



Paquete de Hábeas LSPC COVID-19

(3 de agosto de 2020)

Se adjunta una petición de muestra para que un recurso de Hábeas Corpus sea presentado por personas mayores, discapacitadas y médicamente vulnerables encarceladas en el CDCR que buscan la liberación debido a la pandemia de COVID-19. LSPC preparó esta petición con la ayuda de Prisoner Advocacy Network (PAN). Aunque las peticiones de Hábeas se utilizan con mayor frecuencia para impugnar las condenas, esta petición de muestra busca correctamente la liberación en función de sus condiciones de reclusión.

A continuación, se ofrecen sugerencias sobre cómo completar el formulario HC-001:

pag. 1:

"Name": escriba su nombre

"Address": escriba su dirección donde está encarcelado(a)

"CDC or ID Number": escriba su número de identificación de CDCR

Líneas centradas "(Court)": escriba el nombre y la dirección del tribunal por el condado donde está encarcelado (consulte la hoja adjunta)

"Petitioner" (Demandante): escriba su nombre de Ud.

"Respondent" (Demandado): escriba el nombre del director de su instalación

"No. _____": dejar en blanco

pag. 2:

1. "Your name": escriba su nombre de Ud.

2. "Where are you incarcerated?": escriba el nombre de la prisión donde está encarcelado(a)

3(a): escriba las convicciones que causaron su encarcelación actual

3(b): escriba las leyes que violó

3(c): escriba el condado donde estaba sentenciado/a

3(d): escriba el número de su caso criminal

3(e): escriba la fecha cuando estaba condenado/a

3(f): escriba la fecha cuando estaba sentenciado/a

3(g): escriba su sentencia

3(h): escriba la fecha de liberación anticipada

Esta correspondencia está destinada a proporcionar información legal general.
No da asesoramiento legal.
Esta correspondencia no crea una relación abogado-cliente.

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Oakland, CA 94102.
Phone: (415) 255-7036
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www.prisonerswithchildren.org

3(i): escriba si tuvo representación legal en el tribunal (Yes (Si) o No)

4: escriba si se declaro "Not guilty" (no culpable), "Guilty" (culpable), o "Nolo contendere"

5: si hubo juicio, escriba si hubo "Jury" (jurado), "Judge without a jury" (solo juez), o "Submitted on a transcript" (solo decidido por transcripción escrita)

pag. 3: No se necesitan cambios.

pag. 4: Omita a menos que tenga un reclamo adicional.

pag. 5-6:

8. "Did you appeal . . .": marque Yes (Si) si apeló su convicción o sentencia

8(a): escriba el nombre del tribunal donde apeló

8(b): escriba el resultado de la apelación

8(c): escriba la fecha de la decisión de apelación

8(d): escriba el numero del caso de apelación

8(e): escriba los argumentos en la apelación

8(f): escriba si tuvo representación legal en la apelación

9: escriba si presentó una petition for review en la Corte Suprema de California

9(a): escriba el resultado de la petición

9(b): escriba la fecha de la decisión en la petición

9(c): escriba el numero del case en la Corte Suprema de California

9(d): escriba los argumentos en la petición

10: Escriba "N/A".

11: Describa el 602 que presentó y las respuestas que recibió con fechas. Si no ha presentado un 602 debido a la urgencia de sus circunstancias o Si no ha completado todos los niveles del proceso de apelación y desea presentar una petición de hábeas sin demora, agregue "See Sheet B" (Vea la Hoja B) e incluya la Hoja B con su petición.

12-14: Si anteriormente presentó una acción judicial para solicitar la liberación debido a las condiciones de COVID-19, describa esa acción judicial aquí además de describir las peticiones o mociones que presentó para impugnar su condena.

15: Explique cualquier retraso en la presentación de su reclamo de COVID-19 (probablemente no corresponda).

16: Marque "No."

17: Identifique cualquier otra acción judicial pendiente.

18: Déjelo en blanco.

Firma y fecha: firme y fecha, lo que significa que jura que todo lo que declaró en la petición es verdadero y exacto según su conocimiento personal.

A continuación, las sugerencias sobre cómo completar los anexos al formulario de petición de hábeas:

“Sheet A-1”: Datos sobre la falta de protección contra COVID-19

- “Of the alleged . . .”: Revise la lista de políticas que el CDCR afirma que adoptó para protegerlo de una infección por COVID-19 (en la Hoja A-1) y describa en detalle (a) cómo no se están siguiendo esas políticas, o (b) cómo y por qué esas políticas son inadecuadas. Sea lo más específico posible con fechas, ubicaciones, nombres y descripciones específicas de incidentes, y agregue páginas adicionales si es necesario.
- “For the following additional reasons, . . .”: Describa cualquier otra condición de confinamiento que no lo proteja adecuadamente del COVID-19 y firme.
- “On July 10, 2020, . . .”: Indique si es elegible para los programas recientes de liberación anticipada y firme.
- “Exhibits A-1” (Anexos A-1): Incluya evidencia que respalde sus declaraciones, como declaraciones de usted mismo, compañeros encarcelados o guardias (use el formulario de declaración en blanco adjunto).

“Sheet A-2” (Hoja A-2): Datos sobre su vulnerabilidad a la muerte o daños graves por COVID-19

- “Petitioner’s age”: Indique su edad
- “Petitioner’s medical conditions and disabilities”: describa sus discapacidades y condiciones médicas (diagnósticos) y síntomas.
- “Exhibits A-2” (Anexos A-2): Incluya documentos que confirmen sus discapacidades y afecciones médicas.
- Si se conoce, describa las experiencias de otras personas encarceladas en el CDCR con su condición médica o edad que hayan contraído COVID-19 como una ilustración del peligro que enfrenta. Utilice el formulario de declaración.

“Sheet A-3” (Hoja A-3): Información sobre su plan de liberación y por qué no presenta un riesgo irrazonable para la seguridad pública

- Describa su plan de liberación (sea lo más específico posible, con direcciones, nombres y fechas) y describa su rehabilitación.

“Where Petitioner will live after release”: describa donde vivirá después de la liberación

“How Petitioner will support him or herself after release”: describa cómo se mantendrá después de la liberación

“How Petitioner will obtain needed medical and mental health care after release”: describa cómo se obtendrá cuidado médico físico y mental después de la liberación

“Community members who will support Petitioner with reentry”: identifique los que le apoyará después de la liberación

“Why Petitioner does not pose . . .”: explique por qué no representará un riesgo irrazonable para la seguridad pública (falta de antecedentes disciplinarios, naturaleza de las condenas, edad vs. edad cuando su edad cuando cometió sus delitos, programación, puntaje de evaluación de riesgos) y firme

• “Exhibits A-3” (Anexos A-3): Adjunte cualquier documento relacionado con su plan de liberación y rehabilitación, incluidos certificados u otra evidencia de su programación. Utilice el formulario de declaración en blanco para declaraciones de personas.

“Sheet A-4” (Hoja A-4): Jurisprudencia que respalda su reclamo

Simplemente puede incluir la hoja tal como está escrita o complementarla con su propia investigación legal y / o argumento que aplique la ley a los hechos de su caso.

“Sheet B” (Hoja B): Incluya la Hoja B con su petición si no ha presentado una 602 o no ha completado todos los niveles del proceso de apelación 602.

“Exhibits B” (Anexos B): Adjunte copias de sus apelaciones 602 y de todas las respuestas recibidas. Si no tiene copias por algún motivo o si necesita documentar comunicaciones verbales, escriba una declaración que describa específicamente lo que ocurrió usando el formulario de declaración adjunto.

“Motion for Appointment of Counsel and Declaration of Indigency” (Moción para el nombramiento de un abogado)

“COUNTY OF ____”: escriba el condado donde esta encarcelado/a

“In re ____” escriba su nombre de Ud.

