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UNITED STATES DISTRICT COURTS
EASTERN DISTRICT OF CALIFORNIA
AND NORTHERN DISTRICT OF CALIFORNIA
UNITED STATES DISTRICT COURT COMPOSED OF THREE JUDGES
PURSUANT TO SECTION 2284, TITLE 28 UNITED STATES CODE

RALPH COLEMAN, et al., Plaintiffs, v. GAVIN NEWSOM, et al., Defendants.	Case No. 2:90-CV-00520-KJM-DB **THREE JUDGE COURT**
MARCIANO PLATA, et al., Plaintiffs, v. GAVIN NEWSOM, Defendants.	Case No. C01-1351 JST **THREE JUDGE COURT** **PLAINTIFFS' REPLY BRIEF IN SUPPORT OF EMERGENCY MOTION**

INTRODUCTION

The parties do not dispute the relevant facts: (1) the COVID-19 pandemic poses a serious risk of harm to plaintiffs; (2) the best way to prevent the spread of the virus is social distancing; (3) conditions in the prisons currently do not allow for requisite social distancing; and (4) as a result, people must be released or relocated to reduce population density. The only question, then, is whether the modest steps proposed by the State are reasonable in light of the extreme risk faced by the Plaintiff class. They are not.

The State recognizes that the pandemic is "dangerous," "crippling," and "unprecedented," and brings us to a "moment of extreme peril." Defs.' Opp. to Pls.' Emergency Mot. ("Opp.") at 6-7, 11. The State concedes that Plaintiffs, like those "in nursing homes," "are at a higher risk for contracting the virus" due to "closer living quarters," Declaration of Joseph Bick ("Bick Decl.") ¶ 6; *see* Opp. at 17, and that the virus poses a "risk of severe illness" and "elevated rates of hospitalizations and death," Bick Decl. ¶ 17 &. ¶¶ 3, 11; *see also* Opp. at 15. CDCR already has "shortages of masks, gloves, gowns, and faceshields, which endangers staff and patients." Declaration of Michael Golding ("Golding Decl.") ¶ 6.

The State also agrees that "the spread of COVID-19 is best addressed through physical distancing," Opp. at 25; *see* Declaration of Ralph Diaz ("Diaz Decl.") ¶ 1; Declaration of Connie Gipson ("Gipson Decl.") ¶ 4; Bick Decl. ¶ 7, and that release of people is necessary because "an emergency endangering the lives of inmates . . . has occurred or is imminent," Cal. Gov't Code § 8658; Diaz Decl. ¶¶ 1, 5.

The State's proposed steps—temporarily pausing intake from county jails, expediting the release of 3,496 people who were scheduled to be released in the next 60 days, and relocating at most 534 people from three dorms—are important but not sufficient. Over 46,000 people in CDCR custody live in dorms, and most are in dorms at over 100% of design capacity. Declaration of Michael Bien ISO Pls.' Emergency Mot. ("Bien Decl.") ¶ 17 & Ex. 3 (3221/6529). The State does not (because it cannot) suggest that a modest, one-time reduction in the overall population and transfer of people from three dorms (where overcrowding will lower only to 179%, 161%, and

151%, respectively) will achieve necessary social distancing. The most the State will say is that its approach will allow "greater physical distancing," will "remov[e] inmates from crowded conditions" where "convenient[]," and that staff and incarcerated people are "practicing physical distancing strategies" and "adjusting dining schedules" "where possible." Opp. at 20, 25-26. That is not enough.

This is not the time for half-measures or incremental steps. In the seven days since Plaintiffs filed this motion, the number of confirmed infections of staff more than tripled, the number of confirmed infections of people in the Plaintiff class increased eightfold, and the number of affected institutions more than doubled. Bien Decl. ¶ 47 & Ex. 33 at 149; Declaration of Donald Specter ISO Pls.' Reply Br. ("Specter Decl.") ¶ 4 & Exs. C & D.

Because the State's proposed plan falls far short of the relief required to prevent disaster, this Court must intervene to ensure complete, effective action is taken without further delay. Plaintiffs' proposed remedies – the reduction of population density in crowded dorms to allow social distancing and release or relocation of medically vulnerable patients – are narrowly tailored to address the current crisis and, far from "micromanaging" the State's efforts (Opp. at 12), provide the State flexibility in what measures to implement so long as they achieve social distancing. Such measures can be implemented safely and must be implemented expeditiously.

I. Plaintiffs Are Entitled to Relief Under the PLRA.

A. Preventing and Responding to Infectious Disease Is a Core Component of a Constitutionally Adequate Health Care System and of the *Plata* Case.

Fundamentally misunderstanding the history of this case and the nature of the relief Plaintiffs seek, the State argues that Plaintiffs must file a new lawsuit alleging deliberate indifference to COVID-19 and requesting that a new three-judge panel be convened. Opp. at 15-16, 33-39. The State argues that the matter falls outside the scope of the *Plata* and *Coleman* cases because "the gravamen of Plaintiffs' motion is the need for an adequate response to the COVID-19 crisis, not the delivery of medical care." *Id.* at 16 n.3.

Preventing the spread of a dangerous, contagious illness is plainly a requirement of an

adequate medical care system. *See Helling v. McKinney*, 509 U.S. 25, 33 (1993) (Eighth Amendment requires a remedy for conditions that allow the spread of "infectious maladies such as hepatitis and venereal disease" (citation omitted)). Indeed, the State's failure to adequately control infectious illness has long been a concern *in this case*. *See Brown v. Plata*, 563 U.S. 493, 508-09, 519-20 (2011) (noting that "[o]vercrowding had increased the incidence of infectious disease" in CDCR, and crowded living quarters "where large numbers of prisoners may share just a few toilets and showers [were] 'breeding grounds for disease'"); *Coleman v. Schwarzenegger*, 922 F. Supp. 2d 882, 931 (E.D. Cal., N.D. Cal. 2009) ("[C]rowding generates unsanitary conditions, overwhelms the infrastructure of existing prisons, and increases the risk that infectious diseases will spread."); Findings of Fact and Conclusions of Law Regarding the Appointment of Receiver, *Plata* Dkt. No. 371, Oct. 3, 2005, at 18, 21-22 (identifying deficiencies in CDCR's ability to address communicable diseases and noting that infectious disease outbreaks in the prisons have "the potential to affect other prisoners, the staff and the local community").

