punitive measures ... against class members who decline to engage in labor on the grounds that such labor represents a threat to their health and safety or the health and safety of other class members.”

IN THE COURT OF APPEAL OF THE S  
THIRD APPELLATE DISTRICT

DEVIN MYLES HONE,  
Petitioner,  
v.  
SUPERIOR COURT OF  
SACRAMENTO COUNTY,  
SCOTT JONES, SHERIFF,  
COUNTY OF SACRAMENTO  
Respondents,  
PEOPLE OF THE STATE OF  
CALIFORNIA,  
Real Party in Interest.

CASE NO.  
SUPERIOR COURT OF THE  
COUNTY OF SACRAMENTO  
DEPARTMENT 62  
Telephone No: (916) 874-6893  
Hon. Michael A. Savage  
Superior Court No. 19FE018975

**PETITION FOR WRIT OF MANDATE OR, IN THE  
ALTERNATIVE, HABEAS CORPUS (Pen. Code, § 1490)  
REQUEST FOR EMERGENCY RELIEF  
Denial of Bail Reset Pursuant To  
Emergency Mandatory Bail Schedule (Rule 4)  
No Stay Requested**

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- Exhibit 1: A copy of court record information made available to the Public Defender through “CLU,” case management software maintained by the courts and/or the Department of Justice for case numbers 19FEO18975, 17MIO17782, and 17FEO04177;
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- Exhibit 3: A copy of the inmate page maintained by the Sacramento County Sheriff Department reflecting the bail amount Petitioner must post;
- Exhibit 4: Generic Opposition to the Emergency Mandatory Bail Schedule filed by the District Attorney, listing Petitioner within “Exhibit A;”
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- Exhibit 22: Order of the Presiding Judge of Sacramento County, issued April 1, 2020;
- Exhibit 23: Order of the Presiding Judge of Sacramento County, issued April 16, 2020;
- Exhibit 24: E-mail correspondence regarding setting of bail hearings referenced in People’s Opposition.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT

DEVIN MYLES HONE,  
Petitioner,  
v.  
SUPERIOR COURT OF  
SACRAMENTO COUNTY,  
SCOTT JONES, SHERIFF,  
COUNTY OF SACRAMENTO  
Respondents,  
PEOPLE OF THE STATE OF  
CALIFORNIA,  
Real Party in Interest.

CASE NO.  
SUPERIOR COURT OF THE  
COUNTY OF SACRAMENTO  
DEPARTMENT 62  
Telephone No: (916) 874-6893  
Hon. Michael A. Savage  
Superior Court No. 19FE018975

**PETITION TO THE HONORABLE PRESIDING JUSTICE  
AND THE ASSOCIATE JUSTICES OF THE COURT OF  
APPEAL OF THE STATE OF CALIFORNIA FOR THE THIRD  
APPELLATE DISTRICT:**

Statewide mandatory Emergency Rules ordered the lower court to reset Petitioner's bail at \$0. Yet, at the untimely and improper request of the prosecution, Respondent Superior Court maintained bail at over \$585,000.<sup>1</sup> Petitioner is held in pretrial detention on felony charges that have already been dismissed once before. But for Petitioner's lack of financial resources and inability to afford bail, he would be out custody to await trial.

After April 13, 2020, 5:00 p.m., the lower court had no authority to ignore the Emergency Rules and continue to hold

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<sup>1</sup> Petitioner also has bail set at \$1,500 for a misdemeanor warrant for a vehicle code infraction occurring in 2011. This too should be set to \$0.

Petitioner on anything but \$0 bail. Because the lower court exceeded its jurisdiction in calendaring, hearing, and then granting the prosecution's opposition to the mandatory Emergency Rules, this court should grant this petition and order bail reset at \$0.

Petitioner cannot afford bail at the amount set and is thereby functionally denied bail. Petitioner never consented to a trial date beyond the statutory limits and now, through the lower court's error, will remain in custody long beyond the time provided by statute.

**RELEVANT PROCEDURAL HISTORY**

On April 6, 2020, the Judicial Council passed Emergency Rules relating to court procedures during the COVID-19 pandemic. Emergency Rule 4 contains an Emergency Mandatory Bail Schedule. Under this schedule, Petitioner's bail must be reset to \$0. The Judicial Council ordered Respondent Superior Court to reset bail under the Emergency Mandatory Bail Schedule no later than 5:00 p.m., Monday, April 13, 2020. (Exhs. 9 & 10.)

On April 10, 2020, at around 4:30 p.m., the prosecution filed an opposition to the new bail schedule. The opposition consolidated 103 cases in a single pleading with the cases listed in "Exhibit A." (Exh. 4.) The motion did not speak to a particular defendant in detail and listed the "reason for the objection" in a column in Exhibit A. It became apparent that the defendants appearing in Exhibit A would not be released as ordered by the Judicial Council.

On Monday, April 13, the prosecution filed via e-mail a second opposition with arguments addressing Petitioner. Respondent Superior Court then set a hearing for the prosecution's bail motion,

indicating that they would hold a public safety hearing as requested by the prosecution. (Exh. 1, Exh. 24.) The defense asked the court for opportunity to be heard on the motion and had witnesses who were necessary to address the public safety concerns presented by maintaining the current population of the Sacramento County jail system. The defense requested notice of two or three days so that the witnesses could be set up for remote testimony. (Exh. 24.) The court denied the request and calendared the prosecution's bail motion for April 14, 2020 at 8:30 a.m. in Department 62 of the Sacramento Superior Court. (Exh. 1.)

Also on Monday, April 13, 2020, the Presiding Judge of the Superior Court of Sacramento issued an Order requiring Petitioner's bail to be reset at \$0. (Exh. 10.)

Five o'clock, Monday, April 13, came and went and Petitioner's bail was not reset. Just after 6:00 p.m., defense counsel filed responsive pleading arguing the Emergency Mandatory Bail Schedule is *mandatory* where it applies and the court has no discretion to deviate from it the way a court may in the statutory *presumptive* bail schedule scheme. (Exh. 8.) In sum, the lower court exceeded its jurisdiction in holding the hearing and was required to reduce bail as ordered.

The defense argued further that even if statutory provisions that apply to the *presumptive* countywide bail scheme applied to the Emergency Mandatory Bail Schedule, the prosecution had failed to comply with them. The prosecution failed to make the statutory showings necessary to trigger the requested bail hearing. For one, the only "changed circumstance" as to Petitioner's case was his

impending release. A release that, if he had the financial means, he could have secured long before April 13. Second, the prosecutor had failed to submit the required declarations or even threshold offers of proof. (Pen. Code, § 1270.1(e); Cal. Const., art. I, § 12.) In any event, the public safety concerns argued by the prosecution had already been weighed and considered by the Judicial Council. Weighed against the public safety dangers presented by COVID-19 and the jail serving as the epicenter of a countywide breakdown of emergency services, incarceration was found wanting.

Finally, the defense argued that if the court were to proceed to a bail hearing on the prosecution's request, the court had to consider the public safety concerns presented by the Sacramento County main jail. To that end, the defense submitted declarations from experts in the field and experts who work inside the jail. These declarations conclude that the jail population must be reduced to enable single-celling of inmates. The defense requested that if the court was going to have a hearing, a brief continuance was necessary so that counsel could secure the witnesses' testimony.

The court overruled defense objections and proceeded on the bail hearing. The court denied the defense request to present expert testimony. The court then ordered Petitioner's bail to be maintained at \$585,000. An amount Petitioner demonstrably could not afford.

Petitioner is a pretrial detainee, first arrested on October 18, 2019. The prosecution already was forced to dismiss the case and stipulate to a "bite." During the superseding proceedings, on January 28, 2020, Petitioner was held to answer on the complaint and arraigned on the information. Petitioner entered a not guilty plea

and set the case for trial for March 18, 2020. The 60<sup>th</sup> day was March 30, 2020. On March 18, the court continued Petitioner's case over his objection. The court set a trial date for April 23 and a trial readiness conference for April 16. Ex parte, the court vacated these dates and set the matter for June 10, 2020 for a trial readiness conference. Petitioner has never waived time under Penal Code section 1382 or as to Government Code section 68115.

## I

### **BENEFICIAL INTEREST OF PETITIONERS**

Petitioner is Devin Myles Hone, defendant in *People v. Hone*, Sacramento County Superior Court case number 19FE018975. He is incarcerated in the Sacramento County jail system, Rio Cosumnes Correctional Center. This correctional center is maintained by the Sacramento County Sheriff Scott Jones.

Petitioner is accused of a violation of Vehicle Code section 10851, charged as a felony, Penal Code section 496d, and alleged to have suffered a prior strike conviction in 2014. Petitioner has completed his sentence related to the prior offense.

Petitioner is currently on post-release community supervision (PRCS) arising out of Sacramento Superior Court case number 17FE004177. On July 7, 2017, Petitioner pleaded no contest to a felony violation of Vehicle Code section 2800.2, subdivision a. Petitioner was sentenced to 32 months of confinement in the state prison. On information and belief, the conduct occurred on March 4, 2017.

Petitioner is also on probation in Sacramento Superior Court case numbers 19FE005564 and 17MI017782. In 19FE005564,



Petitioner pleaded no contest to a misdemeanor violation of Vehicle Code section 10851 and granted three years of informal probation with an order to serve 60 days in county jail. Petitioner was time served when he took the bargain.

In 17MI017782, Petitioner was not placed on calendar until September 4, 2018. According to the electronic system, the incident occurred on October 31, 2016. On September 19, 2018, Petitioner pleaded no contest to a misdemeanor violation of Vehicle Code section 23103.5 and a misdemeanor violation of Vehicle Code section 14601.2, subdivision a. Petitioner was granted three years of informal probation with an order to serve 45 days in the county jail. The court deemed Petitioner time served pursuant to his state prison commitment served in between the 2016 conduct and the plea.

Petitioner cannot afford bail in the amount of \$585,000 when it was first set. He cannot afford it now.

## **II**

### **RESPONDENT**

Respondent, the Superior Court of Sacramento County, is now, and at all times mentioned in this petitioner has been, exercising judicial functions in connection with case number *People v. Hone*, 19FE018975.

Petitioner's confinement by the Sacramento Sheriff arises from the court's order regarding bail. (Pen. Code, § 1490.) To the extent the petition involves the conditions of confinement or petitioner is illegally confined, the Sheriff is a respondent.

## **III**

### **REAL PARTY IN INTEREST**

Real Party in Interest is the People of the State of California, plaintiff in the underlying action. The Sacramento County District Attorney, Anne Marie Schubert, represents the People.

#### IV

#### VENUE

All of the proceedings about which this petition is concerned occurred within the territorial jurisdiction of Respondent Superior Court and of the Court of Appeal of the State of California, Third Appellate District.

#### V

#### NO PRIOR PETITIONS

No other petition for writ of mandate or prohibition has been made by or on behalf of Petitioner relating to this matter.

Substantially similar issues are presented in a writ of mandate, or in the alternative, habeas corpus in *People v. Nguyen, et al.* C091785. Petitioner Hone is **not** listed in that writ.

#### VI

#### STANDARD OF REVIEW

Where the subject involves interpretation of statutes, rules, or constitutional provisions, this court exercises independent judgment. (*People v. Henson* (2018) 28 Cal.App.5th 490, 511, fn. 13.) Because this issue involves pretrial detention and the application of mandatory rules promulgated by the Judicial Council, this court should review the proceedings and application of law de novo. (Cf. *In re Humphrey* (2018) 19 Cal.App.5th 1006, 1022-24, *review granted* S247278 [de novo standard].)

In *Griffin v. Superior Court*, the appellate court held, “Habeas corpus and not mandamus or prohibition is an appropriate remedy to review an order fixing bail. (Pen. Code, §§ 1490, 1277, 1291; *In re Newbern* (1961) 55 Cal.2d 500, 503; *People v. Norman* (1967) 252 Cal.App.2d 381, 394.) We have discovered no reported cases where such an order has been reviewed on a petition for mandamus or prohibition.” (*Griffin v. Superior Court* (1972) 26 Cal.App.3d 672, 702; see also, *In re Catalano* (1981) 29 Cal.3d 1.) However, where the trial court exceeds its jurisdiction and the issue is purely legal in nature, the court may treat the petition as a writ of mandate. (*Gray v. Superior Court* (2005) 125 Cal.App.4th 629, 636, fn. 3; Cf. *Alfredo A. v. Superior Court* (1994) 6 Cal.4th 1212, 1217 [treating habeas petition as petition for writ of mandate]; *Thomas v. Superior Court* (1984) 162 Cal.App.3d 728, 729–730 [same].) Hence, this petition is filed as a writ of mandate or, in the alternative, habeas corpus.

Under the California Constitution, the Emergency Rules and the Emergency Mandatory Bail Schedule within Rule 4 has the force of positive law. (*Helbush v. Helbush* (1930) 209 Cal. 758.) The trial court had no authority to hold a bail hearing in conflict with the Judicial Council’s Emergency Rules, Rule 4, subdivisions b and c. (*Kalivas v. Barry Controls Corp.* (1996) 49 Cal.App.4th 1152.)

Even if the lower court was permitted to ignore the Emergency Rules and hold the bail hearing, the lower court abused its discretion in (1) failing to require compliance with statutory elements (Pen. Code, §§ 1269c, 1270.1(e); *In re Alberto* (2002) 102 Cal.App.4th 421 [requiring changed circumstances]); (2) setting the matter for bail hearing without adequate notice; and (3) refusing a reasonable

continuance to hear from Petitioner’s witnesses. (Pen. Code, § 1269c [providing defendant may apply for bail lower than schedule]; *Humphrey, supra*, 19 Cal.App.5th 1006 [defendant presented evidence of indigence].)

Even under more deferential standards, the lower court’s conduct is an abuse of discretion. (*In re White* (2018) 21 Cal.App.5th 18, 29, reviewed granted S248125 [substantial evidence standard]; see also, *In re Application of Black* (1934) 140 Cal.App. 361, 361 [trial court decision on bail subject to abuse of discretion review], *People v. Brown* (1960) 184 Cal.App.2d 588 [requiring appellants to pursue bail reduction as a precursor to appellate review].)

## VII

### PRIMA FACIE CASE FOR RELIEF

The Judicial Council ordered Petitioner’s bail to be reset at \$0. Respondent Superior Court set the same at \$585,000.

## VIII

### EXHIBITS

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## **IX**

### **FACTUAL AND LEGAL BASIS FOR RELIEF**

1. On April 6, 2020, the Judicial Council promulgated an Emergency Mandatory Bail Schedule and required the Superior Court to apply it to Petitioner no later than 5:00 p.m. on April 13, 2020. (Exh 9.)
2. Under the Emergency Mandatory Bail Schedule, Petitioner’s bail would be set at \$0. (Exh. 9.) The Emergency Mandatory Bail Schedule provides that except for 13 enumerated crimes,

the superior court must reset bail for a pretrial detainee to \$0. Neither Vehicle Code section 10851 nor Penal Code section 496 are enumerated. Because Petitioner's offense is not a crime listed in Rule 4, subdivision e, the Emergency Mandatory Bail Schedule does not allow the application of any county-specific conduct enhancements or status enhancements. (Emergency Rule, Rule 4(e).)

3. On April 13, 2020, Presiding Judge of the Sacramento Superior Court issued an Order implementing the Emergency Mandatory Bail Schedule. (Exh. 10.)
4. On October 18, 2019, Petitioner Devin Hone was arrested by the Citrus Heights Police Department and transported to the Sacramento County Main Jail.
5. On October 22, 2019, Petitioner was arraigned on a complaint alleging a felony violations of Vehicle Code section 10851, with a strike prior allegation, and misdemeanor violations for Penal Code section 148.9(a), and Vehicle Code section 14601.2. Petitioner entered pleas of not guilty and set his case for preliminary hearing on December 10, 2019. (Exh. 1.)
6. After preliminary hearing on December 19, 2019, the court held Petitioner to answer on a felony violation of Penal Code section 496(a), and the misdemeanor violation of Penal Code section 148.9(a), all other counts were dismissed. (Exh. 1.)
7. On December 19, 2019, Petitioner sought release on his own recognizance through counsel Alexia C. Mayorga. The motion was denied.

8. On December 24, 2019, the court arraigned Petitioner on an information alleging a felony violation of Penal Code section 496d(a) with a strike prior allegation, and a misdemeanor violation of Penal Code section 148.9. Petitioner entered pleas of not guilty and a trial readiness conference (TRC) was set for January 17, 2020. On January 17, 2020 the District Attorney moved to dismiss and refile the case against Petitioner, stipulating to a “first bite” per Penal Code section 1387.2.
9. The court arraigned Petitioner afresh on January 17, 2020. Petitioner again entered pleas of not guilty, this time to an amended complaint alleging felony violations of Vehicle Code section 10851 and Penal Code section 496d(a) with a prior strike allegation. (Exh. 1.)
10. On January 17, 2020, the court set bail, finding Petitioner eligible for pretrial release upon sufficient surety. The court set bail in the amount required by the countywide presumptive bail schedule. To wit, the court set bail in case number 19FE018975 in an amount of \$585,000. This amount reflected the countywide presumptive bail schedule: \$500,000 for the prior strike allegation arising from case number 14FO0108; \$10,000 for the reason of misdemeanor probation status in case number 19FE005564; \$10,000 for the misdemeanor probation status in 17MI017782; \$25,000 for the reason of PRCS status in case number 17FE004177; \$10,000 for a prior felony conviction arising from 17FE004177; \$20,000 for the Vehicle Code section 10851 charge; and an additional \$10,000 for the Penal Code section 496 violation. Said another way, the



court found defendant eligible for bail at the presumptive schedule.

11. At the second preliminary hearing, held on January 28, 2020, the court held Petitioner to answer on both counts. The court deemed the complaint an information and arraigned Petitioner. Petitioner again entered pleas of not guilty, and did not waive time. Petitioner's trial was set for March 18, 2020, with the 60th day being March 30, 2020. Bail was set again at \$585,000. (Exh. 1.)
12. On April 10, 2020, the District Attorney filed a generic opposition to Petitioner's release. (Exhs. 4, & 12.)
13. On April 13, 2020, the District Attorney filed briefing dealing with Petitioner, specifically. (Exh. 5, & 12.)
14. Petitioner filed a generic response to the District Attorney's opposition. (Exhs. 6, 7, & 12.)
15. Petitioner filed a specific response to the District Attorney's filing, addressing facts relevant to Petitioner's case and personal history. (Exhs. 8, & 12.)
16. Petitioner also filed declarations from medical experts in support of his release. (Exhs. 7, & 12.) These declarations aver that the Sacramento County jail system risks becoming the epicenter of a community-wide COVID-19 outbreak. (Exh. 7.) These experts give further weight to the public policy decision behind the Judicial Council's order. Counsel requested that if the hearings were to go forward over objection, Petitioner should be able to call the witnesses referenced in Exhibit 7. (Exh. 24.)

17. Dr. Amy Barnhorst, a medical doctor currently working within the Sacramento County jail system opined, “Sacramento County Jail’s current structure makes it impossible to follow CDC guidelines. Due to the population, inmates cannot be housed in single cells. Rather, majority of inmates are double occupancy in a cell that does not permit for six-foot separation. Inmates are also not provided hand sanitation or face masks.” (Exh. 7, Declaration of Dr. Amy Barnhorst, ¶ 11.) In her professional opinion, the “Sacramento County Jail population needs to be reduced to allow for single cell occupancy. Continual failure to comply with CDC guidelines will result in a serious medical crisis in the Sacramento County jail and put inmates, staff, and Sheriff’s health and safety at risk.” (Exh. 7, Dr. Barnhorst, ¶ 12.)
18. Another expert, Dr. Cofer, opines that Sacramento County jail system’s structure makes it impossible to follow CDC guidelines. (Exh. 7, Declaration of Dr. Flojuane Cofer, ¶ 14.) Importantly, due to the size of the population, inmates cannot be housed in single cells or joint cells large enough to facilitate social distancing.
19. Bruce Pomer, a public health expert who has served California on nearly every level of public health administration, opines that in his professional opinion, “the community is at great risk if the jail population is not reduced to single cell occupancy.” (Exh. 7, Declaration of Bruce Pomer ¶ 20.) If there is an outbreak in the jail, it will quickly overwhelm our community’s public health system. (Exh. 7, Pomer, ¶ 22.)

20. When Petitioner's case was called, Assistant Public Defender Alexia C. Mayorga represented Petitioner's cause. The court proceeded on the Prosecution's motion, but recast it as a motion for reduction. (Exh. 11, Reporter's Transcript of Bail Motion, April 14, 2020, p. 6:15-16.) The court indicated it had read and considered the general pleadings, Exhibit 6 and 7, filed by the public defender. (Exh. 11, R.T., 2:3-9.) The court heard the District Attorney's motion and granted it over the objections of defense counsel. (Ex. 11, R.T., p. 6.) Bail on case number 19FE018975 remains set a \$585,000. Bail on a vehicle code infraction from 2011 is set at \$1,500. (Exhs. 1, 2, 3, 11.)
21. As to the vehicle code infraction, the citation indicates it occurred on November 24, 2011. Law enforcement issued a citation alleging a violation of Vehicle Code sections 14601.1(a) and 16028(c). The citation indicated a complaint would be filed. (Exh. 2.)
22. The online traffic system indicates Petitioner's date-to-appear on the citation was changed from March 8, 2012 to May 8, 2012. Petitioner failed to appear at this date according to the online system. (Exh. 2)
23. In June 2012, law enforcement activated a warrant and Petitioner was booked on July 14, 2012. (Exh. 2)
24. On July 24, 2012, Petitioner was arraigned on a multi-count complaint alleging, *inter alia*, a violation of Vehicle Code section 14601.1(a) with six priors. This case was ultimately dismissed for insufficiency of the evidence. (Exh. 1.)

25. For reasons unknown to counsel, on July 22, 2019, the court re-issued the warrant in case number 2012019121. Since Petitioner's arrest on October 18, 2019, case number 2012019121 has trailed 19FEO18975. (Exh. 1.)
26. On March 19, 2020, the Presiding Judge of Sacramento Superior Court issued a Temporary Court Closure. (Exh. 19.)
27. On March 23, 2020, Chief Justice Tani G. Cantil-Sakauye issued a statewide order suspending all jury trials in California's superior courts for sixty days.<sup>2</sup> (Exh. 16.) For already-filed cases, this order eliminates a defendant's statutory right to a speedy, public jury trial within sixty days of their arraignment. (Pen. Code, § 1382.)
28. On March 28, 2020, Governor Gavin Newsom issued another Executive Order, Order N-38-20, allowing the Chairperson of the Judicial Council to exceed the legislatively-enacted timeframes of Government Code, section 68115. (Exh. 14.)
29. On March 30, 2020, the Judicial Council issued an order reconfirming the earlier order suspending jury trials and further providing that the timeframes of Government Code, section 68115 could be exceeded. (Exh. 20.)
30. On March 30, 2020, the Presiding Judge of the Sacramento Superior Court issued a Court Closure Extension. (Exh. 21.)
31. On April 1, 2020 the Presiding Judge of the Sacramento Superior Court issued an Order entitled Implementation of

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<sup>2</sup> <https://newsroom.courts.ca.gov/news/chief-justice-issues-statewide-order-suspending-jury-trials>, accessed March 24, 2020.

Emergency Relief. Among other things, the order extends all jury trials 60 days beyond their statutory guidelines. (Exh. 22.)

32. On April 13, 2020, the Presiding Judge of Sacramento County issued an Order implementing the Emergency Mandatory Bail Schedule as instructed in the Emergency Rules and orders. (Exh. 10; Cf. Exh. 9.)
33. On April 16, 2020, the Sacramento Superior Court issued an order extending the court closures. (Exh. 23.)
34. Petitioner does not have access to \$585,000 nor the amount needed to post bond through a bail-bond agency. Petitioner is currently incarcerated in the Rio Cosumnes Correctional Center, awaiting trial. As he has been since October 18, 2020.

## X

### LEGAL CLAIMS & ALLEGATIONS

#### CLAIM ONE

**The Lower Court Exceed its Jurisdiction;  
Lower Courts May Not Ignore the Orders of  
the Judicial Council and the Presiding Judge.  
One Superior Court Judge Cannot Overrule Another.**

The Judicial Council and Chief Justice of California, through inherent rulemaking power, has created a *mandatory* bail schedule. (Cal. Const., art. VI, § 6(d); *Rutherford v. Owens-Illinois, Inc.* (1997) 16 Cal.4th 953, 967.) The Judicial Council created a mandatory, statewide bail schedule outside of the statutory countywide *presumptive* bail scheme. (Exh. 9, Rule 4(c) [hereinafter, *Emergency Mandatory Bail Schedule*]; Cf. Pen. Code, § 1269b.) Under our constitution, the Judicial Council is the governing body for the courts. Through it, the Chief Justice is required to expedite

judicial business and equalize the work of judges. (Cal. Const., art. VI, § 6(e).) Judges across the courts are required to report to the council as the Chief Justice directs and cooperate with the council and hold court as assigned. (Cal. Const., art. VI, § 6(f).) Trial courts cannot adopt rules that conflict with the Judicial Council. (*Hall v. Superior Court* (2005) 133 Cal.App.4th 908, 916-917.)

In weighing the public safety concerns surrounding overcrowded jail and COVID-19, the Judicial Council ordered bail be reset in these cases to \$0 or as appropriate for other crimes. (Emergency Rules, Rule 4.) While the Emergency Mandatory Bail Schedule is different than the countywide presumptive bail schedule scheme, the Judicial Council took into consideration the same factors considered in the presumptive bail scheme, including public safety. (*Emergency Report*, pp. 9-10.)<sup>3</sup>

The Judicial Council has ordered bail to be reset to \$0 for all crimes save those listed in subdivision c of Emergency Rule 4. For other crimes, the countywide bail scheme is still in effect. (Emergency Rules, Rule 4(e).) The Judicial Council weighed public safety and the risks to public health presented by maintaining the current jail population and concluded \$0 is appropriate.

As to this Petitioner, the Emergency Rules, Rule 4, makes no provision for a bail in an amount different from the Emergency

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<sup>3</sup> While in typical times it is a county's obligation to craft a *presumptive* bail schedule, there is no statute or principle which prohibits the Judicial Council and Chief Justice from promulgating a mandatory emergency bail schedule. Judicial Council rules that go beyond statutory provisions are not inconsistent and are valid. (*Butterfield v. Butterfield* (1934) 1 Cal.2d 227.); Compare Pen. Code, § 1269b with Gov. Code, § 53071 ["It is the intention of the Legislature to occupy the whole field of regulation of the registration [of firearms]"]; See e.g., *In re Robin M.* (1978) 21 Cal.3d 337 [rule of court plainly conflicted with statute].)

Mandatory Bail Schedule where it applies. Rather, the Judicial Council provides that trial courts may deny bail where constitutionally appropriate. (Emergency Rules, Rule 4(d).) There is no provision for setting bail in an amount exceeding the new Emergency Rules in this case.

Similarly, to the extent the lower court held the bail hearing and set bail in amount contrary to the Order of the Presiding Judge for the Sacramento Superior Court, the lower court exceeded its jurisdiction and overruled another superior court judge. (Exh. 10; *Alberto, supra*, 102 Cal.App.4th at 427.)

**CLAIM TWO**  
**The Lower Court Exceeded its Jurisdiction by**  
**Not Requiring Compliance with the Statutory Scheme**

Even if this court concludes the statutory presumptive bail scheme applies to the Emergency Rules and the Emergency Mandatory Bail Schedule, the lower court still erred. The lower court exceeded its jurisdiction by not requiring the prosecution to comply with the required statutory scheme. (Exhs. 4 & 5.) The Penal Code requires a party presented sufficient “changed circumstances” to justify a superseding bail hearing. (*Alberto, supra*, 102 Cal.App.4th at 431 [extraordinary writ is People’s remedy where they disagree with bail setting].) Aside from Petitioner’s release—which, if he had financial means he could have previously secured—the prosecution demonstrated no change in circumstances since Petitioner’s last bail hearing. (Exhs. 4& 5.) Further, where the prosecution seeks bail above schedule, the prosecution must submit sworn declarations justifying the increase, presented under penalty of perjury. (Pen.

Code, §§ 1269c, 1270.1(e).) The prosecution did not submit such.  
(Exhs. 4 & 5.)

**CLAIM THREE**  
**The Lower Court Set Bail in**  
**Unconstitutional & Excessive Amount**

\$585,000 is an order of magnitude above the \$0 schedule. Both state and federal constitutions forbid excessive bail. (U.S. Const. amend. VIII; Cal. Const., art. I, § 12.) Petitioner is a pretrial detainee. Previously, the Sacramento Superior Court determined he may be safely released to the community upon payment of a bond or bail. (Exh. 1.) The Judicial Council has now determined “sufficient sureties” to secure his appearance and public safety to be \$0. Nevertheless, the lower court has maintained bail in an amount he cannot afford. As such, Petitioner is unlawfully deprived of his liberty because bail is set in a sum that is the functional equivalent of no bail. (*In re Christie* (2001) 92 Cal.App.4th 1005, 1109; *Humphrey, supra*, 19 Cal. App. 5th 1006.) Bail is excessive when it is unreasonably great and clearly disproportionate to the offense or peculiar circumstances at hand. (*Ex parte Ryan* (1872) 44 Cal. 555, 558.) Additionally and separately, Petitioner is illegally confined under conditions which expose him to an unreasonable risk of contagion by the COVID-19 virus.

The conditions of his confinement worsens Petitioner’s already excessive bail. Petitioner, unable to afford bail, is held in-custody in a jail unable to comply with the social distancing directives required by government and public health officials. There is no legitimate government interest in requiring pretrial detainment



in overcrowded jails merely because the defendant is unable to pay bail. Moreover, every level of government has closed down entire sectors of the economy. The dollar amount set for Petitioner's release pending trial is excessive in these economic conditions.

In the event this claim is rendered moot as applied to petitioner, this court should nonetheless accept jurisdiction because otherwise this practice will continue and will escape review, and the issue is of great importance. (*In re Webb* (2019) 7 Cal.5th 270.) Without granting review, the superior court will continue to disregard conditions of confinement as a consideration. That practice denies defendants due process and a meaningful opportunity to be heard at a hearing that deprives them of freedom. (See e.g., *Naidu v. Superior Court* (2018) 20 Cal.App.5th 300; *Minor v. Municipal Court* (1990) 219 Cal.App.3d 1541, 1544; and, *Gray v. Superior Court* (2005) 125 Cal.App.4th 629.)

**CLAIM FOUR**  
**Continued Pretrial Confinement Offends Both**  
**Equal Protection and Due Process**

Petitioner is denied equal protection of the laws, in that it is only his poverty that prevents him from buying his liberty, in violation of both state and federal constitutions. (U.S. Const., amends. VIII, XIV; Cal. Const. art. I, §§ 1, 7, 12; see *Humphrey, supra*, 19 Cal.App.5th 1006.) The denial of relief on this ground is compounded by the circumstance that the conditions of confinement in the county jail does not meet constitutional minimums and that the Judicial Council ordered his bail to be \$0.

In the event this claim is rendered moot as applied to him, this court should nonetheless accept jurisdiction because otherwise this practice will continue and will escape review, and the issue is of great importance. (*In re Webb* (2019) 7 Cal.5th 270; *Schweisinger v. Jones* (1998) 68 Cal.App.4th 1320, 1324.)

**CLAIM FIVE**  
**Pretrial Detention Violates Petitioners' Rights to Due Process because it Amounts to Punishment**

Petitioner's continued confinement violates his right to Due Process of Law. (*Bell v. Wolfish* (1979) 441 U.S. 520; *Inmates of Riverside County Jail v. Clark* (1983) 144 Cal.App.3d 850.) Petitioner's confinement amounts to punishment because the conditions of confinement pose an unreasonable risk to his health and his life. (U.S. Const., amends. V, VIII, XIV, Cal. Const., art. I, §§ 7, 13, 14, 15, 16, & 17; *Bell v. Wolfish, supra*, 441 U.S. 520; *Inmates of the Riverside County Jail, supra*, 144 Cal.App.3d 850; *Estelle v. Gamble* (1979) 429 U.S. 97; *People v. Superior Court (Himmelsbach)* (1986) 186 Cal.App.3d 524, 534.)

The Judicial Council has ordered Petitioner's bail to be set at \$0. However, the Judicial Council has also permitted superior courts to suspend jury trials. Petitioner is therefore confined, unable to make bail in a conditions that put his life at risk.

**CLAIM SIX**  
**The Lower Court Denied Petition Due Process By Refusing to Hear Evidence on His Behalf**

It seems axiomatic to argue that an accused has a due process right to be heard in a bail hearing. If "procedural due process

requires notice, confrontation, and a full hearing whenever action by the state significantly impairs an individual's freedom to pursue a private occupation,” it seems unquestionable that the same is required when the state impairs an individual’s *actual* freedom. (*Endler v. Schutzbank* (1968) 68 Cal.2d 162, 172; *Willner v. Committee on Character & Fitness* (1963) 373 U.S. 96, 103-06.) Procedural due process should at least encompass allowing Petitioner to present the risks and dangers of remaining in jail on the functional equivalent of “no-bail” amidst the COVID-19 pandemic.

In the proceedings below the prosecution argued that the defendant had no right to present information on his safety while held in pretrial detention. The prosecution also argued that the defendant had no right to present evidence. This is incorrect. (*Naidu v. Superior court* (2018) 20 Cal.App.5th 300 [court imposed bail conditions based on written motions]; *Humphrey, supra*, 19 Cal.App.5th 1009 [defendant presented evidence of indigence at bail hearing].) No case has held such.

Petitioner sought to have witnesses identified in Exhibit 7 testify before the court. These witnesses would have established the critical need to reduce the Sacramento County jail population. This information is critical for a determination of “public safety.” Due to the nature of the COVID-19 virus, the Sacramento County jail system must move to single-cell occupancy. (Exh. 7.) As such, the jail system’s finite capacity must be guarded and viewed as a premium.

Moreover, Petitioner continues to assert that the public health risks caused by the Sacramento County jail system population levels are a public safety issue. In the event this claim is rendered moot as

applied to Petitioner, this court should nonetheless accept jurisdiction because otherwise this practice will continue and will escape review, and the issue is of great importance. (*In re Webb* (2019) 7 Cal.5th 270.) Without granting review, the superior court will continue to disregard conditions of confinement as a consideration. That practice denies defendants due process and a meaningful opportunity to be heard at a hearing that deprives them of freedom. (See e.g., *Naidu v. Superior Court* (2018) 20 Cal.App.5th 300; *Minor v. Municipal Court* (1990) 219 Cal.App.3d 1541, 1544; and, *Gray v. Superior Court* (2005) 125 Cal.App.4th 629.)

## **XI**

### **EXHAUSTION**

Petitioner previously sought release on his own recognizance on December 19, 2019. Petitioner's bail was re-addressed on January 17, 2020. Petitioner opposed the prosecution's bail motion made on April 14, 2020. Because of the manner in which the court set bail at the prosecution's request, Penal Code section 1270.2 providing for bail review within five days is inapplicable.

## **XII**

### **DILIGENCE**

This petition was filed as soon as reasonable given the crisis and confusion in the courts.

## **XIII**

### **INADEQUACY OF OTHER REMEDIES**

Petitioner seeks extraordinary relief from this Court because there is no other adequate remedy. Remedy by appeal is inadequate because the issue is pretrial detention.

In the alternative, Petitioner requests this Court treat the petition as a habeas should the court feel the Great Writ a more appropriate vehicle.

**XIV**

**NO STAY REQUESTED**

Petitioner requests this court to allow the lower court to maintain currently set dates. Petitioner seeks review of confinement status, only.

**XV**

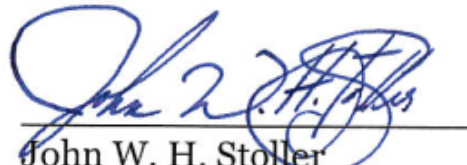
**PRAYER**

WHEREFORE, petitioner prays:

1. That this Court immediately reset his bail to \$0;
2. In the alternative, order the lower court immediately, and within five days of such order, reset bail to \$0;
3. In the alternative, issue and order to show cause as why relief should not be granted.
4. That this court grant any other such additional relief as is just.

Dated: April 17, 2020

Respectfully submitted,

  
\_\_\_\_\_  
John W. H. Stoller  
Assistant Public Defender

Document received by the CA Supreme Court.

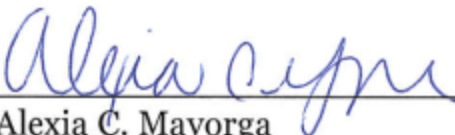
**VERIFICATION**

I, Alexia C. Mayorga, am an Assistant Public Defender, duly licensed to practice law in the State of California. I have been assigned to represent petitioner in this action. I make this verification because I am more familiar with the facts set forth in the petition than is petitioner.

All facts alleged in the above petition not otherwise supported by citations to the record, declarations, exhibits or other documents are true of my own personal knowledge or upon information and belief.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on April 17, 2020, in Sacramento, Sacramento County, California.

Signed,

  
\_\_\_\_\_  
Alexia C. Mayorga  
Assistant Public Defender

Document received by the CA Supreme Court.

**MEMORANDUM OF POINTS AND AUTHORITIES**

Petitioner’s liberty is tied to his financial resources. Before COVID-19 descended upon the nation, the court set a bail he could not pay. Now, it is maintained on an amount he cannot afford. Functionally, Petitioner is denied bail.

In an attempt to secure justice to all people in California, the Judicial Council ordered counties adopt an Emergency Mandatory Bail Schedule. With few exceptions, a criminally accused has the right to release pending adjudication subject to sufficient sureties. (Cal. Const., art. I, § 12; Pen. Code, § 1271.) The Judicial Council has determined “sufficient sureties” for specified cases to be \$0. (Emergency Rules, Rule 4.) The lower court decided the new schedule was not mandatory. This Court must either (1) act on the lower court’s behalf and release petitioner or (2) order the lower court to act.

**I. Emergency Mandatory Bail Schedule is Mandatory. The Lower Court Exceeded its Jurisdiction in Calendaring, Holding, and Granting the Prosecution’s Bail Motion.**

The Judicial Council and Chief Justice of California, through inherent rulemaking power, has created a *mandatory* bail schedule. (Cal. Const., art. VI, § 6(d). The Judicial Council plainly created a mandatory, statewide bail schedule outside of the countywide presumptive bail scheme. Under our constitution, the Judicial Council is the governing body for the courts. Through it, the Chief Justice is required to expedite judicial business and equalize the work of judges. (Cal. Const., art. VI, § 6(e).) Judges across the courts

are required to report to the council as the Chief Justice directs and cooperate with the council and hold court as assigned. (Cal. Const., art. VI, § 6(f).) While trial judges have inherent power to control litigation before them, they have no authority to adopt rules that conflict with the Judicial Council. (*Hall v. Superior Court, supra*, 133 Cal.App.4th at 916-917; see generally, *Rutherford, supra*, 16 Cal.4th at 967.)

In weighing the public safety concerns surrounding overcrowded jail and COVID-19, the Judicial Council ordered bail be reset in these cases to \$0 or as appropriate for other crimes. (Emergency Rules, Rule 4.) While the Emergency Mandatory Bail Schedule is different than the countywide presumptive bail schedule scheme, the Judicial Council took into consideration the same factors considered in the presumptive bail scheme, including public safety. (*Emergency Report*, pp. 9-10.)

Moreover, the statutes cited by the prosecutor to justify the bail amount are part of the statutory scheme for *presumptive* bail. (Pen. Code, § 1269b.)<sup>4</sup> The statutory caveats allowing courts to exceed statutorily-based presumptive bail schedule do not apply to the Emergency Mandatory Bail Schedule. Here, the Judicial Council has ordered bail to be reset to \$0 for all crimes save those listed in subdivision c of Emergency Rule 4. The Judicial Council weighed public safety and the risks to public health presented by maintaining

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<sup>4</sup> While in typical times it is a county's obligation to craft a *presumptive* bail schedule, there is no statute or principle which prohibits the Judicial Council and Chief Justice from promulgating a mandatory emergency bail schedule. (Cf. Pen. Code, § 1269b and Gov. Code, § 53071 ["It is the intention of the Legislature to occupy the whole field of regulation of the registration [of firearms]"]; See *In re Robin M.* (1978) 21 Cal.3d 337 [rule of court plainly conflicted with statute].)



the current jail population and concluded \$0 is appropriate. The Judicial Council did not allow lower courts set bail above the Emergency Mandatory Bail Schedule.

But even under the statutory presumptive bail scheme, the prosecution did not show good cause for the bail hearings. To the extent the caption references Penal Code section 1269c, it has specific requirements—that the arrest be without a warrant or for a domestic violence offense—and specific preconditions. (See *Gray v. Superior Court* (2005) 125 Cal.App.4th 629, 642; see also, *People v. Lexington National Ins. Corp.* (2015) 242 Cal.App.4th 1098, 1103 [discussion describing bail increases].) Indeed, there must be a sworn declaration of sufficient facts justifying the increase before the court may even proceed on the prosecutor’s objections. (Pen. Code, § 1270.1(e).) The lower court did not require compliance and thereby exceeded its jurisdiction in holding the hearing.

Moreover, even under the statutory presumptive bail scheme, good cause to increase bail must be founded in the least upon changed circumstances relating to the defendant or the proceedings. (*In re Alberto* (2002) 102 Cal.App.4th 421 [second judge may not reset bail merely because it viewed earlier order was not valid].) On top of changed circumstances, various code sections and constitutional provisions have their own factual and evidentiary tests to determine bail. (E.g., Cal. Const., art. I, § 12; Pen. Code, § 1269c.) Here, the prosecution lacked any changed circumstances other than the Judicial Council’s order that the circumstances of these times require \$0 bail. As explained by the appellate court, the remedy to

review the Judicial Council's order was through extraordinary writ. (*Alberto, supra*, 102 Cal.App.4th at 431.)

**II. The Judicial Council & Higher Judges Already Weighed Public Safety and Victim Safety in Promulgating the Emergency Mandatory Bail Schedule.**

If an accused can be safely released during this pandemic, he should be. The Judicial Council considered public safety as defined in article I, section 28, subdivision f, of the California Constitution when it created the Emergency Mandatory Bail Schedule. The Emergency Mandatory Bail Schedule came upon the analysis and rationale provided by the Judicial Council committees and their chairs, the Honorable Marsha G. Slough, Hon. David M. Rubin, Hon. Kyle S. Brodie, Hon. Marla O. Anderson, and Hon. Harry E. Hull. (*Emergency Report*.) These judges weighed and considered victim safety and the concerns that could be presented by the crimes at hand. The Emergency Report and the Emergency Mandatory Bail Schedule concluded that for crimes not enumerated in Rule 4(c), bail must be set at \$0 unless bail should be denied. (*Emergency Rules Report*, pp. 9-10; Emergency Rules, Rule 4(d); See Cal. Const., art. I, § 12 [no-bail provisions for public safety].)

The prosecutor urged below that under the article I, section 28, subdivision f, paragraph 3, of the California Constitution (hereinafter, "§ 28(f)"), the lower court had to again consider public safety when hearing the prosecution's opposition to the bail schedule. The prosecutor is incorrect for two reasons. First, the Sacramento Superior Court previously held Petitioner could be safely

released long before the COVID-19 pandemic. Indeed, Petitioner’s bail was set at the amount dictated by presumptive countywide bail schedule. Second, while §28(f) does require the public safety as a factor in bail, the provision does not require that determination be made by the trial judge. Indeed, in California, all levels of the judiciary have authority to set bail. (Pen. Code, § 1490; Cal. Const., art. VI, § 10.)

Finally, insofar as the prosecutor interprets §28(f) to forbid the Judicial Council from promulgating the Emergency Mandatory Bail Schedule or can so emasculate the judiciary such that it cannot dictate the operations of its lower court, Proposition 8 is an impermissible revision of the Constitution. (*Raven v. Deukmejian* (1990) 52 Cal.3d 336, 354 [invalidating Prop. 115 provision to the extent it requires interpretation of California’s confrontation clause coequally with federal Constitution, severing Cal. Const., art. I, § 14.1]; Cf. *In re Lance W.* (1985) 37 Cal.3d 873, *Brosnahan v. Brown* (1982) 32 Cal.3d 236; see generally, *Le Francois v. Goel* (2005) 35 Cal.4th 1094, 1104-1105.) Moreover, § 28(f) must be read to avoid conflict with both the article I, section 12 and article VI of the California Constitution. (*People v. Western Air Lines, Inc.* (1954) 42 Cal.2d 621, 637; *People v. Nguyen* (2010) 184 Cal.App.4th 1096, 1110 [and precedent therein].)

In 1982, voters approved Proposition 8 and added § 28(f) to the constitution. While the voters have broad power to enact legislation through voter initiative and referendum, the voters may not revise the constitution through those powers. (Cal. Const., art II, § 8, § 9, § 10; art. XVIII, § 2.) A revision of the constitution occurs

when a proposition threatens to quantitatively or qualitatively change the nature of judicial authority. (*Lance W.*, *supra*, 37 Cal.3d at 891.) While both *Brosnahan* and *Lance W.* concluded the proposition was not an impermissible revision, neither case contemplated an interpretation of Proposition 8 that would prohibit the judiciary from implementing a mandatory bail schedule during a world-wide health crisis.

The inherent power of the courts to control their proceedings and make rules that do not conflict with the constitution or statute has long been recognized. (*People v. Jordan* (1884) 65 Cal. 644 [holding the court may set up appellate review through inherent power].) The setting of bail is a subject of inherent power. (*Webb*, *supra*, 7 Cal.5th at 276; *In re McSherry* (2003) 112 Cal.App.4th 856, 861-63; *Gray*, *supra*, 125 Cal.App.4th at 642.)

The power of the Judicial Council and higher courts to dictate the practices of lower courts is an inherent and explicit power derived from both constitutional and statutory authority. (Cal. Const., art. VI, § 6; Gov. Code, § 68070; see *Hall v. Superior Court*, *supra*, 133 Cal.App.4th 916-917.) Indeed, that was the very purpose of the Judicial Council. Indeed, the Judicial Council mostly occupies the “rulemaking field” and “derives its powers to ‘Adopt or amend rules of practice and procedure for the several courts not inconsistent with laws that are now or that may hereafter be in force,’ from the California Constitution [ ].” (*Albermont Petroleum, Ltd. v. Cunningham* (1960) 186 Cal.App.2d 84, 89.)

Similar to how the legislature impermissibility trampled separation of powers in *Le Francois v. Goel*, the prosecutor’s reading

of § 28(f) would divorce the Judicial Council of their constitutionally-based rulemaking authority and their power to control lower courts. (See generally, *Fay v. District Court of Appeal* (1927) 200 Cal. 522.) While the consideration of public safety may be a reasonable restriction on the court’s inherent power to set bail, § 28(f) cannot be read as forbidding the Emergency Mandatory Bail Schedule. A judge *did* consider public safety—indeed, the whole Judicial Council did.

Moreover, to the extent article I, section 28 forbids the use of a mandatory bail schedule, it would amount to an unconstitutional revision of judicial power articulated in the California Constitution. (See e.g., *Raven v. Deukmejian* (1990) 52 Cal.3d 336, 354 [invalidating Prop. 115 provision to the extent it requires interpretation of California’s confrontation clause coequally with federal Constitution, severing Cal. Const., art. I, § 14.1].)

Finally, the Presiding Judge of Sacramento Superior Court ordered the courts to implement the Emergency Mandatory Bail Schedule. (Exh. 10.) For similar reasons discussed, the lower court was not empowered to ignore the presiding judge’s order. Moreover, the lower court was not empowered to overrule another judge. (*Alberto, supra*, 102 Cal.App.4th at 427.)

### **III. The Constitution Limits a No-Bail Finding to “Rare and Unusual Cases” that Fit in One of Three Subdivisions.**

Petitioner’s bail is set at the functional equivalent of no bail. The California Constitution entitles a defendant to bail as a matter of right except for three categories:

- a) Capital crimes when the facts are evidence or the presumption great,
- b) Felony offenses involving acts of violence on another person, or felony sexual assault offenses on another person, when the facts are evident or the presumption great and the court finds based upon clear and convincing evidence that there is a substantial likelihood the person's release would result in great bodily harm to others; or,
- c) Felony offenses when the facts are evident or the presumption great and the court finds based on clear and convincing evidence that the person has threatened another with great bodily harm and that there is a substantial likelihood that the person would carry out the threat if released.

Cal. Const., art I, § 12, § 28(f).

In conformance with these constitutional principles, the Judicial Council did create an exception in the Emergency Mandatory Bail Schedule for crimes that would qualify for “no bail” or for courts to “deny bail.” (Emergency Rule, Rule 4(e).) To the extent that Petitioner is held at the functional equivalent of no bail, article I, section 12 forbids that result on the offer of proof given below. (See *In re Christie* (2001) 92 Cal.App.4th 1105.)

**IV. The Conditions of Confinement have Converted Pretrial Detention into Punishment.**

Petitioner is held in pretrial confinement, unable to afford the amount set to secure pretrial release. Because adequate preventative

steps from COVID-19 are impossible in the institutional setting, the jail conditions amount to punishment. (*Bell v. Wolfish* (1979) 441 U.S. 520.) Jail conditions for detainees is a due process issue, “under the Due Process clause, a detainee may not be punished prior to an adjudication of guilt in accordance with due process of law.” (*Id.* at 535.) The confinement conditions of pretrial detainees constitutes punishment without due process of law in violation of the Fifth Amendment to the United States Constitution and article I, section 7 of the California Constitution. “As a matter of equal protection, conditions of confinement which violate the rights of sentenced prisoners also violate those of pretrial detainees, absent any justification for differential treatment.” (*Inmates of the Riverside County Jail v. Clark* (1983) 144 Cal.App.3d 850, 858.)

Pretrial confinement that violates the cruel and unusual punishment clause is unconstitutional. While phrased in terms of cruel and unusual punishment, the Supreme Court instructs that jail conditions for pretrial detainees is actually a violation of the Due Process clause of the Fifth Amendment. (*Bell v. Wolfish* (1979) 441 U.S. 520.) In *Bell v. Wolfish*, the United States Supreme Court held that the government may detain a person pretrial so long “as those conditions and restrictions do not amount to punishment or otherwise violate the Constitution.” (*Bell v. Wolfish, supra*, 441 U.S. at p. 536-537.) With regard to the cruel and unusual punishment clause, the Supreme Court has explained that the basic concept lies within the “dignity of man;” the words are not precise, their scope is not static, and the meaning is drawn from evolving standards of

decency that mark the progress of maturing society. (*Trop v. Dulles* (1958) 356 U.S. 86, 100-101.)

