

Case No. _____

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

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.

PETITION FOR WRIT OF MANDATE

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Petitioners hereby certify that they are not aware of any entity or person that rules 8.208 and 8.488 of the California Rules of Court require to be listed in this Certificate.

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PETITION FOR WRIT OF MANDATE

TO THE HONORABLE JUSTICES OF THE SUPREME COURT OF CALIFORNIA

INTRODUCTION

This petition presents an extraordinary issue of public safety: the urgent need to protect the health of all California residents and save lives by limiting the spread of COVID-19 among incarcerated people and staff in California’s correctional facilities.¹ While the California Judicial Council has made some progress to reduce jail populations, these steps simply have not been large enough or fast enough to reduce the looming threat of exponential spread of COVID-19 in the state’s jails, juvenile facilities, and surrounding communities. Leading public health officials have warned that without swift and large judicial intervention, the “epicenter of the pandemic will be jails and prisons.”² Lacking infrastructure for physical distancing and without vigilant hygiene, California’s jails and juvenile facilities are at grave risk of becoming petri dishes for rampant spread of the virus.

Those detained, including the medically vulnerable and those at

¹ The term “incarcerated,” as used in the Petition refers to people who are held in both county jails and juvenile facilities either pre-trial or post-sentencing. The term “correctional facilities,” as used in the Petition, refers to both county jails and juvenile facilities.

² Amanda Klonsky, *An Epicenter of the Pandemic Will Be Jails and Prisons, if Inaction Continues*, The New York Times (Mar. 12, 2020), <https://www.nytimes.com/2020/03/16/opinion/coronavirus-in-jails.html>.

lower but still significant risk, cannot protect themselves by leaving. And the risk does not stop with those who are incarcerated. Once the virus enters a jail, the movement of staff in and out means that walls and razor wire will not slow or stop the viral spread. Outbreaks at local jails and juvenile facilities threaten to tax the broader community's health care system beyond capacity. This impending viral explosion – imminently likely to occur in most if not all of California's 58 counties – will directly impact all California residents, including correctional staff, their families, and their respective communities. Failure to address the spread of the virus in jails and juvenile facilities will fundamentally undermine the effectiveness of government-mandated measures to enforce social distancing, which now cover millions of Californians.

By this verified petition, petitioners hereby represent:

PARTIES

1. Petitioner National Association of Criminal Defense

Lawyers (“NACDL”) is a membership organization of practicing criminal defense attorneys handling both adult and juvenile cases. NACDL's mission is to serve as a leader, alongside diverse coalitions, in identifying and reforming flaws and inequities in the criminal justice system, redressing systemic racism, and ensuring that its members and others in the criminal defense bar are fully equipped to serve all accused persons at the highest level to safeguard fundamental constitutional rights. NACDL has

approximately 800 members who reside in locations throughout California. NACDL also has members who live in other states but practice in California. NACDL members handle criminal cases, including juvenile cases, in every county in California. NACDL members have numerous clients and former clients now incarcerated or detained in county jails and juvenile detention facilities in California who: fit within the Centers for Disease Control's ("CDC") definition of people who are medically vulnerable to COVID-19; cannot afford bail, are serving sentences in county jails or juvenile detention facilities and have fewer than 120 days left to serve; and are being detained in county jails and juvenile detention facilities because of technical violations of probation conditions.

2. **Petitioner California Attorneys for Criminal Justice**

("CACJ") is a membership organization of criminal defense attorneys practicing in California. CACJ has approximately 1,300 attorney members, who handle juvenile and criminal cases in every county in the state. CACJ routinely engages in advocacy to advance justice, fairness, and constitutional protections in the juvenile and adult criminal systems in the courts and the Legislature. CACJ members currently have clients and former clients incarcerated or detained in county jails and juvenile facilities in California who: fit within the CDC's definition of people who are medically vulnerable to COVID-19; cannot afford bail, are serving sentences in county jails and have fewer than 120 days left to serve; are

being detained in county jails because of technical violations of probation conditions; and are serving terms in juvenile facilities.

3. **Petitioner Youth Justice Coalition (“YJC”)** is a membership organization focused on youth in the juvenile justice system. YJC was founded in 2003 with the mission of uniting system-involved youth, families, and currently and formerly incarcerated people to challenge race, gender, and class inequality in Los Angeles County’s and California’s juvenile and criminal court and custody systems. YJC counts among its members more than 23,000 system-involved youth, families, formerly incarcerated people, and allied organizations throughout California. YJC also has more than 4,000 members inside the state’s prison system. YJC operates a community center and high school that is a free alternative to incarceration and a re-entry resource. YJC holds bi-monthly free legal clinics and provides participatory defense/court support to hundreds of people and their families each year in juvenile court, criminal court, and other forums. YJC also advocates for legislative action to further its organizational goals. YJC members include youth and adults throughout California who: fit within the CDC’s definition of people medically vulnerable to the coronavirus; are serving terms in juvenile facilities; and/or are being detained because they had been released on probation, but had their probation revoked because of a technical violation of their conditions.

4. **Respondent Gavin Newsom** is Governor of California. He is sued in his official capacity. It is Governor Newsom’s legal duty to ensure that the laws of California are uniformly and adequately enforced. Governor Newsom also has special, emergency duties pursuant to the State of Emergency concerning COVID-19, declared on March 4, 2020, and California’s Emergency Services Act. The Act vests Governor Newsom with broad authority to take actions necessary to mitigate the threat of COVID-19, including the power to suspend laws and regulations temporarily if compliance with their terms would hinder or delay the state’s emergency response. Gov’t Code § 8571. The Act also provides the Governor “complete authority over all agencies of the state government and the right to exercise within the area designated all police power vested in the state by the Constitution and laws of the State of California” Gov’t Code § 8567. And it charges the Governor with the responsibility to coordinate and ensure implementation of the emergency plans and programs of all local agencies, counties, and cities and include actions local entities need to carry out in the State Emergency Plan. Gov’t Code § 8569.

5. **Respondent Xavier Becerra** is Attorney General of California. He is sued in his official capacity. It is Attorney General Becerra’s duty to ensure that the laws of California are uniformly and adequately enforced. Attorney General Becerra also is responsible for exercising “direct supervision” over all sheriffs in the state “in all matters

pertaining to the duties of their respective offices” and may require sheriffs “to make reports concerning the . . . punishment of crime in their respective jurisdictions.” Cal. Const. art. V, § 13. Under California law, sheriffs’ law enforcement duties include the duty “to keep the county jail and the prisoners in it.” Gov’t Code § 26605. As the state’s chief law enforcement officer, Attorney General Becerra is responsible for ensuring that the sheriffs keep the county jails in a manner that complies with California law and constitutional requirements.

JURISDICTION

6. Article 6, section 10 of the California Constitution vests the Supreme Court with original jurisdiction in proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition. Cal. Const. art. VI, § 10; *see also* Cal. Civ. Proc. Code § 1085; Cal. R. Ct. 8.486. This Court has recognized that it is appropriate to exercise original jurisdiction “where the matters to be decided are of sufficiently great importance and require immediate attention.” *California Redevelopment Ass’n v. Matosantos*, 53 Cal. 4th 231, 253 (2011). This is such a case.

7. COVID-19 imperils incarcerated adults and youth across the State of California. The disease is spreading rapidly and has already entered the state’s correctional institutions. People who are incarcerated are disproportionately likely to suffer from chronic health conditions that increase the risk of serious complications or death from COVID-19. The

disease has already killed incarcerated people and staff in the state's institutions, and many more will die without preventative measures.

8. The state's response has been inadequate to meet this emergency. Officials have taken sweeping measures to reduce infections within the general public. Stay-at-home orders have fundamentally altered life for millions. But despite an emergency order of the Judicial Council intended to reduce jail populations, conditions inside correctional facilities remain ripe for viral outbreak. Incarcerated people continue to reside in close, communal settings where social distancing is impossible. Soap, disinfectant, and protective gear are in short supply. Correctional facilities lack the resources necessary to screen for infection, isolate the sick, or provide necessary medical treatment. Conditions are ripe for massive COVID-19 outbreaks, as has happened in states across the nation.

9. Continued confinement under these conditions violates the constitutional rights of thousands of incarcerated people across the state. The Eighth and Fourteenth Amendment of the United States Constitutions, and the California Constitution require reasonable protections against disease, which the state is not providing. But the harm is not confined to incarcerated people. Those who work in county jails and juvenile facilities, their families, and outlying communities are also at risk. Once COVID-19 becomes established in the state's correctional institutions, the regular movement of people through those facilities will spread the disease far

beyond their outer perimeters. Thus, the state’s failure to protect incarcerated people undermines its own COVID-19 containment measures and threatens the health of everyone in the state.

10. Under these circumstances, the only reasonable measure to protect incarcerated people and the general population is to reduce the populations of county jails and juvenile facilities. Without reduction in the numbers of detained individuals, correctional facilities will be unable to implement basic protective measures, such as social distancing. Despite this reality, and the urgency of the situation, correctional officers across the state continue to confine incarcerated people in conditions that make disease mitigation impossible. Even in counties where officials have begun to reduce jail populations, too many people remain incarcerated to operate the facilities safely.

11. This Court has exercised its original jurisdictions in other cases that raise urgent matters of public interest. In *San Francisco Unified School District v. Johnson*, 3 Cal. 3d 937 (1971), the Court reviewed a petition that raised issues concerning the constitutionality of compulsory busing, because the matter affected pupil assignment across the state and promptness was necessary for compliance with Supreme Court directives on school desegregation. *Id.* at 944–45. Similarly, in *Strauss v. Horton*, 46 Cal. 4th 364 (2009), the Court exercised original jurisdiction to review the constitutionality of a voter initiative that sought to define marriage as:

“Only marriage between a man and a woman is valid or recognized in California.” *Id.* at 385; *see also California Redevelopment Assn. v. Matosantos*, 53 Cal. 4th 231 (2011) (challenge to legislation providing for dissolution of redevelopment agencies); *Ramirez v Brown*, 9 Cal. 3d 199, 203 (1973) (petition by ex-felons to compel election officials to register them as voters); *Jolicoeur v Mihaly*, 5 Cal. 3rd 565, 570 n. 1 (1971) (mandate issued to election officials after refusal to register young persons who were not living with parents).

12. As in those cases, this petition raises questions about the constitutionality of state practices that impact people state-wide. And it carries the additional urgency of a looming crisis of public health. Piecemeal litigation in the lower courts is insufficient to address this threat. Even if incarcerated or detained people had the practical ability to file individual petitions seeking release from partially-closed courts, litigation would require time and resources that are simply not available. By the time the lower courts could issue relief necessary to remedy ongoing constitutional violations, and those orders could be reviewed by the appellate courts, hundreds or thousands of incarcerated people and staff will have contracted the disease.

13. This Court has already recognized the need for extraordinary action to protect against COVID-19. Orders by this Court and the Judicial Council have fundamentally altered courtroom practice to prevent courts

from becoming hot spots of infection. *See* March 16, 2020 Supreme Court Order Admin. 2020-03-13 (suspending in-person oral arguments); March 18, 2020 Supreme Court Amendment to Rule 2 (requiring electronic filings); March 23, 2020 Judicial Council Order (suspending all jury trials for 60 days and allowing courts to adopt new rules to mitigate infection risk). Similar relief is urgently needed in the state’s correctional institutions. Given the pace at which the pandemic is unfolding, and the increased exposure facing incarcerated people and staff with every passing day, meaningful relief requires direction from this Court. Petitioners urge this Court to invoke its original jurisdiction and to intervene immediately to protect not only the health of incarcerated people, but the health of all Californians.

FACTS³

A. COVID-19 is a Public Health Crisis.

13. We are in the midst of the most significant global pandemic in generations. As of April 2020, there were more than 2.3 million reported

³ All the exhibits in the Appendix filed in support of this Petition are true and correct copies of the provided documents that have been obtained by Petitioners and their counsel. The exhibits are incorporated herein by reference as if fully set forth in this Petition.

COVID-19 cases throughout the world.⁴ Appx. 587 (Goldenson ¶ 6).⁵ The United States accounts for more such cases than the next four countries on the list combined, with more than 751,000 confirmed and suspected cases of infection and 35,884 deaths. *Id.* *The Wall Street Journal* reported that by April 7, 2020, the United States had more than double the number of confirmed cases of COVID-19 as any other country.⁶ Without effective public health intervention, more than 200 million people in the United States could be infected with COVID19, with as many as 1.5 million deaths in the most severe projections. Appx. 603 (Golob Decl. ¶ 11).

14. California has not been spared the pandemic. By April 2020, California accounted for 33,897 of confirmed COVID-19 cases, and 1,227 deaths. Appx. 587 (Goldenson Decl. ¶ 6).

15. On March 4, 2020, Governor Gavin Newsom declared a state of emergency concerning the COVID-19 outbreak. Appx. 411-15

⁴ Unless otherwise noted, allegations followed by a citation to a declaration or other document are made on information and belief on the part of the Petitioners.

⁵ Petitioners cite to the Appendix page where each document can be found. Where a cited document is a declaration, Petitioners include a short form reference to the declarant’s last name and the paragraph in which the supporting statement may be found. “Appx. 587 (Goldenson ¶ 6)” thus refers to the Declaration of Dr. Joe Goldenson, paragraph 6, which can be viewed at page 587 of the accompanying Appendix.

⁶ Jennifer Calfas, Chong Koh Ping, and Drew Hinshaw, Global Coronavirus Death Toll Passes 81,000 as Some Lockdowns Tighten, *The Wall Street Journal* (Apr. 7, 2020), <https://cutt.ly/ztJLM0q>.

(Proclamation of SOE). On March 13, 2020, the President declared a national state of emergency.⁷ In a subsequent letter to President Trump, Governor Newsom projected “that roughly 56 percent of our population—25.5 million people—will be infected with the virus over an eight week period.”⁸

16. COVID-19 is known to spread from person to person through respiratory droplets, close personal contact, and from contact with contaminated surfaces and objects. Appx. 587 (Goldenson ¶ 7). There is no vaccine to inoculate against COVID-19 and no known medication to treat it. Appx. 603 (Golob ¶ 10).

