

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

Center for Juvenile Law and Policy, and  
Independent Juvenile Defender Office

On behalf of

**ALL YOUTH DETAINED IN JUVENILE  
HALLS AND CAMPS IN LOS ANGELES  
COUNTY<sup>1</sup>**

Petitioners,

v.

**LOS ANGELES SUPERIOR COURT  
(JUVENILE)**

Respondents.

No.

**PETITION FOR  
WRIT OF MANDATE**

**PETITION FOR WRIT OF MANDATE**

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<sup>1</sup> This petition excludes any individual youth for whom, after consultation with counsel and based on the likelihood of negative consequences, a decision is made not to be included.

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Exhibit B: Declaration of Dr. Craig Haney, PhD  
Exhibit C: Declaration of Cyn Yamashiro, Independent Juvenile  
Defender Program  
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Law Center  
Exhibit G: Email Communications about BSCC Suspension

## SUMMARY OF ISSUES PRESENTED

This petition to the California Supreme Court requests an extraordinary remedy under extraordinary circumstances – COVID-19 is a highly contagious virus that has become a global pandemic, ravaging communities and causing massive upheaval.

This writ should issue to mitigate the spread of COVID-19 into and beyond Los Angeles County’s juvenile halls and camps, saving lives and preventing devastating harm to young people in custody and their surrounding communities.

Youth are entitled to special care and greater leniency under constitutional and state laws, and such is true when considering the exceptional practice of removing them from their homes, and all the truer in today’s state of emergency. Ultimately, the failure to protect youth in confinement from a likely outbreak of COVID-19 constitutes a violation of due process under the Fourteenth Amendment and the California Constitution, as well as a violation of the very purpose of and duties of the juvenile court system. Under usual circumstances, the statutory scheme for youth justice “is focused on the rehabilitation of the child and thus makes detention of a child the exceptional practice, rather than the rule.”<sup>2</sup> In these unusual circumstances, Judicial Council reminded juvenile courts that they retain “broad discretion under current law to release detained juveniles to protect the health of those juveniles and the health and safety of the others in detention during the current state of emergency related to the COVID-19

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<sup>2</sup> *Emergency Rule 7, Advisory Committee Comment*, Judicial Council (Apr. 6. 2020).

pandemic.”<sup>3</sup> This writ requests mandamus to issue to immediately and substantially reduce and safeguard youth populations in juvenile halls and camps through: immediate release of certain categories of youth in confinement; expedited review and presumptive release of all other youth; a presumptive prohibition on all new admissions into juvenile halls; a prohibition on transfers into all juvenile camps and county jails; and safety and health precautions consistent with protocols issued by the Center on Disease Control to prevent and contain COVID-19 infection.

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<sup>3</sup> *Id.*

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

Center for Juvenile Law and Policy, and  
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On behalf of

ALL YOUTH DETAINED IN JUVENILE  
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LOS ANGELES SUPERIOR COURT  
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**PETITION FOR  
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TO THE HONORABLE CHIEF JUSTICE AND JUSTICES OF THE  
SUPREME COURT OF CALIFORNIA:

Petitioners, Center for Juvenile Law and Policy (“CJLP”) and  
Independent Juvenile Defender Program (“IJD”), hereby petition this  
Honorable Court for a writ of mandate directed to Respondent Superior  
Court to immediately and substantially reduce and safeguard youth  
populations in juvenile halls and camps through: immediate release of

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<sup>4</sup> The Petition excludes any individual youth for whom, after  
consultation with counsel and based on the likelihood of negative  
consequences, a decision is made not be included.

certain categories of youth in confinement; expedited review and presumptive release of all other youth; a presumptive prohibition on all new admissions into juvenile halls; a prohibition on transfers into all juvenile camps and county jails; and safety and health precautions consistent with protocols issued by the Center on Disease Control to prevent and contain COVID-19 infection.

This writ should issue to mitigate the spread of COVID-19 into and beyond Los Angeles County’s juvenile halls and camps, saving lives and preventing devastating harm to young people in custody and their surrounding communities. This Court has proper jurisdiction to issue mandamus as an extraordinary remedy under extraordinary circumstances. (Cal. Const. art VI, §10; CCP § 1086; *see also California Redevelopment Assn. v. Matosantos* (2011) 53 Cal. 4th 231, 253 (state Supreme Court has original jurisdiction over matters “of sufficiently great importance and require immediate resolution.”).)

By this verified petition, Petitioners represent that:

\*

No other petition for writ for mandate, or for any other extraordinary relief has been made by or on behalf of petitioners relating to this matter.

\*

Petitioner CJLP is a public-interest law clinic at Loyola Law School that trains certified law students to holistically represent at-risk youth in delinquency proceedings, transfer hearings, educational hearings, and post-conviction proceedings throughout Los Angeles County. CJLP employs a team-representation model, in which every client facing prosecution in the juvenile justice system receives a

delinquency lawyer, a social worker, and an educational lawyer, as well as certified law students to support them throughout their case and during any subsequent period of supervision. Many clients of CJLP are detained in juvenile halls and camps throughout Los Angeles County.

Petitioner IJDP, which is housed at the Los Angeles County Bar Association, provides free legal services to indigent youth in the county who are facing criminal charges in juvenile court through a panel of 50 independent attorneys. IJDP panel attorneys are vetted by IJDP, trained and supported by IJDP resources, and supervised by IJDP to ensure that youths receive competent representation, consistent with best practices for juvenile delinquency practice. In addition, IJDP provides direct representation in matters involving pre-trial writs, resource advocacy, investigations and forensic social work where called upon by members of the IJDP panel.

\*

Respondent is the Superior Court for the County of Los Angeles.

\*

## SUMMARY OF FACTS

### **A. The Covid-19 Global Pandemic Is a Continuous Threat to Los Angeles County.**

The COVID-19 is a global pandemic, ravaging communities and causing massive upheaval. In just over three months, COVID-19 has spread across the world exponentially. There is no vaccine to protect against COVID-19, nor are there any known effective treatments for those who contract the disease. (Haney Decl.; Barnert Decl.) The virus spreads incredibly efficiently. Because humans have never been

exposed to the virus, no one is immune, or spared from its lethal effects. (Barnert Decl.) Therefore, according to its most aggressive projections, the Center for Disease Control and Prevention (“CDC”) estimates that COVID-19 could infect more than 200 million people in the United States and 1.7 million individuals could die, if effective public health measures are not taken.<sup>5</sup> As of April 13, 2020, over 1.7 million people around the world have received confirmed diagnoses of COVID-19,<sup>6</sup> including 554,849 people in the United States.<sup>7</sup> At least 111,828 people have died globally as a result of COVID-19,<sup>8</sup> including 21,942 in the United States.<sup>9</sup>

California is no exception to the crisis. The first California case of COVID-19 was confirmed in Orange County in late January.<sup>10</sup> Since then, the virus has spread throughout the state. Los Angeles County has the highest concentration in California, with 9,420 confirmed cases, 320 of which have resulted in death, as of April 13, 2020.<sup>11</sup> The

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<sup>5</sup> Sheri Fink, *Worst-Case Estimates for U.S. Coronavirus Deaths*, *N.Y. Times* (Mar. 18, 2020), <https://nyti.ms/2JrLgal>

<sup>6</sup> World Health Organization, *Coronavirus Disease Pandemic*, <https://www.who.int/emergencies/diseases/novel-coronavirus-2019>

<sup>7</sup> <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html>

<sup>8</sup> *Supra*, note 3.

<sup>9</sup> *Supra*, note 4.

<sup>10</sup> *Press Release, OC Health Care Agency Confirms First Case of Novel Coronavirus in Orange County, California*, <https://mailchi.mp/ochca/novelcoronavirus> (Jan. 25, 2020).

<sup>11</sup> *Novel coronavirus in Los Angeles County*, Los Angeles Cty. Dep’t of Pub. Health (last visited Apr. 13, 2020), <http://publichealth.lacounty.gov/media/Coronavirus>.

incidence of unreported cases likely means that actual figures are much higher,<sup>12</sup> and because the disease is so contagious, the number of cases and deaths continues to grow. The already dire situation in Los Angeles County is almost certain to deteriorate further. Current estimates predict that cases of COVID-19 will not peak until May;<sup>13</sup> the county may soon be reporting one thousand new cases a day.<sup>14</sup>

The unprecedented situation wrought by the virus has prompted government officials across the globe and country to take unprecedented actions. California, in particular, has been aggressive in its response to the virus. Governor Newsom declared a state of emergency for California on March 4, 2020 as the number of impacted

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<sup>12</sup> See Ruiyan Li et al., *Substantial undocumented infection facilitates the rapid dissemination of novel coronavirus (SARS-CoV2)*, *Science* (16 Mar. 2020).

<sup>13</sup> Colleen Shalby et al., *L.A. County Tells Residents to Stay Inside This Week as Coronavirus Hits New Milestone*, *L.A. Times* (Apr. 7, 2020), <https://www.latimes.com/california/story/2020-04-07/l-a-county-tell-residents-to-stay-inside-this-week-as-coronavirus-hits-new-milestone>.

<sup>14</sup> Erin B. Logan, *Coronavirus Claims 1,000 U.S. Lives in a Single Day*, *L.A. Times* (Apr. 4, 2020), <https://www.latimes.com/world-nation/story/2020-04-04/coronavirus-death-toll-u-s-tops-1-000-a-day>.

counties rose.<sup>15</sup> The state was one of first to issue a “shelter in place” order of all Californians.<sup>16</sup>

As the virus had made its way into almost every corner of the state, institutional settings have presented particular vulnerabilities. As of April 13, 2020, 1,372 individuals in Los Angeles County have tested positive for COVID-19 in “institutional settings,” which include nursing homes, assisted living facilities, jails, prisons, homeless shelters, treatment centers and supporting living facilities; 40 of those were jail staff.<sup>17</sup> As of April 12, 2020, 13 inmates and 11 staff in the California State Prison in Los Angeles County have the virus, though only 153 inmates have been tested in a facility that houses over 3,000 individuals.<sup>18</sup> Coronavirus is emerging within the juvenile

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<sup>15</sup> *Governor Newsom Declares State of Emergency to Help State Prepare for Broader Spread of COVID-19* (Mar. 4, 2020), <https://www.gov.ca.gov/2020/03/04/governor-newsom-declares-state-of-emergency-to-help-state-prepare-for-broader-spread-of-covid-19>; see also Soumya Karlamangla, et al., *Grand Princess Cruise Ship at Center of Coronavirus Fight Amid Concerns About Spread* (Mar. 5, 2020), <https://www.latimes.com/california/story/2020-03-04/los-angeles-county-declares-coronavirus-emergency-6-new-cases>.

<sup>16</sup> Exec. Dep’t of the State of California, Exec. Order N-33-20; Geoffrey A. Fowler et al., *Social Distancing Works: The Earlier the Better, California and Washington Data Show*, Wash. Post (Apr. 1, 2020), <https://www.washingtonpost.com/nation/2020/04/01/lockdown-coronavirus-california-data/>.

<sup>17</sup> Nouran Salahieh, *With caveat about weekend reporting lag, L.A. County announces ‘relatively low’ number of new coronavirus cases*, KTLA5 (Apr. 13, 2020), <https://ktla.com/news/local-news/l-a-county-officials-provide-latest-updates-on-coronavirus-cases-response-to-pandemic>.

<sup>18</sup> Population COVID-19 Tracking, California Dep’t of Corrections (last visited Apr. 12 2020), <https://www.cdcr.ca.gov/covid19/population->

institutional system as well. On April, 1, 2020, a probation officer in the county's Barry J. Nidorff Juvenile Hall tested positive for the virus, forcing 21 detained youth into quarantine.<sup>19</sup> Five days later on April 6, Los Angeles County reported a second officer had tested positive for COVID-19 at the same facility and another cohort of youth had been quarantined.<sup>20</sup> By April 13, six juvenile probation officers at secure facilities had tested positive.<sup>21</sup> In total, almost one-fourth of the people who have died from coronavirus in the County lived in institutional settings.<sup>22</sup>

It is indisputable that COVID-19 represents a serious threat, and the local government in Los Angeles has also responded in kind. Without a vaccine, ways to reduce transmission of COVID-19 include social distancing (by maintaining a distance of at least six feet from the nearest person), frequent hand washing and other sanitation measures, protective face coverings, and quarantining those who are ill. The CDC

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status-tracking.

<sup>19</sup> Jame Queally, *L.A. County Juvenile Hall Officer Tests Positive for Coronavirus, 21 Youths in Quarantine*, L.A. Times (Apr. 1, 2020), <https://www.latimes.com/california/story/2020-04-01/l-a-county-juvenile-hall-employee-tests-positive-for-coronavirus-21-juveniles-now-on-quarantine>.

<sup>20</sup> Los Angeles County Probation Officer, Electronic Public Announcement, "Second Los Angeles County Probation Employee Tests Positive for COVID-19 at Barry J. Nidorff" (April 6, 2020).

<sup>21</sup> *Virtual Briefing: Covid-19 Updates*, Los Angeles Cty. Dep't of Pub. Health (Apr. 13, 2020).

<sup>22</sup> *See id.*; Luke Money, *This is the latest breakdown of L.A. County communities with coronavirus cases*, L.A. Times (Apr. 10, 2020), <https://www.latimes.com/california/story/2020-04-10/this-is-the-latest-breakdown-of-l-a-county-communities-with-coronavirus-cases>.

considers social distancing a “cornerstone of reducing transmission of respiratory diseases such as COVID-19.”<sup>23</sup> As such, Mayor Eric Garcetti issued a stay-at-home order on March 19, 2020 and revised it on April 10 to extend its duration to mid-May.<sup>24</sup> The Los Angeles County Department of Public Health followed suit and issued a stay-at-home order on March 21,<sup>25</sup> in addition to closing non-essential businesses and prohibiting large gatherings.<sup>26</sup> By April 5, the Los Angeles County Department of Public Health recommended that members of the general public wear a cloth facemask,<sup>27</sup> and on April 7, Mayor Eric Garcetti issued an order for LA residents to wear face coverings when visiting essential businesses.<sup>28</sup>

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<sup>23</sup> Ctrs. for Disease Control & Prevention, *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities* (Mar. 23, 2020), <https://bit.ly/2yggU1k>.

<sup>24</sup> Eric Garcetti, Mayor, City of Los Angeles, *Public Order Under City of Los Angeles Emergency Authority* (Apr. 10, 2020), <https://www.lamayor.org/sites/g/files/wph446/f/page/file/SaferAtHomeAPR10.pdf>

<sup>25</sup> *Safer at Home Order for Control of COVID-19*, Los Angeles Cty. Dep’t of Pub. Health (Mar. 21, 2020), [http://publichealth.lacounty.gov/media/Coronavirus/COVID-19\\_March%2021-HOOrder-7\\_00\\_FINAL2.pdf](http://publichealth.lacounty.gov/media/Coronavirus/COVID-19_March%2021-HOOrder-7_00_FINAL2.pdf)

<sup>26</sup> *Safer at Home Order for Control of COVID-19*, Los Angeles Cty. Dep’t of Pub. Health (Mar. 19, 2020), [http://publichealth.lacounty.gov/media/Coronavirus/COVID-19\\_SaferAtHome\\_HealthOfficerOrder\\_20200319\\_Signed.pdf](http://publichealth.lacounty.gov/media/Coronavirus/COVID-19_SaferAtHome_HealthOfficerOrder_20200319_Signed.pdf).

<sup>27</sup> *Guidance for Cloth Face Coverings*, Los Angeles Cty. Dep’t of Pub. Health (Apr. 5, 2020), <http://publichealth.lacounty.gov/media/Coronavirus/GuidanceClothFaceCoverings.pdf>.

<sup>28</sup> *See supra*, note 22.

## **B. Protecting youth from COVID-19 is crucial to protecting the general public.**

Though older populations are at the greatest risk of serious illness or death from COVID-19, the virus still poses grave dangers to youth.<sup>29</sup> The disease has killed children across the United States, including in Los Angeles County,<sup>30</sup> and available data shows constant growth in the number of individuals admitted into pediatric intensive care units across the country.<sup>31</sup> According to the largest study of pediatric COVID-19 cases to date, approximately six percent of infected children and 11 percent of infected infants have had severe or critical cases.<sup>32</sup> Crucially, even when young people do not develop any symptoms, they become vectors who can unwittingly transmit the virus to more vulnerable populations.<sup>33</sup> (Barnert Decl.)

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<sup>29</sup> Stephanie Nebehay, *WHO Message To Youth on Coronavirus: 'You Are Not Invincible'* (Mar. 20, 2020), <https://reut.rs/343yLvg>.

<sup>30</sup> Taryn Luna et al., *L.A. County Reports First Death of A Possible Coronavirus Patient Under 18 as COVID-19 Cases Top 660*, L.A. Times (Mar. 24, 2020), <https://lat.ms/2Jv9Abe>; Jennifer Millman, *'It Attacks Everyone:' NYC Loses 1st Child to Virus as State Deaths Eclipse 1,300; NJ Cases Soar*, NBC New York (Mar. 31, 2020), <https://bit.ly/2Jx4R9i>.

<sup>31</sup> Virtual Pediatric Sys., *COVID-19 Data: North American Pediatric Intensive Care Units* (Mar. 31, 2020), <https://covid19.myvps.org/>.

<sup>32</sup> See Yuanyuan Dong et al., *Epidemiological Characteristics of 2143 Pediatric Patients With 2019 Coronavirus Disease in China*, Am. Acad. of Pediatrics (2020).

<sup>33</sup> See Guoqing Qian et al., *A COVID-19 Transmission Within a Family Cluster by Presymptomatic Infectors in China (2020)*, Clinical Infectious Diseases.