While there is no “one person, one cell,” principle in the Fifth Amendment Due Process clause, that principle is required in these times of crisis. The virus thrives in close quarters, allowing asymptomatic persons to infect others. Broadly, prevention requires people to remain six feet of distance from others and have constant access to soap, disinfectant and cleaning supplies. Continuing to confine persons awaiting trial in conditions that exponentially increase their risk of contracting a life threatening disease violates the Due Process Clause. (U.S. Const., amend. V, XIV.) Moreover, it offends Equal Protection as it forces enhanced risk onto a population that cannot afford bail. (*Ibid.*)

Courts employ the same basic test to assess confinement conditions under the California Constitution. (*Inmates of Riverside County v. Clark* (1983) 144 Cal.App.3d 850, 859.) Challenged conditions of confinement will survive judicial review if “substantial evidence” supports the conclusion that the confinement conditions are reasonably related to a legitimate government interest. (*Ibid.*) “Standards of decency” are essential to this analysis and state courts should look chiefly to California standards as their guideposts. (*Ibid.*)

When every level of government demands all people remain six feet apart and take considerable hygiene precautions, continuing to double-cell and barrack inmates in communal housing violates standards of decency. In the midst of a pandemic, the status quo operation of the of the Sacramento jail system does not serve a



legitimate governmental purpose. (*Bell v. Wolfish, supra*, 441 U.S. at 538-539.) The Sacramento jail system frequently operates at or above capacity and cells typically house at least two persons. Continued confinement of this population endangers the detainee, sheriff's deputies and jail staff, the community, and the county's emergency services.

COVID-19 implicates both medical and sanitary conditions. A pretrial detainee has a due process right to sanitary detention conditions similar to a convicted person's rights under the Eighth Amendment to be free from cruel and unusual punishment. (See e.g., *Whitnack v. Douglas County* (8th Cir. 1994.) 16 F.3d 954, 957.) A pretrial detainee must be shown the minimal civilized measure of life's necessities. (See *Rhodes v. Chapman* (1981) 452 U.S. 337, 347.) Continuing to double-cell detainees in the midst of a pandemic violates these rights. In short order unsafe sanitary conditions will overwhelm the county's emergency medical service's ability to provide even minimal care for incarcerated persons. As explained by medical professionals who have worked inside the Sacramento Jail system, the jail system lacks the sanitary conditions and medical infrastructure to adequately deal with COVID-19.

**V. Continued Pretrial Confinement Converts Pretrial Detention to Punishment.**

But for Petitioner's lack of financial resources, he would be released. To continue to hold him on the functional equivalent of no bail during a pandemic is unequal treatment in violation of the Equal Protection clause. (See *Humphrey, supra*, 19 Cal.App.5th 1006; see also, *Bearden v. Georgia* (1983) 461 U.S. 660.)

Because of the new orders suspending jury trials, Petitioner is immediately condemned to serve at least 120 days before adjudication of their case, in violation of the Fifth Amendment to the Constitution of the United States and article I, section 7 of the California Constitution. Bail is not a means of punishment; in California, bail is a tool of public safety and assurance that a case will be adjudicated. (Cal. Const., art I, §§ 12, 28; *In re Underwood* (1973) 9 Cal.3d 345, 348.) A person accused of a misdemeanor held in pretrial confinement has a statutory right to a jury trial within 30 days of arraignment. (Pen. Code, § 1382.) For felony accusations, the right is a trial within 60 days of arraignment on an information. (*Id.*) The COVID-19 Order laps both rights for those currently held in pretrial confinement.

**VI. The Lower Court Erred in Refusing to Take Evidence from Petitioner’s Witnesses.**

The lower court has refused to hear evidence from Petitioner’s witnesses. The lower court’s action interferes with a host of Petitioners’ constitutional rights. By statute, Petitioner is also entitled to apply for a bail reduction based on changed circumstances. (Pen. Code, § 1289.) Indeed, even Penal Code section 1269c references the defendant petitioning the court to reduce bail. Petitioner should have been allowed to present witnesses establishing the public safety concerns presented by the Sacramento County jail system.

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## **VII. Public Safety is Threatened by Maintaining Current Incarceration Levels.**

The Judicial Council's very rationale for the Emergency Mandatory Bail Schedule underlines the public safety need intrinsic in reducing the jail population. That rationale is further justified by medical professionals who have completed the attached declarations and letters in support of the defense efforts to comply with the new rules and public safety guidelines. (See "Exhibits in Support of Reply" filed concurrently.) These medical experts agree that the jail system must be reduced to single-cell occupancy, not as a matter of bail reform or criminal justice reform, but as a matter of public safety.

These experts give further weight to the public policy decision behind the Judicial Council's order. For instance, Bruce Pomer, a public health expert who has served California on nearly every level of public health administration, states that in his professional opinion, "the community is at great risk if the jail population is not reduced to single cell occupancy." (Exhibit A, Declaration of Bruce Pomer p. 5, paragraph 20.) If there is an outbreak in the jail, it will quickly overwhelm our community's public health system. (Exh. A, para. 22.) Bruce Pomer is the former Director of Governmental Affairs and former Executive Direct for the Health Officers Association of California. He led the national committee for the National Association of City and County Health Officials through which he evaluated the emergency preparedness for 58 of the state's 61 city and county health systems. His findings were published in the paper "Emergency Preparedness in California's Local Departments."

In setting the new bail schedule, the Honorable Marsha G. Slough, Hon. David M. Rubin, Hon. Kyle S. Brodie, Hon. Marla O. Anderson, and Hon. Harry E. Hull all recommended the Emergency Mandatory Bail Schedule to the Judicial Council “in order to protect the health and safety of the public, court employees, attorneys, litigants, and judicial officers, as well as staff and inmates in detention facilities, and law enforcement during the state of emergency.” (*Emergency Rules Report*, p. 2.) These judges explained (and the Judicial Council agreed) that “it is critical to balance the demands on the courts and concerns for the public.” (*Ibid.*) Their recommendations ensure the health and safety of the public. (*Ibid.*)

In discussing the specific features of courts, the Emergency Rules Report explains that, “A surge of COVID-19 cases is expected in the next two weeks, and the Governor predicts that the state needs another 50,000 hospital beds to accommodate new cases.” (*Emergency rules Report*, p. 5.) “[C]ourts are clearly high-risk places during this pandemic because they require gatherings of judicial officers, court staff, litigants, attorneys, witnesses, defendants, law enforcement, and juries in numbers well in excess of what is allowed for gathering under current executive and health orders. Indeed, many court facilities in California are ill-equipped to implement social distancing and satisfy other public health requirements necessary to protect people involved in court proceedings and prevent the further spread of COVID-19.” (*Emergency Rules Report*, pp. 5-6.)

Specifically in addressing the rationale behind the new Emergency Mandatory Bail Schedule, the Judicial Council explained that “trial courts have a vital role to play in balancing public safety and public health by assisting to safely reduce jail populations in a manner that protects the health of inmates, jail staff, those who transport defendants to courts, and others as individuals leave jail and return to their communities.” (*Emergency Rules Report*, p. 9.)

The Judicial Council recalled that on March 20, 2020, the Chief Justice of California and Chair of the Judicial Council advised all counties to revise their countywide presumptive bail schedules to \$0 for nearly-all misdemeanors and lower-level felonies. Following the advisory, some courts adopted new schedules and some did not. Sacramento did not until after the Judicial Council ordered such. In the face of the pandemic and need for uniformity the Judicial Council made the new bail schedule mandatory, giving the counties no later than 5:00 p.m. on April 13, 2020 to apply these rules. (*Emergency Rules Report*, pp. 9-10; Emergency Rules, Rule 4(b).) And against these public safety concerns, the prosecution has proffered their “objections,” which fail to rise to the level necessary to trigger the hearing the prosecutor seeks. (Pen. Code, §§ 1269c, 1270.1(e).)

Indeed, the Judicial Council’s analysis and rationale comports with the best science in the field. Many of the defendants listed in the prosecutor’s objection have already sought release. (See footnotes 2 & 3, *supra*.) That request was supported by an exhibit demonstrating the same compelling circumstances recognized by the Judicial Council. (See Exhibit 2.) Since that request, additional medical

professionals have evaluated the public safety dangers presented by continued incarceration of so many people within the Sacramento County jail system. As argued in other pleadings, the Sacramento County Main Jail has 1,250 cells.<sup>5</sup> The Rio Cosumnes Correctional Center (“the Branch”) uses pod-style housing able to confine 1,625 inmates. Both locations confine numbers of people far beyond what is reasonable considering the emergency, life-saving orders instituted at various levels of government. Moreover, both institutions double-cell confined persons, thereby making the six-foot requirement impossible. To add to the numbers, hundreds of Sheriff’s personnel staff both institutions and have close contact with the inmates.

The Judicial Council has considered the public safety risks of the crimes within the Emergency Mandatory Bail Schedule. The Judicial Council has balanced the risks posed by resetting bail to \$0 and maintain current pretrial detention levels. Incarceration has been found wanting.

### **VIII. Pretrial Detention Must be Reviewed De Novo.**

“In our society, liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.” (*United States v. Salerno* (1987) 481 U.S. 739, 755.) Generally, any person charged with an offense other than a capital offense may be released on his or her own recognizance. (Pen. Code, §§ 1270, 1270.1 [requiring hearing of certain crimes], and 1270.5 [capital offenses], [repeal

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<sup>5</sup> <https://www.disabilityrightsca.org/system/files/file-attachments/702701.pdf>, access March 17, 2020. See also, fn. 6.

contingent].) The determination made in deciding bail is a mixed question of law and fact, similar to other issues occasioning independent review. (See *People v. Cromer* (2001) 24 Cal.4th 889, 901 [appellate court sits de novo in reviewing trial court's determination that prosecution used due diligence in securing the appearance of a witness]; But see, *In re Application of Black* (1934) 140 Cal.App. 361, 361 [trial court decision on bail subject to abuse of discretion review], *People v. Brown* (1960) 184 Cal.App.2d 588 [requiring appellants to pursue bail reduction as a precursor to appellate review].) While *Black* and *Brown* indicate deferential appellate review, neither case is authoritative, neither has been much cited by other courts (*Black* just four times and *Brown* nine times), and both preexisted major developments in statutory, constitutional and case law. (See e.g., 1982 Prop 4, 1982 Prop. 8, 2008 Prop. 9, *In re Humphrey, supra*, 19 Cal.App.5th at 1048 and *In re White* (2018) 21 Cal.App.5th 18.)

Mixed questions are those in which the historical facts are admitted or established and the only issue is if those facts satisfy the relevant constitutional or statutory standard. (*Cromer, supra*, 24 Cal.4th at 895.) Where a mixed question involves a constitutional right, a reviewing court must apply independent review. (*Ibid.*; see also *Ornelas v. United States* (1996) 517 U.S. 690 [Fourth Amendment] and *Thompson v. Keohane* (1995) 516 U.S. 99 [Fifth Amendment].)

The constitutional right here lies at the very heart of freedom, liberty, and Due Process. The fundamental principle behind the celebrated American criminal justice system is that each person is

innocent until proven guilty and no person is punished before judgment. (US Const., amend. V, XIV; see e.g., *Salerno, supra*, 481 U.S. 739.) An accused’s liberty is a fundamental interest “second only to life itself” in constitutional importance. (See *Van Atta v. Scott* (1980) 27 Cal.3d 424, 435, *superseded by statute*.) Pretrial detention of accused persons inflicts a direct grievous loss upon the accused. (*Ibid.*)

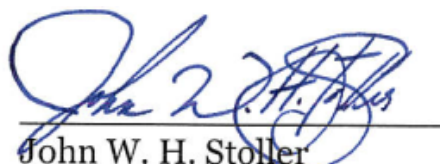
In non-pandemic times, the consequences of prolonged detention can be serious, imperiling the accused’s job, family, and ability to prepare his defense. (*Gerstein v. Pugh* (1975) 420 U.S. 103, 114, 123; see also *Barker v. Wingo* (1972) 407 U.S. 514, 532-533.) Now that the Chief Justice of California has suspended all jury trials for at least 60 calendar days, the petitioner is condemned to serve at least 120 days of a sentence without determination of guilt or innocence. (Pen. Code, §§ 2900.5, 4009.)

**CONCLUSION**

This court should order the release of Petitioner and petitioners who can be safely released to their communities pending trial. Because the lower court has abdicated its responsibility to accused persons to protect them from unlawful confinement, this Court must act.

Dated: April 17, 2020

Respectfully submitted,

  
\_\_\_\_\_  
John W. H. Stoller  
Assistant Public Defender

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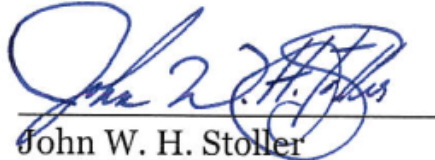


**BRIEF FORMAT CERTIFICATION**

Pursuant to California Rules of Court, Rule 8.204(c) and Rule 8.486, I certify that the foregoing brief is in 13-point, Georgia Font, a conventional roman typeface and contains 10,647 words, according to the word-count function of Microsoft Word, which was used to prepare the brief.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and this declaration was executed on April 17, 2020, in Sacramento, California.

Signed,

  
\_\_\_\_\_  
John W. H. Stoller  
Assistant Public Defender

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**DECLARATION OF URGENCY RE: EXHIBITS**

Pursuant to California Rules of Court, Rule 8.486, section b, subsection 2, I, John W. H. Stoller, hereby declare:

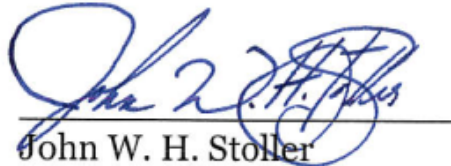
1) Pursuant to a standing order issued on March 17, 2020, the clerk's office of the Superior Court of California, County of Sacramento has been closed and continues to be closed during the filing of this writ due to the COVID-19 pandemic;

2) The court has not provided attorneys with access to an electronic substitute for the clerk's office. Nor does the court have a clerk available to receive and file pleadings. Rather, the court has placed a blue drop box in front of the security kiosk in the courthouse and deputies are instructed to not let persons any further into the building. The court has allowed for e-filing to individual departments. To my knowledge, the court has not formalized a process to confirm e-filings;

3) Due to the closure, I have been unable to obtain documents in compliance with Rule 8.486. To the best of my ability, I have attached as exhibits copies from my office's records. These exhibits are true and accurate copies of documents taken from my own files.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on April 17, 2020, in Sacramento, California.

Signed,



John W. H. Stoller  
Assistant Public Defender

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE**

PEOPLE OF THE STATE OF  
CALIFORNIA,

Plaintiff,

v.

DEFENDANTS IN  
EXHIBIT B,

Defendant.

Case No.: D0

Superior Ct. No.: See Exhibit B

**EMERGENCY PETITION FOR WRIT OF MANDAMUS, or, in  
the alternative, EMERGENCY PETITION FOR WRIT OF  
HABEAS CORPUS**

Honorable Laura Alksne, Judge, Presiding

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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FOURTH APPELLATE DISTRICT  
DIVISION ONE**

PEOPLE OF THE STATE OF  
CALIFORNIA,

Plaintiff,

v.

DEFENDANTS IN  
EXHIBIT B,

Petitioners.

Case No.: D0  
Superior Ct. Case No.:

**EMERGENCY PETITION FOR  
WRIT OF MANDAMUS/ WRIT  
OF HABEAS CORPUS;  
REQUEST FOR IMMEDIATE  
EMERGENCY RELIEF**

**INTRODUCTION**

Under the new Mandatory Emergency Bail Schedule promulgated by the Judicial Council through Emergency Rule 4, bail for all individuals in custody must be reset unless the Constitution allows the trial court to deny bail. (Cal. Const., Art. I, § 12, § 28(f); Amendments to the California Rules of Court, Appendix 1, Emergency Rules, Rule 4, subd's (c) & (d), effective April 6, 2020 [hereinafter, *Emergency Rules* and *Emergency Mandatory Bail Schedule*].)

In its April 13, 2020 'General Order Emergency Bail Schedule; Order #041320-42' (EXHIBIT A), the San Diego Superior Court instead set forth a procedure that delays and denies the *mandatory*

resetting of bail where the prosecution is opposed and allows only one party to request a bail hearing. At the time of this writing, the District Attorney has identified 176+ cases (40% of eligible cases) for which they seek the defendant be held in custody indefinitely or an increase in bail. (EXHIBIT B) Of those, 44 individuals have been held in custody without ever having seen a Judge or been advised of the charges against them – some for as long as a month. At least seven (7) are facing misdemeanor charges *only*.

This order should be rescinded by the Court of Appeal and the Superior Court should be ordered to proceed with immediate implementation of the Emergency Bail Schedule as mandated by the Judicial Council without the ability of the prosecution to slow, stall, or further delay the mandatory release of eligible defendants.

### Allegations

Therefore, Petitioners Pray for an Emergency Writ of Mandamus, or in the alternative, an Emergency Writ of Habeas Corpus alleging the following:

#### I.

Due to the immediate and ongoing impact of the COVID-19 pandemic, the Judicial Council created a mandatory statewide bail schedule requiring bail to be set at \$0 in all cases unless otherwise enumerated. (See *Emergency Rules Report; Emergency Rules*.) The Judicial Council explained that the new bail schedule balances public safety and public health during the COVID-19 pandemic. (*Emergency Rules Report*, at p. 9.) In the face of a virus that can infect and kill persons far removed from an original carrier, the Judicial Council recognized that protecting the public means transitioning away from widespread pre-adjudication detention. Specifically, the new rules aim to “reduce jail populations in a manner that protects the health of

inmates, jail staff, those who transport defendants to courts, and others as individuals leave jail and returned to their community.”<sup>1</sup> (*Ibid.*) As the Judicial Council explains, in our times, public safety includes protecting the public from COVID-19. (*Ibid.*) As such, the Judicial Council mandated that Courts “must” set bail at \$0 for all felonies and misdemeanors, except for 13 enumerated offenses or category of offenses. In cases involving those charges, the county bail schedule is maintained, wherein a Judge “retains authority” to reduce the amount of bail. (Emergency Rule 4(d), and 4(e)(2)). The order was adopted by the Council, and ordered to go into effect not later than 5pm Monday, April 13, 2020.

## II.

Instead, on April 13, 2020, at 5p.m., the Presiding Judge of the San Diego Superior Court issued Order #041320-42, implementing a modified bail schedule that created novel exceptions:

1. The day and time for release of those with \$0 bail will begin at 5pm on April 15, 2020, or “as soon thereafter is feasible.”
2. The prosecuting agency is allowed to review the Sheriff’s list of individuals entitled to have bail reset at \$0, and delay their release by a phone call.
3. The parties are ordered to meet and confer regarding the cases wherein the District Attorney objects to reduced bail, and once notified of the results of those negotiations, those

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<sup>1</sup> Before the Judicial Council meeting discussing and voting to adopt the Rules, a public comment period was open – hundreds of comments were submitted and read and considered by the Council. (Transcript of April 6 Judicial Council Meeting.) It is unknown at the time of this writing whether the San Diego Superior Court, District Attorney, or Sheriff submitted comment before the April 6<sup>th</sup> meeting.

cases in dispute will be reviewed by a judicial officer via a “telephone conference as soon as is practical.”

All of these exceptions run afoul of the Mandatory Emergency Bail Schedule enacted by the Judicial Council and should be rescinded.

### III.

There is no legal basis to delay the provisions of the Emergency Bail Schedule, to “object” to it, or to carve out exceptions to it. The new schedule is that—mandatory - and makes no provision to object or request a different dollar amount. The prosecution knows they have no right to object or delay the implementation of the Emergency Bail Schedule and outlined their agreement in a letter to the Chief Justice of the California Supreme Court. (See Exhibit D, *infra*.) Should the prosecutor seek to review the new order, it is through extraordinary writ. (*In re Alberto* (2002) 102 Cal.App.4th 421, 431.)

### IV.

To the degree the prosecution desires a bail amount higher than the emergency bail schedule, the argument is irrelevant and redundant. The Judicial Council did not permit amounts in excess of the Mandatory Emergency Bail Schedule where it applies. Insofar as the prosecution makes “public safety” arguments that do not rise to no-bail findings, they should be ignored. The Judicial Council has already determined the amount of bail that adequately protects public safety during the COVID-19 pandemic. (See Report to the Judicial Council, *Emergency Rules in Response to the COVID-19 Pandemic*, dated April 4, 2020, effective April 6, 2020 [hereinafter, *Emergency Rules Report*]; Cal. Const., art. I, § 28(f).) For the thirteen enumerated offenses, public safety has already been weighed. Moreover, the “objection” is statutorily insufficient to even trigger a

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hearing. (Pen. Code, §§ 1269c, 1270.1(e) [requiring sworn declarations].)

## V.

As to any cases on which the prosecution seeks a departure from the mandatory schedule, they bear the burden of making a sufficient showing for the court to even think the cases fit the limited no-bail exceptions in the constitution. (Cal. Const., art. I, § 12, § 28(f).) Reasons proffered by the prosecution to hold the named defendants in custody amount to little more than vague statements about the defendant’s prior criminal history and fail to meet the factual and evidentiary burdens involved. (See EXHIBIT B: “danger”, “alcoholic”, “history”, “crime risk”, “fent” [fentanyl?]) are reasons listed as grounds for the objections) (*In re White* (2018) 21 Cal.App.5th 18, 29, review granted, S248125, *In re Nordin* (1983) 143 Cal.App.3d 538.) Mere assertion of “danger” or “public safety” cannot meet the constitutional standard.

## VI.

On April 15, 2020, the Office of the Public Defender filed a “Defense Objection to Order #041320-42 (SDSC Emergency Bail Order 041320); Motion to Reset Bail Pursuant to Emergency Bail Schedule Forthwith.” The objection included Exhibits A-C (attached hereto). A hearing was subsequently scheduled to address the “Objection and Motion” on April 22, 2020. (See EXHIBIT F)

## VII.

After filing the April 15 motion, the Office of the Public Defender received two additional documents that show that our Justice Partners in the County are in agreement with the plain-meaning interpretation

of Rule 4 propounded here. The first is a letter dated April 10<sup>th</sup> from District Attorney Summer Stephan, imploring the Chief Justice to amend Rule 4 because as written, it demands \$0 bail for all of the eligible inmates (herein described as: Petitioners). (EXHIBIT D) It is clear that the District Attorney of San Diego County agrees with the assessment of Emergency Rule 4 set forth in the above-named motion. The second set of documents were published by the San Diego Sheriff. (EXHIBIT E) Based on the documents presented in Exhibit E, it appears that the Sheriff and his Legal Team also agree with the Defense interpretation of the Emergency Bail Schedule - the plain language reading of the mandatory statewide order.

### VIII.

On April 16, 2020, The Office of the Public Defender filed Supplemental Exhibits D-E with the court. In light of the apparent concessions by the Prosecutor and Sheriff in exhibits D & E, the Office of the Public Defender submitted a request for the Presiding Judge to issue a ruling on the motion or advance the hearing to April 17, 2020.

### IX.

On April 16, 2020, the Office of the District Attorney sent an email response<sup>2</sup> – objecting to the request to advance the hearing

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<sup>2</sup>The email reads, in pertinent part: “In order to adequately prepare a complete, clear, and concise reply for this Court, and to have adequate time for review, I am requesting that this Court maintain the schedule provided to the parties this morning. The timeline set forth by this Court for a reply to be filed and a hearing on the matter comply with San Diego Superior Court rule 3.2.1(B), and should be maintained. In accordance with that order, I intend to file the opposition by 5 p.m. on Monday, April 20<sup>th</sup>. In addition, I will be arguing the matter telephonically at the hearing set by this Court on Wednesday, April

and expressing a concern that “a decision rendered without allowing SDCDA to file a reply or to be heard in court would deprive SDCDA of its rights under the San Diego Superior Court rules.” While we appreciate the concern with deprivation of rights – there are no “rights” imbued under the local rules of court that override the petitioners’ constitutional rights to liberty, due process, equal protection, and a speedy and public trial.

COVID-19 is lethal. What the Judicial Council is protecting with Emergency Rule 4 is nothing less than the right to life. Therefore, the Office of the Public Defender respectfully requests this Court to consider this Emergency Petition forthwith without any further delay.

### Prayer

**WHEREFORE**, the Petitioner prays a Writ of Mandamus or in the alternative, a Writ of Habeas Corpus, be issued

- (1) rescinding the portion of Order #041320-42 that does not comply with the Judicial Council’s Mandatory Statewide Emergency Bail Schedule;
- (2) directing both the San Diego Superior Court and San Diego Sheriff to proceed with immediate enactment and implementation of the Mandatory Statewide Bail Schedule for

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22<sup>nd</sup>. In contrast, a decision rendered without allowing SDCDA to file a reply or to be heard in court would deprive SDCDA of its rights under the San Diego Superior Court rules.”

all eligible pretrial and post-conviction supervision violators  
with no exceptions or delays; and

- (3) For such further relief as this Court deems appropriate and  
in the interest of justice.

DATED: April 17, 2020

Respectfully submitted,  
RANDY MIZE, Public Defender  
Office of the Public Defender

By: /s/  
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**GROUND FOR EXTRAORDINARY EMERGENCY WRIT  
RELIEF**

**A. An Emergency Writ Of Mandamus Is An Appropriate Vehicle  
For Petitioners To Seek Relief**

A writ of mandate/mandamus is proper and may be issued in order to compel an inferior court to act in conformance with the law. (California Code of Civil Procedure (‘CCP’) §1085.) While a writ of mandate does not lie where a court has discretion to act, the writ is proper where the law compels a court to act in a particular way. (*Zullo v. Superior Court* (2011) 197 Cal.App.4th 477, 483; *Hilmer v. Superior Court* (1934) 220 Cal.71, 73.)

A writ of mandate is proper where a court has refused to perform a clear legal duty. (*Taliaferro v. Locke* (1960) 182 Cal.App.2d 752, 755.) In *Taliaferro v. Locke*, the First District for the California Court of Appeal addressed whether it was appropriate to issue a writ that sought to, among other issues, compel a judge to issue an arrest warrant. (*Id.* at pp. 754-755.) Where a writ is sought to compel a court to act, the court found that a writ should not issue unless the moving party can demonstrate that the court has not performed a mandatory duty. According to the court, “It is only where a court has refused to perform a clear duty, unmixed with discretionary power or the exercise of judgment that mandamus will issue; it is the duty of the petitioner to show that the duty sought to be enforced does not involve judgment or discretion.” (*Id.* at p. 755.) Because a court must determine whether there is sufficient evidence of a crime before issuing an arrest warrant – and thus, must exercise discretion – the court found that a writ of mandate was not proper. (*Id.* at pp. 754-755.)

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Here a writ of mandate is proper because Emergency Rule 4 imposes a mandatory duty upon the superior court. Specifically, Emergency Rule 4 states: “No Later than 5 p.m. on April 13, 2020, each superior court must apply the statewide Emergency Bail Schedule...” (Emergency Rule 4.) Continuing, the order details what bail “must be” for particular classes of offenses and individuals. (Emergency Rule 4.) The Rule mandates superior courts to act a particular way, leaving the superior courts with no discretion.

Such a writ must issue where there is no “plain, speedy, and adequate remedy, in the ordinary course of the law.” (CCP §1086.) Here, there is no ability to immediately appeal the superior court’s April 13, 2020 order. The Chief Justice made her initial order on April 6, 2020. One week later, the superior court issued an order to implement the Chief Justice’s Emergency Bail Schedule. The court has now set a hearing on April 22, 2020, in order to address the conflicts between its own order and the Chief Justice’s order – 16 calendar days after the Chief Justice’s order was adopted. Under the circumstances of this public health crisis, this timeline is anything but speedy. There are over 4,000 people in San Diego County jails, many of whom are in close proximity to one another (see Section IV, *infra.*). The extraordinary nature of this virus, and the extraordinary public health crisis that it has caused, renders anything but extraordinary writ relief to be inadequate.

Writ review is also proper where a constitutional issue is presented on the face of the record. (See *Preston v. Municipal Court* (1961) 188 Cal.App.2d 76.) Here, by leaving Petitioners incarcerated and in danger of catching a deadly virus, many of whom are in close proximity to one another, suffering underlying medical conditions, or of

advanced age, the court's order implicates and threatens, if not curtails, the life and liberty interests of the named individuals.

**B. An Emergency Writ Of Habeas Corpus Is An Appropriate Vehicle For Petitioners To Seek Relief.**

An individual who is unlawfully imprisoned may petition for a writ of habeas corpus. (Pen. Code § 1474.)

In this case, each identified individual is in custody in San Diego County Jail. Though the Chief Justice issued Emergency Rule 4 on April 6, 2020, which mandated the release of each eligible individual no later April 13, 2020, the presiding judge of the San Diego Superior Court issued Order #041320-42 on April 13, 2020 at 5pm. This has led to the continued unlawful incarceration of over 175 individuals who are immediately entitled to \$0 bail pursuant to Emergency Rule 4. Each of the named individuals is in custody, is entitled to immediate release, and there is no ability to immediately appeal Order #041320-42. Additionally, the ongoing incarceration of each named individual renders each individual incarcerated in close proximity, and vulnerable to a lethal illness. No previous petitions have been filed, and this petition was filed one week after the Emergency Rule was adopted and then only upon the court's decision to defer action on the pending motion until April 22, 2020.

**POINTS & AUTHORITIES**

With few exceptions, a criminally accused has the right to release pending adjudication subject to sufficient sureties. (Cal. Const., art. I, § 12; Pen. Code, § 1271.) In light of the evolving pandemic, the Judicial Council determined "sufficient sureties" for specified cases to be \$0. (Emergency Rules, Rule 4.) The prosecutor seeks a contrary finding for certain individuals named in Exhibit B who otherwise

qualify to have their bail reset. First, the new bail schedule is *mandatory* and not presumptive. The courts cannot exceed the new schedule where it applies. Second, the prosecution's objections do not meet the tests for no-bail as dictated by the California Constitution, and even the prosecution concedes there is no basis in the Mandatory Emergency Bail Schedule to allow them to contest or object to \$0 bail for eligible defendants. (See Exhibit D). Finally, the San Diego Superior Court order delaying the implementation and release of anyone eligible for \$0 bail is null and void.

I.

**The Emergency Mandatory Bail Schedule is Mandatory. The Superior Court Cannot Require an Amount in Excess Merely Because the Governing Body of the Courts Require a Bail Lower than Previously Set. The Superior Court Cannot Create Exceptions at All, Nor Can They Allow Only the Prosecuting Agency Authority to Delay or Inhibit Its Application.**

The Judicial Council and Chief Justice of California, through inherent rulemaking power, has created a *mandatory* bail schedule. (Cal. Const., Art. VI, § 6(d). This Mandatory Statewide Bail Schedule exists outside of the countywide presumptive bail scheme.

Under our state Constitution, the Judicial Council is the governing body for the courts. Through it, the Chief Justice is required to expedite judicial business and equalize the work of judges. (*Id.* at § 6(e).) Judges across the courts are required to report to the Council as directed by the Chief Justice and cooperate with the Council and hold court as assigned. (*Id.* at § 6(f).) In this capacity, the Council weighed public safety concerns surrounding overcrowded jails and COVID-19, and ordered bail be reset in these cases to \$0 or as appropriate for other crimes. (Emergency Rules, Rule 4.) While the Emergency

Mandatory Bail Schedule is different than the countywide presumptive bail schedule scheme, the Judicial Council took into consideration the same factors considered in the presumptive bail scheme, including public safety. (*Emergency Report*, pp. 2-3.)

First, it is axiomatic that the lower court does not have the authority to issue local rules which conflict with statutes or are otherwise inconsistent with the law. (*Rutherford v. Owens-Illinois* (1997) 16 Cal.4th 953, 967.) Indeed, “[i]f a trial court adopts a rule that conflicts with any statewide statute, rule of law, or Judicial Council rule, then it is an inappropriate exercise of that court’s powers.” (*Hall v. Superior Court* (2005) 133 Cal.App.4th 908, 917.) Moreover, even if the court did have that authority in general, the Emergency Rules are not discretionary or advisory; Rule 4, paragraph (b) clearly specifies that these rules are *mandatory* and must be applied no later than April 13, 2020.

The prosecution wants to challenge the Judicial Council’s findings and determinations about the appropriate amount of bail in the midst of a global pandemic. But even under the statutory presumptive bail scheme, the prosecution has not shown good cause for requesting bail hearings. The court has received no justification entitling it to disobey the Judicial Council’s order. Because the court may not set bail “in a sum that is the functional equivalent of no bail,” the former sum represented the determination that defendants could be safely released provided they could afford bond or bail. (*In re Christie* (2001) 92 Cal.App.4th 1005, 1009 [requiring court state specific facts justifying departure from the bail schedule].) Between the Judicial Council and the courts, the law is: the defendant is eligible for bail, and “sufficient sureties” during the pandemic is \$0.

The prosecutor’s ability to object to the Judicial Council’s order is without merit, good cause, or even adequate basis under the Penal Code. (Pen. Code, §§ 1269c, 1270.1.) In a letter written to the Chief Justice of the California Supreme Court, the prosecution concedes there is no ability to object to the Judicial Council’s order setting bail. (See Exhibit D)

The Judicial Council only allowed for review and ‘no bail’ in very rare cases. (See Exhibit D) So, the prosecution’s concession that there is no method to review a defendant’s eligibility for \$0 bail makes any reliance on Penal Code section 1269c meritless. Penal Code section 1269 has specific requirements—that the arrest be without a warrant or for a listed domestic violence offense—and other specific preconditions that are not met in the instant cases. (See *Gray v. Superior Court* (2005) 125 Cal.App.4th 629, 642; see also, *People v. Lexington National Ins. Corp.* (2015) 242 Cal.App.4th 1098, 1103 [discussion describing bail increases].) Indeed, there must be a sworn declaration of sufficient facts justifying the increase before the court may even proceed on the prosecutor’s objections. (Pen. Code, § 1270.1(e).) That has not happened here. Thus, the prosecutor has offered nothing to support their rejection of the new bail schedule and seeks to hold up the process on nothing more than his objection.

The County’s presumptive bail schedule does apply to a defendant who is eligible for \$0 bail. Even under the statutory presumptive bail scheme, however, good cause to increase bail must be founded on at least changed circumstances relating to the defendant or the proceedings. (Pen. Code, § 1269b [countrywide presumptive bail scheme]; See Pen. Code, § 1129 [bail during pendency of trial], § 1269c [bail setting for arrest without a warrant on domestic violence related offenses], § 1272 [bail upon conviction], § 1289 [bail upon arraignment

on information or indictment], § 1305 [forfeiture upon failure-to-appear]; see *In re Alberto, supra*, 102 Cal.App.4th 421 [second judge may not reset bail merely because it viewed earlier order was not valid].) On top of changed circumstances, various code sections and constitutional provisions have their own factual and evidentiary tests to determine bail. (E.g., Cal. Const., art. I, § 12; Pen. Code, § 1269c.) None of those requirements apply under the mandatory emergency bail schedule. But even if they did, in these cases, there are no changed circumstances from the Judicial Council's order other than the fact that the circumstances of the times require \$0 bail.

The prosecution's remedy is not lodging an objection to the mandatory emergency bail schedule imposed by the Judicial Council, but to seek review through extraordinary writ. (*Alberto, supra*, 102 Cal.App.4th at p. 431.) In *Alberto*, the defendant was first accused of robbery charges and bail was set at \$35,000. Sometime thereafter, a grand jury issued an indictment alleging murder arising out of the same incident. On the arraignment, the court kept the bail as previously set indicating that it was substantively the same case and that the defendant had made nine court appearances. In front of a different judge, the prosecution sought bail review. The second judge indicated that the first judge failed to comply with the statutory requirements in setting bail and fixed bail in accordance with the presumptive schedule. An extraordinary writ was filed in the appellate court.

The appellate court explained that the second superior court judge was not so empowered and remanded the case for the lower court to determine if changed circumstances supported reevaluating the first judge's bail determination. The court explained that even if clearly erroneous, the superior court judge could not undermine the prior

orders without good cause and changed circumstances. (*Alberto, supra*, 102 Cal.App.4th at p. 430.) Similarly, this court cannot impose a different bail amount because it disagrees with the Judicial Council’s evaluation of public safety and sufficient sureties.

Moreover, the above statutes and the statutes (presumably) relied on by the prosecution are part of the statutory scheme for *presumptive* bail. (Pen. Code, § 1269b.)<sup>3</sup> The statutory caveats allowing courts to exceed the statutorily-based presumptive bail schedule do not apply to the Emergency Mandatory Bail Schedule. (See Rule 4(a), “Notwithstanding any other law...”) Here, the Judicial Council has ordered bail to be reset to \$0 for all crimes save those listed in subdivision c of Emergency Rule 4. The Judicial Council weighed public safety and the risks to public health presented by maintaining the current jail population and concluded \$0 is appropriate. The Judicial Council has barred lower courts from setting set bail above the mandatory schedule.

## II.

### **The Rules of Statutory Construction Are Clear- the Emergency Bail Schedule is Mandatory and Must Be Implemented Precisely as Written.**

The duty of the superior court is not to interpret the Judicial Council’s directive – it is to implement and enforce it. Unlike legislative enactments, the Emergency Bail Schedule was

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<sup>3</sup> While in typical times it is a county’s obligation to craft a *presumptive* bail schedule, there is no statute or principle which prohibits the Judicial Council and Chief Justice from promulgating a mandatory emergency bail schedule. (Cf. Pen. Code, § 1269b and Gov. Code, § 53071 [“It is the intention of the Legislature to occupy the whole field of regulation of the registration [of firearms]”]; See *In re Robin M.* (1978) 21 Cal.3d 337 [rule of court plainly conflicted with statute].)



written by the Chief Justice of the California Supreme Court and other judges with the emergency powers granted them by Governor Newsom.

***A. The Rule’s Plain Meaning Controls: The Rule Explicitly States that the Superior Court May Reduce Bail Below the Existing County Schedule for the 13 Exceptions, or May Deny Bail Where Allowed by the Constitution, but the Rule Does Not Allow the Superior Court to Increase the Emergency Bail Schedule Amounts, Nor Does it Allow the Prosecutor to Deny a Defendant \$0 bail by Objecting.***

It is well-settled that “plain meaning controls if there is no ambiguity in the statutory language.” (*People v. Cornett* (2012) 53 Cal.4th 1261, 1265.) To be ambiguous, the statutory language must be “susceptible to more than one reasonable interpretation.” (*Hoechst Celanese Corp. v. Franchise Tax Bd.* (2001) 25 Cal.4th 508, 519.) Here, the order enacting the Mandatory Bail Schedule could not be more clear: the choice to use terms with precise, unambiguous legal meaning, (i.e., “mandatory”, “must”, “shall”, “notwithstanding any other law”, and “no later than...”) leaves no room for misinterpretation. In no uncertain terms, the Chief Justice of the California Supreme Court and the Judicial Council ordered that bail “must” be set at \$0 unless certain exceptions apply. (Emergency Rule 4(c)(1-13)) None of the enumerated exceptions apply here.

This “Mandatory” order was to go into effect “no later than 5pm on April 13, 2020,” (Emergency Rule 4(b).) The stated purpose of the Rule enacting the Emergency Bail Schedule is to “establish[] a statewide emergency bail schedule ...to promulgate uniformity in the handling of certain offenses during the ...COVID-19 pandemic.” (Rule 4(a)) The Rule also suspends any other laws to the contrary, and

therefore any arguments based on those laws. (See Rule 4(a), “Notwithstanding any other law...”)

When interpreting statutes, both headings and body are of constructive importance. (See, *People v. Durbin* (1963) 218 Cal.App.2d 846.) This order was styled as having “Mandatory Application” (4(b)), and mandated that the superior courts “must” apply the statewide emergency bail schedule. The meaning of that order is difficult to misconstrue. “The ordinary meaning of “shall” or “must” is of mandatory effect, while the ordinary meaning of “may” is purely permissive in character.”, (*Id.* at p. 849, quoting 27A Words and Phrases (permanent ed. 1961) p. 674); see also *People v. Balt* (1947) 78 Cal.App.2d 171.)

The San Diego Superior Court Order adds language into the Judicial Council’s mandatory emergency bail schedule. Further, “ ‘insert[ing]’ additional language into a statute ‘violate[s] the cardinal rule of statutory construction that courts must not add provision to statutes. This rule has been codified in California as [Code of Civil Procedure] section 1858, which provides that a court must not ‘insert what has been omitted’ from a statute.” (*People v. Guzman* (2005) 35 Cal.4th 577, 587.) Courts have no power to add words to a statute to conform it to an assumed intent that does not appear from the statute’s actual language. (*People v. Eckard* (2011) 195 Cal.App.4th 1241, 1249.) In addition, courts cannot rewrite a statute unless it is “ ‘compelled by necessity and supported by firm evidence of the drafters’ true intent.’ ” (*Guzman, supra*, at p. 587.)

By using terms like “mandatory”, “must”, and setting a firm deadline, the Judicial Council made its intent clear – all superior courts are to implement and follow the order setting \$0 bail; while the

thirteen enumerated exceptions “maintain” the countywide bail schedule (Rule 4(e)(1)). However, the Judicial Council did not strip a Judge of her constitutional discretion, they carved out two specific judicial exceptions:

1. The Superior Court “retains authority to reduce amount of bail” (Rule 4(e)(2); and
2. The Superior Court retains the “ability to deny bail as authorized by article I, section 12, or 28(f)(3) of the California Constitution” (Rule 4(d))

By explicitly referencing these two actions available to a judge, the Judicial Council’s express provisions exclude other possible choices. The doctrine of *Expresio Unius est Exclusio* – that which isn’t included is excluded – is controlling. Or more eloquently, “when one or more things of a class are expressly mentioned, others of the same class are excluded.” If the Judicial Council intended to give judges authority to raise bail amounts, or prosecutors the ability to object to the emergency bail schedule, they would have so stated. They did not, therefore no such exceptions exist.

***B. Emergency Rule 4 Supersedes and Suspends All Statutes and Laws that Conflict with its Plain Meaning.***

In light of the State of Emergency declared by Governor Newsom, The Chief Justice of the California Supreme Court, acting in her capacity as the Chair of the Judicial Council, enacted Emergency Rule 4. In so doing, she explicitly suspended any other laws in conflict with the rule. (See Rule 4(a), “Notwithstanding any other law...”) The intention of the order was to create uniformity throughout the state. (Rule 4(a).) Further, the Chief Justice ordered

each superior court to apply the emergency bail schedule, and specifically listed what the bail “must be set at.” (Rule 4(b),(c).) The Chief Justice gave a superior court discretion only with regard to those offenses that are excepted from the emergency bail schedule, only to reduce bail for those excepted offenses, or to deny bail under the California Constitution. (Rule 4(e)(2).) Therefore, reliance on pre-existing Penal Code provisions is misplaced. Specifically, Penal Code 1269c, which normally allows both parties to be heard regarding bail, has been suspended until the sunset provision of the rule. (See also, *Section I, and II (A), infra.*)

***C. Emergency Rule 4 Explicitly Applies to Pretrial and all types of Post-Conviction Supervision Violations.***

The Mandatory Statewide Emergency Bail Schedule applies to everyone in custody or arrested. Per the EBS, all individuals in custody on probation violations, mandatory supervision (MS) violations, post-release community supervision (PRCS) violations, and parole violations must have bail reduced to \$0 bail or have bail set per the countywide bail schedule for those individuals who are on supervision for (1)-(13) excepted convictions.

Per the Judicial Council’s EBS, Rule 4(f)(2), bail for violations of post-conviction supervision indicates: “Bail for all violations of felony probation, parole, post-release community supervision, or mandatory supervision, must be set in accord with the statewide Emergency Bail Schedule, or for the bail amount in the court’s countywide schedule of bail for charge of conviction list in exceptions (1) through (13), including any enhancements.”

The EBS applies to “every *accused* person” arrested or held in custody. (Emergency Rule 4 subd. (b)(1) and (2); emphasis added.) The

“accused” should be read to mean individuals that have pending crimes or supervision violations.

To put a finer point on it: “Bail for violations of all forms of felony post-conviction supervision is to be set in the amount allowed for the underlying charges of conviction.” (Emergency Rule 4, subd. (f)(2)). If the supervision is for an included offense, the bail *must* be set at \$0. If the individual is on supervision is for an excluded offense, bail must be set as provided in the county’s regular bail schedule for the underlying offense, plus any enhancements. The emergency schedule should be read to prohibit the court from setting a “no bail” status of violation of felony supervision. The presumptive bail must be set as provided in the EBS.

### III.

#### **The Constitution Limits a No-Bail Finding to “Rare and Unusual Cases” that Fit in One of Three Subdivisions.**

The Judicial Council did allow one other exception under Article I, section 12 of the California Constitution. This section entitles a defendant to bail as a matter of right except for three categories:

- a) Capital crimes when the facts are evident or the presumption great,
- b) Felony offenses involving acts of violence on another person, or felony sexual assault offenses on another person, when the facts are evident or the presumption great and the court finds based upon clear and convincing evidence that there is a substantial likelihood the person’s release would result in great bodily harm to others; or,

- c) Felony offenses when the facts are evident or the presumption great and the court finds based on clear and convincing evidence that the person has threatened another with great bodily harm and that there is a substantial likelihood that the person would carry out the threat if released.

(Cal. Const., art I, §§ 12, 28(f).)

In conformance with these constitutional principles, the Judicial Council *did* create an exception in the Emergency Mandatory Bail Schedule for crimes that would qualify for “no bail” or for courts to “deny bail.” (Emergency Rule, Rule 4(e).) If the superior court’s order is allowed to go into effect, the prosecutor would have to argue that any cases on which they seek review would qualify for reduced bail under the Emergency Bail Schedule fit into either Subdivision B or C above. The prosecutor would not have to provide the court with any argument as to which test the court should apply to which case. In this case, the prosecutor can and does include “standalone” **misdemeanor** actions, which is not permissible. The Constitution requires their release on bail regardless of the prosecutor’s reason for objection. (Cal. Const. art. I, § 12 [“felony offenses” and “capital crimes”], § 28(f) [“capital crimes”].)

**A. *Subdivision B: Felony Offenses Involving Acts of Violence or Sexual Assault***

The Constitution allows a no-bail finding for felony offenses involving an act of violence against another person or sexual assault provided the facts are evident or the presumption great and the court finds based upon clear and convincing evidence that there is a substantial likelihood the person’s release would result in great bodily harm to others. (Cal. Const., art. I, § 12(b).) [it is worth noting here

almost any offense falling within this subdivision would be within one of the 13 exceptions & therefore governed by the county bail schedule.]

However, “it be the ‘rare’ and ‘unusual’ case where a court is able to making this finding.” (*In re White, supra*, 21 Cal.App.5th at p. 29.)

The standard requires the court find by “clear and convincing evidence that there is a substantial likelihood the person's release would result in great bodily harm to others.” (*In re White, supra*, 21 Cal.App.5th at pp. 27-28.) “This standard requires more than a mere possibility, and it cannot be based on speculation about the general risk to public safety if a defendant is released. Great bodily harm to others must be a substantial likelihood.” (*Id.* at p. 28.) The “standard requires more than simply a violent history. The trial court must be convinced that future violence amounts to great bodily injury is substantially *likely* if the defendant were released on bail.” (*Ibid.* [emphasis original].)

As the appellate court in *White* explained, not only must the trial court think there is a substantial likelihood of great bodily injury to others, but the finding must be by clear and convincing evidence. “Clear and convincing evidence requires a finding of high probability. The evidence must be ‘so clear as to leave no substantial doubt.’” (*In re White, supra*, 21 Cal.App.5th at p. 28 [citations omitted].) “[I]t will be the ‘rare’ and ‘unusual’ case where a court is able to make this finding.” (*Id.* at p. 29.)

Based on the procedure outlined in the SDSC Order, it appears only the prosecutor can request a bail hearing, and when they do so, those matters would thereby be reviewed through Subdivision B. In

meeting this standard, the prosecution must show facts that at least meet the burden articulated in *White*.

***B. Subdivision C: Felony Offenses Where the Defendant has Threatened Another Person***

Subdivision C is similar to subdivision B, save for that it applies not to crimes of violence or sexual assault, but to a felony offense where the defendant has threatened another with great bodily injury and there is a substantial likelihood the defendant would carry it out if released<sup>4</sup>. (*In re Nordin, supra*, 143 Cal.App.3d 538.) Again, the Constitution requires a “clear and convincing evidence” standard, which means a high finding of probability and must be so clear as to leave no substantial doubt. (*Id.* at p. 543, citing *Sheehan v. Sullivan* (1899) 126 Cal. 189, 193 and *In re Angelia P.* (1981) 28 Cal.3d 908, 919.)

For example, in *Nordin*, the defendant was charged with two counts of soliciting murder. The defendant had threatened and intended to murder a sheriff deputy whom he believed degraded the defendant’s wife during the arrest. The defendant had told another person his plans and had put a “down payment” on a contract to kill the deputy, all while the case was pending. (*In re Nordin, supra*, 143 Cal.App.3d at p. 542.) The court found the standard met.

For each of the cases that would be reviewed through subdivision C, the prosecution would need to articulate specific facts to meet the aforementioned standard.

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<sup>4</sup>In other words, these crimes would probably amount to a violation of PC 422 – which if charged is one of the 13 exceptions. These are not individuals who would qualify for \$0 bail; but would be governed by the county presumptive bail schedule.



In these cases, the prosecution must prove by clear and convincing evidence that the defendant threatened someone with great bodily injury and there is a substantial likelihood the defendant will carry the threat out, if released. The prosecution is not required to do so in the procedure outlined by the court. Without demanding the prosecution make *any showing* that these defendants threatened another and would carry out the threat, they cannot and should not have the ability to delay the enactment of the mandatory bail schedule and the release of eligible individuals.

#### IV.

**The Superior Court's Procedure Outlined in Order #041320-42 Denies Due Process and Equal Protection in Violation of the 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 8<sup>th</sup> and 14<sup>th</sup> Amendments to the US Constitution, as well as Article 1, Sections 14 and 15 of the California Constitution.**

Every Petitioner pleading to this Honorable Court is presumed innocent. (*Coffin v. United States* (1895) 156 U.S. 432, US Constitution 5<sup>th</sup> and 14<sup>th</sup> Amendments.) Petitioners are being held in deplorable conditions in the county jail with many of their constitutional rights suspended. Petitioners cannot see their loved ones or their attorneys. They cannot prepare, investigate or litigate their cases. When circumstances as dire as these can understandably render some constitutional protections impossible, these delays and other violations will only withstand constitutional scrutiny if accompanied by common sense provisions to protect liberty.

While, under normal circumstances, a non-serious, non-violent felony or misdemeanor would take 30-75 days to make its way through the system (See California Penal Code Sections 825, 849, 859b, and

1382 ), all of these individuals are faced with exponentially lengthened delays. Some have been sitting in jail since the shut down on March 15 with no hearings at all, and no future court dates. Under the current conditions, that amounts to cruel and unusual punishment in violation of the 8<sup>th</sup> Amendment to the US Constitution. Particularly when the Chief Justice of the California Supreme Court and the Judicial Council addressed their liberty interest during this global pandemic. Petitioners must be released forthwith.