17. Once contracted, COVID-19 can cause severe damage to lung tissue, including a permanent loss of respiratory capacity, and it can damage tissues in other vital organs, such as the heart and kidneys. Appx. 602 (Golob ¶ 9). According to recent estimates, the fatality rate for people with COVID-19 is about ten times higher than a severe seasonal influenza, even in advanced countries with highly effective health care systems. Appx. 601 (Golob ¶ 4). The White House has projected that, *even taking into*

⁷ Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak, (March 13, 2020), <https://cutt.ly/EtJLZQZ>.

⁸ Governor's 3-18-20 letter to President to deploy USNS Mercy Hospital Ship to LA, <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.18.20-Letter-USNS-Mercy-Hospital-Ship.pdf>

account existing interventions by federal and state authorities, the total number of COVID-19 deaths in the United States may be as high as 240,000 people.²

18. Certain medical conditions increase the risk of serious complications from COVID-19, including asthma and other lung diseases, heart disease, chronic liver or kidney disease, diabetes, compromised immune systems (such as from cancer, HIV, or autoimmune disease), blood disorders (including sickle cell disease), metabolic disorders, stroke, current or recent pregnancy, and developmental delay. Appx. 592 (Goldenson ¶ 22); Appx. 603 (Golob ¶ 14). People with these underlying conditions are at an increased risk of developing serious symptoms from COVID-19, regardless of age. Appx. 601 (Golob ¶ 3); Appx. 525 (Barnert ¶ 7).

19. For people in the highest risk populations, the fatality rate of COVID-19 is about 15 percent—or one in seven infected individuals. Appx. 601 Golob ¶ 4. Patients in high-risk categories who do not die from COVID-19 can nevertheless expect a prolonged recovery, including the need for extensive rehabilitation for profound reconditioning, loss of digits, neurologic damage, and the loss of respiratory capacity. *Id.* 601-02 (*id.* ¶¶ 4-5, 8).

² Rick Noack, et al., *White House Task Force Projects 100,000 to 240,000 Deaths in U.S., Even With Mitigation Efforts*, Wash. Post. (April 1, 2020, 12:02 a.m.), <https://cutt.ly/5tYT7uo>

20. Children and adolescents are not immune to COVID-19.

Young people may have underlying health conditions which make them a higher risk for contracting COVID-19. Appx. 525 (Barnert ¶ 7). Indeed, Los Angeles County has already experienced the death of at least one juvenile to the disease. *Id.*

B. California’s Correctional Facilities House Higher Than Average Concentrations of People Especially Vulnerable to COVID-19

21. The World Health Organization (“WHO”) has recognized that incarcerated people “are likely to be more vulnerable to the [COVID-19] outbreak than the general population because of the confined conditions in which they live”¹⁰ The CDC has explained that correctional facilities “present unique challenges for control of COVID 19 transmission among incarcerated persons, detention center staff, and visitors.” Appx. 416-41 (CDC Guidance). Conditions in correctional facilities pose very significant risks for transmitting COVID-19 not only to the people incarcerated there, but also to employees and volunteers—and from them to the community as a whole. Appx. 595 (Goldenson ¶¶ 26–27); Appx. 676 (Muhammad ¶ 13); Appx 533 (Cullen ¶ 8).

¹⁰ *Preparedness, prevention and control of COVID-19 in prisons and other places of detention* (Mar. 15, 2020), http://www.euro.who.int/_data/assets/pdf_file/0019/434026/Preparedness-prevention-and-control-of-COVID-19-in-prisons.pdf.

22. Public health officials have warned that without swift and large judicial intervention, the “epicenter of the pandemic will be jails and prisons.”¹¹

23. At least some correctional officers appear to agree—and to believe the solution is to reduce the populations of correctional facilities. For example, the Association of Orange County Deputy Sheriffs wrote a letter to the county sheriff urging him to close the dormitories and barracks in the jails and to reduce the jail population to protect against the risk of COVID transmission.¹² Scott Kernan, who previously served as the secretary of the California Department of Corrections and Rehabilitation (“CDCR”), called California prisons and jails “a tinderbox of potential infection as you go forward”¹³

24. Data reported by the California Board of State and Community Corrections (BSCC) indicates that as of April 5, 2020, a daily

¹¹ Amanda Klonsky, *An Epicenter of the Pandemic Will Be Jails and Prisons, if Inaction Continues*, The New York Times (Mar. 12, 2020), <https://www.nytimes.com/2020/03/16/opinion/coronavirus-in-jails.html>.

¹² Letter from Tom Dominguez, President of the Association of Orange County Deputy Sheriffs to Don Barnes, Orange County Sheriff (Mar. 25, 2020), <https://voiceofoc.org/wp-content/uploads/2020/03/OC-deputy-sheriffs-union-letter-re-COVID-inmate-releases-March-25-2020.pdf>.

¹³ Letter from Tom Dominguez, President of the Association of Orange County Deputy Sheriffs to Don Barnes, Orange County Sheriff (Mar. 25, 2020), <https://voiceofoc.org/wp-content/uploads/2020/03/OC-deputy-sheriffs-union-letter-re-COVID-inmate-releases-March-25-2020.pdf>.

average of 57,979 people were confined in county jail.¹⁴ As of the fourth quarter of 2019, about 49,313 people—67%—were held pretrial and thus presumed innocent.¹⁵ In that same time period, the average monthly population for juvenile facilities was 3,621 youth.¹⁶

25. The county jails include many people at risk of severe illness from COVID-19. People in jails over the age of 55 and those with certain medical conditions face an especially high risk of serious illness from COVID-19, Appx. 592-93 (Goldenson ¶ 22), and those over the age of 70 face the highest risk of death, Appx. 601 (Golob ¶ 3). People in correctional institutions are disproportionately likely to have chronic health conditions, including diabetes, high blood pressure, and HIV, that put them at risk of severe health consequences upon contracting the virus. Appx. 592-93 (Goldenson ¶ 22). Youth in California’s juvenile facilities are also more likely to have underlying medical conditions that put them at higher risk for

¹⁴ California Board of State and Community Corrections, Supplemental Jail Profile Survey <https://app.smartsheet.com/b/publish?EQBCT=82b29a92ea9a4a0ea7aa480f1287e137>.

¹⁵ California Board of State and Community Corrections, Jail Profile Survey (updated as of Mar. 6, 2020), <http://www.bscc.ca.gov/wp-content/uploads/Jail-Pop-Trends-Through-Q4-2019.pdf>.

¹⁶ Board of State and Community Corrections, *Juvenile Detention Profile Trends 2-4* (March 11, 2020), available at <https://www.bscc.ca.gov/wp-content/uploads/JDPS-Trends-1Q2002-3Q2019.pdf>.

infection and severe consequences upon contracting COVID-19. Appx. 525 (Barnert ¶ 7); Appx. 535 (Cullen ¶¶ 11–12).

C. Key Measures to Prevent the Spread of COVID-19 Are Impossible to Achieve in Correctional Facilities, Making Severe Outbreaks Likely in Those Facilities and Nearby Communities.

26. In the absence of any vaccine or treatment, the only known effective measure to reduce the risk of serious illness and death that COVID-19 presents is to prevent vulnerable people from being infected in the first place. Appx. 603 (Golob ¶ 10). Social distancing, quarantining, or remaining physically separated from known or potentially infected individuals, and vigilant hygiene, including washing hands with soap and water, are essential measures for protecting vulnerable people. *Id.*; Appx. 588 (Goldenson ¶ 11).

27. People detained in correctional facilities cannot take these necessary mitigation measures and are, therefore, at heightened risk of COVID-19 infection. Appx. 589-92, 594-95 (Goldenson ¶¶ 12–19, 25). County jails and juvenile facilities are “congregate settings,” places where people live or sleep in close proximity. Appx. 589 (*Id.* ¶ 13); Appx. 674 (Muhammad ¶ 7). Such enclosed group environments make it impossible for incarcerated people to practice social distancing. Appx. 589 (Goldenson ¶ 13); Appx. 535-36 (Cullen ¶ 13). Conditions in correctional facilities create heightened public health risks for the spread of COVID-19 far

greater than in non-custodial institutions because of crowding, security-related restrictions, scant medical resources, and the proportion of vulnerable people detained. Appx. 594-95 (Goldenson ¶ 25); Appx. 603 (Golob ¶ 13); Appx. 674-75 (Muhammad ¶¶ 7–9).

28. Recent experience in other states' correctional facilities bears out the devastating impact of COVID-19 infection in correctional facilities. The Legal Aid Society in New York reported that the COVID-19 infection rate at Rikers Island Jail is more than *seven times* higher than the rate across New York City and *85 times* greater than the country at large. Appx. 9, 30 (NYLAS Petition).

29. Until recently, the Cook County Jail in Chicago was believed to be the largest-known source of U.S. COVID virus infections. Appx. 593 (Goldenson ¶ 23). As of April 13, 2020, more than 500 people at that facility had tested positive for COVID-19, and the numbers continue to climb. *Id.* By April 22, 2020, the Cook County Sheriff's Office reported that six of those people had died while receiving treatment at local hospitals.¹⁷

30. On April 20, 2020, it was reported that approximately 1,828 prisoners and 109 staff at the Marion Correctional Institution in Ohio had

¹⁷ COVID Cases at CCDOC, <https://www.cookcountysheriff.org/covid-19-cases-at-ccdoc/> (last visited Apr. 24, 2020).

tested positive for COVID-19. Appx. 593 (Goldenson ¶ 23); Appx. 390-410 (N.D. Ohio Order (*Wilson*)). This large number of cases was found as a result of mass testing of everyone, implying numbers in other prisons are far higher. *Id.*

31. Outbreaks in juvenile facilities have also been reported across the country. On April 18, 2020, the Bon Air Juvenile Correctional Center, located outside Richmond, Virginia, reported that 25 young people held there had tested positive for COVID-19. Appx. 535 (Cullen ¶ 12).¹⁸ The Washington Post reported that, as of April 16, 2020, more than 10 percent of young people held in Louisiana’s juvenile facilities had tested positive for COVID-19.¹⁹

32. As the rate of infection increases in California, the same phenomenon seen in other states’ correctional facilities is likely to repeat itself in California. COVID-19 has already been reported among incarcerated people, correctional staff, or both in correctional facilities in more than ten counties in California: Alameda, Contra Costa, Kern, Kings,

¹⁸ Associated Press, 25 Kids Test Positive for Coronavirus at Virginia Juvenile Detention Center, *Huffington Post* (Apr. 17, 2020) https://www.huffpost.com/entry/25-kids-infected-with-coronavirus-at-virginia-juvenile-detention-center_n_5e9b2803c5b635d25d6d59e6

¹⁹ David Montgomery and Richard Webster, Coronavirus Spreads Among Kids in Detention in Louisiana, *The Washington Post* (Apr. 16, 2020) https://www.washingtonpost.com/national/coronavirus-spreads-among-kids-in-detention-in-louisiana/2020/04/16/579871d4-8003-11ea-a3ee-13e1ae0a3571_story.html

Los Angeles, Orange, Riverside, San Diego, San Bernardino, San Francisco, and Santa Clara. Appx. 593 (Goldenson ¶ 29); Appx 524-25 (Barnert ¶ 6).

33. In Riverside, two sheriff's deputies reportedly died of coronavirus within twenty-four hours. Appx. 596-97 (Goldenson ¶ 29). The Los Angeles Times has reported that days prior to falling ill, one deputy had escorted an inmate who had also tested positive for COVID-19 to an off-site medical center. *Id.* An April 8th report confirmed that a nursing staff member at a Los Angeles County jail, who died the week prior, had also tested positive for COVID-19. *Id.* Several other department employees have been or are currently hospitalized due to the virus. *Id.* The Riverside University Health System reports that as of April 21, 2020, 127 people held in Riverside County jails have tested positive for COVID-19.²⁰

34. In Sylmar Juvenile Hall, two facility staff members have tested positive for COVID-19. Appx. 676 (Muhammad ¶ 16). As a result, forty-three youth are being quarantined there. *Id.*

²⁰ Riverside University Health System, Covid-19 Cases by City of Residence: April 21 (Apr. 21. 2020), <https://www.rivcoph.org/Portals/0/Documents/CoronaVirus/April/Covid%2019%20Cases%20by%20City%20of%20Residence%20April21.pdf?ver=2020-04-21-145829-000×tamp=1587508046094>

35. Transmission in correctional facilities will endanger not only the incarcerated, but also the broader community. As infected correctional staff enter and leave the facility, they carry the virus with them. Appx. 595 (Goldenson ¶ 27).²¹ Like the incarcerated people in the facilities where they work, correctional officers face an increased risk of COVID-19 exposure because they are less able to engage in required social distancing. Appx. 595 (*id.* ¶¶ 26–27); Appx 676 (Muhammad ¶ 13). Beyond the risk they pose to those held at the facilities where they work, correctional staff expose their families and broader communities to substantial risk every time they leave a facility at the end of their daily shifts. Appx. 595 (Goldenson ¶ 26); Appx 676 (Muhammad ¶¶ 13–14).

36. The possibility of a COVID19 outbreak among incarcerated people, the staff, and the communities around them is exacerbated because county jails cannot implement the CDC’s recommended preventative measures in at least four respects.