And Plaintiffs need not re-prove the long-standing constitutional violations each time they seek relief for the State's failure to provide constitutionally adequate health care. Opp. at 15-16. This Court retains "broad" and "flexible" authority to modify its prior order "as warranted by the exercise of its sound discretion." *Plata*, 563 U.S. at 542-43 (citations omitted). Indeed, this Court has a "continuing duty . . . to assess the efficacy and consequences of its order" and to modify the order to "ensure that the rights and interests of the parties are given all due and necessary protection." *Id.* The Court is not required to make new findings of constitutional violations before exercising this power. *See Parsons v. Ryan*, 912 F.3d 486, 501 (9th Cir. 2018) ("Nor do we accept Defendants' suggestion that the district court was required to make *new* findings of a constitutional violation before entering the [additional remedial order]."); *Armstrong*, 768 F.3d at 986-87 (upholding modification of injunction because "[t]he ongoing, intractable nature of this litigation affords the district court considerable discretion in fashioning relief").[1]

[1] For the same reasons, it is plainly erroneous to claim that in a case of this duration, complexity, and scope the Court has not issued orders for less intrusive relief. Opp. at 28. The *Plata* Court

Here, Plaintiffs seek the precise relief contemplated by this Court over a decade ago when it directed Plaintiffs to seek further relief "[s]hould the state prove unable to provide constitutionally adequate medical and mental health care after the prison population is reduced to 137.5% design capacity." 922 F. Supp. 2d at 970 (footnote omitted). It is well established that "social distancing . . . directives are the community standard healthcare recommendations" for COVID-19. *See* Stern Supp. Decl., ¶ 9 & Ex. A at 1. Due to ongoing overcrowding, the State cannot implement this directive—a failure that places class members at unacceptable risk of serious harm. *See* Stern Decl. at ¶ 8; Specter Decl. ¶ 2 & Ex. A at 26, 29-30, 77.

1. Defendants Are Deliberately Indifferent to the Threat of Serious Harm or Death from the COVID-19 Pandemic.

While it is unnecessary to establish the constitutional violation anew, Defendants' conduct with respect to the COVID-19 pandemic clearly violates the Eighth Amendment. "A prison official's 'deliberate indifference' to a substantial risk of serious harm to an inmate violates the Eighth Amendment." *Farmer v. Brennan*, 511 U.S. 825, 828 (1994). Failure to prevent the spread of a contagious illness constitutes deliberate indifference to a serious medical need, as the State concedes. Opp. at 12; *see Helling*, 509 U.S. at 33 (officials may not be "deliberately indifferent to the exposure of inmates to a serious, communicable disease."); *Hutto v. Finney*, 437 U.S. 678, 682 (1978) (finding constitutional violation where incarcerated people were placed in conditions where infectious diseases could spread easily).

The State agrees that "the spread of COVID-19 is best addressed through physical distancing" and concedes that prison conditions, "including closer living quarters," place Plaintiffs at a higher risk for contracting COVID-19. Opp. at 17, 20. The State does not dispute that more than 46,000 people in CDCR live in dorms where people sleep well under six feet apart. *See* Bien Decl. ¶ 16 & Ex 3. And the State is well aware that those incarcerated in CDCR are at heightened risk of falling severely ill due to COVID-19: according to a recent analysis done by the Receiver's

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has issued dozens of orders aimed at the establishment of a constitutionally adequate health care system. *See Plata*, 563 U.S. at 514-16. The State's suggestion that the Court lacks jurisdiction because of the absence of prior court orders specifically addressing COVID 19 strains credulity.

office, 45,110 people incarcerated in CDCR (37%) are at risk of "adverse COVID-19 outcomes" due to age or pre-existing health conditions. *See* Specter Decl. ¶ 3 & Ex. B.

But the State's proposed measures—expediting the release of 3,496 people and moving at most 534 people from three dorms—fail to affect more than a sliver of the overall dorm population. For example, one of the so-called "extraordinary" protective measures is the proposed transfer of "[a]pproximately 480-530 inmates living in dorms . . . to other prisons with unoccupied buildings of space available." Opp. at 6. Specifically, the State asserts that it will move 100-150 people from Chuckawalla Valley State Prison to Ironwood State Prison, and 192 people each from Substance Abuse Treatment Facility and California Rehabilitation Center to California State Prison-Corcoran. Opp. at 18-19. These transfers amount to just 5.5% of the population in those dorms.[2]

The State also proposes expediting the release of 3,496 people who were scheduled to be released in the next 60 days. Opp. at 18; Diaz Decl. ¶ 7. But this will decrease the dorm population, at most, by 7.6%. *See* Bien Decl. ¶ 16 & Ex. 3. Similarly, the effect of State's decision to close intake to the prisons will incur only over time and without the necessary immediacy. Its impact also will be generally limited to the Reception Centers in the CDCR.

These modest decreases, while welcome, will not address overcrowding and will not facilitate appropriate social distancing in the dorms.[3] Put simply, ongoing overcrowding constitutes "a condition of confinement that is sure or very likely to cause serious illness."

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[2] The State's proposal to move 150 people out of CVSP would reduce overcrowding in CVSP's dorms only from 170% to 161% of design capacity. *See* Bien Decl. ¶ 13 & Ex. 3 at 21. Defendants' proposal to move 192 people out of SATF's dorms would impact just 7% of SATF's total dorm population and would reduce overcrowding in SATF's dorms only from 162% to 151% design capacity. *See id.* at 40-41. Finally, the proposal to move 192 people out of CRC's total dorm population of 4,012 people would reduce overcrowding in those dorms from 187% to 179% design capacity. *See id.* at 19.