Indeed, the impact of COVID-19 on even a healthy child can be extremely serious. In a recent lawsuit filed in Washington on behalf of detained immigrants, noted University of Michigan Medical School Professor Dr. Jonathan Louis Golub provided a declaration stating: “Even in younger and healthier people, infection of this virus requires supportive care, which includes supplemental oxygen, positive pressure ventilation, and in extreme cases, extracorporeal mechanical oxygenation.”<sup>34</sup>

### **C. Carceral Settings Pose Dire Health Risks During the COVID-19 Pandemic.**

A number of factors—the spatial constraints of personal and communal spaces, the underlying health conditions of many inmates, poor infection control, lack of soap and other hygiene essentials—conspire to make prisons, jails, and juvenile detention facilities potential hotbeds of contagion during the pandemic.<sup>35</sup> (Barnert Decl; Haney Decl.) The CDC has explained that correctional facilities “present unique challenges for control of COVID-19 transmission among incarcerated/detained persons, [detention center] staff, and

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<sup>34</sup> Declaration of Dr. Jonathan Louis Golub (dated Mar. 13, 2020), filed in *Dawson v. Asher*, W.D. Washington, Case no. 2:20-cv-409 (Motion for Temporary Restraining Order.)

<sup>35</sup> See, e.g., Joseph A. Bick, *Infection Control in Jails and Prisons*, 45 *Clinical Infectious Diseases* 1047, 1047 (Oct. 2007) (in jails “[t]he probability of transmission of potentially pathogenic organisms is increased by crowding, delays in medical evaluation and treatment, rationed access to soap, water, and clean laundry, [and] insufficient infection-control expertise”).

visitors.”<sup>36</sup> Social distancing is, in the CDC’s own words, “challenging to practice in correctional and detention environments,”<sup>37</sup> as with all congregate settings. In light of this reality, the Chief Justice of the California Supreme Court issued an advisory, urging court officials throughout the state to take actions to reduce prison and jail populations and has suspended superior court jury trials across the state.<sup>38</sup> Taking heed, Los Angeles County has made swift efforts to reduce jail populations by granting early releases to approximately 3,500 adults as of April 7, 2020.<sup>39</sup>

The speed at which the virus has raced through other jurisdiction’s carceral infrastructure is a forecast of what could inevitably happen in Los Angeles County without more sweeping intervention. In New York City’s Rikers Island jail complex, at least 19 incarcerated people and 12 staff members had tested positive for

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<sup>36</sup> Ctrs. for Disease Control & Prevention, *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities* (Apr. 5, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html>.

<sup>37</sup> *Id.*

<sup>38</sup> California Courts, Judicial Branch of California, *California Chief Justice Issues Second Advisory on Emergency Relief Measures* (Mar. 20, 2020), <https://newsroom.courts.ca.gov/news/california-chief-justice-issues-second-advisory-on-emergency-relief-measures>; California Courts, Judicial Branch of California, *Judicial Council of California Statewide Emergency Order by Hon. Tani G. Cantil-Sakauye* (Mar. 30, 2020).

<sup>39</sup> Alene Tchekmedyan, *A member of the nursing staff at L.A. County jails who died last week had COVID-19*, L.A. Times (Apr. 8, 2020), <https://www.latimes.com/california/story/2020-04-08/coronavirus-la-county-jails-twin-towers>.

COVID-19 as of March 22.<sup>40</sup> Just eight days later by March 31, the jail’s chief physician reported nearly 200 confirmed cases of coronavirus and described the spread as a “public health disaster unfolding before our eyes.”<sup>41</sup> Viral outbreaks in prisons and jails are nothing new: during the 1918 “Spanish flu” pandemic, California’s San Quentin State Prison was a major node of infection and inmates who eventually left the prison brought the flu with them, leading to outbreaks in other parts of the state.<sup>42</sup>

Recognizing that youth in institutional settings are vulnerable too in this outbreak, medical professionals with Physicians for Criminal Justice Reform have called on governors, courts, and departments of corrections to “[i]mmediately release youth in detention and correctional facilities who can safely return to the home of their families and/or caretakers . . . in order to alleviate potential exposure to COVID-19.”<sup>43</sup> In fact, experts have called for the safe release of as

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<sup>40</sup> Justin Wise, *Top Official Says New York City Coronavirus is a crisis, dozens infected*, The Hill (Mar. 22, 2020), <https://thehill.com/homenews/state-watch/488855-top-official-says-new-york-city-coronavirus-jail-outbreak-is-a-crisis>

<sup>41</sup> Miranda Bryan, *Coronavirus spread at Rikers is a ‘public health disaster’, says jail’s top doctor* (Apr. 1, 2020), <https://www.theguardian.com/us-news/2020/apr/01/rikers-island-jail-coronavirus-public-health-disaster>

<sup>42</sup> See Stuart A. Kinner, *Prisons and Custodial Settings are Part of a Comprehensive Response to COVID-19*, THE LANCET PUBLIC HEALTH (Apr. 2020).

<sup>43</sup> Letter from Physicians for Criminal Justice Reform, to State Governors, State and Local Juvenile Detention and Correctional Departments, and Juvenile Court Judges and Magistrates at 1 (Mar. 22, 2020), <https://bit.ly/3az51sz>.

many confined youth as possible as one of the most effective ways to contain the pandemic among youth, staff and the larger community alike. (Barnert Decl.; Haney Decl.) An explosion of cases in a custodial setting has “the potential to overwhelm prison health-care services and place additional demands on overburdened specialist facilities in the community.”<sup>44</sup> As correctional staff and youths enter and leave juvenile facilities on a regular basis, they have the potential to bring the virus with them and transmit it to the larger community in and outside.<sup>45</sup> (Barnert Decl.; Haney Decl.)

**D. Youth in confinement face an exceptionally high risk of serious harm.**

- 1. Youth in confinement are at a high risk of contracting and spreading coronavirus, as well as of serious mental and emotional harm.*

Youth in correctional facilities cannot take the necessary measures to mitigate the risk of exposure, putting them at heightened risk of COVID-19 infection. (Barnert Decl.; Haney Decl.) This is especially true given how easily the virus can be transmitted in

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<sup>44</sup> Stuart A. Kinner, *Prisons and Custodial Settings are Part of a Comprehensive Response to COVID-19*, *The Lancet Public Health* (Apr. 2020), <https://www.sciencedirect.com/science/article/pii/S246826672030058X?via%3Dihub#bib1>.

<sup>45</sup> See Josiah Rich et al., *We Must Release Prisoners to Lessen the Spread of Coronavirus*, *Wash. Post* (Mar. 17, 2020), <https://wapo.st/2QZ1A6I> (warning that unless States act swiftly to release inmates from jails and prisons the virus threatens not only prisoners and corrections workers but the general public).

institutional settings like juvenile halls and camps that are replete with communal areas and common surfaces. Though physical distancing is the best tool for combating coronavirus, implementing such practice is challenged if not nearly impossible in juvenile facilities. (Barnert Decl.; Haney Decl.) Indeed, as the facilities scramble to prevent or contain viral outbreaks, residents will be and have already been placed in isolation. At Sylmar Juvenile Hall, for example, probation officials placed 21 youths in quarantine after a first probation officer at the facility tested positive for COVID-19, and another 22 youths after a second officer was confirmed with the virus.<sup>46</sup> Such social isolation can exacerbate underlying trauma disorders and lead to anxiety, depression, self-harm, psychosis, and even suicide.<sup>47</sup> In detention settings, isolation may also resemble solitary confinement, which can cause, sometimes irreversibly, mental and physical harm to any person, but even more so youth. (Barnert Decl.; Haney Decl.)

Even prior to the outbreak of COVID-19, health and safety concerns about juvenile probation facilities in Los Angeles were well-known in light of their deteriorate conditions, outmoded policies and practices and staff and youth discontent. Numerous reports reflect

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<sup>46</sup> Jame Queally, *L.A. County Juvenile Hall Officer Tests Positive for Coronavirus, 21 Youths in Quarantine*, L.A. Times (Apr. 1, 2020), <https://www.latimes.com/california/story/2020-04-01/l-a-county-juvenile-hall-employee-tests-positive-for-coronavirus-21-juveniles-now-on-quarantine>; Los Angeles County Probation Officer, Electronic Public Announcement, “Second Los Angeles County Probation Employee Tests Positive for COVID-19 at Barry J. Nidorf” (Apr. 6, 2020).

<sup>47</sup> See also Sarah-Jayne Blakemore & Kathryn L. Mills, *Is Adolescence a Sensitive Period for Sociocultural Processing?*, 65 ANN. REV. PSYCHOL. 187, 199 (2014), <https://bit.ly/2R0My04>.

such concerns, including a 2019 Department of Mental Health report concluding that “[t]he County’s juvenile justice system is the product of a juvenile incarceration model that is flawed and fundamentally fails to adequately meet the current developmental needs and mental health needs of youth and their families.”<sup>48</sup> The Department further observed that the facilities themselves were “environments that are often counter-therapeutic and negate efforts to stabilize and enhance.”

For all young people, including those living at home and benefiting from the safety and stability of family contact, the current moment is a particularly stressful time. The WHO has warned that children and teens are uniquely susceptible to the stress induced by the pandemic and has encouraged parents to reassure their children, maintain routines, and facilitate connections with friends and family. But children detained in juvenile facilities, especially those placed in isolation, are left to face the uncertainty of the pandemic alone. (Haney Decl.; Barnert Decl.)

2. *Youth in confinement have higher incidences of underlying physical and mental health issues that increases their vulnerability to the pandemic.*

Youth in detention are medically vulnerable because of their documented higher incidence of underlying health conditions, increasing both their susceptibility to contracting the virus and related complications. (Hardy Decl.; Barnert Decl.) One study found that 46

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<sup>48</sup> Office of the Inspector General, *Report Response in the OIG Investigation & Improving Mental Health Treatment & Safety in the Juvenile Facilities* (Apr. 26, 2019).

percent of youths entering correctional facilities had medical problems.<sup>49</sup> Pediatric medicine is typically preventative, but youth involved in the juvenile justice system access more emergency care and less preventative care as compared to their peers.<sup>50</sup> As a consequence, justice-involved youth typically experience disproportionate negative health outcomes.<sup>51</sup> In the context of COVID-19, the population is thus more vulnerable, as the virus has been shown to be especially damaging and more deadly to individuals with underlying medical conditions, regardless of age. (Graves Decl.) Indeed, roughly two-thirds of all pediatric patients committed to the ICU with coronavirus in the United States have presented with some comorbidities.<sup>52</sup>

**E. Attempts to release and safeguard youth in juvenile halls and camps in Los Angeles County have fallen short of adequate standards of care.**

The coronavirus pandemic has emerged with such speed that like too many jurisdictions, Los Angeles County has necessarily scrambled

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<sup>49</sup> Karen Hein et al., *Juvenile Detention: Another Boundary Issue for Physicians*, 66 vol. 2 PEDIATRICS 239, 239 (1980), <https://pediatrics.aappublications.org/content/pediatrics/66/2/239.full.pdf>.

<sup>50</sup> Nicole Westman, *To Reduce Long-Term Health Gaps, a Push for Early Intervention in Juvenile Detention*, Juvenile Justice Information Exchange (July 30, 2018), <https://jjie.org/2018/07/30/to-reduce-long-term-health-gaps-a-push-for-early-intervention-in-juvenile-detention/>

<sup>51</sup> *Id.* (“As adults, [individuals involved with the juvenile justice system] show more symptoms of depression and have worse overall health.”).

<sup>52</sup> Virtual Pediatric Sys., *COVID-19 Data: North American Pediatric Intensive Care Units* (Mar. 31, 2020), <https://covid19.myvps.org/>.

to catch up to its spread and devastation. For detained or incarcerated individuals, state and local leaders have taken some action to reduce, as well as protect, their populations in recognition of the threat of COVID-19 in institutional settings. Among the actions taken as the pandemic and information about it evolved was the issuance of emergency rules by the Judicial Council of California on April 7 – one of which regarded delinquency proceedings to “ensure that detention hearings for juveniles in delinquency court must be held in a timely manner to ensure that no child is detained who does not need to be detained to protect the child or the community.” In its comment on the rule, the Council emphasized that the statutory scheme for youth “is focused on the rehabilitation of the child and thus makes detention of a child the exceptional practice, rather than the rule,” and reminded juvenile courts that they retain “broad discretion under current law to release detained juveniles to protect the health of those juveniles and the health and safety of the others in detention during the current state of emergency related to the COVID-19 pandemic.”<sup>53</sup>

Still, efforts in Los Angeles County to review the basis of detention and incarceration, and release every youth possible under these exigent circumstances have been slowed by a severely reduced capacity and changed operation of juvenile courts, and an adherence to case-by-case individualized review. (Yamashiro Decl.) Not surprisingly, and consistent with research and expert observations, implementation of COVID-19 safeguards within juvenile halls and camps has also been

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<sup>53</sup> *Emergency Rule 7, Advisory Committee Comment*, Judicial Council (Apr. 6. 2020).

challenged in the meantime. (*Id.*; Kennedy Decl.; Gunsberg Decl.; Heimov Decl.)

1. *Juvenile courts have failed to swiftly review and release every youth in confinement possible in Los Angeles.*

Some progress has been made to reduce the population of juvenile halls and camps during the pandemic – for instance, over one week between April 6 and April 13, camp populations decreased by 25 (from 252 to 227) and hall populations by 24 (from 401 to 377).<sup>54</sup> While positive, such incremental progress to release youth is incongruent with the current state of emergency, and with the need, more than ever, to advance the rehabilitative mission of the juvenile justice system and the notion that detention is an “exceptional practice.”<sup>55</sup>

In contrast and in spite of scaled-down operations and continuances of certain proceedings in all 38 courthouses across Los Angeles County (Yamashiro Decl.), efforts to reduce jail populations have taken a systematic, sweeping approach. On March 23, the Los Angeles County Board of Supervisors issued an executive order directing collaboration and action by the Sheriff’s Department and other relevant stakeholders to reduce and protect jail populations from the spread of coronavirus.<sup>56</sup> On March 24, Presiding Judge Kevin C.

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<sup>54</sup> Population Statistics, Juvenile Institutions, Los Angeles County Department of Probation (April 6-13, 2020).

<sup>55</sup> Alene Tchekmedyan, *A member of the nursing staff at L.A. County jails who died last week had COVID-19*, L.A. Times (Apr. 8, 2020), <https://www.latimes.com/california/story/2020-04-08/coronavirus-la-county-jails-twin-towers>.

<sup>56</sup> *Executive Order Following Proclamation of Existence of a Local*

Brazile over Los Angeles Superior Court announced an expedited court process to release an extensive, agreed-upon list of adults held pretrial in county jails.<sup>57</sup> Balancing concerns about COVID-19 and public safety, the prosecution and defense had stipulated to the list of persons in a joint motion for release, and the need for a court hearing was waived so that release would be effective immediately upon the court's ex parte review. On March 31, 2020, the Board of Supervisors ratified its executive order from the week prior.<sup>58</sup> On April 13, the Superior Court announced it would continue to work with justice partners on jail release of adults in response to the pandemic. (Yamashiro Decl.)

With respect to youth in confinement, the Board also adopted a motion on the same date, requiring updates from the Probation Department and other county agencies on their efforts to reduce and safeguard juvenile hall and camp populations.<sup>59</sup> More than two weeks

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*Health Emergency Regarding Novel Coronavirus*, Los Angeles County Board of Supervisors (Mar. 23, 2020), [https://covid19.lacounty.gov/wp-content/uploads/23032020HP\\_MFP\\_M577141222-1.pdf](https://covid19.lacounty.gov/wp-content/uploads/23032020HP_MFP_M577141222-1.pdf).

<sup>57</sup> Presiding Judge Kevin C. Brazille: Only Authorized Persons Allowed To Enter Any Superior Court Of Los Angeles County Courthouse, Los Angeles Cty. Superior Court (Mar. 23, 2020), [http://www.lacourt.org/newsmedia/uploads/142020323185249GO\\_Marc h232020\\_FINAL.pdf](http://www.lacourt.org/newsmedia/uploads/142020323185249GO_Marc h232020_FINAL.pdf).

<sup>58</sup> *Motion by Supervisors Hilda L. Solis and Kathryn Barger: Ratifying Executive Order of the Chair of the County of Los Angeles Board of Supervisors Following Proclamation of Existence of a Local Health Emergency Regarding Novel Coronavirus (COVID-19)*, Los Angeles Cty. Board of Supervisors (Mar. 31, 2020).

<sup>59</sup> *Motion by Supervisors Hilda L. Solis and Mark Ridley-Thomas: Ensuring Adequate Efforts to Prevent COVID-19 Among Justice-Involved Populations*, Los Angeles Cty. Board of Supervisors (Mar. 31, 2020).

later after, continuous efforts to ensure greater, transparency, accountability and bold action by the Probation Department and Juvenile Court to reduce youth populations in halls and camps remain hampered. No global approach as has happened with adults to expedite reviewing cases of and release youth en masse has been accepted. (Yamashiro Decl.) Quite the opposite, the Juvenile Court has maintained that the original presiding court must conduct an individualized review of each youth's circumstances, even if, for instance, the defense, prosecution and Probation are aligned in their recommendations for release. (*Id.*; Kennedy Decl.; Gunsberg Decl.)