“No. ____” deja en blanco

“ . . . I am incarcerated at ____”: escriba la instalacion donde esta encarcelado/a

“My total assets are \$____”: escriba el total del dinero que tiene.

“ . . . and my income is \$____ per month”: escriba su ingreso por mes.

Firme

“Exhibits C” (Anexos C): Evidencia de indigencia (pobreza)

Adjunte su estado de cuenta fiduciario y cualquier otra evidencia de su indigencia. Si escribe una declaración, utilice un formulario de declaración.

“Application for Temporary Restraining Order and Preliminary Injunction” (Aplicación de orden de Restricción Temporal y Orden Judicial Preliminar)

“COUNTY OF ____”: escriba el condado donde esta encarcelado/a

“In re ____” escriba su nombre de Ud.

“No. ____” deja en blanco

Simplemente puede incluir la solicitud tal como está escrita o complementarla con su propia investigación legal y / o argumento que aplique la ley a los hechos de su caso. Feche y firme la moción.

"[Proposed] Order . . ." (Orden propuesta)

"COUNTY OF ____": escriba el condado donde esta encarcelado/a

"In re ____" escriba su nombre de Ud.

"No. ____" deja en blanco

Incluir sin otros cambios. Feche y firme.

"Proof of Service" (Prueba de Entrega)

Por lo general, esto no es un requisito, pero si desea notificar al Fiscal General (Attorney General), utilice la dirección que figura en el formulario adjunto, envíe por correo al Fiscal General una copia de su paquete completo de petición, complete el formulario de Prueba de entrega y adjunte la Prueba de entrega. Servicio a su paquete.

Copie y envíe su paquete por correo al Tribunal Superior del condado donde está encarcelado

Consulte el cuadro adjunto para conocer la dirección correcta. Es posible que desee incluir una copia adicional de la primera página de su petición y un sobre con su dirección para que la corte pueda enviarle una copia sellada de esa página como prueba de que se presentó su petición. Conserve una copia para usted y, si es posible, envíe una copia a LSPC.

"Declaration of ____" (Formulario de declaracion)

Este formulario se puede usar para incluir una declaracion de una persona en forma de evidencia judicial.

Name: _____
 Address: _____

CDC or ID Number: _____

(Court)

Petitioner	
vs.	
Respondent	

PETITION FOR WRIT OF HABEAS CORPUS

No. _____
 (To be supplied by the Clerk of the Court)

INSTRUCTIONS—READ CAREFULLY

- If you are challenging an order of commitment or a criminal conviction and are filing this petition in the Superior Court, you should file it in the county that made the order.
- If you are challenging the conditions of your confinement and are filing this petition in the Superior Court, you should file it in the county in which you are confined.

- Read the entire form *before* answering any questions.
- This petition must be clearly handwritten in ink or typed. You should exercise care to make sure all answers are true and correct. Because the petition includes a verification, the making of a statement that you know is false may result in a conviction for perjury.
- Answer all applicable questions in the proper spaces. If you need additional space, add an extra page and indicate that your answer is "continued on additional page."
- If you are filing this petition in the superior court, you only need to file the original unless local rules require additional copies. Many courts require more copies.
- If you are filing this petition in the Court of Appeal, file the original of the petition and one set of any supporting documents.
- If you are filing this petition in the California Supreme Court, file the original and 10 copies of the petition and, if separately bound, an original and 2 copies of any supporting documents.
- Notify the Clerk of the Court in writing if you change your address after filing your petition.

Approved by the Judicial Council of California for use under rule 8.380 of the California Rules of Court (as amended effective January 1, 2018). Subsequent amendments to rule 8.380 may change the number of copies to be furnished to the Supreme Court and Court of Appeal.

This petition concerns:

- ☐ A conviction ☐ Parole
- ☐ A sentence ☐ Credits
- ☒ Jail or prison conditions ☐ Prison discipline
- ☐ Other (specify): _____

1. Your name: _____
2. Where are you incarcerated? _____
3. Why are you in custody? ☐ Criminal conviction ☐ Civil commitment

Answer items a through i to the best of your ability.

- a. State reason for civil commitment or, if criminal conviction, state nature of offense and enhancements (for example, "robbery with use of a deadly weapon").

- b. Penal or other code sections: _____

- c. Name and location of sentencing or committing court:

- d. Case number: _____

- e. Date convicted or committed: _____

- f. Date sentenced: _____

- g. Length of sentence: _____

- h. When do you expect to be released? _____

- i. Were you represented by counsel in the trial court? ☐ Yes ☐ No If yes, state the attorney's name and address:

4. What was the LAST plea you entered? (Check one):

☐ Not guilty ☐ Guilty ☐ Nolo contendere ☐ Other: _____

5. If you pleaded not guilty, what kind of trial did you have?

☐ Jury ☐ Judge without a jury ☐ Submitted on transcript ☐ Awaiting trial

6. GROUNDS FOR RELIEF

Ground 1: State briefly the ground on which you base your claim for relief. For example, "The trial court imposed an illegal enhancement." (If you have additional grounds for relief, use a separate page for each ground. State ground 2 on page 4. For additional grounds, make copies of page 4 and number the additional grounds in order.)

The conditions under which I am being held violate the 8th Amendment prohibition against cruel and unusual punishment because they place me at high risk of contracting COVID and I am at high risk of death or serious health complications from a COVID-19 infection. If and when I am infected, it will not be possible to protect me from harm caused by these conditions because of the rapid and deadly progress of the disease in vulnerable people like me. The only way to reliably remedy the existing violation (my exposure to infection) is to release me from custody.

a. Supporting facts:

Tell your story briefly without citing cases or law. If you are challenging the legality of your conviction, describe the facts on which your conviction is based. If necessary, attach additional pages. CAUTION: You must state facts, not conclusions. For example, if you are claiming incompetence of counsel, you must state facts specifically setting forth what your attorney did or failed to do and how that affected your trial. Failure to allege sufficient facts will result in the denial of your petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.) A rule of thumb to follow is, who did exactly what to violate your rights at what time (when) or place (where).

See Sheets A-1, A-2, A-3.

b. Supporting documents:

Attach declarations, relevant records, transcripts, or other documents supporting your claim. (See *People v. Duvall* (1995) 9 Cal. 4th 484, 474.)

See Exhibits A-1, A-2, A-3.

c. Supporting cases, rules, or other authority (optional):

(Briefly discuss, or list by name and citation, the cases or other authorities that you think are relevant to your claim. If necessary, attach an extra page.)

See Sheet A-4.

7. Ground 2 or Ground _____ (if applicable):

a. Supporting facts:

b. Supporting documents:

c. Supporting cases, rules, or other authority:

8. Did you appeal from the conviction, sentence, or commitment? ☐ Yes ☐ No If yes, give the following information:
- a. Name of court ("Court of Appeal" or "Appellate Division of Superior Court"): _____
- b. Result: _____ c. Date of decision: _____
- d. Case number or citation of opinion, if known: _____
- e. Issues raised: (1) _____
(2) _____
(3) _____
- f. Were you represented by counsel on appeal? ☐ Yes ☐ No If yes, state the attorney's name and address, if known:

9. Did you seek review in the California Supreme Court? ☐ Yes ☐ No If yes, give the following information:
- a. Result: _____ b. Date of decision: _____
- c. Case number or citation of opinion, if known: _____
- d. Issues raised: (1) _____
(2) _____
(3) _____
10. If your petition makes a claim regarding your conviction, sentence, or commitment that you or your attorney did not make on appeal, explain why the claim was not made on appeal (see *In re Dixon* (1953) 41 Cal.2d 756, 759):

11. Administrative review:
- a. If your petition concerns conditions of confinement or other claims for which there are administrative remedies, failure to exhaust administrative remedies may result in the denial of your petition, even if it is otherwise meritorious. (See *In re Dexter* (1979) 25 Cal.3d 921, 925.) Explain what administrative review you sought or explain why you did not seek such review:

- b. Did you seek the highest level of administrative review available? ☐ Yes ☐ No
Attach documents that show you have exhausted your administrative remedies. (See *People v. Duvall* (1995) 9 Cal.4th 464, 474.)
12. Other than direct appeal, have you filed any other petitions, applications, or motions with respect to this conviction, commitment, or issue in any court, including this court? (See *In re Clark* (1993) 5 Cal.4th 750, 767-769 and *In re Miller* (1941) 17 Cal.2d 734, 735.)
☐ Yes If yes, continue with number 13. ☐ No If no, skip to number 15.