[3] The State further asserts that people housed in Joshua Hall at the California Institution for Men are being instructed to stay six feet apart and are given extra soap and hand sanitizer." Opp. at 22. But the State fails to mention that, as of March 23, 2020, Joshua Hall housed 129 people despite having a design capacity of 80 beds, for an overcrowding rate of 161%, with beds only 25-48 inches apart. Tevah Decl. ¶ 5; Bien Decl. ¶ 13, Ex. 3 at 11. The State never explains how social distancing is feasible in such an environment. Notably, 11 staff and one incarcerated person at CIM already have tested positive for COVID-19. Specter Decl. ¶¶ 4-5, Exs. C & D.

Helling, 509 U.S. at 33. Failure to address that grave risk amounts to deliberate indifference.

B. Plaintiffs' Proposed Remedy is Narrowly Tailored and Extends No Further than Necessary

Plaintiffs' proposed remedy is simple. The State must immediately reduce its population to permit social distancing in the prisons. In so doing, the State must address the vulnerabilities of people who are most at risk of becoming severely ill or dying because of COVID-19. The State argues that the remedy Plaintiffs seek is not sufficiently tailored and "overlook[s] less-intrusive alternatives to a release order that can similarly achieve the goal of physical distancing." Opp. at 16. But the State fails to present any evidence that its "more tailored approach" would "achieve[] much of the same end." *Id.* at 26. The State does not explain how social distancing could be achieved by the minimal population releases and transfers it proposes.

Courts have rejected challenges to the scope of relief sought by Plaintiffs where, as here, the State fails to present "realistic alternatives" to the remedy sought. *See Plata*, 563 U.S. at 533-34 (explaining State's failure to propose "any realistic alternative" to population reduction "creates a certain and unacceptable risk of continuing violations of the rights of sick and mentally ill prisoners, with the result that many more will die or needlessly suffer," and that "[t]he Constitution does not permit this wrong"); *Armstrong v. Brown*, 768 F.3d 975, 986-87 (9th Cir. 2014) (where State fails to present "any realistic alternative" that will cure violation, State cannot complain that court order is overly intrusive under PLRA). The State's failure to present a realistic alternative in the prisons underscores the need for relief.

C. Public Safety Considerations Favor Targeted Releases to Curb the Rampant Spread of COVID-19 in CDCR

1. The Adverse Effect on the Public Health System Will Be Far Worse Without a Swift Population Reduction

The State's primary public safety argument is that releasing medically at-risk patients from prison will tax local health care systems because those people will seek emergency health care and utilize other community resources. Opp. at 27-29. The State's estimation of this impact is overblown, but even if it was not "[t]his risk pales in comparison to the risk that groups of

medically at-risk people living in crowded congregate housing will become seriously ill with the virus." Stern Supp. Decl. ¶¶ 3-7. Rapid transmission of COVID-19 in California's congested prisons is "inevitable" and when that happens, the level of care infected patients will require – all of which will be provided by hospitals outside CDCR – will "far exceed the level of care Defendants expect them to require if they are released" now, before they contract COVID-19. *Id.* ¶ 4. Their critical needs will quickly and completely overwhelm the community hospitals tasked with their care, which will then "lack the space, staff and equipment to serve the larger community." *Id.* ¶ 5. This dire prediction is not hypothetical, but in fact already has occurred in an Illinois prison. *Id.* ¶ 6. Preventing the spread of COVID-19 within California's prison walls by releasing people, including those who are medically at-risk, will allow both those released and those who remain incarcerated to socially distance and practice appropriate hygiene. *Id.* ¶ 10. As former CDCR Secretary Kernan testified, these basic prevention practices are simply impossible in the "tinderbox" that is California's overcrowded prison system right now. Specter Decl. ¶ 2 & Ex. A at 26, 29-30, 77.

The State relies heavily on statements from the *Plata* Receiver and a study conducted by one of the consultants to the Receiver, Dr. Brie Williams, in support of their public health argument. Opp. at 28-29. But the State's analysis of Dr. Williams's study is flawed; both the Receiver and Dr. Williams favor decreasing population density to reduce the risk of COVID-19 spread in CDCR. *See* Stern Supp. Decl. ¶¶ 8-9 & Ex. A; Bien Decl. ¶ 56 & Ex. 40.

In short, the State gets the calculation of risk to public health exactly backwards. *See* Stern Supp. Decl. ¶ 10. As the State agrees, people are more likely to be infected with COVID-19 in prison than in the community. *See* Bick Decl. ¶ 6. The real risk here is that COVID-19 will quickly run rampant in CDCR, causing many thousands of people to become critically ill, and those people will then require intensive, resource-consuming health care in community hospitals that already are on the verge of being overwhelmed. Only by reducing the prison population to the point where effective preventative measures can actually be employed to slow transmission can this catastrophic outcome be mitigated. Anything less will result in a public health nightmare.

2. The State Has Both the Expertise and the Tools to Reduce the Prison Population with Minimal Effect on Public Safety

The State asserts that it cannot safely release people early from CDCR in order to curb COVID-19's spread because doing so would prevent appropriate prerelease planning and cause increased crime. *See* Opp. at 29-33. Those claims fall short. On the prerelease planning point, the State relies entirely on the testimony of Jeffrey Green, the acting Director of DAPO, who goes to great lengths to recite the steps of DAPO's nine-month prerelease planning process. Notably, Mr. Green never claims that this standard, leisurely process cannot be expedited in the face of the greatest public health emergency of this generation. Indeed, even using Mr. Green's own estimates, it is clear that the numerous prerelease planning steps currently spread over 270 days can be accomplished in a matter of hours. Hoffman Supp. Decl. ¶¶ 6-15; *see* Green Decl. ¶¶ 4-40.