Yet, the juvenile court system in Los Angeles is now operating at less than 50 percent capacity to conduct such individualized reviews. On April 10, 2020, the Presiding Judge of the Superior Court's Juvenile Division delivered notification that the limited operations would remain in place until June 22, 2020. (Yamashiro Decl.) Currently, only nine or fewer of the 18 juvenile bench officers are regularly presiding over cases since the onset of the crisis. (Yamashiro Decl.; Kennedy Decl.; Gunsberg Decl.) The current delinquency bench appears to work on a rotation, but no formal notification has issued as to that rotation. (Yamashiro Decl.) Five bench officers seem to keep erratic schedules that differ from day-to-day. One bench officer hears cases in a courthouse different than the one he is normally assigned. Only four bench officers are hearing their regular calendars in their regular courtrooms. So far, no clear directives have issued from any of the juvenile courts "as to how or where defense counsel should file motions or how to direct these to the appropriate bench officer when a courtroom is closed." (Kennedy Decl.; Gunsberg Decl.) As the courts

and its administrative office decline to employ any electronic means of communication with attorneys, the prosecution and defense bar have discovered they must submit motions to a “drop box” outside courthouses that is dangerously exposed to persons as they enter and exit one of the busiest juvenile court systems in the United States. (Yamashiro Decl.)

In spite of the altered and reduced operations of the juvenile courts, probation alongside legal offices have submitted routine motions and arguments for youths’ release. (Yamashiro Decl.; Kennedy Decl.; Gunsberg Decl.) In an effort by Probation to move for the release of over 40 youth, notice of the motions was not provided to attorneys, and in several cases, the Juvenile Court denied release without permitting the youth to be heard, providing the probation reports supporting the decision, and without entering the decision into the minutes. (Yamashiro Decl.) In one case, IJDP counsel was permitted to appear and argue for his client, though he was not provided with the underlying probation report ostensibly supporting the Juvenile Court’s denial, and was initially refused an expedited transcript for appellate review. (*Id.*) For another IJDP attorney, the adjusted and reduced court capacity has meant that all seven of his clients who are confined in the halls and camps are navigating courts that have been altered in their schedule and capacity. (Gunsberg Decl.) While successfully filing and appearing on motions for release on behalf of three clients, CJLP has been delayed on two other motions; in one case, defense counsel is still awaiting a hearing date on a motion she delivered in person on April 8 to a box at the juvenile court, and in another, counsel was rerouted to a different courtroom, was advised that a hearing would take place in

approximately two weeks, and only after persistent follow-up communication, succeeded in advancing the hearing date. (Kennedy Decl.)

As review of youths' requests for release happen on a case-by-case basis, defender officers and advocates alike have called for broader, swifter measures to reduce hall and camp populations since at least mid-March.<sup>60</sup> Concern about an outbreak in Los Angeles County's juvenile facilities is not just a remote possibility. Six probation officers at juvenile facilities have already tested positive,<sup>61</sup> the virus has is spreading in the county's adult detention centers,<sup>62</sup> and there have been reports of symptomatic individuals in juvenile detention centers.<sup>63</sup> Last week on April 7, one county agency weighed in publicly on the urgency of population reduction: the Los Angeles County Board of Education passed an emergency resolution to "protect the educational future of students in probation camps and halls" through advocating for

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<sup>60</sup> See, e.g., Tyler Kingkade, *Coronavirus in juvenile detention is a 'nightmare scenario,' doctors and advocates say*, CBS News (Mar. 27, 2020); Dr. Robert K. Ross and Shane M. Goldsmith, *Stop a Coronavirus Disaster: Release Kids from Juvenile Facilities*, Chronicle of Social Change (Apr. 8, 2020); Leila Miller, *Youths in detention should be released to reduce coronavirus risk, advocates say*, LA Times (Mar. 17, 2020).

<sup>61</sup> *Supra*, note 18.

<sup>62</sup> *Population COVID-19 Tracking*, California Dep't of Corrections (last visited Apr. 8, 2020), <https://www.cdcr.ca.gov/covid19/population-status-tracking/>.

<sup>63</sup> Verified Pet. for Writ of Habeas Corpus ¶ 46, New York ex rel. Williams v. Brann, No. \_\_\_ (N.Y. Mar. 19, 2020), <https://bit.ly/2WZFghc>

certain categories of youth incarcerated or awaiting trial.<sup>64</sup> During a public briefing, both the Department of Public Health and County Supervisor Hilda Solis also echoed calls for releasing greater numbers of youth from juvenile facilities.<sup>65</sup>

2. *Youth in juvenile halls and camps in Los Angeles are not adequately safeguarded from coronavirus, nor provided meaningful rehabilitative value.*

Despite worldwide and nationwide measures to safeguard populations against COVID-19, youth in confinement continue to report lack of measures to implement any such protections inside juvenile halls and camps. Social distancing, the “cornerstone of reducing transmission of respiratory diseases such as COVID-19,”<sup>66</sup> is reported to be non-existent at juvenile facilities; in some instances, youth have not been instructed on the need to social distance at all, and in other instances, youth have received guidance, but probation staff have failed to implement the practice. (Yamashiro Decl.; Kennedy Decl.; Gunsberg Decl.) At both juvenile halls and camps, youth report eating, showering, playing board games and watching television communally,

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<sup>64</sup> *Minutes Los Angeles County Board Of Education Emergency Board Meeting*, Los Angeles Cty. Office of Edu., (Apr. 7, 2020), [https://www.lacoe.edu/Portals/0/Board/No.%2023A%20\(4-7-20\)%20Emergency%20Meeting%20Minutes.pdf?ver=2020-04-08-131657-467](https://www.lacoe.edu/Portals/0/Board/No.%2023A%20(4-7-20)%20Emergency%20Meeting%20Minutes.pdf?ver=2020-04-08-131657-467).

<sup>65</sup> Virtual Briefing: Covid-19 Updates, Los Angeles Cty. Dep’t of Pub. Health (Apr. 13, 2020).

<sup>66</sup> Ctrs. for Disease Control & Prevention, *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities* (Mar. 23, 2020), <https://bit.ly/2yggU1k>.

as recently as April 10th. (*Ibid.*) At both juvenile halls, youth were playing contact sports. (Kennedy Decl.; Gunsberg Decl.) This was confirmed personally by the Chief Probation Officer. (Yamashiro Decl.). At the camps, youth report that they continue to sleep in open dormitory settings, with some 10 or more other youth. Meanwhile, most youth interviewed reported that no hygiene essentials, like soap, hand sanitizer or face masks, have been supplied to them. (Yamshiro Decl.; Kennedy Decl.; Gunsberg Decl.; Heimov Decl.) Some youth report having inconsistent access to hand sanitizer, gloves or masks, including based on favoritism. At one juvenile hall at least, staff are inconsistently or not using masks and gloves at all. (Heimov Decl.)

As juvenile facilities in Los Angeles struggle to implement social distancing, the practice has resulted in isolation and lack of crucial rehabilitative programming. (Yamashiro Decl.; Kennedy Decl.; Gunsberg Decl.; Heimov Decl.) At all facilities, school, programs and family visitation have all halted upon the Probation Department's request to and approval by the Board of State and Community Corrections on March 27, 2020 to suspend its compliance with title XV state regulations through April 11; on April 8, those suspensions were extended through the end of April. (*See* BSCC Suspension.) In place of school instruction, youth receive packets to complete independently, with no opportunity for feedback or guidance from teachers. So far, there has been no access to laptops or other technology to assist with learning. (Kennedy Decl.) All youth clients report being cut off from mental health services, including any telephonic counseling since the beginning or middle of March. (Yamashiro Decl.; Kennedy Decl.; Gunsberg Decl.; Heimov Decl.) Several youth represented by CJLP

describe suffering symptoms of illness but being unable to seek timely medical treatment. (Kennedy Decl.) At a time when familial support is more crucial than ever for a youth's mental well-being under WHO and CDC guidelines (Barnert Decl.; Harvey Decl.), family visitation has ceased since March 13, and the ability to make once-a-week, short phone calls as a substitute has been provided, as well as withheld, as an incentive for good behavior. (Kennedy Decl.; Gunsberg Decl.) For non-verbal youth who have disabilities and cannot make phone calls, any form of contact with outside support has effectively ceased. (Gunsberg Decl.) Youth have also reported being unable to access the secure, confidential phone calls that are entitled to with their attorneys. (Kennedy Decl.)

More than a month into the crisis, Chief Ray Leyva explained on April 13 that the department is now contemplating measures to address the challenges in lack of productive activity and visitation, like extending the brief phone calls permitted for youth to connect with their families.<sup>67</sup>

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The following documents are lodged herewith and incorporated by reference:

Exhibit A: Declaration of Dr. Elizabeth Barnert, MD, MPH, MS

Exhibit B: Declaration of Dr. Craig Haney, PhD

Exhibit C: Declaration of Cyn Yamashiro, Independent Juvenile Defender Program

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<sup>67</sup> *Supra*, note 60.

Exhibit D: Declaration of Sean Kennedy, Executive Director,  
Center for Juvenile Law and Policy

Exhibit E: Declaration of Jerod Gunsberg, Esq.

Exhibit F: Declaration of Leslie Heimov, Executive Director,  
Children's Law Center

Exhibit G: Email Communications about BSCC Suspension

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Petitioners have no other plain, speedy, or adequate remedy at law other than the relief sought in this petition. Mandamus is the proper remedy because, due to the extreme reduction in capacity of Respondent to rule on petitions for relief, and the failure of Respondent to the gravity of the situation faced by youth in custody.

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WHEREFORE, petitioner prays that this Court issue a writ of mandate, commanding the court below to:

**A. Promote the Immediate and Substantial Reduction of Youth Populations in Halls and Camps By:**

- i. Directing the courts to vacate all existing detention orders and order the immediate release, with appropriate precautionary measures to ensure the prevention and spread of COVID-19 infection, to family or guardian, a non-congregate care facility, or medical care, of:
  1. All youth with any medical condition that the Centers for Disease Control has identified as creating a higher risk of contracting COVID-19 or might create a higher risk for severe illness from COVID-19;
  2. Any youth who displays COVID-19 symptoms or tests positive for COVID-19; and
  3. All youth detained based solely upon a finding of:
    - a. Failure to appear;
    - b. Failure to pay any outstanding fines or fees;
    - c. Any alleged probation violation that is not a crime;
    - d. Alleged violation of probation where the underlying offense was an infraction, misdemeanor or offense not listed under Welfare and Institutions Code § 707(b);
    - e. Court order awaiting a non-secure custodial placement pursuant to Welfare and Institutions Code § 727;
    - f. Court order pursuant to Welfare and Institutions code § 709; or



adjudicated offense cannot be a surrogate for such a risk.

- iv. Directing the courts to suspend all new admissions into juvenile camps and county jails.
- v. Effective immediately, directing Probation to suspend the use of out-of-home confinement, including halls, camps and jails, for violations of probation that are not crimes, and any requirements for in-person meetings with probation officers.
- vi. Ordering the expedited review and presumptive release of all other youth currently held in juvenile halls and camps, to family or guardian, to a non-congregate care facility, or to medical care,
  - 1. Unless a determination is made, after a hearing, that such release poses an immediate, specific, articulable and substantiated risk of serious physical harm to another; the imminent, specific, articulable, and substantiated risk of serious physical harm outweighs the risk of harm that continued detention of the youth poses to the youth, other detained individuals, staff, and the community; and no condition or combination of conditions of release can mitigate that risk of physical harm such that the youth can be safely released into the community. The nature of the adjudicated offense cannot be a surrogate for such a risk.

- B. Ensure the Safety and Health of Youth in Juvenile Halls and Camps by:

- i. Reducing the population significantly and to the point at which they can ensure, without creating conditions that are tantamount to solitary confinement, that youth are able to maintain six feet or greater distance in all directions at all times, and to free up sufficient housing space so that individuals who are sick can be effectively quarantined;
- ii. Requiring facilities housing youth to comply with the CDC Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities;
- iii. Requiring facilities housing youth to provide free and regular access to phones and video visitation with family and to online or other educational, physical or mental health services and opportunities; and
- iv. Appointing a Special Master to administer and monitor compliance with this order and direct the President Juvenile Court Judge, to provide compliance reports to the Special Master and petitioners' counsel in this case, in a manner, and at a time interval, directed by this Court.

DATED: April 14, 2020

Respectfully submitted,



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PATRICIA SOUNG

Counsel for Petitioners.

## VERIFICATION

State of California, County of Los Angeles:

I, Patricia Soung, declare that:

I am an attorney at law licensed to practice in all the courts of California. My business address is: 634 South Spring Street, Suite 500C, Los Angeles, CA 90014.

In that capacity I am the attorney of record for petitioner in the foregoing petition for writ of mandate and I make this verification on his behalf for the reason that the facts alleged therein are more within my knowledge than his.

I have read the foregoing petition and the exhibits attached thereto or lodged with this court, and I know the contents thereof to be true as based upon my representation of the petitioner in respondent superior court.

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

Executed on this 14th day of April 2020, at Los Angeles, California.



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PATRICIA SOUNG

Counsel for Petitioners.

## ARGUMENT, POINTS AND AUTHORITIES

### **I. THIS COURT HAS PROPER JURISDICTION TO GRANT AN EXTRAORDINARY WRIT UNDER THE EXTRAORDINARY CIRCUMSTANCES FOR THE REQUESTED RELIEF.**

Mandamus is an extraordinary remedy issuing to compel an inferior tribunal, body, or person to perform an act which the law specially enjoins as a duty resulting from an office. (Code Civ. Proc., § 1085; *Harris Transportation Co. v. Air Resources Board* (1995) 32 Cal.App.4th 1472, 1481.) A writ of mandate must be issued where there is no plain, speedy, and adequate remedy in the ordinary course of law. (*Ibid.*) Ultimately, a decision to grant mandamus should promote justice. (*Betty v. Superior Court of Los Angeles County* (1941) 18 Cal 2d 619, 622.) The California Supreme Court has original jurisdiction over extraordinary writs like mandamus (Cal. Const. art VI, §10; CCP § 1086.), but generally declines to exercise its discretion over a petition that was not filed initially in the superior court, unless “the matters to be decided are of sufficiently great importance and require immediate resolution.” (*California Redevelopment Assn. v. Matosantos* (2011) 53 Cal. 4th 231, 253.) Certainly, the novel coronavirus pandemic that has spread the world over, poses particular risks to institutional settings and youth in confinement, and has already infected six juvenile hall probation staff and resulted in the quarantine of at least 43 youth in those facilities in Los Angeles County, rise to this level of importance and urgency.

To obtain mandamus, petitioners must show: (1) “that the respondent has failed to perform an act despite a clear, present and ministerial duty to do so,” (2) “that the petitioner has a clear, present

and beneficial right to that performance,” and (3) “that there is no other plain, speedy and adequate remedy.” (*Riverside Sheriff’s Ass’n v. Cty. of Riverside* (2003) 106 Cal. App. 4th 1285, 1289.) In addition to enforcing “ministerial” duties, mandamus may be an appropriate vehicle to correct constitutional violations. (*Edward W. v. Lamkins* (2002) 99 Cal. App. 4th 516, 529.) Thus, the duty that mandamus seeks to enforce may arise under statutory law, regulations, or the state or federal Constitution. Here, petitioners seek mandamus to enforce the Los Angeles Superior Court’s duty to care for youth in confinement under the federal and state constitution, as well as California statutes.

California courts have long authorized “public interest standing” in mandamus. As a general rule, a party must also be “beneficially interested” to seek a writ of mandate. (Code Civ. Proc., § 1086; *Save the Plastic Bag Coalition v. City v. Manhattan Beach* (2011) 52 Cal.4th 155, 166.) Importantly, however, the beneficial interest requirement is relaxed in cases that seek to enforce a “public right.” “Where the question is one of public right and the object of the mandamus is to procure enforcement of a public duty, the relator need not show that he has any legal or special interest in the result, since it is sufficient that he is interested as a citizen in having the laws executed and the duty in question enforced.” (*Bd. of Social Welfare v. Los Angeles Cty.* (1945) 27 Cal. 2d 98, 100-01.) “This ‘public right/public duty’ exception to the requirement of beneficial interest for a writ of mandate promotes the policy of guaranteeing citizens the opportunity to ensure that no governmental body impairs or defeats the purpose of legislation establishing a public right . . . . We refer to this variety of standing as ‘public interest standing.’” (*Save the Plastic Bag*, 52 Cal. 4th at 166.).

The courts scrutinize claims of public interest standing brought by entities more closely than claims brought by individual citizens. (*Id.* at 170, n.5.) “When a nonhuman entity claims the right to pursue a citizen suit, the issue must be resolved in light of the particular circumstances presented, including the strength of the nexus between the artificial entity and human beings and the context in which the dispute arises.” (*Id.* at 167.) This Court has directed courts confronted with public interest standing to consider:

whether the corporation has shown a continuous interest in or commitment to the public right being asserted; whether it represents individuals who would be beneficially interested in the action; whether individuals who are beneficially interested would find it difficult or impossible to seek vindication of their own rights; and whether prosecution of the action as a citizen suit by a corporation would conflict with other legislative bodies.

(*Ibid.*) Where the mandamus petitioner is a “nonprofit public benefit corporation,” a claim of public interest standing is stronger than one by a commercial enterprise. (See *Rialto Citizens for Responsible Growth v. City of Rialto* (2012) 208 Cal. App. 4th 899, 915.)

Because CJLP and IJDP attorneys represent youth in delinquency proceedings and are deeply involved in all aspects of juvenile justice, the nonprofit entities have a continuous interest in and commitment to upholding the constitutional and statutory rights asserted on behalf of their clients and similarly situated youth in juvenile halls and camps in Los Angeles. The entities’ status as nonprofits further buttress their claim of public interest standing. Finally, the ability of each youth in confinement to seek vindication of their own rights is challenged by the fact of their detention and the compromised capacity of and access to courts during the pandemic. (Yamshiro Decl.; Kennedy Decl.; Gunsberg Decl.)