It is important to note the emergency bail schedule is only one part of a larger scheme of orders enacted by the Judicial Council in light of the pandemic. They only work when taken together as a whole- otherwise the lack of constitutional protections could likely end in the majority of these cases being dismissed or reversed on appeal for blatant Constitutional and statutory violations and prolonged detentions. Even more ominous and deadly is the very real threat of increased spread of the virus to more inmates, detention staff, correctional officers, and the community.

The procedure implemented by the San Diego Superior Court in Order # 041320-42 allows the agency prosecuting named individuals the exclusive control over their detention and usurps judicial authority. Separation of powers demands these functions be handled by an independent judiciary with transparency and access to justice. (US Constitution, Article III.) Instead, the named individuals are denied notice, a hearing and even the suggestion of due process before they are denied the Judicial Council's mandated \$0 bail and held beyond the statutory deadline on the whim of the very agency seeking their conviction.

**V.**  
**Delayed Implementation of the Emergency Bail Schedule  
Endangers Public Safety for the Entire Region.**

The Judicial Council mandated in Rule 4 that eligible inmates be released no later than 5pm on April 13, 2020. Order #041320-42 disregards that imperative and allowed releases to begin on April 15, 2020 at 5pm or when ‘feasible’.

Let us not forget the Judicial Council’s very rationale for the Emergency Mandatory Bail Schedule underlines the public safety need intrinsic in reducing the jail population. That rationale is further justified by medical professionals who have spoken out about the dangers of the virus spreading in jail settings. (See EXHIBIT C, Affidavit of Dr. Brie Williams, M.D., and “The Challenge of Preventing COVID-19 Spread in Correctional Facilities”<sup>5</sup>). These medical experts agree that the jail system must be reduced to single-cell occupancy, not as a matter of bail reform or criminal justice reform, but as a matter of public safety.

These experts give further weight to the public policy decision behind the Judicial Council’s order. If there is an outbreak in the jail, it will quickly overwhelm our community’s public health system. (Exhibit C)

In setting the new bail schedule, the Honorable Marsha G. Slough, Hon. David M. Rubin, Hon. Kyle S. Brodie, Hon. Marla O. Anderson, and Hon. Harry E. Hull all recommended the Emergency Mandatory Bail Schedule to the Judicial Council “in order to protect

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<sup>5</sup> Rita Rubin, MA  
<https://jamanetwork.com/journals/jama/fullarticle/2764379>,  
accessed April 14, 2020.)

the health and safety of the public, court employees, attorneys, litigants, and judicial officers, as well as staff and inmates in detention facilities, and law enforcement during the state of emergency.”

(*Emergency Rules Report*, p. 2.) These judges explained (and the Judicial Council agreed) that “it is critical to balance the demands on the courts and concerns for the public.” (*Ibid.*) Their recommendations ensure the health and safety of the public. (*Ibid.*)

In discussing the specific features of courts, the Emergency Rules Report explains that, “A surge of COVID-19 cases is expected in the next two weeks, and the Governor predicts that the state needs another 50,000 hospital beds to accommodate new cases.” (*Emergency Rules Report*, p. 5.) “[C]ourts are clearly high-risk places during this pandemic because they require gatherings of judicial officers, court staff, litigants, attorneys, witnesses, defendants, law enforcement, and juries in numbers well in excess of what is allowed for gathering under current executive and health orders. Indeed, many court facilities in California are ill-equipped to implement social distancing and satisfy other public health requirements necessary to protect people involved in court proceedings and prevent the further spread of COVID-19.” (*Id.* at pp. 5-6.)

Specifically, in addressing the rationale behind the new Emergency Mandatory Bail Schedule, the Judicial Council explained that “trial courts have a vital role to play in balancing public safety and public health by assisting to safely reduce jail populations in a manner that protects the health of inmates, jail staff, those who transport defendants to courts, and others as individuals leave jail and return to their communities.” (*Emergency Rules Report*, p. 9.)

The Judicial Council recalled that on March 20, 2020, the Chief Justice of California and Chair of the Judicial Council advised all counties to revise their countywide presumptive bail schedules to \$0 for nearly-all misdemeanors and lower-level felonies. Following the advisory, some courts adopted new schedules and some did not. In the face of the pandemic and need for uniformity the Judicial Council made the new bail schedule mandatory, and gave counties no later than 5:00 p.m. on April 13, 2020 to apply these rules. (*Emergency Rules Report*, pp. 9-10; Emergency Rules, Rule 4(b).) And against these public safety concerns, the prosecutorial agencies in San Diego now have the ability to proffer their “objections,” where none was given by the Judicial Council and which fail to rise to the level necessary to trigger the hearing the prosecutor seeks. (See Pen. Code, §§ 1269c, 1270.1(e).)

Indeed, the Judicial Council’s analysis and rationale comports with the best science in the field. All county jail locations confine numbers of people far beyond what is reasonable considering the emergency, life-saving orders instituted at various levels of government. Moreover, all institutions double-cell or triple-cell confined persons, thereby making the six-foot requirement impossible. To add to the numbers, hundreds of Sheriff’s personnel staff both institutions and have close contact with the inmates. Inmates are raising alarms throughout the County about their unsanitary and risky conditions in the jails.<sup>6</sup> Any delay further increases the risk to all San Diegans.

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<sup>6</sup> <https://www.sandiegouniontribune.com/news/watchdog/story/2020-04-12/theyre-filthy-inmates-decry-lack-of-clean-masks-testing-conditions-in-san-diego-jails>

The Judicial Council has considered the public safety risks of the crimes within the Emergency Mandatory Bail Schedule. The Judicial Council has balanced the risks posed by resetting bail to \$0 and maintain current pretrial detention levels. Continued incarceration of these defendants is not justified in light of the risk. To any degree the Superior Court's order delays the resetting of bail, it is null and void.

## VI.

### **Holding the Named Individuals in Custody Without Resetting Bail to \$0, and Without an Opportunity to See a Judge, Under Current Conditions, Amounts to Cruel and Unusual Punishment in Violation of the 8<sup>th</sup> Amendment to the US Constitution.**

Time is not the main thing - it is the only thing during a pandemic on a global scale. Since April 1, 2020, the United States has documented 26,064 deaths due to COVID-19 and 634,246 Americans have tested positive for the illness.<sup>7</sup> COVID-19 continues to grow exponentially. The Constitution requires confined persons be treated within the minimum civilized norms of society. In the midst of a global pandemic, where preventing the spread of a life-threatening virus requires that we all maintain a safe distance from others, those civilized norms call upon people to remain in their homes, practice good hygiene and sanitation, avoid crowds, and generally stay six feet apart from one another. Those civilized norms are denied to people currently confined in the San Diego County jail system. Hundreds of physicians and medical professionals agree that this jail must reduce its population in view of the pandemic health crisis.

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<sup>7</sup> <https://www.worldometers.info/coronavirus/country/us/>  
accessed April 14, 2020.

By not substantially reducing the jail population, we increase the risk to the entire community.<sup>8</sup> Balancing that risk against the low risk of releasing the type of defendants discussed herein, there is just one reasonable conclusion: the jail population must be substantially reduced. That is why District Attorneys in Contra Costa and San Francisco Counties—and throughout the United States—are calling for dramatic reductions in jail population.<sup>9</sup>

The jail system is not a closed, sterile environment. The number of inmates within the San Diego County jail system imperils not only the accused and convicted, but law enforcement, medical providers, jail custodians and staff, and the community at large. Because the jail system operates by double- and triple- celling many confined persons, containment is impossible unless the court takes steps to reduce the population. Just as how the public must take steps to “flatten the curve” in their communities, we must flatten the curve within the jail system. Once the virus reaches the jail system, the infectious nature of COVID-19 will quickly overwhelm jail medical staff, forcing the

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<sup>8</sup> This pandemic health crisis is forcing our justice system to confront over-incarceration, a problem that disproportionately harms impoverished communities and communities of color. There is an existing consent decree already in place because of over-crowding and inadequate mental health care and accommodations for the disabled. The groups of people we ask this court to release all are lower risk and can be released without posing an undue risk to our community. The Public Defender is aware of a not-yet release jail population study that analyzes the public safety risks presented by the population typically detained by the county’s incarceration policies and procedures. Should the study be relevant, the Public Defender will direct the court’s attention to it once it is released.

<sup>9</sup> <https://www.sfchronicle.com/crime/article/Coronavirus-San-Francisco-Contra-Costa-15137291.php>, accessed March 18, 2020.

community's medical infrastructure to provide care for the over 4,000 persons who will be near-certain to contract the disease.

The jail population must be reduced to a number low enough to allow for necessary social distancing, enable staff to maintain sanitary conditions, and protect the medical infrastructure from destabilization and becoming overwhelmed by the pandemic. Broadly, only those inmates who present a clear and present danger should remain confined. By allowing the jail system to operate at single-cell capacity, the court can save lives. Without precautionary measures, COVID-19 will destabilize the jail system's emergency medical infrastructure.

Under these extreme circumstances, no further delay should be tolerated – any further delay is unconstitutional and should not be countenanced by this Court. The Order must be rescinded.

***A. COVID-19 In San Diego County Jails is on the Rise***

COVID-19 cases are present within San Diego County Jails. A nurse employed at Las Colinas Detention Facility, tested positive for COVID-19 on March 25, 2020.<sup>10</sup> According to the Sheriff's press release, the nurse reported feeling ill and "has been isolated at home since March 22nd." The Department did not provide the last day she was in contact with inmates before she tested positive. The Department, "identified all inmates and staff who may have come into close contact with this nurse," however the Department did not indicate that they identified people that were in contact with those in contact with the infected nurse. This extra step is vital as those who are asymptomatic or pre-symptomatic for the disease are still vectors for transferring COVID-19. Additionally, and alarmingly, no inmates

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<sup>10</sup> <https://www.sdsheriff.net/> 3/26/2020 press release, Nurse Tests Positive for COVID-19



identified as being in contact with the infected nurse have been placed in isolation. Since then, 4 other Sheriff employees have tested positive for COVID-19.

As of its press release on April 10, 2020, only 69 inmates in San Diego County had been tested for COVID-19, despite a population of roughly 4300 current inmates (less than 1%).<sup>11</sup> Of those, 3 were confirmed positive, 2 of whom remained in custody, 6 do not yet have results. The tests resulted in 61 negative tests. As of April 14, 2020, the Sheriff’s Department has not updated any testing or results of inmates in its care. The Sheriff’s Department also has not updated how many of its “isolation beds” are being utilized or how many “isolation beds” are needed. The care of inmates in San Diego County is particularly concerning, in light of recent articles by the San Diego Union Tribune, that found San Diego county jails have a significantly higher death rate than all other counties in the state.<sup>12</sup>

**Mortality rate with city deaths**  
Deaths per 100,000 inmates

County	Average daily population	10-year average deaths	10-year mortality rate
<b>San Diego</b>	<b>5,211.9</b>	<b>12.8</b>	<b>245.6</b>
Los Angeles	17,060.6	30	175.8
San Bernardino	5,643.5	8.9	157.7
Santa Clara	3,702.3	5.4	145.9
Orange	5,928.6	8.1	136.6
Sacramento	3,942.2	3.7	93.9

<sup>11</sup> <https://www.sandiegouniontribune.com/news/public-safety/story/2020-03-16/jails-to-release-some-inmates-adjust-booking-criteria-amid-coronavirus-concerns>, accessed April 1, 2020, and <https://www.sdsheriff.net/newsroom/links/dsb-covid19.pdf>, accessed April 14, 2020

<sup>12</sup> <https://www.sandiegouniontribune.com/news/watchdog/story/2019-11-24/san-diego-has-highest-jail-mortality-rate-among-largest-counties-even-with-new-data>, accessed April 1, 2020.

With confirmed cases that indicate community spread, the time is now to take action to protect vulnerable populations and the community at large. The Judicial Council prescribed the way to reduce jail populations and the San Diego Superior Court merely needs to follow the mandatory emergency bail schedule.

### CONCLUSION

***This Court Should Rescind the Order and Issue an Order Directing Immediate Enactment of the Mandatory Bail Schedule with No Exceptions or Delays.***

Some of the cases objected to by the prosecution *might* qualify for a no-bail finding; however, the prosecutor's means of making such an objection is by extraordinary writ. And that time passed on April 13, 2020 at 5pm. Moreover, mere assertions of "public safety" are an insufficient offer of proof to trigger a hearing. The prosecutor's "objection" is a far cry from the constitutional and statutory requirements. (Pen. Code, §§ 1269c, 1270.1(e).)

The time has passed for objections, comment or delay. We implore this Honorable Court of Appeals to act now.

Wherefore, Petitioners pray for an Emergency Writ of Mandamus or in the alternative, an Emergency Writ of Habeas Corpus, be issued:

- (1) Rescinding the portions of Order #041320-42 that violate the Emergency Statewide Bail Schedule mandated by the Chief Justice of the California Supreme Court and the Judicial Council;
- (2) Directing both the San Diego Superior Court and San Diego Sheriff to proceed with immediate enactment and implementation of the Mandatory Statewide Bail Schedule for



**CERTIFICATE OF WORD COUNT**

I, WHITNEY N. ANTRIM, hereby certify that based on the software in the word processor program, the word count for this document is 8,852 words.

Dated: \_\_\_\_\_

Respectfully submitted,  
RANDY MIZE,  
Public Defender  
Office of the Public Defender

By:         /s/          
WHITNEY N. ANTRIM  
Deputy Public Defender

Attorney for the Petitioners

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**PROOF OF SERVICE**

**Case Name: People v. Defendants in Exhibit B**

**Case No./Super Ct. Case#: D0 / See Exhibit B**

I am a citizen of the United States and a resident of the County of San Diego, State of California. I am over the age of 18 years and not a party to the within action. My office address is 450 "B" Street, Suite 900, San Diego, California 92101

On the date of execution of this document, I served the *foregoing* **EMERGENCY PETITION FOR WRIT OF MANDAMUS OR HABEAS CORPUS**, to the following in the manner stated:

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

Hon. Lorna Alksne, Judge,  
Presiding  
Hon. Michael Smyth, Judge  
*c/o* San Diego Superior Court  
P.O. Box 122724  
San Diego, Ca 92112-2724  
[Lorna.alksne@sdcourt.ca.gov](mailto:Lorna.alksne@sdcourt.ca.gov)  
[MichaelT.smith@sdcourt.ca.gov](mailto:MichaelT.smith@sdcourt.ca.gov)  
*(via TrueFiling)*

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San Diego, CA 92101  
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Sheriff William Gore  
San Diego Sheriff's Department  
Attn: Legal Rob Fagin & S. Toyen  
P.O. Box 939062  
San Diego, CA 92193-9062  
[William.gore@sdsheriff.org](mailto:William.gore@sdsheriff.org)  
[Rob.Fagin@sdsheriff.org](mailto:Rob.Fagin@sdsheriff.org)  
[Sanford.toyen@sdsheriff.org](mailto:Sanford.toyen@sdsheriff.org)  
*(via TrueFiling)*

Executed on April 17, 2020, at San Diego, California.  
\_\_\_\_\_  
*/s/*  
Michael A. Owens  
*Declarant*

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# EXHIBIT A

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APR 13 2020

By: C. McCoy

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**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SAN DIEGO**

**IN RE: APPLICATION OF JUDICIAL  
COUNCIL EMERGENCY RULE 4  
(EMERGENCY BAIL SCHEDULE)**

) **GENERAL ORDER OF THE  
PRESIDING DEPARTMENT**  
) **ORDER NO. 041320-42**  
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On April 6, 2020, the Judicial Council of the State of California adopted 11 temporary emergency rules relating to the COVID-19 pandemic. Emergency Rule 4 provides for an Emergency Bail Schedule (hereafter “EBS”). Pursuant to subdivision (b) of Emergency Rule 4, each superior court must apply the EBS by 5:00 p.m. April 13, 2020, (1) to every accused person arrested and in pretrial custody, and (2) to every accused person held in pretrial custody. By its own terms, Emergency Rule 4 “will remain in effect until 90 days after the Governor declares that the state of emergency related to the COVID-19 pandemic is lifted, or until amended or repealed by the Judicial Council.” (Emergency Rule 4, subd. (e).)

By this Order, the San Diego Superior Court hereby implements the EBS in Emergency Rule 4. The EBS shall be applied in the same manner as the regularly adopted San Diego County Bail Schedule, except as noted below.

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1 1. **Previous arrests:** For persons arrested prior to the effective date and time of this order,  
2 bail shall be set in accordance with the EBS. However, the court retains the traditional  
3 authority in an individual case to depart from the bail schedule or impose conditions of  
4 bail to assure the appearance of the defendant or protect public safety. (See Pen. Code §  
5 1269c, 1270.1(e).) In that regard:

- 6 a. Persons whose bail is reduced to zero by the EBS shall be released from custody  
7 at 5:00 p.m. on April 15, 2020, or as soon thereafter as is feasible, unless prior to  
8 5:00 p.m. on April 15, 2020, the prosecuting agency notifies the Sheriff that it will  
9 be requesting an increase in bail, a “no bail” hold, or imposition of conditions of  
10 release. The list of the persons for whom an increase in bail, “no bail” hold, or  
11 imposition of conditions of release that has been requested by the prosecuting  
12 agency shall also be provided to defense counsel by 5:00 p.m. on April 15, 2020.
- 13 b. Prior to 5:00 p.m. on April 16, 2020, the parties shall meet and confer to  
14 determine (1) whether in any of the cases the parties can reach an agreement to  
15 modify bail or impose conditions of release; and (2) which cases need to be  
16 submitted to a judge for a decision.
- 17 c. For those cases in which the parties agree bail is to be as set at zero by the EBS,  
18 the prosecuting agency shall forthwith notify the Sheriff that the person can be  
19 released.
- 20 d. For those cases in which the parties agree bail shall be increased from the EBS, or  
21 that conditions of release shall be imposed, the prosecuting agency shall forthwith  
22 notify the Sheriff, and the parties shall provide to the court a stipulation and  
23 proposed order. The Sheriff shall note any conditions of release the person’s  
24 release papers.
- 25 e. For disputed cases in which the defendant has not yet been arraigned, the  
26 prosecuting agency shall put the matter on the video-court calendar commencing  
27 Monday, April 20, 2020, or as soon as practical thereafter, for arraignment and  
28 bail review.



1 f. For all other disputed cases, the matter will be reviewed by a judicial officer via  
2 telephone conference as soon as practical.<sup>1</sup>

3  
4 2. **New Arrests:** For persons arrested on or after the effective date and time of this order,  
5 bail shall be set in accordance with the EBS. Requests for a modification of the bail  
6 amount, or for conditions of release, shall be made to the daytime or after-hours duty  
7 judge. If bail is modified, or conditions imposed, the court will notify the Sheriff's  
8 Watch Commander at the detention facility where the defendant is housed, and the  
9 Sheriff shall note the change on defendant's paperwork, including any release papers.

10  
11 The San Diego Superior Court Temporary Emergency Modification to the Bail Schedule  
12 adopted April 2, 2020, is rescinded.

13  
14 THIS ORDER IS EFFECTIVE AT 5:00 P.M. ON APRIL 13, 2020.

15 IT IS SO ORDERED.

16  
17 DATED: \_\_\_\_\_

4-13-2020



18 HON. LORNA A. ALKSNE  
19 PRESIDING JUDGE

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1 The phone number and email of the judge hearing these requests will be provided to counsel by separate email.

# EXHIBIT B

Document received by the CA Supreme Court.

COURT	DA	DEFENDANT_NAME	ATTORNEY TYPE	ATTORNEY	DDA	REASON	DISTRICT	DIVISION	UNIT	BOOKING_NUMBER	HIGHEST_CHARGE	ALL_CHARGES_ON_LATEST_COMPLAINT
CS311762	BCF483	ACHOY, CECILIA	APD	BASIC, CHRISTINE	BLAYLOCK, CHRIS	Flight Risk	South County	Narcotics	Narcotics	19778279A	HS11352(a), import	COUNT 4: HS11352(a), import -- PC1203.073(b)(1) -- HS11370.4(a)(1) -- HS11370.4(a)(2) -- HS11370.4(a)(3) -- HS11370.4(a)(4) COUNT 5: HS11351 -- PC1203.073(b)(1) -- HS11370.4(a)(1) -- HS11370.4(a)(2) -- HS11370.4(a)(3) -- HS11370.4(a)(4) COUNT 6: HS11366.8(a)
CS313533	BCG698	ALEMAN, ALLEN	APD	PENALOSA, MIGUEL	SELLWOOD, MICHELLE	Charged with HS11370.1(a) + HS11379.02-2020. D has 242.61g meth + cutting agent + scale + 2 modified shotguns + shotgun ammo. Prior: 2011 PC496d	South County	South Bay Branch	South Bay Branch	20912558A	HS11370.1(a)	COUNT 1: HS11370.1(a) COUNT 2: HS11378 COUNT 3: PC23900 COUNT 4: PC33215 COUNT 5: PC30305(a)(1) COUNT 6: HS11364 PRIOR: PC1203(e)(4) PRIOR: PC1170(f)(h)(3)
CS313404	BCG007	ALVAREZ, EDGAR	OPD		PRO, JOHN	danger/fert/coke/K	South County	Narcotics	Narcotics	20911155A	HS11351	COUNT 1: HS11351 COUNT 2: HS11351 COUNT 3: HS11375(b)(1) PRIOR: PC1170(f)(h)(3) PRIOR: PC667(b)-(i)
CS313762	BCG108	ARCHULETA, GILBERT	OPD	NO NAME	SELLWOOD, MICHELLE	Charged with PC594(a)(b)(1) [03-2020. D throws rocks at passing people and cars. D hits one person and breaks windshield of car.] Priors: 2015 PC243(e)(1) -- D shows girlfriend at fast food restaurant, grabs her arm and forces her to leave. 3d party calls police.	South County	South Bay Branch	South Bay Branch	20915205A	PC594(a)(b)(1)	COUNT 1: PC594(a)(b)(1)
CD283843	AE0645	AYALA, JUAN	OPD	SLATTERY, STEPHANIE	EASTMAN, CHRISTINA	Danger	Central	Narcotics	Narcotics	19767346A	HS11370.6(a)	COUNT 1: HS11370.6(a) COUNT 2: HS11370.9(a) COUNT 3: PC273a(e) PRIOR: PC1203(e)(4)
CN409495	OCN423	BALBOA, PETER	OPD	Hallare, Joseph	CHEN, VINCENT	50kg/ft risk/danger	North County	Narcotics	Narcotics	20902072A	HS11379(a), transport	COUNT 1: HS11379(a), transport -- HS11370.4(b)(4)
CN411278	OCN761	BARRON, GUSTAVO	OPD	KINCHEN, CASSANDRA	NGUYEN, STEVEN	Crime Risk	North County	North County Branch	North County Branch	20911882A & E	VC2800.2(a)	COUNT 1: VC2800.2(a) COUNT 2: HS11377(a) COUNT 3: HS11364 PRIOR: PC1170(f)(h)(3)
CS313575	BCG065	BECK, JOHN	OPD	ZAVALASOTO, ALONSO	PRO, JOHN	ft/danger/40kg meth	South County	Narcotics	Narcotics	20913242A	HS11379(a), import	COUNT 1: HS11379(a), import -- PC1203.073(b)(2) -- HS11370.4(b)(1) -- HS11370.4(b)(2) -- HS11370.4(b)(3) -- HS11370.4(b)(4) -- PC1210(a) COUNT 2: HS11378 -- PC1203.073(b)(2) -- HS11370.4(b)(1) -- HS11370.4(b)(2) -- HS11370.4(b)(3) -- HS11370.4(b)(4)
CE393803	MBT111	BERGSTROM, PAUL	OPD	HATHAWAY, KELSEY	WALLER, SHANE	Danger	East County	East County Branch	East County Branch	19749959B	PC148.1(c)	COUNT 1: PC148.1(c)
CN409385	OCN408	BLANCO, SCOTT	RET.	GREENE, SAMANTHA	OCAMPO, MELISSA	Flight Risk	North County	North County Branch	North County Branch		PC192(c)(1), unlawful act	COUNT 1: PC192(c)(1), unlawful act PRIOR: PC1170(f)(h)(3)
CE398980	MBU197	BRYANT, DORIAN	OPD	SCHMIDT, BRIAN	TELLESEN, DANA	History	East County	East County Branch	East County Branch	20910925A	VC2800.2	COUNT 1: VC2800.2 COUNT 2: PC496d PRIOR: PC1170(f)(h)(3) PRIOR: PC667(b)-(i)
CS313641	BCG067	CAMERON, JOHN	OPD	PORTER, GRANT	PENA, AGUSTIN	BAIL \$100k; MENTAL/VIOLENCE/STRIKE PRIOR	South County	Family Protection	Elder Abuse	20913766A	PC368(b)(1)	COUNT 1: PC368(b)(1) PRIOR: PC1170(f)(h)(3) PRIOR: PC667(b)-(i)
CS312558	BCF759	CASIAN, MARNA	OPD	CONGE, JASON	BLAYLOCK, CHRIS	Flight Risk	East County	Narcotics	Narcotics	20901438A	HS11379(a), transport	COUNT 1: HS11379(a), transport -- HS11370.4(b)(2) -- HS11370.4(b)(3) -- HS11370.4(b)(4) COUNT 2: HS11378 -- HS11370.4(b)(4) -- HS11370.4(b)(3) -- HS11370.4(b)(2)
CS313060	BCF904	CASTILLO, MARCO	RET.	Bickford, James	RHOADS	Res 211	South County	Gang Prosecution	Gang Prosecution	20906703A	PC182(a)(1)	COUNT 1: PC182(a)(1) -- PC12022(a)(1), vicariou COUNT 2: PC182(a)(1) -- PC12022(a)(1), vicariou
CS311873	BCF544	CEJA, ADRIAN	NO ATTORNEY TYPE	GARRICK, SARAH	BLAYLOCK, CHRIS	Flight Risk	South County	Narcotics	Narcotics	20904562A	HS11352(a), transport	COUNT 5: PC182(a)(1) COUNT 6: HS11352(a), transport -- PC1203.073(b)(1) -- HS11370.4(a)(1) -- HS11370.4(a)(2) -- HS11370.4(a)(3) -- HS11370.4(a)(4) COUNT 7: HS11351 -- PC1203.073(b)(1) -- HS11370.4(a)(1) -- HS11370.4(a)(2) -- HS11370.4(a)(3) -- HS11370.4(a)(4)
CS312988	BCF889	CESENA, MIRIAM	APD	PENALOSA, MIGUEL	BLAYLOCK, CHRIS	danger/2kg fert	South County	Narcotics	Narcotics	20906088A	HS11352(a), transport	COUNT 1: HS11352(a), transport -- HS11370.4(a)(1) COUNT 2: HS11351 -- HS11370.4(a)(1) COUNT 3: HS11352(a), transport COUNT 4: HS11351 -- HS11370.4(a)(1) -- HS11370.4(a)(1) COUNT 7: PC182(a)(1)
CN404073	OCM368	CHAVEZ, WONG	APD	PATTERSON, JOHN	GOCHNOUR, DANIEL	Flight Risk	North County	Narcotics	Narcotics	19752597A	HS11379(a), transport	COUNT 1: HS11379(a), transport -- HS11370.4(b)(4) COUNT 2: HS11352(a), transport -- HS11370.4(a)(4)
CS312678	BCF779	CISNEROS, LUIS	APD	BASIC, CHRISTINE	SOMERVILLE, CHERIE	Charged with PC245(a)(4) [11-2019. D and companion attack another, smaller inmate while in custody, punching him 30+ times.] Priors: 2019 PC245(a)(4) + PC12022.1(b) -- D ripped metal handle off security door of market then uses metal handle to smash out taillights of witness who was reporting the crime. D threatens witness with metal handle. 2019 PC21310 -- Police respond to suspicious person call and find D. D attempts to discard 7" fixed blade knife. Also has meth pipe. / 2016 hot prow residential burglary (Juv)	South County	South Bay Branch	South Bay Branch		PC245(a)(4), force	COUNT 1: PC245(a)(4), force
CS313729	BCG086	CONRAD, JACKSON	OPD	NO NAME	SELLWOOD, MICHELLE	Charged with PC594(a)(b)(1) [03.2020. D attempts to enter victim's home. Leaves but returns 10 minutes later, angry, and throws basketball through victim's window where she is standing. Victim is terrified and says D repeatedly tries to enter her home. D has open PC273.5(a) and open PC148(a)(1). Priors: 2017 PC273.5(a).	South County	South Bay Branch	South Bay Branch	20914598A	PC594(a)(b)(1)	COUNT 1: PC594(a)(b)(1)
CS313060	BCF904	CRUZ, IGNACIO	OAC	Dutley, Patrick	RHOADS	Res 211	South County	Gang Prosecution	Gang Prosecution	20906699A	PC182(a)(1)	COUNT 1: PC182(a)(1) -- PC12022(a)(1), vicariou COUNT 2: PC182(a)(1) -- PC12022(a)(1), vicariou PRIOR: PC1170(f)(h)(3)
CN402901	OCM140	CRUZ, JOSE	RET.	DICKS, JAMES	GOCHNOUR, DANIEL	Flight Risk	North County	Narcotics	Narcotics	19746295A	HS11379(a), transport	COUNT 1: HS11379(a), transport -- HS11370.4(b)(4) COUNT 2: HS11378 -- PC1203.073(b)(2) -- HS11370.4(b)(4)
CS311873	BCF544	DANISON, RAYMOND	RET.	BAKER, DAVID	BLAYLOCK, CHRIS	Flight Risk	South County	Narcotics	Narcotics	19772270A	HS11352(a), import	COUNT 1: HS11352(a), import -- PC1203.073(b)(1) -- HS11370.4(a)(1) -- HS11370.4(a)(2) -- HS11370.4(a)(3) COUNT 3: HS11351 -- PC1203.073(b)(1) -- HS11370.4(a)(2) -- HS11370.4(a)(3) COUNT 5: PC182(a)(1)
CN411859	OCN882	DAO, THY	OPD	NO NAME	WOODWARD, PAIGE	Crime Risk	North County	North County Branch	North County Branch	20914230A	PC530.5(a)	COUNT 1: PC530.5(a) COUNT 2: PC530.5(c)(2)
CN411963	OCN804	DAO, THY	OPD	NO NAME	WOODWARD, PAIGE	Crime Risk	North County	North County Branch	North County Branch	20914230C	PC487(a)	COUNT 1: PC487(a)
CD285381	AEF948	DAVIS, BROOKS	OPD	WADDLE, AMANDA	FELS, IAN	No. prior VOL 15 years, huge drug record, breaking windows in current case and out of control	Central	Superior Court	Superior Court	20907799C	PC594(a)(b)(1)	COUNT 1: PC594(a)(b)(1) PRIOR: PC1203(e)(4) PRIOR: PC667(b)-(i) PRIOR: PC1170(f)(h)(3)

ment received by the CA Supreme Court.

CS313110	BCF930	DEANDA, BRIDGET	OPD	BOLEY, DOMINIQUE	STEHR, JESSICA	Charged with PC4532(b)(1) + PC243(b) [01-2020. D pled guilty in separate case to PC69 + PC459. After court, D complained of having had a seizure and taken by SDSO to Scripps. At Scripps, D rips out her IV and tries to leave the hospital. Deputy has to physically restrain her and D gets violent, spits directly in deputy's face.] Fines: 2020 PC69 + PC459 - This is the offense D had just pled guilty to. In this case, D was arrested after stealing over \$1K of property from an unlocked car. D gets in a violent struggle with police, kicking one officer in the groin and scratching another officer's neck	South County	South Bay Branch	South Bay Branch	20902951D	PC4532(b)(1), no force	COUNT 1: PC4532(b)(1), no force COUNT 2: PC148(a)(1) COUNT 3: PC243(b)
CS311781	BCF496	DEITASERRANO, JOSE	RET.	NASSERI, SAMAN	PRO, JOHN	ft/15kg coke	South County	Narcotics	Narcotics	19770575A	HS11352(a), import	COUNT 1: HS11352(a), import -- PC1203.07(b)(1) -- HS11370.4(a)(1) -- HS11370.4(b)(2) -- HS11370.4(a)(3) COUNT 2: HS11351 -- PC1203.07(b)(1) -- HS11370.4(a)(1) -- HS11370.4(a)(2) -- HS11370.4(a)(3) COUNT 3: PC22210
CE392935	MBS896	DAZ, TANNER	RET.	NASSERI, SAMAN	PRO, JOHN	Danger	East County	East County Branch	East County Branch	19744316A	PC29815	COUNT 1: PC29815 -- PC12022.1(b) COUNT 2: PC25400(a)(1) COUNT 3: HS11359(b) PRIOR: PC1170(f)&(h)(3)
CN410905	OCN702	DOMANSKI, DANIEL	RET.	GEDULIN, GEORGE	GOCHNOUR, DANIEL	dang/meth/heroin	North County	Narcotics	Narcotics	20910257A	HS11352(a), transport	COUNT 1: HS11352(a), transport -- PC1203.07(a)(2) COUNT 2: HS11351 -- PC1203.07(a)(1) -- PC1203.07(a)(3) COUNT 3: HS11379(a), transport COUNT 4: HS11378 COUNT 5: HS11350(a) COUNT 6: VC14601.1(a) COUNT 7: HS11364 PRIOR: PC1203(e)(4)
CD284998	AEP663	DUNN, KEITH	RET.	Gedulin, George	Denton	Danger based on underlying DV PV + DV hx	Central	Economic Crimes	Economic Crimes	19778844	PC530.5c2	
CS312558	BCF759	ESPINO, OLGA	RET.	SIDELL, GEORGE	BLAYLOCK, CHRIS	Flight Risk	South County	Narcotics	Narcotics	20903132A	HS11379(a), transport	COUNT 3: HS11379(a), transport -- HS11370.4(b)(1) -- HS11370.4(b)(2) -- HS11370.4(b)(3) -- HS11370.4(b)(4) COUNT 4: HS11378 -- HS11370.4(b)(1) -- HS11370.4(b)(2) -- HS11370.4(b)(3) -- HS11370.4(b)(4)
CD285518	AEQ085	GARCIA, JORGE	OPD	NO NAME	FULBRIGHT, KALEB	No, stabbing air on colleg campus, armed, prior battery and possession of weapons	Central	Superior Court	Superior Court	20915005A	PC626.10(a)(1)	COUNT 1: PC626.10(a)(1) COUNT 2: PC21310
CD285493	AEQ060	GIACOBBE, MATTHEW	OPD	NO NAME	POYHONEN, ALEXANDER	No, gigantic theft record, prior strike (20k res burg from 2017) Two open unadjudicated felony cases	Central	Superior Court	Superior Court	20912603E	PC530.5(a)	COUNT 1: PC530.5(a) COUNT 2: PC530.5(a) PRIOR: PC1203(e)(4) PRIOR: PC1170(f)&(h)(3) PRIOR: PC667(b)-(i)
CD284408	AEP066	GIUNTI, JOHN	OPD	OPD	Jimenez	Danger +Flight - \$1M loss &repeat conduct	Central	Economic Crimes	Economic Crimes	20901223	CC25401 &25540	
CS312583	BCF788	GONZALEZ, JONATAN	RET.	KELLEY, CHRIS	PRO, JOHN	ft/dang/19k meth	South County	Narcotics	Narcotics	20901622A	HS11379(a), transport	COUNT 1: HS11379(a), transport -- PC1203.07(b)(2) -- HS11370.4(b)(1) -- HS11370.4(b)(2) -- HS11370.4(b)(3) COUNT 2: HS11378 -- PC1203.07(b)(2) -- HS11370.4(b)(1) -- HS11370.4(b)(2) -- HS11370.4(b)(3)
CS312988	BCF889	GUILLEN, RAUL	OPD	BOLLINGER, ANDRE	MENDEZ, LUIS	dang/2kg fent	South County	Narcotics	Narcotics	20906098A	HS11352(a), transport	COUNT 5: HS11352(a), transport COUNT 6: HS11351 COUNT 7: PC182(a)(1)
CN401074	OCL743	GUTIERREZ, RAFAEL	OPD	HOLLAND, JACOB	CHEN, VINCENT	dang/1900 fent pills	North County	Narcotics	Narcotics		HS11352(a), transport	COUNT 1: HS11352(a), transport COUNT 2: HS11351 COUNT 3: VC2800.1(a) COUNT 4: VC14601.1(a) COUNT 5: PC135
CN410692	OCN655	HALL, JEFFREY	OPD	NO NAME	LAYON, MARNIE	BAIL INCREAT \$50k to \$100k; STRANGULATION + PRIOR DV/STRANGULATION + THREATS	North County	Family Protection	Domestic Violence	20907760A	PC245(a)(4), force	COUNT 1: PC245(a)(4), force COUNT 2: PC236(237)(a) COUNT 3: PC245(a)(4), force
CS313060	BCF904	HALL, MARIO	OAC	Leahy, Jerry	RHOADS	Res 211	South County	Gang Prosecution	Gang Prosecution	20906704A	PC182(a)(1)	COUNT 1: PC182(a)(1) -- PC12022(a)(1), vicariou COUNT 2: PC182(a)(1) -- PC12022(a)(1), vicariou
CE393676	MBT080	HERNANDEZ, DAVID	PRO PER		RYAN, VALERIE	danger	East County	East County Branch	East County Branch	19750775B	VC2800.2(a)	COUNT 1: VC2800.2(a) COUNT 2: VC20001(a) COUNT 3: PC10851(a), >950 -- PC666.5(a) -- PC666.5(a) -- PC666.5(a) COUNT 4: PC496d -- PC666.5(a) -- PC666.5(a) -- PC666.5(a) PRIOR: PC1170(f)&(h)(3) PRIOR: PC667(b)-(i)
CD283255	AE0100	HOLDER, DUSTIN	APD	BABCOCK, RUSSELL	WALTER, STEVE	Crime Risk	Central	Insurance Fraud	Insurance Fraud	19755683A	VC10851(a), >950	COUNT 1: VC10851(a), >950 -- PC666.5(a) -- PC666.5(a) -- PC666.5(a) COUNT 2: PC496d -- PC666.5(a) -- PC666.5(a) -- PC666.5(a) COUNT 3: PC496d -- PC666.5(a) -- PC666.5(a) -- PC666.5(a) PRIOR: PC1203(e)(4) PRIOR: PC667.5(b) PRIOR: PC667.5(b) PRIOR: PC667.5(b) PRIOR: PC667.5(b)
CD284040	AE0742	HOLDER, DUSTIN	APD	BALFE, AMY	WALTER, STEVE	Crime Risk	Central	Superior Court	Superior Court	PC459	PC459	COUNT 1: PC459 -- PC12022.1(b) COUNT 2: PC459 -- PC12022.1(b) COUNT 3: PC459 -- PC12022.1(b) COUNT 4: PC459 -- PC12022.1(b) COUNT 5: PC459 -- PC12022.1(b) COUNT 6: PC459 -- PC12022.1(b) COUNT 25: PC459 -- PC12022.1(b) COUNT 26: PC459 -- PC12022.1(b) PRIOR: PC1203(e)(4)
CS312725	BCF802	HOLDER, DUSTIN	APD	BALFE, AMY	SELLWOOD, MICHELLE	Crime Risk	South County	South Bay Branch	South Bay Branch	20901997A	VC10851(a), >950	COUNT 1: VC10851(a), >950 -- PC666.5(a) -- PC666.5(a) -- PC666.5(a) -- PC666.5(a) -- PC12022.1(b) -- PC12022.1(b) COUNT 2: PC496d -- PC12022.1(b) -- PC12022.1(b) PRIOR: PC1203(e)(4)
CD284334	AEP040	HOMOKI, STEVE	RET.	SLATTERY, THOMAS	PATRICK, WENDY	Danger	Central	Special Operations	Special Operations	19775485A	PC273a(a)	COUNT 1: PC273a(a) COUNT 2: PC273a(a) COUNT 3: PC273a(a) COUNT 4: PC30605(a) COUNT 5: PC30605(a) COUNT 6: PC30605(a)
CE397876	MBT971	JIMENEZ, ALLYSSA	OPD	WEBB, AVERY	TELLEFSEN, DANA	other case res burg AEP611	East County	East County Branch	East County Branch		PC459	COUNT 1: PC459
CE391291	MBS541	JOHNSON, CHANNEL	OPD	SUWCZINSKY, LIZA	SCOTT, TIFFANY	Danger	East County	East County Branch	East County Branch		PC243.9(a)	COUNT 1: PC243.9(a) PRIOR: PC1170(f)&(h)(3) PRIOR: PC667(b)-(i)
CD284848	AEP512	JOHNSON, MICHAEL	OPD	CARTER, MONIQUE	WALTER, STEVE	REQUEST NO RELEASE GOT RE-ARRESTED ON NEW CASE AEO281 WHILE OUT ON BAIL	Central	Insurance Fraud	RATT	20903691A	VC10851(a), >950	COUNT 1: VC10851(a), >950 -- PC666.5(a) -- PC666.5(a) -- PC666.5(a) COUNT 2: PC459 COUNT 3: PC459 COUNT 4: PC487(d)(1), auto->950 -- PC666.5(a) -- PC666.5(a) -- PC666.5(a) COUNT 5: VC10851(a), drive only -- PC666.5(a) -- PC666.5(a) -- PC666.5(a) COUNT 6: PC496d -- PC666.5(a) -- PC666.5(a) -- PC666.5(a) PRIOR: PC1203(e)(4)
CE397651	MBT915	LONG, JOSEPH	OPD	Garber, Madeleine	OWEN, MEI	Danger	East County	East County Branch	East County Branch	20900990A	PC245(a)(4), force	COUNT 1: PC245(a)(4), force -- PC667(e)(2)(C)(v), 3 strikes PRIOR: PC667(b)-(i)
CD283179	AE0023	LOPEZ, CHRISTIAN	OPD	BOLLINGER, ANDRE	OJEL, PATRICK	No, on probation for 245, new offence jewelry high value proof, juve 245, and staff asult in CYA.	Central	Superior Court	Superior Court	19755356A	PC487(a)	COUNT 1: PC487(a) COUNT 2: PC459 COUNT 3: PC487(c), > 950 COUNT 4: PC459 PRIOR: PC1170(f)&(h)(3) PRIOR: PC667(b)-(i)
CN411944	OCN893	MAGANA, NESTOR	APD	NO NAME	GOCHNOUR, DANIEL	Flight Risk	North County	Narcotics	Narcotics	20915199A	HS11352(a), transport	COUNT 1: HS11352(a), transport -- HS11370.4(a)(2) COUNT 2: HS11351 -- PC1203.07(a)(1) -- HS11370.4(a)(2)
CS312558	BCF759	MANRIQUEZ, JUAN	APD	PENALOSA, MIGUEL	BLAYLOCK, CHRIS	Flight Risk	East County	Narcotics	Narcotics	20901444A	HS11379(a), transport	COUNT 1: HS11379(a), transport -- HS11370.4(b)(2) -- HS11370.4(b)(3) -- HS11370.4(b)(2) -- HS11370.4(b)(1) COUNT 2: HS11378 -- HS11370.4(b)(4) -- HS11370.4(b)(3) -- HS11370.4(b)(2) -- HS11370.4(b)(1)
CS311873	BCF544	MARTINEZ, SELSO	RET.	RUAN, CARLOS	BLAYLOCK, CHRIS	Flight Risk	South County	Narcotics	Narcotics	19772271A	HS11352(a), transport	COUNT 2: HS11352(a), transport -- PC1203.07(b)(1) -- HS11370.4(a)(1) -- HS11370.4(a)(2) -- HS11370.4(a)(3) COUNT 3: HS11351 -- PC1203.07(b)(1) -- HS11370.4(a)(2) -- HS11370.4(a)(3) COUNT 4: PC273a(a) COUNT 5: PC182(a)(1)
CN410633	OCN638	MAXEY, STEVEN	OPD	NO NAME	MASKAL, ERIKA	BAIL INCREASE \$100k to \$500k; STRANGER ATTACK ON 76 YO FEMALE + STRIKE PRIOR	North County	Family Protection	Elder Abuse	20908379A	PC368(b)(1)	COUNT 1: PC368(b)(1) COUNT 2: PC148(a)(1) PRIOR: PC1170(f)&(h)(3) PRIOR: PC667(b)-(i)
CS313555	BCG045	MEAVE, RICARDO	OPD	ROSE-WEBER, EMILY	BLAYLOCK, CHRIS	ft/dang/22kmeth	South County	Narcotics	Narcotics	20912561A	HS11379(a), transport	COUNT 1: HS11379(a), transport -- HS11370.4(b)(1) -- HS11370.4(b)(2) -- HS11370.4(b)(3) -- HS11370.4(b)(4) COUNT 2: HS11378 -- HS11370.4(b)(1) -- HS11370.4(b)(2) -- HS11370.4(b)(3) -- HS11370.4(b)(4)