- 13 a. (1) Name of court: _____
 (2) Nature of proceeding (for example, "habeas corpus petition"): _____
 (3) Issues raised: (a) _____
 (b) _____
 (4) Result (attach order or explain why unavailable): _____
 (5) Date of decision: _____
- b. (1) Name of court: _____
 (2) Nature of proceeding: _____
 (3) Issues raised: (a) _____
 (b) _____
 (4) Result (attach order or explain why unavailable): _____
 (5) Date of decision: _____

c. For additional prior petitions, applications, or motions, provide the same information on a separate page.

14. If any of the courts listed in number 13 held a hearing, state name of court, date of hearing, nature of hearing, and result:

15. Explain any delay in the discovery of the claimed grounds for relief and in raising the claims in this petition. (See *In re Robbins* (1998) 18 Cal.4th 770, 780.)

16. Are you presently represented by counsel? ☐ Yes ☐ No If yes, state the attorney's name and address, if known:

17. Do you have any petition, appeal, or other matter pending in any court? ☐ Yes ☐ No If yes, explain:

18. If this petition might lawfully have been made to a lower court, state the circumstances justifying an application to this court:

I, the undersigned, say: I am the petitioner in this action. I declare under penalty of perjury under the laws of the State of California that the foregoing allegations and statements are true and correct, except as to matters that are stated on my information and belief, and as to those matters, I believe them to be true.

Date: _____



(SIGNATURE OF PETITIONER)

Sheet A-1

Facts Showing Petitioner is Not Adequately Protected from COVID-19 in Custody

As of June 17, 2020, eight of the 10 largest clusters of COVID-19 cases in the United States were in correctional facilities (including Chuckawalla Valley State Prison and Lompoc Prison Complex in California), as were **15 of the top 20** (including Avenal State Prison and California Institution for Men), and **36 of the top 50**. (<https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html?auth=link-dismiss-google1tap#clusters>, updated 6/17/20 8:01 am E.T.) This data is **consistent with long-standing predictions by public health professionals that prisons present ideal conditions for the spread of the virus**, as social distancing is nearly impossible. (<https://bioethics.jhu.edu/wp-content/uploads/2019/10/Johns-Hopkins-faculty-letter-on-COVID-19-jails-and-prisons.pdf>; <https://medium.com/@lee.riley/ca-public-health-experts-urge-gov-newsom-to-release-elderly-and-medically-vulnerable-from-prisons-f41ed7cdbc7f>; <https://www.brennancenter.org/our-work/analysis-opinion/how-coronavirus-could-affect-us-jails-and-prisons>.)

COVID-19 has spread rapidly through California prisons, even after long periods of no or few positive tests. On April 4, 2020, there were two positive tests among incarcerated people at California Institution for Men; on April 22, 69 and one death; on May 9, 323 and four deaths; on May 24, 457 and nine deaths; on June 15, 499 and 15 deaths. Although the active cases began to decline, they surged again in mid-July and the death toll rose to 19. On April 7, there were no positive tests at California Institution for Women; on May 5, there were two; on May 15, 46; on May 19, 104; on May 26, 126; on June 2, 139; on June 11, 100 and one death. The outbreak appeared to wane in late June and early July, but surged again in late July, reaching 150 cases on August 3. On May 19, there were no positive tests at Avenal State Prison; on May 26, there were 196; and on June 3, 799. Cases dropped but surged again in late July and there have been five deaths. (Exhibits A-1, Declaration of Rita Himes.) **Transfers have spread the virus to other facilities.** On May 30, 2020, incarcerated people were reportedly transferred from California Institution for Men, the site of a major COVID-19 outbreak, to San Quentin State Prison. ("200 Chino inmates transferred to San Quentin, Corcoran. Why weren't they tested first?" by Megan Cassidy and Jason Fagone, *San Francisco Chronicle*, June 8, 2020.) Shortly thereafter, an outbreak occurred at San Quentin, leading to a peak of 1,437 active positive cases and 19 deaths so far. (Exhibits A-1, Declaration of Rita Himes.)

The pending federal class action lawsuits have not been able to get the outbreaks under control. Federal courts overseeing two longstanding federal class actions – one challenging inadequate CDCR medical care (*Plata v. Newsom* (N.D. Cal. No. 4:01-CV-01351)) and the other challenging inadequate CDCR mental health care (*Coleman v. Newsom* (E.D. Cal. No. 2:90-cv-0520 KJM DB P)) – are addressing COVID-related Eighth Amendment claims but the proceedings have not resulted in effective measures to control the pandemic. The courts are now considering referrals to a three-judge court for a possible population reduction order to address the pandemic (see Order Setting July 6, 2020 Case Management Conference (July 5, 2020) *Plata v. Newsom*, Order (July 2, 2020) *Coleman v. Newsom*), but that legal process will be protracted if it occurs at all.

The Centers for Disease Control guidelines for the prevention of COVID-19 in carceral facilities include:

- *Several times per day*, clean and disinfect shared equipment (e.g., keys) and surfaces and objects that are frequently touched, especially in common areas (e.g., doorknobs, light switches, sink handles, countertops, toilets, toilet handles, recreation equipment, kiosks, and telephones) using EPA-registered disinfectants per label instructions, which may require non-dilution, use of gloves, and adequate ventilation. (p. 9)
- Stock cleaning supplies *throughout the facility*, and provide incarcerated people with 60% alcohol hand sanitizer, liquid soap and running water, hand drying machines or paper towels and tissues and no-touch trash receptacles. (p. 10)
- Ask screening questions and check temperature of all incoming incarcerated people (intakes and transfers), and quarantine them for 14 days before allowing them to enter the general population.

(pp. 10, 14)

(<https://www.cdc.gov/coronavirus/2019-ncov/downloads/guidance-correctional-detention.pdf>.)

In federal court filings, CDCR has claimed it follows the following policies to protect incarcerated people from COVID-19:

- Sharing critical information in multiple languages and accessible to those with disabilities about symptoms, hand washing, how to reduce spread of the virus, and how to report symptoms.
- Isolating people who test positive or show symptoms of COVID-19.
- Quarantining for 14 days those who have close contact with a known or suspected COVID-19 case.
- Requiring all staff to wear facemasks, and stay home if they are sick.
- Requiring incarcerated people to wear masks.
- Requiring medical staff to promptly evaluate anyone with symptoms and test them for COVID-19.
- Requiring individuals (later changed to 8-person cohorts in dorms) to stay 6 feet apart at all times.
- Offering the seasonal flu vaccine to all incarcerated people.
- Making available hygiene and cleaning supplies, including “personal protective equipment” (PPE) and medical supplies, including tissue, liquid soap, hand drying supplies, alcohol-based hand sanitizer, cleaning supplies, and facemasks.
- Intensively cleaning the facility (including doorknobs, light switches, sink handles, countertops, toilets, toilet handles, recreational equipment, kiosks, and telephones) using EPA registered disinfectants.
- Conducting all medical evaluations cell front or in a designated area near the cell, requiring minimal movement and contact with other people.
- Transferring anyone with severe illness to a local hospital.
- Suspending intakes from jails in May; limiting intakes in June to 200 (50 each to four prisons).
- As of June 5, barring transfers within CDCR unless the transferee has tested negative within the previous seven days. (See description of San Quentin transfers below.)
- As of July 1, releasing people within 180 days of their release date to community supervision if they have a post-release housing plan (excluding those serving current sentences for violent or serious felonies or domestic violence, those with high risk of violence Static Risk Assessment scores, and those required to register as sex offenders).
- Beginning sometime after June 18, conducting universal testing of staff at CHCF, CMF and CCWF, followed by surveillance testing of 25% of staff every week; at prisons with no recent COVID-19 cases, surveillance testing of 10% of staff every two weeks and monthly testing of staff on transport duty or assigned to medical or mental health beds; and at prisons with recent COVID-19 cases, serial testing of staff every 14 days until there are no new cases for a month.
- Beginning sometime after June 18, moving high-risk individuals (elderly and with underlying medical conditions) from dorms to cells.
- Under a federal court order, by August 17 CDCR must identify and vacate a housing unit in each institution that will provide at least 100 beds for isolation and quarantine in case of an outbreak.
- Under another federal court order, CDCR must abide by the Program Guide “to the full extent possible” despite the COVID-19 pandemic.