If the subject matter of the mandamus action is important to public policy or the community at large, the claim of public interest standing will be better received than if the subject matter is more limited. (*See McDonald v. Stockton Met. Transit Dist.* (1973) 36 Cal. App. 3d 436, 440 (“When the duty is sharp and the public need weighty, the court will grant a mandamus at the behest of an applicant who shows no greater personal interest than that of a citizen who wants the law enforced. When the public need is less pointed, the courts hold the petitioner to a sharper showing of personal need.”).) Several cases have used this rationale to authorize public interest standing for an individual or nonprofit seeking to protect a class of disadvantaged people from lack of government action or improper government actions. (*See, e.g., Brown v. Crandall* (2011) 198 Cal.App. 4th 1, 13-14 (plaintiff “seeking to enforce a public duty to provide a safety net health care to indigents” qualified for public interest standing); *Common Cause v. Bd. of Supervisors* (1989) 49 Cal. 3d 432, 439-40 (individual and nonprofits concerned with voting rights qualified for public interest standing to prosecute mandamus action forcing county to institute taxpayer outreach program for low-income residents); *Green v. Obledo* (1981) 29 Cal. 3d 126, 144-45 (individual qualified for public interest standing to prosecute mandamus action forcing county to properly calculate welfare benefits for poor families).) In *Wells v. Municipal Court* (1981) 126 Cal.App.3d 808, however, the appellate court precluded the Sacramento County Public Defender from filing a challenge to sentencing guidelines issued by the county for use in prosecution and drunk driving cases. There, the court objected to the petition being filed on behalf of all potential defendants (*id.*, at p. 811), and the questioned practice not

rising to the level of a violation of a constitutional or statutory right. (*Id.*, at p. 812.)

The mandamus action here concerns the alleged failure of the delinquency courts to attend to the safety of youth in custody during a pandemic through more swiftly and substantially depopulating juvenile institutions, ensuring adequate access to justice and implementing critical public health measures – a failure that certainly rises to the level of a “weighty” public concern. Unlike in *Wells*, the challenge here alleges violations of both constitutional and statutory rights; moreover the petition is brought on behalf of actual youth in custody, not potential individuals.

Given the magnitude of this crisis and the lack of more sweeping, sufficient protections of youth in custody in Los Angeles, petitioners have no other timely and adequate remedy other than mandamus. Thus, the Court has jurisdiction to issue a writ of mandate to prevent unjust, irreparable harm to youth whose constitutional and statutory rights, and ultimately their very safety and health, petitioners are firmly committed to upholding. Mandamus is the proper vehicle here to “ultimately promote justice.” (*Betty*, Cal 2d at p. 622.)

**II. THIS COURT SHOULD EXERCISE ITS PLENARY AND SUPERVISORY JURISDICTION TO EXPEDITIOUSLY GRANT RELIEF TO RELEASE AND SAFEGUARD EVERY YOUTH POSSIBLE IN JUVENILE HALLS AND CAMPS.**

Youth are entitled to special care and greater leniency under constitutional and state laws, and such is true when considering the exceptional practice of removing them from their homes, and all the truer in today’s state of emergency. Ultimately, the failure to protect

children in confinement from a likely outbreak of COVID-19 constitutes a violation of due process under the Fourteenth Amendment and the California Constitution (Art. I, § 7 subd. (a)), as well as a violation of the very purpose of and duties of the juvenile court system.

**A. The Juvenile Justice System Must Treat Children in its Custody with Special Care and Greater Leniency, Because Children are Developmentally and Constitutionally Different.**

Throughout United States Supreme Court jurisprudence, it is firmly established that children are developmentally different and “have a very special place in life which law should reflect.” (*May v. Anderson* (1953) 345 U.S. 528, 536 (Frankfurter, J., concurring); see also *J.D.B. v. North Carolina* (2011) 564 U.S. 261, 274 (“[O]ur history is replete with laws and judicial recognition’ that children cannot be viewed simply as miniature adults.”) (quoting *Eddings v. Oklahoma* (1982) 455 U.S. 104, 115-16); *Miller v. Alabama* (2012) 132 S. Ct. 2455, 2464 [citing *Roper v. Simmons* (2005) 543 U.S. 551, 569]; see also *Graham v. Florida* (2010) 130 S. Ct. 2011, 2026.) A child’s age is far “more than a chronological fact.” (See *Roper*, 543 U.S. at p. 569; *Eddings*, 455 U.S. at p. 115.) It is a fact that “generates commonsense conclusions about behavior and perception.” (*Yarborough v. Alvarado* (2004) 541 U.S. 652, 674 (BREYER, J., dissenting).) Given the hallmark features of youthfulness, our courts and laws have thus reflected a long-standing commitment to considering the status of children when construing their rights under the Constitution. (*Miller*, supra, 132 S. Ct. at p. 2464.)

Indeed, the very premise of and treatment of children in the juvenile justice system is that they are categorically less mature and responsible than adults, and should be treated with special care and greater leniency. (*Eddings*, 455 U.S. at pp. 115-116.) For children in state custody, this principle takes on heightened importance. Our laws do not consider children to have been “convicted” of crimes, and the purpose for institutional confinement of children emphasizes rehabilitation rather than punishment, in contrast to the incarceration of adults. (See *Alexander S. v. Boyd* (D.S.C. 1995) 876 F. Supp. 773, 782, *aff’d in part and rev’d in part on other grounds*, 113 F.3d 1373 (4th Cir. 1997), *cert. denied*, 118 S. Ct. 880 (1998). Where children are involuntarily removed from the custody of their parents and frequently present complex histories and needs, the State assumes a duty to provide for their care, safety and well-being. (See *Youngberg v. Romeo* (1982) 457 U.S. 307, 317 (“When a person is institutionalized—and wholly dependent on the State[,]...a duty to provide certain services and care does exist.”).)

**B. A Failure to Protect Children From a Likely Outbreak of COVID-19 In Confinement Constitutes a Violation of Due Process Under The Fourteenth Amendment and the California Constitution (Art. I, § 7 Subd. (a)).**

Conditions of confinement that pose an unreasonable risk of future harm to adult prisoners violate the constitutional protections of the Eighth Amendment. (See *Helling v. McKinney* (1993) 509 U.S. 25, 33 (“That the Eighth Amendment protects against future harm to inmates is not a novel proposition”) In *Helling*, a plaintiff alleged that he was assigned to a cell with

another inmate who smoked five packs of cigarettes per day. (*Id.* at p. 28.) Even though the plaintiff had not yet suffered harm, the Supreme Court found that the plaintiff stated “a cause of action under the Eighth Amendment by alleging that petitioners have, with deliberate indifference, exposed him to levels of [environmental tobacco smoke] that pose an unreasonable risk of serious damage to his future health.” (*Id.* at p. 35.)

The Eighth Amendment requires that “inmates be furnished with the basic human needs, one of which is ‘reasonable safety.’” (*Helling*, 509 U.S. at p. 33.) It requires that “inmates be furnished with . . . reasonable safety,” and the Supreme Court has explicitly recognized that the risk of contracting “serious contagious diseases” may constitute such an “unsafe, life-threatening condition” that it threatens “reasonable safety.” (*Id.*, at pp. 33-34 (internal quotations omitted); *see also Hutto v. Finney* (1978) 437 U.S. 678, 682-685 (recognizing the need for a remedy where prisoners were crowded into cells and some had infectious diseases). Any suggestion that future harm—harm that has yet to happen—is not cognizable under the Eighth Amendment has been disavowed: where unsafe, life-threatening conditions exist, the Supreme Court has been clear that it will not wait for serious medical problems or symptoms to arrive before it intervenes. (*Helling*, 509 U.S. at p. 33 (“We have great difficulty agreeing that prison authorities...may ignore a condition of confinement that is sure or very likely to cause serious illness and needless suffering

the next week or month or year.”); *Hutto*, 437 U.S. at 682 (Finding an Eighth Amendment violation despite the fact that likely infection may not occur immediately and may not affect all of those exposed did not matter); *Parsons v. Ryan* (9th Cir. 2014) 754 F.3d 657, 678 (“[A]lthough a presently existing risk may ultimately result in different future harm for different inmates—ranging from no harm at all to death—every inmate suffers exactly the same constitutional injury when he is exposed to a... policy or practice that creates a substantial risk of serious harm.”).)

Courts have found claims of future harms cognizable under the Eighth Amendment that involved risks posed by contaminated water (*Carroll v. DeTella* (7th Cir. 2001) 255 F.3d 470, 472), use of chemical toilets (*Masonoff v. DuBois* (D. Mass. 1995) 899 F. Supp. 782, 797), paint toxins (*Crawford v. Coughlin* (W.D.N.Y. 1999) 43 F. Supp. 2d 319, 325), asbestos (*Wallis v. Baldwin* (9th Cir. 1995) 70 F.3d 1074, 1076-77), and substandard fire prevention. (*Hoptowit v. Spellman* (9th Cir. 1985) 753, F.2d 779.) In cases like that of petitioners, courts have also found valid Eighth Amendment claims involving contagious disease in carceral environments. Relying on *Helling*, courts recognized as valid claims based on relatively high risk of contracting Valley Fever in California prisons. (*Allen v. Kramer* (E.D. Cal., 2016) 2016 WL 4613360, at \*1, 11.)

As discussed below, if risks posed by secondhand smoke, contaminated water, use of chemical toilets, paint toxins, or Valley Fever constitute an “unsafe, life-threatening condition” that threatens “reasonable safety” of adults in a carceral setting, youth’s continued confinement in light of the COVID-19 pandemic, which poses dire health risks and has killed thousands of people in this country and around the world, would certainly constitute an unreasonable risk of future harm violating the constitutional protections of the Eighth Amendment and the California Constitution. Under no uncertain terms, history and the present-day crisis have underscored that institutional settings are at particular risk of exposure and spread of contagion; already, one-quarter of individuals who have died in Los Angeles County to coronavirus lived in institutional settings.

Though the Eighth Amendment sets the standard for adult prisoners, the majority of courts have determined that the standard to which conditions of youth confinement are subject implicates the Due Process Clause of the Fourteenth Amendment instead.<sup>68</sup> (*Gary H. v. Hegstrom* (9th Cir. 1987) 831 F.2d 1430, 1432; *H.C. ex rel. Hewett v. Jarard* (11th Cir. 1986) 786 F.2d 1080, 1084-1085; *Milonas v. Williams* (10th Cir. 1982) 691 F.2d 931,

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<sup>68</sup> The Supreme Court has not announced the appropriate federal standards by which to judge state juvenile detention facility conditions. (See *Ingraham v. Wright* (1977) 430 U.S. 651, 669 n. 37 (expressly reserving the question whether the cruel and unusual punishments clause applies to juvenile institutions).

942; *Alexander S.*, 876 F. Supp. at p. 773; *Santana v. Collazo* (1st Cir. 1983) 714 F.2d 1172, 1179.) This is so because children are not subject to “punishment,” as the word is used in the Eighth Amendment. The due process clause implicitly incorporates the cruel and unusual punishments clause standards as a constitutional minimum. (*Gary H.*, *supra*, 831 F.2d at p. 1432.) Whether confined pre- or post-adjudication, children thus have a right to care and treatment under the Fourteenth Amendment. (*Youngberg*, 457 U.S. at p. 317 (“When a person is institutionalized—and wholly dependent on the State[,] . . . a duty to provide certain services and care does exist.”)).

It is beyond dispute that the State has a heightened duty to any pre-trial detainee, child or adult. In *Bell v. Wolfish* (1979) 441 U.S. 520, the U.S. Supreme Court held that because they have not been “convicted of any crimes,” pre-trial detainees cannot be subjected to conditions that “amount to punishment.” (*Id.*, at p. 541, *see also Kingsley v. Hendrickson* (2015) 135 S. Ct. 2466, 2473-2474 (clarifying that the Fourteenth Amendment excessive force standard applicable to pre-trial detainees is more protective than the Eighth Amendment standard); *Youngberg*, *supra*, 457 U.S. at pp. 321–322 (clarifying that involuntarily committed individuals “are entitled to more considerate treatment and conditions of confinement” than individuals post-conviction whose conditions of confinement are “designed to punish”). “[A]s a general matter, the due process standard applied to juvenile pretrial detainees should

be more liberally construed than that applied to adult detainees.”  
(*A.J. ex rel. L.B. v. Kierst* (8th Cir. 1995) 56 F.3d 849, 854.)

Following the U.S. Supreme Court’s reasoning in *Youngberg* and *Bell*, courts throughout the nation have concluded that the Fourteenth Amendment also provides heightened protections to youth held post-adjudication. Like pre-trial detainees and involuntarily committed patients, youth in state custody due to a delinquency adjudication are not confined for punitive purposes. (See, e.g., *Vann v. Scott* (7th Cir. 1972) 467 F.2d 1235, 1239 (applying the Fourteenth Amendment because the purpose of the “delinquent” classification is “to afford the State an adequate opportunity to rehabilitate and safeguard delinquent minors rather than to punish them”); see also *A.J.*, *supra*, 56 F.3d at p. 854; *Gary H.*, *supra*, 831 F.2d at pp. 1431–1432; *H.C. ex rel. Hewett*, 786 F.2d at pp. 1084–85; *Alexander S.*, 876 F. Supp. at pp. 795–796.) Accordingly, confinement of children, whether pre- or post-adjudication, in conditions that “amount to punishment” (*Bell*, 441 U.S. at p. 535), or in conditions that represent a substantial departure from accepted professional judgment violate the Fourteenth Amendment Due Process Clause. (*Youngberg*, 457 U.S. at pp. 321-322.) Conditions or restrictions of children in confinement that are not reasonably related to a legitimate governmental objective amount to punishment. (*Bell*, 441 U.S. at pp. 538-539.)

In sum, under the Fourteenth Amendment, all youth in custody must be protected from punishment and known risks of harm. (See, e.g., *Natale v. Camden Cty. Corr. Facility* (3d Cir. 2003) 318 F.3d 575, 581 (“the Fourteenth Amendment affords pretrial detainees protections ‘at least as great as the Eighth Amendment protections available to a convicted prisoner’”) (quoting *City of Revere v. Mass. Gen. Hosp.* (1983) 463 U.S. 239, 244; *Helling, supra*, 509 U.S. at p. 33 (the State violates the Eighth Amendment when it crowds prisoners into cells with others who have “infectious maladies”) (citing *Hutto, supra*, 437 U.S. at p. 682.)) Among the additional guarantees to children under the Fourteenth Amendment is a right to treatment and rehabilitation. (See *Youngberg*, 457 U.S. at pp. 321–322; *Nelson v. Heyne* (7th Cir. 1974) 491 F.2d 352, 360 (children have a right to “rehabilitative treatment” because the State has assumed the role of the parent and such treatment must be “what proper parental care would provide”); see also *C.P.X. v. Garcia*, No. 4:17-cv-00417 (S.D. Iowa Mar. 30, 2020), Trial Order (holding that juvenile facility’s failure to provide appropriate mental health care violates children’s substantive due process rights under the Fourteenth Amendment).

Under the Fourteenth Amendment, the failure to protect youth from a likely outbreak of COVID-19 in confinement certainly constitutes a violation of due process. On one hand, the lack of sufficient and speedy compliance in Los Angeles with CDC

protocols on COVID-19 flouts constitutional protections by exposing youth to serious risk of known harms. (Yamashiro Decl.; Kennedy Decl.; Gunsberg Decl.; Heimov Decl.). On the other, some measure of compliance has resulted in depriving youth of education, programming, visitation and mental health counseling (*ibid.*), as well as forms of isolation known to cause long-term psychological harm. (Barnert Decl.; Haney Decl.) In the current atmosphere of anxiety and harms related to COVID-19, the absence of robust and productive activity for youth, or adequate connection to their families, negates any, already dubious rehabilitative value of juvenile halls and camps; their continued detention under the circumstances thus amounts to punishment in violation of the federal and state constitutions.

**C. A Failure to Protect Children From A Likely Outbreak Of COVID-19 In Confinement Also Violates The Very Purpose of and Duties under Juvenile Court Law**

Under California law, Welfare and Institutions Code § 202 broadly sets forth the general purposes of juvenile law to serve the youth's best interests by providing care, treatment and guidance to rehabilitate, as well as to guard the public's safety. (*In re Michael R.* (1977) 73 Cal.App.3d 327, 333-334.) Juvenile Court Law is designed to rehabilitate and treat, not punish. (*Ibid.*) Thus, state statutes and regulations governing juvenile delinquency proceedings as well as facility conditions are replete with additional protections ensuring youth's right to adequate treatment and rehabilitation. One fundamental protection is the strong presumption against and sparing

use of detention and incarceration. (*See, e.g.*, WIC § 202(a) (“removing the minor 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”; WIC § 626 (“In determining which disposition of the minor to make, the officer shall prefer the alternative which least restricts the minor's freedom of movement...”); WIC § 636 (Upon detaining a youth, the court shall order the probation officer to “provide services as soon as possible to enable the minor’s parent or legal guardian to obtain any assistance as may be needed to enable the parent or guardian to effectively provide the care and control necessary for the minor to return to the home.”).)

Where a youth is removed from home, state law requires that custodial settings resemble as closely as possible a homelike environment, in keeping with the primary rehabilitative aim of the juvenile justice system. (*See* WIC § 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.”); WIC § 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.”).) To further ensure that conditions and treatment within confinement facilitate rehabilitation, California statutes assign responsibility of oversight to various local and state bodies. (*See* WIC § 210 (requiring the Board of State and Community Corrections to adopt minimum standards for juvenile facilities); WIC § 209 (a)(1) (“The judge of the juvenile court of a county, or, if there is more than one judge, any of the judges of the juvenile court shall, at

least annually, inspect any jail, juvenile hall, or special purpose juvenile hall.”); WIC § 229 (requiring juvenile justice commissions “to inquire into the administration of the juvenile court law in the county or region in which the commission serves” and granting such commissions to have access to and inspect all publicly administered institutions at least once a year).