CE38830	MBU02	MICK, RORY	RET.	BEKKEN, MARTHA	PRO, JOHN	History	East County	East County Branch	East County Branch	20907132A	HS11352(a), transport	COUNT 1: HS11352(a), transport COUNT 2: HS11352(a), import COUNT 3: HS11352(a), transport COUNT 4: HS11352(a), import COUNT 5: HS11351 COUNT 6: HS11351 COUNT 7: HS11379(a), transport COUNT 8: HS11379(a), transport COUNT 9: HS11378 PRIOR: PC667(b)-(i)
CS313702	BCG076	MILLER, ROBERT	RET.	BEKKEN, MARTHA	PRO, JOHN	ft/dang/50 lb meth	South County	Narcotics	Narcotics	20914188A	HS11379(a), import	COUNT 1: HS11379(a), import -- PC1203.073(b)(2) -- HS11370.4(b)(1) -- HS11370.4(b)(2) -- HS11370.4(b)(3) -- HS11370.4(b)(4) COUNT 2: HS11378 -- PC1203.073(b)(2) -- HS11370.4(b)(1) -- HS11370.4(b)(2) -- HS11370.4(b)(3) -- HS11370.4(b)(4) COUNT 3: HS11350(a) -- HS11370.4(b)(4)
CE397286	MBT810	MORA, BENNY	APD	SOPER, BLAIR	GUILLEN, MELANIE	History	East County	East County Branch	East County Branch	19778156A	PC496d	COUNT 1: PC496d -- PC1202.1(b) COUNT 2: HS11377(a) COUNT 3: PC466 PRIOR: PC1203(e)(4) PRIOR: PC667(b)-(i) PRIOR: PC1170(f)&(h)(3)
CD282311	AEN276	MURPHY, THOMAS	OPD	NO NAME	CUNNINGHAM, PHILIPPA	No. out on bail offense, huge theft record, 2800.2 history	Central	Superior Court	Superior Court	20909432F	VC10851(a), >\$950	COUNT 1: VC10851(a), >\$950 -- PC1202.1(b) COUNT 2: PC459 -- PC1202.1(b) COUNT 3: PC487(a), real property -- PC1202.1(b) COUNT 4: PC594(a)(b)(1) -- PC1202.1(b) PRIOR: PC1170(f)&(h)(3) PRIOR: PC667.5(b) PRIOR: PC667.5(b) PRIOR: PC667.5(b) PRIOR: PC667.5(b) PRIOR: PC667.5(b) PRIOR: PC667.5(b) PRIOR: PC667.5(b) PRIOR: PC667.5(b)
CE388015	MBR843	MYERS, ANDREW	RET.	BLAIR, PETER	TAG, MATTHEW	Danger	East County	East County Branch	East County Branch	19706896A&B	PC459	COUNT 1: HS11379.8(a) COUNT 2: PC459 COUNT 3: PC459-PC684 COUNT 4: PC459 COUNT 5: PC459 COUNT 6: PC459 COUNT 7: PC459 COUNT 8: PC459-PC684 COUNT 9: PC459 COUNT 10: PC459 COUNT 13: PC459 COUNT 14: PC459 COUNT 15: PC459 COUNT 18: PC459 COUNT 19: PC459 COUNT 20: PC459 COUNT 26: PC459 COUNT 27: PC459 COUNT 33: PC459 PRIOR: PC1170(f)&(h)(3) PRIOR: PC1203(e)(4) PRIOR: PC667(b)-(i)
CS313702	BCG076	OLEA, MIKE	APD	PENALOSA, MIGUEL	PRO, JOHN	ft/dang/50 lb meth	South County	Narcotics	Narcotics	20914189A	HS11379(a), import	COUNT 1: HS11379(a), import -- PC1203.073(b)(2) -- HS11370.4(b)(1) -- HS11370.4(b)(2) -- HS11370.4(b)(3) -- HS11370.4(b)(4) COUNT 2: HS11378 -- PC1203.073(b)(2) -- HS11370.4(b)(1) -- HS11370.4(b)(2) -- HS11370.4(b)(3) -- HS11370.4(b)(4)
CN409029	OCN328	OREA, RICARDO	RET.	WESSEL, JAMES	WOODWARD, PAIGE	Crime Risk	North County	North County Branch	North County Branch	19779568A	VC10851(a), >\$950	COUNT 1: VC10851(a), >\$950 COUNT 2: PC496d COUNT 3: VC10851(a), >\$950 COUNT 4: PC496d COUNT 5: VC20002(a) PRIOR: PC1170(f)&(h)(3) PRIOR: PC667(b)-(i)
CE388126	MBU038	OVERSTREET, JAMES	RET.	FILICIA, THOMAS	GUILLEN, MELANIE	Danger	East County	East County Branch	East County Branch	20904778A	HS11378	COUNT 1: HS11378 -- PC1202.1(b) PRIOR: PC1170(f)&(h)(3)
CS312558	BCF759	PARRASILLAS, BRAULIO	RET.	BAKER, DAVID	BLAYLOCK, CHRIS	Flight Risk	South County	Narcotics	Narcotics	20903147A	HS11379(a), transport	COUNT 3: HS11379(a), transport -- HS11370.4(b)(1) -- HS11370.4(b)(2) -- HS11370.4(b)(3) -- HS11370.4(b)(4) COUNT 4: HS11378 -- HS11370.4(b)(1) -- HS11370.4(b)(2) -- HS11370.4(b)(3) -- HS11370.4(b)(4)
CS313052	BCF900	PEPPARD, VINCENT	OPD	FUENTES, VARGAS	LABUFF, JACOB	Charged with PC245(a)(4) while out on bail for PC245(a)(1) [01-2020. D repeatedly punches his 56yo mother in the face causing laceration that requires sutures. D was on bail in case in which he repeatedly strikes victim with his skateboard after victim confronts D about shoplifting. Priors: 2015 PC245(a)(1)/PC1170(b)(4) + PC417 + PC242 - City Attorney DV case	South County	South Bay Branch	South Bay Branch		PC245(a)(4), force	COUNT 1: PC245(a)(4), force -- PC1202.1(b) PRIOR: PC1170(f)&(h)(3)
CN407928	OCN113	PEREZ, ELISEO	OPD	VALDOVINOS, PATRICIA	LAWRENSON, CASSANDRA	strike pend/gun	North County	Narcotics	Narcotics	19772710A	HS11379(a), transport	COUNT 1: HS11379(a), transport -- PC1202.1(b) COUNT 2: HS11378 -- PC1203.073(b)(2) -- PC1202.1(b)
CS311873	BCF544	PEREZ, REBECA	RET.	RAMOS, GEORGE	BLAYLOCK, CHRIS	Flight Risk	South County	Narcotics	Narcotics	20904615A	HS11352(a), transport	COUNT 5: PC182(a)(1) COUNT 6: HS11352(a), transport -- PC1203.073(b)(1) -- HS11370.4(a)(1) -- HS11370.4(a)(2) -- HS11370.4(a)(3) -- HS11370.4(a)(4) COUNT 7: HS11351 -- PC1203.073(b)(1) -- HS11370.4(a)(1) -- HS11370.4(a)(2) -- HS11370.4(a)(3) -- HS11370.4(a)(4)
CD281932	AEM930	POWELL, GERALD	OAC	BADILLO, JOSE	MCREYNOLDS, STACEY	Crime Risk	Central	Insurance Fraud	RATT	19736306A	PC186.10(a)	
CD281933	AEM831	POWELL, GERALD	OAC	BADILLO, JOSE	MCREYNOLDS, STACEY	Crime Risk	Central	Insurance Fraud	RATT	19736306A	PC186.10(a)	
CS313060	BCF904	RAMIREZ, TOMAS	OPD	Tandon, Danesh	RHOADS	Res 211	South County	Gang Prosecution	Gang Prosecution	20906700A	PC182(a)(1)	COUNT 1: PC182(a)(1) -- PC12022(a)(1), vicariou COUNT 2: PC182(a)(1) -- PC12022(a)(1), vicariou
CS313703	BCG077	REYES, GAYTAN	OPD		BLAYLOCK, CHRIS	ft/fert	South County	Narcotics	Narcotics	20914354A	HS11379(a), import	COUNT 1: HS11379(a), import -- PC1203.073(b)(2) -- HS11370.4(b)(1) -- HS11370.4(b)(2) -- HS11370.4(b)(3) -- HS11370.4(b)(4) COUNT 2: HS11378 -- PC1203.073(b)(2) -- HS11370.4(b)(1) -- HS11370.4(b)(2) -- HS11370.4(b)(3) -- HS11370.4(b)(4) COUNT 3: HS11352(a), import -- HS11370.4(a)(1) COUNT 4: HS11351 -- HS11370.4(a)(1) COUNT 5: HS11352(a), import COUNT 6: HS11351 COUNT 7: PC273a(a)
CN411681	OCN825	RUIZ, RODOLFO	RET.	SEVILLA III, EDGAR	GOCHNOUR, DANIEL	Fert/Danger	North County	Narcotics	Narcotics	20913755A	HS11352(a), transport	COUNT 1: HS11352(a), transport -- HS11370.4(a)(4) COUNT 2: HS11352(a), transport -- HS11370.4(a)(1)
CN409254	OCN378	SALAS, STEVEN	OPD	LOPEZ, ADELAI DA	WOODWARD, PAIGE	Flight Risk	North County	North County Branch	North County Branch	20900676A	VC2800.2(a)	COUNT 1: VC2800.2(a) COUNT 2: VC2800.4 COUNT 3: PC21810 COUNT 4: PC22210 COUNT 5: PC22610(a) PRIOR: PC1170(f)&(h)(3)
CN410979	OCN716	SANCHEZ, VIRGEN	OPD	FLEMMING, MICHAEL	REISCHL, JENNIFER	BAIL INCREASE \$50K TO \$60K	North County	Family Protection	Domestic Violence	20910599B & C	PC594(a)(b)(1)	COUNT 1: PC594(a)(b)(1) COUNT 2: PC484 PRIOR: PC667(b)-(i)
CS313060	BCF904	SHAW, NICHOLAS	RET.	Sparks, William	RHOADS	Res 211	South County	Gang Prosecution	Gang Prosecution	20906701A	PC182(a)(1)	COUNT 1: PC182(a)(1) -- PC12022(a)(1) COUNT 2: PC182(a)(1) -- PC12022(a)(1)
CS310000	BCE946	STEWART, EDWARD	OPD	CANLOBO, JONATHAN	BLAYLOCK, CHRIS	ft/dang/52kgmeth	South County	Narcotics	Narcotics		HS11379(a), import	COUNT 1: HS11379(a), import -- PC1203.073(b)(2) -- HS11370.4(b)(1) -- HS11370.4(b)(2) -- HS11370.4(b)(3) -- HS11370.4(b)(4) COUNT 2: HS11378 -- PC1203.073(b)(2) -- HS11370.4(b)(1) -- HS11370.4(b)(2) -- HS11370.4(b)(3) -- HS11370.4(b)(4) COUNT 3: HS11352(a), import -- PC1203.073(b)(1) -- HS11370.4(a)(1) PRIOR: PC1170(f)&(h)(3) PRIOR: PC667(b)-(i) PRIOR: PC667.5(b) PRIOR: PC1203(e)(4) PRIOR: PC667(b)-(i)
CN408064	OCN149	TAPIA, ESTEFANA	OPD	GONZALEZ, ALVARO	GOCHNOUR, DANIEL	Flight Risk	North County	Narcotics	Narcotics	19775095A	HS11379(a), transport	COUNT 1: HS11379(a), transport -- HS11370.4(b)(1) COUNT 2: HS11378 -- PC1203.073(b)(2) -- HS11370.4(b)(3) COUNT 3: PC273a(a)
CS312558	BCF759	TECAUPA, CARLOS	OAC	MERCER, LINDSEY	BLAYLOCK, CHRIS	Flight Risk	South County	Narcotics	Narcotics	20903148A	HS11379(a), transport	COUNT 3: HS11379(a), transport -- HS11370.4(b)(1) -- HS11370.4(b)(2) -- HS11370.4(b)(3) -- HS11370.4(b)(4) COUNT 4: HS11378 -- HS11370.4(b)(1) -- HS11370.4(b)(2) -- HS11370.4(b)(3) -- HS11370.4(b)(4)
CD285437	AEQ004	TELLO, JORGE	OPD	NO NAME	GRECO, MATTHEW	No. Murder 1368	Central	Superior Court	Superior Court	20913737A	PC245(a)(4), force	COUNT 1: PC245(a)(4), force COUNT 2: PC243.9(a) COUNT 3: PC242 COUNT 4: PC243(b), physician, nurse COUNT 5: PC243(b), physician, nurse COUNT 6: PC243(b), physician, nurse COUNT 7: PC243(b), physician, nurse
CS313060	BCF904	TORRES, JESUS	OAC	Cremans, Jill	RHOADS	Res 211	South County	Gang Prosecution	Gang Prosecution	20906689A	PC182(a)(1)	COUNT 1: PC182(a)(1) -- PC12022(a)(1), vicariou COUNT 2: PC182(a)(1) -- PC12022(a)(1), vicariou PRIOR: PC1170(f)&(h)(3)
CN411411	OCN777	TORRES, SALVADOR	OPD	VALDOVINOS, PATRICIA	GOCHNOUR, DANIEL	3kg meth/danger	North County	Narcotics	Narcotics	20912494A	HS11379(a), transport	COUNT 1: HS11379(a), transport -- HS11370.4(b)(1)
CE399538	MBU294	TOWNSEND, VICTOR	OPD	NO NAME	RUPP, RENEE	BAIL \$100K: MENTAL ILLNES/SUBSTANCE ABUSE/VIOLENCE	East County	Family Protection	Elder Abuse	20914837A	PC368(b)(1)	COUNT 1: PC368(b)(1) COUNT 2: PC245(a)(4), force COUNT 3: PC236237(a) COUNT 4: PC594(a)(b)(1) COUNT 5: PC148(a)(1)
CE397352	MBT834	TYLER, RODNEY	OPD	WEBB, AVERY	KIMBLE, MERIDETH	History	East County	East County Branch	East County Branch		PC470(d), checks and ID theft	COUNT 1: PC530.5(c)(3) COUNT 2: PC470(d), checks and ID theft PRIOR: PC1170(f)&(h)(3) PRIOR: PC667(b)-(i) PRIOR: PC1203(e)(4)
CN404073	OCM368	URREA, CHRISTIAN	RET.	BABCOCK, RUSSELL	GOCHNOUR, DANIEL	Flight Risk	North County	Narcotics	Narcotics	19752556A	HS11379(a), transport	COUNT 1: HS11379(a), transport COUNT 2: HS11352(a), transport
CS313706	BCG078	VALENZUELA, JOSE	OPD	FUENTES, LEONEL	PRO, JOHN	selling fert/danger	South County	Narcotics	Narcotics	20914190A	HS11352(a), sell	COUNT 1: HS11352(a), sell COUNT 2: HS11351 COUNT 3: HS11352(a), sell COUNT 4: HS11351 COUNT 5: HS11352(a), sell COUNT 6: HS11351

CD284863	AEP527	VALENZULA, LUIS	RET.	WHITE, STEPHEN	TRAN, ERIC	Flight Risk	Central	Narcotics	Narcotics	20904608A	HS11379(a), transport	COUNT 1: HS11379(a), transport -- HS11370.4(b)(1) -- HS11370.4(b)(2) -- HS11370.4(b)(3) -- HS11370.4(b)(4) COUNT 2: HS11378 -- HS11370.4(b)(1) -- HS11370.4(b)(2) -- HS11370.4(b)(3) -- HS11370.4(b)(4)
CS311762	BCF483	VASQUEZ, ERIC	RET.	TEGHELIA, RYAN	BLAYLOCK, CHRIS	Flight Risk	South County	Narcotics	Narcotics	19770135A	HS11352(a), import	COUNT 1: HS11352(a), import -- PC1203.073(b)(1) -- HS11370.4(a)(1) -- HS11370.4(a)(2) -- HS11370.4(a)(3) -- HS11370.4(a)(4) COUNT 2: HS11351 -- PC1203.073(b)(1) -- HS11370.4(a)(1) -- HS11370.4(a)(2) -- HS11370.4(a)(3) -- HS11370.4(a)(4) COUNT 3: HS11366.8(a)
CN409738	OCN469	VASQUEZ, SALVADOR	RET.	EZQUERRO, FERNANDA	LOGAN, DEAN CAL	Danger/Flight Risk	North County	Narcotics	Narcotics	20903339A	HS11379(a), transport	COUNT 1: HS11379(a), transport -- HS11370.4(b)(4) COUNT 2: HS11378 -- HS11370.4(b)(4) PRIOR: PC667(b)-(i)
CN411944	OCN893	VAZQUEZ, JARED	OPD	NO NAME	GOCHNOUR, DANIEL	Flight Risk	North County	Narcotics	Narcotics	20915197A	HS11352(a), transport	COUNT 1: HS11352(a), transport -- HS11370.4(a)(2) COUNT 2: HS11351 -- PC1203.07(a)(1) -- HS11370.4(a)(2)
CD284323	AEP029	VERNON, ELIAS	RET.	FUQUA, ALEXANDER	FELS, IAN	No. 594 same victim while out on bail	Central	Superior Court	Superior Court	19768493A	PC594(a)(b)(1)	COUNT 1: PC594(a)(b)(1) -- PC12022.1(b) PRIOR: PC1203(e)(4)
CD284324	AEP030	VERNON, ELIAS	RET.	FUQUA, ALEXANDER	FELS, IAN	No. 594 same victim while out on bail. 245 history.	Central	Superior Court	Superior Court		PC594(a)(b)(1)	COUNT 1: PC594(a)(b)(1) -- PC12022.1(b) COUNT 2: PC594(a)(b)(1) -- PC12022.1(b) COUNT 3: PC594(a)(b)(1) -- PC12022.1(b) PRIOR: PC1203(e)(4)
CN389776	OCJ437	VO, NHAT	OPD	Hallare, Joseph	Coleman	Mental issues/danger	North County	Family Protection	Animal Cruelty	18150983A	PC597(a)	COUNT 1: PC597(a) PC 12022(b)(1); COUNT 2: PC594(a)(b)(2)(A) COUNT 3: PC602(m)
CD283155	AEN998	WATERS, JIMMY	RET.	Orsatti, Victor	Tanney	Danger + flight - \$1.6M loss repeat conduct	Central	Economic Crimes	Economic Crimes	19764841	PC530.5(a)	
CN409574	OCN444	WAY, BRIAN	OPD	ITZHAKI, LINDSAY	GOCHNOUR, DANIEL	drug/gun/meth	North County	Narcotics	Narcotics	19739738A	HS11370.1(a)	COUNT 1: HS11370.1(a) COUNT 2: HS11378 -- PC1203.073(b)(2) -- PC1203.07(a)(1) -- PC12022(c) -- HS11370.4(b)(1) COUNT 3: PC29800(a)(1) COUNT 4: PC30305(a)(1) COUNT 5: PC18710(a) COUNT 6: HS11378 PRIOR: PC1170(f)&(h)(3) PRIOR: PC1203(a)(4) PRIOR: PC667(b)-(i)
CE399280	MBU247	WENBOURNE, BRETT	OPD	WEINTRE, JAMES	CHEN, VINCENT	danger/history	East County	East County Branch	East County Branch	20910692F	PC530.5(c)(3)	COUNT 1: PC530.5(c)(3) COUNT 2: HS11377(a) COUNT 3: HS11364 PRIOR: PC1170(f)&(h)(3)



CD284195	AEO901	YNZUNZA, FRANCISCO	APD	NGUYEN, DAVID	EASTMAN	fl/76lbs meth	Central	Narcotics	Narcotics	19772689A	HS11379(a), sell/furnish	COUNT 1: HS11379(a), sell/furnish -- HS11370.4(b)(4) -- HS11370.4(b)(3) -- HS11370.4(b)(2)
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COURT	DA	REASON	ISSUED AS	DISTRICT	DIVISION	UNIT	DEFENDANT_NAME	BOOKING	ISSUING_DATE	HIGHEST_CHARGE	ALL_CHARGES_ON_LATEST_COMPLAINT
CD285872	AEQ289	Raise bail - D spits on staff, on probation	Felony	Central	Case Issuing/Extraditions	Case Issuing/Extraditions	ALLEN, MATTHEW	20918084A	04/08/20	PC594(a)(b)(1)	COUNT 1: PC594(a)(b)(1)
CD285853	AEQ270	danger/10K fent pills	Felony	Central	Narcotics	Narcotics	ALVAREZ, ADRIAN	20917885A	04/07/20	HS11352(a), transport	COUNT 1: HS11352(a), transport COUNT 2: HS11351
CS313762	BCG108	Charged with PC594(a)(b)(1) [03-2020]	Felony	South County	South Bay Branch	South Bay Branch	ARCHULETA, GILBERT	20915205A	03/13/20	PC594(a)(b)(1)	COUNT 1: PC594(a)(b)(1)
S313919		D on felony probation for PC 69 which	Misdemeanor	South County	Family Protection	Domestic Violence	AVILA, JORGE	20917934A	04/07/20	PC594(a)(b)(2)(A)	
CD285896	AEQ313	Raise bail - Def on parole and on fed p	Felony	Central	Case Issuing/Extraditions	Case Issuing/Extraditions	AVITIA, CHRISTIAN	20918270A	04/10/20	VC2800.2(a)	
CD285691	AEQ258	Violent Hist of threats and theft; callous	Felony	Central	Superior Court	Superior Court	BATTLE, KHARI	20901184A	03/17/20	PC245(a)(4), force	COUNT 1: PC245(a)(4), force PRIOR: PC1203(e)(4) PRIOR: PC667(b)-(i) PRIOR: PC1170(f)&(h)(3)
C399801		danger	Misdemeanor	East County	East County Branch	East County Branch	BAXTER, RYAN	20917515A	04/02/20	PC148(a)(1)	
CE399829	MBU380	history	Felony	East County	East County Branch	East County Branch	BELTRAN, FERNANDO	20917938A	04/07/20	HS11351	
S313903		D alcoholic with 2 strike priors	Misdemeanor	South County	Family Protection	Elder Abuse	BERNAL, JOEL	20917263A	04/02/20	PC368(c)	
CN412223	OCN942	D on probation for 245(a)(1) out of Riv	Felony	North County	Family Protection	Elder Abuse	BROWN, CHAD	20916444A	03/23/20	PC368(b)(1)	COUNT 1: PC368(b)(1) COUNT 2: PC236/237(a) PRIOR: PC1203(e)(4) PRIOR: PC667(b)-(i) PRIOR: PC1170(f)&(h)(3)
CN411947	OCN895	flit/4 kilos meth	Felony	North County	Narcotics	Narcotics	CASTRO, EVERADO	20915185A	03/13/20	HS11379(a), transport	COUNT 1: HS11379(a), transport -- HS11370.4(b)(2) COUNT 2: HS11378 -- HS11370.4(b)(2)
CE399728	MBU340	danger	Felony	East County	East County Branch	East County Branch	CAVALLERO, JASON	20916688A	03/25/20	HS11379(a), import	COUNT 1: HS11379(a), import COUNT 2: HS11378 COUNT 3: VC2800.2(a)
CE399770	MBU360	Danger	Felony	East County	Special Operations	Hate Crimes	CLANCY, CATHY	20917417A	04/01/20	PC594(a)(b)(1)	COUNT 1: PC594(a)(b)(1) -- PC422.75(a) COUNT 2: PC422.6(b)
CD285875	AEQ292	Constant reoffender, has prior 2800.2.	Felony	Central	Case Issuing/Extraditions	Case Issuing/Extraditions	COFFMAN, THOMAS	0918195A&20917800	04/08/20	VC2800.2(a)	COUNT 1: VC2800.2(a) -- PC1202.1(b) COUNT 2: VC10851(a), >\$950 -- PC1202.1(b) -- PC666.5(a) COUNT 3: PC496d -- PC1202.1(b) -- PC666.5(a) COUNT 4: VC10851(a), >\$950 -- PC666.5(a) COUNT 5: PC496d -- PC666.5(a) PRIOR: PC1170(f)&(h)(3) PRIOR: PC1203(e)(4)
CN412483	OCN997	Crime Risk	Felony	North County	North County Branch	North County Branch	CORONA, JOSE	20917459A	04/01/20	PC236/237(a)	COUNT 1: PC236/237(a) COUNT 2: PC594(a)(b)(1)
CE399812	MBU372	danger	Felony	East County	East County Branch	East County Branch	DAMAS, DONTE	20917878A	04/07/20	PC30305(a)(1)	COUNT 1: PC30305(a)(1) PRIOR: PC1203(e)(4) PRIOR: PC667(b)-(i) PRIOR: PC1170(f)&(h)(3)
CN411963	OCN904	Crime Risk	Felony	North County	North County Branch	North County Branch	DAO, THY	20914230C	03/13/20	PC487(a)	COUNT 1: PC487(a)
CD285852	AEQ269	Raise bail - Def causes \$74K damage,	Felony	Central	Case Issuing/Extraditions	Case Issuing/Extraditions	DOERING, EDUARDO	20917884A	04/07/20	PC463(a)	COUNT 1: PC463(a) COUNT 2: PC459 COUNT 3: PC148(d) COUNT 4: PC69 COUNT 5: PC594(a)(b)(1) COUNT 6: PC600(a), charge
CE399756	MBU352	danger	Felony	East County	East County Branch	East County Branch	FAKHOURY, RAMI	20916603A	03/24/20	PC246.3(a)	COUNT 1: PC246.3(a) PRIOR: PC1170(f)&(h)(3)
CN412433		Violence Risk	Misdemeanor	North County	North County Branch	North County Branch	FONSECA, JOSE	20917098A	03/27/20	PC417(a)(1), exhibit weapon	COUNT 1: PC417(a)(1), exhibit weapon
CN412516		80 years old father and elderly landlord ar	Misdemeanor	North County	Family Protection	Elder Abuse	GERMAN, AMANDA	20917365A	04/02/20	PC368(c)	COUNT 1: PC368(c) COUNT 2: PC242
CD285630	AEQ197	danger	Felony	Central	Narcotics	Narcotics	HARPER, ROBERT	20917004A	03/27/20	HS11352(a), sell	COUNT 1: HS11352(a), sell COUNT 2: HS11352(a), sell
CD285667	AEQ234	Holding down and hitting mom, having	Felony	Central	Case Issuing/Extraditions	Case Issuing/Extraditions	JOHNSON, KEVIN	20917149A	04/02/20	PC236/237(a)	COUNT 1: PC236/237(a) COUNT 2: PC242 COUNT 3: PC594(a)(b)(2)(A) PRIOR: PC667(b)-(i) PRIOR: PC1170(f)&(h)(3)
CD285864	AEQ281	REQUEST NO RELEASE GOT RE-AR	Felony	Central	Insurance Fraud	Insurance Fraud	JOHNSON, MICHAEL	20917910A	04/08/20	VC10851(a), drive only	COUNT 1: VC10851(a), drive only -- PC666.5(a) -- PC666.5(a) -- PC666.5(a) -- PC1202.1(b) COUNT 2: PC496d -- PC666.5(a) -- PC666.5(a) -- PC666.5(a) -- PC1202.1(b) PRIOR: PC1203(e)(4)
CD285656	AEQ223	danger/fent/striker	Felony	Central	Narcotics	Narcotics	KIOLBASA, ADAM	20917465A	04/01/20	HS11352(a), transport	COUNT 1: HS11352(a), transport COUNT 2: HS11351 COUNT 3: PC530.5(a) PRIOR: PC667(b)-(i)
CD285656	AEQ223	danger/fent/striker	Felony	Central	Narcotics	Narcotics	KIOLBASA, ADAM	20917465A	04/01/20	HS11352(a), transport	COUNT 1: HS11352(a), transport COUNT 2: HS11351 COUNT 3: PC530.5(a) PRIOR: PC667(b)-(i)
CD285581	AEQ148	danger/fent/gun	Felony	Central	Narcotics	Narcotics	MAYNARD, ALICE	20916312A	03/20/20	HS11351	COUNT 1: HS11351 -- PC12022(c) COUNT 2: HS11351 -- PC12022(c) COUNT 3: HS11378 -- PC12022(c)
CD285581	AEQ148	danger/fent/gun	Felony	Central	Narcotics	Narcotics	MAYNARD, CRAIG	20916311A	03/20/20	HS11351	COUNT 1: HS11351 -- PC12022(c) COUNT 2: HS11351 -- PC12022(c) COUNT 3: HS11378 -- PC12022(c) COUNT 4: PC29800(a)(1)
CD285637	AEQ204	High with explosives- danger to commu	Felony	Central	Case Issuing/Extraditions	Case Issuing/Extraditions	MEJIA, JAZIEL	20916983A	03/27/20	PC18715(a)	COUNT 1: PC18715(a) COUNT 2: PC148(a)(1)
C399706		D on parole for PC 273.5 from 2018 co	Misdemeanor	East County	Family Protection	Elder Abuse	MOORE, HENNAN	20916289A	03/24/20	PC594(a)(b)(2)(A)	COUNT 1: PC594(a)(b)(2)(A)
CS313840	BCG128	danger/10lbs met/fent	Felony	South County	Narcotics	Narcotics	OSUNA, GERARDO	20916329A	03/24/20	HS11379(a), transport	
CS313824	BCG123	Charged with PC245(a)(4) x3 + PC594	Felony	South County	South Bay Branch	South Bay Branch	PEREA, JOSE	20916264A	03/23/20	PC245(a)(4), force	
CD285684	AEQ251	Dangerous - Pending Assault case ther	Felony	Central	Case Issuing/Extraditions	Case Issuing/Extraditions	QUIROZ, FERNANDO		03/15/20	PC243.9(a)	COUNT 1: PC243.9(a) PRIOR: PC1203(e)(4)
CN412145	OCN927	3 prior recent convictions for elder abuse	Felony	North County	Family Protection	Elder Abuse	RALEY, ANDREA	20915665A	03/18/20	PC368(b)(1)	COUNT 1: PC368(b)(1) COUNT 2: PC368(b)(1)
CD285686	AEQ253	D has Poway attempt rape case open as w	Felony	Central	Family Protection	Financial	RASMUSSEN, RYAN	20917498B	04/03/20	PC368(d), >\$950	COUNT 1: PC368(d), >\$950 COUNT 2: PC530.5(a) COUNT 3: PC470(d), checks > \$950 COUNT 4: PC470(a), forgery and ID Theft COUNT 5: PC487(a)
CD285606	AEQ173	attacking homeless; history of violence	Felony	Central	Case Issuing/Extraditions	Case Issuing/Extraditions	RODRIGUEZ, NICK	20916583A	03/25/20	PC594(a)(b)(1)	COUNT 1: PC594(a)(b)(1) COUNT 2: PC242 PRIOR: PC1170(f)&(h)(3) PRIOR: PC1203(e)(4) PRIOR: PC667(b)-(i)
CD313801	BCG115	flight risk	Felony	South County	Narcotics	Narcotics	RODRIGUEZ, RUBEN	20915883A	03/18/20	HS11352(a)	
CN411941	OCN890	NEGLECT/DEATH; ARREST WARRANT	Felony	North County	Family Protection	Elder Abuse	ROTHCHILD, ELISHA	20916306	3/18/2020	PC368(b)(1)	COUNT 1: PC368(b)(1) PC368(b)(3)(B), 70+

CD285609	AEQ176	Gang member w/Ks, dangerous 2800.2	Felony	Central	Case Issuing/Extraditio	Case Issuing/Extraditions	SAMIANO, JUAN	20916634A	03/25/20	VC2800.2(a)	COUNT 1: VC2800.2(a) COUNT 2: PC148(a)(1) PRIOR: PC667(b)-(i) PRIOR: PC1170(f)&(h)(3)
CE399694	MBU328	cases/danger	Felony	East County	East County Branch	East County Branch	SCALES, JOSHUA	20916325B	03/23/20	PC594(a)(b)(1)	COUNT 1: PC594(a)(b)(1) PRIOR: PC1170(f)&(h)(3) PRIOR: PC1203(e)(4)
CN412440	OCN988	Crime Risk	Felony	North County	North County Branch	North County Branch	TERRIQUEZ, AUSTIN	20917049A	03/30/20	PC246.3(a)	COUNT 1: PC246.3(a) COUNT 2: PC30305(a)(1) COUNT 3: PC22410 COUNT 4: PC22210 COUNT 5: PC29800(a)(1) PRIOR: PC1170(f)&(h)(3)
CD285646	AEQ213	Drives stolen vehicle while DUI w/ prior	Felony	Central	Case Issuing/Extraditio	Case Issuing/Extraditions	VELASCO, ADRIAN	20917376A	04/01/20	VC10851(a), >\$950	COUNT 1: VC10851(a), >\$950 -- PC666.5(a) COUNT 2: PC496d -- PC666.5(a) COUNT 3: VC23152(a) -- VC23578 COUNT 4: VC23152(b) -- VC23578 COUNT 5: VC20002(a) PRIOR: PC1170(f)&(h)(3) PRIOR: PC667(b)-(i) PRIOR: PC1203(e)(4)
CN412629		on probation for PC 422 which when vio	Misdemeanor	North County	Family Protection	Elder Abuse	WINN, BRYAN	20917751A	04/06/20	PC166(a)(4), disobey	

# EXHIBIT C

Document received by the CA Supreme Court.



4. I submit this affidavit in support of any defendant seeking release from custody during the COVID-19 pandemic, so long as such release does not jeopardize public safety and the inmate can be released to a residence in which the inmate can comply with CDC social distancing guidelines. The statements in this affidavit are based only on the current state of emergency and the circumstances described below.

**The Risk of Infection and Accelerated Transmission of COVID-19 within Jails and Prisons is Extraordinarily High.**

5. Prisons and jails are not actually isolated from our communities: hundreds of thousands of correctional officers and correctional healthcare workers enter these facilities every day, returning to their families and to our communities at the end of their shifts, bringing back and forth to their families and neighbors and to incarcerated patients any exposures they have had during the day. Access to testing for correctional staff has been “extremely limited,” guards have reported a “short supply” of protective equipment, and prisons are not routinely or consistently screening correctional officers for symptoms.<sup>1</sup>

6. The risk of exposure is particularly acute in pre-trial facilities where the inmate populations shift frequently.<sup>2</sup> For example, despite the federal government’s guidance to stay

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<sup>1</sup> Keegan Hamilton, *Sick Staff, Inmate Transfers, and No Tests: How the U.S. Is Failing Federal Inmates as Coronavirus Hits*, Vice (Mar. 24, 2020), [https://www.vice.com/en\\_ca/article/jge4vg/sick-staff-inmate-transfers-and-no-tests-how-the-us-is-failing-federal-inmates-as-coronavirus-hits](https://www.vice.com/en_ca/article/jge4vg/sick-staff-inmate-transfers-and-no-tests-how-the-us-is-failing-federal-inmates-as-coronavirus-hits).

*See also* Daniel A. Gross, “*It Spreads Like Wildfire*”: *The Coronavirus Comes to New York’s Prisons*, The New Yorker (Mar. 24, 2020), <https://www.newyorker.com/news/news-desk/it-spreads-like-wildfire-covid-19-comes-to-new-yorks-prisons>; Josiah Bates, ‘*We Feel Like All of Us Are Gonna Get Corona.*’ *Anticipating COVID-19 Outbreaks, Rikers Island Offers Warning for U.S. Jails, Prisons*, Time (Mar. 24, 2020), <https://time.com/5808020/rikers-island-coronavirus/>; Sadie, Gurman, *Bureau of Prisons Imposes 14-Day Quarantine to Contain Coronavirus*, WSJ (Mar. 24, 2020), <https://www.wsj.com/articles/bureau-of-prisons-imposes-14-day-quarantine-to-contain-coronavirus-11585093075>; Cassidy McDonald, *Federal Prison Workers Say Conflicting Orders on Coronavirus Response Is Putting Lives at Risk*, CBS News (Mar. 19, 2020), <https://www.cbsnews.com/news/coronavirus-prison-federal-employees-say-conflicting-orders-putting-lives-at-risk-2020-03-19/>.

<sup>2</sup> Emma Grey Ellis, *Covid-19 Poses a Heightened Threat in Jails and Prisons*, Wired (Mar. 24, 2020), <https://www.wired.com/story/coronavirus-covid-19-jails-prisons/>.

inside and many states' stay-in-place orders, many prosecutors are still arresting individuals and seeking detention.<sup>3</sup> Pre-trial detention facilities are still accepting new inmates who are coming from communities where COVID-19 infection is rampant. As of today's date, the Bureau of Prisons is still moving inmates from facility to facility, including prisoners in New York.<sup>4</sup>

7. Because inmates live in close quarters, there is an extraordinarily high risk of accelerated transmission of COVID-19 within jails and prisons. Inmates share small cells, eat together and use the same bathrooms and sinks. They eat together at small tables that are cleaned only irregularly. Some are not given tissues or sufficient hygiene supplies.<sup>5</sup> Effective social distancing in most facilities is virtually impossible, and crowding problems are often compounded by inadequate sanitation, such as a lack of hand sanitizer or sufficient opportunities to wash hands.<sup>6</sup>

**Inmate Populations Also Have the Highest Risk of Acute Illness and Poor Health Outcomes if Infected with COVID-19.**

8. There are more than 2.3 million people incarcerated in the United States<sup>7</sup>

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<sup>3</sup> Stephen Rex Brown, *'Business as Usual' For Federal Prosecutors Despite Coronavirus, Nadler Writes, Calling for Release of Inmates*, N.Y. Daily News (Mar. 20, 2020), <https://www.nydailynews.com/new-york/ny-nadler-doj-inmates-20200320-d6hbdjcu5aitppi3ui2xz7tjy-story.html>.

<sup>4</sup> Courtney Bubl , *Lawmakers, Union Urge Halt to All Prison Inmate Transfers*, Government Executive (Mar. 25, 2020), <https://www.govexec.com/management/2020/03/lawmakers-union-urge-halt-all-prison-inmate-transfers/164104/>; Hamilton, *Sick Staff, Inmate Transfers*; Luke Barr, *Despite Coronavirus Warnings, Federal Bureau of Prisons Still Transporting Inmates*, ABC News (Mar. 23, 2020), <https://abcnews.go.com/Health/warnings-bureau-prisons-transporting-inmates-sources/story?id=69747416>.

<sup>5</sup> Justine van der Leun, *The Incarcerated Person Who Knows How Bad It Can Get*, Medium (Mar. 19, 2020), <https://gen.medium.com/what-its-like-to-be-in-prison-during-the-coronavirus-pandemic-1e770d0ca3c5> ("If you don't have money, you don't have soap or tissues."); Keri Blakinger and Beth Schwartzapfel, *How Can Prisons Contain Coronavirus When Purrell Is a Contraband?*, ABA Journal (Mar. 13, 2020), <https://www.abajournal.com/news/article/when-purrell-is-contraband-how-can-prisons-contain-coronavirus>.

<sup>6</sup> Rosa Schwartzburg, *The Only Plan the Prison Has Is to Leave Us To Die in Our Beds*, The Nation (Mar. 25, 2020), <https://www.thenation.com/article/society/coronavirus-jails-mdc/>.

<sup>7</sup> Kimberly Kindy et al., *'Disaster Waiting to Happen': Thousands of Inmates Released as Jails and Prisons Face Coronavirus Threat*, Washington Post (Mar. 25, 2020), [https://www.washingtonpost.com/national/disaster-waiting-to-happen-thousands-of-inmates-released-as-jails-face-coronavirus-threat/2020/03/24/761c2d84-6b8c-11ea-b313-df458622c2cc\\_story.html](https://www.washingtonpost.com/national/disaster-waiting-to-happen-thousands-of-inmates-released-as-jails-face-coronavirus-threat/2020/03/24/761c2d84-6b8c-11ea-b313-df458622c2cc_story.html).

approximately 16% of whom are age 50 or older.<sup>8</sup> The risk of coronavirus to incarcerated seniors is high. “Their advanced age, coupled with the challenges of practicing even the most basic disease prevention measures in prison, is a potentially lethal combination.”<sup>9</sup> To make matters worse, correctional facilities are often ill-equipped to care for aging prisoners, who are more likely to suffer from chronic health conditions than the general public.

9. An estimated 39-43% of all prisoners, and over 70% of older prisoners, have at least one chronic condition, some of the most common of which are diabetes, hypertension, and heart problems.<sup>10</sup> According to the CDC, each of these conditions—as well as chronic bronchitis, emphysema, heart failure, blood disorders, chronic kidney disease, chronic liver disease, any condition or treatment that weakens the immune response, current or recent pregnancy in the last two weeks, inherited metabolic disorders and mitochondrial disorders, heart disease, lung disease, and certain neurological and neurologic and neurodevelopment conditions<sup>11</sup>—puts them at a “high-risk for severe illness from COVID-19.”<sup>12</sup>

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<sup>8</sup> Brie Williams *et al.*, *Strategies to Optimize the Use of Compassionate Release from US Prisons*, 110 AJPH S1, S28 (2020), available at <https://ajph.aphapublications.org/doi/full/10.2105/AJPH.2019.305434>; Kimberly A. Skarupski, *The Health of America’s Aging Prison Population*, 40 *Epidemiologic Rev.* 157, 157 (2018), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5982810/>.

<sup>9</sup> Weihua Li and Nicole Lewis, *This Chart Shows Why the Prison Population is So Vulnerable to COVID-19*, The Marshall Project (Mar. 19, 2020), <https://www.themarshallproject.org/2020/03/19/this-chart-shows-why-the-prison-population-is-so-vulnerable-to-covid-19>.

<sup>10</sup> Brie A. Williams *et al.*, *How Health Care Reform Can Transform the Health of Criminal Justice-Involved Individuals*, 33 *Health Affairs* 462-67 (2014), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4034754/>; Brie A. Williams *et al.*, *Coming Home: Health Status and Homelessness Risk of Older Pre-release Prisoners*, 25 *J. Gen. Internal Med.* 1038-44 (2010), available at <https://link.springer.com/content/pdf/10.1007/s11606-010-1416-8.pdf>; Laura M. Maruschak *et al.*, *Medical Problems of State and Federal Prisoners and Jail Inmates, 2011-12*, U.S. Dept of Justice (Oct. 4, 2016), at 5, available at <https://www.bjs.gov/content/pub/pdf/mpsfj1112.pdf>.

<sup>11</sup> Harvard Health Publishing, *Coronavirus Research Center*, Harvard Medical School (Mar. 25, 2020), <https://www.health.harvard.edu/diseases-and-conditions/coronavirus-resource-center>.

<sup>12</sup> Centers for Disease Control and Prevention, *Coronavirus Disease 2019: People Who Are at Higher Risk*, <https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/people-at-higher-risk.html> (last updated Mar. 22, 2020).

10. However, even many young federal prisoners suffer from asthma, rendering them also very vulnerable to coronavirus.<sup>13</sup>

11. But it is not only the elderly, or those with preexisting medical conditions that are at risk of coronavirus in a correctional setting. As of March 23, 2020, New York City reported that “[p]eople ranging in ages from 18 to 44 have accounted for 46 percent of positive tests.”<sup>14</sup> Across the United States, 38% of those hospitalized are between the ages of 20 and 54 and 12% of the intensive care patients are between 20 and 44.<sup>15</sup>

12. This data is of particular concern for inmate populations, since prisoners’ physiological age *averages 10 to 15 years older* than their chronological age.<sup>16</sup> Therefore, the consensus of those who study correctional health is that inmates are considered “geriatric, by the age of 50 or 55 years.”<sup>17</sup> It is not clear that prison health care administrations are taking accelerated ageing into account when determining the eligibility criteria for age-related screening tools and medical care protocols for coronavirus, potentially leaving large swathes of the prison population at risk.<sup>18</sup>

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<sup>13</sup> Laura Maruschak, *Medical Problems of Jail Inmates*, Dep’t of Justice (Nov. 2006), at p. 2, available at <https://www.bjs.gov/content/pub/pdf/mpji.pdf>.

<sup>14</sup> Kimiko de Freytas-Tamura, *20-Somethings Now Realizing That They Can Get Coronavirus, Too*, N.Y. Times (Mar. 23, 2020), <https://www.nytimes.com/2020/03/23/nyregion/nyc-coronavirus-young.html>.

<sup>15</sup> *Id.*

<sup>16</sup> Brie A. Williams *et al.*, *Aging in Correctional Custody: Setting a Policy Agenda for Older Prisoner Health Care*, 102 Am. J. Public Health 1475-81 (2012), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3464842/>; see also Brie Williams *et al.*, *Detained and Distressed: Persistent Distressing Symptoms in a Population of Older Jail Inmates*, 64 J. Am. Geriatrics Soc. 2349-55 (2016), <https://onlinelibrary.wiley.com/doi/pdf/10.1111/jgs.14310> (“For example, older jail inmates with an average age of 60 in this study reported poor or fair health [and] chronic lung disease . . . at rates similar to those reported by community-based lower income older adults with an average age of 72.”).

<sup>17</sup> Brie A. Williams *et al.*, *The Older Prisoner and Complex Chronic Medical Care* 165-70 in World Health Organization, *Prisons and Health* (2014), <https://pdfs.semanticscholar.org/64aa/10d3cff6800ed42dd152fcf4e13440b6f139.pdf>.



13. In one study, we found that inmates who died in hospitals were, on average, nearly two decades younger than non-incarcerated decedents, had significantly shorter hospitalizations, and had higher rates of several chronic conditions including cancer, liver disease and/or hepatitis, mental health conditions, and HIV/AIDS.”<sup>19</sup>

### **The Entire Community is at Risk If Prison Populations Are Not Reduced**

14. As the World Health Organization has warned, prisons around the world can expect “huge mortality rates” from Covid-19 unless they take immediate action including screening for the disease.<sup>20</sup>

15. As of March 24, 2020, at least 38 people involved in the New York City correctional system have tested positive for Covid-19.<sup>21</sup> Already, three inmates and three staff at federal correctional facilities across the United States have tested positive for the coronavirus, according to the Federal Bureau of Prisons.<sup>22</sup>

16. Jails and prisons are fundamentally ill-equipped to handle a pandemic.

17. Medical treatment capacity is not at the same level in a correctional setting as it is in a hospital. Some correctional facilities have no formal medical ward and no place to quarantine

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<sup>18</sup> Brie A. Williams *et al.*, *Differences Between Incarcerated and Non-Incarcerated Patients Who Die in Community Hospitals Highlight the Need For Palliative Care Services For Seriously Ill Prisoners in Correctional Facilities and in Community Hospitals: a Cross-Sectional Study*, 32 *J. Palliative Med.* 17-22 (2018), available at <https://journals.sagepub.com/doi/pdf/10.1177/0269216317731547>.

<sup>19</sup> *Id.* at 20.

<sup>20</sup> Hannah Summers, ‘*Everyone Will Be Contaminated*’: *Prisons Face Strict Coronavirus Controls*, *The Guardian* (Mar. 23, 2020), <https://www.theguardian.com/global-development/2020/mar/23/everyone-will-be-contaminated-prisons-face-strict-coronavirus-controls>.

<sup>21</sup> Ellis, *Covid-19 Poses a Heightened Threat in Jails and Prisons*.

<sup>22</sup> Ryan Lucas, *As COVID-19 Spreads, Calls Grow to Protect Inmates in Federal Prisons*, *NPR* (Mar. 24, 2020), <https://www.npr.org/sections/coronavirus-live-updates/2020/03/24/820618140/as-covid-19-spreads-calls-grow-to-protect-inmates-in-federal-prisons>.

sick inmates, other than the facilities' Special Housing Unit (SHU).<sup>23</sup> While the cells in the SHU have solid doors to minimize the threat of viral spread in otherwise overcrowded facilities, they rarely have intercoms or other ways for sick inmates to contact officers in an emergency.<sup>24</sup> This is particularly dangerous for those with COVID-19 infection since many patients with COVID-19 descend suddenly and rapidly into respiratory distress.<sup>25</sup>

18. Even those facilities that do have healthcare centers can only treat relatively mild types of respiratory problems for a very limited number of people.<sup>26</sup> This means that people who become seriously ill while in prisons and jails will be transferred to community hospitals for care. At present, access to palliative care in prison is also limited.

19. Corrections officers may also be particularly vulnerable to coronavirus due to documented high rates of diabetes and heart disease.<sup>27</sup> Prison staff in Pennsylvania, Michigan, New York and Washington state have tested positive for the virus, resulting in inmate quarantines. In Washington, D.C., a U.S. marshal who works in proximity to new arrestees tested positive for the virus, meaning dozens of defendants headed for jail could have been exposed.<sup>28</sup> In New York,

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<sup>23</sup> MCC New York COVID 19 Policy Memo, Mar. 19, 2020, <https://www.documentcloud.org/documents/6818073-MCC-New-York-COVID-19-Policy-Memo.html>; Danielle Ivory, *'We Are Not a Hospital': A Prison Braces for the Coronavirus*, N.Y. Times (Mar. 17, 2020), <https://www.nytimes.com/2020/03/17/us/coronavirus-prisons-jails.html>.

<sup>24</sup> Brie Williams *et al.*, *Correctional Facilities in the Shadow of COVID-19: Unique Challenges and Proposed Solutions*, Health Affairs (Mar. 26, 2020), <https://www.healthaffairs.org/doi/10.1377/hblog20200324.784502/full/>.

<sup>25</sup> Lizzie Presser, *A Medical Worker Describes Terrifying Lung Failure From COVID-19—Even in His Young Patients*, ProPublica (Mar. 21, 2020), <https://www.propublica.org/article/a-medical-worker-describes--terrifying-lung-failure-from-covid19-even-in-his-young-patients>.

<sup>26</sup> Ellis, *Covid-19 Poses a Heightened Threat in Jails and Prisons*; Li and Lewis, *This Chart Shows Why the Prison Population is So Vulnerable to COVID-19*.

<sup>27</sup> Brie Williams, *Role of US-Norway Exchange in Placing Health and Well-Being at the Center of US Prison Reform*, <https://ajph.aphapublications.org/doi/10.2105/AJPH.2019.305444> (published Jan. 22, 2020).

<sup>28</sup> Zusha Elinson and Deanna Paul, *Jails Release Prisoners, Fearing Coronavirus Outbreak*, WSJ (Mar. 22, 2020), <https://www.wsj.com/articles/jails-release-prisoners-fearing-coronavirus-outbreak-11584885600> (“We’re all headed for some dire consequences,” said Daniel Vasquez, a former warden of San Quentin and Soledad state prisons in

236 members of the New York Police Department have tested positive for coronavirus and 3,200 employees are sick, triple the normal sick rate.<sup>29</sup> Two federal prison staffers have also tested positive.<sup>30</sup>

20. For this reason, correctional health is public health. Decreasing risk in prisons and jails decreases risk to our communities.

21. Reducing the overall population within correctional facilities will also help medical professionals spread their clinical care services throughout the remaining population more efficiently. With a smaller population to manage and care for, healthcare and correctional leadership will be better able to institute shelter in place and quarantine protocols for those who remain. This will serve to protect the health of both inmates as well as correctional and healthcare staff.

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

Dated: San Francisco, California  
March 27, 2020



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Dr. Brie Williams

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California. “They’re in such close quarters—some double- and triple-celled—I think it’s going to be impossible to stop it from spreading.”).

<sup>29</sup> Erin Durkin, *Thousands of NYPD Officers Out Sick Amid Coronavirus Crisis*, Politico (Mar. 25, 2020), <https://www.politico.com/states/new-york/albany/story/2020/03/25/thousands-of-nypd-officers-out-sick-amid-coronavirus-crisis-1268960>.

<sup>30</sup> Elinson and Paul, *Jails Release Prisoners, Fearing Coronavirus Outbreak*.

# EXHIBIT D

Document received by the CA Supreme Court.

**SUMMER STEPHAN**  
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**DAVID P. GREENBERG**  
ASSISTANT DISTRICT ATTORNEY

April 10, 2020

Honorable Tani Cantil-Sakauye  
Chief Justice of the California Supreme Court  
Presiding Judges Committee

RE: Request to Amend Emergency Bail Schedule to Allow for Judicial review in Cases that Present a Threat to Public Safety

Dear Chief Justice and Presiding Judges Committee:

As District Attorney of San Diego County, California, I respectfully ask you to amend the Emergency Bail Schedule to all for Judicial review in cases that present a threat to public safety. This requested amendment might require a brief delay in the implementation of Emergency Rule 4 containing the Emergency Bail Schedule (EBS), approved by the Judicial Council on April 6, 2020 and scheduled to become effective by 5:00 p.m. on April 13, 2020, so that this well-intentioned law can be improved to better protect the public's safety. Specifically, I respectfully ask that a mechanism be added for judicial review in cases that present a threat to public safety. Release decisions should be made thoughtfully after consideration of many factors, including criminal history and current level of dangerousness, and not solely based on the present charges. By setting the scheduled bail for most felony offenses at zero, our ability and opportunity to add release conditions has been curtailed, and our ability to protect the public has been taken from us.

San Diego County took proactive steps to protect the health of inmates by reducing the jail population, balancing our actions with the health and safety of the public in mind. My office worked in collaboration with the outstanding leadership of our Presiding Judge and her leadership team, Sheriff, City Attorney and Public Defender to swiftly reduce the jail population by more than 20 percent. We employed our own carefully revised emergency bail schedule, utilizing Penal Code section 1269 to conduct pre-arraignment virtual bail hearings, 30 and 60 day early kicks and a close review of vulnerable inmates with compromised health issues. We followed and implemented the suggestions of the Chief Justice and used some of our own risk assessment strategies to expand our existing assessment tools which do not rely on wealth or status of those who can afford bail, but rather on objective criteria.

However, I'm very concerned that the current EBS provides an all or nothing approach— zero bail or no bail, rather than using tools and conditions that rely on objective risk and dangerousness criteria and victim input. In times of crisis, it is imperative we do our best to protect everyone's rights— those of the accused and those of victims as protected under our constitution.

The current EBS rules preclude setting any bail for the vast majority of felony offenses, regardless of the individual nature of the crime, the extent of the threat to the victim, the danger to the public, the criminal history of the suspect, or the number of times the suspect has committed the crime before.

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The EBS makes no provision for permitting any bail for a number of extremely serious crimes that jeopardize the public's safety including solicitation to commit murder (Penal Code [PC] section 653f(b)), felony child abuse (PC 273a(a), elder abuse (PC 368), vehicular manslaughter (PC 192(c)(1)), and hate crimes (PC 422.75) among many others. When we arrest leaders of drug cartels on charges of selling or trying to sell hundreds of kilos of fentanyl, heroin and/or methamphetamine, under the current EBS rules, these criminal bosses are required to be released on zero bail and immediately become free to flee to countries with whom we have no extradition agreements.

There are numerous examples of these very real public safety threats created by the EBS in San Diego alone:

(1) A con woman with a long record agreed to act as a paid caregiver for a 78-year-old man who required skill nursing care. Instead of caring for him, she left him outside on a patio in the sun for two weeks, covered in flies, smelling of decaying wounds and sitting in waste, she hosed him off once a day. This callous and dangerous maltreatment ultimately led to the victim's death. The defendant's bail was set at \$350,000 by a judge thoroughly familiar with the facts. While this defendant faces a charge of elder abuse proximately causing death, the implementation of EBS will reduce her bail to zero.

(2) A woman with an extensive 20-year criminal history who has been to state prison threatened to kill three judges, her own public defender and a prosecutor. The entire San Diego bench recused themselves, so this woman is facing trial in Orange County on four counts of threatening judges and two counts of attempted threatening state officials or judges pursuant to California PC 76(a). The EBS, upon effect, will make her bail zero, allowing her release and potentially allowing her to carry out her threats.

(3) A man with 14 firearms in his home, including three assault weapons, three loaded handguns, and six fully-loaded high-capacity magazines lived with his three children ages 5 to 12 and their mother. The guns were easily accessible to the children. The man went to a downtown San Diego hotel and acted out a mass shooting rehearsal fantasy with an assault rifle and other weapons. In the YouTube video later posted of this rehearsal, the man is seen loading and unloading guns, pointing guns at pedestrians out his window, pulling the trigger and pretending to fire at people, saying "one down, more to go." He appears to act out an imaginary attack. This man has been charged with three counts of child abuse and three counts of possession of an assault weapon. Upon implementation of EBS, he will have zero bail and be released from custody.

(4) A man previously convicted of attempted murder was caught with more than 60 pounds of methamphetamine hidden inside his car. When EBS is implemented, this man's bail will reduce to zero, he will be released, and be free to flee the jurisdiction.