(July 22, 2020 Order; June 18, May 20, and May 6, 2020 Joint Case Management Statements; Comparison of CDC Guidelines for Corr. Sys. and Status of CDCR Implementation (CDCR Exhibit A) filed Apr. 16, 2020, *Plata v. Newsom*; July 28, 2020 Order, *Coleman v. Newsom*.)

(Sheet A-1, continued)

Of the alleged CDCR policies listed above, my institution does not substantially comply with the following:

For the following additional reasons, I am not adequately protected from COVID-19 and complications from COVID-19 in my facility:

I declare under penalty of perjury under the laws of California that all of my statements on Sheet A-1 and any attachments are true and accurate to the best of my personal knowledge.

Date

Signature

(Sheet A-1, continued)

On July 10, 2020, CDCR announced plans to reduce the incarcerated population, but these plans will not adequately protect me because (1) I am ineligible for release under the plans, (2) I face an unreasonable risk of injury or death while awaiting release under these plans, and/or (3) the population reductions anticipated under these release plans will be far from sufficient to prevent the spread of COVID-19 among the remaining incarcerated population, according to expert opinions of public health professionals. (See Plaintiff's Brief, *Plata v. Newsom*, No. 4:01-cv-01351, (N.D. Cal. July 15, 2020) Exh. B at pp. 1, 3 [expert public health opinion that 50% reduction in San Quentin's incarcerated population is necessary to prevent high risk of COVID-19 morbidity and mortality].)

180-day release

Screened and released on a rolling basis (estimated 4,800 released by July 31, 2020):

- 180 days or less to serve on sentence
- Not currently serving time for domestic violence or a violent crime
- No current or prior sentence requiring sex offender registration (Penal 290)
- No assessment score indicating high risk for violence

- ☐ I am ineligible.
- ☐ I face an unreasonable risk of injury or death while awaiting this release.

One-year release

Screened on a rolling basis until CDCR determines releases are no longer necessary:

- Incarcerated at one of the following facilities with large population of high-risk patients: San Quentin, CCWF, CHCR, CIM, CIW, CMF, Folsom, RJD
- 365 days or less to serve on their sentence
- Not currently serving time for domestic violence or a violent crime
- No current or prior sentence requiring sex offender registration (Penal 290)
- No assessment score indicating high risk for violence
- 30 years old or older (Discretionary release decided on case-by-case basis for those under 30, considering medical risk, case factors, and time served.)

- ☐ I am ineligible.
- ☐ I face an unreasonable risk of injury or death while awaiting this release.

Positive Programming Credits

One-time Positive Programming Credit (PPC) of 12 weeks (estimated 108,000 eligible, including 2,100 who will become eligible for release by September 2020):

- Currently incarcerated (includes all 35 adult institutions, community correctional facilities, fire camps, Male Community Reentry Program, Community Prisoner Mother Program, Custody to Community Transitional Program, Alternative Custody Program, and those serving a state prison sentence in a state hospital)
- Not death sentence or LWOP
- No serious rules violations between March 1 and July 5, 2020 (including all Division "A" through "F" offenses)

- ☐ I am ineligible.
- ☐ I face an unreasonable risk of injury or death while awaiting release under this plan

High-Risk Medical

The following people will be considered for release:

- Deemed high risk for COVID-19 complications by CCHCS (over age 65 who have chronic conditions, or those with respiratory illnesses such as asthma or chronic obstructive pulmonary disease (COPD))
- Not death sentence or LWOP
- Not a high risk sex offender (required to register pursuant to Penal Code Section 290, and has been identified to pose a higher risk to commit a new sex offense in the community, as determined using a standard risk assessment tools for sex offenders)
- Assessment score indicating a low risk for violence

- ☐ I am ineligible.
- ☐ I face an unreasonable risk of injury or death while awaiting release under this plan.
- ☐ This plan is discretionary and I have been denied release under the plan.

Hospice and pregnancy

CDCR is reviewing potential release protocols for incarcerated persons who are in hospice or pregnant, as they are considered at high risk for COVID-19 complications. Everybody will be reviewed based on both their current health risk and risk to public safety.

- ☐ CDCR still has not announced release protocols for hospice and pregnancy.
- ☐ I am ineligible.
- ☐ I face an unreasonable risk of injury or death while awaiting release under this plan.

Found suitable for parole

CDCR will also be expediting the release of incarcerated persons who have been found suitable for parole by the Board of Parole Hearings and Governor, but who have not yet been released from prison.

- ☐ I am ineligible.
- ☐ I face an unreasonable risk of injury or death while awaiting release under this plan.

Other relevant facts:

I declare under penalty of perjury under the laws of California that all of my statements on Sheet A-1 and any attachments are true and accurate to the best of my personal knowledge.

Date

Signature

Exhibits A-1

Evidence Showing Petitioner is Not Adequately Protected from COVID-19 in Custody

[illegible]

Declaration of Rita Himes

1. I am Rita Himes, Staff Attorney at Legal Services for Prisoners with Children, 4400 Market Street, Oakland, CA 94608.

2. I compiled the following table from information posted on the California Department of Corrections and Rehabilitation (CDCR) "Population COVID-19 Tracking" website, which is updated almost daily. (<https://www.cdcr.ca.gov/covid19/population-status-tracking/>)

ASP: Avenal State Prison

CCC: California Correctional Center

CCI: California Correctional Institution

CIM: California Institution for Men

CIW: California Institution for Women

CRC: California Rehabilitation Center

SQSP: San Quentin State Prison

The first numbers represent active positive cases among incarcerated people on the specified date, and the numbers in parentheses representative cumulative deaths of incarcerated people from COVID-19.