Under ordinary circumstances, Judicial Council reminded courts of these statutory obligations – that detention and incarceration in juvenile halls and camps should be “an exceptional practice, rather than the rule” in a rehabilitation-focused system.<sup>69</sup> Even as the court system across Los Angeles County has scaled down immensely, swifter, sweeping efforts to reduce jail populations by nearly four thousand<sup>70</sup> stand in sharp contrast to the lack of due speed and global approaches on the juvenile side. Instead, the Juvenile Court has continued to adhere strictly to case-by-case review through challenged operations, including lack of notice, lack of hearings, delays and confusion. (Yamshiro Decl.; Kennedy Decl.; Gunsberg Decl.) In sum, efforts in Los Angeles County to release and safeguard every youth possible in juvenile halls and camps in the face of the pandemic have been incongruent with constitutionally adequate standards of care, the

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<sup>69</sup> *Emergency Rule 7, Advisory Committee Comment*, Judicial Council (Apr. 6, 2020).

<sup>70</sup> Alene Tchekmedyan, *A member of the nursing staff at L.A. County jails who died last week had COVID-19*, L.A. Times (Apr. 8, 2020), <https://www.latimes.com/california/story/2020-04-08/coronavirus-la-county-jails-twin-towers>.

rehabilitative mission of the juvenile justice system, or the exigency of the COVID-19 crisis.

**CONCLUSION**

Accordingly, Petitioners respectfully urges the Supreme Court of California to issue a writ of mandate as prayed.

DATED: April 14, 2020.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Patricia Sung', written in a cursive style.

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PATRICIA SOUNG  
Counsel for Petitioners.

## CERTIFICATION OF WORD COUNT

Counsel for petitioners hereby certify that this petition consists of approximately 11,118 words, according to the word count of the computer word-processing program (excluding tables, proof of service, and this certificate).

Executed on this 14th day of April, 2020, at Los Angeles, California.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Patricia Sung', written in a cursive style.

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PATRICIA SOUNG

Counsel for Petitioners.

# EXHIBIT A

Declaration of Dr. Elizabeth Barnert, MD, MPH, MS

## DECLARATION OF DR. ELIZABETH S. BARNERT, MD, MPH, MS

### I, Elizabeth S. Barnert, declare as follows:

1. I am a pediatrician and Assistant Professor of Pediatrics at David Geffen School of Medicine at University of California, Los Angeles (UCLA), where I engage in research on the link between juvenile justice and health. I am a part of the UC Criminal Justice & Health Consortium – a collaborative effort of researchers, experts and advocates from across the University of California system working to bring evidence-based health and healthcare solutions to criminal justice reform in California and nationwide.
2. I also have served as a consultant to numerous governmental and non-governmental organizations on issues related to juvenile justice. My research examining youth justice and health, funded by the National Institutes of Health, has been published in top tier academic journals. I have advised the United States Congress, the California legislature, the California Governor’s office, the Los Angeles County Board of Supervisors, and the Los Angeles Mayor’s Office on juvenile justice policy. I am a member of the Juvenile Health Committee of the National Commission of Correctional Health Care. I am also a practicing pediatrician and provide clinical care in a Los Angeles County juvenile hall setting. My research, writing, and testimony have been referenced by the California Legislature and the California Governor’s Office.<sup>1</sup>
3. COVID-19 is a serious, highly contagious disease and pandemic.<sup>2</sup> Under certain, extreme conditions, a single person can infect hundreds or thousands of community members.<sup>3</sup> Thus, time is of the essence to contain the spread of this infection. Across the world and country, COVID-19 has quickly and exponentially caused harm and death. Over 1.14 million people around the world have received confirmed diagnoses of COVID-19

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<sup>1</sup> For example, see Barnert et al. Identifying best practices for “Safe Harbor” legislation to protect child sex trafficking victims: Decriminalization alone is not sufficient. *Child Abuse & Neglect*, 51, 249–262. <https://doi.org/10.1016/j.chiabu.2015.10.002>

<sup>2</sup> <https://www.cdc.gov/coronavirus/2019-ncov/prepare/transmission.html>

<sup>3</sup> <https://graphics.reuters.com/CHINA-HEALTH-SOUTHKOREA-CLUSTERS/0100B5G33SB/index.html>

as of April 9, 2020,<sup>4</sup> including 395,011 people in the United States.<sup>5</sup> At least 85,586 people have died globally as a result of COVID-19 as of April 9, 2020,<sup>6</sup> including 12,754 in the United States.<sup>7</sup> These numbers have rapidly increased exponentially and are predicted by health officials to continue to increase. The CDC has estimated that as many as 214 million people may eventually be infected in the United States, and that as many as 21 million could require hospitalization.<sup>8</sup>

4. The COVID-19 Pandemic poses such a threat to public health and safety, that President Trump declared a national state of emergency on March 13.<sup>9</sup> On March 4, 2020, Governor Gavin Newsom declared a statewide State of Emergency, and on March 19, 2020, he ordered all California residents to stay home or at their place of residence except to facilitate certain authorized necessary activities.<sup>10</sup> His office estimated that, in the absence of taking appropriate steps to mitigate the spread of the virus, as many as 56 percent of all Californians will contract it.<sup>11</sup>
5. The outbreak of COVID-19 has already reached incarcerated populations. In New York City's Rikers Island jail complex, at least 19 incarcerated people and 12 staff members had contracted COVID-19 as of March 22.<sup>12</sup> Just eight days later by March 31, the jail's chief physician reported nearly 200 confirmed cases of coronavirus and described the spread as a "public health disaster unfolding before our eyes."<sup>13</sup>

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<sup>4</sup> <https://www.who.int/emergencies/diseases/novel-coronavirus-2019>

<sup>5</sup> <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html>

<sup>6</sup> <https://www.who.int/emergencies/diseases/novel-coronavirus-2019>

<sup>7</sup> <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html>

<sup>8</sup> <https://www.nytimes.com/2020/03/13/us/coronavirus-deaths-estimate.html>

<sup>9</sup> <https://www.cnn.com/2020/03/13/politics/donald-trump-emergency/index.html>

<sup>10</sup> <https://covid19.ca.gov/img/Executive-Order-N-33-20.pdf>

<sup>11</sup> Office of the Governor, "Letter to President Donald Trump" (March 18, 2020), available at <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.18.20-Letter-USNS-Mercy-Hospital-Ship.pdf>.

<sup>12</sup> <https://thehill.com/homenews/state-watch/488855-top-official-says-new-york-city-coronavirus-jail-outbreak-is-a-crisis>

<sup>13</sup> <https://www.theguardian.com/us-news/2020/apr/01/rikers-island-jail-coronavirus-public-health-disaster>

6. On March 22, a Los Angeles County facility reported the first identified case of an incarcerated person testing positive for COVID-19 in California.<sup>14</sup> Two days later, neighboring Orange County reported its first confirmed case of an incarcerated person contracting COVID-19 in Men’s Central Jail in Santa Ana.<sup>15</sup> On April 1, Los Angeles County reported its first positive case of coronavirus of a probation officer who works at Sylmar juvenile hall,<sup>16</sup> and the quarantine of 21 youth at that facility, and April 6, it reported the second positive case of an officer at the same facility.<sup>17</sup>
7. Children and adolescents are at risk of severe disease and death. They are no less immune to COVID-19. Indeed, the first fatality of a person under 18 in the U.S. from COVID-19 occurred in Los Angeles County on March 24.<sup>18</sup> Additionally, 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.<sup>19</sup>
8. COVID-19 is a novel virus. There is no vaccine available for COVID-19, and there is no cure for COVID-19. Except for the individuals fortunate to have survived COVID-19, no one has immunity, making the population vulnerable to ongoing outbreak. Currently, the most effective ways to control the virus are to use preventive strategies, including social distancing, and to dedicate our healthcare capacity for a manageable

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<sup>14</sup> <https://www.mercurynews.com/2020/03/22/coronavirus-california-state-prison-inmate-positive-for-covid-19/>

<sup>15</sup> <https://www.latimes.com/california/story/2020-03-24/orange-county-jail-inmate-tests-positive-for-the-coronavirus>

<sup>16</sup> <https://www.latimes.com/california/story/2020-04-01/l-a-county-juvenile-hall-employee-tests-positive-for-coronavirus-21-juveniles-now-on-quarantine>.

<sup>17</sup> Los Angeles County Probation Officer, Electronic Public Announcement, “Second Los Angeles County Probation Employee Tests Positive for COVID-19 at Barry J. Nidorf” (April 6, 2020).

<sup>18</sup> <https://www.latimes.com/california/story/2020-03-24/los-angeles-young-person-coronavirus-death>

<sup>19</sup> American Academy of Pediatrics. Health Care for Youth in the Juvenile Justice System. *Pediatrics*. 2011;128(6):1219–1235 (March 01, 2012), Available at <https://pediatrics.aappublications.org/content/128/6/1219>.

number of patients. Otherwise overwhelming the supply of healthcare will certainly continue to exacerbate the pandemic.

9. Although juvenile justice facilities are a contained space, physical and logistical challenge create significant barriers to carrying out infection control processes necessary to contain the COVID-19 pandemic. In addition, arrival of new youth detainees, essential movement of residents, and the daily ingress and egress of the correctional workforce create portals for infection entry – as well as exit to the community. Thus, penal institutions are at high risk of COVID-19 outbreaks and of creating spread to the community.<sup>20</sup>
10. Furthermore, juvenile facilities lack the operational capacity to address the needs of youth in custody in this magnitude of crisis. They are ill-equipped to provide youth with ready access to cleaning and sanitation supplies, or to assure that staff sanitize all surfaces during the day. Most lack the capacity to provide anything more than bare bones emergency mental or physical health care, and the demand for such services in this crisis will grow. In addition, juvenile facilities typically have very limited provisions for providing telephonic or other forms of remote visiting to youth – measures that are critically important to their health and rehabilitation if contact visiting is limited. The curtailing of education to homework packets in place of in-person or virtual instruction further compromises the ability to sustain or promote the well-being of children in confinement.
11. Moreover, juvenile detention facilities are already extremely stressful environments for children confined to them. They can be psychologically and medically harmful in their own right, leaving formerly incarcerated persons with higher rates of certain kinds of psychiatric and medical problems. Incarceration leads to higher rates of morbidity (illness rates) and mortality (i.e., it lowers the age at which people die).
12. Penal settings also have limited options to implement the social distance that is now required in response to the COVID-19 pandemic. It is very likely that many of them will resort to the use of solitary confinement. Adolescents may have difficulty complying and because of fear of being placed in solitary confinement if ill or suspected to be ill, they may under-report symptoms. Further, solitary confinement subjects adults and

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<sup>20</sup> <https://www.healthaffairs.org/doi/10.1377/hblog20200324.784502/full/>

children alike to serious mental and physical harm,<sup>21</sup> so that professional mental and physical health-related, legal, human rights, and even correctional organizations have called for severe limitations on the degree to which solitary confinement is employed.<sup>22</sup>

13. In addition to the traumatic effects of incarceration itself for children,<sup>23</sup> and the added trauma produced by harsh conditions of juvenile confinement (such as solitary confinement), it is important to recognize that most incarcerated children have already experienced numerous childhood traumas, “risk factors,” or what have been called “adverse childhood experiences.”<sup>24</sup> Thus, juvenile incarceration represents a form of “retraumatization” for many of them, one that can be exacerbated by placement in solitary confinement. It is hard to imagine a more vulnerable population whose very significant needs should be treated with the utmost sensitivity in the face of this Pandemic.
14. In addition to the threats that the COVID-19 Pandemic presents to the physical health of all individuals, the United States Center for Disease

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<sup>21</sup> These many studies have been carefully reviewed in a number of publications. For example, see: K. Cloyes, D. Lovell, D. Allen & L. Rhodes, Assessment of psychosocial impairment in a supermaximum security unit sample, *Criminal Justice and Behavior*, 33, 760-781 (2006); S. Grassian, Psychiatric effects of solitary confinement. *Washington University Journal of Law & Policy*, 22, 325-383 (2006); C. Haney, Restricting the use of solitary confinement. *Annual Review of Criminology*, 1, 285-310 (2018); C. Haney & M. Lynch, Regulating prisons of the future: The psychological consequences of solitary and supermax confinement. *New York Review of Law & Social Change*, 23, 477-570 (1997); and P. Smith, The effects of solitary confinement on prison inmates: A brief history and review of the literature, in Michael Tonry (Ed.), *Crime and Justice* (pp. 441-528). Volume 34. Chicago: University of Chicago Press (2006).

<sup>22</sup> For a list of these organizations and their specific recommendations, see: Haney, C. (2018) Restricting the use of solitary confinement. *Annual Review of Criminology*, 1, 285-310; Haney, C., Ahalt, C., & Williams, B., et al. (2020). Consensus statement of the Santa Cruz summit on solitary confinement. *Northwestern Law Review*, in press.

<sup>23</sup> For example, see: Sue Burrell, Trauma and the Environment of Care in Juvenile Institutions, National Child Traumatic Stress Network (2013).

<sup>24</sup> For example, see: Carly Dierkhising, Susan Ko, Briana Woods-Jaeger, et al., Trauma Histories among Justice-Involved Youth: Findings from the National Child Traumatic Stress Network, *European Journal of Psychotraumatology*, 4, (2013)

Control and Prevention (CDC) and World Health Organization (WHO) report that this Pandemic likewise presents a threat to the mental health to many, including in particular children and teens.<sup>25</sup> To mitigate the stressors created by the COVID-19 Pandemic, both agencies recommend practices by parents and other caregivers to support the mental health of their children, all of which are currently challenged or made impossible in juvenile detention facilities.<sup>26</sup>

15. In summary, COVID-19 has reached crisis proportions around the globe. On an individual level, it is itself a traumatic event, especially for children, trying to comprehend its magnitude and implications, and to feel safe in an otherwise suddenly unsafe-feeling world.
16. I submit this declaration to explain how the continued confinement of children during the COVID-19 outbreak poses a grave threat to their physical and mental health, as well as a threat to juvenile justice systems staff, the healthcare system's capacity and thus the overall community. In light of the above, it is my professional opinion that releasing as many incarcerated children as possible – and as quickly and safely as possible – to their families, where they can receive the support that the CDC and WHO recommend, is the best possible course of action for children, their families and the broader community in response to the COVID-19 pandemic. This is a time-sensitive matter. As described above, multiple correctional settings around the country are experiencing COVID-19 outbreaks and deaths.<sup>27</sup>

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

Executed on April 9, 2020 at Los Angeles, California.



DR. ELIZABETH S. BARNERT

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<sup>25</sup> <https://www.cdc.gov/coronavirus/2019-ncov/prepare/managing-stress-anxiety.html>; [https://www.who.int/docs/default-source/coronaviruse/helping-children-cope-with-stress-print.pdf?sfvrsn=f3a063ff\\_2](https://www.who.int/docs/default-source/coronaviruse/helping-children-cope-with-stress-print.pdf?sfvrsn=f3a063ff_2).

<sup>26</sup> *Ibid.*

<sup>27</sup> [https://docs.google.com/spreadsheets/d/1X6uJkXXS-O6eePLxw2e4JeRtM41uPZ2eRcOA\\_HkPVTk/edit#gid=1197647409](https://docs.google.com/spreadsheets/d/1X6uJkXXS-O6eePLxw2e4JeRtM41uPZ2eRcOA_HkPVTk/edit#gid=1197647409)

# EXHIBIT B

Declaration of Dr. Craig Haney, PhD

## DECLARATION OF DR. CRAIG W. HANEY, PHD

### I, Craig W. Haney, declare as follows:

1. I am a Distinguished Professor of Psychology and UC Presidential Chair at the University of California Santa Cruz in Santa Cruz, California, where I engage in research applying social psychological principles to legal settings, including the assessment of the psychological effects of living and working in institutional environments, especially the psychological effects of incarceration. I was a co-founder and co-director of the UC Criminal Justice & Health Consortium – a collaborative effort of researchers, experts and advocates from across the University of California system working to bring evidence-based health and healthcare solutions to criminal justice reform in California and nationwide.
2. I also have served as a consultant to numerous governmental, law enforcement, and legal agencies and organizations on jail- and prison-related issues. Those agencies and organizations include the Palo Alto Police Department, various California Legislative Select Committees, the National Science Foundation, the American Association for the Advancement of Science, the United States Department of Justice, the Department of Health and Human Services (HHS), the Department of Homeland Security, and the White House (under both the Clinton and Obama Administrations). In 2012, I testified as an expert witness before the Judiciary Committee of the United States Senate in a hearing that focused on the use and effects of solitary confinement and was appointed as a member of a National Academy of Sciences committee analyzing the causes and consequences of high rates of incarceration in the United States. My research, writing, and testimony have been cited by state courts, including the California Supreme Court, and by Federal District Courts, Circuit Courts of Appeal, and the United States Supreme Court.<sup>1</sup>
3. COVID-19 is a serious, highly contagious disease and has reached pandemic status. At least 234,073 people around the world have

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<sup>1</sup> For example, see *Brown v. Plata*, 563 U.S. 493 (2011).

received confirmed diagnoses of COVID-19 as of March 20, 2020,<sup>2</sup> including 15,219 people in the United States.<sup>3</sup> At least 9,840 people have died globally as a result of COVID-19 as of March 20, 2020,<sup>4</sup> including 201 in the United States.<sup>5</sup> These numbers are predicted by health officials to increase, perhaps exponentially. For example, the CDC has estimated that as many as 214 million people may eventually be infected in the United States, and that as many as 21 million could require hospitalization.<sup>6</sup>

4. The COVID-19 Pandemic poses such a threat to the public health and safety in the State of California that, on March 4, 2020, Governor Gavin Newsom declared a statewide State of Emergency/ On March 19, 2020, he ordered all California residents to stay home or at their place of residence except to facilitate certain authorized necessary activities.<sup>7</sup> His office has estimated that, in the absence of taking appropriate steps to mitigate the spread of the virus, as many as 56% of all Californians will contract it.<sup>8</sup>
5. COVID-19 is a novel virus. At present there is no vaccine and no cure for COVID-19. No one has immunity. Currently, the most effective way to control the virus is to use preventive strategies,

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<sup>2</sup> World Health Organization, *Coronavirus disease (COVID-19) Outbreak*, <https://www.who.int/emergencies/diseases/novel-coronavirus-2019>

<sup>3</sup> Center for Disease Control and Prevention, *Coronavirus Disease 2019 (COVID-19): Cases in U.S.*, <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html>.