(5) A convicted drug dealer and another man were stopped with a three-year-old child in the backseat of a car. Police discovered over \$900,000 hidden in the gas compartment. One of the men admitted working for a money laundering organization and believed the money was from narcotics or firearm sales. The two men face charges of having money obtained from drug sales in violation of Health and Safety Code section 11370.6(a), acquiring over \$25,000 from a controlled substance offense in violation of HS 11370.9(a), and felony child endangerment in violation of PC 273a(a). When EBS takes effect, bail for these men will be zero, they will be released and free to flee the country and/or return to working for the drug cartel.

(6) My office has filed 156 fraud counts alleged against a man who conned at least 45 people into investing more than a million dollars based upon his extensive misrepresentations of his company's relationship with Google and a Chinese bank, and his claim to have developed a new computer application which never existed. This defendant ignored the SEC court's \$457,000 administrative judgment against him in federal court in 2017, continued his fraud, groomed more investors, fraudulently filed for bankruptcy in Florida, and had to be extradited back to California to face charges. After hearing the facts of the case, a judge previously set this defendant's bail at three million dollars.

For the vast majority of crimes, the EBS also makes no provision to require bail for repeat offenders, regardless of how often they continue committing crimes. For example, a pimp who repeatedly jeopardizes the health and safety of young women by pimping (PC 266h) and pandering (PC 266i) them, can get arrested for committing these crimes, bail out, return to continue pimping and pandering the same (or different) victims again, and regardless of how many times he is arrested his bail will still be zero.

There are numerous persons with mental health issues who will be released in the community without any significant support services as soon as EBS is implemented and their bail is reduced to zero. Just a few examples in San Diego include:

- (1) A defendant who broke into the backyard of a relative's home and stabbed the family turtle through its shell seven times with a pickaxe and scissors;
- (2) A defendant who punched a four-year-old in the face for no reason;
- (3) A defendant who attacked a series of nurses at the psychiatric hospital where he was confined pursuant to a conservatorship which required he be in a locked facility;
- (4) A defendant who opened the firehoses on several floors of a residential building, flooding the entire building, risking the lives of many, causing some to lose their homes and resulting in hundreds of thousands of dollars in damage.

Finally, and perhaps most importantly, the EBS conflicts with the California Constitution in excluding any consideration of a victim's rights and safety in setting bail. This violates the "Public Safety Bail" portion of Marsy's Law whereby California Constitution, Article 1, Section 28(b)(3) requires that the courts consider "the safety of the victim" in setting, reducing or denying bail.

I recognize that we are all committed to a fair and just criminal justice system and we are working to balance public safety with public health concerns during this unprecedented time. In my view, the current EBS creates some significant public safety risks, but I believe we can work together to modify the order, improve these deficiencies, and better protect all Californians. For these reasons, I respectfully ask that an amendment be considered to allow prompt judicial review remotely to consider situations involving a threat to public safety which may require a brief delay to consider this amendment.

Sincerely,



Summer Stephan  
San Diego County District Attorney

# EXHIBIT E

Document received by the CA Supreme Court.



## SUMMARY OF CHANGES TO BAIL SCHEDULE

On April 6, 2020, the Judicial Council of California directed all Superior Courts in California to adopt a revised bail schedule beginning on April 13, in response to the COVID-19 crisis. On April 13, 2020, the Superior Court issued a revised bail schedule consistent with the Judicial Council's order.

The new emergency bail schedule is now in effect. As a result, bail for **all** felony and misdemeanor offenses will be zero (meaning no bail is required), **except** for an offense that falls within one of thirteen (13) categories. A list of the crimes that fall within these 13 categories is attached. For the offenses in the 13 categories, the bail amount continues to be the amount reflected in the current San Diego County Superior Court Bail Schedule and can include bail enhancements.

## PROCEDURES

### **Cite and Release With an Order To Appear**

When an arresting officer makes an arrest for an offense or offenses that require zero bail, the arrestee should be cited and released in the field and given a court date. The Sheriff's Department has modified its booking acceptance criteria to not accept arrestees whose total bail is zero.

### **Seeking a modification of bail amount or conditions of release when appropriate**

Arresting officers may seek a bail modification in cases where it is necessary to protect public safety or an individual is unlikely to appear if released with zero bail. The Judicial Council order leaves intact those provisions that allow a court to deny bail if certain conditions are met.

One such provision is Article I, Section 12 of the California constitution. Under section 12, a court must deny bail in the following circumstances.

- For capital crimes, where the facts are evident or the presumption great
- Felony offenses involving acts of violence on another person, or felony sexual assault offenses on another person, when the facts are evident or the presumption great and the court finds based upon clear and convincing evidence that there is a substantial likelihood the person's release would result in great bodily harm to others.
- Felony offenses when the facts are evident or the presumption great and the court finds based on clear and convincing evidence that the person has

threatened another with great bodily harm and that there is a substantial likelihood that the person would carry out the threat if released.

The Superior Court, under the Judicial Council order, retains the authority to deny bail altogether. In doing so, the court must also take into consideration the seriousness of the offense charged, the arrestee's prior criminal record, and the probability of his or her appearing at the trial or hearing of the case.

The second provision that allows a court to deny bail is Article 28(f)(3) of the California Constitution, which states as follows:

A person may be released on bail by sufficient sureties, except for capital crimes when the facts are evident or the presumption great. Excessive bail may not be required. In setting, reducing or denying bail, the judge or magistrate shall take into consideration the protection of the public, the safety of the victim, the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of his or her appearing at the trial or hearing of the case. Public safety and the safety of the victim shall be the primary considerations.

If an arresting officer believes that bail should be denied or wants to request a modification of the bail amount or conditions of release for an arrestee, he or she must obtain approval for modification from the daytime or after-hours duty judge utilizing the following procedure:

1. The modification of the bail amount must be obtained **prior** to transporting the arrestee to the jail.
2. In order to request a bail modification, the arresting officer must first complete the Bail Setting Request Form (J-107). A copy of the form is attached to this training bulletin.
3. The completed Bail Setting Request Form should be emailed to the watch commander at the facility where the arresting officer is seeking to have the arrestee with zero bail booked, using the below email addresses:

San Diego Central Jail – [WatchCommander.SDCJ@sdsheriff.org](mailto:WatchCommander.SDCJ@sdsheriff.org)

Vista Detention Facility – [WatchCommander.Vista@sdsheriff.org](mailto:WatchCommander.Vista@sdsheriff.org)

Las Colinas Detention and Reentry Facility – [WatchCommander.LCDRF@sdsheriff.org](mailto:WatchCommander.LCDRF@sdsheriff.org)

4. The arresting officer must then contact the watch commander at the facility where they are seeking to have the arrestee with zero bail booked. The watch commander can be contacted using the following telephone numbers:

San Diego Central Jail – 619-615-2472

Vista Detention Facility – 760-940-4820  
Las Colinas Detention and Reentry Facility – 619-258-3088

5. After reviewing the Bail Setting Request Form, the watch commander will then initiate a conference call between the arresting officer and the duty judge. The arresting officer should be prepared to talk about the circumstances of the crime and articulate to the judge why, based on the facts of the case, he or she believes that the defendant, if released, is likely to commit great bodily harm on others.
6. If the bail is modified from zero, or release conditions are imposed, the arrestee can then be transported and booked into the appropriate facility.
7. If the request is denied, the arrestee should be cited and released in the field and given a court date to appear.

### **Arrest on a warrant**

If an arrest is made on a warrant, an officer can still take the arrestee directly to jail and book them on the outstanding warrant.



# COUNTY OF SAN DIEGO

## INTER-DEPARTMENTAL CORRESPONDENCE

April 10, 2020

TO: Kelly Martinez, Assistant Sheriff  
Law Enforcement Services Bureau

FROM: Frank C. Clamser, Assistant Sheriff  
Detention Services Bureau

### SUMMARY OF CHANGES TO BAIL SCHEDULE

On April 6, 2020, the Judicial Council of California directed all Superior Courts in California to adopt a revised bail schedule beginning on April 13, in response to the COVID-19 crisis.

Under the revised bail schedule that will go into effect on April 13, bail for all felony and misdemeanor offenses will be zero (meaning no bail is required), except for an offense that falls within one of thirteen (13) categories. A list of the crimes that fall within these thirteen categories is attached. For the offenses in the thirteen categories, the bail amount continues to be the amount reflected in the current San Diego County Superior Court Bail Schedule and can include bail enhancements.

The order not only applies to all new arrestees, but to anyone currently in custody.

Zero bail amounts cannot be adjusted upwards. However, in situations where an arresting officer, on a felony arrest where bail would be zero, believes that there is a substantial likelihood that the person's release would result in great bodily harm to others, the arresting officer can apply to have a "no bail" order issued.

Attached is a training bulletin that may be used as a reference.

WILLIAM D. GORE, SHERIFF

A handwritten signature in black ink that reads "Frank C. Clamser".

Frank C. Clamser, Assistant Sheriff  
Detention Services Bureau

WDG:FCC:aeb

Document received by the CA Supreme Court.



William D. Gore  
Sheriff

Detention Services Bureau, In-Service Training Unit  
Telephone: (619) 258-3111

APRIL 10, 2020

**TRAINING BULLETIN**

## **SUMMARY OF CHANGES TO BAIL SCHEDULE**

On April 6, 2020, the Judicial Council of California directed all Superior Courts in California to adopt a revised bail schedule beginning on April 13, in response to the COVID-19 crisis.

Under the revised bail schedule that will go into effect on April 13, bail for all felony and misdemeanor offenses will be zero (meaning no bail is required), except for an offense that falls within one of thirteen (13) categories. A list of the crimes that fall within these thirteen categories is attached. For the offenses in the thirteen categories, the bail amount continues to be the amount reflected in the current San Diego County Superior Court Bail Schedule and can include bail enhancements.

The order not only applies to all new arrestees, but to anyone currently in custody.

Zero bail amounts cannot be adjusted upwards. However, in situations where an arresting officer, on a felony arrest where bail would be zero, believes that there is a substantial likelihood that the person's release would result in great bodily harm to others, the arresting officer can apply to have a "no bail" order issued.

### **PROCEDURES**

#### **Cite and Release With an Order To Appear**

When an arresting officer makes an arrest for an offense or offenses that require zero bail, the arrestee should be cited and released in the field and given a court date. The Sheriff's Department will be modifying its booking acceptance criteria to not accept arrestees whose total bail is zero.

This Training Bulletin was prepared by Legal Affairs. If you have expertise in a particular subject and would like to write a training bulletin, please contact the Detention In Service Training unit at [InserviceTrainingUnit.Detentions@sdsheriff.org](mailto:InserviceTrainingUnit.Detentions@sdsheriff.org).



### **Arrest on a Warrant**

If an arrest is made on a warrant, and the underlying charge on the warrant falls within one of the 13 enumerated categories, an officer can book an arrestee into jail on the outstanding warrant. However, if an arrest is made on a warrant for an underlying charge that now carries a zero bail amount, the arresting officer should cite and release the arrestee with a new notice to appear date. A "no bail" warrant is still a "no bail" warrant, and the arrestee can be booked into jail.

### **Seeking a "No Bail" Order When Appropriate**

Arresting officers should seek a "No Bail" order in felony cases where it is necessary to protect public safety or an individual from likely and great bodily harm. The Judicial Council order leaves intact those provisions that allow a court to issue a "No Bail" order, if certain conditions are met.

One such provision is Article I, Section 12 of the California constitution. Under section 12, a court must deny bail in the following circumstances.

- For capital crimes, where the facts are evident or the presumption great
- Felony offenses involving acts of violence on another person, or felony sexual assault offenses on another person, when the facts are evident or the presumption great and the court finds based upon clear and convincing evidence that there is a substantial likelihood the person's release would result in great bodily harm to others.
- Felony offenses when the facts are evident or the presumption great and the court finds based on clear and convincing evidence that the person has threatened another with great bodily harm and that there is a substantial likelihood that the person would carry out the threat if released.

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While the Superior Court, under the Judicial Council order is not free to increase a bail amount, it does retain the authority to deny bail altogether. In doing so, the court must also take into consideration the seriousness of the offense charged, the arrestee's prior criminal records, and the probability of his or her appearing at the trial or hearing of the case.

The second provision that allows a court to issue a "No Bail" order is Article 28(f)(3) of the California constitution, which states as follows:

A person may be released on bail by sufficient sureties, except for capital crimes when the facts are evident or the presumption great. Excessive bail may not be required. In setting, reducing or denying bail, the judge or magistrate shall take into consideration the protection of the public, the safety of the victim, the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of his or her appearing at the trial or hearing of the case. Public safety and the safety of the victim shall be the primary considerations.

If the arresting officer believes that a no-bail order should be issued, he or she should bring the arrested individual to the jail and ask the Watch Commander to contact the on-duty judge.

Please note that when asking the court for a "no bail" order, it will not be enough to simply point out that the crime that the arrestee committed is a very bad or very violent crime. The arresting officer should be prepared to talk about the circumstances of the crime and articulate to the judge why, based on the facts of the case, he or she believes that the defendant, if released, is likely to commit great bodily harm on others.

# EXHIBIT F

Document received by the CA Supreme Court.



**From:** Alksne, Lorna  
**To:** [Antrim, Whitney](#); [Greenberg, David](#) SCSDA; [Stephan, Summer](#) SCSDA; [Smyth, Michael T.](#) SCSD; [Eyherabide, Eugenia](#) SCSD; [Elliott, Mara](#); [jhemmerling@sandiego.gov](#); [Gore, William](#) SDSO; [Toyen, Sanford](#) SDSO; [Faigin, Robert](#) SDSO  
**Cc:** [Mize, Randy](#)  
**Subject:** RE: Defense Objection and Motion  
**Date:** Thursday, April 16, 2020 10:26:32 AM

---

I am in receipt of the objection to my General Order regarding Emergency Bail Schedule. I did not see a request to set a hearing date or a request to shorten time for hearing. I will on my own motion, shorten time and set it for hearing next Wednesday April 22<sup>nd</sup>, at 9:00 am in Presiding. All appearances will be telephonic. Any opposition is due by email to me by 5 p.m. on Monday April 20<sup>th</sup>, 2020.

Judge Alksne  
Presiding Judge  
San Diego Superior Court

---

**From:** Antrim, Whitney <Whitney.Antrim@sdcounty.ca.gov>  
**Sent:** Wednesday, April 15, 2020 3:47 PM  
**To:** Alksne, Lorna <Lorna.Alskne@SDCourt.CA.Gov>; Greenberg, David (DA) <david.greenberg@sdca.org>; Stephan, Summer (DA) <summer.stephan@sdca.org>; Smyth, Michael T. <MichaelT.Smyth@SDCourt.CA.Gov>; Eyherabide, Eugenia <Eugenia.Eyherabide@SDCourt.CA.Gov>; Elliott, Mara <MElliott@sandiego.gov>; jhemmerling@sandiego.gov; Gore, William (SDSO) <William.Gore@sdsheriff.org>; Toyen, Sanford (SDSO) <Sanford.Toyen@sdsheriff.org>; Faigin, Robert (SDSO) <Robert.Faigin@sdsheriff.org>  
**Cc:** Mize, Randy (COSD) <Randy.Mize@sdcounty.ca.gov>  
**Subject:** Defense Objection and Motion

Good Afternoon, All:

Please find attached "*DEFENSE OBJECTION TO ORDER #041320-42 (SDSC EMERGENCY BAIL ORDER 041320); MOTION TO RESET BAIL PURSUANT TO EMERGENCY BAIL SCHEDULE FORTHWITH*".

Thank you for your time and consideration. I hope you and your families are all healthy and well,

*Whitney N. Antrim*  
Deputy Public Defender  
San Diego County Office of the Primary Public Defender  
450 B Street, 11<sup>th</sup> Floor  
San Diego, CA 92101  
PH: (619)338.4623

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## County of San Diego

### OFFICE OF THE PUBLIC DEFENDER

RANDY MIZE

April 18, 2020  
Kevin Lane, Clerk/Administrator  
Court of Appeal of the State of California  
Fourth Appellate District  
750 B Street, Suite 300

Re: *Ayala et al. v. The Superior Court of San Diego County/The People*  
Case No. D077460  
Letter Brief in Support of Emergency Petition for Writ of Mandate

**EMERGENCY REQUEST FOR A STAY OF ALL 'BAIL REVIEW' HEARINGS SET FOR APRIL 20, 2020 IN DEPARTMENTS: Central Dept 102, South Bay Dept 12, El Cajon Dept 2, Vista Dept 14, and those set for "Telephonic Hearings" not assigned to a particular department**

**Contact for Criminal Presiding Judge Eugenia Eyherabide 619-844-2485**  
**Contact for Catherine McCoy, Clerk, 619-844-2975**

Dear Mr. Lane:

Petitioners filed a Petition for Emergency Writ of Mandate seeking extraordinary relief on Friday, April 17, 2020. The basis for the writ petition is that Petitioners are being held in custody in violation of the Chief Justice and Judicial Council's Emergency Rules and specifically Emergency Rule 4, implementing a Mandatory Statewide Bail Schedule.

Document received by the CA Supreme Court.

At that time, a related motion seeking relief had been filed in Superior Court and was pending a hearing on the motion on April 22, 2020. Based on the delay, Petitioner sought emergency relief by way of a Writ Petition with this Honorable Court of Appeal.

After filing the petition, Petitioners were informed that the Presiding Judge of the Superior Court (Respondent) summarily denied the Motion for relief, taken the April 22<sup>nd</sup> hearing off calendar, and scheduled Petitioners (over 176 and counting) for illegal 'bail review' hearings and arraignments. These hearings are scheduled to commence Monday, April 20, 2020 at 9am. Respondent Superior Court indicates these 'hearings' will mostly be conducted telephonically, with some defendants appearing over video.

This timing and proposed procedure raises a number of due process, equal protection and other constitutional violations:

A. A remote arraignment and bail hearing is unlawful because Petitioners have a right to be personally present.

An individual has the right to be personally present during criminal proceedings. (Cal. Const., art. I, § 15.) In pertinent part, the California Constitution states: "The defendant in a criminal cause has the right to...be personally present with counsel." Cal. Const., art. I, § 15.)

Here, the Court is attempting to address Petitioners' bail without Petitioner being personally present. This violates Petitioner's right to be personally present.

B. Petitioners' right to counsel, as is protected by both the United States and California constitutions, will be violated if the hearing is conducted while Petitioner is not personally present.

As previously cited, the right to the assistance of counsel includes the right to be present with counsel during the proceedings. (*People v. Zammora, supra*, 66 Cal.App.2d at p. 235.)

Here, Petitioners will be denied the right to the assistance of counsel if the court proceeds with these remote hearings. Specifically, Petitioners will not be able to meaningfully participate and confer with counsel during the hearing. Instead, Petitioners will be relegated to watching the bail hearing – a hearing about Petitioners' life and liberty – proceed on a monitor as an individual might watch television at home. The nature of a bail hearing requires a discrete conversation between client and counsel, about specific facts, which might help mitigate the government's argument; such is impossible where counsel and Petitioners are not present in court together.

**C. Holding the bail hearings or arraignments without Petitioners personally present will violate Petitioners' right to due process.**

As is stated above, a defendant has a due process right to be personally present at hearings where the defendant's presence can contribute to the presentation of a defense. (*Kentucky v. Stincer, supra*, 482 U.S. at p. 745.)

A bail-setting hearing requires the defendant's presence. Specifically, a court's findings at a bail hearing will directly affect whether the client is free – or imprisoned – for the duration of the case. The presence of Petitioners in court is vital to the presentation of the defense against accusations of dangerousness and flight.

The San Diego Superior Court is picking and choosing which Judicial Council Emergency Rules to follow. While Emergency Rules 3 and 5 allow for remote appearances with the use of technology, they also require the consent of Petitioners. The complete disregard for the implementation and release of eligible defendants under the mandatory bail schedule demonstrates the San Diego Superior Court's selective enforcement of the Judicial Council's mandates. So long as eligible defendants are being denied the mandatory bail to which they are entitled per Emergency Rule 4, they are forced to languish in custody with the specter of exposure to the deadly virus gripping not just our city, county, or state, but the entire world.

Respectfully submitted,

/s/

---

Whitney N. Antrim  
Deputy Public Defender  
Writs and Appeals

Document received by the CA Supreme Court.

P R O O F O F S E R V I C E

CASE NAME: Ayala, et al. v. Superior Court  
Case No. D077460

I am a citizen of the United States and a resident of San Diego County. I am over the age of 18 years and not a party to the within action. My office address is 450 "B" Street, Suite 900, San Diego, California 92101.

On the date of execution of this document, I served true and correct copies of Letter Brief in Support of the petition for writ of mandate / Request for Emergency Stay by submitting to TrueFiling Electronic Service to the following:

Hon. Lorna Alksne, Judge,  
Presiding  
Hon. Michael Smyth, Judge  
*c/o* San Diego Superior Court  
P.O. Box 122724  
San Diego, Ca 92112-2724  
[Lorna.alksne@sdcourt.ca.gov](mailto:Lorna.alksne@sdcourt.ca.gov)  
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Sheriff William Gore  
San Diego Sheriff's Department  
Attn: Legal Rob Fagin  
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[Sanford.toyen@sdsheriff.org](mailto:Sanford.toyen@sdsheriff.org)

I certify under penalty of perjury that the foregoing is true and correct. Executed this 18th day of April, 2020, at San Diego, California.

\_\_\_\_\_  
/s/  
MICHAEL A. OWENS  
*Declarant*

Document received by the CA Supreme Court.



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## County of San Diego

### OFFICE OF THE PUBLIC DEFENDER

RANDY MIZE

### NOTICE OF ERRATA IN LETTER BRIEF

April 18, 2020  
Kevin Lane, Clerk/Administrator  
Court of Appeal of the State of California  
Fourth Appellate District  
750 B Street, Suite 300

Re: *Ayala et al. v. The Superior Court of San Diego County/The People*  
Case No. D077460

Notice of **Errata** in Letter Brief in Support of Emergency Petition for Writ of Mandate

Dear Mr. Lane:

In the Letter Brief filed in Support of the Emergency Petition for Writ of Mandate (filed April 18, 2020) it has come to my attention that there was an error. At the top of page 2, this language should be removed, "*summarily denied the Motion for relief, taken the April 22<sup>nd</sup> hearing off calendar, and*".

The sentence should now read. "*After filing the petition, Petitioners were informed that the Presiding Judge of the Superior Court (Respondent) scheduled Petitioners (over 176 and counting) for illegal 'bail review' hearings and arraignments.*"

Document received by the CA Supreme Court.



This is not a material fact to the question before the Court of Appeal, nor does it change  
Petitioners **EMERGENCY REQUEST FOR A STAY OF ALL 'BAIL REVIEW'**  
**HEARINGS SET FOR APRIL 20, 2020.**

Respectfully submitted,

/s/

---

Whitney N. Antrim  
Deputy Public Defender  
Writs and Appeals

Document received by the CA Supreme Court.

P R O O F O F S E R V I C E

CASE NAME: Ayala, et al. v. Superior Court  
Case No. D077460

I am a citizen of the United States and a resident of San Diego County. I am over the age of 18 years and not a party to the within action. My office address is 450 "B" Street, Suite 900, San Diego, California 92101.

On the date of execution of this document, I served true and correct copies of Letter Brief in Support of the petition for writ of mandate / Request for Emergency Stay by submitting to TrueFiling Electronic Service to the following:

Hon. Lorna Alksne, Judge,  
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c/o San Diego Superior Court  
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I certify under penalty of perjury that the foregoing is true and correct. Executed this 18th day of April, 2020, at San Diego, California.

\_\_\_\_\_  
/s/  
MICHAEL A. OWENS  
Declarant

Document received by the CA Supreme Court.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO

_____	:	
CRAIG WILSON, <i>et al.</i> ,	:	CASE NO. 4:20-cv-00794
	:	
Petitioners,	:	ORDER
	:	[Resolving Doc. 1]
vs.	:	
	:	
MARK WILLIAMS, <i>et al.</i> ,	:	
	:	
Respondents.	:	
_____	:	

JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

On April 13, 2020, Petitioners, inmates at Elkton Federal Correctional Institution, brought this emergency habeas action seeking release from Elkton due to the spread of COVID-19 within the prison.<sup>1</sup> Petitioners claim to represent both a class of all Elkton inmates as well as a subclass of medically vulnerable inmates.<sup>2</sup> Respondents opposed.<sup>3</sup>

On April 17, 2020 the Court held a hearing on the matter. On April 18, 2020, both parties filed additional materials in response to the Court’s hearing inquiries.<sup>4</sup>

For the foregoing reasons, the Petitioners’ motion for relief is **GRANTED IN PART** and **DENIED IN PART**.

**I. COVID-19 at Elkton**

State government and the media have well documented the spread of COVID-19 and the efforts to contain the virus and limit its impact. The virus’s highly-infectious nature and the risks it poses, especially to medically vulnerable populations, has led to the

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<sup>1</sup> Doc. 1.  
<sup>2</sup> *Id.*  
<sup>3</sup> Doc. 10.  
<sup>4</sup> Docs. 18, 19.

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Case No. 4:20-cv-00794  
Gwin, J.

implementation of unprecedented measures throughout the country and the world.

While research concerning the virus is ongoing, for some time health officials have known and reported that asymptomatic persons spread the virus.<sup>5</sup> A large percentage of coronavirus-infected citizens are asymptomatic.<sup>6</sup> These asymptomatic persons show no, or limited, symptoms. Yet, they spread the virus.

Due to this threat from infected but asymptomatic individuals, testing, tracing and treatment became the first mitigation responsibilities. As the virus has become more widespread, state government has directed citizens to reduce the spread not only through careful hygiene practices, but also through social distancing and isolation.

For inmates in our country's prisons the virus is no less a threat, but distancing measures are only minimally available.

Defendants Elkton officials have implemented measures to lessen the COVID-19 threat. Elkton segregates new inmates for fourteen days.<sup>7</sup> Elkton officials evaluate existing inmates with virus symptoms to determine whether isolation or testing is appropriate.<sup>8</sup> They check inmate and staff temperatures.<sup>9</sup> Elkton officials segregate inmates for fourteen days before allowing the inmates to leave Elkton.<sup>10</sup>

But despite their efforts, the Elkton officials fight a losing battle. A losing battle for

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<sup>5</sup> CDC, *Coronavirus Disease 2019: Recommendations for Cloth Face Covers*, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cloth-face-cover.html> (last visited Apr. 20, 2020) (citing Yan Bai, Lingsheng Yao, and Tao Wei, *et al.*, *Presumed Asymptomatic Carrier Transmission of COVID-19*, JAMA (Feb. 21, 2020), <https://jamanetwork.com/journals/jama/fullarticle/2762028>).

<sup>6</sup> Apoorva Mandavilli, *Infected but Feeling Fine: The Unwitting Coronavirus Spreaders*, N.Y. TIMES (Mar. 31, 2020), <https://www.nytimes.com/2020/03/31/health/coronavirus-asymptomatic-transmission.html>.

<sup>7</sup> Doc. 10 at 8.

<sup>8</sup> *Id.* at 9.

<sup>9</sup> *Id.* at 9-10.

<sup>10</sup> *Id.* at 27.

Case No. 4:20-cv-00794  
Gwin, J.

staff. A losing battle for inmates.

The parties to the present action dispute some of the factual details of the current conditions within Elkton. Even in light of these disputes, the prison's "dorm-style" design guarantees that inmates remain in close proximity to one another.<sup>11</sup> With the shockingly limited available testing and the inability to distance inmates, COVID-19 is going to continue to spread, not only among the inmate population, but also among the staff.

According to Respondents, Elkton has had 59 confirmed cases of COVID-19 among inmates.<sup>12</sup> The number of infected staff members, 46, is almost as high.<sup>13</sup> The number has risen even in the days since the initiation of this lawsuit and will continue to do so absent intervention.

Notably, it is unlikely that these figures represent the actual number of cases at the institution, given the paltry number of tests the federal government has made available for the testing of Elkton's inmates.

To date, Elkton has received only 50 COVID-19 swab tests and one Abbott Rapid testing machine with 25 rapid tests.<sup>14</sup> Most swab tests have already been used. Because the Department of Justice has given BOP so few tests, Elkton medical staff has needed to triage test usage.

Respondents represent that "test swabs are back-ordered until July or August," but

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<sup>11</sup> Doc. 10 at 7.

<sup>12</sup> Doc. 19 at 2.

<sup>13</sup> The official numbers on the Bureau of Prison's website conflict with the numbers reported by Respondents. The BOP's website reports 52 confirmed cases among inmates, 46 cases among staff. Contrarily, Respondents report 59 cases among inmates and 34 among staff. *Compare* Federal Bureau of Prisons, *COVID-19 Cases*, <https://www.bop.gov/coronavirus/> (last visited April 22, 2020), *with* Docs. 10 at 10, 19 at 2.

<sup>14</sup> Doc. 19 at 1-2.

Case No. 4:20-cv-00794  
Gwin, J.

they “believe that they will receive an additional 25 rapid test[s]” each week.<sup>15</sup> These additional tests are all but useless considering Elkton’s 2,400 inmates.

Recent experience at another Ohio correctional facility, Marion Correctional Institution, run by the Ohio Department of Rehabilitation and Corrections, shows how quickly and insidiously the virus spreads among a tightly quartered prison population.

Both Elkton and Marion are low security prisons and house approximately 2,500 inmates.<sup>16</sup>

The State of Ohio has tested its prisoners en masse for COVID-19. At Marion 1,950 inmates tested positive for COVID-19.<sup>17</sup> This number includes large numbers of inmates who were asymptomatic and would otherwise not have been tested.<sup>18</sup>

Everything suggests that if BOP tested as ODRC commendably has, results would show that the virus has become equally widespread within Elkton. However, without testing there is no way to know how many Elkton inmates have the virus.

The Ohio prisons virus response undercuts BOP’s ability to argue that testing is either unavailable or is impossible. Why has the Justice Department allocated Elkton an entirely insignificant number of tests while Ohio has been able to pull off mass testing across not only Marion, but at multiple institutions?

While the COVID-19 tests inadequacy is one area of grave concern, testing is only one part of the multi-faceted approach institutions like Elkton must take to reduce the

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<sup>15</sup> *Id.*

<sup>16</sup> Ohio Department of Rehabilitation & Correction, *Marion Correctional Institution*, <https://drc.ohio.gov/mci> (last visited Apr. 22, 2020).

<sup>17</sup> Ohio Department of Rehabilitation & Correction, *COVID-19 Inmate Testing Updated 4/20/2020*, <https://drc.ohio.gov/Portals/0/DRC%20COVID-19%20Information%2004-20-2020%20%201304.pdf> (last visited Apr. 20, 2020).

<sup>18</sup> *Id.*

Case No. 4:20-cv-00794  
Gwin, J.

virus's spread.

Respondents report that the prison, in accordance with BOP guidance, has changed its operations to try to limit the virus's spread.<sup>19</sup> For instance, the prison has implemented health screening measures for various groups of inmates, staff, and civilians.<sup>20</sup> These are all good efforts.

However, once the virus is inside the prison, as it already is at Elkton, screening measures can only be so effective. And screening will only help to identify individuals with active symptoms, not those asymptomatic individuals who can nevertheless spread the virus undetected.

Respondents have also implemented "modified operations" to somewhat reduce inmate contact with each other. Elkton allows inmate housing units of 150 to pick up pre-packaged meals, receive dispensed medications, and visit the commissary with only a single housing unit moving around the institution at one time.<sup>21</sup> Better practices, but not enough.

Respondents attempt to liken each housing unit to a "family unit." They say that each unit is akin to unincarcerated community members who live with roommates or family.<sup>22</sup> They say that each housing unit is separate from other units, visitors, and sick inmates.<sup>23</sup>

But each single housing unit includes about 150 people.<sup>24</sup> Respondents ignore that

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<sup>19</sup> Doc. 10 at 7-11.

<sup>20</sup> *Id.* at 8-9.

<sup>21</sup> Doc. 10 at 21.

<sup>22</sup> *Id.* at 21-22.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

Case No. 4:20-cv-00794  
Gwin, J.

some unit inmates nonetheless circulate throughout the prison as “essential” workers. Because some untested inmates circulate throughout Elkton, the housing units are not truly isolated. And with 150 “family members,” there are significant opportunities to increase the risk of spread. Within each housing unit there seems to be little chance of obstructing the spread of the virus.

Respondents say that soap and disinfectant are readily available, a fact that Petitioners dispute.<sup>25</sup> However, these supplies can only be so useful in an environment where the inmates are constantly in close proximity to one another. Likewise, the education about hygiene and social distancing Respondents tout is only effective if the inmates have the supplies and physical space to put such knowledge into practice.<sup>26</sup>

Furthermore, while the deteriorating health conditions at Elkton pose a danger for each of the 2,400 men who are incarcerated at Elkton, the institution’s inability to stop the spread of the virus among the inmates in its care poses an even greater risk for inmates whose medical conditions put them at higher risk of death if they contract the virus.<sup>27</sup>

Plus, while this litigation concerns Elkton’s conditions for its inmates, the same conditions endanger prison staff, who must continue to go to work despite the virus’s spread throughout the facility. And the Elkton spread endangers the staff’s families who come into contact with Elkton’s undoubtedly exposed staff.

In light of these realities, Petitioners, inmates at Elkton, bring the present action. They sue on behalf of themselves and on behalf a class of all current and future Elkton

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<sup>25</sup> Compare Doc. 10 at 27, with Doc. 1 at 17.

<sup>26</sup> Doc. 10 at 11-12.

<sup>27</sup> See generally Briefs for Disability Rights Ohio and Public Health and Human Rights Experts as Amici Curiae Supporting Petitioners, Docs. 8-1 and 14-1.



Case No. 4:20-cv-00794  
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inmates.<sup>28</sup>

They bring additional claims on behalf of the “Medically-Vulnerable Subclass,” defined as:

[A]ll current and future persons incarcerated at Elkton over the age of 50, as well as all current and future persons incarcerated at Elkton of any age who experience: chronic lung disease or moderate to severe asthma; serious heart conditions; conditions that can cause a person to be immunocompromised, including cancer treatment, smoking, bone marrow or organ transplantation, immune deficiencies, poorly controlled HIV or AIDS or prolonged use of corticosteroids and other immune weakening medications; severe obesity (defined as a body mass index of 40 or higher); diabetes; chronic kidney disease or undergoing dialysis; or liver disease.<sup>29</sup>

Petitioners seek certification of the classes. In addition, they request:

a temporary restraining order, preliminary injunction, permanent injunction, and/or writ of habeas corpus requiring Respondents to identify within six (6) hours of the Court’s order, and submit to the Court a list of, all Medically-Vulnerable Subclass Members, and release all such persons within twenty-four (24) hours, with such release to include supports to ensure social distancing and other expert-recommended measures to prevent the spread of coronavirus.<sup>30</sup>

Petitioners define release as “discharge of incarcerated persons from the physical confines of Elkton, not necessarily release from custody.”<sup>31</sup> Petitioners suggest that “[r]elease options may include, but are not limited to: release to parole or community supervision; transfer furlough (as to another facility, hospital, or halfway house); or non-transfer furlough, which could entail a release person’s eventual return to Elkton once the pandemic is over and the viral health threat abated.”<sup>32</sup>

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<sup>28</sup> Doc. 1 at 29.

<sup>29</sup> *Id.*

<sup>30</sup> Doc. 1 at 36.

<sup>31</sup> *Id.* at 2 n. 2.

<sup>32</sup> *Id.* at 2.

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In other words, Petitioners seek an “enlargement.” Enlargement is not release, although some courts refer to it using the terms release or bail.<sup>33</sup> When a court exercises its power to “enlarge” the custody of a defendant pending the outcome of a habeas action, the BOP maintains custody over the defendant, but the place of custody is altered by the court.<sup>34</sup>

After the release of the subclass, Petitioners request “a plan, to be immediately submitted to the Court and overseen by a qualified public health expert” that provides for mitigation efforts in line with CDC guidelines and a housing and/or public support plan for released inmates.<sup>35</sup> They also seek the release of Class Members so that the remaining inmates can follow CDC guidance to maintain six feet of space between them while in the prison.<sup>36</sup>

Respondents respond that Petitioners cannot challenge the conditions inside the prison through a habeas corpus action and that this Court and the BOP do not have the authority to grant early release.<sup>37</sup>

## II. Discussion

District courts have inherent authority to grant enlargement to a defendant pending a ruling on the merits of that defendant’s habeas petition.<sup>38</sup> The Court finds that the exceptional circumstances at Elkton and the Petitioners’ substantial claims, that are likely to

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<sup>33</sup> See Declaration of Professor Judith Resnik Regarding Provisional Remedies for Detained Individuals at 8, *Money et al. v. Jeffreys*, No. 1:20-cv-02094 (N.D. Ill. April 4, 2020), ECF No. 24-3.

<sup>34</sup> *Id.*

<sup>35</sup> Doc. 1 at 36-37.

<sup>36</sup> *Id.* at 37.

<sup>37</sup> Doc. 10 at 15-19.

<sup>38</sup> See, e.g., *Mapp v. Reno*, 241 F.3d 221, 226 (2d Cir. 2001); *Dotson v. Clark*, 900 F.2d 77, 79 (6th Cir. 1990).

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succeed at the merits stage, necessitate the exercise of that authority and that such relief is proper for members of the subclass defined *infra*.<sup>39</sup>

However, given the nature of the present litigation as class action habeas proceeding, the Court is unable to determine the specific type of enlargement most suitable for each subclass member. In light of this difficulty, the Court will grant a preliminary injunction, in aid of its authority to grant enlargements, ordering Respondents to determine the appropriate means of transferring medically vulnerable subclass members out of Elkton. Pursuant to the below analysis, the Court finds that Petitioners have met the standard for a preliminary injunction.

#### A. Jurisdiction

Petitioners argue that Elkton's inability, even if it tried, to adequately protect the inmates from the risks posed by coronavirus subjects the prisoners to substantial risk of harm in violation of their Eighth Amendment rights. Petitioners say that their claim is cognizable under 28 U.S.C. § 2241 as a habeas action because they are challenging the execution of their sentences, rather than the validity of the convictions themselves.<sup>40</sup> Petitioners argue that they are not seeking to challenge a specific aspect of their confinement, but the confinement itself.<sup>41</sup>

Respondents argue that habeas relief is not the proper vehicle to challenge conditions of confinement.<sup>42</sup>

Courts have attempted to clarify the types of claims appropriate for habeas relief and

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<sup>39</sup> *Dotson*, 900 F.2d at 79.

<sup>40</sup> Doc. 1 at 34-35.

<sup>41</sup> Doc. 18 at 8-9.

<sup>42</sup> Doc. 10 at 15-16.

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distinguish those claims from civil rights claims more appropriately resolved under § 1983. The general result has been that challenges to the fact or duration of confinement that seek release sound in habeas whereas actions challenging the conditions of confinement raise concerns properly addressed under § 1983.<sup>43</sup>

But, these seemingly bright line rules are difficult to apply in practice. The near impossibility in some cases of drawing such distinctions has become even more obvious with COVID-19. Whereas many medical needs claims might appropriately be addressed through § 1983 litigation, claims concerning COVID-19 are not so easily classified as § 1983 claims.

Inmates challenging BOP's COVID-19 response challenge the dangerous conditions within the prison created by the virus. However, the only truly effective remedy to stop the spread is to separate individuals—a measure that in our nation's densely populated prisons is typically impossible without the release of a portion of the population. So, such actions ultimately seek to challenge the fact or duration of confinement as well.<sup>44</sup>

In this case, the Petitioners frame their action as a § 2241 habeas claim.<sup>45</sup> The Sixth Circuit, echoing the distinctions recognized by other courts, has found that “§ 2241 is not

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<sup>43</sup> See *Muhammad v. Close*, 540 U.S. 749, 750 (2004) (“Challenges to the validity of any confinement or to particulars affecting its duration are the province of habeas corpus . . . requests for relief turning on circumstances of confinement may be presented in a § 1983 action.”); *Heck v. Humphrey*, 512 U.S. 477 (1994); *Preiser v. Rodriguez*, 411 U.S. 475 (1978).

<sup>44</sup> *Mays v. Dart*, No. 20 C 2134, 2020 WL 1812381, at \*6 (N.D. Ill. Apr. 9, 2020). Two federal district courts have noted without deciding that claims such as those brought by Petitioners might be cognizable as habeas claims because the relief sought would affect the duration of confinement or because the conditions complained of could not be eliminated without releasing the inmates from detention. See *A.S.M. v. Donahue*, No. 7:20-CV-62, 2020 WL 1847158, at \*1 (M.D. Ga. Apr. 10, 2020); *Mays*, 2020 WL 1812381 at \*6.

<sup>45</sup> Whereas other petitioners bringing COVID-19-related challenges have pleaded both habeas and § 1983 claims in the alternative, Petitioners do not do so here.

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the proper vehicle for a prisoner to challenge conditions of confinement.”<sup>46</sup> However, the Sixth Circuit has also held “§ 2241 is appropriate for claims challenging the execution or manner in which the sentence is served.”<sup>47</sup>

Petitioners’ action evades easy classification. Part of the difficulty rests in Petitioners’ differing relief requests for the class and subclass. For the significantly vulnerable subclass the Petitioners seek immediate release, arguing that for the medically vulnerable inmates continued imprisonment at Elkton is unconstitutional given the COVID-19 outbreak.

Notably, these Petitioners do not seek a commutation of their sentences, but rather to serve their sentences in home confinement, parole, or in half-way houses at least until the risk of the virus has abated. This claim is closer to a challenge to the manner in which the sentence is served and is therefore cognizable under 28 U.S.C. § 2241.

For the remainder of the less-obviously-vulnerable class the challenges sound more as a confinement conditions claim. Petitioners seek the oversight of a public health expert to mitigate the risk COVID-19 poses to class members that remain incarcerated at Elkton. Because the not medically vulnerable Elkton inmates seek an alteration to the confinement conditions, the claims are more like § 1983 claims.

Because Petitioners have brought their claims as a habeas petition, the Court may only properly address those claims suitable for habeas relief. The remainder of this order addresses the habeas claims of the vulnerable subclass alone.

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<sup>46</sup> *Luedtke v. Berkebile*, 704 F.3d 465, 465-66 (6th Cir. 2013) (citing two additional Sixth Circuit cases that found the same).

<sup>47</sup> *United States v. Peterman*, 249 F.3d 458, 461 (6th Cir. 2001).

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### B. Class Certification

Given the emergency nature of this proceeding, a class certification determination has not yet taken place. That does not, however, preclude Petitioners from obtaining class-wide interim relief at this stage. “[T]here is nothing improper about a preliminary injunction preceding a ruling on class certification.”<sup>48</sup> This Court may grant preliminary injunctive relief to a conditional class.

As a preliminary matter, the Court finds that the Petitioners’ subclass definition is likely too broad. Although the risk of complications from COVID-19 is serious for all inmates, the Court limits the subclass to those identified by the CDC as being at higher risk.<sup>49</sup> This includes all Elkton inmates 65 years or older and those with documented, pre-existing medical conditions, including heart, lung, kidney, and liver conditions, diabetes, conditions causing a person to be immunocompromised (including, but not limited to cancer treatment, transplants, HIV or AIDS, or the use of immune weakening medications) and severe obesity (body mass index of 40 or higher).<sup>50</sup> The subclass definition excludes those whose only risk factor is a history of smoking, given the difficulty of documenting such occurrence and identifying those individuals through BOP records alone.

Under Federal Rule of Civil Procedure 23(a), a class must meet the requirements of numerosity, commonality, typicality, and adequate representation. Additionally, one of Rule 23(b)’s requirements must also be satisfied.

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<sup>48</sup> *Gooch v. Life Investors Ins. Co. of America*, 672 F.3d 402, 433 (6th Cir. 2012).

<sup>49</sup> The Court has “broad discretion to modify class definitions.” *Ball v. Kasich*, 307 F. Supp.3d 701, 718 (S.D. Ohio Mar. 30, 2018).

<sup>50</sup> CDC, *Coronavirus Disease 2019: People Who Are At Higher Risk*, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html> (last visited April 20, 2020).

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Petitioners have made a sufficient showing at this stage to satisfy the Rule 23(a) factors for the above-defined subclass.

**Numerosity:** The subclass consists of hundreds of Elkton inmates.<sup>51</sup>

**Commonality:** “Commonality requires [Petitioners] to demonstrate that the class members have suffered the same injury.”<sup>52</sup> “Their claims must depend upon a common contention ... of such a nature that it is capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.”<sup>53</sup> This inquiry focuses on whether a class action will generate common answers that are likely to drive resolution of the lawsuit.<sup>54</sup>

In this case, all subclass members have been subjected to dangerous conditions in which they run a high risk of exposure to the deadly COVID-19 virus. The inquiry driving the litigation is whether the BOP’s failure to create safe conditions for inmates with especially vulnerable health has violated those inmates’ rights. Answering this question will determine whether the inmates are entitled to movement from Elkton.

Respondents argue that the subclass lacks commonality given the class’s combination of “inmates that have different crimes, sentences, outdates, disciplinary histories, ages, medical histories, proximities to infected inmates, availability of a home landing spot, likelihoods of transmitting the virus to someone at home detention,

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<sup>51</sup> In accordance with the Court’s order, dated April 17, 2020, Respondents submitted for *in camera* review, lists of Elkton inmates with certain medical conditions. Although the Court cannot say with certainty the exact number of inmates who comprise the subclass, it is satisfied that the number is in the hundreds.

<sup>52</sup> *Ball*, 307 F. Supp.3d at 719 (quoting *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 349-50 (2011)).

<sup>53</sup> *In re Whirlpool Corp. Front-Loading Washer Prod. Liab. Litig.*, 722 F.3d 838, 852-53 (6th Cir. 2013) (citing *Dukes*, 564 U.S. at 350).

<sup>54</sup> *Id.*

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likelihoods of violation or recidivism, and dangers to the community.”<sup>55</sup>

However, the Petitioners seek varied relief that allows the BOP to make individualized determination as to where each subclass member should be placed. Petitioners do not seek to open the prison gates to allow its inmates to run free. In fact, Petitioners concede that “release” might look different for different inmates. The Petitioners acknowledge that while some inmates might be placed in home confinement others should be furloughed and that in all instances such “release” could be temporary.<sup>56</sup>

The motivating question in the litigation is whether the subclass members’ rights are being violated by the deteriorating conditions at Elkton. As such, the subclass can satisfy commonality.

**Typicality:** “Typicality is met if the class members’ claims are ‘fairly encompassed by the named plaintiffs’ claims.’”<sup>57</sup> Three of the named Petitioners have documented medical issues that are commiserate with those suffered by the subclass. The fourth named Petitioner, Maximino Nieves, could represent that class, but not the subclass, as he attests that he doesn’t have a serious medical history.<sup>58</sup> Excepting Nieves, nothing suggests that the remaining three Petitioners’ claims are distinct from those of the remainder of the subclass. Typicality is satisfied.<sup>59</sup>

**Adequate Representation:** The Court is satisfied that counsel is competent to represent the class. Additionally, the interests of the named Petitioners do not conflict with

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<sup>55</sup> Doc. 10 at 36-37.

<sup>56</sup> Doc. 1 at 2 n. 2.

<sup>57</sup> *In re Whirlpool*, 722 F.3d at 852 (citation omitted).

<sup>58</sup> Doc. 1-8 at 2.

<sup>59</sup> Respondents argue that the named Petitioners defy typicality because they are all ineligible for home confinement. This contention ignores the fact that other means of removal from Elkton might be available to the named Petitioners other than home confinement, such as transfer to another facility.



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those of the other subclass members.

Having satisfied the Rule 23(a) requirements, the subclass must also demonstrate that it meets one of the Rule 23(b) requirements. Petitioners argue that “Respondents have acted on grounds generally applicable to all proposed Class members, and this action seeks declaratory and injunctive relief.”<sup>60</sup> Indeed, Respondents’ failure to protect the inmates from the spreading virus applies to the entirety of the subclass generally and injunctive relief is appropriate as to the subclass. Rule 23(b)(2) is therefore satisfied.

For the purposes of the preliminary injunction inquiry, the Court finds that the subclass as defined in this order likely meets the requirements for class certification.

### C. Injunctive Relief

“Four factors guide a district court’s decision to issue a preliminary injunction: whether the plaintiffs will likely win down the road, whether an injunction would prevent the plaintiffs from being irreparably harmed, whether an injunction would harm others, and how the injunction would impact the public interest.”<sup>61</sup> The Court considers each in turn.

#### 1. Likely Success

Petitioners’ claims are predicated on a violation of their Eighth Amendment rights which protects them from “cruel and unusual punishments.” In order to succeed on an Eighth Amendment claim, Petitioners must satisfy both an objective and subjective component.<sup>62</sup>

“The objective component of the test requires the existence of a ‘sufficiently serious’

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<sup>60</sup> Doc. 1 at 31.

<sup>61</sup> *McNeil v. Community Prob. Servs., LLC*, 945 F.3d 991, 994 (6th Cir. 2019).

<sup>62</sup> *Miller v. Calhoun Cty.*, 408 F.3d 803, 812 (6th Cir. 2005).

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medical need.”<sup>63</sup> Petitioners obviously satisfy this component. At this moment a deadly virus is spreading amongst Elkton’s population and staff. For infected inmates, the virus can lead to pneumonia. In the worse pneumonia cases, COVID-19 victims suffer diminishing oxygen absorption, with resulting organ failure leading to death. Victims choke to death. While not every inmate who contracts the virus will die, the subclass members are at a much greater risk of doing so. They have a very serious medical need to be protected from the virus.

The subjective component requires that Respondents have acted with deliberate indifference, “a degree of culpability greater than mere negligence, but less than ‘acts or omissions for the very purpose of causing harm or with knowledge that harm will result.’”<sup>64</sup> Petitioners satisfy this standard.

While Respondents offer certain prison-practice changes to show they know COVID-19 risks and have sought to reduce those risks, the Court still finds that, at this preliminary stage of the litigation, the Petitioners have sufficiently met the threshold for showing that Respondents have been deliberately indifferent.

One only need look at Elkton’s testing debacle for one example of this deliberate indifference. Additionally, Elkton has altogether failed to separate its inmates at least six feet apart, despite clear CDC guidance for some time that such measures are necessary to stop the spread and save lives.

Having met both prongs of the Eighth Amendment analysis, Petitioners have demonstrated a likelihood of success on the merits.

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<sup>63</sup> *Id.* (citing *Blackmore v. Kalamazoo County*, 390 F.3d 890, 895 (6th Cir. 2004)).

<sup>64</sup> *Id.* at 813 (quoting *Farmer v. Brennan*, 511 U.S. 825, 837 (1994)).