The State stresses the burden of accelerated releases on DAPO prerelease and supervisory resources. Opp. at 32. But, as former CDCR Secretary Kernan testified, the State already releases 38,000 people per year, some of who have insufficient or indeed no parole plans whatsoever, even if they have contagious diseases. Specter Decl. ¶ 2 & Ex. A at 37-38, 92. And DAPO has many options available to it to use its resources more efficiently. Hoffman Supp. Decl. ¶¶ 16-22. Finally, of course, the State's claim that its prerelease planning process is "crucial to ensuring an inmate's best chances for success in the community upon release" is a hollow promise if the people undergoing that process die in prison of COVID-19 awaiting release, which is likely absent an order reducing CDCR's population density. *See* Opp. at 32; *see also* Stern Decl. ¶¶ 7-8; Bick Decl. ¶¶ 6, 11 (recognizing that COVID-19 poses elevated risk of death that is heightened in prison setting); Specter Decl. ¶ 2 & Ex. A at 27 (Kernan testimony that risk of significant health concerns, including death, is heightened in prison).

The State's second argument, which predicts increased crime, echoes the dire forecasts that greeted this Court's 2009 population order. The State does not contest the fact that California was able to dramatically reduce its prison and parole populations while maintaining historically low crime rates using the exact same types of evidence-based tools and data Mr. Hoffman testifies are

available to safely implement the remedy here. *See* Hoffman Decl. ¶¶ 3-4, 8-11; *see also* Hoffman Supp. Decl. ¶¶ 3-5. Indeed, the risk to public safety is even lower now than it was at the time of this Court's 2009 order. *See* Austin Decl. ¶¶ 11-25.

The State zeros in on one paragraph in Mr. Hoffman's declaration concerning the State's risk assessment tool, the CSRA, asserting that Mr. Hoffman must misunderstand the tool even though it was developed under his direction. *See* Opp. at 27-28; *see also* Hoffman Supp. Decl. ¶¶ 2-5. But it is the State who misconstrues Mr. Hoffman's testimony. Mr. Hoffman does not claim that the State should simply release the roughly 50% of incarcerated people who score low risk on CSRA, or that the CSRA is a perfect predictor of future crime. *See* Hoffman Supp. Decl. ¶ 3. Both Mr. Hoffman and Mr. Green agree that risk assessment is a valuable component of pre-release decision-making, including what levels of supervision the person will require upon release. *Id*. ¶¶ 4-5; Green Decl. ¶¶ 4-8. The State's investment in such tools must be leveraged now to address this crisis, consistent with former CDCR Secretary Kernan's testimony that expedited releases are reasonable and indeed necessary given the extreme danger posed by COVID-19. Specter Decl. ¶ 2 & Ex. A at 34-35, 38. And the evidence shows that can be safely done, as it has before. *See* Austin Decl. ¶¶ 11-25.

The gravamen of the State's argument is that releasing some people a few months early as an emergency measure to stave off the spread of COVID-19 will increase crime. The State points to no competent evidence that contradicts this Court's well-supported finding that "moderate reductions in prison sentences do not adversely affect either recidivism rates or the deterrence value of imprisonment," because "[t]here is no statistically significant relationship between an individual's length of stay in prison and his recidivism rate." *Coleman*, 922 F. Supp. 2d at 976-97; *see also* Austin Decl. ¶¶ 11-25. Nor would expediting releases cause new crime, because "the likelihood that a person who is released a few months before his original release date will reoffend is the same as if he were released on his original release date." *Id.* at 977. That is sufficient to satisfy the PLRA's public safety inquiry, which "does not require the court to certify that its order has no possible adverse impact on the public." *Plata*, 563 U.S. at 534.

II. The Court Must Act to Enforce the Constitutional Rights of People in State Prisons

The State exhorts the Court to refrain from ordering relief to protect the 122,000 people in CDCR custody out of deference to prison authorities. Opp. at 10-14. While courts must give some deference to prison administrators, the Supreme Court has counseled in this very case that where a "government fails to fulfill its obligation [to provide adequate health care], the courts have a responsibility to remedy the resulting Eighth Amendment violation." *Plata*, 563 U.S. at 511. Thus, while courts should be sensitive to principles of federalism, "[c]ourts nevertheless must not shirk from their obligation to enforce the constitutional rights of all persons, including prisoners," and "may not allow constitutional violations to continue simply because a remedy would involve intrusion into the realm of prison administration." *Id*.

If the State does not significantly reduce the crowding, COVID-19 will rapidly spread through the California prisons, placing the people who live and work inside them at substantial risk of injury and death, in addition to endangering the community at large. *See* Stern Decl. ¶¶ 8-9, 12-13; Stern Supp. Decl., ¶¶ 3-6, 9 & Ex. A. The State's failure to take swift action to prevent this crisis therefore warrants judicial intervention.

CONCLUSION

Plaintiffs respectfully request this Court grant their emergency motion.

Respectfully submitted,

DATED: April 1, 2020

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UNITED STATES DISTRICT COURTS
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UNITED STATES DISTRICT COURT COMPOSED OF THREE JUDGES
PURSUANT TO SECTION 2284, TITLE 28 UNITED STATES CODE

RALPH COLEMAN, et al., Plaintiffs, v. GAVIN NEWSOM, et al., Defendants.	Case No. 2:90-CV-00520-KJM-DB **THREE JUDGE COURT**
MARCIANO PLATA, et al., Plaintiffs, v. GAVIN NEWSOM, Defendants.	Case No. C01-1351 JST **THREE JUDGE COURT** **DECLARATION OF DONALD SPECTER IN SUPPORT OF PLAINTIFFS' REPLY BRIEF**

I, Donald Specter, declare:

1. I am a member of the Bar of this Court and co-counsel for Plaintiffs in both of the above-entitled actions. I am also the Executive Director of the Prison Law Office.

2. On March 26, 2020, I conducted a deposition of Scott Kernan, former Secretary of the California Department of Corrections and Rehabilitation. Attached as **Exhibit A** are true and correct copies of pages 18, 26-27, 29, 30, 34-35, 37-38, 77 and 92 from that deposition.