1. Efforts to Date to Reduce Populations in Correctional Facilities Have Had Limited Results.

37. The California Judicial Council, recognizing the public health threat presented by COVID-19 and acknowledging the need to

²¹ Josiah Rich, et al., *We Must Release Prisoners to Lessen the Spread of Coronavirus*, The Washington Post (Mar. 17, 2020), www.washingtonpost.com/opinions/2020/03/17/we-must-release-prisoners-lessen-spread-coronavirus

“restrict person-to-person contact,” issued an emergency order to reduce jail populations on April 6th.²² The order following an advisory issued by Chief Justice and Judicial Council Chair Cantil-Sakauye on March 20th.²³

38. The April 6 order does not provide for relief for thousands of medically vulnerable people who are serving sentences in county jails, whose bails will not be reduced to \$0 by the emergency order, or who are in jail on technical probation or parole violations but whose underlying substantive offense has a bail amount above \$0 under the emergency order. And although the Chief Justice’s March 20, 2020 Advisory *encouraged* courts to take into account “defendant’s existing health conditions” in setting, inter alia, the length of confinement, numerous people with serious health issues that put them at high risk from COVID–19 remain in jails throughout the state. Appx. 681 (Munkelt ¶ 7).

39. The April 6 order set an Emergency Bail Schedule, but that too has been implemented unevenly across the state. For example, the Stanislaus County District Attorney has announced her intent to challenge

²² Judicial Council of Cal., Judicial Branch Administration: Emergency Rules in Response to the COVID-19 Pandemic (April 6, 2020), <https://jcc.legistar.com/View.ashx?M=F&ID=8233133&GUID=4CE2DDD F-426E-446C-8879-39B03DE418B3>;

²³ Cal. Chief Justice, Advisory on Emergency Relief Measures (Mar. 20, 2020), <https://newsroom.courts.ca.gov/news/california-chief-justice-issues-second-advisory-on-emergency-relief-measures>.

the superior court’s recommendation of \$0 bail in many cases.²⁴ The San Bernardino County District Attorney also revealed hostility to the schedule, stating on April 16, 2020: “People who are in custody, they made a choice at the same time to commit crimes against other people and there’s a price to be paid for that also. And perhaps that price ought to be that the virus finds you where you were when it came into our community, which was in custody, and that’s why I have a hard time saying we need to let people out of custody when the virus comes in...”²⁵ As a result of this uneven rollout, many people eligible for release on \$0 bail remain in county jails. Appx. 726 (Verner-Crist ¶ 3).

40. Even counties where stakeholders are cooperating, such as Los Angeles, face unacceptable implementation delays. Appx. 714 (Stewart-Oaten ¶ 7).

41. Some counties have also taken steps to lower jail populations.

²⁴ Apr. 13, 2020 Stanislaus County District Attorney’s Office Statement, *available at* <https://www.modbee.com/news/local/crime/article241979576.html>, at 00:25-00:36; *see also* [NEEDS CITATION] <http://www.stanislaus-da.org/pdf/news/2020/press-release-20200408-looting.pdf>; Decl. Verner-Crist, ¶3.

²⁵ Jail inmates released for COVID-19, San Bernardino Cty D.A. (Apr. 16, 2020), <https://www.facebook.com/notes/san-bernardino-county-district-attorney/jail-inmates-released-due-to-covid-19/10158352896679540/>; *id.* https://www.youtube.com/watch?time_continue=237&v=qe2rJ3fhL1w&feature=emb_logo; Appx. 248-301 (Sacramento Public Defender’s writ to compel application of the emergency bail schedule).

For example, Los Angeles County has reduced its jail population from about 17,076 to 12,269, which is about a 28% reduction. Goldenson ¶ 34. But even so, the jail population is only 135 people below the 12,404 capacity as rated by the BSCC. *Id.* BSCC ratings were not designed with social distancing requirements in mind. *Id.* Facilities that are operating above, at, or not far below their BSCC rated capacities will not allow for inmates, correctional and other staff to maintain appropriate social distancing necessary to preventing the transmission of COVID-19. *Id.*

42. Other counties have failed to address, or even recognize, the risk of COVID-19 to incarcerated people in jails and to the surrounding communities. For example, the Riverside County jail population has only declined by about 428 people (11%) in the last month, despite the evidence of a growing COVID-19 outbreak. Appx. 599 (Goldenson ¶ 35). The Riverside County Sheriff told the press: “Unlike other jurisdictions, I have no intention of preemptively releasing inmates out of fear something may or may not happen. I feel very strongly that the inmates we have remaining in custody pose a much greater risk to public safety than the risk this virus poses to them while they are in custody.”²⁶ He later explained, “If you

²⁶ April 2, 2020 Riverside County Sheriff Press Conference at 18:20–18:40, available at <https://www.facebook.com/RiversideCountySheriff/videos/200294147931381/>.

don't want to get this virus while you're in custody, don't break the law. That's really all I can tell you." *Id.*; *see also* Appx. 727 (Verner-Crist ¶ 5).

43. At a hearing on April 13, 2020, U.S. District Judge Virginia A. Phillips inquired whether the Riverside County Sheriff had identified medically vulnerable inmates who, among the current population of 4,000 inmates could be released. He responded:

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

THE COURT: Every single one of them?

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

Appx. 227 (*Gray* transcript). In a later Minute Order, Judge Phillips found that the County "has not conducted an analysis of its own records to identify particularly vulnerable prisoners" and "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." Appx. 241-42.

44. Nor have counties meaningfully depopulated youth facilities. BSCC estimates that since April 5, 2020, there have been only 126 youth releases related to COVID-19 statewide. Appx. 677-78 (Muhammad ¶ 21). Twenty-four counties have not released *any* youth in response to the pandemic. *Id.* The current response to the pandemic in the state's juvenile

facilities is insufficient to protect the health and well-being of detained youth. *Id.*

45. Despite the Judicial Council's April 6 emergency order and population reductions in some counties, California's jails remain dangerously overpopulated for purposes of COVID-19 prevention.

2. Correctional Facilities' Designs Do Not Allow Social Distancing at Current Population Levels.

46. Social distancing is the most important means to prevent the spread of COVID-19. Appx 587-88 (Goldenson Decl. ¶¶ 7, 11). Social distancing is so imperative that Governor Newsom has ordered people in all 58 counties not to leave their homes. Appx. 411-15. Reporting in the New York Times shows that as of April 7, at least 42 states, 3 counties, 9 cities, and the District of Columbia were under similar stay-at-home orders.²⁷

47. CDC guidance on correctional and detention facilities specifically recommends implementing social distancing (ideally 6 feet between individuals, regardless of the presence of symptoms) to increase the physical space between incarcerated persons. Appx. 416-41; Appx. 589 (Goldenson ¶ 13). As currently constructed and operated, correctional facilities in California do not allow for this. Appx. 589-92, 594 (*id.* ¶¶ 13,

²⁷ By Sarah Mervosh et al., *See Which States and Cities Have Told Residents to Stay at Home*, The New York Times (updated Apr. 7, 2020), <https://www.nytimes.com/interactive/2020/us/coronavirus-stay-at-home-order.html>

14, 17, 19, 20, 25); Appx. 634 (Hodges ¶ 4); Appx 664, 666 (McGill ¶¶ 20, 32).

48. People in jails typically sleep in close quarters. Appx. 589-90 (Goldenson ¶ 14). Many live in dormitory style housing where there are multiple rows of bunks in a large open room in which they share telephones, toilets, showers, and sinks, and social distancing is not possible. Appx. 590 (*id.* ¶ 15). Other people in jail share small cells and use a common toilet and sink in the cell. *Id.* In most cases, those cells surround a large common area or dayroom with telephones, tables and showers that are shared by all of the people in the housing unit where it is also not possible to maintain six feet of separation. *Id.*

49. Statements from people in numerous jails throughout the state demonstrate that, even after the judicial council order, detainees continue regularly to be housed in large barrack dorms with rows of closely spaced bunk beds in which social distancing is impossible. *See* Appx. 681 (Munkelt ¶ 6); Appx. 699 (Sabelli ¶ 7.)²⁸ Others continue to be regularly

²⁸ *See also* Appx. 569, 571, 575, 577 (Fischer ¶¶ 25, 32, 42, 47); Appx. 580-81 (Freedman ¶ 8); Appx. 723 (Venegas ¶ 4; Appx. 546 (Deeds ¶ 7, 15); Appx. 625 (Haviland ¶ 3); Appx. 638 (Holguin ¶ 5); Appx. 652-53 (Lewis ¶ 6); Appx. 691 (Ramnaney ¶ 5); Appx. 647 (Lebeouf ¶ 10); Appx. 702 (Hardgrove on behalf of Jose Saravia ¶¶ 5-6); Appx. 687 (Nelson ¶ 2); Appx. 712 (Sperdelozzi for Jovanny Cipres ¶¶ 6-9); Appx. 750 (Zawadzki for Ricky Pacheco ¶ 3); Appx. 757 (Zepeda ¶¶ 14-15); Appx. 719

housed in small cells with at least one other person in which they share a toilet and a sink,²⁹ and when they get out of their cells they are often crowded into dayrooms or other common areas that are too small to allow for appropriate social distancing.³⁰

50. People in jails are often forced to stand close together or even be chained together in lines for meals, pill call, and telephones in their housing units,³¹ when they are being moved to other parts of the jails,³² or in lines and vehicles when they are being transported to off-site medical care and court.³³ Appx. 592 (Goldenson ¶ 20). Additionally, detention

(Sutherland on behalf of Nolberto Corral ¶ 6-7); Appx. 730 (Voss at 2); Appx. 696 (Saatjian on behalf of Elenes ¶¶ 7-8).

²⁹ See, e.g., Appx. 657 (Maldonado ¶ 8); Appx. 529 (Covarrubias-Klein ¶ 5); Appx. 635 (Hodges ¶ 9); Appx. 736 (Wells ¶¶ 8, 11); Appx. 641 (Joyce ¶ 3); Appx. 696 (Saatjian obo Isael Elenes ¶ 5); Appx. 712 (Speredelozzi obo Cipres ¶¶ 7-9); Appx. 750 (Zawadski obo Pacheco ¶ 3); Appx. 736 (Wells ¶¶ 8, 11); Appx. 641 (Joyce ¶ 3).

³⁰ See, e.g., Appx. 634 (Hodges ¶ 4); Appx. 670-71 (Miller ¶ 8-9); Appx. 687 (Nelson ¶ 4); Appx. 507 (Aluqdah ¶ 6-7); Appx. 542 (Cullors ¶ 11); Appx. 723 (Venegas ¶ 4); Appx. 721 (Vargas obo Sims ¶ 8); Appx. 716 (Stubbs obo Nunes ¶¶ 5-6).

³¹ See, e.g., Appx. 734 (Hodges ¶¶ 5, 7); Appx. 648 (Lebeouf ¶ 14); (Appx. 546 (Deeds ¶ 8); Appx. 736 (Pratt ¶ 10); Appx. 717 (Stubbs ¶ 8); Appx. 759 (Zepeda ¶ 25).

³² See, e.g., Appx. 734 (Hodges ¶ 6); Appx. 520 (Avila ¶ 17); Appx. 542 (Cullors ¶ 14); Appx. 627 (Havilland ¶ 12).

³³ Appx. 737 (Wells ¶¶ 12-13); Appx. 626 (Havilland ¶ 8); Appx. 542 (Cullors ¶ 15); Appx. 641 (Joyce ¶ 4); Appx. 643 (Kimbirk ¶ 4); Appx. 521 (Avila ¶ 20); Appx. 693 (Ross ¶¶ 9-10); Appx. 729 (Voss ¶¶ 1-2).

facilities often rely on detainees to perform work that supports the operation of the facility, such as food service, laundry, and cleaning.³⁴ To perform these work assignments, they typically travel from their housing units to other parts of the facility. *Id.*

51. Young people confined in California’s juvenile facilities also live in close quarters with little opportunity for proper hygiene or social distancing. Appx. 665 (McGill ¶ 26). As in county jails, social distancing is impossible in many juvenile facilities, where youth are often in close contact in dormitories and dining halls. Appx. 666 (*id.* ¶ 32); Appx. 503-04 (Susan A. ¶¶ 9, 11).

52. Youth reportedly continue to interact closely with one another. Appx. 681 (Munkelt ¶ 5); Appx. 501 (Jessica A. ¶ 9); Appx. 613 (Genevieve H. ¶ 5). Mothers of children detained at Campus Kilpatrick, Central Juvenile Hall, and San Bernardino Juvenile Detention Center report that their children are unable to follow social distancing rules and continue to eat, sleep, and shower close to other youth at the facilities. Appx. 503-04 (Susan A. ¶¶ 10, 11); Appx. 501 (Jessica A. ¶ 9); Appx. 613 (Genevieve H. ¶ 5). Mothers report that youth are still congregating in day rooms, watching television, and playing contact sports like basketball. *Id.* One

³⁴ Appx. 706 (Scott ¶ 18); Appx. 552-53 (Dunham ¶ 15); Appx. 724-25 (Venegas ¶¶ 6, 12); Appx. 747 (Young ¶ 9); Appx 729 (Voss ¶ 2); Appx. 738 (Wells ¶ 21).

mother reported that children are being penalized for trying to social distance rather than participate in group activities. *Id.*

53. In these circumstances, correctional facilities will not be able to prevent COVID-19 transmission once the virus is introduced.

3. Correctional facilities do not have sufficient supplies for the enhanced hygiene and disinfecting necessary to prevent the spread of COVID-19.

54. CDC Guidance also describes procedures necessary for individual hygiene, including frequent cleaning and disinfection of surfaces. Appx. 588 (Goldenson ¶ 11). It is impossible for correctional facilities to implement these procedures.

55. People in correctional facilities share toilets, sinks, and showers, without disinfection between each use. Appx. 590 (Goldenson ¶ 15); Appx. 674-75 (Muhammad ¶ 8); Appx. 665 (McGill ¶ 26).³⁵ Shared bathroom and shower facilities pose a particular problem given the emerging evidence about the possibility of fecal-oral transmission. Appx. 534 (Cullen ¶ 9).