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## 2. Irreparable Harm

Respondents argue that Petitioners have not shown that release will reduce the risk of exposure to COVID-19. But the district court cases Respondents use that have found that release would not lessen the risk to a defendant's health did not deal specifically with Elkton confinement.<sup>65</sup> Of the reported inmate deaths in nation-wide BOP custody, 6 out of 23, more than 1 in 4, has occurred at Elkton, making it a hotspot for the virus and certainly more dangerous than other facilities.<sup>66</sup>

Respondents also argue that the Petitioners' harm is speculative. It is true that some subclass members may not die if they contract the virus. However, it is more than mere speculation that the virus will continue to spread and pose a danger to inmates if BOP does not increase its efforts to stop the spread.<sup>67</sup> Petitioners have therefore shown a risk for irreparable harm.

## 3. Harm to Others

Respondents argue that the release of inmates from Elkton "would cause substantial damage to others" because there is no assurance that the inmates can care for themselves upon release.<sup>68</sup> They argue the inmates might be left without access to food, shelter, or medical care.<sup>69</sup>

As stated previously, Petitioners do not ask this Court to throw open the gates to the

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<sup>65</sup> *United States v. Taylor*, No. 5:19-CR-192-KKC-MAS, 2020 WL 1501997, at \*5 (E.D. Ky. Mar. 26, 2020) (noting that the Court believed that the practices at "any facility" were sufficient to protect from COVID-19); *United States v. Steward*, 2020 WL 1468005, at \*1 (S.D.N.Y. Mar. 26, 2020) (denying release from Metropolitan Correctional Center).

<sup>66</sup> Federal Bureau of Prisons, *COVID-19 Cases*, <https://www.bop.gov/coronavirus/> (last visited April 22, 2020).

<sup>67</sup> See Doc. 14-1 at 5-10 (describing the inadequacy of the Elkton measures and the risk of spread within the prison environment).

<sup>68</sup> Doc. 10 at 3.

<sup>69</sup> *Id.* at 3, 33-34.

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prison and leave the inmates that are released to fend for themselves. Instead, Petitioners seek “release” that consists of moving vulnerable inmates to various other types of confinement so that they are no longer at risk of dying from the virus. And as Respondents acknowledge, it is BOP’s current policy to quarantine all inmates that are transferred from Elkton for 14 days before transfer.<sup>70</sup> The continued implementation of this policy reduces the risk that an inmate with COVID-19 will carry the virus with him outside of the prison.

Furthermore, there is a continued risk of harm to others, including prison staff, if inmates remain in the prison and the virus continues to thrive among the dense inmate population.

#### 4. Public Interest

Respondents argue that the public faces a grave danger if inmates are to be released *en masse* onto the streets. They say:

Our over-burdened police and safety services should not be forced to deal with the indiscriminate release of thousands of prisoners on the streets without any verification that those prisoners will follow the laws when they are released, that they will have a safe place to go where they will not be mingling with their former criminal associates, and that they will not return to their former ways as soon as they walk through the prison gates.<sup>71</sup>

First, Respondents might as well be arguing against the release of any inmate, at any time, for any reason, because even in the best of circumstances the country’s criminal justice system has no way, short of life imprisonment, of ensuring former prisoners do not recidivate. The COVID-19 pandemic has not suddenly raised this issue.

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<sup>70</sup> Doc. 10-2 at 7.

<sup>71</sup> Doc. 10 at 41-42.

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Third, the danger of recidivism reduces with age, especially after age 40.<sup>72</sup> The subclass inmates are older and by definition, the vulnerable sub-class inmates suffer serious medical conditions.

Second, it bears repeating that the Petitioners are not asking the Court to dump inmates out into the streets. No one's interest would be served in doing so. The Court is confident that the transfer of prisoners from Elkton to other means of confinement could accomplish the goal of protecting Elkton's vulnerable population while also protecting public safety.

Third, six Elkton inmates have already died. Likely, they died after agonizing days under intensive care, most probably with ventilators. The BOP absorbs the high cost of this treatment—costs that are likely multiples of what it would have cost to test each Elkton inmate and guard.

Finally, "it is always in the public interest to prevent the violation of a party's constitutional rights."<sup>73</sup>

#### **D. The Prison Litigation Reform Act**

Respondents argue that the Prison Litigation Reform Act ("PLRA"), 18 U.S.C. § 3626, bars this Court from granting the inmates' release.<sup>74</sup> This is not so. The PLRA does not extend to "habeas corpus proceedings challenging the fact or duration of confinement in prison."<sup>75</sup> Because the Court has determined that the subclass's claims are

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<sup>72</sup> See generally United States Sentencing Commission, *The Effects of Aging on Recidivism Among Federal Offenders*, (Dec. 2017), <https://www.ussc.gov/research/research-reports/effects-aging-recidivism-among-federal-offenders>.

<sup>73</sup> *G & V Lounge, Inc. v. Mich. Liquor Control Comm'n*, 23 F.3d 1071, 1079 (6th Cir. 1994).

<sup>74</sup> Doc. 10 at 16.

<sup>75</sup> 18 U.S.C. § 3626(g)(2).

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properly before the Court as a habeas action, this prohibition does not apply.<sup>76</sup>

Additionally, Respondents argue that a release order may only be entered by a three-judge court and that the court must find that “crowding is the primary cause of the violation of a Federal right” and “no other relief will remedy the violation.”<sup>77</sup> As stated previously the PLRA does not bar this habeas proceeding. However, even if it did, the Court is not ordering the release of the prisoners. Instead, the inmates will remain in BOP custody, but the conditions of their confinement will be enlarged.

### III. Conclusion

The Court **GRANTS IN PART** and **DENIES IN PART** Petitioners’ motion for relief.

The Court orders the Respondents to identify, within one (1) day all members of the subclass as defined in this Order. Respondents must identify in the list each subclass member’s sentencing court and the case number of their underlying criminal conviction.

Following identification, the Court orders Respondents to evaluate each subclass member’s eligibility for transfer out of Elkton through any means, including but not limited to compassionate release, parole or community supervision, transfer furlough, or non-transfer furlough within two (2) weeks.

In undertaking this evaluation, Respondents will prioritize the review by the medical threat level. For example, older inmates with heart, pulmonary, diabetes or immunity risks should receive review priority over subclass members who are younger.

Subclass members who are ineligible for compassionate release, home release, or

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<sup>76</sup> See *Colton v. Ashcroft*, 299 F. Supp. 2d 681, (E.D. Ky. 2004) (“28 U.S.C. §§ 2241, 2254, and 2255 filings have been deemed not covered by the PLRA.”).

<sup>77</sup> 18 U.S.C. § 3626(a)(3)(E).

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parole or community supervision must be transferred to another BOP facility where appropriate measures, such as testing and single-cell placement, or social distancing, may be accomplished. In transferring subclass members, Respondents must continue to comply with BOP policy of quarantining inmates for 14 days prior to transfer out of Elkton.

Any subclass members transferred out of Elkton may not be returned to the facility until the threat of the virus is abated or until a vaccine is available and Elkton obtains sufficient vaccine supplies to vaccinate its population, whichever occurs first.

IT IS SO ORDERED.

Dated: April 22, 2020

*s/ James S. Gwin*  
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JAMES S. GWIN  
UNITED STATES DISTRICT JUDGE

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EXECUTIVE DEPARTMENT  
STATE OF CALIFORNIA

PROCLAMATION OF A STATE OF EMERGENCY

**WHEREAS** in December 2019, an outbreak of respiratory illness due to a novel coronavirus (a disease now known as COVID-19), was first identified in Wuhan City, Hubei Province, China, and has spread outside of China, impacting more than 75 countries, including the United States; and

**WHEREAS** the State of California has been working in close collaboration with the national Centers for Disease Control and Prevention (CDC), with the United States Health and Human Services Agency, and with local health departments since December 2019 to monitor and plan for the potential spread of COVID-19 to the United States; and

**WHEREAS** on January 23, 2020, the CDC activated its Emergency Response System to provide ongoing support for the response to COVID-19 across the country; and

**WHEREAS** on January 24, 2020, the California Department of Public Health activated its Medical and Health Coordination Center and on March 2, 2020, the Office of Emergency Services activated the State Operations Center to support and guide state and local actions to preserve public health; and

**WHEREAS** the California Department of Public Health has been in regular communication with hospitals, clinics and other health providers and has provided guidance to health facilities and providers regarding COVID-19; and

**WHEREAS** as of March 4, 2020, across the globe, there are more than 94,000 confirmed cases of COVID-19, tragically resulting in more than 3,000 deaths worldwide; and

**WHEREAS** as of March 4, 2020, there are 129 confirmed cases of COVID-19 in the United States, including 53 in California, and more than 9,400 Californians across 49 counties are in home monitoring based on possible travel-based exposure to the virus, and officials expect the number of cases in California, the United States, and worldwide to increase; and

**WHEREAS** for more than a decade California has had a robust pandemic influenza plan, supported local governments in the development of local plans, and required that state and local plans be regularly updated and exercised; and

**WHEREAS** California has a strong federal, state and local public health and health care delivery system that has effectively responded to prior events including the H1N1 influenza virus in 2009, and most recently Ebola; and

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**WHEREAS** experts anticipate that while a high percentage of individuals affected by COVID-19 will experience mild flu-like symptoms, some will have more serious symptoms and require hospitalization, particularly individuals who are elderly or already have underlying chronic health conditions; and

**WHEREAS** it is imperative to prepare for and respond to suspected or confirmed COVID-19 cases in California, to implement measures to mitigate the spread of COVID-19, and to prepare to respond to an increasing number of individuals requiring medical care and hospitalization; and

**WHEREAS** if COVID-19 spreads in California at a rate comparable to the rate of spread in other countries, the number of persons requiring medical care may exceed locally available resources, and controlling outbreaks minimizes the risk to the public, maintains the health and safety of the people of California, and limits the spread of infection in our communities and within the healthcare delivery system; and

**WHEREAS** personal protective equipment (PPE) is not necessary for use by the general population but appropriate PPE is one of the most effective ways to preserve and protect California's healthcare workforce at this critical time and to prevent the spread of COVID-19 broadly; and

**WHEREAS** state and local health departments must use all available preventative measures to combat the spread of COVID-19, which will require access to services, personnel, equipment, facilities, and other resources, potentially including resources beyond those currently available, to prepare for and respond to any potential cases and the spread of the virus; and

**WHEREAS** I find that conditions of Government Code section 8558(b), relating to the declaration of a State of Emergency, have been met; and

**WHEREAS** I find that the conditions caused by COVID-19 are likely to require the combined forces of a mutual aid region or regions to appropriately respond; and

**WHEREAS** under the provisions of Government Code section 8625(c), I find that local authority is inadequate to cope with the threat posed by COVID-19; and

**WHEREAS** under the provisions of Government Code section 8571, I find that strict compliance with various statutes and regulations specified in this order would prevent, hinder, or delay appropriate actions to prevent and mitigate the effects of the COVID-19.

**NOW, THEREFORE, I, GAVIN NEWSOM**, Governor of the State of California, in accordance with the authority vested in me by the State Constitution and statutes, including the California Emergency Services Act, and in particular, Government Code section 8625, **HEREBY PROCLAIM A STATE OF EMERGENCY** to exist in California.

**IT IS HEREBY ORDERED THAT:**

1. In preparing for and responding to COVID-19, all agencies of the state government use and employ state personnel, equipment, and facilities or perform any and all activities consistent with the direction of the Office of Emergency Services and the State Emergency Plan, as well as the California Department of Public Health and the Emergency Medical Services Authority. Also, all residents are to heed the advice of emergency officials with regard to this emergency in order to protect their safety.
2. As necessary to assist local governments and for the protection of public health, state agencies shall enter into contracts to arrange for the procurement of materials, goods, and services needed to assist in preparing for, containing, responding to, mitigating the effects of, and recovering from the spread of COVID-19. Applicable provisions of the Government Code and the Public Contract Code, including but not limited to travel, advertising, and competitive bidding requirements, are suspended to the extent necessary to address the effects of COVID-19.
3. Any out-of-state personnel, including, but not limited to, medical personnel, entering California to assist in preparing for, responding to, mitigating the effects of, and recovering from COVID-19 shall be permitted to provide services in the same manner as prescribed in Government Code section 179.5, with respect to licensing and certification. Permission for any such individual rendering service is subject to the approval of the Director of the Emergency Medical Services Authority for medical personnel and the Director of the Office of Emergency Services for non-medical personnel and shall be in effect for a period of time not to exceed the duration of this emergency.
4. The time limitation set forth in Penal Code section 396, subdivision (b), prohibiting price gouging in time of emergency is hereby waived as it relates to emergency supplies and medical supplies. These price gouging protections shall be in effect through September 4, 2020.
5. Any state-owned properties that the Office of Emergency Services determines are suitable for use to assist in preparing for, responding to, mitigating the effects of, or recovering from COVID-19 shall be made available to the Office of Emergency Services for this purpose, notwithstanding any state or local law that would restrict, delay, or otherwise inhibit such use.
6. Any fairgrounds that the Office of Emergency Services determines are suitable to assist in preparing for, responding to, mitigating the effects of, or recovering from COVID-19 shall be made available to the Office of Emergency Services pursuant to the Emergency Services Act, Government Code section 8589. The Office of Emergency Services shall notify the fairgrounds of the intended use and can immediately use the fairgrounds without the fairground board of directors' approval, and

notwithstanding any state or local law that would restrict, delay, or otherwise inhibit such use.

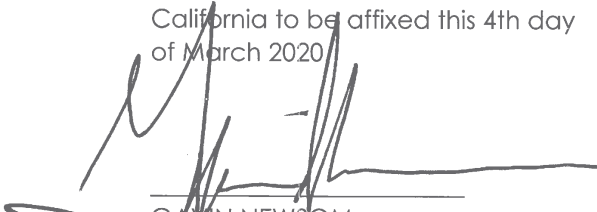
7. The 30-day time period in Health and Safety Code section 101080, within which a local governing authority must renew a local health emergency, is hereby waived for the duration of this statewide emergency. Any such local health emergency will remain in effect until each local governing authority terminates its respective local health emergency.
8. The 60-day time period in Government Code section 8630, within which local government authorities must renew a local emergency, is hereby waived for the duration of this statewide emergency. Any local emergency proclaimed will remain in effect until each local governing authority terminates its respective local emergency.
9. The Office of Emergency Services shall provide assistance to local governments that have demonstrated extraordinary or disproportionate impacts from COVID-19, if appropriate and necessary, under the authority of the California Disaster Assistance Act, Government Code section 8680 et seq., and California Code of Regulations, Title 19, section 2900 et seq.
10. To ensure hospitals and other health facilities are able to adequately treat patients legally isolated as a result of COVID-19, the Director of the California Department of Public Health may waive any of the licensing requirements of Chapter 2 of Division 2 of the Health and Safety Code and accompanying regulations with respect to any hospital or health facility identified in Health and Safety Code section 1250. Any waiver shall include alternative measures that, under the circumstances, will allow the facilities to treat legally isolated patients while protecting public health and safety. Any facilities being granted a waiver shall be established and operated in accordance with the facility's required disaster and mass casualty plan. Any waivers granted pursuant to this paragraph shall be posted on the Department's website.
11. To support consistent practices across California, state departments, in coordination with the Office of Emergency Services, shall provide updated and specific guidance relating to preventing and mitigating COVID-19 to schools, employers, employees, first responders and community care facilities by no later than March 10, 2020.
12. To promptly respond for the protection of public health, state entities are, notwithstanding any other state or local law, authorized to share relevant medical information, limited to the patient's underlying health conditions, age, current condition, date of exposure, and possible contact tracing, as necessary to address the effect of the COVID-19 outbreak with state, local, federal, and nongovernmental partners, with such information to be used for the limited purposes of monitoring, investigation and control, and treatment and coordination of care. The

notification requirement of Civil Code section 1798.24, subdivision (i), is suspended.

13. Notwithstanding Health and Safety Code sections 1797.52 and 1797.218, during the course of this emergency, any EMT-P licensees shall have the authority to transport patients to medical facilities other than acute care hospitals when approved by the California EMS Authority. In order to carry out this order, to the extent that the provisions of Health and Safety Code sections 1797.52 and 1797.218 may prohibit EMT-P licensees from transporting patients to facilities other than acute care hospitals, those statutes are hereby suspended until the termination of this State of Emergency.
14. The Department of Social Services may, to the extent the Department deems necessary to respond to the threat of COVID-19, waive any provisions of the Health and Safety Code or Welfare and Institutions Code, and accompanying regulations, interim licensing standards, or other written policies or procedures with respect to the use, licensing, or approval of facilities or homes within the Department's jurisdiction set forth in the California Community Care Facilities Act (Health and Safety Code section 1500 et seq.), the California Child Day Care Facilities Act (Health and Safety Code section 1596.70 et seq.), and the California Residential Care Facilities for the Elderly Act (Health and Safety Code section 1569 et seq.). Any waivers granted pursuant to this paragraph shall be posted on the Department's website.

**I FURTHER DIRECT** that as soon as hereafter possible, this proclamation be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this proclamation.

**IN WITNESS WHEREOF** I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 4th day of March 2020



\_\_\_\_\_  
GAVIN NEWSOM  
Governor of California

**ATTEST:**

\_\_\_\_\_  
ALEX PADILLA  
Secretary of State

# Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities

This interim guidance is based on what is currently known about the transmission and severity of coronavirus disease 2019 (COVID-19) as of **March 23, 2020**.

The US Centers for Disease Control and Prevention (CDC) will update this guidance as needed and as additional information becomes available. Please check the following CDC website periodically for updated interim guidance: <https://www.cdc.gov/coronavirus/2019-ncov/index.html>.

This document provides interim guidance specific for correctional facilities and detention centers during the outbreak of COVID-19, to ensure continuation of essential public services and protection of the health and safety of incarcerated and detained persons, staff, and visitors. Recommendations may need to be revised as more information becomes available.

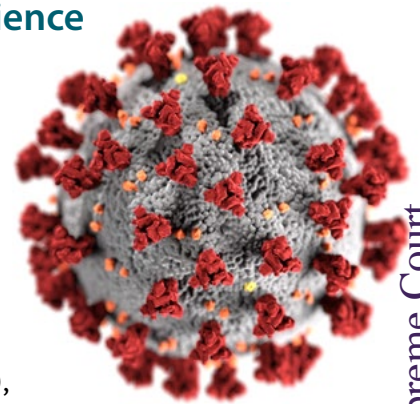
## In this guidance

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- Recommended PPE and PPE Training for Staff and Incarcerated/Detained Persons
- Verbal Screening and Temperature Check Protocols for Incarcerated/Detained Persons, Staff, and Visitors

## Who is the intended audience for this guidance?

This document is intended to provide guiding principles for healthcare and non-healthcare administrators of correctional and detention facilities (including but not limited to federal and state prisons, local jails, and detention centers), law enforcement agencies that have custodial authority for detained populations (i.e., US Immigration and Customs Enforcement and US Marshals Service), and their respective health departments, to assist in preparing for potential introduction, spread, and mitigation of COVID-19 in their facilities. In general, the document uses terminology referring to correctional environments but can also be applied to civil and pre-trial detention settings.

This guidance will not necessarily address every possible custodial setting and may not use legal terminology specific to individual agencies' authorities or processes. **The guidance may need to be adapted based on individual facilities' physical space, staffing, population, operations, and other resources and conditions.** Facilities should contact CDC or their state, local, territorial, and/or tribal public health department if they need assistance in applying these principles or addressing topics that are not specifically covered in this guidance.



Document received by the CA Supreme Court.



## Why is this guidance being issued?

Correctional and detention facilities can include custody, housing, education, recreation, healthcare, food service, and workplace components in a single physical setting. The integration of these components presents unique challenges for control of COVID-19 transmission among incarcerated/detained persons, staff, and visitors. Consistent application of specific preparation, prevention, and management measures can help reduce the risk of transmission and severe disease from COVID-19.

- Incarcerated/detained persons live, work, eat, study, and recreate within congregate environments, heightening the potential for COVID-19 to spread once introduced.
- In most cases, incarcerated/detained persons are not permitted to leave the facility.
- There are many opportunities for COVID-19 to be introduced into a correctional or detention facility, including daily staff ingress and egress; transfer of incarcerated/detained persons between facilities and systems, to court appearances, and to outside medical visits; and visits from family, legal representatives, and other community members. Some settings, particularly jails and detention centers, have high turnover, admitting new entrants daily who may have been exposed to COVID-19 in the surrounding community or other regions.
- Persons incarcerated/detained in a particular facility often come from a variety of locations, increasing the potential to introduce COVID-19 from different geographic areas.
- Options for medical isolation of COVID-19 cases are limited and vary depending on the type and size of facility, as well as the current level of available capacity, which is partly based on medical isolation needs for other conditions.
- Adequate levels of custody and healthcare staffing must be maintained to ensure safe operation of the facility, and options to practice social distancing through work alternatives such as working from home or reduced/alternate schedules are limited for many staff roles.
- Correctional and detention facilities can be complex, multi-employer settings that include government and private employers. Each is organizationally distinct and responsible for its own operational, personnel, and occupational health protocols and may be prohibited from issuing guidance or providing services to other employers or their staff within the same setting. Similarly, correctional and detention facilities may house individuals from multiple law enforcement agencies or jurisdictions subject to different policies and procedures.
- Incarcerated/detained persons and staff may have [medical conditions that increase their risk of severe disease from COVID-19](#).
- Because limited outside information is available to many incarcerated/detained persons, unease and misinformation regarding the potential for COVID-19 spread may be high, potentially creating security and morale challenges.
- The ability of incarcerated/detained persons to exercise disease prevention measures (e.g., frequent handwashing) may be limited and is determined by the supplies provided in the facility and by security considerations. Many facilities restrict access to soap and paper towels and prohibit alcohol-based hand sanitizer and many disinfectants.
- Incarcerated persons may hesitate to report symptoms of COVID-19 or seek medical care due to co-pay requirements and fear of isolation.

CDC has issued separate COVID-19 guidance addressing [healthcare infection control](#) and [clinical care of COVID-19 cases](#) as well as [close contacts of cases](#) in community-based settings. Where relevant, community-focused guidance documents are referenced in this document and should be monitored regularly for updates, but they may require adaptation for correctional and detention settings.

This guidance document provides additional recommended best practices specifically for correctional and detention facilities. **At this time, different facility types (e.g., prison vs. jail) and sizes are not differentiated. Administrators and agencies should adapt these guiding principles to the specific needs of their facility.**

## What topics does this guidance include?

The guidance below includes detailed recommendations on the following topics related to COVID-19 in correctional and detention settings:

- ✓ Operational and communications preparations for COVID-19
- ✓ Enhanced cleaning/disinfecting and hygiene practices
- ✓ Social distancing strategies to increase space between individuals in the facility
- ✓ How to limit transmission from visitors
- ✓ Infection control, including recommended personal protective equipment (PPE) and potential alternatives during PPE shortages
- ✓ Verbal screening and temperature check protocols for incoming incarcerated/detained individuals, staff, and visitors
- ✓ Medical isolation of confirmed and suspected cases and quarantine of contacts, including considerations for cohorting when individual spaces are limited
- ✓ Healthcare evaluation for suspected cases, including testing for COVID-19
- ✓ Clinical care for confirmed and suspected cases
- ✓ Considerations for persons at higher risk of severe disease from COVID-19

## Definitions of Commonly Used Terms

**Close contact of a COVID-19 case**—In the context of COVID-19, an individual is considered a close contact if they a) have been within approximately 6 feet of a COVID-19 case for a prolonged period of time or b) have had direct contact with infectious secretions from a COVID-19 case (e.g., have been coughed on). Close contact can occur while caring for, living with, visiting, or sharing a common space with a COVID-19 case. Data to inform the definition of close contact are limited. Considerations when assessing close contact include the duration of exposure (e.g., longer exposure time likely increases exposure risk) and the clinical symptoms of the person with COVID-19 (e.g., coughing likely increases exposure risk, as does exposure to a severely ill patient).

**Cohorting**—Cohorting refers to the practice of isolating multiple laboratory-confirmed COVID-19 cases together as a group, or quarantining close contacts of a particular case together as a group. Ideally, cases should be isolated individually, and close contacts should be quarantined individually. However, some correctional facilities and detention centers do not have enough individual cells to do so and must consider cohorting as an alternative. See [Quarantine](#) and [Medical Isolation](#) sections below for specific details about ways to implement cohorting to minimize the risk of disease spread and adverse health outcomes.

**Community transmission of COVID-19**—Community transmission of COVID-19 occurs when individuals acquire the disease through contact with someone in their local community, rather than through travel to an affected location. Once community transmission is identified in a particular area, correctional facilities and detention centers are more likely to start seeing cases inside their walls. Facilities should consult with local public health departments if assistance is needed in determining how to define “local community” in the context of COVID-19 spread. However, because all states have reported cases, all facilities should be vigilant for introduction into their populations.

**Confirmed vs. Suspected COVID-19 case**—A confirmed case has received a positive result from a COVID-19 laboratory test, with or without symptoms. A suspected case shows symptoms of COVID-19 but either has not been tested or is awaiting test results. If test results are positive, a suspected case becomes a confirmed case.

**Incarcerated/detained persons**—For the purpose of this document, “incarcerated/detained persons” refers to persons held in a prison, jail, detention center, or other custodial setting where these guidelines are generally applicable. The term includes those who have been sentenced (i.e., in prisons) as well as those held for pre-trial (i.e., jails) or civil purposes (i.e., detention centers). Although this guidance does not specifically reference individuals in every type of custodial setting (e.g., juvenile facilities, community confinement facilities), facility administrators can adapt this guidance to apply to their specific circumstances as needed.

**Medical Isolation**—Medical isolation refers to confining a confirmed or suspected COVID-19 case (ideally to a single cell with solid walls and a solid door that closes), to prevent contact with others and to reduce the risk of transmission. Medical isolation ends when the individual meets pre-established clinical and/or testing criteria for release from isolation, in consultation with clinical providers and public health officials (detailed in guidance [below](#)). In this context, isolation does NOT refer to punitive isolation for behavioral infractions within the custodial setting. Staff are encouraged to use the term “medical isolation” to avoid confusion.

**Quarantine**—Quarantine refers to the practice of confining individuals who have had close contact with a COVID-19 case to determine whether they develop symptoms of the disease. Quarantine for COVID-19 should last for a period of 14 days. Ideally, each quarantined individual would be quarantined in a single cell with solid walls and a solid door that closes. If symptoms develop during the 14-day period, the individual should be placed under [medical isolation](#) and evaluated for COVID-19. If symptoms do not develop, movement restrictions can be lifted, and the individual can return to their previous residency status within the facility.

**Social Distancing**—Social distancing is the practice of increasing the space between individuals and decreasing the frequency of contact to reduce the risk of spreading a disease (ideally to maintain at least 6 feet between all individuals, even those who are asymptomatic). Social distancing strategies can be applied on an individual level (e.g., avoiding physical contact), a group level (e.g., canceling group activities where individuals will be in close contact), and an operational level (e.g., rearranging chairs in the dining hall to increase distance between them). Although social distancing is challenging to practice in correctional and detention environments, it is a cornerstone of reducing transmission of respiratory diseases such as COVID-19. Additional information about social distancing, including information on its use to reduce the spread of other viral illnesses, is available in this [CDC publication](#).

**Staff**—In this document, “staff” refers to all public sector employees as well as those working for a private contractor within a correctional facility (e.g., private healthcare or food service). Except where noted, “staff” does not distinguish between healthcare, custody, and other types of staff including private facility operators.

**Symptoms**—[Symptoms of COVID-19](#) include fever, cough, and shortness of breath. Like other respiratory infections, COVID-19 can vary in severity from mild to severe. When severe, pneumonia, respiratory failure, and death are possible. COVID-19 is a novel disease, therefore the full range of signs and symptoms, the clinical course of the disease, and the individuals and populations most at risk for disease and complications are not yet fully understood. Monitor the [CDC website](#) for updates on these topics.

## Facilities with Limited Onsite Healthcare Services

Although many large facilities such as prisons and some jails usually employ onsite healthcare staff and have the capacity to evaluate incarcerated/detained persons for potential illness within a dedicated healthcare space, many smaller facilities do not. Some of these facilities have access to on-call healthcare staff or providers who visit the facility every few days. Others have neither onsite healthcare capacity nor onsite medical isolation/quarantine space and must transfer ill patients to other correctional or detention facilities or local hospitals for evaluation and care.



The majority of the guidance below is designed to be applied to any correctional or detention facility, either as written or with modifications based on a facility's individual structure and resources. However, topics related to healthcare evaluation and clinical care of confirmed and suspected COVID-19 cases and their close contacts may not apply directly to facilities with limited or no onsite healthcare services. It will be especially important for these types of facilities to coordinate closely with their state, local, tribal, and/or territorial health department when they encounter confirmed or suspected cases among incarcerated/detained persons or staff, in order to ensure effective medical isolation and quarantine, necessary medical evaluation and care, and medical transfer if needed. The guidance makes note of strategies tailored to facilities without onsite healthcare where possible.

Note that all staff in any sized facility, regardless of the presence of onsite healthcare services, should observe guidance on [recommended PPE](#) in order to ensure their own safety when interacting with confirmed and suspected COVID-19 cases. Facilities should make contingency plans for the likely event of [PPE shortages](#) during the COVID-19 pandemic.

## COVID-19 Guidance for Correctional Facilities

Guidance for correctional and detention facilities is organized into 3 sections: Operational Preparedness, Prevention, and Management of COVID-19. Recommendations across these sections can be applied simultaneously based on the progress of the outbreak in a particular facility and the surrounding community.

- **Operational Preparedness.** This guidance is intended to help facilities prepare for potential COVID-19 transmission in the facility. Strategies focus on operational and communications planning and personnel practices.
- **Prevention.** This guidance is intended to help facilities prevent spread of COVID-19 from outside the facility to inside. Strategies focus on reinforcing hygiene practices, intensifying cleaning and disinfection of the facility, screening (new intakes, visitors, and staff), continued communication with incarcerated/detained persons and staff, and social distancing measures (increasing distance between individuals).
- **Management.** This guidance is intended to help facilities clinically manage confirmed and suspected COVID-19 cases inside the facility and prevent further transmission. Strategies include medical isolation and care of incarcerated/detained persons with symptoms (including considerations for cohorting), quarantine of cases' close contacts, restricting movement in and out of the facility, infection control practices for individuals interacting with cases and quarantined contacts or contaminated items, intensified social distancing, and cleaning and disinfecting areas visited by cases.

## Operational Preparedness

Administrators can plan and prepare for COVID-19 by ensuring that all persons in the facility know the [symptoms of COVID-19](#) and how to respond if they develop symptoms. Other essential actions include developing contingency plans for reduced workforces due to absences, coordinating with public health and correctional partners, and communicating clearly with staff and incarcerated/detained persons about these preparations and how they may temporarily alter daily life.

## Communication & Coordination

- ✓ **Develop information-sharing systems with partners.**
  - Identify points of contact in relevant state, local, tribal, and/or territorial public health departments before cases develop. Actively engage with the health department to understand in advance which entity has jurisdiction to implement public health control measures for COVID-19 in a particular correctional or detention facility.
  - Create and test communications plans to disseminate critical information to incarcerated/detained persons, staff, contractors, vendors, and visitors as the pandemic progresses.

- Communicate with other correctional facilities in the same geographic area to share information including disease surveillance and absenteeism patterns among staff.
  - Where possible, put plans in place with other jurisdictions to prevent [confirmed and suspected COVID-19 cases and their close contacts](#) from being transferred between jurisdictions and facilities unless necessary for medical evaluation, medical isolation/quarantine, clinical care, extenuating security concerns, or to prevent overcrowding.
  - Stay informed about updates to CDC guidance via the [CDC COVID-19 website](#) as more information becomes known.
- ✓ **Review existing pandemic flu, all-hazards, and disaster plans, and revise for COVID-19.**
- Ensure that physical locations (dedicated housing areas and bathrooms) have been identified to isolate confirmed COVID-19 cases and individuals displaying COVID-19 symptoms, and to quarantine known close contacts of cases. (Medical isolation and quarantine locations should be separate). The plan should include contingencies for multiple locations if numerous cases and/or contacts are identified and require medical isolation or quarantine simultaneously. See [Medical Isolation](#) and [Quarantine](#) sections below for details regarding individual medical isolation and quarantine locations (preferred) vs. cohorting.
  - [Facilities without onsite healthcare capacity](#) should make a plan for how they will ensure that suspected COVID-19 cases will be isolated, evaluated, tested (if indicated), and provided necessary medical care.
  - Make a list of possible [social distancing strategies](#) that could be implemented as needed at different stages of transmission intensity.
  - Designate officials who will be authorized to make decisions about escalating or de-escalating response efforts as the epidemiologic context changes.
- ✓ **Coordinate with local law enforcement and court officials.**
- Identify lawful alternatives to in-person court appearances, such as virtual court, as a social distancing measure to reduce the risk of COVID-19 transmission.
  - Explore strategies to prevent over-crowding of correctional and detention facilities during a community outbreak.
- ✓ **Post [signage](#) throughout the facility communicating the following:**
- **For all:** symptoms of COVID-19 and hand hygiene instructions
  - **For incarcerated/detained persons:** report symptoms to staff
  - **For staff:** stay at home when sick; if symptoms develop while on duty, leave the facility as soon as possible and follow [CDC-recommended steps for persons who are ill with COVID-19 symptoms](#) including self-isolating at home, contacting their healthcare provider as soon as possible to determine whether they need to be evaluated and tested, and contacting their supervisor.
  - Ensure that signage is understandable for non-English speaking persons and those with low literacy, and make necessary accommodations for those with cognitive or intellectual disabilities and those who are deaf, blind, or low-vision.

## Personnel Practices

- ✓ **Review the sick leave policies of each employer that operates in the facility.**
- Review policies to ensure that they actively encourage staff to stay home when sick.
  - If these policies do not encourage staff to stay home when sick, discuss with the contract company.
  - Determine which officials will have the authority to send symptomatic staff home.

- ✓ **Identify staff whose duties would allow them to work from home. Where possible, allowing staff to work from home can be an effective social distancing strategy to reduce the risk of COVID-19 transmission.**
  - Discuss work from home options with these staff and determine whether they have the supplies and technological equipment required to do so.
  - Put systems in place to implement work from home programs (e.g., time tracking, etc.).
- ✓ **Plan for staff absences.** Staff should stay home when they are sick, or they may need to stay home to care for a sick household member or care for children in the event of school and childcare dismissals.
  - Allow staff to work from home when possible, within the scope of their duties.
  - Identify critical job functions and plan for alternative coverage by cross-training staff where possible.
  - Determine minimum levels of staff in all categories required for the facility to function safely. If possible, develop a plan to secure additional staff if absenteeism due to COVID-19 threatens to bring staffing to minimum levels.
  - Consider increasing keep on person (KOP) medication orders to cover 30 days in case of healthcare staff shortages.
- ✓ **Consider offering revised duties to staff who are at [higher risk of severe illness with COVID-19](#).** Persons at higher risk may include older adults and persons of any age with serious underlying medical conditions including lung disease, heart disease, and diabetes. See [CDC's website](#) for a complete list, and check regularly for updates as more data become available to inform this issue.
  - Facility administrators should consult with their occupational health providers to determine whether it would be allowable to reassign duties for specific staff members to reduce their likelihood of exposure to COVID-19.
- ✓ **Offer the seasonal influenza vaccine to all incarcerated/detained persons (existing population and new intakes) and staff throughout the influenza season.** Symptoms of COVID-19 are similar to those of influenza. Preventing influenza cases in a facility can speed the detection of COVID-19 cases and reduce pressure on healthcare resources.
- ✓ **Reference the [Occupational Safety and Health Administration website](#) for recommendations regarding worker health.**
- ✓ **Review [CDC's guidance for businesses and employers](#)** to identify any additional strategies the facility can use within its role as an employer.

## Operations & Supplies

- ✓ **Ensure that sufficient stocks of hygiene supplies, cleaning supplies, PPE, and medical supplies (consistent with the healthcare capabilities of the facility) are on hand and available, and have a plan in place to restock as needed if COVID-19 transmission occurs within the facility.**
  - Standard medical supplies for daily clinic needs
  - Tissues
  - Liquid soap when possible. If bar soap must be used, ensure that it does not irritate the skin and thereby discourage frequent hand washing.
  - Hand drying supplies
  - Alcohol-based hand sanitizer containing at least 60% alcohol (where permissible based on security restrictions)
  - Cleaning supplies, including [EPA-registered disinfectants effective against the virus that causes COVID-19](#)

- Recommended PPE (facemasks, N95 respirators, eye protection, disposable medical gloves, and disposable gowns/one-piece coveralls). See [PPE section](#) and [Table 1](#) for more detailed information, including recommendations for extending the life of all PPE categories in the event of shortages, and when face masks are acceptable alternatives to N95s.
  - Sterile viral transport media and sterile swabs [to collect nasopharyngeal specimens](#) if COVID-19 testing is indicated
- ✓ **Make contingency plans for the probable event of PPE shortages during the COVID-19 pandemic, particularly for non-healthcare workers.**
    - See CDC guidance [optimizing PPE supplies](#).
  - ✓ **Consider relaxing restrictions on allowing alcohol-based hand sanitizer in the secure setting where security concerns allow.** If soap and water are not available, [CDC recommends](#) cleaning hands with an alcohol-based hand sanitizer that contains at least 60% alcohol. Consider allowing staff to carry individual-sized bottles for their personal hand hygiene while on duty.
  - ✓ **Provide a no-cost supply of soap to incarcerated/detained persons, sufficient to allow frequent hand washing.** (See [Hygiene](#) section below for additional detail regarding recommended frequency and protocol for hand washing.)
    - Provide liquid soap where possible. If bar soap must be used, ensure that it does not irritate the skin and thereby discourage frequent hand washing.
  - ✓ **If not already in place, employers operating within the facility should establish a [respiratory protection program](#) as appropriate, to ensure that staff and incarcerated/detained persons are fit tested for any respiratory protection they will need within the scope of their responsibilities.**
  - ✓ **Ensure that staff and incarcerated/detained persons are trained to correctly don, doff, and dispose of PPE that they will need to use within the scope of their responsibilities.** See [Table 1](#) for recommended PPE for incarcerated/detained persons and staff with varying levels of contact with COVID-19 cases or their close contacts.

## Prevention

Cases of COVID-19 have been documented in all 50 US states. Correctional and detention facilities can prevent introduction of COVID-19 from the community and reduce transmission if it is already inside by reinforcing good hygiene practices among incarcerated/detained persons, staff, and visitors (including increasing access to soap and paper towels), intensifying cleaning/disinfection practices, and implementing social distancing strategies.

Because many individuals infected with COVID-19 do not display symptoms, the virus could be present in facilities before cases are identified. Both good hygiene practices and social distancing are critical in preventing further transmission.

## Operations

- ✓ **Stay in communication with partners about your facility's current situation.**
  - State, local, territorial, and/or tribal health departments
  - Other correctional facilities
- ✓ **Communicate with the public about any changes to facility operations, including visitation programs.**

- ✓ **Restrict transfers of incarcerated/detained persons to and from other jurisdictions and facilities unless necessary for medical evaluation, medical isolation/quarantine, clinical care, extenuating security concerns, or to prevent overcrowding.**
  - Strongly consider postponing non-urgent outside medical visits.
  - If a transfer is absolutely necessary, perform verbal screening and a temperature check as outlined in the [Screening](#) section below, before the individual leaves the facility. If an individual does not clear the screening process, delay the transfer and follow the [protocol for a suspected COVID-19 case](#)— including putting a face mask on the individual, immediately placing them under medical isolation, and evaluating them for possible COVID-19 testing. If the transfer must still occur, ensure that the receiving facility has capacity to properly isolate the individual upon arrival. Ensure that staff transporting the individual wear recommended PPE (see [Table 1](#)) and that the transport vehicle is [cleaned](#) thoroughly after transport.
- ✓ **Implement lawful alternatives to in-person court appearances where permissible.**
- ✓ **Where relevant, consider suspending co-pays for incarcerated/detained persons seeking medical evaluation for respiratory symptoms.**
- ✓ **Limit the number of operational entrances and exits to the facility.**

### Cleaning and Disinfecting Practices

- ✓ **Even if COVID-19 cases have not yet been identified inside the facility or in the surrounding community, begin implementing intensified cleaning and disinfecting procedures according to the recommendations below. These measures may prevent spread of COVID-19 if introduced.**
- ✓ **Adhere to [CDC recommendations for cleaning and disinfection during the COVID-19 response](#).** Monitor these recommendations for updates.
  - Several times per day, clean and disinfect surfaces and objects that are frequently touched, especially in common areas. Such surfaces may include objects/surfaces not ordinarily cleaned daily (e.g., doorknobs, light switches, sink handles, countertops, toilets, toilet handles, recreation equipment, kiosks, and telephones).
  - Staff should clean shared equipment several times per day and on a conclusion of use basis (e.g., radios, service weapons, keys, handcuffs).
  - Use household cleaners and [EPA-registered disinfectants effective against the virus that causes COVID-19](#) as appropriate for the surface, following label instructions. This may require lifting restrictions on undiluted disinfectants.
  - Labels contain instructions for safe and effective use of the cleaning product, including precautions that should be taken when applying the product, such as wearing gloves and making sure there is good ventilation during use.
- ✓ **Consider increasing the number of staff and/or incarcerated/detained persons trained and responsible for cleaning common areas to ensure continual cleaning of these areas throughout the day.**
- ✓ **Ensure adequate supplies to support intensified cleaning and disinfection practices, and have a plan in place to restock rapidly if needed.**

## Hygiene

- ✓ **Reinforce healthy hygiene practices, and provide and continually restock hygiene supplies throughout the facility, including in bathrooms, food preparation and dining areas, intake areas, visitor entries and exits, visitation rooms and waiting rooms, common areas, medical, and staff-restricted areas (e.g., break rooms).**
- ✓ **Encourage all persons in the facility to take the following actions to protect themselves and others from COVID-19. Post signage throughout the facility, and communicate this information verbally on a regular basis. [Sample signage and other communications materials](#) are available on the CDC website.** Ensure that materials can be understood by non-English speakers and those with low literacy, and make necessary accommodations for those with cognitive or intellectual disabilities and those who are deaf, blind, or low-vision.
  - **Practice good [cough etiquette](#):** Cover your mouth and nose with your elbow (or ideally with a tissue) rather than with your hand when you cough or sneeze, and throw all tissues in the trash immediately after use.
  - **Practice good [hand hygiene](#):** Regularly wash your hands with soap and water for at least 20 seconds, especially after coughing, sneezing, or blowing your nose; after using the bathroom; before eating or preparing food; before taking medication; and after touching garbage.
  - **Avoid touching your eyes, nose, or mouth without cleaning your hands first.**
  - **Avoid sharing eating utensils, dishes, and cups.**
  - **Avoid non-essential physical contact.**
- ✓ **Provide incarcerated/detained persons and staff no-cost access to:**
  - **Soap**—Provide liquid soap where possible. If bar soap must be used, ensure that it does not irritate the skin, as this would discourage frequent hand washing.
  - **Running water, and hand drying machines or disposable paper towels for hand washing**
  - **Tissues** and no-touch trash receptacles for disposal
- ✓ **Provide alcohol-based hand sanitizer with at least 60% alcohol where permissible based on security restrictions.** Consider allowing staff to carry individual-sized bottles to maintain hand hygiene.
- ✓ **Communicate that sharing drugs and drug preparation equipment can spread COVID-19 due to potential contamination of shared items and close contact between individuals.**

## Prevention Practices for Incarcerated/Detained Persons

- ✓ **Perform pre-intake screening and temperature checks for all new entrants. Screening should take place in the sallyport, before beginning the intake process,** in order to identify and immediately place individuals with symptoms under medical isolation. See [Screening section](#) below for the wording of screening questions and a recommended procedure to safely perform a temperature check. Staff performing temperature checks should wear recommended PPE (see [PPE section](#) below).
  - **If an individual has symptoms of COVID-19** (fever, cough, shortness of breath):
    - Require the individual to wear a face mask.
    - Ensure that staff who have direct contact with the symptomatic individual wear [recommended PPE](#).
    - Place the individual under [medical isolation](#) (ideally in a room near the screening location, rather than transporting the ill individual through the facility), and refer to healthcare staff for further evaluation. (See [Infection Control](#) and [Clinical Care](#) sections below.)
    - Facilities without onsite healthcare staff should contact their state, local, tribal, and/or territorial health department to coordinate effective medical isolation and necessary medical care.

○ **If an individual is a [close contact](#) of a known COVID-19 case (but has no COVID-19 symptoms):**

- Quarantine the individual and monitor for symptoms two times per day for 14 days. (See [Quarantine](#) section below.)
- Facilities without onsite healthcare staff should contact their state, local, tribal, and/or territorial health department to coordinate effective quarantine and necessary medical care.

✓ **Implement [social distancing](#) strategies to increase the physical space between incarcerated/detained persons (ideally 6 feet between all individuals, regardless of the presence of symptoms).** Strategies will need to be tailored to the individual space in the facility and the needs of the population and staff. Not all strategies will be feasible in all facilities. Example strategies with varying levels of intensity include:

○ **Common areas:**

- Enforce increased space between individuals in holding cells, as well as in lines and waiting areas such as intake (e.g., remove every other chair in a waiting area)

○ **Recreation:**

- Choose recreation spaces where individuals can spread out
- Stagger time in recreation spaces
- Restrict recreation space usage to a single housing unit per space (where feasible)

○ **Meals:**

- Stagger meals
- Rearrange seating in the dining hall so that there is more space between individuals (e.g., remove every other chair and use only one side of the table)
- Provide meals inside housing units or cells

○ **Group activities:**

- Limit the size of group activities
- Increase space between individuals during group activities
- Suspend group programs where participants are likely to be in closer contact than they are in their housing environment
- Consider alternatives to existing group activities, in outdoor areas or other areas where individuals can spread out

○ **Housing:**

- If space allows, reassign bunks to provide more space between individuals, ideally 6 feet or more in all directions. (Ensure that bunks are [cleaned](#) thoroughly if assigned to a new occupant.)
- Arrange bunks so that individuals sleep head to foot to increase the distance between them
- Rearrange scheduled movements to minimize mixing of individuals from different housing areas

○ **Medical:**

- If possible, designate a room near each housing unit to evaluate individuals with COVID-19 symptoms, rather than having them walk through the facility to be evaluated in the medical unit. If this is not feasible, consider staggering sick call.
- Designate a room near the intake area to evaluate new entrants who are flagged by the intake screening process for COVID-19 symptoms or case contact, before they move to other parts of the facility.

- ✓ **Communicate clearly and frequently with incarcerated/detained persons about changes to their daily routine and how they can contribute to risk reduction.**
- ✓ **Note that if group activities are discontinued, it will be important to identify alternative forms of activity to support the mental health of incarcerated/detained persons.**
- ✓ **Consider suspending work release programs and other programs that involve movement of incarcerated/detained individuals in and out of the facility.**
- ✓ **Provide [up-to-date information about COVID-19](#) to incarcerated/detained persons on a regular basis, including:**
  - [Symptoms of COVID-19](#) and its health risks
  - Reminders to report COVID-19 symptoms to staff at the first sign of illness
- ✓ **Consider having healthcare staff perform rounds on a regular basis to answer questions about COVID-19.**

### Prevention Practices for Staff

- ✓ **Remind staff to stay at home if they are sick.** Ensure that staff are aware that they will not be able to enter the facility if they have symptoms of COVID-19, and that they will be expected to leave the facility as soon as possible if they develop symptoms while on duty.
- ✓ **Perform verbal screening (for COVID-19 symptoms and close contact with cases) and temperature checks for all staff daily on entry.** See [Screening](#) section below for wording of screening questions and a recommended procedure to safely perform temperature checks.
  - In very small facilities with only a few staff, consider self-monitoring or virtual monitoring (e.g., reporting to a central authority via phone).
  - Send staff home who do not clear the screening process, and advise them to follow [CDC-recommended steps for persons who are ill with COVID-19 symptoms](#).
- ✓ **Provide staff with [up-to-date information about COVID-19](#) and about facility policies on a regular basis, including:**
  - [Symptoms of COVID-19](#) and its health risks
  - Employers' sick leave policy
  - **If staff develop a fever, cough, or shortness of breath while at work:** immediately put on a face mask, inform supervisor, leave the facility, and follow [CDC-recommended steps for persons who are ill with COVID-19 symptoms](#).
  - **If staff test positive for COVID-19:** inform workplace and personal contacts immediately, and do not return to work until a decision to discontinue home medical isolation precautions is made. Monitor [CDC guidance on discontinuing home isolation](#) regularly as circumstances evolve rapidly.
  - **If a staff member is identified as a close contact of a COVID-19 case (either within the facility or in the community):** self-quarantine at home for 14 days and return to work if symptoms do not develop. If symptoms do develop, follow [CDC-recommended steps for persons who are ill with COVID-19 symptoms](#).
- ✓ **If a staff member has a confirmed COVID-19 infection, the relevant employers should inform other staff about their possible exposure to COVID-19 in the workplace, but should maintain confidentiality as required by the Americans with Disabilities Act.**
  - Employees who are [close contacts](#) of the case should then self-monitor for [symptoms](#) (i.e., fever, cough, or shortness of breath).



- ✓ **When feasible and consistent with security priorities, encourage staff to maintain a distance of 6 feet or more from an individual with respiratory symptoms while interviewing, escorting, or interacting in other ways.**
- ✓ **Ask staff to keep interactions with individuals with respiratory symptoms as brief as possible.**

### Prevention Practices for Visitors

- ✓ **If possible, communicate with potential visitors to discourage contact visits in the interest of their own health and the health of their family members and friends inside the facility.**
- ✓ **Perform verbal screening (for COVID-19 symptoms and close contact with cases) and temperature checks for all visitors and volunteers on entry.** See [Screening](#) section below for wording of screening questions and a recommended procedure to safely perform temperature checks.
  - Staff performing temperature checks should wear [recommended PPE](#).
  - Exclude visitors and volunteers who do not clear the screening process or who decline screening.
- ✓ **Provide alcohol-based hand sanitizer with at least 60% alcohol in visitor entrances, exits, and waiting areas.**
- ✓ **Provide visitors and volunteers with information to prepare them for screening.**
  - Instruct visitors to postpone their visit if they have symptoms of respiratory illness.
  - If possible, inform potential visitors and volunteers before they travel to the facility that they should expect to be screened for COVID-19 (including a temperature check), and will be unable to enter the facility if they do not clear the screening process or if they decline screening.
  - Display [signage](#) outside visiting areas explaining the COVID-19 screening and temperature check process. Ensure that materials are understandable for non-English speakers and those with low literacy.
- ✓ **Promote non-contact visits:**
  - Encourage incarcerated/detained persons to limit contact visits in the interest of their own health and the health of their visitors.
  - Consider reducing or temporarily eliminating the cost of phone calls for incarcerated/detained persons.
  - Consider increasing incarcerated/detained persons' telephone privileges to promote mental health and reduce exposure from direct contact with community visitors.
- ✓ **Consider suspending or modifying visitation programs, if legally permissible. For example, provide access to virtual visitation options where available.**
  - If moving to virtual visitation, clean electronic surfaces regularly. (See [Cleaning](#) guidance below for instructions on cleaning electronic surfaces.)
  - Inform potential visitors of changes to, or suspension of, visitation programs.
  - Clearly communicate any visitation program changes to incarcerated/detained persons, along with the reasons for them (including protecting their health and their family and community members' health).
  - If suspending contact visits, provide alternate means (e.g., phone or video visitation) for incarcerated/detained individuals to engage with legal representatives, clergy, and other individuals with whom they have legal right to consult.