3. On March 30, 2020, I received an email from Roscoe Barrow, Chief Counsel for the California Correctional Health Care Services, and an attached Excel file entitled "COVID Risk Factors MH LOC." Attached as **Exhibit B** are true and correct copies of both the email and the Excel file. According to Mr. Barrow's email, the Receiver requested that the data in the Excel sheet be shared with me and my co-counsel. As Mr. Barrow explained in his email, "[t]he data represents patient counts utilizing the condition/disease definitions from our dashboard stratified by mental health level of care."

4. Attached hereto as **Exhibit C** is a true and correct copy of the CDCR, COVID-19 Preparedness website: April 1, 2020 Update, last accessed April 1, 2020, available at https://www.cdcr.ca.gov/covid19/.

5. Attached hereto as **Exhibit D** is a true and correct copy of the CDCR/CCHCS COVID-19 Employee Status website: March 31, 2020 Update, last accessed April 1, 2020, available at https://www.cdcr.ca.gov/covid19/cdcr-cchcs-covid-19-status/.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed in Sonoma County on April 1, 2020.

/s/ Donald Specter

EXHIBIT A

Q. For how long?

A. Approximately ten years.

Q. And do I remember correctly you were also at Sac for a while?

A. CSB Sacramento, yes, sir. And Mule Creek State Prison.

Q. Both of those as wardens?

A. Yes, sir.

Q. And then you -- could you briefly describe the positions you held at headquarters for me?

A. Associate director. Director. Chief deputy secretary. Deputy director of Adult Institutions. Under secretary of operations, and ultimately as secretary from January 2016 to August 31, 2018.

Q. So two and a half years. Is that correct?

A. Right around there, yes.

Q. Okay. And as secretary and possibly the warden, but definitely as secretary, you were once defendants in the Plata and Coleman case -- you were one of the defendants in the Plata and Coleman cases. Is that correct?

A. Yes.

Q. And you and I have been on opposite sides of litigation table, so to speak, for quite a while, correct?

preserving objections here. It's an incomplete hypothetical, and it calls for speculation.

You can answer the question, Mr. Kernan. I don't need to tell you that. You can do what you want. I apologize. Thank you.

THE WITNESS: I think the mass humanity in the dormitories and the lack of physical space presents a particular problem during this crisis, if that answers your question, Mr. Specter.

MR. SPECTER:

Q. Could you elaborate, please -- elaborate on the gravity of the crisis?

A. The physical space in the prisons prevent appropriate social distancing. Shared bathroom communals, laundry that is, you know, washed once a week.

There's significant concerns in my mind of the ability to prevent and mitigate the spread of disease that undoubtedly in my mind will go through the prisons given the -- you know, the close quarters that inmates must live in.

Q. In a radio interview with KQED, do you refer to the situation in the prisons as "tinderbox"? First of all, did you -- did I accurately quote you from that interview?

A. Yes, sir.

Q. And could you describe what you mean by that?

A. I think I was -- even as inartful as it was, it was not meant to be salacious. It was simply meant to suggest to the person I was talking to the gravity of the situation in our state prisons and jails given the COVID-19 virus.

My experience with other contagions over the years, that is that the prisons are a prime location for the spread of that. And my concern that it will take off like it is in New York and it's down in some of the other countries -- that it will take off in the prisons and create a significant health concern for the offenders that we care for and the staff that work there.

Q. When you say "significant health concern," do you include possibly death in that scenario?

A. I -- I have to believe, given the aging population in the prison system and those with other healthcare issues, that the risk is heightened in the prison setting versus the community setting.

Q. You -- you understand that there have been certain cruise ships that have had passengers with the virus, correct?

A. Yes, sir.

Q. Do you have particular concerns about the risk to that population?

A. I guess I would say given my knowledge of the COVID virus and the news reports that are going on is that this is a highly, highly contagious disease. That we've already identified, as you have pointed out, you know, one inmate and nine staff.

I think it's not -- if it's going to happen. It's when it's going to happen that they're going to have considerable more cases given the close proximity of the inmate population as -- as we are describing in these dorms across the system.

Q. Do the dorms present a -- in your mind, do the dorms present a greater risk than other types of housing units that they have in CDCR?

A. Well, I mean, I think all inmates, even inmates in cells that are, you know -- having to go to chow halls or do other -- pill call or what have you, where they're in close proximity to other inmates present a greater level of risk.

And I say that with just based on my experience, not based on any expert knowledge of it. It just strikes me that as Americans are being asked to stay six feet apart that, you know, placing the bunks and the dorms that I dealt with were very much closer

than that.

They share communal bathrooms. You have got to believe that the social distancing is almost impossible for most of those inmates and the tight quarters only exacerbate the problem.

Q. In your opinion, tight quarters -- well, you understand that in many institutions, prisoners are fed in dining rooms, general dining rooms, where they congregate, correct?

A. Yes, sir.

Q. And they sit at tables with about four stools apiece?

A. Yes, sir.

Q. And those are less than six feet apart from each other, are they not?

A. Yes, sir.

Q. Are you concerned about the transmission of the disease in that area as well?

A. You know, yes is the direct answer. And, you know, concerned with all my colleagues that are working those prisons. I mean, I think it's a bad situation for both.

Q. So you're concerned that the staff have no way to keep social distance in that current condition as well. Is that correct?

You can answer.

THE WITNESS: I'm sorry, Mr. Specter. Would you please repeat that.

MR. SPECTER: I don't think I can.

(Record read.)

MR. MELLO: Same objection so as not to sidetrack you, Mr. Kernan.

THE WITNESS: I guess the most responsive answer is I just don't know, Don. I -- I worry about the time that is elapsing and what we're seeing, you know, as this is coming across the country and flattening the curve and all the things that are going on the news; that decisions are being made now might mitigate it two weeks from now.

But I -- again, with all directness, do not know what the department is doing internally today to mitigate the population issues across the system.

MR. SPECTER:

Q. Secretary Kernan, do you believe that immediate steps are warranted to reduce the population or spread the population out in some way in order to reduce the risk of harm?

MR. MELLO: Same objections.

THE WITNESS: I do, sir. I think it's common sense that we should be taking immediate, bold steps to

try to mitigate the spread of the virus in the prisons. And for that matter, in jails across the country.