56. Food preparation and service are communal, with little opportunity for surface disinfection. Appx. 590 (Goldenson ¶ 15). County

³⁵ See also Appx. 547-48 (Deeds ¶¶ 9, 13); Appx. 557 (Ellawendy ¶ 9); Appx. 551-52 (Dunham ¶ 10); Appx. 507 (Aluqdah ¶ 7); Appx. 647 (Lebeouf ¶¶ 10, 12); Appx. 684 (Neal ¶ 7); Appx. 639 (Holguin ¶ 9); Appx. 721 (Vargas ¶ 7); Appx. 510-511 (Armendariz ¶¶ 24-26).

jails do not provide enough supplies for individuals to wash their hands or to disinfect the space around them, falling far short of the frequent cleaning and disinfecting procedures recommended by the CDC. *Id.* (*id.* ¶¶ 15–16).³⁶ Failure to provide these supplies while requiring individuals in custody to use shared bathroom facilities and to eat in common spaces creates an intolerably high risk of infectious spread.

57. Like county jails, juvenile facilities lack the ability to provide for proper hygiene to prevent transmission of COVID-19. A youth inside Wayside-Pitchess Detention Center, North Facility, a dorm with 96 people, reports that staff have not provided any cleaning supplies with which to disinfect tables, bathrooms, or frequently touched items. Appx. (McGill ¶ 33). Although staff have started wearing masks at that facility, youth have still not been provided with proper, CDC-recommended personal protective equipment. *Id.*; Appx. 503 (Susan A. ¶ 10); Appx. 417-41 (CDC Guidance). Mothers of children detained at Campus Kilpatrick and Central Juvenile Hall report that their children are not receiving proper hygiene or enough soap, hand sanitizer, masks, or gloves. Appx. 504 (Susan A. ¶ 15); Appx. 666 (McGill ¶ 32); Appx. 613 (Genevieve H. ¶ 6). At San Bernardino

³⁶ See also Appx. 721 (Vargas ¶ 7); Appx. 529 (Covarrubias-Klein ¶ 7); Appx. 507 (Aluqdah ¶ 7); Appx. 510-511 (Armendariz ¶¶ 24–26); Appx. 551 (Dunham ¶ 9); Appx. 641 (Joyce ¶¶ 6–8); Appx. 519-20 (Avila ¶¶ 11, 15–16); Appx. 648 (Lebeouf ¶¶ 16–18); (Appx. 757 (Zepeda ¶ 16); Appx. 472 (Hardy ¶ 12).

Juvenile Detention Center staff and youth reportedly were provided masks, but not required to wear them—and many do not. *Id.*

4. Proper isolation for symptomatic people is not possible in local correctional facilities.

58. CDC guidance recommends “medical isolation of confirmed or suspected COVID 19 cases.” Appx. 418 (CDC Guidance). Yet, once a person in a county jail has symptoms, proper isolation is not possible due to population size, space constraints, and lack of sufficient respiratory isolation rooms. Appx. 591 (Goldenson ¶ 18). Because of forced contact between many individuals in crowded facilities, people who are exposed will need to be quarantined. *Id.* There simply is insufficient space to house people consistent with the CDC-recommended quarantine protocol, which requires separating people to prevent further spread of the disease, or to house those who test positive in true isolation units. *Id.*; Appx. 434 (CDC Guidance).³⁷

59. Proper medical quarantine of youth in juvenile facilities is not possible due to space and staffing concerns. Appx. 676 (McGill ¶ 33); Appx. 675 (Muhammad ¶ 9). One public defender reports that one youth was detained for nine days alone without education, programming, or social contact after she exhibited symptoms of illness, creating fear

³⁷ Appx. 553 (Dunham ¶ 19); Appx. 717 (Stubbs ¶ 9); Appx. 737 (Pratt ¶ 8); Appx. 638 (Holguin ¶ 6); Appx. 518 (Avila ¶ 7); Appx. 636 (Hodges ¶ 15); Appx. 631 (Henry ¶ 3); Appx. 733-34 (Wakefield ¶¶ 3, 5, 9).

amongst other youth and their families of illness or prolonged isolation. Appx. 650 (Lee ¶ 6).

60. For young people held in juvenile facilities, isolation is an inappropriate and psychologically damaging intervention. Appx. 536 (Cullen ¶ 14); Appx. 619 (Haney ¶¶ 10–11). During the COVID-19 pandemic, these young people—who already have a history of trauma—are already likely to experience retraumatization from the stress of the pandemic itself. Appx. 620 (*id.* ¶ 12). Experiencing the pandemic in isolation would make that retraumatization even worse. *Id.*

5. Correctional facilities do not have the capacity to properly screen or quarantine individuals entering the facilities, and cannot provide needed rehabilitative services to youth.

61. California’s correctional facilities cannot implement screening measures necessary to prevent introduction of the virus into the jails. The CDC recommends that correctional facilities adopt intensive pre-intake screening of all detainees, and screen all staff and individuals entering the facility. Appx. 416-41 (CDC Guidance). Non-test based verbal screens—*i.e.*, asking a person for a subjective report of symptoms—are inadequate because they cannot prevent asymptomatic or pre-symptomatic infections. Appx. 591-92 (Goldenson ¶ 19). As COVID-19 has a typical incubation period of five days, transmission often occurs before presentation of symptoms. Appx. 602 (Golob ¶ 6). The possibility of

asymptomatic transmission means that monitoring staff or incarcerated people for fevers is inadequate to identify all who may be infected and to prevent transmission. Appx. 595 (Goldenson ¶ 27). For example, in Virginia’s juvenile facilities 21 of 25 youth who tested positive for COVID-19 showed no outward symptoms. Appx. 534-35 (Cullen ¶¶ 10, 12).

62. Given the shortage of COVID-19 test kits in the United States, correctional facilities are currently unable to test people newly admitted to the facility, individuals on work release, staff, visiting attorneys, or any other people who enter facilities daily. Appx. 591 (Goldenson ¶ 18). Moreover, it can take days to weeks to obtain test results, and people who have very recently been infected may test negative. *Id.* ¶ 19. Tests, particularly rapid tests, also produce a significant number of false negatives, which can leave many cases undetected. Appx. 535 (Cullen ¶ 13). Thus, correctional facilities cannot meaningfully reduce the risk of asymptomatic transmission of COVID into the facilities by new intakes without quarantining them for 14 days and monitoring them for symptoms before they are deemed safe to introduce into the general population. Appx. 591 (Goldenson ¶¶ 18–19). Current population levels, combined with the need for appropriate space for quarantine, make this impossible to implement in most, if not all, correctional facilities without significant

population reductions. *Id.*³⁸

63. Many juvenile facilities, recognizing their inability to properly screen visitors, have halted all family visits to youth since early March. Appx. 535 (Cullen ¶ 12); Appx. 676 (Muhammad ¶ 17).³⁹ Institutional policies separating youth from their families and support networks in response to this health care emergency exacerbate an ongoing mental health crisis among detained youth and risk significant emotional harm. Appx. 536-37 (Cullen ¶¶ 14, 16–19). The vast majority of youth in the juvenile justice system have experienced trauma or suffer from mental health disorders. Appx. 535 (Cullen ¶ 13). The anxiety, fear and emotional distress young people feel when detained is worsened by the pandemic. *Id.*⁴⁰ The American Academy of Pediatrics cautions that youth who are separated from parents and families during traumatic events, such as the current pandemic, are thus more likely suffer lasting emotional problems if they are not with their parents or are separated from their parents, compounding trauma. Appx. 536 (Cullen ¶ 14).⁴¹

³⁸ Appx. 472 (Hardy ¶¶ 10–11); Appx. 638 (Holguin Decl. ¶ 7); Appx. 694 (Saatjian obo Menth ¶¶ 1–2).

³⁹ Appx. 503-04 (Susan A. ¶¶ 7, 12); Appx. 500 (Jessica A. ¶¶ 6–8); Appx. 613 (Genevieve H. ¶¶ 9, 12).

⁴⁰ Appx. 515 (Arroyo ¶¶ 5, 6, 12–14, 16); Appx 689-90 (Raju ¶¶ 4, 7–8); Appx. 650 (Lee ¶ 5).

⁴¹ Brian Stafford et al., “*Pediatric Education in Disasters Manual Module 9: The Emotional Impact of Disasters on Children and Families*,” (Stephen

64. Youth in California’s juvenile facilities are also entitled to certain educational and rehabilitative services as part of their incarceration. Appx. 677 (Muhammad ¶ 20). Yet young people have reported being denied schooling and rehabilitative services as a result of the pandemic.⁴² Youth counsel report the same across the state as facilities decrease services and educational and recreational programming.⁴³ Any rehabilitative benefits young people were receiving are being lost under the current crisis conditions.⁴⁴

D. Population reduction is the only way to protect against the further spread of COVID-19 in county correctional facilities and to prevent the death of those at highest risk.

65. Under these circumstances, significant reduction of the populations in county jails and juvenile facilities is a necessary step to protect incarcerated persons from COVID-19. Appx. 598 (Goldensen ¶¶

Berman ed. 2009), https://www.aap.org/en-us/Documents/disasters_dpac_PEDsModule9.pdf; see also Melissa de Witte, “Separation From Parents Removes Children’s Most Important Protection and Generates a New Trauma, Stanford Scholar Says,” STANFORD NEWS (June 26, 2018), <https://news.stanford.edu/2018/06/26/psychological-impact-early-life-stress-parental-separation/>.

⁴² Appx. 501 (Jessica A. ¶ 12); Appx. 504 (Susan A. ¶¶ 13, 16); Appx. 613 (Genevieve ¶ 10).

⁴³ Appx. 742—43 (Woods ¶¶ 11-15); Appx. 562 (Epps ¶ 12); Appx. 649—51 (Lee ¶¶ 4, 8); Appx. 515 (Arroyo ¶ 7-13).

⁴⁴ Appx. 515 (Arroyo ¶ 16); Appx. 665—66 (McGill ¶¶ 25, 30); Appx. 743 (Woods ¶ 18).

33–34). Without reduction in the numbers of detained individuals, correctional facilities will be unable to implement the CDC Guidelines to minimize the risk of infection. *Id.*; *Doe v. Barr*, No. 20-cv-02141-LB, 2020 WL 1820667, at *10 (N.D. Cal. 2020) (ordering release after finding that detainees at “Yuba County jail live in close quarters, cannot practice social distancing, do not have masks, and do not have access to adequate disinfecting and cleaning supplies”); *Ortuño v. Jennings*, No. 20-CV-02064-MMC, 2020 WL 1701724, at *4 (N.D. Cal. Apr. 8, 2020) (ordering release of petitioners after concluding that detainees at the jail “cannot practice meaningful social distancing.”).

66. In recognition of the risk posed by COVID-19 to California’s prison population, the Governor has issued a plan for preventing the spread of COVID-19 in state prisons. Appx. 450-69. However, he has not taken uniform action to prevent the spread of COVID-19 in county jails or juvenile facilities.

67. Despite efforts to discover what measures Sheriffs, probation departments, and the BSCC across the state are taking, little information has been provided about the response to COVID-19 in county jails and juvenile facilities. For example, in response to a request for information about a COVID-19 prevention plan sent to 46 sheriffs across the state, 29 counties failed to reply—and some counties who replied declined to

provide any responsive documents. Appx. 470-71 (Hardy ¶¶ 5, 9).⁴⁵

68. People in jails and juvenile facilities are disproportionately likely to have chronic health conditions, including diabetes, high blood pressure, asthma, and HIV, that put them at higher risk of severe health consequences upon contracting the virus. Appx. 593 (Goldenson ¶ 23); Appx. 675 (Muhammad ¶ 10); Appx. 535 (Cullen Decl. ¶ 12).

69. Large numbers of seriously ill people will strain the limited medical infrastructure in correctional facilities, heightening the risk that infected individuals will suffer serious harm. Appx. 593 (Goldenson ¶ 23). These facilities lack the necessary medical infrastructure necessary to address a COVID-19 outbreak. Appx. 592 (*id.* ¶ 21); Appx. 675 (Muhammad ¶ 9).

70. Once COVID-19 spreads throughout a correctional facility, the burden of caring for these sick individuals will shift to local community medical facilities. Appx. 597 (Goldenson ¶ 30); Appx. 675 (Muhammad ¶ 9). Because many rural parts of the state have limited access to hospitals with intensive care units or trained infectious disease practitioners, and limited personal protective equipment and other life-sustaining supplies, there is an increased likelihood of death for all individuals living in such

⁴⁵ *California Chief justice: Courts lack information on jail conditions*, Bob Egelko, available at <https://www.sfchronicle.com/news/article/California-chief-justice-Courts-lack-information-15208595.php>, last visited 4/22/20.

rural communities who become ill and require treatment. Appx. 597 (Goldenson ¶ 30).

71. To effectively mitigate the risk of infection and subsequent spread of the virus, the populations of jails and juvenile facilities must be reduced. Appx. 598-99 (*id.* ¶¶ 33-36). A sizable enough reduction in the overall number of individuals in detention facilities allows social distancing for all inside, and facilitates both proper screening to prevent COVID from being introduced into the jails and proper isolation and monitoring of individuals who may be infected. *Id.* These steps are necessary to minimize the risk to incarcerated people and correctional staff and protect the communities where the correctional staff live. Appx. 595 (*id.* ¶ 26).

72. Significantly lowering correctional facility populations will allow the facilities to reduce the risk of infection for both incarcerated people and correctional officers, which in turn protects the communities to which the officers return. Appx. 599-600 (Goldenson ¶¶ 36–37). And, where youth are stripped of any rehabilitative or educational programmatic benefits and subjected to illegal periods of isolation, youth should be released to protect their rights, their health, and their future. Appx. 539 (Cullen ¶ 22); Appx. 678 (Muhammad Decl. ¶ 22, 24); Appx. 665 (McGill Decl. ¶ 26); Appx. 690 (Raju ¶ 9).

CLAIMS ASSERTED

73. Executive officials must execute their duties in a manner that does not derogate the constitutional rights of others. By taking inadequate measures to ensure that county jails and juvenile facilities follow CDC-recommended guidance in response to COVID-19, Respondents are exercising their duties in a manner that violates the constitutional rights of people incarcerated and detained in California's county jails and juvenile facilities. Petitioners are thus entitled to a writ of mandate requiring Respondents to conform their conduct to the requirements of the United States Constitution and California Constitution.