NOTE: Suspending visitation would be done in the interest of incarcerated/detained persons' physical health and the health of the general public. However, visitation is important to maintain mental health.

If visitation is suspended, facilities should explore alternative ways for incarcerated/detained persons to communicate with their families, friends, and other visitors in a way that is not financially burdensome for them. See above suggestions for promoting non-contact visits.

- ✓ **Restrict non-essential vendors, volunteers, and tours from entering the facility.**

## Management

If there has been a suspected COVID-19 case inside the facility (among incarcerated/detained persons, staff, or visitors who have recently been inside), begin implementing Management strategies while test results are pending. Essential Management strategies include placing cases and individuals with symptoms under medical isolation, quarantining their close contacts, and facilitating necessary medical care, while observing relevant infection control and environmental disinfection protocols and wearing recommended PPE.

## Operations

- ✓ **Implement alternate work arrangements deemed feasible in the [Operational Preparedness](#) section.**
- ✓ **Suspend all transfers of incarcerated/detained persons to and from other jurisdictions and facilities (including work release where relevant), unless necessary for medical evaluation, medical isolation/quarantine, care, extenuating security concerns, or to prevent overcrowding.**
  - If a transfer is absolutely necessary, perform verbal screening and a temperature check as outlined in the [Screening](#) section below, before the individual leaves the facility. If an individual does not clear the screening process, delay the transfer and follow the [protocol for a suspected COVID-19 case](#)—including putting a face mask on the individual, immediately placing them under medical isolation, and evaluating them for possible COVID-19 testing. If the transfer must still occur, ensure that the receiving facility has capacity to appropriately isolate the individual upon arrival. Ensure that staff transporting the individual wear recommended PPE (see [Table 1](#)) and that the transport vehicle is [cleaned](#) thoroughly after transport.
- ✓ **If possible, consider quarantining all new intakes for 14 days before they enter the facility’s general population (SEPARATELY from other individuals who are quarantined due to contact with a COVID-19 case).** Subsequently in this document, this practice is referred to as **routine intake quarantine**.
- ✓ **When possible, arrange lawful alternatives to in-person court appearances.**
- ✓ **Incorporate screening for COVID-19 symptoms and a temperature check into release planning.**
  - Screen all releasing individuals for COVID-19 symptoms and perform a temperature check. (See [Screening](#) section below.)
    - If an individual does not clear the screening process, follow the [protocol for a suspected COVID-19 case](#)—including putting a face mask on the individual, immediately placing them under medical isolation, and evaluating them for possible COVID-19 testing.
    - If the individual is released before the recommended medical isolation period is complete, discuss release of the individual with state, local, tribal, and/or territorial health departments to ensure safe medical transport and continued shelter and medical care, as part of release planning. Make direct linkages to community resources to ensure proper medical isolation and access to medical care.
    - Before releasing an incarcerated/detained individual with COVID-19 symptoms to a community-based facility, such as a homeless shelter, contact the facility’s staff to ensure adequate time for them to prepare to continue medical isolation, or contact local public health to explore alternate housing options.

✓ **Coordinate with state, local, tribal, and/or territorial health departments.**

- When a COVID-19 case is suspected, work with public health to determine action. See [Medical Isolation](#) section below.
- When a COVID-19 case is suspected or confirmed, work with public health to identify close contacts who should be placed under quarantine. See [Quarantine](#) section below.
- Facilities with limited onsite medical isolation, quarantine, and/or healthcare services should coordinate closely with state, local, tribal, and/or territorial health departments when they encounter a confirmed or suspected case, in order to ensure effective medical isolation or quarantine, necessary medical evaluation and care, and medical transfer if needed. See [Facilities with Limited Onsite Healthcare Services](#) section.

## Hygiene

- ✓ **Continue to ensure that hand hygiene supplies are well-stocked in all areas of the facility.** (See [above](#).)
- ✓ **Continue to emphasize practicing good hand hygiene and cough etiquette.** (See [above](#).)

## Cleaning and Disinfecting Practices

- ✓ **Continue adhering to recommended cleaning and disinfection procedures for the facility at large.** (See [above](#).)
- ✓ **Reference specific cleaning and disinfection procedures for areas where a COVID-19 case has spent time ([below](#)).**

## Medical Isolation of Confirmed or Suspected COVID-19 Cases

**NOTE: Some recommendations below apply primarily to facilities with onsite healthcare capacity. [Facilities with Limited Onsite Healthcare Services](#), or without sufficient space to implement effective medical isolation, should coordinate with local public health officials to ensure that COVID-19 cases will be appropriately isolated, evaluated, tested (if indicated), and given care.**

- ✓ **As soon as an individual develops symptoms of COVID-19, they should wear a face mask (if it does not restrict breathing) and should be immediately placed under medical isolation in a separate environment from other individuals.**
- ✓ **Keep the individual's movement outside the medical isolation space to an absolute minimum.**
  - Provide medical care to cases inside the medical isolation space. See [Infection Control](#) and [Clinical Care](#) sections for additional details.
  - Serve meals to cases inside the medical isolation space.
  - Exclude the individual from all group activities.
  - Assign the isolated individual a dedicated bathroom when possible.
- ✓ **Ensure that the individual is wearing a face mask at all times when outside of the medical isolation space, and whenever another individual enters.** Provide clean masks as needed. Masks should be changed at least daily, and when visibly soiled or wet.
- ✓ **Facilities should make every possible effort to place suspected and confirmed COVID-19 cases under medical isolation individually. Each isolated individual should be assigned their own housing space and bathroom where possible.** [Cohorting](#) should only be practiced if there are no other available options.

- If cohorting is necessary:
  - **Only individuals who are laboratory confirmed COVID-19 cases should be placed under medical isolation as a cohort. Do not cohort confirmed cases with suspected cases or case contacts.**
  - Unless no other options exist, do not house COVID-19 cases with individuals who have an undiagnosed respiratory infection.
  - Ensure that cohorted cases wear face masks at all times.

✓ **In order of preference, individuals under medical isolation should be housed:**

- Separately, in single cells with solid walls (i.e., not bars) and solid doors that close fully
- Separately, in single cells with solid walls but without solid doors
- As a cohort, in a large, well-ventilated cell with solid walls and a solid door that closes fully. Employ [social distancing strategies related to housing in the Prevention section above](#).
- As a cohort, in a large, well-ventilated cell with solid walls but without a solid door. Employ [social distancing strategies related to housing in the Prevention section above](#).
- As a cohort, in single cells without solid walls or solid doors (i.e., cells enclosed entirely with bars), preferably with an empty cell between occupied cells. (Although individuals are in single cells in this scenario, the airflow between cells essentially makes it a cohort arrangement in the context of COVID-19.)
- As a cohort, in multi-person cells without solid walls or solid doors (i.e., cells enclosed entirely with bars), preferably with an empty cell between occupied cells. Employ [social distancing strategies related to housing in the Prevention section above](#).
- Safely transfer individual(s) to another facility with available medical isolation capacity in one of the above arrangements  
(NOTE—Transfer should be avoided due to the potential to introduce infection to another facility; proceed only if no other options are available.)

If the ideal choice does not exist in a facility, use the next best alternative.

✓ **If the number of confirmed cases exceeds the number of individual medical isolation spaces available in the facility, be especially mindful of [cases who are at higher risk of severe illness from COVID-19](#).** Ideally, they should not be cohorted with other infected individuals. If cohorting is unavoidable, make all possible accommodations to prevent transmission of other infectious diseases to the higher-risk individual. (For example, allocate more space for a higher-risk individual within a shared medical isolation space.)

- Persons at higher risk may include older adults and persons of any age with serious underlying medical conditions such as lung disease, heart disease, and diabetes. See [CDC’s website](#) for a complete list, and check regularly for updates as more data become available to inform this issue.
- Note that incarcerated/detained populations have higher prevalence of infectious and chronic diseases and are in poorer health than the general population, even at younger ages.

✓ **Custody staff should be designated to monitor these individuals exclusively where possible.** These staff should wear recommended PPE as appropriate for their level of contact with the individual under medical isolation (see [PPE](#) section below) and should limit their own movement between different parts of the facility to the extent possible.

✓ **Minimize transfer of COVID-19 cases between spaces within the healthcare unit.**

- ✓ **Provide individuals under medical isolation with tissues and, if permissible, a lined no-touch trash receptacle.** Instruct them to:
  - **Cover** their mouth and nose with a tissue when they cough or sneeze
  - **Dispose** of used tissues immediately in the lined trash receptacle
  - **Wash hands** immediately with soap and water for at least 20 seconds. If soap and water are not available, clean hands with an alcohol-based hand sanitizer that contains at least 60% alcohol (where security concerns permit). Ensure that [hand washing supplies](#) are continually restocked.
- ✓ **Maintain medical isolation until all the following criteria have been met. Monitor the [CDC website](#) for updates to these criteria.**

**For individuals who will be tested to determine if they are still contagious:**

- The individual has been free from fever for at least 72 hours without the use of fever-reducing medications **AND**
- The individual's other symptoms have improved (e.g., cough, shortness of breath) **AND**
- The individual has tested negative in at least two consecutive respiratory specimens collected at least 24 hours apart

**For individuals who will NOT be tested to determine if they are still contagious:**

- The individual has been free from fever for at least 72 hours without the use of fever-reducing medications **AND**
- The individual's other symptoms have improved (e.g., cough, shortness of breath) **AND**
- At least 7 days have passed since the first symptoms appeared

**For individuals who had a confirmed positive COVID-19 test but never showed symptoms:**

- At least 7 days have passed since the date of the individual's first positive COVID-19 test **AND**
- The individual has had no subsequent illness

- ✓ **Restrict cases from leaving the facility while under medical isolation precautions, unless released from custody or if a transfer is necessary for medical care, infection control, lack of medical isolation space, or extenuating security concerns.**
  - If an incarcerated/detained individual who is a COVID-19 case is released from custody during their medical isolation period, contact public health to arrange for safe transport and continuation of necessary medical care and medical isolation as part of release planning.

## Cleaning Spaces where COVID-19 Cases Spent Time

**Thoroughly clean and disinfect all areas where the confirmed or suspected COVID-19 case spent time. Note—these protocols apply to suspected cases as well as confirmed cases, to ensure adequate disinfection in the event that the suspected case does, in fact, have COVID-19. Refer to the [Definitions](#) section for the distinction between confirmed and suspected cases.**

- Close off areas used by the infected individual. If possible, open outside doors and windows to increase air circulation in the area. Wait as long as practical, up to 24 hours under the poorest air exchange conditions (consult [CDC Guidelines for Environmental Infection Control in Health-Care Facilities for wait time based on different ventilation conditions](#)), before beginning to clean and disinfect, to minimize potential for exposure to respiratory droplets.
- Clean and disinfect all areas (e.g., cells, bathrooms, and common areas) used by the infected individual, focusing especially on frequently touched surfaces (see list above in [Prevention](#) section).

✓ **Hard (non-porous) surface cleaning and disinfection**

- If surfaces are dirty, they should be cleaned using a detergent or soap and water prior to disinfection.
- For disinfection, most common EPA-registered household disinfectants should be effective. Choose cleaning products based on security requirements within the facility.
  - Consult a [list of products that are EPA-approved for use against the virus that causes COVID-19](#). Follow the manufacturer's instructions for all cleaning and disinfection products (e.g., concentration, application method and contact time, etc.).
  - Diluted household bleach solutions can be used if appropriate for the surface. Follow the manufacturer's instructions for application and proper ventilation, and check to ensure the product is not past its expiration date. Never mix household bleach with ammonia or any other cleanser. Unexpired household bleach will be effective against coronaviruses when properly diluted. Prepare a bleach solution by mixing:
    - 5 tablespoons (1/3rd cup) bleach per gallon of water or
    - 4 teaspoons bleach per quart of water

✓ **Soft (porous) surface cleaning and disinfection**

- For soft (porous) surfaces such as carpeted floors and rugs, remove visible contamination if present and clean with appropriate cleaners indicated for use on these surfaces. After cleaning:
  - If the items can be laundered, launder items in accordance with the manufacturer's instructions using the warmest appropriate water setting for the items and then dry items completely.
  - Otherwise, use products [that are EPA-approved for use against the virus that causes COVID-19](#) and are suitable for porous surfaces.

✓ **Electronics cleaning and disinfection**

- For electronics such as tablets, touch screens, keyboards, and remote controls, remove visible contamination if present.
  - Follow the manufacturer's instructions for all cleaning and disinfection products.
  - Consider use of wipeable covers for electronics.
  - If no manufacturer guidance is available, consider the use of alcohol-based wipes or spray containing at least 70% alcohol to disinfect touch screens. Dry surfaces thoroughly to avoid pooling of liquids.

Additional information on cleaning and disinfection of communal facilities such can be found on [CDC's website](#).

✓ **Ensure that staff and incarcerated/detained persons performing cleaning wear recommended PPE.** (See [PPE](#) section below.)

✓ **Food service items.** Cases under medical isolation should throw disposable food service items in the trash in their medical isolation room. Non-disposable food service items should be handled with gloves and washed with hot water or in a dishwasher. Individuals handling used food service items should clean their hands after removing gloves.

✓ **[Laundry from a COVID-19 cases](#) can be washed with other individuals' laundry.**

- Individuals handling laundry from COVID-19 cases should wear disposable gloves, discard after each use, and clean their hands after.
- Do not shake dirty laundry. This will minimize the possibility of dispersing virus through the air.
- Launder items as appropriate in accordance with the manufacturer's instructions. If possible, launder items using the warmest appropriate water setting for the items and dry items completely.

- Clean and disinfect clothes hampers according to guidance above for surfaces. If permissible, consider using a bag liner that is either disposable or can be laundered.
- ✓ **Consult [cleaning recommendations above](#) to ensure that transport vehicles are thoroughly cleaned after carrying a confirmed or suspected COVID-19 case.**

## Quarantining Close Contacts of COVID-19 Cases

**NOTE: Some recommendations below apply primarily to facilities with onsite healthcare capacity. Facilities without onsite healthcare capacity, or without sufficient space to implement effective quarantine, should coordinate with local public health officials to ensure that close contacts of COVID-19 cases will be effectively quarantined and medically monitored.**

- ✓ **Incarcerated/detained persons who are close contacts of a [confirmed or suspected COVID-19 case](#) (whether the case is another incarcerated/detained person, staff member, or visitor) should be placed under quarantine for 14 days (see CDC guidelines).**
  - If an individual is quarantined due to contact with a suspected case who is subsequently tested for COVID-19 and receives a negative result, the quarantined individual should be released from quarantine restrictions.
- ✓ **In the context of COVID-19, an individual (incarcerated/detained person or staff) is [considered a close contact](#) if they:**
  - Have been within approximately 6 feet of a COVID-19 case for a prolonged period of time OR
  - Have had direct contact with infectious secretions of a COVID-19 case (e.g., have been coughed on)

Close contact can occur while caring for, living with, visiting, or sharing a common space with a COVID-19 case. Data to inform the definition of close contact are limited. Considerations when assessing close contact include the duration of exposure (e.g., longer exposure time likely increases exposure risk) and the clinical symptoms of the person with COVID-19 (e.g., coughing likely increases exposure risk, as does exposure to a severely ill patient).

- ✓ **Keep a quarantined individual's movement outside the quarantine space to an absolute minimum.**
  - Provide medical evaluation and care inside or near the quarantine space when possible.
  - Serve meals inside the quarantine space.
  - Exclude the quarantined individual from all group activities.
  - Assign the quarantined individual a dedicated bathroom when possible.
- ✓ **Facilities should make every possible effort to quarantine close contacts of COVID-19 cases individually. [Cohorting](#) multiple quarantined close contacts of a COVID-19 case could transmit COVID-19 from those who are infected to those who are uninfected. Cohorting should only be practiced if there are no other available options.**
  - If cohorting of close contacts under quarantine is absolutely necessary, symptoms of all individuals should be monitored closely, and individuals with symptoms of COVID-19 should be placed under [medical isolation](#) immediately.
  - If an entire housing unit is under quarantine due to contact with a case from the same housing unit, the entire housing unit may need to be treated as a cohort and quarantine in place.
  - Some facilities may choose to quarantine all new intakes for 14 days before moving them to the facility's general population as a general rule (not because they were exposed to a COVID-19 case). Under this scenario, avoid mixing individuals quarantined due to exposure to a COVID-19 case with individuals undergoing routine intake quarantine.

- If at all possible, do not add more individuals to an existing quarantine cohort after the 14-day quarantine clock has started.

✓ **If the number of quarantined individuals exceeds the number of individual quarantine spaces available in the facility, be especially mindful of those who are at higher risk of severe illness from COVID-19.** Ideally, they should not be cohorted with other quarantined individuals. If cohorting is unavoidable, make all possible accommodations to reduce exposure risk for the higher-risk individuals. (For example, intensify [social distancing strategies](#) for higher-risk individuals.)

✓ **In order of preference, multiple quarantined individuals should be housed:**

- Separately, in single cells with solid walls (i.e., not bars) and solid doors that close fully
- Separately, in single cells with solid walls but without solid doors
- As a cohort, in a large, well-ventilated cell with solid walls, a solid door that closes fully, and at least 6 feet of personal space assigned to each individual in all directions
- As a cohort, in a large, well-ventilated cell with solid walls and at least 6 feet of personal space assigned to each individual in all directions, but without a solid door
- As a cohort, in single cells without solid walls or solid doors (i.e., cells enclosed entirely with bars), preferably with an empty cell between occupied cells creating at least 6 feet of space between individuals. (Although individuals are in single cells in this scenario, the airflow between cells essentially makes it a cohort arrangement in the context of COVID-19.)
- As a cohort, in multi-person cells without solid walls or solid doors (i.e., cells enclosed entirely with bars), preferably with an empty cell between occupied cells. Employ [social distancing strategies related to housing in the Prevention section](#) to maintain at least 6 feet of space between individuals housed in the same cell.
- As a cohort, in individuals' regularly assigned housing unit but with no movement outside the unit (if an entire housing unit has been exposed). [Employ social distancing strategies related to housing in the Prevention section above](#) to maintain at least 6 feet of space between individuals.
- Safely transfer to another facility with capacity to quarantine in one of the above arrangements

(NOTE—Transfer should be avoided due to the potential to introduce infection to another facility; proceed only if no other options are available.)

✓ **Quarantined individuals should wear face masks if feasible based on local supply, as source control, under the following circumstances** (see [PPE](#) section and [Table 1](#)):

- If cohorted, quarantined individuals should wear face masks at all times (to prevent transmission from infected to uninfected individuals).
- If quarantined separately, individuals should wear face masks whenever a non-quarantined individual enters the quarantine space.
- All quarantined individuals should wear a face mask if they must leave the quarantine space for any reason.
- Asymptomatic individuals under [routine intake quarantine](#) (with no known exposure to a COVID-19 case) do not need to wear face masks.

✓ **Staff who have close contact with quarantined individuals should wear recommended PPE if feasible based on local supply, feasibility, and safety within the scope of their duties** (see [PPE](#) section and [Table 1](#)).

- Staff supervising asymptomatic incarcerated/detained persons under [routine intake quarantine](#) (with no known exposure to a COVID-19 case) do not need to wear PPE.



- ✓ **Quarantined individuals should be monitored for COVID-19 symptoms twice per day, including temperature checks.**
  - If an individual develops symptoms, they should be moved to medical isolation immediately and further evaluated. (See [Medical Isolation](#) section above.)
  - See [Screening](#) section for a procedure to perform temperature checks safely on asymptomatic close contacts of COVID-19 cases.
- ✓ **If an individual who is part of a quarantined cohort becomes symptomatic:**
  - **If the individual is tested for COVID-19 and tests positive:** the 14-day quarantine clock for the remainder of the cohort must be reset to 0.
  - **If the individual is tested for COVID-19 and tests negative:** the 14-day quarantine clock for this individual and the remainder of the cohort does not need to be reset. This individual can return from medical isolation to the quarantined cohort for the remainder of the quarantine period.
  - **If the individual is not tested for COVID-19:** the 14-day quarantine clock for the remainder of the cohort must be reset to 0.
- ✓ **Restrict quarantined individuals from leaving the facility (including transfers to other facilities) during the 14-day quarantine period, unless released from custody or a transfer is necessary for medical care, infection control, lack of quarantine space, or extenuating security concerns.**
- ✓ **Quarantined individuals can be released from quarantine restrictions if they have not developed symptoms during the 14-day quarantine period.**
- ✓ **Meals should be provided to quarantined individuals in their quarantine spaces.** Individuals under quarantine should throw disposable food service items in the trash. Non-disposable food service items should be handled with gloves and washed with hot water or in a dishwasher. Individuals handling used food service items should clean their hands after removing gloves.
- ✓ **Laundry from quarantined individuals can be washed with other individuals' laundry.**
  - Individuals handling laundry from quarantined persons should wear disposable gloves, discard after each use, and clean their hands after.
  - Do not shake dirty laundry. This will minimize the possibility of dispersing virus through the air.
  - Launder items as appropriate in accordance with the manufacturer's instructions. If possible, launder items using the warmest appropriate water setting for the items and dry items completely.
  - Clean and disinfect clothes hampers according to guidance above for surfaces. If permissible, consider using a bag liner that is either disposable or can be laundered.

## Management of Incarcerated/Detained Persons with COVID-19 Symptoms

**NOTE: Some recommendations below apply primarily to facilities with onsite healthcare capacity. Facilities without onsite healthcare capacity or without sufficient space for medical isolation should coordinate with local public health officials to ensure that suspected COVID-19 cases will be effectively isolated, evaluated, tested (if indicated), and given care.**

- ✓ **If possible, designate a room near each housing unit for healthcare staff to evaluate individuals with COVID-19 symptoms, rather than having them walk through the facility to be evaluated in the medical unit.**
- ✓ **Incarcerated/detained individuals with COVID-19 symptoms should wear a face mask and should be placed under medical isolation immediately. Discontinue the use of a face mask if it inhibits breathing. See [Medical Isolation](#) section above.**

- ✓ **Medical staff should evaluate symptomatic individuals to determine whether COVID-19 testing is indicated.** Refer to CDC guidelines for information on [evaluation](#) and [testing](#). See [Infection Control](#) and [Clinical Care](#) sections below as well.
- ✓ **If testing is indicated (or if medical staff need clarification on when testing is indicated), contact the state, local, tribal, and/or territorial health department. Work with public health or private labs as available to access testing supplies or services.**
  - If the COVID-19 test is positive, continue medical isolation. (See [Medical Isolation](#) section above.)
  - If the COVID-19 test is negative, return the individual to their prior housing assignment unless they require further medical assessment or care.

### Management Strategies for Incarcerated/Detained Persons without COVID-19 Symptoms

- ✓ **Provide [clear information](#) to incarcerated/detained persons about the presence of COVID-19 cases within the facility, and the need to increase social distancing and maintain hygiene precautions.**
  - Consider having healthcare staff perform regular rounds to answer questions about COVID-19.
  - Ensure that information is provided in a manner that can be understood by non-English speaking individuals and those with low literacy, and make necessary accommodations for those with cognitive or intellectual disabilities and those who are deaf, blind, or low-vision.
- ✓ **Implement daily temperature checks in housing units where COVID-19 cases have been identified, especially if there is concern that incarcerated/detained individuals are not notifying staff of symptoms.** See [Screening](#) section for a procedure to safely perform a temperature check.
- ✓ **Consider additional options to intensify [social distancing](#) within the facility.**

### Management Strategies for Staff

- ✓ **Provide clear information to staff about the presence of COVID-19 cases within the facility, and the need to enforce social distancing and encourage hygiene precautions.**
  - Consider having healthcare staff perform regular rounds to answer questions about COVID-19 from staff.
- ✓ **Staff identified as close contacts of a COVID-19 case should self-quarantine at home for 14 days and may return to work if symptoms do not develop.**
  - See [above](#) for definition of a close contact.
  - Refer to [CDC guidelines](#) for further recommendations regarding home quarantine for staff.

### Infection Control

**Infection control guidance below is applicable to all types of correctional facilities. Individual facilities should assess their unique needs based on the types of exposure staff and incarcerated/detained persons may have with confirmed or suspected COVID-19 cases.**

- ✓ **All individuals who have the potential for direct or indirect exposure to COVID-19 cases or infectious materials (including body substances; contaminated medical supplies, devices, and equipment; contaminated environmental surfaces; or contaminated air) should follow infection control practices outlined in the [CDC Interim Infection Prevention and Control Recommendations for Patients with Suspected or Confirmed Coronavirus Disease 2019 \(COVID-19\) in Healthcare Settings](#). Monitor these guidelines regularly for updates.**

- Implement the above guidance as fully as possible within the correctional/detention context. Some of the specific language may not apply directly to healthcare settings within correctional facilities and detention centers, or to facilities without onsite healthcare capacity, and may need to be adapted to reflect facility operations and custody needs.
- Note that these recommendations apply to staff as well as to incarcerated/detained individuals who may come in contact with contaminated materials during the course of their work placement in the facility (e.g., cleaning).
- ✓ **Staff should exercise caution when in contact with individuals showing symptoms of a respiratory infection.** Contact should be minimized to the extent possible until the infected individual is wearing a face mask. If COVID-19 is suspected, staff should wear recommended PPE (see [PPE](#) section).
- ✓ **Refer to [PPE](#) section to determine recommended PPE for individuals persons in contact with confirmed COVID-19 cases, contacts, and potentially contaminated items.**

## Clinical Care of COVID-19 Cases

- ✓ **Facilities should ensure that incarcerated/detained individuals receive medical evaluation and treatment at the first signs of COVID-19 symptoms.**
  - If a facility is not able to provide such evaluation and treatment, a plan should be in place to safely transfer the individual to another facility or local hospital.
  - The initial medical evaluation should determine whether a symptomatic individual is at [higher risk for severe illness from COVID-19](#). Persons at higher risk may include older adults and persons of any age with serious underlying medical conditions such as lung disease, heart disease, and diabetes. See [CDC's website](#) for a complete list, and check regularly for updates as more data become available to inform this issue.
- ✓ **Staff evaluating and providing care for confirmed or suspected COVID-19 cases should follow the [CDC Interim Clinical Guidance for Management of Patients with Confirmed Coronavirus Disease \(COVID-19\)](#) and monitor the guidance website regularly for updates to these recommendations.**
- ✓ **Healthcare staff should evaluate persons with respiratory symptoms or contact with a COVID-19 case in a separate room, with the door closed if possible, while wearing [recommended PPE](#) and ensuring that the suspected case is wearing a face mask.**
  - If possible, designate a room near each housing unit to evaluate individuals with COVID-19 symptoms, rather than having them walk through the facility to be evaluated in the medical unit.
- ✓ **Clinicians are strongly encouraged to test for other causes of respiratory illness (e.g., influenza).**
- ✓ **The facility should have a plan in place to safely transfer persons with severe illness from COVID-19 to a local hospital if they require care beyond what the facility is able to provide.**
- ✓ **When evaluating and treating persons with symptoms of COVID-19 who do not speak English, using a language line or provide a trained interpreter when possible.**

## Recommended PPE and PPE Training for Staff and Incarcerated/Detained Persons

- ✓ **Ensure that all staff (healthcare and non-healthcare) and incarcerated/detained persons who will have contact with infectious materials in their work placements have been trained to correctly don, doff, and dispose of PPE relevant to the level of contact they will have with confirmed and suspected COVID-19 cases.**

- Ensure that staff and incarcerated/detained persons who require respiratory protection (e.g., N95s) for their work responsibilities have been medically cleared, trained, and fit-tested in the context of an employer's [respiratory protection program](#).
- For PPE training materials and posters, please visit the [CDC website on Protecting Healthcare Personnel](#).

- ✓ **Ensure that all staff are trained to perform hand hygiene after removing PPE.**
- ✓ **If administrators anticipate that incarcerated/detained persons will request unnecessary PPE, consider providing training on the different types of PPE that are needed for differing degrees of contact with COVID-19 cases and contacts, and the reasons for those differences (see [Table 1](#)). Monitor linked CDC guidelines in [Table 1](#) for updates to recommended PPE.**
- ✓ **Keep recommended PPE near the spaces in the facility where it could be needed, to facilitate quick access in an emergency.**
- ✓ **Recommended PPE for incarcerated/detained individuals and staff in a correctional facility will vary based on the type of contact they have with COVID-19 cases and their contacts (see [Table 1](#)). Each type of recommended PPE is defined below. **As above, note that PPE shortages are anticipated in every category during the COVID-19 response.****

- **N95 respirator**

See below for guidance on when face masks are acceptable alternatives for N95s. N95 respirators should be prioritized when staff anticipate contact with infectious aerosols from a COVID-19 case.

- **Face mask**
- **Eye protection**—goggles or disposable face shield that fully covers the front and sides of the face
- **A single pair of disposable patient examination gloves**

Gloves should be changed if they become torn or heavily contaminated.

- **Disposable medical isolation gown or single-use/disposable coveralls, when feasible**

- If custody staff are unable to wear a disposable gown or coveralls because it limits access to their duty belt and gear, ensure that duty belt and gear are disinfected after close contact with the individual. Clean and disinfect duty belt and gear prior to reuse using a household cleaning spray or wipe, according to the product label.
- If there are shortages of gowns, they should be prioritized for aerosol-generating procedures, care activities where splashes and sprays are anticipated, and high-contact patient care activities that provide opportunities for transfer of pathogens to the hands and clothing of staff.

- ✓ **Note that shortages of all PPE categories are anticipated during the COVID-19 response, particularly for non-healthcare workers. Guidance for optimizing the supply of each category can be found on CDC's website:**

- [Guidance in the event of a shortage of N95 respirators](#)

- Based on local and regional situational analysis of PPE supplies, **face masks are an acceptable alternative when the supply chain of respirators cannot meet the demand.** During this time, available respirators should be prioritized for staff engaging in activities that would expose them to respiratory aerosols, which pose the highest exposure risk.

- [Guidance in the event of a shortage of face masks](#)

- [Guidance in the event of a shortage of eye protection](#)

- [Guidance in the event of a shortage of gowns/coveralls](#)

**Table 1. Recommended Personal Protective Equipment (PPE) for Incarcerated/Detained Persons and Staff in a Correctional Facility during the COVID-19 Response**

Classification of Individual Wearing PPE	N95 respirator	Face mask	Eye Protection	Gloves	Gown/Coveralls
<b>Incarcerated/Detained Persons</b>					
Asymptomatic incarcerated/detained persons (under quarantine as close contacts of a COVID-19 case*)	Apply face masks for source control as feasible based on local supply, especially if housed as a cohort				
Incarcerated/detained persons who are confirmed or suspected COVID-19 cases, or showing symptoms of COVID-19	-	✓	-	-	-
Incarcerated/detained persons in a work placement handling laundry or used food service items from a COVID-19 case or case contact	-	-	-	✓	✓
Incarcerated/detained persons in a work placement cleaning areas where a COVID-19 case has spent time	Additional PPE may be needed based on the product label. See <a href="#">CDC guidelines</a> for more details.			✓	✓
<b>Staff</b>					
Staff having direct contact with asymptomatic incarcerated/detained persons under quarantine as close contacts of a COVID-19 case* (but not performing temperature checks or providing medical care)	-	Face mask, eye protection, and gloves as local supply and scope of duties allow.			-
Staff performing temperature checks on any group of people (staff, visitors, or incarcerated/detained persons), or providing medical care to asymptomatic quarantined persons	-	✓	✓	✓	✓
Staff having direct contact with (including transport) or offering medical care to confirmed or suspected COVID-19 cases (see <a href="#">CDC infection control guidelines</a> )	✓**		✓	✓	✓
Staff present during a procedure on a confirmed or suspected COVID-19 case that may generate respiratory aerosols (see <a href="#">CDC infection control guidelines</a> )	✓	-	✓	✓	✓
Staff handling laundry or used food service items from a COVID-19 case or case contact	-	-	-	✓	✓
Staff cleaning an area where a COVID-19 case has spent time	Additional PPE may be needed based on the product label. See <a href="#">CDC guidelines</a> for more details.			✓	✓

\* If a facility chooses to routinely quarantine all new intakes (without symptoms or known exposure to a COVID-19 case) before integrating into the facility's general population, face masks are not necessary.

\*\* A NIOSH-approved N95 is preferred. However, based on local and regional situational analysis of PPE supplies, face masks are an acceptable alternative when the supply chain of respirators cannot meet the demand. During this time, available respirators should be prioritized for procedures that are likely to generate respiratory aerosols, which would pose the highest exposure risk to staff.

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## Verbal Screening and Temperature Check Protocols for Incarcerated/Detained Persons, Staff, and Visitors

The guidance above recommends verbal screening and temperature checks for incarcerated/detained persons, staff, volunteers, and visitors who enter correctional and detention facilities, as well as incarcerated/detained persons who are transferred to another facility or released from custody. Below, verbal screening questions for COVID-19 symptoms and contact with known cases, and a safe temperature check procedure are detailed.

✓ **Verbal screening for symptoms of COVID-19 and contact with COVID-19 cases should include the following questions:**

- *Today or in the past 24 hours, have you had any of the following symptoms?*
  - *Fever, felt feverish, or had chills?*
  - *Cough?*
  - *Difficulty breathing?*
- *In the past 14 days, have you had contact with a person known to be infected with the novel coronavirus (COVID-19)?*

✓ **The following is a protocol to safely check an individual's temperature:**

- Perform hand hygiene
- Put on a face mask, eye protection (goggles or disposable face shield that fully covers the front and sides of the face), gown/coveralls, and a single pair of disposable gloves
- Check individual's temperature
- **If performing a temperature check on multiple individuals, ensure that a clean pair of gloves is used for each individual and that the thermometer has been thoroughly cleaned in between each check.** If disposable or non-contact thermometers are used and the screener did not have physical contact with an individual, gloves do not need to be changed before the next check. If non-contact thermometers are used, they should be [cleaned routinely as recommended by CDC for infection control](#).
- Remove and discard PPE
- Perform hand hygiene



# Office of the District Attorney Stanislaus County

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District Attorney

**Assistant District Attorney**  
David P. Harris

**Chief Deputies**  
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**Bureau of Investigation**  
Chief Terry L. Seese

## PRESS RELEASE

### For Immediate Release

Date: April 8, 2020  
Re: Looting, PC 463

### For More Information Contact:

John Goold, Public Information Liaison  
Phone: (209) 525-6909

Modesto, California - Stanislaus County District Attorney Birgit Fladager announced today that anyone who commits a crime of Burglary in the Second Degree, Grand Theft or Petty Theft, in our county, during the State of Emergency could be charged with Looting in violation of Penal Code §463.

The District Attorney's Office has been working closely with our local law enforcement agencies to address these types of crimes that have continued during this pandemic. Our office has filed fifteen separate counts of looting thus far. Twelve of these counts are felonies against seven defendants in six separate cases. The remaining three counts are misdemeanor looting charges against three defendants in two separate cases. These cases were generated from arrests made by Modesto, Turlock and the Waterford Police Departments. These are the numbers to date and we continue to receive additional cases referred by law enforcement.

A statewide emergency bail order was implemented by the California Judicial Council on April 6, 2020, which required bail to be set at zero dollars for a multitude of offenses, except for specified crimes. Looting is among those specified crimes. Therefore, if a defendant is charged with looting he or she will have to go before the court to address his or her custody status and will not be automatically released on zero amount bail.

A person convicted of looting must serve a mandatory minimum sentence of three to six months in jail and the court could impose an additional 80 to 240 hours of community service.

###

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# California State Sheriffs' Association

Organization Founded by the Sheriffs in 1894

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Policy Director

Cory Salzillo  
Legislative Director

**FOR IMMEDIATE RELEASE**

**April 11, 2020**

**Contact: Cory Salzillo**

**E-mail: [pres@calsheriffs.org](mailto:pres@calsheriffs.org)**

## CSSA Statement on Judicial Council's \$0 Bail Rule for Certain Crimes

Sheriffs across California affirmed their opposition to a rule adopted by the Judicial Council of California on Monday that temporarily imposes an emergency statewide bail schedule setting bail at \$0 for specified misdemeanors and felonies.

“Sheriffs understand the unprecedented impacts that the COVID-19 outbreak has created, but we are deeply concerned that the blanket release from custody of potentially thousands of inmates will have far-reaching public safety ramifications,” said Sheriff David Livingston, President of the California State Sheriffs’ Association (CSSA). “We fear the Judicial Council’s ‘one-size-fits-most’ approach will also jeopardize public health during the COVID-19 crisis by releasing mentally ill individuals to the community without proper planning and services and releasing people who may be homeless, unable or unwilling to comply with stay at home orders, or drug-addicted and at risk of overdose.”

“Many counties have taken significant steps to address the outbreak and deter the spread of the virus, including by reducing jail populations where appropriate,” said Sheriff David Robinson, 1st Vice President of CSSA. “However, this has been accomplished by taking measured steps, often in conjunction with local partners including judges, the district attorney, probation, and the public defender. The judiciary’s statewide mandate, in many circumstances, ignores these local processes and results and simply cannot contemplate every case detail and the needs of hundreds of communities around California.”

CSSA notes that, while the \$0 bail rule exempts certain crimes from its reach, it would nevertheless apply to other offenses including child abuse, elder abuse, and violating public health orders, meaning suspects arrested for those crimes could be released on \$0 bail.

“We understand that we are facing extraordinary circumstances and we appreciate the Judicial Council’s work to keep court operations running,” added Livingston. “That said, we are worried that this order risks public health and safety and we urge judges to use whatever discretion is available to examine the totality of the circumstances when applying this order.”

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State of California  
Office of the Attorney General

XAVIER BECERRA  
ATTORNEY GENERAL

April 13, 2020

The Honorable Chad F. Wolf  
Acting Secretary of Homeland Security  
Washington, D.C. 20528

Dear Acting Secretary Wolf:

I write to urge you to take critical steps to minimize the transmission of COVID-19 in immigration detention facilities. To a significant extent, immigration detention is discretionary, and the Department of Homeland Security (DHS) currently has discretion to release thousands of individuals with little or no risk to public safety, particularly compared to the public health benefits that will flow from reducing the population of detained immigrants.

Based on the California Department of Justice's comprehensive reviews of six facilities and tours of all other detention facilities in California where immigrants are held pending their immigration proceedings, we know that many immigration detainees have no criminal histories and many are new arrivals seeking asylum. During these reviews, my Department has encountered many individuals whose medical conditions place them at a higher risk for developing serious illness from COVID-19. I am aware that the physical plants, custody and staffing patterns, and health care systems in immigration detention do not allow for social distancing practices and that additional practices such as improved sanitation, screening, and halting the admission of new detainees are needed to prevent transmission of the virus. Further, the facilities in question in California do not appear to have the healthcare resources required to treat infected detainees who become seriously ill. Failure to use your discretion to decrease the detainee population as much as possible and improve sanitation and COVID-19 screening practices for those detainees that remain will not only harm civil immigration detainees, but will overwhelm community hospitals to which those detainees will necessarily be transferred for treatment. COVID-19 infections have already been reported in one of the immigration detention facilities in California. Urgent action is required to prevent our country's immigration detention system from causing countless unnecessary deaths.

***Alternatives to Detention Are Appropriate for Individuals Who Pose No Risk to Public Safety***

Individuals in immigration detention are civilly detained pending their immigration proceedings. Their detention is unrelated to a criminal conviction, or—if criminal history is a factor in their proceedings—they have already served their sentences. The Immigration and Nationality Act provides you with discretion to release immigration detainees on bond or on their

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own recognizance, unless “mandatory detention” conditions apply. (8 U.S.C. § 1226.)<sup>1</sup> The thousands of immigration detainees that are in custody pending the resolution of their asylum claims or based on unauthorized status alone should be released so that they can shelter in place in their communities.

Based on my Department’s review of detention facilities in California, I am aware that large numbers of detainees are considered low security due to their lack of criminal history. For example, 619 detainees—91 percent of the population—at the Imperial Regional Detention Facility were classified as low security at the time of my Department’s review last year. At the Adelanto ICE Processing Center, 682 detainees were classified as low security and 49.79 percent of the detainee population was classified as low or medium-low security in early August 2019. Otay Mesa Detention Center, which reported COVID-19 infections among staff and at least ten detainees as of last week, had 693 low security detainees in December 2019—80 percent of the population. Releasing the thousands of individuals currently held in immigration detention despite being low security risks would allow detention facilities much greater flexibility for quarantining detainees that remain in custody, to the benefit of both detainee and community health. This is particularly critical for detainees who already receive treatment for chronic illnesses, as medical care within the detention facilities will soon become even less available due to potential significant diversion of healthcare staff and resources to treat COVID-19 patients throughout detention facilities, and such individuals are at greater risk of death from COVID-19.

I am aware that Immigration and Customs Enforcement has long used alternatives to detention, such as the Intensive Supervision Appearance Program and the Family Case Management Program, that effectively ensure participation in immigration proceedings without the need for costly detention. As the current health emergency turns the economic costs of immigration detention into a serious threat to our healthcare systems and our very lives, there could be no better time to make maximum use of supervised release options.

***Immigration Detention Occurs in a Congregate Setting Where Transmission Is Possible***

Immigration detainees live in crowded dorms with up to 99 other people (such as in the Mesa Verde ICE Processing Center), with no physical partitions. Reports from advocates

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<sup>1</sup> Courts have recognized that even mandatory detention must be applied in accordance with constitutional due process limitations. In an unprecedented health crisis, where human life is at stake, release of individuals who pose little or no risk of danger to the community is warranted to protect both the detainees’ and the surrounding community’s interest in “life, liberty and the pursuit of happiness.” (U.S. Constitution, Amend. 5; *see Jennings v. Rodriguez* (2018) \_\_ U.S. \_\_, 138 S.Ct. 830, 853 [acknowledging availability of due process grounds for seeking bond hearing despite application of mandatory detention statute]; *Kabba v. Barr* (W.D.N.Y. 2019) 403 F.Supp.3d 180 [due process prohibited unreasonably prolonged detention under mandatory detention statute], *appeal filed* (2d. Cir 2020) No. 19-3418.)

indicate that detainees have not been issued protective gear such as face masks for those who are coughing, that hand sanitizer is not available, and that even soap is in short supply. Detainees at most detention centers in California eat in dining halls built for 50 or more people, at communal tables, where transmission of the COVID-19 virus—if present—is likely. Even without a staggered schedule to lessen the number of people in dining halls at one time, my office has observed that detention facilities struggle to seat all detainees for all their meals in a manner that allows the full 20-minute meal time required by federal standards. With a decreased population, facilities could employ staggered dining schedules to reduce the number of detainees dining together. Detention facilities should also undertake increased cleaning and provision of cleaning supplies such as sanitizer and soap in detainee housing units for those who remain in custody.

***Healthcare Systems in Detention Facilities Are Ill-Equipped to Handle an Epidemic***

The California Department of Justice reported on overburdened healthcare systems at immigration detention facilities in our February 2019 report, *Immigration Detention in California*.<sup>2</sup> My Department has encountered detainees with serious medical conditions who regularly struggle to obtain adequate care at these detention facilities without the strain an infectious disease outbreak would place on the healthcare staff. None of the facilities we visited are equipped with sufficient options for meaningful testing and quarantine.<sup>3</sup> One facility we reviewed had no written protocol for addressing infectious diseases, despite having had mumps and chicken pox outbreaks in the months before our visit. With only six separate medical isolation rooms for a population of 700, the facility dealt with disease outbreaks by cohorting an entire 64-person housing unit. A similar approach was undertaken by other facilities that my Department visited and that had similarly faced infectious disease outbreaks.

***Outbreaks in Detention Facilities Will Increase the Burden on Local Community Hospitals and Cause Unnecessary Deaths***

Immigration detention facilities regularly transfer detainees off-site for specialty care and when they require hospitalization. Because none of the facilities are equipped to provide intensive care, detainees that require medical intervention for COVID-19 will need to be treated at local hospitals, increasing the risk of infection to the public at large and overwhelming local health care providers.<sup>4</sup> This in turn will result in community health resources being less

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<sup>2</sup> This report is available at

<https://oag.ca.gov/sites/all/files/agweb/pdfs/publications/immigration-detention-2019.pdf>.

<sup>3</sup> For example, the Adelanto ICE Processing Center has six negative-pressure isolation rooms for a population of up to 1,940 detainees; Imperial Regional Detention Facility has six for a population of about 700; Mesa Verde Detention Facility has two for a population of about 400; and Otay Mesa has six for a population of about 1,500.

<sup>4</sup> Although early reports suggested that COVID-19 presented danger only for particularly vulnerable individuals, such as the elderly and people with health conditions, CDC data shows that 76% of individuals who have tested positive for COVID-19 are aged 18-64, and CDC

available for community members. On March 19, 2020, the Governor of California issued a state-wide Stay-at-Home Order precisely to prevent the rapid transmission of COVID-19 from overwhelming local hospitals. Continuing to house immigration detainees who do not have a significant criminal history and are not pending criminal charges in their current settings seriously undermines this effort, one that Californians have undertaken at great economic and personal cost. In addition to reducing the detainee populations in its facilities, DHS should adopt strategies to limit transmission within the facilities such as screening of visitors and staff; increased sanitization and provision of cleaning supplies; and staggered dining hours to allow greater distancing between detainees during meals. Unless DHS takes immediate steps to reduce the population of detainees lacking a significant criminal history or pending criminal charges and implement policies to reduce the risk of transmission among the remaining detainees and staff, detainees, detention facility staff, and members of neighboring communities will face increased risk of death due to a shortage of medical equipment.

###

Significant steps are needed to avoid COVID-19-related catastrophe in our immigration detention facilities and their surrounding communities. I urge you immediately to:

- Limit the transfer or transport of detainees and halt the introduction of new detainees to immigration detention facilities, requiring a 14-day quarantine for any detainee for whom transfer or admission is unavoidable;
- Obtain COVID-19 test kits and conduct comprehensive testing of staff and the detained population in order to avoid transmission, using temperature and other vital statistics screens while waiting for such tests to become available;
- Obtain protective equipment such as masks, gloves, soap, and cleaning products for detainees and staff, and educate detainees and staff about how to minimize transmission, taking care to ensure that language minorities also receive this vital information;
- Identify and release detainees that pose no risk to public safety, such as those without significant criminal histories or pending criminal charges, prioritizing those that are in fragile health, so as to reduce the risk in detention facilities in a manner that balances any public safety concerns associated with such releases; and

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estimates that between 10-33% of those individuals have been hospitalized. Based on detainee rosters immigration detention facilities provided to my Department in 2019 and 2020, 99.45% of immigration detainees in California are aged 18-64. Thus, immigrant detainees are also highly likely to need hospitalization if exposed to the virus. (See Center for Disease Control, Coronavirus Disease 2019 in Children — United States, February 12–April 2, 2020 (April 6, 2020) [https://www.cdc.gov/mmwr/volumes/69/wr/mm6914e4.htm?s\\_cid=mm6914e4\\_w](https://www.cdc.gov/mmwr/volumes/69/wr/mm6914e4.htm?s_cid=mm6914e4_w) [as of April 7, 2020]).

The Honorable Chad F. Wolf

April 13, 2020

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- Increase sanitation, availability of cleaning supplies and sanitizer, alter schedules, meal delivery, and physical space in detention facilities for remaining detainees while taking care not to further curtail detainees' liberty within the facilities.

Our communities are facing an unprecedented threat, and all of us must take affirmative steps to minimize it. I urge you to use your authority to address the countless unnecessary deaths that will follow if immigration detention proceeds without change during this public health crisis.

Sincerely,



XAVIER BECERRA  
California Attorney General

cc: The Honorable Ron Johnson, Chairman, Committee on Homeland Security and Government Affairs

The Honorable Gary Peters, Ranking Member, Committee on Homeland Security and Government Affairs


The Honorable Bennie G. Thompson, Chairman, Committee on Homeland Security

The Honorable Mike D. Rogers, Ranking Member, Committee on Homeland Security

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GENERAL OFFICE MEMORANDUM 20-060

TO: ALL DEPUTY DISTRICT ATTORNEYS

FROM:  JOSEPH P. ESPOSITO  
Chief Deputy District Attorney

SUBJECT: EMERGENCY BAIL SCHEDULE – ZERO BAIL IS *NOT*  
DISCRETIONARY

DATE: APRIL 16, 2020

On March 27, 2020, Governor Newsom issued Executive Order N-38-20 which enhanced “the authority of the Judicial Council and its Chairperson to issue emergency orders; to amend or adopt rules for court administration, practice, and procedure; and to take other action to respond to the emergency caused by COVID-19.”

The order states in part:

In the event that the Judicial Council or its Chairperson, in the exercise of rulemaking authority consistent with Paragraph 2 [allowing emergency amendment to the California Rules of Court], wishes to consider a rule that would otherwise be inconsistent with any statute concerning civil or criminal practice or procedure, the relevant statute is **suspended**.”

Statutes are suspended only to the extent they are inconsistent with the proposed rule(s).

Subsequently, the Judicial Council (JC) and its Chairperson (the Chief Justice) issued several statewide authorizations and orders. On April 6, 2020, the JC adopted 11 emergency California Rules of Court (See GOM 20-57).

Emergency rule 4 is the Emergency Bail Schedule. It applies to every accused person arrested and every accused held in pretrial custody. Rule 4(c) states that “bail for all misdemeanor and felony offenses **must** be set at \$0” with the exception of “**only**” 13 listed exceptions. Reading this mandatory language in conjunction with the Governor’s March 27<sup>th</sup> Executive Order, it is the Office’s position that courts do *not* have discretion to set bail other than \$0 for offenses that are not found in the 13 listed exceptions. To the extent that bail statutes give courts authority and discretion to set bail for offenses that fall outside of the 13 listed exceptions, they are suspended under the terms of the Governor’s Executive Order.

The Emergency Bail Schedule allows for denial of bail as authorized by article I, §§ 12 or 28(f)(3) of the California Constitution.

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11 IN THE UNITED STATES DISTRICT COURT  
12 FOR THE EASTERN DISTRICT OF CALIFORNIA  
13 SACRAMENTO DIVISION

15 **RALPH COLEMAN, et al.,**

16 Plaintiffs,

17 v.