Date	Total	ASP	CCC	CCI	CIM	CIW	CRC	SQSP
4-Apr	13 (0)	0 (0)	0 (0)	0 (0)	2 (0)	0 (0)	0 (0)	0 (0)
6-Apr	17 (0)	0 (0)	0 (0)	0 (0)	7 (0)	0 (0)	0 (0)	0 (0)
8-Apr	25 (0)	0 (0)	0 (0)	0 (0)	17 (0)	1 (0)	0 (0)	0 (0)
10-Apr	37 (0)	0 (0)	0 (0)	0 (0)	22 (0)	1 (0)	0 (0)	0 (0)
12-Apr	51 (0)	0 (0)	0 (0)	0 (0)	38 (0)	1 (0)	0 (0)	0 (0)
14-Apr	58 (0)	0 (0)	0 (0)	0 (0)	46 (0)	1 (0)	0 (0)	0 (0)
16-Apr	69 (0)	0 (0)	0 (0)	0 (0)	47 (0)	1 (0)	0 (0)	0 (0)
18-Apr	115 (0)	0 (0)	0 (0)	0 (0)	59 (0)	0 (0)	0 (0)	0 (0)
20-Apr	124 (1)	0 (0)	0 (0)	0 (0)	64 (0)	1 (0)	0 (0)	0 (0)
22-Apr	135 (1)	0 (0)	0 (0)	0 (0)	69 (1)	1 (0)	0 (0)	0 (0)
24-Apr	166 (1)	0 (0)	0 (0)	0 (0)	81 (1)	1 (0)	0 (0)	0 (0)
26-Apr	176 (1)	0 (0)	0 (0)	0 (0)	88 (1)	1 (0)	0 (0)	0 (0)
28-Apr	181 (1)	0 (0)	0 (0)	0 (0)	91 (1)	1 (0)	0 (0)	0 (0)
30-Apr	216 (1)	0 (0)	0 (0)	0 (0)	111 (1)	1 (0)	0 (0)	0 (0)
2-May	236 (1)	0 (0)	0 (0)	0 (0)	123 (1)	1 (0)	0 (0)	0 (0)
4-May	339 (1)	0 (0)	0 (0)	0 (0)	216 (1)	1 (0)	0 (0)	0 (0)
6-May	424 (1)	0 (0)	0 (0)	0 (0)	299 (1)	2 (0)	0 (0)	0 (0)
9-May	409 (4)	0 (0)	0 (0)	0 (0)	323 (4)	2 (0)	0 (0)	0 (0)
10-May	424 (4)	0 (0)	0 (0)	0 (0)	314 (4)	5 (0)	0 (0)	0 (0)
12-May	429 (5)	0 (0)	0 (0)	0 (0)	320 (5)	5 (0)	0 (0)	0 (0)
14-May	454 (5)	0 (0)	0 (0)	0 (0)	325 (5)	20 (0)	0 (0)	0 (0)
16-May	466 (5)	0 (0)	0 (0)	0 (0)	353 (5)	46 (0)	0 (0)	0 (0)
18-May	615 (5)	0 (0)	0 (0)	0 (0)	451 (5)	71 (0)	0 (0)	0 (0)
20-May	673 (6)	25 (0)	0 (0)	0 (0)	451 (5)	107 (0)	0 (0)	0 (0)
22-May	713 (6)	51 (0)	0 (0)	0 (0)	454 (6)	116 (0)	0 (0)	0 (0)
24-May	906 (9)	197 (0)	0 (0)	0 (0)	457 (9)	122 (0)	0 (0)	0 (0)

26-May	926 (9)	196 (0)	0 (0)	0 (0)	458 (9)	126 (0)	0 (0)	0 (0)
28-May	952 (9)	198 (0)	0 (0)	0 (0)	450 (9)	129 (0)	0 (0)	0 (0)
30-May	1010 (9)	213 (0)	0 (0)	0 (0)	453 (9)	130 (0)	0 (0)	0 (0)
31 May	1709 (9)	581 (0)	0 (0)	0 (0)	448 (10)	139 (0)	0 (0)	0 (0)
3-Jun	1984 (10)	799 (0)	0 (0)	0 (0)	471 (12)	113 (0)	0 (0)	1 (0)
5-Jun	2294 (12)	703 (0)	0 (0)	0 (0)	470 (12)	107 (0)	0 (0)	5 (0)
7-Jun	2357 (12)	670 (0)	0 (0)	0 (0)	475 (12)	108 (0)	0 (0)	14 (0)
9-Jun	2401 (12)	668 (0)	0 (0)	0 (0)	511 (12)	109 (0)	0 (0)	16 (0)
11-Jun	2430 (14)	660 (0)	0 (0)	0 (0)	506 (13)	100 (1)	45 (0)	16 (0)
13-Jun	2456 (15)	667 (0)	0 (0)	0 (0)	507 (13)	100 (1)	46 (0)	22 (0)
15-Jun	2462 (17)	673 (0)	0 (0)	0 (0)	499 (15)	100 (1)	46 (0)	30 (0)
17-Jun	2122 (17)	396 (0)	0 (0)	0 (0)	486 (15)	49 (1)	56 (0)	46 (0)
19-Jun	1817 (18)	135 (0)	1 (0)	0 (0)	496 (16)	49 (1)	68 (0)	88 (0)
21-Jun	1882 (19)	132 (1)	1 (0)	4 (0)	506 (16)	49 (1)	70 (0)	197 (0)
23-Jun	1826 (19)	112 (1)	4 (0)	4 (0)	492 (16)	17 (1)	70 (0)	407 (0)
25-Jun	1896 (20)	76 (2)	76 (0)	9 (0)	507 (16)	16 (1)	75 (0)	515 (0)
27-Jun	2111 (20)	45 (2)	196 (0)	79 (0)	512 (16)	17 (1)	85 (0)	613 (0)
29-Jun	2572 (22)	52 (3)	213 (0)	109 (0)	509 (16)	6 (1)	99 (0)	1021 (0)
1-Jul	2564 (22)	35 (3)	214 (0)	109 (0)	496 (16)	5 (1)	108 (0)	1122 (0)
3-Jul	2606 (22)	33 (3)	221 (0)	115 (0)	274 (16)	5 (1)	109 (0)	1381 (0)
5-Jul	2438 (25)	29 (3)	221 (0)	126 (0)	119 (16)	1 (1)	86 (0)	1387 (3)
11-Jul	2112 (31)	10 (3)	141 (0)	154 (0)	60 (17)	4 (1)	192 (0)	1394 (7)
13-Jul	2410 (34)	11 (3)	195 (0)	163 (0)	58 (17)	4 (1)	193 (0)	1437 (10)
15-Jul	2195 (37)	9 (4)	215 (0)	157 (0)	52 (18)	6 (1)	181 (0)	1214 (11)
17-Jul	2176 (39)	14 (4)	230 (0)	243 (0)	103 (19)	8 (1)	202 (0)	1118 (12)
19-Jul	2044 (39)	13 (4)	243 (0)	249 (0)	111 (19)	8 (1)	215 (0)	925 (12)
21-Jul	1898 (40)	103 (4)	249 (0)	233 (0)	88 (19)	13 (1)	107 (0)	862 (13)
23-Jul	1995 (42)	115(4)	266 (0)	274 (0)	80 (19)	82 (1)	63 (0)	864 (15)
25-Jul	1855 (44)	143 (5)	245 (0)	277 (0)	98 (19)	124 (1)	97 (0)	628 (16)
27-Jul	1799 (47)	203 (5)	249 (0)	244 (0)	101 (19)	126 (1)	94 (0)	537 (19)
29-Jul	1358 (47)	196 (5)	121 (0)	183 (0)	48 (19)	122 (1)	72 (0)	383 (19)
3-Aug	1384 (47)	355 (5)	154 (0)	247 (0)	38 (19)	150 (1)	62 (0)	147 (19)

I declare under penalty of perjury under the laws of California that the foregoing is true and accurate to the best of my personal knowledge.

8/3/20

Date

Rita Himes

Rita Himes

Sheet A-2

Facts Showing Petitioner's Unusual Vulnerability to Death or Serious Harm from a COVID-19 Infection

The Centers for Disease Control states that **people 65 years and older or suffering with the following underlying medical conditions, particularly if not well controlled, are at high risk of complications from COVID-19:** chronic lung disease or moderate to severe asthma; serious heart conditions; immunocompromised (including cancer treatment, smoking, bone marrow or organ transplantation, immune deficiencies, poorly controlled HIV or AIDS, and prolonged use of corticosteroids and other immune weakening medications); severe obesity (body mass index [BMI] of 40 or higher); diabetes; chronic kidney disease undergoing dialysis; and liver disease. (<https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html>.)