74. Given the crisis caused by the COVID-19 pandemic, existing conditions of confinement in California's local jails violate the rights of people with criminal convictions under the Eighth Amendment to the United States Constitution and article 1, section 17 of the California Constitution.

75. For those who are not convicted, but are being detained pre-trial, those same conditions violate due process rights secured by the Fourteenth Amendment to the United States Constitution and article 1, section 7 of the California Constitution.

76. For youth who are being held in juvenile facilities, whether pre- or post-adjudication, existing conditions of confinement violate their rights under the Fourteenth Amendment to the United States Constitution

and article 1, section 7 of the California Constitution.

77. Given the rapid spread of COVID-19 and the inherent inadequacy of county jail and juvenile facilities to comply with recommended measures for reducing the risk of infection, Respondents cannot incarcerate individuals in compliance with the United States Constitution and California Constitution without releasing medically vulnerable persons from county jails and juvenile facilities and also reducing their populations significantly throughout the state.

78. Rectifying ongoing constitutional deficiencies in the state's correctional facilities is a matter of compelling public interest, which implicates both important constitutional rights and matters of public health and safety. Petitioners have public interest standing to pursue relief.

79. Further, Petitioners, their members' clients, and their members who are incarcerated or detained in California's county jails and juvenile facilities will suffer irreparable injury unless this Court orders Respondents to exercise their duties in accordance with the United States Constitution and California Constitution.⁴⁶

⁴⁶ This Petition hereby incorporates by reference the following memorandum of points and authorities.

RELIEF SOUGHT

Wherefore, Petitioners respectfully request that this Court:

80. As soon as practicable and, in any event, no later than May 4, 2020, issue a peremptory writ of mandate in the first instance, *see* Civ. Proc. Code §§1087–1088, 1104–1105; *Palma v U.S. Indus. Fasteners, Inc.*, 36 C3d 171, 178 (1984), directing Respondents to exercise their duties without violating the constitutional rights of people incarcerated and detained in California’s county jails and juvenile facilities by releasing sufficient persons to ensure that all remaining persons are held under conditions consistent with CDC and public health guidance to prevent the spread of COVID-19, including appropriate social distancing.

81. Should the Court deem such action necessary and appropriate, issue an alternative writ of mandate or order to show cause compelling Respondents to demonstrate why a writ of mandate should not issue and, upon return of the alternative writ or order to show cause, if any, issue a peremptory writ as set forth above;

82. Issue an order declaring that Respondents have violated the rights of people with convictions in California’s jails to safe conditions of confinement under the Eighth Amendment to the United States Constitution and article I, section 17 of the California Constitution;

83. Issue an order declaring that Respondents have violated the

rights of people detained in California's jails pre-trial and the rights of youth detained in juvenile facilities to reasonable safety and to be free from punishment prior to conviction under the Fourteenth Amendment to the United States Constitution and article I, section 7 of the California Constitution;

84. Issue an order declaring that Respondents have violated the substantive due process rights of young people detained in juvenile facilities by restraining them in a manner far exceeding the purpose for which they were confined in violation of the Fourteenth Amendment to the United States Constitution and article I, section 7 of the California Constitution;

85. Award Petitioners attorneys' fees and costs under Code of Civil Procedure § 1021.5 and other applicable law; and

86. Grant any further relief to which Petitioners are entitled.

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I, Peter Eliasberg, a citizen of the United States and a resident of the State of California, am a Petitioner in the above-captioned action. I have read the foregoing Petition and know the contents thereof. I am informed, believe, and allege based on that information and belief that the contents of the foregoing Petition are true.

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



Peter Eliasberg

Document received by the CA Supreme Court.

MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

This petition presents an extraordinary issue of public safety: the urgent need to protect the health of all California residents and save lives by limiting the spread of COVID-19 among incarcerated people and staff in California’s county jails and juvenile facilities. While the Judicial Council has made some progress to reduce populations in correctional facilities, the impact has been limited. This Court must take dramatic, urgent action to sufficiently reduce the looming threat of exponential growth of the virus in these facilities, and in the surrounding communities. Unless this Court exercises its original jurisdiction and orders Respondents to release significant numbers of incarcerated people, leading public health officials warn that the “epicenter of the pandemic will be jails and prisons.”⁴⁷

Adults and youth detained in California’s correctional facilities, including the medically vulnerable, cannot practice social distancing or protect themselves by leaving. But this is not just about prisoner safety. Regular movement of staff in and out of the facilities means that the virus will not stay confined with the incarcerated. The failure to control the spread of the virus at jails and youth facilities threatens to tax the broader

⁴⁷ Amanda Klonsky, *An Epicenter of the Pandemic Will Be Jails and Prisons, if Inaction Continues*, The New York Times (Mar. 12, 2020), <https://www.nytimes.com/2020/03/16/opinion/coronavirus-in-jails.html>.

community's health care system beyond capacity. This ticking viral timebomb threatens imminent outbreaks in most if not all of California's 58 counties, and will directly impact all California residents, including correctional staff, their families, and their respective communities.

In light of the looming public health catastrophe, keeping persons imprisoned in jails and youth facilities where they face unnecessary health risks is inhumane and violates their rights under the Eighth and Fourteenth Amendments to the United States Constitution and article I, sections seventeen and seven of the California Constitution. Indeed, for some individuals who are older or suffer from pre-existing medical problems, continued detention may literally be a death sentence.

The Governor, in exercising his broad and expanded powers under the Emergency Services Act, must address this public health crisis by coordinating local efforts to mitigate the effects of COVID-19 and must do so without derogating the constitutional rights of people incarcerated in local jails and youth facilities. The Attorney General, as supervisor of all county sheriffs, must ensure that all county jails are operating in accordance with constitutional requirements.

This Court has the power to issue a writ of mandamus ordering Respondents to exercise their mandatory duties in conformance with the constitutions of California and the United States. This relief is warranted,

reasonable, and, above all, essential in light of the unprecedented public health risk facing all California residents.

DISCUSSION

I. California’s Correctional Institutions Fail to Adequately Protect Those Who are Incarcerated from COVID-19, in Violation of the U.S. and California Constitutions.

A. County Jails are Failing to Protect Adults who are Incarcerated or Detained

“[W]hen the State takes a person into its custody and holds him there against his will, the Constitution imposes upon it a corresponding duty to assume some responsibility for his safety and general well-being.”

DeShaney v. Winnebago Cty. Dept. of Soc. Servs., 489 U.S. 189, 199–200 (1989). For people with criminal convictions, this responsibility is embodied in the prohibitions against cruel and unusual punishment of the Eighth Amendment to the U.S. Constitution and article I, section 17 of the California Constitution. *See Estelle v. Gamble*, 429 U.S. 97, 104 (1976); *see also In re Head*, 42 Cal. 3d 223, 229 (1986). For people held pretrial, and for young people held in juvenile facilities both pre- and post-adjudication, the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution and article I, section 7 of the California Constitution contain the same obligations, and wholly prohibit punitive conditions of confinement. *Bell v. Wolfish*, 441 U.S. 520, 535 n. 16 (1979) (“Due process requires that a pretrial detainee not be punished.”); *see also Ochoa v.*

Superior Court, 39 Cal. 3d 159, 174 (1985); *Inmates of Riverside Cty. Jail v. Clark*, 144 Cal. App. 3d 850, 859 (4th Dist. 1983).

Both principles preclude the state from subjecting incarcerated people to an intolerable risk of infectious disease. Because the state is aware of the danger of COVID-19 but has failed to take appropriate protective measures, conditions in the county jails violate the prohibitions on cruel and unusual punishment and punishment without due process.

1. Failure to Protect People Serving Sentences in County Jails Violates the Eighth Amendment and California Constitution

For individuals who are serving jail sentences, the State’s response to the COVID-19 pandemic violates the constitutional prohibition on cruel and unusual punishment. Both the Eighth Amendment of the U.S. Constitution and article I, section 17 of the California Constitution protect the right of people who are incarcerated to have their medical needs met while in government custody. *Estelle*, 429 U.S. at 104. “A prison official’s ‘deliberate indifference’ to a substantial risk of serious harm to an inmate violates the Eighth Amendment.” *Farmer v. Brennan*, 511 U.S. 825, 828 (1994).

To establish “deliberate indifference”, an incarcerated person must prove that (1) the challenged deprivation was “sufficiently serious,” and (2) officials “know[] that inmates face a substantial risk of serious harm and disregard[] that risk by failing to take reasonable measures to abate it.”

Farmer, 511 U.S. at 834, 847; *see also Riverside Cty.*, 144 Cal. App. 3d at 859 (explaining that “[t]he same basic test employed in the federal courts is appropriate to assessing conditions of confinement challenged under the California Constitution”). Both showings are easily made here.

First, COVID-19 presents a serious threat to every incarcerated person in California—not to mention jail staff, their families, and outlying communities. Appx. 246 (Amended Order, *Cameron v. Bouchard*, No. 20-cv-10494 (E.D. Mich Apr. 17, 2020) (“It cannot be disputed that COVID-19 poses a serious health risk to Plaintiffs and the putative class [of detainees.]”). COVID-19 is a highly contagious, potentially deadly disease, which is many times deadlier than a severe seasonal influenza. Appx. 601-02 (Golob ¶ 4). There is no vaccine or cure. Appx. 588 (Goldenson ¶ 10); Appx. 603 (Golob ¶ 10). The disease spreads from infected persons through respiratory droplets, close personal contact, and from contact with contaminated surfaces. Appx. 587-88 (Goldenson ¶ 7); Appx. 534 (Cullen ¶ 9). Among high-risk populations, COVID-19 kills about one in every seven people it infects, and it can scar survivors with loss of digits, neurologic damage, and loss of respiratory capacity. Appx. 601-02 (Golob ¶ 4).

The Eighth Amendment mandates that the State protect incarcerated people from the risk of serious illness and death by contagion. And courts routinely find Eighth Amendment violations when—as here—officials fail

to protect incarcerated people from the risk of infection. *See Brown v. Plata*, 563 U.S. 493, 545 (2011) (affirming order to reduce prison overcrowding in order to, *inter alia*, remedy unsanitary living conditions and failure to protect incarcerated people from infectious disease); *Hutto v. Finney*, 437 U.S. 678, 682–83 (1978) (finding constitutional violation where incarcerated people were placed in conditions where infectious diseases could spread easily).⁴⁸

Importantly, the state’s duty to protect applies regardless of whether COVID-19 has yet entered a given correctional facility. “[A] remedy for unsafe conditions need not await a tragic event.” *Helling v. McKinney*, 509 U.S. 25, 33 (1993). Failure to take reasonable steps to abate a substantial risk of harm from infectious disease violates the Eighth Amendment even if the disease has not yet sickened the incarcerated population. *Farmer*, 511 U.S. at 847. As the U.S. Supreme Court has explained, authorities may not ignore jail conditions that are “sure or very likely to cause serious illness and needless suffering the next week or month or year.” *Helling*, 509 U.S. at 33.

⁴⁸ *See also Jolly v. Coughlin*, 76 F.3d 468, 477 (2d Cir. 1996) (“[C]orrectional officials have an affirmative obligation to protect inmates from infectious disease.”); *DeGidio v. Pung*, 920 F.2d 525, 533 (8th Cir. 1990) (prison’s negligent and reckless response to tuberculosis outbreak violates Eighth Amendment); *Gates v. Collier*, 501 F.2d 1291, 1303 (5th Cir. 1974) (prison’s contaminated water and failure to separate contagious patients from other incarcerated persons violate Eighth Amendment).

Second, while taking extraordinary action to protect the public from COVID-19, officials have neglected basic measures necessary to reduce contagion in the jails. California officials know that social distancing—maintaining at least six feet of space between individuals—is essential to fighting COVID-19. To facilitate this practice, Governor Newsom ordered all Californians to shelter in place and shuttered non-essential businesses.

Similar measures are urgently needed in the state’s correctional institutions, which, by their nature, create a heightened risk of disease. Jails are “congregate settings,” where many people live and sleep in close proximity, facilitating community spread. Appx. 589 (Goldenson ¶ 13). They have high turnover, creating numerous opportunities for COVID-19 to be introduced within the facility’s walls. Appx. 595 (Goldenson ¶ 26). Once COVID-19 enters a jail, its effects will be severe. Compared to the general population, people in jails are disproportionately likely to have chronic health conditions, which place them at a greater risk of falling seriously ill or dying from the disease. Appx. 592-93 (Goldenson ¶ 22); *id.* 674-75 (Muhammad Decl. ¶¶ 8-10); *id.* 533-34 (Cullen Decl. ¶ 8).

The CDC has warned that, because of these structural issues, jails “present[] unique challenges for control of COVID-19 transmission among incarcerated/detained persons, staff, and visitors.” Appx. 417 (CDC Interim Guidance). Courts have found that “avoiding exposure to COVID-19 is impossible for most detainees and inmates.” Appx. 177 (Opinion, *Cristian*

A.R., et al. v. Decker, No. 20-3600, (D. N.J. April 12, 2020); *see also* Appx. 57 (Order, *Basank v. Decker*, No. 20-cv-2518 (AT), at 7, 10 (S.D.N.Y. Mar. 26, 2020) (“The risk of contracting COVID-19 in tightly-confined spaces, especially jails, is now exceedingly obvious.”)). The disease has already overwhelmed jails in other states, leading to some of the largest COVID-19 outbreaks in the nation. Appx. 595-96 (Goldenson ¶ 28).

A Respondent in this case—Attorney General Becerra—underscored the danger of inaction in a letter urging federal authorities to fight COVID-19 in immigration facilities. Appx. 444-48 (Becerra letter to DHS). The letter criticizes federal authorities for holding detainees in facilities whose “physical plants, custody and staffing patterns, and health care systems . . . do not allow for social distancing practices.” Appx. 444. It rails against keeping people in “crowded dorms . . . without partitions,” denying access to masks and sanitation supplies, and providing meals “at communal tables, where transmission of the COVID-19 virus—if present—is likely.” Appx. 446. And it warns that a failure to reduce the detainee population significantly will cause “countless unnecessary deaths.” Appx. 444, 448.