19 **GAVIN NEWSOM, et al.,**

20 Defendants.

2:90-cv-00520 KJM-DB (PC)

**DEFENDANTS’ STRATEGIC COVID-19  
MANAGEMENT PLAN**

22 Pursuant to the Court’s April 10, 2020 order (ECF No. 6600), Defendants submit their  
23 strategic plan for preventing the spread of coronavirus disease (COVID-19) and managing it once  
24 the virus infects an institution. Defendants’ plan addresses guidelines and recommendations  
25 provided by the United States Centers for Disease Control and Prevention (CDC) Interim  
26 Guidance on Management of Coronavirus Disease (2019) (COVID-19) in Correctional and  
27 Detention Facilities. (*Id.* at 2.) Defendants continue to manage this unprecedented and  
28 worldwide crisis with extensive, proactive, and thoughtful actions.

1 **I. DEFENDANTS' COVID-19 STRATEGIC PLAN, DEVELOPED IN COLLABORATION**  
2 **WITH CALIFORNIA CORRECTIONAL HEALTH CARE SERVICES, INCLUDES ACTIONS**  
3 **TAKEN, OBJECTIVES, AND TIMELINES REFLECTING ROBUST EFFORTS TO RESPOND**  
4 **TO THE GLOBAL PANDEMIC.**

5 Defendants' strategic plan was developed by the California Department of Corrections and  
6 Rehabilitation (CDCR) in conjunction with California Correctional Health Care Services  
7 (CCHCS) and describes steps taken to address the COVID-19 global pandemic within  
8 California's prison system. The primary goals of CDCR and CCHCS are to ensure the safety and  
9 security of inmates, staff, and the public, minimize the spread of COVID-19, treat all patient  
10 healthcare needs, and communicate with inmates, staff, and the public about COVID-19 and steps  
11 taken by CDCR to minimize its spread. Part of CDCR and CCHCS's COVID-19 plan is to  
12 comply, to the extent possible in a correctional setting, with the CDC interim guidelines. As  
13 ordered, Defendants' plan includes a detailed comparison of CDCR and CCHCS's efforts with  
14 the CDC's guidelines and a timeline of CDCR and CCHCS's efforts to address COVID-19.

15 In addition to efforts taken to mitigate the spread of COVID-19, CDCR is taking a long list  
16 of actions to address the needs of patients with mental illnesses. Consistent with the overall goals  
17 of CDCR and CCHCS, CDCR's Statewide Mental Health Program is focused on preserving life,  
18 stabilizing acute mental health deterioration, and providing coping skills to the mental health  
19 population. CDCR mental health program leadership and the Division of Adult Institutions  
20 (DAI) developed guidance, in consultation with several of the Special Master's experts, regarding  
21 the provision of appropriate and adequate mental health care to patients during the present state of  
22 emergency, including continuity of care and attendant programming needs, taking into account  
23 potential staffing pressures and movement restrictions. This guidance was issued to CDCR's  
24 institutions after further consultation with the Special Master and Plaintiffs' counsel during the  
25 COVID task force meetings. Relevant memoranda and guidance demonstrating these actions and  
26 mental health care services plans are also attached to Defendants' strategic plan. Moreover,  
27 CDCR's COVID-19 strategic plan describes various steps taken to communicate with inmates  
28 and the public concerning pandemic response and management, preventive practices, population  
management, movement reduction, additional space utilization and physical distancing, staff



1 screening, and other preventive measures that Defendants are taking to respond to the pandemic.  
 2 Memoranda issued to CDCR facilities addressing these actions are attached to Defendants’  
 3 strategic plan.

4 **II. DEFENDANTS ARE ENTITLED TO DEFERENCE IN FORMULATING A PLAN**  
 5 **ADDRESSING THE GLOBAL PANDEMIC POSING AN UNPRECEDENTED RISK TO**  
 6 **PUBLIC HEALTH.**

7 Exercising appropriate authority, California leaders and public health officials have taken  
 8 numerous steps over the past month in response to the COVID-19 pandemic. As the United  
 9 States Court of Appeal for the Fifth Circuit recently noted, state authorities are entitled to great  
 10 deference concerning responses to a public health crisis. *In re: Abbott*, Case No. 20-50264,  
 11 Document No. 00515374865 (5th Cir., Apr. 7, 2020). “[W]hen faced with a society-threatening  
 12 epidemic, a state may implement emergency measures that curtail constitutional rights so long as  
 13 the measures have at least some ‘real or substantial relation’ to the public health crisis and are not  
 14 ‘beyond all question, a plain, palpable invasion of rights secured by the fundamental law.’” *Id.*  
 15 at 13 (citing *Jacobson v. Commonwealth of Massachusetts*, 197 U.S. 11, 31 (1905)). “Courts  
 16 may ask whether the state’s emergency measures lack basic exceptions for ‘extreme cases,’ and  
 17 whether the measures are pretextual—that is, arbitrary or oppressive. *Id.* (citing *Jacobson* at 38).  
 18 At the same time, however, courts may not second-guess the wisdom or efficacy of the measures  
 19 *Id.* (citing *Jacobson*, 197 U.S. at 28, 30). Further, “[i]t is no part of the function of a court” to  
 20 decide which measures are “likely to be the most effective for the protection of the public against  
 21 disease.” *Id.* (citing *Jacobson*, 197 U.S. at 30). A court’s “fail[ure] to apply (or even  
 22 acknowledge) the framework governing emergency exercises of state authority during a public  
 23 health crisis, established over 100 years ago in *Jacobson v. Commonwealth of Massachusetts*,  
 24 197 U.S. 11 (1905)” is “extraordinary error.” *Id.* at 10; *see also id.* at 13 (“*Jacobson* remains  
 25 good law”).

26 Similarly, an Illinois district court emphasized the deference due state officials in the prison  
 27 context when responding to this pandemic. *Money v. Pritzker*, --- F. Supp. 3d ---, 2020 WL  
 28 1820660, at \*1 (N.D. Ill. Apr. 10, 2020). Actions that require courts to get involved in prison  
 management raise “serious concerns under core principles of federalism and the separation of

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1 powers.” *Id.* at \*15. Federalism counsels against courts getting involved in state prison  
2 management, while the separation of powers commits the task of running prisons to the  
3 “executive and legislative branches.” *Id.* at \*16. The concerns about “institutional competence  
4 [are] especially great where, as here, there is an ongoing, fast-moving public health emergency.”  
5 *Id.*

6 As world leaders continue to be in crisis management mode addressing this unprecedented  
7 pandemic as best they can, Defendants are entitled to deference as they work around the clock to  
8 respond to the rapidly evolving emergency impacting their operations of California’s prisons.  
9 Like society in general, Defendants’ goal is to prevent the spread of COVID-19. The Court  
10 should allow Defendants to meet that goal and continue implementing and operationalizing the  
11 various facets of their attached strategic plan, which is focused on protecting the health and safety  
12 of CDCR inmates, staff, and the public from COVID-19.

13 Dated: April 16, 2020

Respectfully submitted,

14 XAVIER BECERRA  
15 Attorney General of California  
16 ADRIANO HRVATIN  
Supervising Deputy Attorney General

17 */s/ Lucas L. Hennes*

18 LUCAS L. HENNES  
19 Deputy Attorney General  
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April 16, 2020

Elise Thorn  
Office of the Attorney General  
1300 I Street  
Sacramento, CA 95814

*VIA EMAIL ONLY*

Dear Elise:

Attached please find the California Department of Corrections and Rehabilitation’s plan and supporting attachments to respond to the COVID-19 pandemic, as required by the Coleman Court’s April 10, 2020 order.

Respectfully,

*/s/ Melissa C. Bentz*

Melissa C. Bentz  
Attorney  
Office of Legal Affairs  
California Department of Corrections and Rehabilitation

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## CDCR COVID Plan

### I. Introduction

The California Department of Corrections and Rehabilitation (CDCR), along with California Correctional Health Care Services (CCHCS) have taken, and continue to take, appropriate steps to address the COVID-19 global pandemic within the California prison system. The myriad of efforts undertaken by CDCR and CCHCS are informed by outside agencies, public health professionals, and the Centers for Disease Control and Prevention (CDC). Public safety remains CDCR's top priority, along with the health of the staff and inmates who work and live within CDCR institutions.

CDCR's goals are keeping the inmate population and staff working within CDCR safe and secure, minimizing the spread of COVID-19 as much as possible, treating patients for all their healthcare needs during the pandemic, to the greatest extent possible, and regularly communicating with staff, inmates, and the public about COVID-19 and the steps taken by CDCR to minimize its spread. With those goals in mind, CDCR has taken the following steps:

- Activated the Department Operations Center (DOC), jointly chaired by CDCR's Director of Division of Adult Institutions and CCHCS's Director of Healthcare Operations, on March 15, 2020, enabling centralized oversight and immediate response to any departmental impacts of COVID-19;
- Stopped inmate visitation and all large events within institutions beginning on March 11, 2020 and stopped all tours and family visits by March 16, 2020;
- Suspended all intake from county jails for at least sixty days beginning on March 24, 2020, which will result in a reduction of approximately 5,000-6,000 inmates;
- Released over 3,400 inmates from CDCR early, who were within sixty days of release;
- Transferred 630 inmates from dormitory housing to empty housing units within CDCR, and plans to transfer an additional 640 inmates from dormitory housing by April 16, 2020;
- Implemented robust staff screening measures, including temperature screenings for anyone entering an institution;
- Increased cleaning within the institution and made hand sanitizer and masks available to inmates and staff;
- Issued guidance to healthcare and correctional staff on the treatment and prevention of COVID-19, including guidance on quarantine, isolation, personal protection, and hygiene; and
- Issued guidance, via posters, handouts, videos, and Inmate Advisory Council Meetings, to inmates on physical distancing, hygiene, prevention techniques, and symptoms of COVID-19.

### II. Compliance with the Centers for Disease Control and Prevention Guidelines

Part of CDCR and CCHCS's COVID-19 plan is to comply with CDC's guidelines, to the extent possible in a correctional setting. Indeed, CDCR and CCHCS's plans and policies have been made with guidance from public health experts and with reference to the guidelines on the prevention of COVID-19 in correctional settings issued by the CDC. CDCR implemented much of what CDC ultimately issued as guidelines before the CDC even issued its guidelines on March 23, 2020. CDCR and CCHCS have closely adhered to the guidelines and have complied with almost all of them. A detailed comparison of CDCR and CCHCS's efforts and the CDC's guidelines is laid out in Attachment A and a timeline of CDCR and CCHCS's efforts to address COVID-19 is in Attachment B.

While steps are being taken to mitigate the spread of COVID-19, CDCR is taking additional action to address the needs of patients with mental illness. In addition to the overall goals of CDCR and CCHCS,

CDCR's Statewide Mental Health Program is focused on preserving life, stabilizing acute mental health deterioration, and providing coping skills to the mental health population. To that end, Mental Health and its partners at CCHCS and the Division of Adult Institutions (DAI) have issued guidance to the field on providing mental health care during a state of emergency, taking into account potential staffing pressures and movement restrictions. CDCR has also issued policies on how and when to transfer patients to a higher level of care, and how to provide additional treatment and coping skills to patients who are awaiting a higher level of care. These policies have been developed in consultation with the *Coleman* Special Master and Plaintiffs, through numerous taskforce meetings convened since March 20, 2020.

Like the rest of the world, CDCR's plans to mitigate the spread of COVID-19 continue to evolve as additional scientific and medical information becomes available. The plans set forth below are those implemented by CDCR and CCHCS to date and are in line with guidance provided by public health agencies. CDCR and CCHCS are committed to reviewing and revising the plans as new information, treatments, and prevention techniques become available.

### III. CDCR and CCHCS Plan to Prevent the Spread of COVID-19 in the Institutions

First and foremost in CDCR and CCHCS's plan is to prevent the spread of COVID-19 among inmates and staff, which has been done through communication and coordination, prevention practices, safe practices for our health care providers, increased cleaning and disinfecting, and overall pandemic guidance throughout every institution.

CDCR and CCHCS are dedicated to the safety of everyone who lives in, works in, and visits our institutions. CDCR and CCHCS have longstanding outbreak management plans in place to address communicable disease outbreaks such as influenza, measles, mumps, norovirus, and varicella, as well as preparedness procedures to address a variety of medical emergencies and natural disasters. While COVID-19 is a pandemic unlike the world has seen, CDCR and CCHCS have used past practices combined with new guidance from CDC and public health professionals to combat the spread of the virus. Details of the steps that have been taken and those that are in the process of being implemented are provided below.

#### A. Communication and Coordination

Part of CDCR and CCHCS's plan is to have ongoing, transparent, communication and coordination within CDCR and CCHCS and with the public. To that end, on March 11, 2020, CCHCS issued a memorandum regarding the 2019 Novel Coronavirus. (Attachment C). The memo discussed risk assessment and management of patients with respiratory illness, laboratory testing for COVID-19, surveillance and reporting requirements, and resources for up-to-date COVID-19 information. This was the first of many communications issued from CDCR to staff regarding COVID-19. Since that time, CDCR and CCHCS have taken numerous steps to keep staff, inmates, and the public informed of the steps taken to combat the spread of COVID-19.

##### i. Department Operations Center

An important part of the communication within CDCR and CCHCS and with the Administration is the DOC. On March 15, 2020, CDCR and CCHCS activated the DOC, which is a centrally-located command center where CDCR and CCHCS experts monitor information, prepare for known and unknown events, and exchange information centrally in order to make decisions and provide guidance quickly. The DOC is chaired by the Director of DAI and CCHCS's Director of Healthcare Operations. The DOC's goal is to implement measures and strategies to protect inmates and staff during the COVID-19 pandemic, to enhance social distancing in communal areas, and to review alternative housing options

that may be used to increase physical distancing between inmate cohorts in dorms where possible. Under the guidance of the DOC, both CDCR's DAI and CCHCS have issued numerous memoranda providing guidance to staff regarding housing, transfers, programming, and other aspects of institutional operations in light of COVID-19.

ii. CDCR COVID-19 Preparedness Webpage

One of the key goals of CDCR and CCHCS during this pandemic is transparency with staff, inmates, and the public. To facilitate information to the public, CDCR and CCHCS initiated a COVID-19 Preparedness website that provides almost daily updates regarding the steps CDCR and CCHCS have taken in response to the COVID-19 pandemic. (<https://www.cdcr.ca.gov/covid19/>). On March 26, 2020, as part of the COVID-19 Preparedness website, CDCR and CCHCS unveiled a COVID-19 tracking tool for inmate testing, cases, and results. (<https://www.cdcr.ca.gov/covid19/population-status-tracking/>). Data for the tracking tool is extracted directly from internal systems such as the Strategic Offender Management System (SOMS) and the Electronic Health Record System (EHRS), and provides near real time updates. CDCR and CCHCS have also provide a public tracking system for the number of employees that have self-reported positive COVID-19 cases at each institution. (<https://www.cdcr.ca.gov/covid19/cdcr-cchcs-covid-19-status/>). CDCR and CCHCS will continue to update these websites on a regular basis to outline the steps taken to mitigate and appropriately react to the spread of COVID-19.

iii. Communication with Inmate Population

Just as CDCR and CCHCS have made significant efforts to keep the public informed of the steps taken in light of COVID-19, CDCR and CCHCS have also taken numerous steps to ensure that the inmate population is informed of COVID-19, including the appropriate safety precautions that should be taken to minimize risk of contracting the virus, and the steps CDCR and CCHCS has taken to prevent the spread of COVID-19 in the institutions. This communication occurs in numerous ways, including by the hanging of posters throughout the institutions with information regarding symptoms, appropriate social distancing in communal areas, COVID-19 facts and frequently asked questions, and preventing the spread of illness. (Attachment D). In addition, both Secretary Diaz and the *Plata* Receiver, Clark Kelso, have recorded videos for the inmate population that have been added to the Division of Rehabilitative Programs institutional television wellness channel. The videos, which provide information regarding COVID-19 and the steps CDCR and CCHCS have taken in response, can be viewed on CDCR and CCHCS's COVID-19 Preparedness website. (<https://www.cdcr.ca.gov/covid19/population-communications/>). All printed material, as well as all videos, are available in both English and Spanish, including closed captioning.

In addition, Wardens, Captains, Public Information Officers, and other institution executives have been meeting regularly with their respective Inmate Advisory Councils (IAC), either individually or in small groups where social distancing can be maintained. These meetings allow institution executives to provide information to the IAC regarding COVID-19 and any steps CDCR and CCHCS are taking, as well as allowing the inmates to raise any questions or concern they may have. CDCR is also providing daily updates regarding COVID-19 to the Statewide Inmate Family Council and all institutional Inmate Family Councils.

Finally, CDCR and CCHCS have created a public email box at [COVID19@cdcr.ca.gov](mailto:COVID19@cdcr.ca.gov) where questions specific to COVID-19 can be answered for concerned family members or friends. The email address has been made available on CDCR's social media platforms, the CDCR website, and in daily updates to stakeholder groups.

B. Prevention Practices

As with the general public, a goal of CDCR and of CCHCS is to prevent the spread of COVID-19. This effort necessarily involves strategies targeted at inmates and staff, individually and collectively.

i. Inmates

CDCR and CCHCS have collectively taken numerous steps to prevent the spread of COVID-19 amongst the inmate population. This includes population management measures, mandatory modified programming, eliminating non-essential transfers, and transferring inmates out of dormitory settings to enhance physical distancing, and taking steps to enhance social distancing in communal areas. All plans related to social and physical distancing between inmates are being jointly developed by CDCR and the *Plata* Receiver. There are currently no plans to target specific portions of the population, such as *Coleman* class members or high risk inmates, for special movement or housing, except as detailed below in section III regarding the provision of Mental Health care. The approach taken by both CDCR and the *Plata* Receiver is a holistic approach that aims to protect and mitigate the spread of COVID-19 amongst the entire CDCR population.

a. Population Management

An important step in curbing the spread of COVID-19 is managing the prison population to allow for social distancing. Since March 25, 2020, CDCR has reduced its state prison population by 6,758 inmates, allowing more space and flexibility in housing inmates statewide. The reduction was achieved through CDCR's expedited release plan and through the suspension of intake of inmates from county jails.

1. Intake of New Inmates

One of the key guidelines from the CDC recommends restricting transfers of inmates to and from other jurisdictions and facilities unless necessary. (<https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html>). On March 24, 2020, Governor Newsom issued an executive order directing the Secretary of CDCR to use his emergency authority under California Penal Code section 2900, subdivision (b) to suspend intake of inmates into state facilities for 30 days. (Attachment E). The executive order also granted the Secretary the authority to issue one or more 30-day extensions of suspension of intake as needed to protect the health, safety, and welfare of inmates and staff at CDCR. On April 13, 2020, the Secretary indicated that he plans to use this authority to issue a 30-day extension on the suspension of intake into CDCR. *See Plata v. Newsom*, Case No. 01-cv-01351, ECF No. 3274, page 3, paragraph 6. The need for a further extension will be continually assessed based on the circumstances in the community, county jails, and CDCR's institutions.

2. Expedited Release Plan

The advance release of inmates to parole or community supervision was also an important component of the goal to reduce the spread of COVID-19. On March 31, 2020, CDCR announced an expedited release plan to improve the institutions' capacities to respond to the threat posed by COVID-19 by accelerating the release of eligible inmates who have 60 days or less to serve on their sentences, and who are not currently serving time for a violent crime as defined by law, required to register under Penal Code section 290, or serving a commitment for domestic violence. In total, CDCR has released over 3,400 inmates under this expedited release plan. Of those who were released through the accelerated release program, approximately 930 were in the Mental Health Services Delivery System as of April 2, 2020. On April 3, 2020, CDCR began releasing inmates under this plan. All inmates who were eligible under the expedited release criteria have been released.

b. Mandatory 14-Day Modified Program

An integral part of the prevention of the spread of COVID-19 is to minimize movement. Thus, on April 7, 2020, DAI issued a memorandum implementing a mandatory 14-day statewide modified program. (Attachment F). The memorandum provides direction regarding how movement will occur within the institution to maximize social distancing and prevent inmates from different housing units from coming into contact with one another. While these restrictive measures are mandatory, the inmate population will still have access to medication, health care services, yard time, canteen, packages, and cell-front religious programming, while allowing for physical distancing and proper cleaning and disinfecting. Showers and telephones will be disinfected between each use. Meals will be served in cells or housing units. Recreation and yard time will be available, but the schedules will be staggered by housing unit. If canteen cannot be accommodated during yard time, staff will facilitate delivery of canteen items to housing units. Only inmates classified as critical workers will be permitted to report to work. Implementation of these restrictions over the two-week period will further reduce potential staff and inmate exposure to COVID-19. On April 7, 2020, DAI and the Department of Rehabilitative Programs issued a memoranda to provide clarification to the institution schools regarding the modified program. (*Id.*)

c. Transfers

Just as with the limitation of movement imposed throughout the public by “stay-at-home” or “shelter-in-place” orders, CDCR has imposed limitations on movement to minimize the spread of COVID-19.

1. Elimination of Non-Essential Transfers

CDCR has taken many steps as the COVID-19 pandemic has spread to limit transfer in and out of state institutions, as each movement carries a potential for exposure not only to the inmate who is transferring, but also to those at the location to where the inmate transfers. As an initial action, on March 17, 2020, CDCR suspended all transfers of out-of-state parolees or inmates. On March 19, 2020, CDCR restricted non-essential transfer of inmates between CDCR facilities, only allowing transfer in the following scenarios: removal from restricted housing units; transfer from reception centers; transfers to and from mental health crisis beds, conservation camps, Male Community Reentry Programs (MCRP), Custody to Community Transitional Reentry Programs (CCTRP), Alternative Custody Programs (ACP); and transfers from Modified Community Correction Facilities due to deactivation efforts. Transfers required due to Health Care Placement Oversight Program (HCPop) placement, court appearances, and medical emergencies was also allowed.

On March 23, the California Judicial Council issued a statewide order suspending all jury trials for 60 days, which significantly reduced the need to transfer inmates from CDCR to outside county jails or courts. On March 24, 2020, CDCR suspended transfers of inmates to the conservation camps, MCRP, CCTRP, and ACP. On the same day, Governor Newsom issued an executive order requiring the Secretary use his authority to suspend intake of inmates into CDCR for 30 days. (Attachment E). On April 7, 2020, CDCR took the additional step of suspending all transfers of inmates from Reception Centers through April 22, 2020. On April 10, 2020, CDCR’s Statewide Mental Health Program issued transfer guidelines regarding inmates who need a higher level of care, the details of which are outlined in section III. On April 15, 2020, CDCR communicated with county sheriffs about changes to the transfer of state prison inmates to county jails for mandated court hearings. Inmates leaving CDCR custody to be housed in county jails for purposes of attending a court hearing will not be accepted back until intake is resumed. Inmates transferred for same-day court appearances will be allowed to return to CDCR, but will be provided a mask and will be screened by health care staff upon return to the institution.



## 2. Transfers Out of Dormitory Settings

Targeted moves of inmates out of dormitory settings is another tool CDCR has utilized to meet the goal of limiting the spread of COVID-19. On April 1, 2020, DAI issued a directive to transfer just over 800 inmates from several Level II dormitories to locations with vacant buildings within the system, including transferring 300 inmates from Chuckawalla Valley State Prison (CVSP) to Ironwood State Prison (ISP), 57 inmates from CVSP to California State Prison, Corcoran (COR), 361 inmates from California Rehabilitation Center (CRC), and 100 inmates from the Substance Abuse Treatment Facility and State Prison, Corcoran to COR. CDCR also transferred 43 inmates from Folsom Women’s Facility to the Female Community Reentry Facility. In addition, CDCR transferred 228 inmates from California State Prison, Solano to Deuel Vocational Institution. All noted transfers were completed by April 16, 2020. Finally, CDCR has identified 426 inmates in Level I or Level II dorms at California Correctional Center and Sierra Conservation Center who will be transferred to fire camps. The transfer of these inmates is being coordinated at a local level with CAL FIRE based on need at each fire camp. As of April 13, 2020, 53 inmate have been transferred from California Correctional Center to fire camps. As of April 15, 2020, 159 inmates have been transferred from Sierra Conservation Center to fire camps.

On April 10, 2020, the *Plata* Receiver issued a memorandum to Secretary Diaz regarding CCHCS’s Guidelines for Achieving and Maintaining Social Distancing in California Prisons. (Attachment G).<sup>1</sup> The memorandum explained that social distancing was already being achieved in single- and double-celled units, as cellmates constitute an appropriate “social distancing cohort” for correctional purposes and “are analogous to a family unit in the free world.” With respect to dorm housing, the Receiver determined that “necessary social distancing can be achieved by creating 8-person housing cohorts” with at least six feet of distance in all direction between each cohort. In addition, the memorandum instructed that all movement of inmates out of dorms to achieve social distancing must be done in coordination and concurrence with the Health Care Placement Oversight Program to ensure that such movement does not contribute to the spread of COVID-19. Before the release of this memorandum, CDCR was developing plans to transfer inmates from San Quentin State Prison to COR. However, these plans have been temporarily paused. Upon completion of all currently scheduled transfers related to physical distancing, CDCR, in conjunction with the *Plata* Receiver, will assess the population in the dorms and determine what additional steps need to be taken, if any.

## 3. Utilization of Additional Vacant Space for Housing

CDCR and CCHCS are currently assessing whether there is additional space within the institutions that may be used to house inmates, such as gymnasiums. However, the State Fire Marshal must approve those spaces to be used for housing. Further, CDCR must ensure there are enough cots and assess the staffing needs for each location so that DAI can ensure that safety and security can be maintained and the inmates’ essential needs, such as feeding, escorts, medication, and any mental health or medical needs, can be met. At this time, nineteen potential sites have been identified for use to house inmates. To date, the State Fire Marshal has approved occupancy for twelve gymnasiums and two visiting rooms located at Mule Creek State Prison, Central California Women’s Facility, Pleasant Valley State Prison, Salinas Valley State Prison, San Quentin State Prison, California State Prison, Solano, and California State Prison, Los Angeles County. CDCR has procured 600 cots and can obtain more if needed. CDCR is working closely with the State Fire Marshal to get approval for additional space as soon as possible. CDCR, along with CCHCS, will work together to determine how these spaces might best be used to improve physical distancing.

<sup>1</sup> On April 12, 2020, the *Plata* Receiver issued a supplemental memorandum clarifying that the April 10, 2020 memorandum was not intended to affect any inter-institution transfers to address either medical, mental health, or dental needs that were not available at the sending institution. (Attachment G).

d. Social Distancing in Communal Areas

Social distancing is crucial in preventing the spread of COVID-19. One of CDCR's first directives to the institutions was to implement social distancing. The CDC defines social distancing as "keeping space between yourself and other people outside of your home." (<https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/social-distancing.html>). Thus, CDCR's initial focus has been on ensuring appropriate distancing of inmates who do not live in the same cell or housing unit. Institutions implemented this directive by placing markings on the floor in communal areas marking six feet between each space. These markings were placed in the housing units near kiosks and telephones, and on the yard for medication pass. The markings serve as prompts and reminders for inmates to maintain physical distance from others as they wait for services in these areas. Pictures of these markings at various institutions are provided in Attachment H.

ii. Staff

An essential step in limiting the spread of COVID-19 is decreasing exposure points by limiting interaction between people who are not in the same family group. In the state of California, this step was implemented by Governor Newsom's shelter-in-place order. In CDCR, part of limiting exposure points was to limit unnecessary personnel from entering the institutions and appropriately screening those essential workers who entered the institutions.

a. Limitation of Staff Entering Institutions

On March 12, 2020, all tours of CDCR institutions statewide were cancelled. On March 15, 2020, in-person observers were no longer permitted at parole suitability hearings. On March 17, 2020, DAI provided a letter notifying rehabilitative program providers and volunteers that all inmate activity groups and programs were suspended until further notice. (Attachment I).

b. Telework and Administrative Time Off

To further the goal of preventing the spread of COVID-19, on March 19, 2020, Governor Newsom issued an executive order requiring Californians to stay at home or in their place of residence except as needed to maintain continuity of operations of critical infrastructure sectors. (Attachment J). In response, CDCR issued direction that all hiring authorities should maximize telework to the extent possible. (<https://www.cdcr.ca.gov/covid19/360-2/>). There are currently more than 8,500 CDCR staff successfully teleworking.

In addition, staff members whose job duties are not immediately critical to the continuity of operations and are not viable for telework, and who cannot be redirected to work that is critical or can be accomplished via telework, are provided Administrative Time Off. This allows employees to continue to earn wages without being required to work.

c. Verbal Screening and Temperature Protocols

Preventing the introduction of COVID-19 into CDCR facilities is also important to reducing the spread of the virus. On March 14, 2020, CDCR implemented mandatory verbal screening for all persons entering state prisons. Those attempting to enter a state prison or office building at any time are required to verbally respond if they currently have any new or worsening symptoms of a respiratory illness or fever. If the individual responds affirmatively, that person is restricted from entering the site that day. On March 27, 2020, touchless temperature screening was implemented as an additional precaution for all persons entering institutions and community correctional facilities. (Attachment K).

## iii. Visitors

Another significant potential for the introduction of COVID-19 to institutions is through visitors who may have contracted the virus before entering an institution. Therefore, on March 11, 2020, CDCR suspended normal visiting. All overnight family visits were suspended effective March 16, 2020. CDCR, however, understands the need to ensure that all inmates have the ability to stay connected with friends and family during this trying time. Thus, CDCR has worked with partners Global Tel Link (GTL) and JPay to ensure that access continues.

On March 17, 2020, GTL announced that it would offer free phone calls to the inmate population on March 19<sup>th</sup> and March 26<sup>th</sup>. On the same day, JPay offered two free stamps per week for registered electronic message users through available kiosk or tablets.<sup>2</sup> On March 30, 2020, Secretary Diaz announced that GTL and JPay had agreed to provide three days of free phone calls per week on Tuesdays, Wednesdays, and Thursdays through the end of April 2020. In addition, JPay agreed to offer reduced-priced emails to registered electronic message users at the pilot institutions, and to provide free emails for those unable to pay.

On April 8, 2020, DAI provided a memorandum to the field increasing phone call privileges for all inmates housed in restricted housing, Reception Centers, and Psychiatric Inpatient Programs. (Attachment L). The memorandum increased phone call privileges as follows: (1) All non-disciplinary segregation inmates are allowed one phone call per week; (2) All other inmates in restricted housing are allowed a phone call every two weeks; (3) All C status inmates are allowed one call every two weeks; (4) All Reception Center inmates are provided one phone call a week; and (5) All Psychiatric Inpatient Program inmates are provided one phone call a week, unless restricted by the Interdisciplinary Treatment Team (IDTT). The memorandum was revised and re-released on April 13, 2020, to clarify that inmates in the above housing units will be provided at least the number of phone calls specified in the memorandum. (*Id.*)

Most recently, on April 8, 2020, CDCR partnered with JPay to provide inbound email print services to all institutions at a reduced rate by April 10, 2020. This service enables inmates' family and friends to use JPay to send e-correspondences, which mailroom staff then print and deliver with regular mail. While this will not eliminate physical mail, this process will reduce COVID-19 transmission risk from outside of the institution. This service is also a cost-effective way for inmates to maintain contact with family and friends, which is especially important while visiting is closed.

## C. CCHCS Interim Guidance for Health Care and Public Health Providers

Providing up-to-date, best practices advice to health care providers is an essential part of CDCR and CCHCS's plan. On March 20, 2020, CCHCS issued COVID-19 Interim Guidance for Health Care and Public Health Providers. The document addresses COVID-19 testing, treatment, transmission, reporting requirements, personal protective equipment use, precautions, and management of suspected and confirmed cases of COVID-19. On April 3, 2020, CCHCS issued revised interim guidance. (Attachment M).

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<sup>2</sup> The following institutions are part of the JPay pilot which provide inmates with access to kiosks and tablets: High Desert State Prison, Kern Valley State Prison, California Institution for Women, Central California Women's Facility, and the Substance Abuse Treatment Facility and Prison, Corcoran. At some of these institutions, only certain yards have access to this technology.

i. Testing

The CDC has issued guidelines for COVID-19 testing, which divides the priority for testing into the four following tiers:<sup>3</sup>

<p><b>PRIORITY 1</b>  <b>Ensure optimal care options for all hospitalized patients, lessen the risk of nosocomial infections, and maintain the integrity of the healthcare system</b></p> <ul style="list-style-type: none"> <li>• Hospitalized patients</li> <li>• Symptomatic healthcare workers</li> </ul>
<p><b>PRIORITY 2</b>  <b>Ensure that those who are at highest risk of complication of infection are rapidly identified and appropriately triaged</b></p> <ul style="list-style-type: none"> <li>• Patients in long-term care facilities with symptoms</li> <li>• Patients 65 years of age and older with symptoms</li> <li>• Patients with underlying conditions with symptoms</li> <li>• First responders with symptoms</li> </ul>
<p><b>PRIORITY 3</b>  <b>As resources allow, test individuals in the surrounding community of rapidly increasing hospital cases to decrease community spread, and ensure health of essential workers</b></p> <ul style="list-style-type: none"> <li>• Critical infrastructure workers with symptoms</li> <li>• Individuals who do not meet any of the above categories with symptoms</li> <li>• Health care workers and first responders</li> <li>• Individuals with mild symptoms in communities experiencing high COVID-19 hospitalizations</li> </ul>
<p><b>NON-PRIORITY</b></p> <ul style="list-style-type: none"> <li>• Individuals without symptoms</li> </ul>

The CCHCS Interim Guidance for Health Care and Public Health Providers draws from the CDC recommendations regarding testing of patients and prioritizes testing for patients who are “close contacts of confirmed cases (should be in quarantine) who develop any symptoms of the illness, even if mild or not classic for COVID-19.” (Attachment M, page 9). Any patient who is exhibiting symptoms of COVID-19 is also eligible for testing. Consistent with CDC guidelines, asymptomatic patients are not recommended for testing at this time. (*Id.*)

Recently, rapid testing has been developed. However, those tests are not currently available to CDCR. As those tests become available in large quantities, the recommendations regarding priorities for testing may be altered.

ii. Personal Protective Equipment

In early March, CDCR conducted an initial assessment of all necessary personal protective equipment (PPE) at each institution. Per this assessment, most institutions had an adequate supply to immediately address any potential COVID-19 exposures. When needed, institutions submitted orders of masks, gloves, and gowns. The DOC is continuously monitoring supply and demand of PPE to ensure the institutions have the resources needed to protect staff and inmates. CDCR is also working with the Governor’s Office of Emergency Services to ensure adequate supplies of PPE are available at each institution.

<sup>3</sup> <https://www.cdc.gov/coronavirus/2019-nCoV/hcp/clinical-criteria.html> (last updated March 24, 2020)

In addition to using resources outside of CDCR to increase the available supply of PPE, CDCR has partnered with the California Prison Industry Authority (CALPIA) to produce PPE. CALPIA has begun producing reusable cloth barrier masks to meet some of the supply needs of staff and inmates. The masks are being produced at CALPIA's Fabric enterprises at the California Institution for Women, Mule Creek State Prison, California Men's Colony, Sierra Conservation Center, Correctional Training Facility, California Correctional Institution, and Centinela State Prison. As of April 10, 2020, CALPIA is producing about 22,000 barrier masks per day, and has begun distributing the masks to the institutions for both staff and inmate use. All institutions will increase laundry services in order to accommodate proper washing and drying of barrier masks. (See Attachment N).

CALPIA is also producing hand sanitizer for sanitizer dispenser stations in housing units, dining halls, work change areas, and other areas where sinks and soap are not immediately available. The hand sanitizer is available to all CDCR and CCHCS facilities and locations. If CALPIA's inventory exceeds the needs of those two departments, CALPIA will make the product available to other state agencies.

The interim guidance issued by CCHCS provides guidance to staff on the use of PPE. (Attachment M, page 20-23). On April 6, CCHCS issued a memo with additional guidance on staff use of PPE to make clear what types of PPE are appropriate for each situation and guidance on the extended use of PPE. (Attachment O). Finally, a quick reference guide was provided to staff. (Attachment P).

On April 15, 2020, CDCR issued a memorandum which requires the use of cloth face coverings for both staff and inmates. (Attachment Q). While staff are allowed to bring in their own masks to wear while performing any duties on institutional grounds, all staff and inmates are being provided at least two CALPIA reusable cloth barrier masks. Inmates will be required to wear the CALPIA masks during any situation that requires movement outside of cell or while in a dorm setting, during interactions with other inmates, such as yard time or canteen, and during movement to or from health care appointments or medication administration areas.

#### D. Cleaning and Disinfecting Practices

Cleaning and disinfecting is another critical component to minimizing the spread of COVID-19. To address this, CDCR directed increased cleaning and disinfection procedures to all institutions and mandated cleaning a minimum of every three hours. (Attachment R). All CDCR institutions have been instructed to conduct additional deep-cleaning efforts in high-traffic, high-volume areas, including health care facilities. Communal areas such as dayrooms, showers, restrooms, and officers are cleaned a minimum of twice per shift during second and third watch, and more if needed. Inmates who assist with cleaning high-traffic areas of the institutions have received direct instruction on proper cleaning and disinfecting procedures in order to eliminate COVID-19. All critical inmate workers are screened and cleaning practices allow for physical distancing of staff and porters when possible. (Attachment S).

#### E. DAI Pandemic Operational Guidelines

As a public institution responsible for the safety and well-being of those in its care, CDCR has plans in place to address a variety of circumstances. DAI has developed a 5-tiered system that explains operational programming in five different "operational conditions," *i.e.*, (i) Normal, (ii) Alpha, (iii) Bravo, (iv) Charlie, and (v) Delta. (Attachment T). Each condition reflects what kind of restrictions will be put in place depending on necessary movement restrictions and staffing levels at any given time. The plan explains how core functions (such as feeding, medications, health care, and showers), programs, privileges, and transportation will be modified in each of the five conditions.

The first operational condition titled “Normal” reflects the normal daily scenario in which the institution is able to sustain normal operations and perform all functions. The second operational condition, “Alpha,” mandates some modifications to program activities to minimize exposure or to address staff limitations impacting daily operations. The third operational condition, “Bravo,” mandates increased modifications to program activities and transportation to minimize exposure, address quarantines, or to address increased staff limitations, including custodial staffing, which impact daily operations. The fourth operational condition, “Charlie,” mandates significant modifications to program activities, transportation, and core functions due to increased isolations and quarantines, and to address increased staff limitations, including custodial staffing, which impact daily operations. The fifth and last operational condition, “Delta,” is the last resort scenario with the most extensive modifications. The purpose of the different operational levels is to allow CDCR the ability to incrementally increase the levels and severity of counter measures at each institution while still conducting mission-essential operations.

Which one of the five conditions applies to each institution is, in large part, guided by the number of custodial staff available on any given day. For instance, the fifth and last operational condition, “Delta,” will only be triggered if the number of available custodial staff decreases to the skeleton staffing level of 50 to 59 percent of current second watch staffing. Currently, CDCR only expects institutions in remote locations to ever reach condition “Delta.” Institutions located in more central areas can usually obtain resources from nearby institutions or CDCR’s headquarters when coverage is needed. CDCR has also taken the proactive step of reaching out to recently-retired correctional peace officers who would be willing to return to service to address staffing shortages during this emergency, if needed.

Most CDCR institutions are currently operating in the third tier, “Bravo,” except for mail and phone services. As detailed above, CDCR has expanded mail and phone privileges for inmates in segregated housing.

#### IV. CDCR’s Plan to Provide Mental Health Care to Patients During COVID-19 Global Pandemic

Aside from the protections and services outlined above applicable to all CDCR institutions, inmates, and staff, over the past month, CDCR has worked to continue to provide adequate mental health care to its patients while balancing the need for treatment against the necessary restrictions in place to mitigate the spread of COVID-19. CDCR’s Statewide Mental Health Program’s goals are to preserve life, stabilize acute mental health deterioration, and provide coping skills to the mental health population. In furtherance of those goals, CDCR has issued policies on the delivery of mental health care during COVID-19, screening patients before referring to higher levels of care, and providing treatment to patients in need of a higher level of care while awaiting transfer.

##### A. Mental Health Program Pandemic Operational Guidelines

In response to COVID-19, Mental Health has modified its programs, with input from the Special Master and his team, to meet the needs of its patients. On March 25, 2020, CDCR issued a memorandum titled COVID 19 – Mental Health Delivery of Care Guidelines. (Attachment U). The memorandum directs clinical leadership at each institution to regularly assess their mental health program capacity to make determinations based on available staff, known exposures to COVID-19, individual patient needs, and facility and system patient flow. The policy makes clear the expectation that institutions should follow current Program Guide policies as much as possible, including access to groups, one-on-one treatment, emergent and urgent referral processes, crisis intervention, suicide prevention, and inpatient referrals.

The policy creates four tiers of care based on the available resources at each institution, as determined by its clinical leadership. The guidelines help ensure patients receive care while minimizing the risk of COVID-19 to staff and patients. The document provides institutional leadership with guidance on

determining which tier an institution may be in based on several factors including the availability of staff, the ease of patient movement between and within institutions, the availability of inpatient beds, and the availability of beds to provide suicide watch. For each of the four tiers, the plan discusses how to handle inpatient referrals, required suicide prevention practices, what level and types of treatment should be provided, including individual and group treatment, rounding practices, and how to handle evaluations for patients who are potentially paroling as Offenders with Mental Health Disorders.

The March 25, 2020, policy also includes guidance for providing education on COVID-19 to patients, isolation and quarantine practices, and ensuring physical distancing between staff and patients in treatment settings. To that end, the policy also encourages institutions to increase the use of telepsychiatry to help with physical distancing between clinician and patient.

#### B. Transfers and Screening of Patients Referred to a Higher Level of Care

Notwithstanding COVID-19, CDCR continues to refer patients to higher levels of mental health care, including Mental Health Crisis Beds (MHCBs) or Psychiatric Inpatient Units (PIPs), when clinically indicated. Restrictions have been put in place, however, to ensure COVID-19 is not spread between institutions. On April 5, 2020, CDCR issued a memorandum titled COVID-19 – Screening Prior to Mental Health Transfers. (Attachment V). The memorandum makes clear that while referrals must continue, transfers must take place in a way that minimizes the risk to patients and staff.

The policy requires a medical physician or psychiatrist to conduct the screening in consultation with a public health or infection control nurse. The screening must be documented before the patient leaves the institution and must include a minimum of 11 data points concerning the patient's physical health.

On April 10, 2020, after meeting and conferring with the *Coleman* Special Master and Plaintiffs' counsel, CDCR issued further guidance to the field in a memorandum titled COVID Emergency Mental Health Treatment Guidance and COVID Temporary Transfer Guidelines and Workflow. (Attachment W). The temporary Transfer Guidelines and Workflow immediately restricted all non-emergent movement between institutions. The policy sets forth instruction on referrals of patients to different institutions, including guidelines on which referrals require transfer to other institutions, how to obtain clearance for those transfers, the duties of the receiving institution, and the final transfer procedure. The policy also directs institutions to retain discharged patients at the same institution whenever possible. This is in accordance with department-wide direction on cessation of non-essential transfer first issued on March 24, 2020.

#### C. Provision of Treatment to Patients while Awaiting Transfer to a Higher Level of Care

Throughout the COVID-19 pandemic, CDCR has maintained its obligation to provide the appropriate level of mental health care to each patient.

##### i. Access to MHCBs and PIPs, Temporary Mental Health Units, and Enhanced Level of Care Treatment

An important goal of CDCR throughout the COVID-19 pandemic is to communicate with mental health providers regarding the ongoing expected level of care for patients. Thus, on April 10, 2020, CDCR provided direction to the field on providing care to patients awaiting transfer to a higher level of care. (Attachment X). The memorandum provides the institutions direction on when a patient referred to a higher level of care should be transferred to a local MHCB or PIP bed, held in a Temporary Mental Health Unit (TMHU), or sent offsite to another institution's MHCB or PIP. When patients cannot be transferred to a local or external MHCB or PIP, TMHU placement must be considered. In some cases,

where a TMHU is not immediately available, the patient will receive Enhanced Level of Care Treatment in their cell.

TMHUs consist of a cluster of clearly-marked adjacent-celled housing where treatment can be provided to a group individuals who require similar inpatient treatment. The TMHUs will provide treatment team meetings within seventy-two hours of admission, and weekly thereafter. Suicide watch will be provided on the unit for patients with suicidality. Staff shall participate in daily interdisciplinary huddles. And out of cell time must be provided in accordance with the unit on which the TMHU is located. At a minimum, out of cell treatment must be offered daily, and confidentially, to each patient to be conducted by the psychiatrist or primary clinician. Group therapy may be provided in small groups where physical distancing is possible. Dayroom and evening yard shall also be considered, when appropriate, to enhance out of cell time. Rounding must also occur at least daily and patients will have equal access to yard, showers, and phone calls. Patients will be offered recreational therapy, individual treatment, access to entertainment devices, and in cell treatment. Patients are transferred or discharged from the TMHU when an appropriate MHCb or PIP bed becomes available based on the patient's acuity or the patient no longer meets clinical criteria for their referral.

In case a patient is unable to transfer to an MHCb, PIP, or TMHU, the patient will be retained in his housing unit and provided Enhanced Level of Care Treatment. The goal is to provide the maximum out of cell time available to the patient. When clinically indicated, the patient will be placed on suicide watch. Out of cell time should be provided daily, including daily clinical contact with a psychiatrist or primary clinician. Rounding shall also occur at least daily and, like TMHUs, patients shall have equal access to yard, showers, and phone calls, as compared with other inmates in the housing unit. Patients will also be offered recreational therapy, individual treatment, access to entertainment devices, group therapy, where feasible, and in cell treatment.

The TMHU and the Enhanced Level of Care Treatment will be monitored by Regional Mental Health Administrators.

ii. Temporary Mental Health Units for Patients in Restricted Housing Referred to MHCb's or PIPs

It is important to CDCR that patients on MAX custody status are appropriately accommodated during the COVID-19 pandemic. Therefore, during the week of April 13, 2020, CDCR developed a policy for providing care to patients on MAX custody who are referred to an MHCb or PIP. (Attachment Y). When transfer to a local or external MHCb or PIP is not possible, the policy requires the MAX custody patient be referred to a TMHU. First, the policy mandates that institutions work to resolve the reason the patient is on MAX custody in order to transfer the patient to a general population TMHU, as discussed above. If MAX custody cannot be suspended, the patient will be placed in a TMHU located within a restricted housing unit.

The policy sets forth the requirements for restricted housing in TMHUs, including mandates for minimum out of cell time and programming requirements. This treatment includes a minimum of five hours of structured groups each week, 15 hours yard each week, and daily out-of-cell individual treatment. Length of stay will be capped at 10 days. If a patient still requires inpatient care after seven days, an Interdisciplinary Treatment Team will order a transfer to an appropriate bed. Rounding must also occur at least daily and patients will have equal access to yard, showers, and phone calls. Patients will be offered recreational therapy, individual treatment, access to entertainment devices, and in cell treatment.

Document received by the CA Supreme Court.



This policy was discussed in a COVID-19 task force meeting on April 15, 2020 with the Special Master and Plaintiffs' counsel. The final policy was sent to the Special Master and Plaintiffs' counsel on April 16, 2020 and will be issued to the field no later than Monday, April 20, 2020.

iii. Access to Enhanced Outpatient Program and Enhanced Treatment for Patients Who Cannot Transfer

To assist in meeting the goal of preventing the spread of COVID-19, during the week of April 13, 2020, CDCR developed a policy restricting the transfer of patients to Enhanced Outpatient Programs (EOP) except under the following circumstances: (1) where an imminent, life-threatening emergency necessitates transfer; or (2) a serious mental health decompensation necessitates transfer; and (3) the life threatening condition or serious decompensation cannot be reasonably treated at the institution. (Attachment Z).

In cases where the patient cannot transfer, the institution is directed to provide alternate strategies for managing the patient including, when staffing allows, updated individualized treatment plans to address the patient's current clinical needs and weekly clinical contacts. The tiered operations plan should be utilized to determine programming availability based on staffing resources.

This policy was discussed in a COVID-19 task force meeting on April 15, 2020 with the Special Master and Plaintiffs' counsel. The final policy was sent to the Special Master and Plaintiffs' counsel on April 16, 2020 and will be issued to the field no later than Monday, April 20, 2020.

D. Other COVID-19 Policies Ensure Patients with Mental Illness Receive Property, Privileges, and Access to Care

CDCR has issued several other policies since the start of the COVID-19 pandemic that touch on provisions of mental health care. On April 1, 2020, CDCR issued a memorandum titled COVID-19 – Electronic Appliance Program for Restricted Housing Inmates. (Attachment AA). The policy enhances in-cell activities for inmates, including *Coleman* class members, in segregated housing. The memorandum temporarily supersedes the January 22, 2014 memorandum titled Multi-Powered Radio Loaner Program in Administrative Segregation Units and the August 4, 2017 memorandum titled Electronic Tablet Loaner Program in Administrative Segregation and Short-Term Restricted Housing. The new policy guarantees access to a crank radio upon entry into restricted housing. Thereafter, the inmate may have access to a television, if available and if the cell has power. Otherwise, they will be issued a crank radio.

Also on April 1, 2020, CDCR issued a memorandum titled COVID-19 Programming Opportunities for Inmates Participating in the Mental Health Services Delivery System in Restricted Housing. (Attachment AB). The memo implements third watch programming for the duration of the COVID-19 pandemic. In order to maximize out of cell time and prevent suicides, the policy requires additional yard time when mental health groups or individual contacts are unable to occur in mental health restricted housing units.

On April 7, 2020, CDCR issued a memorandum titled Revised COVID-19 Mandatory 14-Day Modified Program, discussed in more detail above. (Attachment F). The memorandum makes clear that during the period of modified program and restricted movement, mental health groups and individual contacts remain classified as priority ducats. The policy also makes clear that canteen, packages, and phone calls remain available during the modified program.

On April 8, 2020, CDCR issued a memorandum titled Revised Restricted Housing, Reception Centers, and Psychiatric Inpatient Program Phone Calls, as discussed above. (Attachment L). The policy outlines expanded phone privileges for inmates including those with mental illness housed in Non-Disciplinary

Segregation (NDS), restricted housing, Reception Centers, C-Status housing, and Psychiatric Inpatient Units. NDS Privilege Groups A and B inmates will receive one phone call each week. Inmates in restricted housing will be given a phone call once every two weeks. C-Status inmates will be offered a phone call once every two weeks. Reception Center inmates will receive a weekly phone call. And PIP patients will receive one phone call per week unless restricted and documented by their treatment team. The memorandum was revised and re-released on April 13, 2020, to clarify that inmates in the above housing units will be provided at least the number of phone calls specified in the memorandum. (*Id.*)

Document received by the CA Supreme Court.