Almost all (93%) of the 47 CDCR incarcerated people who died of COVID-19 as of July 31, 2020 had underlying medical conditions that made them particularly vulnerable to complications from COVID. Moreover, **their average age was 64; 68% had mental health, cognitive and physical disabilities; and 70% were people of color.** (See Exhibits A-2, Declaration of Michael Bien.)

CDCR has not acted expeditiously to protect elderly and medically-vulnerable incarcerated people from death or serious injury, even when they could safely be released. For example, one of the five people who died by mid-May was "a 65-year-old man[who] was scheduled to parole in just a few months. Before being diagnosed he twice implored medical staff in writing to help him get an early release due to myriad conditions, including severe breathing problems," without success. (Joint Case Management Conference Statement, filed May 13, 2020, *Plata v. Newsom*, No. 4:01-cv-01351, p. 2.) Of the 47 who have died, ten had release dates in 2020 or 2021 and 83% had low risk assessment scores, but CDCR still failed to release them to protect them from the pandemic. (See Exhibits A-2, Declaration of Michael Bien.)

Petitioner's age:

Petitioner's medical conditions and disabilities:

Exhibits A-2

Evidence Showing Petitioner's Unusual Vulnerability to Death or Serious Harm from a COVID-19 Infection

[illegible]

Declaration of Michael Bien

1. I am Michael Bien, partner at Rosen Bien Galvan & Grunfeld, LLP, lead counsel for the plaintiff class in *Coleman v. Newsom* (E.D. Cal. 2:90-CV-00520-KJM-DB). I have personal knowledge of the matters stated herein and if called as a witness I could and would testify competently to each of the factual assertions.

2. Based on confidential information provided by the California Department of Corrections and Rehabilitation in the course of my work in *Coleman*, I can attest that the following is true of the 47 currently reported deaths of people incarcerated in California prisons due to COVID-19 as of July 31, 2020:

- The average age was 64.
- 93% were considered high risk for adverse outcomes if infected with COVID-19 due to underlying medical conditions.
- 68% were identified as people with mental health, cognitive or physical disabilities.
- 83% had low risk assessment scores.
- 70% were people of color.
- 10 had release dates in 2020 or 2021.

3. I declare under penalty of perjury under the laws of California that the foregoing is true and accurate to the best of my personal knowledge and that this declaration has been executed in San Francisco, California.

July 31, 2020

Date

Michael W. Bien

Michael W. Bien

Sheet A-3

Facts about Petitioner's Release Plan and Why Release Would Not Pose an Unreasonable Risk to Public Safety

Where Petitioner will live after release:

How Petitioner will support him or herself after release:

How Petitioner will obtain needed medical and mental health care after release:

Community members who will support Petitioner with reentry (including getting ID):

Why Petitioner does not pose an unreasonable risk to public safety if released (i.e., evidence of rehabilitation):

I declare under penalty of perjury under the laws of California that all of my statements on Sheet A-1 and any attachments are true and accurate to the best of my personal knowledge.

Date

Signature

Exhibits A-3

[illegible]

Sheet A-4

Case Law and Legal Argument

Respondent is violating the Eighth Amendment by exposing Petitioner to a deadly infectious disease. “A prison that deprives prisoners of basic sustenance, including adequate medical care, is incompatible with the concept of human dignity and has no place in civilized society. [¶] If government fails to fulfill this obligation, the courts have a responsibility to remedy the resulting Eighth Amendment violation.” (*Brown v. Plata* (2011) 563 U.S. 493, 511; see *Jolly v. Coughlin* (2d Cir. 1996) 76 F.3d 468, 477 [recognizing state officials have an affirmative obligation to protect prisoners from infectious disease].)

The duty to remedy a violation exists even if harm or injury is imminent rather than extant. “[I]t would be odd to deny an injunction to inmates who plainly proved an unsafe, life-threatening condition in their prison on the ground that nothing yet had happened to them.” (*Helling v. McKinney* (1993) 509 U.S. 25, 33.) “[A] remedy for unsafe conditions need not await a tragic event.” (*Ibid.*; see also *Bent v. Barr* (N.D. Cal. April 9, 2020) __ F.Supp. 3d __, 2020 WL 1812850 at p. *3 [immigration detainee has standing to seek release even though there were no positive coronavirus cases in his detention facility]; *United States v. Kennedy* (E.D. Mich. Mar. 27, 2020) __ F.Supp. 3d __, 2020 WL 1493481, at *5 [“[W]aiting for either Defendant to have a confirmed case of COVID-19, or for there to be a major outbreak in Defendant’s facility, would render meaningless this request for release”; bond release order].)

Thus, an incarcerated person need not wait until he or she is infected with coronavirus or suffering serious medical complications from COVID-19 before raising an unconstitutional-conditions claim or seeking release as a remedy.

Bent v. Barr is instructive. Petitioner Claude Bent immigrated to the United States at 18 years old in about 1980; suffered a “marijuana conviction” in 1989; and incurred California convictions for voluntary manslaughter and attempted murder in 2006 when he was about 44 years old. After serving a prison term with no reported disciplinary infractions, he was taken into ICE custody and removal proceedings were commenced. In 2020, three years into his detention, the COVID-19 pandemic occurred but had not yet reached his detention facility. (*Bent v. Barr, supra*, 2020 WL 1812850 at pp. *2, *7.) Nevertheless, the court found that Bent’s age and medical condition – he was 58 and suffered from asthma, hypertension and prediabetes – combined with the limited availability of social distancing, screening procedures, protective equipment, and cleaning supplies in his facility meant that he faced unsafe conditions in confinement and had to be released from custody. The court found he posed little risk to public safety, but conditioned his release on an adequate release plan (with information about where he would live, how he would travel to that residence, and how he would support himself and avoid infection while out of custody). (*Id.* at pp. *2-*3, *6-*8.)

Subsequent history shows the wisdom and prescience of the court’s analysis in *Bent v. Barr*. In early May 2020, a 57-year-old detained at a sister California immigration detention facility, Otay Mesa, died of COVID-19 amid an outbreak that by mid-June had infected 164 detainees. (<https://www.ice.gov/coronavirus>; <https://www.sfchronicle.com/news/article/This-is-a-cry-for-help-ICE-detainees-beg-15268548.php>.)

The pendency of federal class action suits on California prison conditions, *Plata v. Newsom* and *Coleman v. Newsom*, is no bar to this court’s granting relief in this case. While those federal courts have so far denied motions for mass releases due to the COVID-19 pandemic, the instant petition (1) focuses on the petitioner’s individual circumstances, not the circumstances of a class of plaintiffs; and (2) does not implicate the Prison Litigation Reform Act of 1995, which restricts federal courts’ power to order prison releases. (*Brown v. Plata, supra*, 563 U.S. at p. 500 [discussing 18 U.S.C. § 3626, subd. (a)].) Moreover, while

Respondent is violating the Eighth Amendment by continuing to confine Petitioner, who is at high risk of complications from a COVID-19 infection including serious bodily injury or death, without adequately protection against the rapidly-spreading outbreak of COVID-19 in the California prison system. To remedy the violation, this court must order Petitioner's release under community supervision.

In July 2020, the Marin Superior Court issued Orders to Show Cause in 41 consolidated habeas proceedings seeking release from San Quentin State Prison to remedy Eighth Amendment violations due to inadequate protection from the COVID-19 pandemic. The Court also appointed counsel for the pro se petitioners. (See Orders to Show Cause, *San Quentin Consolidated Writ Proceeding*, No. SC212684 (Marin Super. Ct.).)

This court should also issue an Order to Show Cause and appoint counsel in this case, which is substantively indistinguishable from the above-mentioned habeas proceedings.