MR. SPECTER:

Q. And to your knowledge, and I understand this is to your knowledge, it's not -- I understand that the department may be doing things that you don't know about, but to your knowledge, do you know about the -- do you know of any immediate and bold steps other than the one that -- the ones that were contained in the governor's executive order?

A. I -- I think that logistically the department has taken a number of steps to try to mitigate that; the screening of staff coming into the facility, the taking of temperatures, and questioning. It seems like a reasonable step to me.

The closing of programs, the closing of visiting all of those things that the department has done seem to me to be reasonable steps to try to mitigate the problem.

And then it just becomes a question, and again, admittedly don't know, are they spreading people out either through using the full capacity that they have, considering releasing offenders that are soon to be released, and addressing those people that are immune comprised and might be in greater jeopardy than the rest

thousands of inmates without someplace to go in the community, you know, a residence or other location and without the appropriate support, is a dangerous thing.

So I don't think that what they're dealing with is very easy, Mr. Specter, but I do think that reducing the density is a very common sense in-the-moment kind of issue. And I'm hopeful that the governor and the secretary are going to do that.

MR. SPECTER:

Q. Okay. You understand that people are released on parole from the CDCR every day or every workday at least, correct?

A. Yes, sir.

Q. And the latest figures I have were that they're about -- in 2018, I believe, 38,000 some-odd people were released from prison. Is that around the number that you have experienced while you were there?

A. Well, when I was there, it got up to a hundred thousand a year because of parole violations and different aspects of the criminal justice system. But that sounds about right as I understand the current parole numbers.

Q. Right. And you understand also that some of those people -- some of those people are sentenced to determinate terms, correct?

A. Yes, sir.

Q. And so when their parole day comes, they're released regardless of whether they have parole plans in place, correct?

A. Yes, sir.

Q. In terms of if you were recommending reduction in the population of the -- well, strike that.

In your opinion, if -- there was a need to reduce the population, and I think you may have said this already, but do you agree that releasing people who are going to be released anyway in the next six months or a year is a reasonable group to look at in terms of the population?

MR. MELLO: "Reasonable" is vague. It's an incomplete hypothetical. Calls for speculation.

THE WITNESS: I -- I would say yes to that, Mr. Specter. I guess with the caveat that I understand the balance that the governor and the secretary have in protecting public safety in that just releasing people is a challenging political thing.

I guess I would just say that this virus strikes me as something that we've never dealt with before. It's scary. Staff are scared, extra scared. And I think that -- and hope that the governor will do something to reduce the density in that prison

healthcare providers in community that it is even more likely individuals will have less access to sufficient medical and mental health services upon their early release from DCR prisons?

A. I think the obvious to that is yes, sir.

Q. In the KQED article that Mr. Specter asked you about, I believe there's a quote. It says "it's a tinderbox of potential infection as you go forward, especially if you were just watching what's going on around the world. I know Italy and Brazil had serious violence and escapes and murders in jails as a result of COVID-19."

Does that sound like something you said to the reporter from KQED?

A. Yes, sir.

Q. Okay. Do you think CDCR's prisons are comparable to jails in Brazil?

MR. SPECTER: Vague as to "comparable."

THE WITNESS: I don't know if I would say they're comparable, Mr. Mello. I would just say that -- you know, as it relates to confined quarters, there's some general consistencies in any detention facility no matter where it is in the world that are consistent with -- you know, the same kind of things we deal with here in California.

entire question. Could you repeat it?

Q. I'm sorry. Maybe I should go about this a different way. In the best of all possible worlds, everybody coming out of prison would have a parole plan that applies for their medical and mental health needs as well as their housing needs, right?

A. Yes.

Q. That doesn't happen in today's prison system in California, correct?

A. Not for everybody, no.

Q. But they're still released, correct?

A. Yes.

Q. And people are still released even though they may have HIV or other contagious diseases, correct?

A. Yes.

Q. Regardless of whether they have a parole plan or not, correct?

A. Yes.

Q. That's all I have, Paul.

MR. MELLO: I have nothing further. Madame court reporter, I will try to get you those declarations, those exhibits.

And I thank Mr. Kernan for his time.

We definitely want a transcript.

Don, you're picking that up?

EXHIBIT B

From: Barrow, Roscoe@CDCR <Roscoe.Barrow@cdcr.ca.gov>
Sent: Monday, March 30, 2020 1:45 PM
To: Donald Specter; Sara Norman; Steve Fama; Alison Hardy; Rana Anabtawi; Sophie Hart; Alayna O'Bryan; Michael W. Bien; Lisa Ells; Jessica Winter; Kyle.Lewis@doj.ca.gov; RSilberfeld@RobinsKaplan.com; Stafford, Carrie@CDCR; Scofield, Bryant; Damon.McClain@doj.ca.gov; Nasstaran.Ruhparwar@doj.ca.gov; Paul B. Mello; Samantha Wolff; Matt Lopes; Ed Swanson
Cc: Clark Kelso; Toche, Diana@CDCR; Richard Kirkland; Tharratt, Steven@CDCR
Subject: Risk Factors for Adverse COVID-19-Related Outcomes by MH Level of Care
Attachments: COVID Risk Factors MH LOC.xlsx

Sensitivity: Confidential

The Receiver has asked that I share the attached file with you.

The data represents patient counts utilizing the condition/disease definitions from our dashboard stratified by mental health level of care. Some of these conditions may represent increased risk of severe COVID-19 morbidity/mortality. The most significant risk factors based on our current understanding of the disease appear to include age, underlying lung and cardiovascular disease (and probably obesity and smoking history). Additional refinement of the selection criteria would need to better define some medical subsets such as ”poorly” controlled diabetes or “significant” cardiovascular disease.

If you have any questions, please do not hesitate to contact me. Thank you very much.