<sup>4</sup> *Supra*, fn. 2.

<sup>5</sup> *Supra*, fn. 3.

<sup>6</sup> Sheri Fink, *Worst-Case Estimates for U.S. Coronavirus Deaths*, N.Y. TIMES (Mar. 18, 2020), <https://www.nytimes.com/2020/03/13/us/coronavirus-deaths-estimate.html>.

<sup>7</sup> Executive Department, State of California, Executive Order N-33-20, <https://covid19.ca.gov/img/Executive-Order-N-33-20.pdf>

<sup>8</sup> Office of the Governor, "Letter to President Donald Trump" (March 18, 2020), <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.18.20-Letter-USNS-Mercy-Hospital-Ship.pdf>.

including social distancing, in order to maximize our healthcare capacity to treat a manageable number of patients. Otherwise, healthcare resources will be overwhelmed and the Pandemic will certainly be exacerbated.

6. Social distancing presents serious challenges for everyone in every part of our society, but nowhere more than in penal institutions, where living conditions are unusually sparse, prisoners necessarily live in unescapably close quarters, and have unavoidable contact with one another. Juvenile institutions are no exception to this general institutional rule.
7. Moreover, jails and prisons are already extremely stressful environments for adult prisoners and for children who are confined in secure facilities.<sup>9</sup> Research has shown that these environments are psychologically and medically harmful in their own right, leaving formerly incarcerated persons with higher rates of certain kinds of psychiatric and medical problems.<sup>10</sup> In fact, incarceration

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<sup>9</sup> Much of this evidence is summarized in several book-length treatments of the topic. For example, see: Haney, C., *Reforming Punishment: Psychological Limits to the Pains of Imprisonment*. Washington, DC: American Psychological Association (2006); Liebling, A., & Maruna, S. (Eds.), *The Effects of Imprisonment*. Cullompton, UK: Willan (2005); and National Research Council (2014). *The Growth of Incarceration in the United States: Exploring the Causes and Consequences*. Washington, DC: The National Academies Press. In addition, there are numerous empirical studies and published reviews of the available literature. For example, see: Haney, C., Prison effects in the age of mass incarceration. *Prison Journal*, 92, 1-24 (2012); Johns, D., Confronting the disabling effects of imprisonment: Toward prehabilitation. *Social Justice*, 45(1), 27-55.

<sup>10</sup> E.g., see: Schnittker, J. (2014). The psychological dimensions and the social consequences of incarceration. *Annals of the American Association of Political and Social Science*, 651, 122-138; Turney, K., Wildeman, C., & Schnittker, J., As fathers and felons: Explaining the effects of current and recent incarceration on major depression. *Journal of Health and Social Behaviour*, 53(4), 465-481 (2012). See, also: Listwan, S., Colvin, M., Hanley, D., & Flannery, D., Victimization, social support, and psychological well-being: A study of recently released prisoners. *Criminal Justice and Behavior*, 37(10), 1140-1159 (2010).

leads to higher rates of morbidity (illness rates) and mortality (i.e., it lowers the age at which people die).<sup>11</sup>

8. The COVID-19 Pandemic presents penal institutions with an enormous challenge that they are ill-equipped to handle. Juvenile facilities in particular lack the operational capacity to address the needs of youth in custody in a crisis of this magnitude. They do have the resources needed to provide youth with ready access to cleaning and sanitation supplies, or to ensure that staff sanitize all potentially contaminated surfaces during the day. Most lack the capacity to provide more than minimal emergency mental health or medical care. Yet the demand for such services in this crisis will grow, stretching already scarce treatment resources even further. In addition, juvenile facilities typically provide children in custody with very limited access to telephonic or other forms of remote visiting. However, these ways of connecting to others will become critically important if contact visiting is limited or eliminated. Furthermore, juvenile facilities cannot readily protect youth from contact with staff who regularly enter facilities after having been in the outside world. Staff members are at risk of contracting COVID-19 and then transmitting it to both youth and other staff inside.
9. Penal settings have limited options to implement the social distancing that is now required in response to the COVID-19 Pandemic. It is very likely that many of them will resort to the use of solitary confinement. Indeed, I have seen precisely this form of social distancing utilized as a matter of course in numerous correctional institutions throughout the country, where medical quarantines are conducted in prison infirmaries or other housing units by effectively placing prisoners in solitary confinement.

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<sup>11</sup> E.g., see: Binswanger, I., Stern, M., Deyo, R., et al., Release from prison: A high risk of death for former inmates. *New England Journal of Medicine*, 356, 157-165; Massoglia, M. Incarceration as Exposure: The Prison, Infectious Disease, and Other Stress-Related Illnesses. *Journal of Health and Social Behavior*, 49(1), 56-71; and Massoglia, M., & Remster, B., Linkages Between Incarceration and Health. *Public Health Reports*, 134(Supplement 1), 85-145 (2019); and Patterson, E. (2013). The dose-response of time served in prison on mortality: New York state, 1989-2003. *American Journal of Public Health*, 103(3), 523-528.

10. Yet the experience of solitary confinement inflicts an additional set of very serious harmful effects that significantly undermine mental and physical health. The scientific literature on the harmfulness of solitary confinement in jails and prisons is now widely accepted and the research findings are consistent and alarming.<sup>12</sup> This research has led a number of professional mental and physical health-related, legal, human rights, and even correctional organizations to call for severe limitations on the degree to which solitary confinement is employed—specifically by significantly limiting when, for how long, and on whom it can be imposed.<sup>13</sup>
11. Although there is some variation in the specific recommendations, virtually all of them call for the drastic reduction or outright elimination of the use of solitary confinement with juveniles.<sup>14</sup> That

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<sup>12</sup> These many studies have been carefully reviewed in a number of publications. For example, see: K. Cloyes, D. Lovell, D. Allen & L. Rhodes, Assessment of psychosocial impairment in a supermaximum security unit sample. *Criminal Justice and Behavior*, 33, 760-781 (2006); S. Grassian, Psychiatric effects of solitary confinement. *Washington University Journal of Law & Policy*, 22, 325-383 (2006); C. Haney, Restricting the use of solitary confinement. *Annual Review of Criminology*, 1, 285-310 (2018); C. Haney & M. Lynch, Regulating prisons of the future: The psychological consequences of solitary and supermax confinement. *New York Review of Law & Social Change*, 23, 477-570 (1997); and P. Smith, The effects of solitary confinement on prison inmates: A brief history and review of the literature, in Michael Tonry (Ed.), *Crime and Justice* (pp. 441-528). Volume 34. Chicago: University of Chicago Press (2006).

<sup>13</sup> For a list of these organizations and their specific recommendations, see: Haney, C. (2018) Restricting the use of solitary confinement. *Annual Review of Criminology*, 1, 285-310; Haney, C., Ahalt, C., & Williams, B., et al. (2020). Consensus statement of the Santa Cruz summit on solitary confinement. *Northwestern Law Review*, in press.

<sup>14</sup> For example, in December 2015, the U.N. General Assembly adopted the United Nations Standard Minimum Rules for the Treatment of Prisoners (“The Nelson Mandela Rules”) that, among other things, prohibited the use of solitary confinement for juveniles. See: Commission on Crime Prevention and Criminal Justice. 2015. *United Nations standard minimum rules for the treatment of prisoners*. New York: UN Economic and Social Council.

is, because of the categorically greater vulnerability of children to harsh conditions of confinement and the potentially irreversible mental and physical harm that they are more likely to experience, solitary confinement should rarely if ever be imposed on them. In fact, current California law significantly limits the use of solitary or solitary-like confinement<sup>15</sup> for juveniles to durations of no longer than four hours. In rare instances when longer times are absolutely necessary, in response to emergency or exigent circumstances, they must be limited to the shortest amount of additional time possible and, even then, always under the care of a licensed physician.<sup>16</sup> These severe limitations on the use of solitary confinement with children are critically important to acknowledge and adhere to in the face of the COVID-19 Pandemic and in the context of the social distancing steps that juvenile institutions are likely to engage in.

12. The COVID-19 Pandemic will be a traumatic experience for many, especially for children. In the case of children housed in juvenile institutions, this trauma will affect an already highly traumatized population. In addition to the traumatic effects of incarceration itself for children,<sup>17</sup> and the added trauma produced by harsh conditions of juvenile confinement (such as solitary confinement), it is important to recognize that most incarcerated children have already experienced numerous childhood “risk factors” or “adverse childhood experiences.”<sup>18</sup> Thus, juvenile incarceration represents a form of “retraumatization” for many of them. And even this retraumatization can be made worse, for example by placement in

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<sup>15</sup> Juvenile facilities often use different terms for solitary confinement, such as “segregation,” “isolation,” “seclusion,” and “room confinement.” My statements about solitary confinement apply to these terms as well. (E.g. see, Sue Burrell and Ji Seon Song, Ending “Solitary Confinement” of Youth in California. *Children's Legal Rights Journal*, 39, 42, 45 (2019).)

<sup>16</sup> Calif. Welf. & Inst. Code § 208.3.

<sup>17</sup> For example, see: Sue Burrell, Trauma and the Environment of Care in Juvenile Institutions, *National Child Traumatic Stress Network* (2013).

<sup>18</sup> For example, see: Carly Dierkhising, Susan Ko, Briana Woods-Jaeger, et al., Trauma Histories among Justice-Involved Youth: Findings from the National Child Traumatic Stress Network, *European Journal of Psychotraumatology*, 4, (2013)

solitary confinement. It is thus hard to imagine a more vulnerable population whose very significant needs should be treated with the utmost sensitivity in the face of this Pandemic.

13. Indeed, the United States Center for Disease Control and Prevention (CDC) has acknowledged that the COVID-19 Pandemic poses a threat the mental as well as physical health of the nation, especially to its children and teens.<sup>19</sup> In order to mitigate the stressors created by the COVID-19 Pandemic, the CDC has recommended that parents and other caregivers undertake the following practices to support their children:<sup>20</sup>
  - Take time to talk with your child or teen about the COVID-19 outbreak. Answer questions and share facts about COVID-19 in a way that your child or teen can understand.
  - Reassure your child or teen that they are safe. Let them know it is ok if they feel upset. Share with them how you deal with your own stress so that they can learn how to cope from you.
  - Limit your family's exposure to news coverage of the event, including social media. Children may misinterpret what they hear and can be frightened about something they do not understand.
  - Try to keep up with regular routines. If schools are closed, create a schedule for learning activities and relaxing or fun activities.
  - Be a role model. Take breaks, get plenty of sleep, exercise, and eat well. Connect with your friends and family members.
14. Similarly, the World Health Organization (WHO) also has recognized that the COVID-19 poses an existential threat to the

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<sup>19</sup> Center for Disease Control and Prevention, *Manage Anxiety & Stress*, <https://www.cdc.gov/coronavirus/2019-ncov/prepare/managing-stress-anxiety.html>

<sup>20</sup> *Ibid.*

mental health of children.<sup>21</sup> The WHO recommended that care providers undertake the following practices to support the mental health of children in their care:<sup>22</sup>

- Help children find positive ways to express feelings such as fear and sadness. Every child has their own way to express emotions. Sometimes engaging in a creative activity, such as playing, and drawing can facilitate this process. Children feel relieved if they can express and communicate their feelings in a safe and supportive environment
- Keep children close to their parents and family, if considered safe for the child, and avoid separating children and their caregivers as much as possible. If a child needs to be separated from their primary caregiver, ensure that appropriate alternative care is provided and that a social worker, or equivalent, will regularly follow up on the child. Further, ensure that during periods of separation, regular contact with parents and caregivers is maintained, such as twice-daily scheduled phone or video calls or other age-appropriate communication (e.g., social media depending on the age of the child).
- Maintain familiar routines in daily life as much as possible, or create new routines, especially if children must stay at home. Provide engaging age appropriate activities for children, including activities for their learning. As much as possible, encourage children to

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<sup>21</sup> World Health Organization, *Helping children cope with stress during the 2019-nCoV outbreak*, [https://www.who.int/docs/default-source/coronaviruse/helping-children-cope-with-stress-print.pdf?sfvrsn=f3a063ff\\_2](https://www.who.int/docs/default-source/coronaviruse/helping-children-cope-with-stress-print.pdf?sfvrsn=f3a063ff_2)

<sup>22</sup> World Health Organization, *Mental Health and Psychosocial Considerations During COVID-19 Outbreak*, <https://www.who.int/docs/default-source/coronaviruse/mental-health-considerations.pdf>

continue to play and socialize with others, even if only within the family when advised to restrict social contact.

- During times of stress and crisis, it is common for children to seek more attachment and be more demanding on parents. Discuss COVID-19 with your children using honest and age appropriate way. If your children have concerns, addressing those together may ease their anxiety. Children will observe adults' behaviors and emotions for cues on how to manage their own emotions during difficult times.

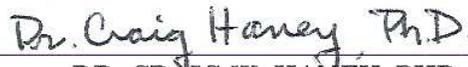
15. The COVID-19 Pandemic is a natural disaster that has already had a significant worldwide impact whose catastrophic effects are beginning to mount in the United States. The Pandemic has traumatic psychological as well as physical consequences. The consequences are especially severe for children who are not only experiencing the Pandemic but also trying to comprehend its magnitude and implications. They are seeking safety in an otherwise suddenly unsafe-feeling world. Not surprisingly, the CDC and WHO both recommend intense and expansive forms of family support, caring, and coping to ameliorate these traumatic effects. Yet this kind of familial support, caring, and coping is simply unavailable in (and in essence precluded by) juvenile institutions.
16. Thus, it should be obvious that few if any of the CDC or WHO recommendations for the appropriate way to address the needs of children in light of the present Pandemic can be effectively implemented in a secure juvenile facility. Of course, their recommendations for optimizing children's meaningful family contacts and ensuring that children are able to follow as normal a routine as possible should apply no less forcefully to children who have been placed in juvenile institutions. In fact, for the aforementioned reasons, in light of the likely past trauma they have suffered and the traumatic nature of their present circumstances, the recommendations apply with even more logic and force.
17. As I have noted, the continued detention/confinement of children during the COVID-19 Pandemic constitutes a grave threat to their physical and mental health. Young people confined to juvenile facilities are vulnerable emotionally; they are separated from their

families; they likely face unhealthy and unsanitary physical conditions in such institutions, which will exacerbate any existing medical conditions and heighten the risk of their contracting and transmitting coronavirus; and their incarceration in the midst of this crisis will likely result in their placement in settings that are the equivalent of solitary confinement, placing them at even greater risk. The combination of these factors argues in favor of removing them from secure institutions and returning them to their families for proper protection and care. Of course, the release of children from secure institutions can and should be done with adequate measures to protect them, their families and the broader community.<sup>23</sup>

18. With these things in mind, it is my professional opinion that returning incarcerated children to their families, where they can receive the kind of familial support that the CDC and WHO recommend, is the best possible course of action to take in response to the COVID-19 Pandemic.

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

Executed on March 21, 2020 at Santa Cruz, California.

  
DR. CRAIG W. HANEY, PHD

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<sup>23</sup> See Council for State Governments, Justice Center, “Seven Questions About Reentry Amid COVID Confusion.”

# EXHIBIT C

Declaration of Cyn Yamashiro, Independent Juvenile Defender Program

## DECLARATION OF CYN YAMASHIRO

- 1) I, Cyn Yamashiro, declare that I am attorney licensed to practice law in the State of California, State Bar No. 169964.
- 2) I am the Directing Attorney of the Independent Juvenile Defender Program of the Los Angeles County Bar Association. (“IJDP”).
- 3) IJDP was established and funded by the Los Angeles County Board of Supervisors (the “Board”) to oversee and administer a panel of independent contractors to represent indigent minors (“Minors”) against whom a petition pursuant to Welfare & Institutions Code, § 602 is filed, when both the Public Defender (“PD”) and the Alternate Public Defender (“APD”) are unavailable. IJDP panel attorneys are vetted by IJDP, trained and supported by IJDP resources, and supervised by IJDP to ensure that Minors are receiving competent representation, consistent with best practices for juvenile delinquency practice. In addition, IJDP provides direct representation in matters involving pre-trial writs, resource advocacy, investigations and forensic social work where called upon by members of the IJDP panel. This declaration is provided pursuant Welfare and Institutions Code section 634.3(a)(3) and California Rules of Court 5.663(c) mandating post-disposition representation and advocacy.
- 4) As of April 14, 2020, IJDP attorneys represent multiple youth serving sentences in the *Los Angeles County Probation Camp Community Placements* and youth awaiting trial, disposition or placement in the *Los Angeles County Probation Juvenile Halls*.
- 5) On March 17, 2020 in my capacity as directing attorney for IJDP, I requested a meeting with the supervising judge of the Los Angeles County juvenile delinquency court, the District Attorney, the Public Defender and Alternate Public Defender and Probation Department in order to implement a systematic review of youth in custody in order to facilitate release, where appropriate, consistent with the basic model utilized by the Sheriff for adult defendants in the Los Angeles County Jail. At that meeting and every subsequent meeting, the court has refused to take a global review of the youth in custody and instead, has

insisted all court partners to engage in a case by case, individualized review adhering to the same analytical framework employed prior to the COVID-19 outbreak.