Sheet B

Petitioner Should Be Excused from the Administrative Exhaustion Requirement

In general, a party must exhaust all available administrative remedies before resorting to the courts. (See *Campbell v. Regents of University of California* (2005) 35 Cal.4th 311, 321; *In re Dexter* (1979) 25 Cal.3d 921, 925 [applying the exhaustion requirement to prisoners].) However, the doctrine “has not hardened into inflexible dogma.” (*Ogo Associates v. City of Torrance* (1974) 37 Cal.App.3d 830, 834.) There are well-established exceptions, including “when pursuit of an administrative remedy would result in irreparable harm.” (*Id.*; 3 Witkin, Cal. Procedure (5th ed. 2020) Actions, § 342.) To be sure, a party may forego the exhaustion requirement “where irreparable injury will result if an administrative hearing is permitted to proceed and its order made effective without prior judicial interference.” (*Greenblatt v. Munro* (1958) 161 Cal.App.2d 596, 605–506.) Moreover, because the rule “is not rigidly and undeviatingly applied, . . . exceptional circumstances may prompt the reviewing court to consider questions of law not pressed or passed upon by the administrative agency, where injustice might otherwise result.” (*Id.* at p. 606.)

For example, in *In re N.V.*, the Court of Appeal held that postponing a juvenile court’s placement decision “for an indefinite period pending completion of administrative proceedings” would result in irreparable harm. (*In re N.V.* (2010) 189 Cal.App.4th 25, 31.) The “children’s interest in prompt placement with a suitable relative preclude[d] any unnecessary delay in the juvenile court’s review” of the case. (*Ibid.*; see also *American Indian Model Schools v. Oakland Unified School District* (2014) 227 Cal.App.4th 258 [applying the irreparable harm exception to ensure that a school’s students could obtain a proper education]; *Greenblatt v. Munro*, *supra*, 161 Cal.App.2d at pp. 605–607 [if the court declined “to apply the exception to the exhaustion of remedy rule, petitioner would suffer the extreme penalty of losing his [liquor] license”].)

Here, where Petitioner’s health and life are at serious risk, the irreparable harm exception is clearly applicable. Moreover, the usual justifications for administrative exhaustion do not apply here. Generally, the need to exhaust administrative remedies serves “important benefits: (1) it serves the salutary function of mitigating damages; (2) it recognizes the quasi-judicial tribunal’s expertise; and (3) it promotes judicial economy by unearthing the relevant evidence and by providing a record should there be a review of the case.” (*Campbell*, *supra*, 35 Cal.4th at p. 322.) Here, Respondent and CDCR has already had an ample opportunity to implement procedures to protect incarcerated people such as Petitioner from the risk of death and serious injury due to the pandemic COVID-19. There is no question they are on notice of the risks to incarcerated people like Petitioner, and they have been specifically ordered to design and implement preventive policies by the governor and in the context of the *Plata v. Newsom* and *Coleman v. Newsom* class actions. The administrative officers who will or would decide Petitioner’s grievance do not have special expertise to address Petitioner’s situation that is different from the CDCR officials that are responding to calls for protective policies from the governor and federal court. Finally, all of the relevant evidence is attached to this petition or is within the control of Respondent, who can provide supplemental evidence in a return to the petition.

Exhibits B

Evidence of Petitioner's Exhaustion of Administrative Remedies (e.g., 602 Appeal Process)

[illegible]

SUPERIOR COURT, STATE OF CALIFORNIA

COUNTY OF _____

In re _____,

Petitioner,

(No. _____)

On Habeas Corpus.

MOTION FOR APPOINTMENT OF COUNSEL AND DECLARATION OF INDIGENCY

I declare that I am the Petitioner to the above-referenced matter, that I am incarcerated at

_____, and that I am indigent and unable to afford counsel.

My total assets are \$ _____ and my income is \$ _____ per month. Attached as Exhibits C is evidence of my indigency, including my trust slip documenting my trust account balance.

I hereby request that counsel be appointed in this matter so that my interests may be protected by the professional assistance required. In addition, if the court issues an order to show cause, counsel must be appointed for an indigent petitioner who requests counsel. (Rules of Court, rule 4.551(c)(2).)

I declare under penalty of perjury that the foregoing is true and correct and based on my personal knowledge.

Date: _____

Signature: _____

Exhibits C

Evidence of Indigency (Poverty)

[illegible]

SUPERIOR COURT, STATE OF CALIFORNIA

COUNTY OF _____

In re _____,

Petitioner,

(No. _____)

On Habeas Corpus.

APPLICATION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

Petitioner applies ex parte for a Temporary Restraining Order and Preliminary Injunction on the ground that Petitioner's immediate release from incarceration is the only adequate remedy for an existing Eighth Amendment violation, to wit, Petitioner's continuing unreasonable risk of exposure to a coronavirus infection in the existing unsafe prison conditions and risk of rapid death or serious injury due to complications from COVID-19 because of Petitioner's advanced age and/or medical infirmities.

ARGUMENT

"[O]btaining relief through habeas corpus proceedings [need not] be slow or cumbersome." If the claim asserted in the petition has apparent merit and there is some urgency, the court may require the respondent to submit the return in as little as 24 hours after being served. (See *People v. Romero* (1994) 8 Cal. 4th 728, 744-45 [holding a court may grant preliminary relief in a prison conditions case upon filing of petition]; Cal. Penal Code, §§ 1475-76, 1484.) Once the return is received, the court may grant relief without an evidentiary hearing if there are no material contested issues of fact. (See *In re Fields* (1990) 51 Cal. 3d 1063, 1070, fn. 2.)

“ ‘In deciding whether to issue a preliminary injunction, a court must weigh two “interrelated” factors: (1) the likelihood that the moving party will ultimately prevail on the merits and (2) the relative interim harm to the parties from issuance or nonissuance of the injunction.’ ” (*In re Pham* (2011) 195 Cal.App.4th 681, 685.) “[T]he greater the [moving party]’s showing on one, the less must be shown on the other to support an injunction.” (*Ibid.*)

First, for the reasons stated in the Petition, Petitioner is likely to prevail on the merits in this action.

Second, the balance of equities clearly favor Petitioner, who faces irreparable harm if retained in custody in the form of death or serious injury due to COVID-19. In *Thakker v. Doll*, a federal district court granted a temporary restraining order requiring the immediate release of 11 people from federal custody who suffer from chronic medical conditions and face a serious threat of injury or death if exposed to COVID-19. “[S]hould we fail to afford relief” to medically vulnerable prisoners “we will be a party to an unconscionable and possibly barbaric result.” (*Thakker v. Doll* (M.D. Pa. Mar. 31, 2020) 2020 WL 1671563, at p. *9; see also *Brown v. Plata* (2011) 563 U.S. 493, 519-520 [overcrowding in California prisons had created “unsafe and unsanitary living conditions” in living quarters that were “breeding grounds for disease”]; *Bent v. Barr* (N.D. Cal. April 9, 2020) __ F.Supp. 3d __, 2020 WL 1812850 at pp. *6, 8 [finding irreparable harm due to risk of COVID-19 and granting TRO for immediate release of detainee in California’s Mesa Verde ICE Processing Facility conditioned on release plan]; *Castillo v. Barr* (C.D. Cal. Mar. 27, 2020) __ F.Supp. 3d __, 2020 WL 1502864, at p. *6 [finding irreparable harm due to risk of COVID-19 and granting TRO for immediate release of detainees in California’s Adelanto Detention Center]; *Basank v. Decker* (S.D.N.Y. Mar. 26, 2020) 2020 WL 1481503, at p. *4 [“The risk that Petitioners will face a severe, and quite possibly fatal, infection if they remain in immigration detention constitutes irreparable harm warranting a TRO”]; *Coronel v. Decker* (S.D.N.Y. Mar. 27, 2020) 2020 WL 1487274, at p. *3 [similar]; *Boone v. Brown* (D.N.J. Aug. 22, 2005) 2005 WL 2006997, at p. *14 [finding allegation of refusal to provide adequate testing for highly contagious infectious disease sufficient to demonstrate irreparable harm]; *Xochihua-Jaimes v. Barr* (9th Cir. Mar. 23, 2020) 2020 WL 1429877, at p. *1

[“In light of the rapidly escalating public health crisis,” sua sponte ordering immediate release of immigration detainee pending resolution of case].) In any event, it is well established that the deprivation of constitutional rights alone constitutes irreparable injury. (*Hernandez v. Session* (9th Cir. 2017) 872 F.3d 976, 994.)