The same conditions that threaten immigration detainees define life in county jails. Despite efforts by the Judicial Council to reduce jail populations, people in county jails continue to reside in dorms with closely spaced beds or in shared cells, where it is impossible to maintain six feet of physical space. Petition ¶ 49. They are forced to stand or sit in close

proximity, and they use communal toilets, sinks, and showers, which are rarely disinfected between uses. *Id.* ¶¶ 48, 49, 55. People in jails report that they lack access to soap and cleaning supplies. *Id.* ¶ 56. Jails lack capacity to test newly-admitted individuals, staff, or visitors for COVID-19; nor can they isolate new arrestees for 14 days, frustrating efforts to keep disease from entering the facilities. *Id.* ¶ 62. As Respondent Becerra has acknowledged in the immigration context, confining individuals under these circumstances invites illness and death.

The stakes could not be higher, but the state has no comprehensive plan of corrective action.⁴⁹ While some counties have taken limited steps to reduce their jail populations, these efforts have been uneven, lacking the coordination necessary to meet the statewide emergency. Some counties have refused to take any significant action whatsoever. The Sheriffs of San Bernardino and Riverside Counties recently expressed hostility to releasing incarcerated persons under any circumstance. Petition ¶¶ 42–43. Others, such as Los Angeles County, have taken steps to reduce their jail populations but continue to maintain facilities near their design capacity—a

⁴⁹ The State has prepared a “Strategic COVID-19 Management Plan” for managing the obvious risk that COVID-19 poses to the state prison population. Appx. 450. Petitioners are unaware of any similar plan to mitigate the threat for people who are incarcerated in the county’s jails. The State’s decision to develop a response plan for prisons, while foregoing coordinated action in the similar context of county jails underscores its deliberate indifference to the jail population.

practice that is fundamentally incompatible with social distancing. Appx. 598-99 (Goldenson ¶ 34).

These piecemeal efforts have failed to facilitate CDC-recommended practices in county jails. Conditions are—and remain—incompatible with public health guidance, preventing incarcerated people from protecting themselves from COVID-19. The situation creates a “condition of confinement that is sure or very likely to cause serious illness.” *Helling*, 509 U.S. at 33. And failure to remedy the issue constitutes deliberate indifference in violation of the U.S. and California constitutions.⁵⁰

⁵⁰ Recognizing the grave risk of COVID-19, courts across the country have found deliberate indifference based on jail conditions that make social distancing impossible to implement. *See* Appx. 405 (Order, *Wilson v. Williams*, No. 20-cv-794 (N.D. Ohio Apr. 22, 2020) (ordering transfer of medically vulnerable prisoners and preliminarily finding deliberate indifference based on prison’s failure to keep “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”); Appx. 246 (Order, *Cameron v. Bouchard*, No. 20-cv-10494 (E.D. Mich Apr. 17, 2020) (preliminarily finding deliberate indifference in violation of the Eight Amendment when jail “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-n detention facilities”); *see also* Appx. 74 (Order, *United States v. Grobman*, No. 18-cr-20989, Dkt. No. 397 (S.D. Fla. Mar. 29, 2020) (releasing medically-vulnerable defendant before sentencing on fraud conviction when “it is difficult, if not impossible, for [the defendant] and others to practice the social distancing measures which government, public health and medical officials all advocate”); *see also* Appx. 93 (Order, *United States v. Muniz*, Case No. 4:09-cr-199, Dkt. No. 578 (S.D. Tex. Mar. 30, 2020) (“[W]hile the Court is aware of the measures taken by the Federal Bureau of Prisons, news reports of the virus’s spread in detention centers within the United States and beyond our borders in China and Iran demonstrate that

2. Failure to Protect Pre-Trial Detainees, who are Presumed Innocent, Violates the Fourteenth Amendment and California Constitution

The same conditions of confinement that violate the Eighth Amendment rights of individuals who are serving sentences also infringe the due process rights of those held in county jail pending trial.

Unlike individuals who are serving sentences, people who are detained pre-trial have not been adjudicated guilty of any crime and cannot be subjected to “punishment” without due process. *Bell*, 441 U.S. at 535 (“[U]nder the Due Process Clause, a detainee may not be punished prior to an adjudication of guilt in accordance with due process of law.”); *Vazquez v. Cty. of Kern*, 949 F.3d 1153, 1163 (9th Cir. 2020).

Applying these principles, courts have held that—as in the Eighth Amendment context—deliberate indifference to serious medical needs violates due process. As the Supreme Court has explained, a detainee’s due process rights “are at least as great as the Eighth Amendment protections available to a convicted prisoner.” *City of Revere v. Massachusetts Gen. Hosp.*, 463 U.S. 239, 244 (1983); *see also Youngberg v. Romeo*, 457 U.S. 307, 321–22 (1982) (“Persons who have been involuntarily committed are entitled to more considerate treatment and conditions of confinement than

individuals housed within our prison systems nonetheless remain particularly vulnerable to infection.”).

criminals whose conditions of confinement are designed to punish.”). Thus, the Due Process Clause incorporates Eighth Amendment standards as a “constitutional minimum.” *Gary H. v. Hegstrom*, 831 F.2d 1430, 1432 (9th Cir. 1987); see *Sundance v. Mun. Court*, 42 Cal. 3d 1101, 1123 n. 12 (1986) (“Since pretrial detainees cannot be punished at all, they are entitled *at a minimum* to be free from cruel and unusual punishment.”).

Courts apply the deliberate indifference test differently to pre-trial detainees, providing less deference to officials in light of the state’s limited justification for confinement. See *Vazquez*, 949 F.3d at 1163 (explaining that “the Fourteenth Amendment is more protective than the Eighth Amendment”). To establish deliberate indifference in violation of the Due Process Clause, a person detained pretrial need not establish State officials’ *subjective* knowledge of the risk. *Kingsley v. Hendrickson*, 576 U.S. ___, 135 S.Ct. 2466, 273–74 (2015); *Gordon v. Cty. of Orange*, 888 F.3d 1118, 1124–25 (9th Cir. 2018). Instead, the person must show only *objective* deliberate indifference—meaning that officials failed to take reasonable measures to abate a risk “even though a reasonable official in the circumstances would have appreciated the high degree of risk involved.” *Gordon*, 888 F.3d at 1124–25 (holding pretrial detainees’ right to medical care claims “must be evaluated under an objective deliberate indifference standard”); see also *Kennedy v. City of Ridgefield*, 439 F.3d 1055, 1062 (9th Cir. 2006) (explaining that a state actor acts with deliberate

indifference by ignoring “a known or obvious danger” to another created by the actor’s own conduct).

Because the state has acted with subjective indifference to the risk of COVID-19 in county jails, the objective standard is also satisfied. The danger that COVID-19 presents is widely known and would be obvious to any reasonable correctional official. Yet the State has failed to take coordinated action to protect against infection. Instead, it continues to confine incarcerated people, including pre-trial detainees, in communal quarters that preclude basic health practices. Petition ¶¶ 48, 49, 55. This inaction evinces deliberate indifference to detainees’ due process rights in violation of the Fourteenth Amendment and the California Constitution.⁵¹

⁵¹ Courts across the county have released detainees, including people confined in immigration custody, when conditions of confinement prevent measures to reduce COVID-19 infection. Appx. 169 (Order, *Doe v. Barr*, No. 20-cv-02141-LB, 2020 WL 1820667, at *10 (N.D. Cal. Apr. 12, 2020) (releasing an immigration detainee with COVID-19 comorbidities because those in the jail “live in close quarters, cannot practice social distancing, do not have masks, and do not have access to adequate disinfecting and cleaning supplies”); Appx. 147 (Order, *Ortuño v. Jennings*, No. 20-cv-02064-MMC (N.D. Cal Apr. 8, 2020) (ordering release of two medically vulnerable ICE detainees who “cannot practice meaningful social distancing in their respective detention facilities”); Appx. 134 (Mem. & Order, *Hope et al. v. Doll*, No. 1:20-cv-562 (M.D. Pa. Apr. 7, 2020) (releasing 22 ICE detainees when staff “do not reliably wear gloves and masks[,] . . . temperature checks are infrequently conducted,” and cell blocks were not cleaned to prevent spread”); Appx. 71 (Order, *Castillo v. Barr*, No. 20-cv-605 (TJH)(AFM), at 10 (C.D. Cal. Mar. 27, 2020) (ordering release of two ICE detainees exposed to unreasonable risk of COVID-19 infection; reasoning that detainees “are not protected” against risks associated with COVID-19, “are not kept at least 6 feet apart from

B. Juvenile Facilities are Failing to Protect Detained Youth and Undermining the very Purpose of the Juvenile Justice System

Youth in juvenile facilities are entitled to even greater protection.

Having removed these children from their homes, the state must protect them from hazardous conditions of confinement. At the same time, the juvenile system’s *raison d’etre* demands adequate opportunities for education, rehabilitation, and development. Existing conditions violate youths’ rights on both fronts: the state is failing to provide reasonable protections against COVID-19 while simultaneously depriving youth of rehabilitative services and resorting to extended and emotionally traumatic isolation—all in violation of the Due Process Clause of the Fourteenth Amendment and Article I, section 7 of the California Constitution.

1. The State’s Failure to Protect Youth from COVID-19 Constitutes Unconstitutional “Punishment” in Violation of Due Process

The State’s failure to protect detained youth from a likely outbreak of COVID-19 in confinement violates due process principles.

As with pre-trial detainees, the Due Process Clause governs the

others at all times,” and “are forced to touch surfaces touched by other detainees, such as with common sinks, toilets and showers”); Appx. 58-59 (Order, *Basank v. Decker*, No. 20-cv-2518 (AT), at 7, 10 (S.D.N.Y. Mar. 26, 2020) (ordering release of ICE detainees and finding deliberate indifference when authorities “could not represent that the detention facilities were in a position to allow inmates to remain six feet apart from one another, as recommended by the [CDC]”).

constitutional standards for youth confinement. *See Vazquez*, 949 F.3d at 1163 (applying the Fourteenth Amendment to evaluate a detained youth’s “right to be free from punishment”). This is because detained youth are not subject to “punishment,” but are instead confined for non-penal purposes. As such, conditions of confinement that amount to objective deliberate indifference to the threat of COVID-19 violates youths’ due process rights. *See Gordon*, 888 F.3d at 1125. Respondents have failed to take appropriate measures to abate the spread of COVID-19 “even though a reasonable official in the circumstances would have appreciated the high degree of risk involved” to detained youth. *See id.*; *see also Kennedy*, 439 F.3d at 1062.

Juvenile facilities present unique challenges to containing the spread of COVID-19. Appx. 525-26 (Barnert ¶ 9). Although social distancing is required to prevent the spread of the virus, juvenile facilities in California are in many ways “designed for exactly the opposite of the physical distancing measures required by this pandemic.” Appx. 674 (Muhammed ¶ 7). Youth in California’s juvenile facilities often share rooms with others and generally include shared bathroom and showering facilities, dining facilities, and day rooms. *Id.* Mothers of youth detained at Campus Kilpatrick, Central Juvenile Hall, and San Bernardino Juvenile Detention Center report that these unsafe practices have continued in spite of the pandemic, making the observance of social distancing impossible. Appx. 503-04 (Susan A. ¶¶ 10, 11); *id.* 501 (Jessica A. ¶ 9); *id.* 613 (Genevieve H.

¶ 5); *id.* 681 (Munkeldt ¶ 5); *id.* 743 (Woods ¶ 16).

Juvenile facilities also generally lack capacity to ensure the hygiene and sanitizing necessary to prevent the spread of COVID-19, and youth typically do not have access to soap or cleaning supplies. Appx. 674-75 (Muhammed ¶ 8); *id.* 526 (Barnert ¶ 10). Nor do juvenile facilities have the capacity to provide proper personal protective equipment. Appx. 667 (McGill ¶33). At Wayside-Pitchess Detention Center, although staff have started wearing masks, youth have still not been provided with them. *Id.*; *see also* Appx. 503 (Susan A. ¶ 10). Likewise, a youth at San Bernardino reported that only staff had masks prior to April 17, 2020, and most rarely wore them. Genevieve H. Decl. ¶ 6. In addition to generally lacking the operational capacity to effectively curb the spread of the virus, Juvenile facilities lack the capacity to provide anything more than “bare bones emergency mental or physical health care” to youth and could not meet the demands that would come with an outbreak of COVID-19. Appx. 526 (Barnert ¶ 10).

While the threat of COVID-19 under such conditions would be intolerable even for a healthy child, the threat is particularly acute for youth in the juvenile justice system who tend to be less healthy than their peers with higher rates of asthma and other medical vulnerabilities that can increase the severity and danger of COVID-19. Appx. 675 (Muhammed ¶ 10); *id.* 525 (Barnert ¶ 7) (noting that “young people with underlying

medical conditions have a higher susceptibility to COVID-19, of particular concern because youth in the juvenile justice system are known to have disproportionate medical morbidity compared to same-age peers”); *see also id.* 613 (Genevieve H. ¶ 6) (mother of youth with asthma at San Bernardino Juvenile Detention Center fearful for her child’s life after hearing that staff are not even cleaning phones between calls). The disproportionate representation of African-American youth in California’s juvenile facilities raises additional concerns about the threat of COVID-19, as preliminary data have shown that African-Americans are disproportionately affected by the virus. Appx. 675-76 (Muhammed ¶ 12) (citing to an analysis finding that African-Americans make up 42% of COVID-19 deaths despite constituting approximately 21% of the population).

The threat of a COVID-19 outbreak has already become a reality at Sylmar Juvenile Hall, where at least two staff have tested positive for the virus and over 40 youth have been quarantined. Appx. 666 (McGill ¶ 31). Given the conditions of confinement at juvenile facilities, it is only a matter of time before other juvenile facilities face outbreaks of their own. Continuing to hold youth in such conditions despite the imminent and obvious threat posed by COVID-19 amounts to punishment and violates the due process rights of youth detained in juvenile facilities.