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California Correctional Health Care Services
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CALIFORNIA CORRECTIONAL HEALTH CARE SERVICES

Risk Factors for Adverse COVID-19 Outcomes by Mental Health Level of Care

California Prison Inmate Population

Data as of March 30, 2020

	Summary Data			Patient Counts by Risk Factor												
Level of MH Care	Patients with at least 1 Risk Factor	Total Patients in Level of Care	Percent of Patients with at least 1 Risk Factor	Age (65+)	Asthma	COPD	BMI (40+)	Cancer	Hyper-tension	Cerebro-vascular Disease	Coronary Artery Disease	Diabetes	Dialysis	ESLD	Immuno-suppressed	Pregnancy
GP	27,329	84,640	32%	3,985	7,977	1,519	2,044	1,945	15,825	554	1,587	4,946	129	2,487	720	16
CCCMS	13,492	27,442	49%	1,267	5,159	1,212	1,241	842	7,496	324	937	2,703	41	1,322	389	4
EOP	3,565	6,910	52%	309	1,277	303	253	193	2,101	87	245	830	3	376	81	2
MH HLOC	724	1,568	46%	27	290	37	36	29	418	27	48	122	NULL	55	18	NULL
All Levels of Care	45,110	120,560	37%	5,588	14,703	3,071	3,574	3,009	25,840	992	2,817	8,601	173	4,240	1,208	22

EXHIBIT C

COVID-19 Preparedness

(para español, haga clic aquí (https://www.cdcr.ca.gov/covid19/preparacion-covid-19/). Las traducciones al español se proporcionan dentro de las 24 horas de una actualización)

April 1, 2020

- *As of April 1, 2020, six incarcerated persons at California State Prison-Los Angeles County, one incarcerated person at North Kern State Prison, and one incarcerated person at California Institution for Men in Chino have tested positive for COVID-19. See CDCR and CCHCS Patient Testing Tracker* (https://www.cdcr.ca.gov/covid19/population-status-tracking/) *for the latest testing and case information for the incarcerated population.*
- *There are currently 25 CDCR/CCHCS employees who have tested positive for COVID-19. See the CDCR/CCHCS COVID-19 Employee Status webpage* (https://www.cdcr.ca.gov/covid19/cdcr-cchcs-covid-19-status/) *for a breakdown by location.*
- *CDCR has announced its plan to further protect staff and inmates (https://www.cdcr.ca.gov/news/2020/03/31/cdcr-announces-plan-to-further-protect-staff-and-inmates-from-the-spread-of-covid-19-in-state-prisons/) from the spread of COVID-19 in state prisons.*
  - *CDCR will expedite the transition to parole for eligible inmates who have 60 days or less to serve on their sentences and are not currently serving time for a violent crime as defined by law, a person required to register under PC 290 (sex offenses), or domestic violence.*
  - *Plan will create increased capacity and space to help with inmate movement, physical distancing, isolation efforts*
  - *The plan also includes making more use of the state's private and public Community Correctional Facilities, as well as maximizing open spaces in prisons, such as gymnasiums, to increase capacity and inmate movement options.*
- *Federal Receiver J. Clark Kelso released a video message (https://www.cdcr.ca.gov/insidecdcr/2020/03/31/message-to-all-cdcr-cchcs-staff-from-receiver-j-clark-kelso/) to all CCHCS and CDCR staff.*
- *CDCR and CCHCS have launched an internal patient registry to assist institutions in monitoring patients with suspected or confirmed COVID-19. The COVID-19 Registry also tracks all individuals by risk. The registry is updated twice daily and draws from multiple data sources, including the electronic health record system, claims data, and the Strategic Offender Management System to compile risk factor data. This registry also includes release date information for each individual, in the event that individuals are to be considered for early release during the pandemic. This tool is not publically available as it contains personal health care information protected by medical privacy laws.*

Executives and staff at CDCR and CCHCS are working closely with infectious disease control experts to minimize the impact of COVID-19 on our operations. To ensure we are ready to immediately respond to any COVID-19 related incident, CDCR and CCHCS activated the Department Operations Center (DOC) in order to be fully prepared to respond to any departmental impacts resulting from COVID-19.

CDCR and CCHCS are dedicated to the safety of everyone who lives in, works in, and visits our state prisons. We have longstanding outbreak management plans in place to address communicable disease outbreaks such as influenza, measles, mumps, norovirus, and varicella, as well as preparedness procedures to address a variety of medical emergencies and natural disasters.

Public safety is a top priority for CDCR, as is the health of our community. The department has been diligent in implementing proactive efforts to ensure health and safety, including recent actions to limit the risks and spread of COVID-19. Examples include limiting all non-essential or emergency transportations between CDCR facilities; screening all who enter the prisons; and suspending visits by the public. As a further protective measure, Governor Newsom issued an executive order (https://www.gov.ca.gov/2020/03/24/governor-newsom-issues-executive-order-on-state-prisons-and-juvenile-facilities-in-response-to-the-covid-19-outbreak/) recently directing CDCR to temporarily halt the intake of inmates and youth into the state's 35 prisons and four youth correctional facilities. We are continuously evaluating and implementing

proactive measures to help prevent the spread of COVID-19 and keep our CDCR population and the community-at-large safe.

BELOW IS AN OVERVIEW OF STEPS WE ARE TAKING REGARDING COVID-19

Expedited release and plan to increase space within institutions

On March 31, CDCR announced its plan to further protect staff and inmates (https://www.cdcr.ca.gov/news/2020/03/31/cdcr-announces-plan-to-further-protect-staff-and-inmates-from-the-spread-of-covid-19-in-state-prisons/) from the spread of COVID-19 in state prisons.

CDCR will expedite the transition to parole for eligible inmates who have 60 days or less to serve on their sentences and are not currently serving time for a violent crime as defined by law, a person required to register under Penal Code 290, or domestic violence.

The plan will create increased capacity and space to help with inmate movement, physical distancing, and quarantine and isolation efforts for positive COVID-19 cases.

The plan also includes making more use of the state's private and public Community Correctional Facilities, as well as maximizing open spaces in prisons, such as gymnasiums, to increase capacity and inmate movement options.