Several of the government’s interests also favor release. The public has a critical interest in preventing the further spread of COVID-19: transmission in prison exacerbates community transmission through prison staff, who circulate in the surrounding community, and through treatment of incarcerated people at local, mostly rural community hospitals. (See *Castillo v. Barr*, *supra*, 2020 WL 1502864, at p. *6; *Basank v. Decker*, *supra*, 2020 WL 1481503, at p. *6; *Coronel v. Decker*, *supra*, 2020 WL 1487274, at p. *7.) Furthermore, “it is always in the public interest to prevent the violation of a party’s constitutional rights.” (*Melendres v. Arpaio* (9th Cir. 2012) 695 F.3d 990, 1002; see *Castillo v. Barr*, at p. *6; *Coronel v. Decker*, at p. *7.) Moreover, on the facts of this case, the government interest in public safety is insufficient to outweigh the aforementioned interests that favor Petitioner’s immediate release. (See *Bent v. Barr*, *supra*, 2020 WL 1812850 at pp. *.) As explained in the petition, Petitioner has a release plan and has demonstrated his rehabilitation. He does not pose an unreasonable risk to public safety.

In sum, Petitioner’s interest in avoiding serious bodily injury or death due to the COVID-19 outbreak that is coursing through the California prison system outweighs the government’s interest in keeping Petitioner confined pending resolution of this habeas petition.

CONCLUSION

In conclusion, Petitioner urges the court to issue a TRO and preliminary injunction ordering his immediate release from custody.

Date: _____

Signature: _____

SUPERIOR COURT, STATE OF CALIFORNIA

COUNTY OF _____

In re _____,

Petitioner,

(No. _____)

On Habeas Corpus.

[PROPOSED] ORDER GRANTING PRELIMINARY RELEASE,

ORDER TO SHOW CAUSE, AND APPOINTMENT OF COUNSEL

Petitioner filed a Petition for Habeas Corpus, Application for Ex Parte Temporary Restraining Order and Preliminary Injunction, and Motion for Appointment of Counsel. Sufficient reason having been shown that Petitioner will suffering immediate and continuing harm unless Respondents are immediately restrained, it is hereby:

ORDERED, that pending the proceedings on Petitioner's Application for an Order to Show Cause:

- (1) That Respondent release Petitioner from custody within one day of the date of this order, pending an evidentiary hearing;
- (2) That Respondent show cause why a preliminary injunction should not issue;
- (3) That Respondent show cause why the petition for a writ of habeas corpus should not be granted, and
- (4) That counsel is hereby appointed to represent Petitioner pursuant to California Rule of Court 4.551(c)(2).

The clerk of the court shall serve this Order Granting Preliminary Release, Order to Show Cause, and Order Appointing Counsel and all supporting documents on Respondent.

Dated: _____

Judge of the Superior Court

Amador County Superior Court 500 Argonaut Lane Jackson, CA 95642	Office of the Attorney General P.O. Box 955255 Sacramento, CA 94244	Mule Creek State Prison
Del Norte County Superior Court 450 H Street, Room 209 Crescent City, CA 95531	Office of the Attorney General 455 Golden Gate Ave., Ste. 11000 San Francisco, CA 94102	Pelican Bay State Prison
Fresno County Superior Court 1100 Van Ness Fresno, CA 93742-0002	Office of the Attorney General P.O. Box 955255 Sacramento, CA 94244	Pleasant Valley State Prison
Imperial County Superior Court 939 West Main Street El Centro, CA 92243	Office of the Attorney General P.O. Box 85266-5299 San Diego, CA 92186-5266	Calipatria State Prison California State Prison – Centinela
Kings County Superior Court 1640 Kings County Drive Hanford, CA 93230	Office of the Attorney General P.O. Box 955255 Sacramento, CA 94244	Avenal State Prison California State Prison – Corcoran Substance Abuse Treatment Facility
Lassen County Superior Court 220 South Lassen Street Susanville, CA 96130	Office of the Attorney General P.O. Box 955255 Sacramento, CA 94244	California Correctional Center High Desert State Prison
Los Angeles County Superior Court 210 W. Temple Street Lancaster, CA 90012	Office of the Attorney General 300 South Spring Street Los Angeles, CA 90013-1230	California State Prison – Los Angeles County
Madera County Superior Court 200 South G Street Madera, CA 93637	Office of the Attorney General P.O. Box 955255 Sacramento, CA 94244	Central California Women’s Facility Valley State Prison
Marin County Superior Court 3501 Civic Center Drive, P.O. Box 4988 San Rafael, CA 94913	Office of the Attorney General 455 Golden Gate Ave., Ste. 11000 San Francisco, CA 94102	San Quentin State Prison
Monterey County Superior Court 240 Church Street Salinas, CA 93901	Office of the Attorney General 455 Golden Gate Ave., Ste. 11000 San Francisco, CA 94102	Correctional Training Facility Salinas Valley State Prison
Riverside County Superior Court 4100 Main Street Riverside, CA 92501	Office of the Attorney General P.O. Box 85266-5299 San Diego, CA 92186-5266	California Rehabilitation Center Chuckawalla Valley State Prison Ironwood State Prison
Sacramento County Superior Court 720 9th Street Sacramento, CA 95814	Office of the Attorney General P.O. Box 955255 Sacramento, CA 94244	California State Prison – Sacramento Folsom State Prison
San Bernardino County Superior Court 247 West Third Street San Bernardino, CA 92101	Office of the Attorney General P.O. Box 85266-5299 San Diego, CA 92186-5266	California Institution for Men California Institution for Women
San Diego County Superior Court 220 W. Broadway San Diego, CA 92101	Office of the Attorney General P.O. Box 85266-5299 San Diego, CA 92186-5266	Richard J. Donovan Correctional Facility
San Joaquin County Superior Court 222 East Weber Avenue #303 Stockton, CA 95202	Office of the Attorney General P.O. Box 955255 Sacramento, CA 94244	Deuel Vocational Institution California Health Care Facility
San Luis Obispo County Superior Court 1035 Palm Street, Rm. 385 San Luis Obispo, CA 93408	Office of the Attorney General 300 South Spring Street Los Angeles, CA 90013-1230	California Men’s Colony
Solano County Superior Court 600 Union Avenue Fairfield, CA 94533	Office of the Attorney General 455 Golden Gate Ave., Ste. 11000 San Francisco, CA 94102	California Medical Facility California State Prison – Solano
Tuolumne County Superior Court 41 West Yaney Avenue Sonora, CA 95370	Office of the Attorney General P.O. Box 955255 Sacramento, CA 94244	Sierra Conservation Center

Proof of Service

Case name:

Case number:

I, _____, declare:

1. I am over the age of 18 and a resident of (town) _____
in _____ County. My address is _____

2. On the date listed below, I caused the following documents to be served by placing true copies in a sealed envelope and placing the envelope for collection and mailing per the business practices of (your CDCR facility) _____,
i.e., for deposit in the United States Postal Service with postage fully prepaid.

Documents included:

3. The envelope was addressed to:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on (date) _____ at (location) _____, CA.

Name

Signature

Declaration of _____

1. I am (name) _____

2. (Describe relationship to Petitioner e.g., fellow incarcerated person, relative, doctor): _____

3. _____

4. _____

5. _____

6. -- _____

7. _____

8. _____

9. _____

10. _____

11. _____

I declare under penalty of perjury under the laws of California that the foregoing is true and accurate to the best of my personal knowledge.

Date

Signature