- 6) In my capacity as directing attorney for IJDP, I have learned the following facts regarding the manner in which the Los Angeles County Superior Court and the Los Angeles County Probation Department have reacted to the outbreak of the COVID-19 virus in Los Angeles County.
  - a) Court Actions:
    - i) On March 17, 2020, Presiding Judge Kevin Brazile declared a court holiday, closing all courts, including the Juvenile Court for March 17<sup>th</sup>, 18<sup>th</sup>, 19<sup>th</sup>, in response to the Corvid-19 pandemic (“Pandemic”). Juvenile Courts re-opened at a greatly reduced capacity on March 20, 2020.
    - ii) On March 13, 2020, in response to the Covid-19 Pandemic, Presiding Judge Kevin Brazile of the Los Angeles Superior Court announced recommendations to all judges and commissioners of the Superior Court, effective March 16, 2020, that (1) All new civil jury trials should be continued for at least 30 days and all preference jury trials should be continued for at least 15 days; (2) All criminal jury trials, where statutory time had been waived should be continued for at least 30 days; and (3) Limit new jury panels within the next 30 days due to concerns about juror availability. The same day, Presiding Judge Brazile made a request the Chief Justice for an emergency order permitting closure of the courts.
    - iii) On March 15, 2020, Presiding Judge Brazile announced in a news release that, “the Court will begin scaling down operations tomorrow to achieve social distancing in all 38 courthouses. Additional public protection measures will be evaluated and announced tomorrow of Tuesday.”
    - iv) On March 16, 2020, after receiving authorization from the Supreme Court to do so, Presiding Brazile declared a court holiday, closing all courts, including the Juvenile Court for March 17<sup>th</sup>, 18<sup>th</sup>, 19<sup>th</sup>, in response to the Corvid-19 pandemic.

- v) On March 17, 2020, Presiding Judge Brazile issued an implementation order to continue all non-emergency matters for 30 days.
- vi) On March 18, 2020, Presiding Judge Brazile ordered the continuance of all traffic infractions and non-traffic infraction trials and arraignments for at least 30 days.
- vii) On March 19, 2020, Presiding Judge Brazile ordered the courts to re-open for essential and emergency functions.
- viii) On March 20, 2020, the Superior Court announced that all clerk's offices would be closed to the public, as the clerk's office transitioned to telephonic and remote solutions.
- ix) On March 22, 2020, Presiding Judge Brazile ordered the closure of the Sylmar courthouse for three days after positive Covid-19 exposure.
- x) On March 23, 2020, Presiding Judge Brazile issued an order that only authorized persons may enter the courthouse.
- xi) On March 23, 2020, the Superior Court announced that a dependency judge was under a 14-day quarantine.
- xii) On March 24, 2020, the Superior Court ordered release of some adult county jail inmates awaiting trial, after reaching agreement with justice partners.
- xiii) On April 2, 2020, Presiding Judge Brazile ordered deadlines extended for arraignments, preliminary hearings and trials.
- xiv) On April 9, 2020, Presiding Judge Brazile announced that all essential dependency hearings would be held remotely.
- xv) On April 10, 2020, Presiding Judge Brazile announced immediate temporary relief for all traffic and non-traffic infraction defendants for 90 days.
- xvi) On April 10, 2020, the Honorable Victor H. Greenburg, Presiding Judge of the Juvenile Division, notified the juvenile delinquency bar, by email, that, "[l]imited operations policies presently in place for the Superior Court have been extended until June 22, 2020. The court plans to reopen on

June 22. Cases classified as Non-Essential which are calendared prior to June 22 will be continued until after our reopening. Due to social distancing requirements, as well as the backlog of cases, we will not be able to hear all juvenile case immediately following that date.”

xvii) On April 13, 2020, the Superior Court announced it was continuing to work with justice partners on jail release of *adults* in response to the pandemic.

b) Conditions of confinement:

i) Multiple Los Angeles County Probation Department employees who work with youth in the Juvenile Halls have tested positive for COVID-19 and multiple youth have been quarantined as a result of the exposure.

ii) Throughout the viral outbreak we have received reports that conditions in the Juvenile Halls (JH) and Camp Community Placements (CCP) are inconsistent with CDC, State or County guidance around safety measures to prevent the spread of the virus:

(1) Social Distancing

(a) Many clients report the only “social distancing” taking place is between staff and the youth, but youth are otherwise allowed to freely congregate in numbers and distances inconsistent with CDC guidance.

(b) The Los Angeles County Probation Chief personally reported that he observed youth playing sports such as 5 on 5 basketball and soccer after the emergency declaration was imposed.

(c) Youth continue to shower and eat in groups larger than 10.

(2) Sanitation

(a) Youth report a lack of hand sanitizer, gloves, cleaning solutions, or face masks.

(3) Rehabilitative Services

(a) Education: Youth report educational instruction has all but ceased and that they are provided “packets” of materials that are

distributed and picked up once a week. There is no accompanying explanation, instructions, corrections or the ability to ask questions of an instructor.

(b) Mental Health: Youth report Los Angeles County Department of Mental Health (DMH) staff are no longer on site. For a time, some counselors were reportedly handling counseling sessions via phone or video conferencing, but those were either terminated or limited due to the demands of the court video conferencing and attorney meetings now taking place over the phone.

(c) Vocational training: Youth report vocational training has been suspended.

7) In light of the aforementioned facts surrounding the conditions of confinement, IJDP attorneys have submitted multiple motions under Welfare and Institutions Code Section 778 for a change of plan, seeking their client's release from Probation CCPs. IJDP attorneys have encountered unprecedented ministerial and procedural difficulties in moving for release and litigating other critical matters due to drastically reduced juvenile court capacity following the declaration of the judicial emergency. The reduced court capacity and systems implemented to limit courtroom activity has systematically deprived youth of notice and a right to be heard. These include the following:

- a) According to IJDP attorneys, following the judicial emergency order, the number of active juvenile delinquency courts was reduced from 18 to fewer than 9. The current active juvenile delinquency bench appears to work on a rotation, but I have not received any formal notification of the rotation. This directly impacts the ability of attorneys to direct their motions to the Judge who imposed the disposition they seek to change.
- b) The courts and the administrative office of the courts have refused to employ any means for attorneys to file motions or receive necessary court documents electronically and have relegated the Prosecution and the Defense bar to submitting motions via a physical "drop box" outside the courthouse. At least

one of these “drop boxes” has been placed next to the entrance of the court, exposed to hundreds of youth and their families as they enter and exit one of the busiest juvenile courthouses in the United States. At least one motion placed in the drop box may be lost.

- c) I am informed and believe that the Probation Department has moved the Delinquency Court to issue “change of plans” under Welfare & Institutions Code section 778 in order to release over 40 youth. Notice of these motions was not provided to their attorneys nor were they afforded an opportunity to be heard on the merits of the motion. In several cases, despite a probation recommendation for release, the petitions were denied by the Juvenile Court without permitting the Minor to be heard, providing the Minor and his or her counsel with the probation reports supporting the decision, and without entering the decision upon the minutes, permitting appellate review. Moreover, in one case, even when IJDP counsel was permitted to appear and argue for the Minor, he was not provided with the underlying probation report ostensibly supporting the Juvenile Court’s decision. When he sought an expedited transcript for appellate review, that request was initially denied.
- d) I am informed and believe that certain Juvenile Courts have taken the position that motions seeking a change of plan under WIC section 778 are not considered “essential” items and as such will be heard once the judicial emergency has ended or after June 22, 2020.

I declare, on information and belief, the forgoing facts are true and correct under penalty of perjury.

Executed the 14<sup>th</sup> day of April, 2020

  
\_\_\_\_\_  
Cyn Yamashiro  
Directing Attorney  
Independent Juvenile Defender Program

# EXHIBIT D

Declaration of Sean Kennedy  
Executive Director, Center for Juvenile Law and Policy

## DECLARATION RE CONDITIONS OF CONFINEMENT

I, Sean Kennedy, declare as follows:

1. I am an attorney licensed to practice law in the State of California, State Bar no. 145632.
2. I am Kaplan and Feldman Executive Director and Associate Professor of the Center for Juvenile Law and Policy at Loyola Law School, Los Angeles. As part of our mission at the Center for Juvenile Law and Policy, we provide holistic defense to young people in Los Angeles juvenile delinquency courts, with a focus on dual-jurisdiction youth.
3. Our office represents 6 youth who are currently detained in juvenile hall, 1 youth in secure camp and 1 youth in secure suitable placement.
4. In our communications with several clients, conducted between April 2 and April 9, 2020, I have learned the following information about conditions at Central Juvenile Hall, Barry J. Nidorf Juvenile Hall and Campus Kirkpatrick.
  - a. Social Distancing:
    - i. There have been no reported practices of social distancing at any of the facilities where our clients are detained. A client detained at Barry J. Nidorf did not know about social distancing until speaking with his attorney. No probation staff had explained or enforced the practice of social distancing. Probation staff have told youth at Campus Kilpatrick to social distance, but do not implement social distancing.
    - ii. Young people at Central and Barry J. Nidorf sleep alone in single cells, as was the practice before the pandemic. Our client at Campus Kilpatrick sleeps in an open dormitory with 10 other youth.
    - iii. Youth interviewed at Central Juvenile Hall and Barry J. Nidorf Juvenile Hall report eating meals daily with other children in their unit at the same table, playing board games, watching television and taking communal showers with the other youth. The youth at Campus Kilpatrick also reports living communally in an open dormitory setting.
    - iv. The youth interviewed and detained at Central Juvenile Hall and Barry J. Nidorf report that they are still having recreational time outside, and are allowed to play contact sports. The youth detained at Campus Kilpatrick reports that all recreational activities have been restricted and he remains inside the dormitory all day with the other youth in his cottage.
  - b. Access to necessary hygiene products
    - i. All interviewed youth report that they are responsible for cleaning their cells daily, but have not been given disinfectant or other cleaning supplies. Youth at

both juvenile halls report that there has been no increase in cleaning supplies, and that while probation is now helping them to clean the unit, there has been no introduction or increase in professional cleaning staff since COVID-19 began. Youth report that they have access to soap and water in order to wash their hands. Their clothes are changed and washed once a week, and their bedclothes are changed every couple of weeks, depending on availability of fresh sheets and/or access to laundry.

ii. No youth interviewed reported having access to hand sanitizer.

iii. No youth interviewed reported having access to a facial mask.

iv. No youth interviewed reported having access to gloves.

iv. The youth interviewed at Central and Barry J. Nidorf report having no access to cleaning wipes or disinfectant.

#### d. Medical Symptoms and Response

i. A youth at Barry J. Nidorf Juvenile Hall reports that they were ill with a sore throat and stuffy nose over two weeks ago, and stayed in his room. This youth reports that it takes over an hour to see a nurse, and that there aren't enough staff to transport youth to the nurses office. This youth also reports that on their particular unit, over 3 separate probation staff were sent home for displaying COVID like symptoms in the last few days.

Another youth at Barry J. Nidorf Juvenile Hall lives in the unit where a probation staff have tested positive for COVID-19.

During the week of March 16, 2020, a youth at Central Juvenile Hall reported not feeling well, with a cough and runny nose. This youth has pre-existing medical conditions. He was initially told to drink hot water, but was never provided hot water. He also reported that the heat in his unit was broken, and that he was constantly cold. He finally saw a nurse, after repeatedly asking probation officers on his unit for medical care.

#### c. Education

i. All youth interviewed, across facilities, have reported that educational instruction has completely ceased. All youth have Individualized Education Plans, the provisions of which are not being implemented. At Campus Kilpatrick, a teacher comes once a week to pick up and drop off new packets for youth to work on, but are not available to answer questions. The packets are not individualized to a student's learning needs or grade level. The student reports feeling like he has "no choice" over his education.

One youth at Barry J. Nidorf Juvenile Hall reports that since mid-March, 2020, he and all of the other youth on his unit have completed one page of math work. Math sheets were left in a box in the youth's unit, but staff did not report to the youth that the sheet was available. The youth were not given any instructions on how to do the assignment, and did not have anyone available to ask questions about the assignment.

A youth at Central Juvenile Hall reports that he has not been provided any special education services, and as of the first week of April had not been given a new packet of work for over a week and a half. This child reports that he has not been able to ask any questions about the assignments, when packets are provided. [

All students interviewed report that there is no access to laptop or other technology to assist with learning.

#### d. Programming

i. All youth interviewed report that there has been zero programming, including mental health services from DMH for the last few weeks. No youth interviewed has been able to access DMH counseling since mid-March, including telephonic calls. Groups such as Inside Out Writers, ARC, and any other rehabilitative group classes or therapy have completely ceased.

Youth across facilities, with the exception of Campus Kilpatrick, report that "rec time" is the only activity they are engaged in. Otherwise, they are in their rooms or the day room. At Campus Kilpatrick, the youth reports that outdoor rec time has been completely restricted and that he is in the common area of his dorm for the majority of the day.

#### e. Visits

i. Since family visits were restricted on March 13, 2020, one month ago, no youth interviewed has been able to have a video phone call with their family. With the exception of Campus Kilpatrick, access to phone calls in the juvenile halls and has been restricted to once a week, and further limiting access to phone calls is used as a disciplinary measure. Youth and their families are still paying for these calls using Global TeleLink.

At Barry J. Nidorf, starting the week of March 16, each child has been given one ten-minute phone call every Thursday to speak to his family. One client uses five minutes to call his dad, and five minutes to call his grandmother. The staff told him that they are supposed to get another ten minute phone call on Sundays, but that has not happened. Each Thursday, before getting a phone call, our client is given a sheet of paper to sign to verify that he has satisfied all of the disciplinary requirements to be able to receive his phone call, and that he was given his phone call. If a child does not meet all of the behavior requirements, they are not given a phone call that week. Our client reports that they are always told that their

Thursday phone call is a privilege that has to be earned and can be taken away if they do not behave. There has been no attempt to use video conferencing to call his family. A client at Central Juvenile Hall similarly reports that Probation uses phone calls as discipline. Staff advise him to behave or he won't be able to make phone calls, even to his attorney. This youth has not been allowed to make any video calls. This youth reports feeling sadness, distress and anxiety without having access to his mom or legal team.

Another client reports that without visits, he is very angry and upset.

Our clients have been unable to access secure, confidential phone calls with their legal team. Multiple times a week, a client at Barry J. Nidorf asks the staff on duty if he can call his attorney, but almost every time he is told that there is no time or that there is not enough staff to let him call his attorney. A client at Central Juvenile Hall, who per a court order is entitled to "reasonable, free access to counsel," is required to use the pay phones, using Global TeleLink, to make recorded calls to his legal team at a cost. Our client has told this to probation staff, who do not provide reasonable, free access to counsel.

5. Given this information, we have been attempting to bring selected cases before the court to either seek the release or otherwise seek remedy to the issues addressed in this declaration. I have encountered the following difficulties:
  - i. To address many of these issues outlined in this declaration, it is my understanding from the public statements of the Los Angeles Superior Court that juvenile cases should be heard by the bench officer assigned to a particular case for the duration of the pandemic emergency.
  - ii. Until the pandemic emergency, the Los Angeles County Juvenile Delinquency Court there were 18 juvenile delinquency courtrooms across seven courthouses. Of the 18 bench officers in the Los Angeles County Juvenile Delinquency Court, only nine of those bench officers have regularly been on the bench since the onset of the crisis. Five of the nine keep erratic schedules that differ from day to day. One bench officer hears cases in a different courthouse than the one to which he is assigned. Only four bench officers are hearing their regular calendars in their regular courtrooms.
  - iii. No directives have issued from any of the juvenile courts as to how or where defense counsel should file motions or how to direct these to the appropriate bench officer when a courtroom is closed.
  - iv. Our office has attempted to file WIC 775/778 motions for several clients. We have been able to file these motions and hold hearings in 3 instances. In another instance, we were instructed to drop the motion in a box inside the Eastlake Juvenile Courthouse, and are awaiting word on whether the motion will be heard.

In another instance, we emailed the Judicial Assistant in the particular department, as well as the two assigned Deputy District Attorneys in that courtroom. We were directed to send the motion to the judicial assistant in another department in that particular courthouse. We were then informed we could calendar in the motion in approximately two weeks. After several follow-up phone calls, we were able to advance the hearing date to within a week of filing.

I declare, based on information and belief, under penalty of perjury that the foregoing is true and correct.

Executed on April 14, 2020 at Los Angeles, California.



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SEAN KENNEDY

Declarant

# EXHIBIT E

Declaration of Jerod Gunsberg, Esq.

## DECLARATION

I, Jerod Gunsberg, declare as follows:

1. I am an attorney licensed to practice law in the State of California, State Bar no 260219.
2. I am an attorney in private practice in Los Angeles, California. As part of my practice, I represent youth in Los Angeles County juvenile delinquency proceedings. In these cases, I am privately retained and accept court appointments through the Independent Juvenile Defender Program of Los Angeles County.
3. I currently represent four youth who are detained in juvenile hall and three youth who are detained in the secure probation camps. One of my camp clients was released from camp on April 9, 2020.
4. In my communications with clients, conducted between March 12th, 2020 and April 10th, 2020. I have learned the following information about conditions at both juvenile halls (Central Juvenile Hall and Barry J. Nidorf Juvenile Hall) and three of the camps (Camp Kirkpatrick, Camp Afflerbaugh and Camp Paige).

a. Social Distancing:

- i. There have been no reported practices of social distancing at any of the facilities where my clients are detained. Probation staff had not explained or enforced the practice of social distancing.
- ii. Young people at Central and Barry J. Nidorf sleep alone and thus isolated in single cells. At all camps, youth sleep in open dorms of approximately 10 -13 people.
- iii. All youth report eating meals daily with other children in their unit at the same table. All report communal showers with other youth.
- iv. The youth detained at Central Juvenile Hall and Barry J. Nidorf report that they are still having recreational time outside, and are allowed to play basketball, football, and kickball. At Camp Paige, youth are playing basketball and soccer. At Campus Kiplatrick, there is no outdoor recreation time, but youth are, watching television and taking communal showers with the other youth.

b. Access to necessary hygiene products

- i. No child reported having access to hand sanitizer.
- ii. No child reported consistent access to soap and water or any further directions regarding hand washing.
- iii. No child reported having access to a facial mask.
- iv. No child reported having gloves.
- v. No child report having access to disinfecting wipes.

c. Education

- i. All youth, across facilities, have reported that school instruction has completely ceased.