2. The State’s Denial of Rehabilitative Programming also Violates the Due Process Rights of Youth who are Detained

A second constitutional deficiency concerns the State’s continued deprivation of youths’ liberty, without providing a corresponding benefit in the form of enriching activities or rehabilitative programs.

The “right to personal security constitutes a ‘historic liberty interest’ protected by the Due Process Clause.” *Youngberg v. Romeo*, 457 U.S. 307, 315 (1982) (quoting *Ingraham v. Wright*, 430 U.S. 651, 673 (1977)). When the State deprives an individual of liberty, due process requires a rational connection between the deprivation and a legitimate government interest. *Jackson v. Indiana*, 406 U.S. 715, 738 (1972). In *Jackson v. Indiana*, the Supreme Court held that when the State confines a person without a criminal conviction, “due process requires that the nature and duration of commitment bear some reasonable relation to the purpose for which the individual is committed.” *Id.* at 738.

This principle applies in the context of juvenile detention. When—as in this case—the State removes young people from their homes, depriving them of liberty for the stated purposes of furnishing education or rehabilitation, “due process requires that the conditions and programs at the [youth facilities] must be reasonably related to that purpose.” *Morgan v. Sproat*, 432 F. Supp. 1130, 1135 (S.D. Miss. 1977) (citing *Jackson*); *Alexander S. By & Through Bowers v. Boyd*, 876 F. Supp. 773, 796 (D.S.C.

1995), *as modified on denial of reh'g* (Feb. 17, 1995) (assessing relationship between rationale for youth confinement and conditions of confinement); *see also In re Albert C.*, 3 Cal. 5th 483, 494 (2017) (explaining that “*Jackson* . . . set constitutional limits defining when a detention becomes so lengthy or unjustified as to violate due process”). Conditions of youth confinement that are not reasonably related to the government’s objective amount to punishment in violation of due process. *Bell*, 441 U.S. at 538–39 (explaining that “arbitrary” restrictions on liberty may amount to punishment “that may not constitutionally be inflicted upon detainees qua detainees”).

A corollary to this principle, which this Court has recognized in the context of institutionalization of chronic alcoholics, is that “[w]here the justification for involuntary confinement rests, even in part, upon the need for care and treatment of an individual, then the state which confines must also provide treatment.” *Sundance*, 42 Cal. at 1155. In other words, the State may not simply warehouse the people it confines without a criminal conviction. “If the purpose of the commitment is to secure treatment, the state violates due process if it does not, in fact, provide treatment.” *D. W. v. Rogers*, 113 F.3d 1214, 1217 (11th Cir. 1997).

Here, there is no question that rehabilitative goals drive California’s juvenile system. As this Court has explained, “[j]uvenile commitment proceedings are designed for the purposes of rehabilitation and treatment,

not punishment.” *In re Aline D.*, 14 Cal. 3d 557, 567 (1975). California law mandates that a minor may be removed from the custody of his or her parents “only when necessary for his or her welfare or for the safety and protection of the public.” Cal. Welf. & Inst. Code § 202(a). Any punishment imposed on a minor must be consistent with the minor’s best interest and the goal of rehabilitation. See Cal. Welf. & Inst. Code § 202(b) (stating that youth confined for delinquency must receive “care, treatment, and guidance that is consistent with their best interest, that holds them accountable for their behavior, and that is appropriate for their circumstances”); *see also In re Samuel V.*, 225 Cal. App. 3d 511, 517 (1990) (“[T]he state’s punishment of minors is a means to an end, or a rehabilitative tool. . . .”).

Consistent with this rehabilitative purpose, California law provides confined youth substantive and procedural protections designed to facilitate treatment and development. For instance, facility administrators must provide each youth an individualized assessment and case plan based on their individual “risk factors, needs and strengths” Cal. Code Regs. tit. 15, § 1355(a), (b). Administrators are also required to “develop and implement written policies and procedures ensuring the availability of appropriate counseling and casework services for all youth.” Cal. Code Regs. tit. 15, § 1356. Juvenile facilities must resemble a supportive, homelike environment, not a penal institution. *See* Welf. & Inst. Code §

202(a) (“If the minor is removed from his or her own family, it is the purpose of this chapter to secure for the minor custody, care, and discipline as nearly as possible equivalent to that which should have been given by his or her parents.”); Welf. & Inst. Code § 851 (“Juvenile hall...shall not be deemed to be, nor be treated as, a penal institution. It shall be a safe and supportive homelike environment.”).)

Despite these mandates, California juvenile institutions are not currently providing adequate rehabilitative or educational programming. Many counties have sought suspension of state regulations regarding rehabilitative programming offered in their juvenile facilities. Appx. 677 (Muhammed ¶ 18). Twenty-eight counties now indicate that their educational programs rely on packet-based learning, while nineteen indicate that facility staff are providing all programming or that outside service providers are no longer able to offer services in the facility. *Id.* Young people in facilities across the state have reported being denied schooling and other activities as a result of the pandemic. See Petition ¶ 64.

Although California law requires facility administrators to provide a “safe and supportive homelike environment,” COVID-19 has created an environment of increasing isolation and anxiety. For instance, because of juvenile facilities’ inability to screen visitors for possible infection, many facilities have simply halted all family visits to youth. Of the forty-five counties with juvenile facilities, forty have been granted suspension of their

compliance with visitation regulations, with five counties moving visitation into “no-contact” rooms, and at least thirty-five counties replacing visitation with phone calls or other remote contact. Appx. 677 (Muhammed ¶ 18). Juvenile facilities typically have very limited provisions for providing telephonic or other forms of remote visitation to youth, which are “critically important” to both their health and rehabilitation in the absence of in-person visitation. Appx. 526 (Barnert ¶ 10). Given these limitations, it is not surprising that Monterey County is granting youth only five-minute phone calls in lieu of in-person visits. Appx. 677 (Muhammed ¶ 18).

Mothers of youth in juvenile facilities have reported severe limitations on their ability to contact their children, even via telephone, which has led to an unnecessary increase in anxiety for both youth and their families. *See* Appx. 503-04 (Susan A. ¶¶ 7, 12) (mother precluded from visiting asthmatic son detained at Campus Kilpatrick and provided one call per week); *id.* 500-01 (Jessica A. ¶¶ 6-8) (mother no longer able to visit her son at Central Juvenile Hall and only allowed one ten-minute call per week); *id.* 613-14 (Genevieve H. ¶¶ 9, 12) (mother unable to visit her son at San Bernardino Juvenile Detention Center or speak with him regularly despite his being at high risk given his asthma and severe allergies).

Juvenile institutions are failing to deliver the services that purport to justify depriving youth of liberty. Rather than providing treatment in a supportive, homelike environment, facilities are providing inactivity and

boredom, all while subjecting youth to an unreasonable risk of COVID-19 infection. Confinement in these conditions bears no reasonable relationship to the legitimate objectives of the juvenile system and violates due process.

3. The Use of Extended Isolation to Prevent Viral Spread in Juvenile Facilities Needlessly Traumatizes Youth and Constitutes yet another Violation of Due Process

In addition to placing youth at risk of physical harm while providing little or no rehabilitative services, the State stands to inflict severe emotional trauma on its charges through the use of extended isolation in violation of due process. Numerous courts have held that excessive isolation or solitary confinement violates juveniles’ constitutional rights. *See Milonas v. Williams*, 691 F.2d 931, 941–43 (10th Cir. 1982) (holding that use of isolation rooms violates juveniles’ due process rights); *Pena v. N.Y. Div. for Youth*, 419 F.Supp. 203, 210–11 (S.D.N.Y. 1976) (finding placement of youth in isolation for punitive reasons violates due process when officials provided no treatment and infrequent assessment for release); *Inmates v. Affleck*, 346 F. Supp. 1354, 1372 (D.R.I. 1972) (“This court is convinced that solitary confinement [for juveniles] may be psychologically damaging, anti-rehabilitative, and at times, inhumane”).

Experts likewise condemn isolation as harmful to youth, particularly youth with histories of mental health needs and trauma. Appx. 526-27 (Barnert ¶ 12); *id.* 677 (Muhammed ¶ 20); *id.* 536 (Cullen ¶ 14).

Withdrawing visitation and reducing programming, while simultaneously increasing isolation, will likely exacerbate “facility tension, mental illness and histories of trauma.” Appx. 677 (Muhammed ¶ 19). Such a situation can lead to increased risk of self-harm and is associated with risks lasting into adulthood, including poorer overall health and increased incidence of suicide. *Id.* Extended isolation, without access to educational opportunities, counseling or other programming is also inconsistent with the rehabilitative goal of juvenile confinement. Appx. 677 (Muhammed ¶ 20). Because of the negative impact of isolation on youth, California law places severe limits on the use of isolation in juvenile facilities. The Welfare and Institution Code expressly prohibits extended isolation, creating a presumptive limit of four hours for solitary confinement for youth who are confined. Welf. & Inst. Code §208.3(a)(1).

The COVID-19 pandemic thus places the current system for confining youth on the horns of a dilemma. The State’s failure to take actions to reduce the risk of infection creates an unreasonable risk of infection for young people in state custody, in violation of the Due Process Clause. Because of staffing and institutional challenges, juvenile facilities attempting to comply with distancing recommendations will likely rely on isolation of youth. Appx. 676 (Muhammed ¶ 16). But this method for reducing infection risk—mandatory isolation—threatens youth with severe trauma, while depriving them of the benefits that juvenile detention is

intended to provide. The only way out of this dilemma is to release substantial numbers of detained youth to allow for appropriate staffing and care for the physical and mental health of youth held in juvenile facilities. Appx. 677-78 (Muhammed ¶ 21); *id.* 527-28 (Barnert ¶ 16); *id.* 539 (Cullen ¶ 22). Release of youth to home placements is possible and can be done safely. Appx. 678 (Muhammed ¶ 22). Indeed, in New York City and Washington, D.C., the vast majority of youth were safely moved into community programs while ensuring public safety. *Id.*

In sum, continuing to confine youth under current conditions amounts to punishment in violation of the United States and California constitutions. Where a child could safely shelter in place with a parent or guardian, there is simply no reasonable justification for locking that child in a cell with only her fears and anxiety to keep her company—even if a homework packet is provided. Immediate release of large numbers of detained youth is necessary to remedy the ongoing violation of their right to due process under the U.S. and California constitutions.

II. A Writ of Mandate Is Necessary to Remedy the State’s Constitutionally Deficient Response to COVID-19 in Correctional Institutions

A writ of mandate appropriately can ensure that California’s correctional facilities will cease holding people in conditions that create an intolerable risk of COVID-19 infection. To obtain a writ of mandate, a petitioner must show that: (1) “the respondent has failed to perform an act

despite a clear, present and ministerial duty to do so,” (2) “the petitioner has a clear, present and beneficial right to that performance,” and (3) “there is no other plain, speedy and adequate remedy.” *Riverside Sheriff’s Ass’n v. Cty. of Riverside*, 106 Cal. App. 4th 1285, 1289 (2003). Petitioners satisfy all three requirements, entitling them to immediate judicial relief.

A. Respondents have Breached a Constitutional Duty to Protect People in California Correctional Facilities from COVID-19 Infection

As this Court has held, “[m]andamus is . . . appropriate for challenging the constitutionality or validity of statutes or official acts.” *Jolicoeur v. Mihaly*, 5 Cal. 3d 565, 570 n. 2 (1971). When an official’s conduct violates rights guaranteed by the U.S. or California constitutions, mandamus is available to compel the official to take corrective action. *Id.*; see also *Edward W. v. Lamkins*, 99 Cal. App. 4th 516, 529 (2002) (“If appellant is correct that respondent’s practices violate the constitutional guarantees of due process and/or equal protection of the laws, relief by means of writ of mandate would be appropriate.”); *Stone v. Bd. of Directors of City of Pasadena*, 47 Cal. App. 2d 749, 754 (1941) (issuing mandamus to compel officials to admit Black petitioners to municipal bath houses and swimming pools, as required by state law and the Equal Protection Clause).

Although officials have discretion in how they perform certain public duties, no official has discretion to violate the constitution. When an official violates rights secured by the constitution, the official has breached

a non-discretionary duty, warranting mandamus relief. *See Molar v. Gates*, 98 Cal. App. 3d 1, 25 (1979) (“Plaintiffs have a clear right to the enjoyment of the equal protection of the laws and defendants have a clear duty to respect that right. Accordingly, mandamus is an appropriate remedy to enforce plaintiff’s constitutional right to equal protection.”); *De La Mar v. Superior Court*, 22 Cal. App. 2d 373, 375 (1937) (mandate issued to defendant not timely indicted because “[a] party charged with crime has the constitutional right to a speedy trial and the court has no discretionary power to deny him a right so important”).

These principles apply fully to Respondents in this case. Both directly oversee California’s county correctional facilities and owe a constitutional duty to ensure that people held in those facilities are protected from the substantial risk of harm posed by COVID-19.

Governor Newsom’s duty to ensure public health in California’s jails and juvenile facilities flows from his emergency declaration. On March 4, 2020, Governor Newsom declared a state of emergency concerning the viral outbreak, triggering provisions of the Emergency Services Act. *See* Newsom March 4, 2020 Executive Order. In issuing this declaration, the Governor expressly found that “local authority is inadequate to cope with the threat posed by COVID-19,” necessitating a statewide response. *Id.* Thus, while day-to-day jail administration falls on county sheriffs, Gov’t Code § 26605, and administration of the juvenile facilities falls on county

probation departments, Welf. & Inst. Code § 626.5, the Governor’s decision to exercise emergency powers over local agencies carried with it the responsibility to coordinate those agencies’ response to COVID-19.