At Campus Kilpatrick, my client completed high school and was set to begin college classes. College classes have been suspended. At all other facilities, there is no instruction.

One youth at Central Juvenile Hall reports that he receives packets of school work to complete independently. These packets are placed in a folder after completion. He receives no grades or feedback on his work. This youth also reports that all the same packets as given to everyone, regardless of grade level or Individual Education Plans.

d. Mental Health

- i. I represent a youth who is housed in the Extreme Supervision Unit of Central Juvenile Hall. This youth has been found incompetent by the court. This youth is non-verbal. Separate from now suspended remediation efforts, this youth was being seen by a clinician from the Los Angeles County Department of Mental Health (“DMH”) on a regular basis. Since the beginning of the pandemic, it has been reported to me that there are not consistent meetings with his clinician.

Under normal circumstances, there are periodic court-ordered competency progress reports. This offers the defense counsel the ability to challenge the findings of the reports or argue that remediation efforts will not succeed. Without

remediation and without regular behavioral therapy, he is not receiving adequate services.

ii. At Campus Kilpatrick, a youth reports that he has had no contact with his DMH clinician for over one month since the beginning of March.

e. Programming

At all facilities, all vocational training has been suspended. All programs from community-based organizations have ceased.

Youth across facilities, with the exception of Campus Kilpatrick, report that “rec time” is the only activity they are engaged in. Otherwise, they are in their rooms or the day room. At Campus Kilpatrick, the youth reports that outdoor rec time has been completely restricted and that he is in the common area of his dorm where youth are huddled closely together to watch movies.

f. Transfer to Placement

One youth at Barry J Nidorf Juvenile Hall is awaiting transfer to a suitable placement facility in another state. Due to the pandemic, the probation department has suspended all out of state suitable placement transfers. On April 10, 2020, I asked a probation officer at the juvenile hall when the suspension would be lifted. She told me “with the way things are going around here, not anytime soon.”

It is also reported that transfers from juvenile hall to probation camps have been suspended. A camp commitment ranges from 5 to 9 months, yet youth do not receive credit for the time they spend in juvenile hall until they arrive at camp. Due to the suspension of transfers, youth are spending extra months in juvenile hall, longer than what was intended at the time the court imposed disposition.

f. Visits

i. Family visits were suspended on March 13, 2020. No youth at any facility have been given access to any sort of video calls with their families. Phone calls are sometimes behavior based. With the exception of Campus Kilpatrick, access to phone calls has been restricted to once a week and is used as a behavior incentive.

ii. For my non-verbal client at Central Juvenile Hall, phone calls to the family are not feasible. As of April 10, 2020, the probation department has not facilitated any video calls with his family. Since visits were suspended, the only time this youth was able to see his family was approximately two and a half weeks ago

when he saw his DMH clinician. As a favor, the clinician used his own telemedicine software on his laptop computer to communicate with the family.

5. Given this information, we have been attempting to bring selected cases before the court to either seek the release or otherwise seek remedy to the issues addressed in this declaration. I have encountered the following difficulties:

a. To address many of these issues outlined in this declaration, it is my understanding from the public statements of the Los Angeles Superior Court that juvenile cases should be heard by the bench officer assigned to a particular case for the duration of the pandemic emergency.

b. Until the pandemic emergency, the Los Angeles County Juvenile Delinquency Court consisted of 18 juvenile delinquency courtrooms across seven courthouses. Of the 18 bench officers in the Los Angeles County Juvenile Delinquency Court, only nine of those bench officers have regularly been on the bench since the onset of the crisis. Five of the nine keep erratic schedules that differ from day to day. One bench officer hears cases in a different courthouse than the one to which he is assigned. Only four bench officers are hearing their regular calendars in their regular courtrooms. Unfortunately, none of these bench officers are assigned to my cases.

c. No directives have issued from any of the juvenile courts as to how or where defense counsel should file motions or how to direct these to the appropriate bench officer when a courtroom is closed.

d. My incompetent, non-verbal client, has a right to be heard on the issues of the conditions at juvenile hall, the suspension of his treatment and the state of competency proceedings, and his access to his family. The judge regularly assigned to this case is unavailable. There is no indication as to when this judge will be available again.

e. The youth who is awaiting transfer to an out-of-state placement, but is on hold at juvenile hall, needs to be updated on his situation. A court date needs to be calendared so we can confer on how to remedy the situation. As this was an “open admission” to this particular judge, I cannot accomplish this through stipulation or negotiation with the Office of the District Attorney. I was told by a judicial assistant at the courthouse that the judge assigned to the case would need to address the issue, but he was unaware as to when this particular judge would return.

I declare, based on information and belief, under penalty of perjury that the foregoing is true and correct.

Executed on April 12, 2020 at Los Angeles, California.

A handwritten signature in black ink, appearing to read "Jerod Gunsberg", written over a horizontal line.

JEROD GUNSBURG

Declarant

# EXHIBIT F

Declaration of Leslie Heimov, Executive Director, Children's Law Center

## DECLARATION OF LESLIE HEIMOV

I, LESLIE HEIMOV, declare as follows:

1. I am an attorney duly licensed to practice law in all the courts in the State of California. I am the Executive Director of the Children's Law Center of California ("CLC").
2. I have personal knowledge of the facts stated herein, and, if called upon to do so, I could and would competently testify thereto.
3. CLC provides representation to all of the children and youth under the jurisdiction of the Los Angeles County Superior Court, Juvenile Dependency Division. CLC currently represents over 30,000 children/non-minor dependents.
4. CLC represents several hundred children who are also involved with the Juvenile Justice System.
5. Within the last week, CLC attorneys have spoken directly to at least 17 of our clients who are currently detained in Central Juvenile Hall, Barry J. Nidorf Juvenile Hall, Dorothy Kirby Center or Camp Glenn Rocky.
6. We are concerned about the increased risk of COVID-19 faced by our clients due to the congregate living setting, the staff coming and going from the facilities daily, and the lack of COVID-19 safety precautions being taken to protect our clients.
7. At Barry J. Nidorf Juvenile Hall in Sylmar, CA, at least 2 staff members have reportedly tested positive for COVID-19. Our clients detained at Barry J. Nidorf Juvenile Hall do not have access to hand sanitizer and masks. There is inconsistent use of gloves and masks by staff, with some staff wearing neither gloves nor a mask. The youth spend most of their day in the "day room," where they are not provided space to be 6 feet apart from each other.

8. Our clients detained at Central Juvenile Hall, Dorothy Kirby Center or Camp Glenn Rocky also report inconsistent access to hand sanitizer, gloves and masks for the youth. One client detained at Central Juvenile Hall reported that only “favorites” are provided with masks.
9. We are concerned about the lack of access to services and support for our clients detained at Central Juvenile Hall, Dorothy Kirby Center or Camp Glenn Rocky. None of them are receiving in-person schooling or in-person therapeutic services while detained.

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

Executed this 13th day of April 2020, at Los Angeles, California.



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LESLIE HEIMOV

# EXHIBIT G

Email Communications about BSCC Suspension

## Debbie Craig

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**From:** Dalila Alcantara  
**Sent:** Thursday, April 9, 2020 3:51 PM  
**To:** Debbie Craig  
**Subject:** FW: Emailing: 2020 3.26 Los Angeles County Probation Department ESS Approval.pdf  
**Attachments:** 2020 3.26 Los Angeles County Probation Department ESS Approval.pdf

-----Original Message-----

**From:** Dalila Alcantara  
**Sent:** Friday, March 27, 2020 3:58 PM  
**To:** Ray Leyva <Ray.Leyva@probation.lacounty.gov>  
**Cc:** Marisa Ron <Marisa.Ron@probation.lacounty.gov>; Tom Faust <Tom.Faust@probation.lacounty.gov>; Brandon Nichols <Brandon.Nichols@probation.lacounty.gov>; Luis Dominguez <Luis.Dominguez@probation.lacounty.gov>  
**Subject:** FW: Emailing: 2020 3.26 Los Angeles County Probation Department ESS Approval.pdf

Chief, attached please find a letter from the BSCC granting our request for emergency suspension of Title 15 requirements. The request was submitted on behalf of the halls and camps.

Thank you

-----Original Message-----

**From:** Southwell, Lisa@BSCC <Lisa.Southwell@bscc.ca.gov>  
**Sent:** Friday, March 27, 2020 3:52 PM  
**To:** Dalila Alcantara <Dalila.Alcantara@probation.lacounty.gov>; Jennifer Kaufman <JENNIFER.KAUFMAN@probation.lacounty.gov>  
**Subject:** Emailing: 2020 3.26 Los Angeles County Probation Department ESS Approval.pdf

CAUTION: External Email. Proceed Responsibly.

Ms. Alcantara and Ms. Kaufman;  
Please see attached and forward to Interim Chief Leyva. If there are any questions, please do not hesitate to contact me by email or by cell phone at 916 838-9132.

Your message is ready to be sent with the following file or link attachments:

2020 3.26 Los Angeles County Probation Department ESS Approval.pdf

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. ~~Check your e-mail security settings to determine how attachments are handled.~~

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STATE OF CALIFORNIA

**BOARD OF STATE AND COMMUNITY CORRECTIONS**

LINDA M. PENNER  
*Chair*

2590 VENTURE OAKS WAY, SUITE 200 • SACRAMENTO CA 95833 • 916.445.5073 • BSCC.CA.GOV



GAVIN NEWSOM  
*Governor*

KATHLEEN T. HOWARD  
*Executive Director*

**TO: Ray Leyva, Interim Chief Probation Officer, Los Angeles County Probation Department**

**FROM: Linda Penner, Chair, Board of State and Community Corrections**

**DATE: March 27, 2020**

**RE: COVID-19 EMERGENCY SUSPENSION OF STANDARDS THROUGH APRIL 11, 2020**

In response to the COVID-19 pandemic, and in accordance with federal, state and local public health guidance and directives, the Los Angeles County Probation Department requested emergency suspension of the following standards in their local detention facilities:

- 3/16/2020 § 1370. Education Program.
- 3/16/2020 § 1371. Programs, Recreation, and Exercise.
- 3/25/2020 § 1372. Religious Program.
- 3/16/2020 § 1373. Work Program.
- 3/14/2020 § 1374. Visiting.

The BSCC has reviewed your request for suspension of standards and plans to mitigate impact of the suspension. I hereby grant the Los Angeles County Probation Department's request for Emergency Suspension of Standards pursuant to Title 15, Section 1311, Emergency Suspension of Standards, until April 11, 2020. Prior to April 11, BSCC staff will contact you or your designee to determine whether the agency anticipates continuing the emergency suspension of standards.

The BSCC will consider and grant requests for continued emergency suspensions of standards in 15-day increments.

If you need any assistance, or your agency suspends additional standards please notify your assigned Field Representative immediately.

Thank you,

LINDA PENNER  
Chair

**Debbie Craig**

---

**From:** Jennifer Kaufman  
**Sent:** Wednesday, April 8, 2020 6:52 PM  
**To:** Southwell, Lisa@BSCC; Dalila Alcantara; Luis Dominguez; Mark Garcia (Probation)  
**Cc:** Gong, Elizabeth@BSCC; Thompson, Craigus@BSCC  
**Subject:** RE: Information to the Fields ESS

Lisa,

Sorry for the delayed response.

Regulation	N(New) Y or N	Extend Through	Mitigation(If New) or Updates(If Any)
§ 1370. Education Program.	N	4/30/20	
§ 1371. Programs, Recreation, and Exercise.	N	4/30/20	
§ 1372. Religious Program.	N	4/30/20	
§ 1373. Work Program.	N	4/30/20	
§ 1374. Visiting.	N	4/30/20	
§ 1488. Hair Care Services	Y	4/30/20	None

**From:** Southwell, Lisa@BSCC [mailto:Lisa.Southwell@bscc.ca.gov]  
**Sent:** Wednesday, April 8, 2020 2:54 PM  
**To:** Dalila Alcantara <Dalila.Alcantara@probation.lacounty.gov>; Luis Dominguez <Luis.Dominguez@probation.lacounty.gov>; Mark Garcia (Probation) <MARK.Garcia@probation.lacounty.gov>; Jennifer Kaufman <JENNIFER.KAUFMAN@probation.lacounty.gov>; Jennifer Butz (butzj@co.monterey.ca.us) <butzj@co.monterey.ca.us>; Oscar Ruiz <Oscar.Ruiz@yolocounty.org>; Chelsey Chappelle <clchappelle@co.shasta.ca.us>; Tracie Neal <tneal@co.shasta.ca.us>; Carla Stevens <cstevens@co.shasta.ca.us>; Lance Floerke <lfloerke@trinitycounty.org>; Tim Rogers <trogers@trinitycounty.org>  
**Cc:** Gong, Elizabeth@BSCC <elizabeth.gong@bscc.ca.gov>; Thompson, Craigus@BSCC <Craigus.Thompson@bscc.ca.gov>  
**Subject:** RE: Information to the Fields ESS

**CAUTION: External Email. Proceed Responsibly.**

All

A friendly reminder, I need this information today by 5pm. If you have no change ie. no additional regulation to add or delete, no additional mitigation to note , are happy with how the smart sheet reads as is AND will continue with your suspensions and only need your approval memo, Please reply " Please send memo only, all other information is correct as is. No change necessary. "

If you have any update, please update as requested.

If you have questions, please call me.

Thank you, Lisa 😊

**From:** Southwell, Lisa@BSCC

**Sent:** Monday, April 6, 2020 7:15 PM

**To:** Bailey, Jason <jbailey@rcprob.us>; Los Angeles County Probation (Dalila.Alcantara@probation.lacounty.gov) <Dalila.Alcantara@probation.lacounty.gov>; Luis.Dominguez@probation.lacounty.gov; Mark Garcia (Probation) <MARK.Garcia@probation.lacounty.gov>; Jennifer Kaufman <JENNIFER.KAUFMAN@probation.lacounty.gov>; Hernandez, Paula (JUV) <paula.hernandez@sfgov.org>; Recinos, Luis (JUV) <luis.recinos@sfgov.org>; Jennifer Butz (butzj@co.monterey.ca.us) <butzj@co.monterey.ca.us>; Oscar Ruiz <Oscar.Ruiz@yolocounty.org>; Shelley Pluim <spluim@tcp probation.org>; Chelsey Chappelle <clchappelle@co.shasta.ca.us>; Tracie Neal <tneal@co.shasta.ca.us>; Carla Stevens <cstevens@co.shasta.ca.us>; Lance Floerke <lfloerke@trinitycounty.org>; Tim Rogers <trogers@trinitycounty.org>  
**Cc:** Gong, Elizabeth@BSCC <elizabeth.gong@bscc.ca.gov>; Thompson, Craigus@BSCC <Craigus.Thompson@bscc.ca.gov>  
**Subject:** Information to the Fields ESS

Hello All;

As a reminder if you have not yet viewed the dashboard, here is the link again.

<https://app.smartsheet.com/b/publish?EQBCT=ba9b83f39b4a46dd9ea8d8a889c56039>

Please let me know asap if there are any items that need to be added, updated or if there are any errors in how your information is noted. If you have a new regulation to add, I need a memo or letter regarding the addition and if there is any mitigation that you would like to add.

Board Chair Penner will be conducting her 2- week Emergency Suspension review this week to extend for the next two weeks from April 11, 2020 through April 26, 2020. Please advise if you intend to extend your suspensions by completing the chart below and returning to me no later than April 8, 2020 at 5pm. Please include any updates if any. This will enable me to get the information in and processed as quickly as possible. If you have any questions, please feel free to contact me. I am available by email and by cell phone.

Thank you so much. Lisa

Regulation	N(New) Y or N	Extend Through	Mitigation(If New) or Updates(If Any)



## DECLARATION OF SERVICE

I, the undersigned, say that I am over eighteen years of age and not a party to the above action. My business address is 634 South Spring Street, Suite 500C, Los Angeles, CA 90014.

On April 14, 2020, I served the attached PETITION FOR WRIT OF MANDATE on the persons indicated below, by placing a true copy thereof in a sealed envelope with first class postage thereon fully prepaid in the United States mail at Los Angeles, California, addressed as follows:

Honorable Victor H. Greenberg  
Presiding Judge, Juvenile Division  
Edmund D. Edelman Children's Court  
201 Centre Plaza Drive, Monterey Park, CA 91754

Shawn Randolph  
Office of the District Attorney, Juvenile Division  
211 W Temple St, Ste 1200, Los Angeles, CA 90012

Jane Newman  
Office of the Public Defender  
210 W Temple St Fl 19, Los Angeles, CA 90012

Cesar Sanchez  
Office of the Alternate Public Defender  
210 W Temple St Fl 18, Los Angeles, CA 90012

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

Executed this 14th day of April 2020, at Los Angeles, California.



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PATRICIA SOUNG  
Counsel for Petitioners.