The Emergency Services Act “confers broad powers on the Governor to deal with [declared] emergencies.” *Macias v. State of California*, 10 Cal. 4th 844, 854 (1995). It provides “that in situations of ‘extreme peril’ to the public welfare the State may exercise its sovereign authority to the fullest extent possible consistent with individual rights and liberties” *Id.* The Governor has the “responsibility to coordinate the emergency plans and programs of all local agencies, ‘such plans and programs to be integrated into and coordinated with the State Emergency Plan and the plans and programs of the federal government and of other states to the fullest possible extent.’” *Id.* (quoting Gov’t Code § 8569).

The Governor has power to suspend laws and regulations that hinder or delay the state’s emergency response, Gov’t Code § 8571, to commandeer or utilize any private property or personnel deemed necessary to carry out his responsibilities, Gov’t Code § 8572, and to make expenditures from any fund “legally available . . . to deal with actual or threatened conditions of [the emergency].” Gov’t Code, § 8645. In addition, the Emergency Services Act expressly permits the release of people who are incarcerated when, as here, emergency circumstances “endanger the lives of inmates of a state, county, or city penal or correctional institution.”

Gov't Code § 8658; *see also Cal. Correc. Peace Officers Ass'n v. Schwarzenegger*, 163 Cal. App. 4th 802, 811 (2008) (holding governor had power to issue declaration of emergency based on state prison overcrowding). In a recent "Information Bulletin," California Attorney General Xavier Becerra confirmed that section 8658 applies both to the release of people held in the county jails and young people held in juvenile detention centers. Ex. 28 at 443.

In his emergency orders, the Governor requires that all Californians practice social distancing—even to the point of shuttering all non-essential businesses—and that hospitals must be conserved for a threatened influx of sick patients. (Newsom March 19, 2020 Executive Order N-33-20.) However, the Governor's failure to abate crowded conditions in county jails and juvenile detention facilities will not only preclude social distancing inside these facilities, but also lead to avoidable infections that will consume scarce community medical resources. Infections inside correctional facilities will not stop with the incarcerated population; they will also expose correctional staff and their families to greater risk – who will spread COVID-19 from jails into the communities at large. Moreover, because jails and juvenile detention facilities are not hospitals and cannot provide the level of medical care needed by many COVID-19 patients, incarcerated COVID-19 patients will need to be transported to community hospitals for care. Thus, COVID-19 infections among incarcerated patients,

correctional staff, and their families will quickly increase the burden on local community medical facilities, which are especially scarce in rural areas. The status quo in California correctional facilities thus poses a direct health risk not just to the currently incarcerated, but to the health of the public at large. This undermines full implementation of the Governor’s emergency orders. Having declared a statewide emergency and assumed broad emergency powers, the Governor is required to coordinate local efforts to combat the spread of COVID-19 for the sake of the health of all Californians. In fulfilling that duty, the Governor must ensure that when correctional facilities seek to implement his COVID-19 executive orders, these efforts are consistent with the U.S. and California Constitutions.

Unlike the Governor, Attorney General Becerra’s obligations exist independently of the Emergency Services Act. The California Constitution provides that “[t]he Attorney General *shall have direct supervision over every district attorney and sheriff* and over such other law enforcement officers as may be designated by law, in all matters pertaining to the duties of their respective offices” Cal. Const. art. V, § 13 (emphasis added). Similarly, Government Code section 12560 provides: “The Attorney General *has direct supervision over the sheriffs of the several counties of the State*, and may require of them written reports concerning the investigation, detection and punishment of crime in their respective jurisdictions.” Gov’t. Code § 12560 (emphasis added); *see also Venegas v.*

Cty. of Los Angeles, 32 Cal. 4th 820, 836 (2004) (holding that for purposes of liability “sheriffs while performing law enforcement duties are state agents”); *Cty. of Los Angeles v. Superior Court*, 68 Cal. App. 4th 1166, 1178 (1998) (holding that sheriff acted as state official, not a local official, in setting policies pertaining to assignment of people who were incarcerated in county jail and was therefore immune from § 1983 liability).

As the state’s chief law enforcement officer, the Attorney General has a “constitutional responsibility to oversee the sheriff[s]” and the district attorneys, and to coordinate their response to COVID-19. *See Dibb v. Cty. of San Diego*, 8 Cal. 4th 1200, 1210 (1994). As described in the pro argument for the 1934 ballot initiative that enacted that constitutional amendment, voters vested the Attorney General with this authority to “make[] possible the coordination of county law enforcement agencies and provide[] the necessary supervision to insure that result.”⁵² The constitutional amendment made it the obligation of the Attorney General to ensure “the uniform and adequate enforcement of law throughout the State.” *Id.* Thus, in supervising the sheriffs and district attorneys, the Attorney General cannot ignore the constitutional rights of incarcerated and detained persons to be protected from COVID-19 infection in correctional

⁵² California Attorney General, California Proposition 4, at 2 (1934), https://repository.uchastings.edu/cgi/viewcontent.cgi?article=1318&context=ca_ballot_props.

facilities. The Attorney General must ensure that sheriffs and district attorneys continue to carry out their law enforcement duties in a constitutional manner, including by limiting populations in correctional facilities to the extent necessary to ensure constitutional conditions inside.

B. Petitioners have Standing to Enforce Respondents’ Constitutional Duties

1. Petitioners have a Beneficial Interest in Securing Constitutionally Adequate Carceral Conditions for their Current and Former Clients

Petitioners may seek a writ of mandate when they are “beneficially interested,” meaning that they have “some special interest to be served or some particular right to be preserved or protected over and above the interest held in common with the public at large.” *Save the Plastic Bag Coal. v. City of Manhattan Beach*, 52 Cal. 4th 155, 165 (2011). To make this showing as associations, petitioners need show only that their individual members have a beneficial interest in the outcome of these proceedings. *See Associated Builders & Contractors, Inc. v. San Francisco Airports Com.*, 21 Cal. 4th 352, 361 (1999) (explaining that “[t]o establish associational standing, [petitioner] must demonstrate that its members would otherwise have standing to sue in their own right.”).

All three petitioners’ members work closely with adults and juveniles who are confined in county jails and detention facilities, or are themselves confined in those facilities. For instance, Petitioner YJC’s

members include youth confined in juvenile detention facilities and individuals who work with system-involved youth to provide support and reentry services. Appx. 660-61,662 (McGill ¶¶ 4–7, 12). Unconstitutional conditions in youth facilities harm these members by heightening their infection risk.

Health risks give YJC a concrete interest in constitutionally adequate carceral conditions “over and above the interest held in common with the public at large.” *Plastic Bag Coal.*, 52 Cal. 4th at 170 (holding that association of plastic bag manufacturers had beneficial interest in challenging ordinance banning plastic bags because ordinance would harm members’ business in the city); *Associated Builders*, 21 Cal. 4th at 354 (holding that contractor associations had standing to challenge the legality of a project stabilization agreement that allegedly infringed members’ right of association and harmed their business through anticompetitive influence). Denial of reasonable protections against infection is properly remediated through a writ of mandate. *See In re Head*, 42 Cal. 3d 223, 231 n. 7 (1986) (“Because actions to enforce statutory and constitutional rights of prisoners are brought to ‘compel the performance of an act which the law specifically enjoins, as a duty resulting from an office,’ . . . there is no question but that mandamus lies.”).

2. Petitioners have Public Interest Standing in Securing Constitutionally Adequate Conditions

In addition to their beneficial interest, Petitioners have public interest standing to petition for a writ of mandate. When, as here, “the question is one of public right and the object of mandamus is to procure the enforcement of a public duty,” any member of the public can seek public interest standing, “since it is sufficient that he is interested as a citizen in having the laws executed and the duty in question enforced.” *Plastic Bag Coal.*, 52 Cal. 4th at 166 (quoting *Bd. of Soc. Welfare v. Los Angeles Cty.*, 27 Cal. 2d 98, 100–01 (1945)).

In evaluating whether a petitioner has public interest standing, courts weigh the public interest in ensuring that the government performs its duties against any “competing considerations of a more urgent nature.” *Green v. Obledo*, 29 Cal. 3d 126, 145 (1981). When there is a “manifest public interest” in ensuring that respondents’ conduct conforms to legal requirements, and no “urgent considerations . . . outweigh” that public interest, public interest standing is available. *Hector F. v. El Centro Elementary Sch. Dist.*, 227 Cal. App. 4th 331, 342 (2014); see *Reynolds v. City of Calistoga*, 223 Cal. App. 4th 865, 875 (2014).

Here, the public has a manifest interest in ensuring that respondents do not subject people in government custody to intolerable risks of COVID-19 infection, in violation of their constitutional rights. See *In re*

Head, 42 Cal. 3d at 230 (public policies served by the constitutional and statutory rights of incarcerated people are frequently “of interest not only to the prison inmates themselves, but the public in general.”); *In re Brindle*, 91 Cal. App. 3d 660, 670 (1979) (explaining that “the supervision of the administration of criminal justice” raises “questions of general public concern”); *see also Dep’t of Corr. v. State Pers. Bd. (Wallace)*, 59 Cal. App. 4th 131, 143 (1997) (discrimination in public employment concerns “the public generally in whose name and under whose auspices these controversial policies are carried out”).

The public also has a manifest interest in preventing avoidable COVID-19 infections. Because correctional facilities are not sealed off from the rest of the community—staff enter and leave every day, new arrestees arrive daily, and others are released—any outbreak that begins behind bars will spread to the broader community. Additionally, people who contract COVID-19 in correctional facilities and become seriously ill require treatment in community healthcare facilities. This further strains the hospital resources during the most significant global pandemic in generations. The public has a strong interest in preventing these harms.⁵³

⁵³ Courts have previously found public interest standing when the harms have a similarly broad impact. *See Plastic Bag Coal.*, 52 Cal. 4th at 160 (finding public interest in “the preparation of an environmental impact report”); *Bd. of Soc. Welfare*, 27 Cal. 2d at 101 (“[T]he provision of public aid to the needy aged is a matter of state-wide concern.”).

Further support comes from structural challenges facing individuals in vindicating their constitutional rights. “In determining whether a petitioner has public interest standing, the court . . . considers the burden on those who have a beneficial interest, and would have general standing, but who may be disinclined or ill-equipped to seek review.” *Weiss v. City of Los Angeles*, 2 Cal. App. 5th 194, 205 (2016). Even if everyone in custody had the resources and ability to file a lawsuit seeking protection from infection, piecemeal litigation would be inadequate—especially as COVID-19 limits court capacity around the state. Given the pandemic’s pace and scale, change must happen quickly to avoid widespread illness. Statewide public interest litigation is ideally suited to achieve that objective.

III. Petitioners have no Adequate Administrative Remedy

Mandamus is appropriate only if the petitioner has no “plain, speedy, or adequate remedy.” Civ. Proc. Code § 1086. Courts do not require exhaustion of administrative remedies where “irreparable harm will result if judicial intervention is withheld until a final administrative decision is rendered.” *Alta Loma Sch. Dist. v. San Bernardino Cty. Com. on Sch. Dist. Reorganization*, 124 Cal. App. 3d 542, 555 (1981); see *Ogo Assocs. v. City of Torrance*, 37 Cal. App. 3d 830, 834 (1974).

Here, the rapid spread of COVID-19 creates a grave risk of infection for everyone in correctional facilities, which increases with each day. It is simply impracticable for tens of thousands of incarcerated people to pursue

relief through administrative channels.⁵⁴ By the time everyone has an opportunity to be heard, the statewide situation will have deteriorated and many of those pursuing administrative relief may already have become infected or critically ill. Courts have excused failure to exhaust on far lesser showings of urgent need. *See Dep't of Pers. Admin. v. Superior Court*, 5 Cal. App. 4th 155, 169 (1992) (entertaining mandamus petition seeking to invalidate statute that cut employee compensation during a financial crisis).

Nor have courts required exhaustion when the public interest demands judicial resolution. *See Hull v. Cason*, 114 Cal. App. 3d 344, 357 (1981). Fighting COVID-19 in correctional facilities is a matter of compelling, statewide public interest. Absent judicial intervention, the state's correctional facilities are likely to become hotspots of infection, threatening public health and undermining the state's containment efforts. This has already occurred in other states, and it underscores the need for immediate judicial review. *See id.* at 357 (declining to apply exhaustion requirement when "prompt determination [was] not only in the public

⁵⁴ Although some form of administrative remedy process may be available in various correctional facilities, it is neither speedy enough nor sufficient. These administrative remedy processes are typically designed to address routine individualized grievances, such as to request that a facility investigate a discrete incident of mistreatment or unprofessional behavior by staff, request changes to housing or security classifications, or correct an error in the facility's records—not to address urgent, systemwide changes like those addressed in this petition.

interest, but it would also end what must be grave uncertainty in the lives and careers of the many persons . . . who [would] be affected by its outcome”); *Lindeleaf v. Agric. Labor Relations Bd.*, 41 Cal. 3d 861, 870–71 (1986) (hearing challenge to Labor Board protocols despite failure to exhaust when refusal to address challenge would affect not only the parties but also non-parties involved in Board decisions).

For all of these reasons, the Court should decline to enforce any exhaustion requirement and resolve this petition on its merits. The petition raises important constitutional issues that “affect not only the present parties, but also” every person who is incarcerated in California, surrounding communities, and California residents at large. *Lindleaf*, 41 Cal. 3d at 870. Time is short, and there is an urgent need for action.

CONCLUSION

For the foregoing reasons, Petitioners respectfully request that this Court grant the relief sought in the Petition for Writ of Mandate.

DATED: April 24, 2020

Respectfully submitted,

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CERTIFICATE OF WORD COUNT

I, the undersigned counsel for Petitioners, relying on the word count function of Microsoft Word, the computer program used to prepare this document, certify that the foregoing Petition and Memorandum of Points and Authorities contain 18,586 words, excluding the words in the sections that California Rules of Court, rules 8.204(c)(3) and 8.486(a)(6) instruct counsel to exclude. I have filed concurrently with this Petition and Memorandum of Points and Authorities an Application for Permission to File Petition for Writ of Mandate in Excess of 14,000 Words.

/s/ Sara A. McDermott

Sara A. McDermott

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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

PETITION FOR WRIT OF MANDATE


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

Document received by the CA Supreme Court.

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