For frequently asked questions on this plan, visit our FAQ page here (https://www.cdcr.ca.gov/covid19/frequently-asked-questions-for-plan-on-expedited-release-and-increased-physical-space-within-state-prisons/).

Expanded precautions at institutions and office locations

All staff and visitors entering CDCR correctional institutions will undergo a touchless temperature screening prior to entering the facility. This is in addition to the ongoing verbal symptom screening. This applies to CDCR state prisons and community correctional facilities. For guidance on this implementation, see the COVID-19 Facility Entrance Screening.

CDCR and CCHCS have implemented mandatory verbal screening for every person entering **any** work location, in line with screenings in place at prisons since March 14.

Those attempting to enter a state prison or office building at any time are required to verbally respond if they currently have new or worsening symptoms of a respiratory illness. If the individual's response is that they are experiencing symptoms, they will be restricted from entering the site that day.

All CDCR institutions have been instructed to conduct additional deep-cleaning efforts in high-traffic, high-volume areas, including visiting and health care facilities. Those in the incarcerated population identified as assisting with cleaning areas of the institution have received direct instruction on proper cleaning procedures in order to eliminate coronavirus.

On March 11, all CDCR institutions were instructed to order additional hand sanitizer dispenser stations. The purchased dispensers have begun arriving at the institutions and are being placed inside institution dining halls, work change areas, housing units, and where sinks/soap are not immediately available. These dispensers will contain the type of alcohol-based hand sanitizer recommended by the Centers for Disease Control and Prevention to help eliminate coronavirus.

Additional dispensers may be placed in high-need areas where they can be monitored for safety and security of the institution.

Staff have been granted permission to carry up to two ounces of personal-use hand sanitizer. The incarcerated population is being provided extra soap when requested and hospital-grade disinfectant that meets CDC guidance for COVID-19.

CDCR and CCHCS have been actively monitoring and assessing institutions to ensure staff have an adequate supply of personal protective equipment to immediately address any potential COVID-19 exposures, and to protect staff and incarcerated people. The workgroup will continue to collaborate and maintain open lines of communication with the Governor's Office of Emergency Services to identify any deficiencies and ensure adequate supplies are available at each institution on an ongoing basis.

California Prison Industry Authority production

In an effort to help prevent the spread of COVID-19, the California Prison Industry Authority (CALPIA) has begun producing hand sanitizer for use by both staff and the incarcerated population.

CALPIA is producing two types of hand sanitizer: *Cleanse,* which contains alcohol, and *Cleanse – AF* (Alcohol Free) which contains the active ingredient Benzalkonium Chloride. The alcohol-based hand sanitizer will be used in the sanitizer dispenser stations being directed into housing units, dining halls, work change areas, and other areas where sinks and soap are not immediately available. The non-alcohol based product is being produced for future needs.

The hand sanitizer is being made available to CDCR and CCHCS facilities and locations. If CALPIA's inventory exceeds the needs of those two departments, CALPIA will make the product available to other state agencies.

CALPIA worked with the California Department of Public Health and within two weeks was able to acquire the necessary licensing for relabeling, repackaging, and mixing.

CALPIA has already started delivering the bottles to CDCR facilities.

The production of the materials will occur at CALPIA's Chemical Enterprise located at the California State Prison, Los Angeles County.

Screening incarcerated population on entry into prisons

All incarcerated persons received into a Reception Center institution are placed into an automatic 14-day quarantine for monitoring. For more on CDCR and CCHCS quarantine protocols, visit our COVID-19 Status (https://gcc01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.cdcr.ca.gov%2Fcovid19%2Fcdcr-cchcs-covid-19-status%2F&data=02%7C01%7CDana.Simas%40cdcr.ca.gov%7Cb289a7c86e924c100f6708d7d127c0c3%7C0662477dfa0c4556a8f5c3bc62aa0d9c%7C0%7C0%7C637207840984514096&sdata=%2Fr1fOjVQFht%2FiygQmZjeoRWHN0cakc2DcSvPyp9mCFQ%3D&reserved=0) webpage.

Immediately upon entry, all inmates are screened for symptoms of influenza-like illness (lLI) including COVID-l9. The inmate populations that must be screened include, but are not limited to, those entering via reception centers, receiving and release locations and fire camps, and returning from court, a higher level of care, or an offsite specialty appointment.

The screening shall include asking an individual if they have a cough, fever and/or difficulty breathing, and taking their temperature. Based on the screening questions, temperature reading, and health care staff's clinical judgement, the individual will either be placed in isolation, quarantine or other housing.

Social distancing

CDCR has implemented several practices to encourage "social distancing," which is a strategy recommended by public health officials to stop the spread of contagious diseases. Social distancing requires the creation of physical space between individuals, minimizing gatherings, and ensuring space between individuals when events or activities cannot be modified, postponed, or canceled. Achieving space between individuals of approximately six feet is advisable.

The incarcerated population has received information about social distancing, and staff and inmates are practicing social distancing strategies where possible, including limiting groups to no more than 10, assigning bunks to provide more space between individuals, rearranging scheduled movements to minimize mixing of people from different housing areas, encouraging social distancing during yard time, and adjusting dining schedules where possible to allow for social distancing and additional cleaning and disinfecting of dining halls between groups.

Transportation/Receiving and Release protocols

Effective March 24, CDCR will suspend intake of all incarcerated persons into both adult state prison and Division of Juvenile Justice facilities for a minimum of 30 days. California Governor Gavin Newsom issued an Executive Order (https://gcc01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.gov.ca.gov%2F2020%2F03%2F24%2Fgovernor-newsom-issues-executive-order-on-state-prisons-and-juvenile-facilities-in-response-to-the-covid-19-outbreak%2F&data=02%7C01%7CDana.Simas%40cdcr.ca.gov%7Cb289a7c86e924c100f6708d7d127c0c3%7C0662477dfa0c4556a8f5c3bc62aa0d9c%7C0%7C1%7C637207840984524088&sdata=K1qcU0GPI8DnmF8fTLT5pNk2ZV9TlhVf4cMYAeZ6qss%3D&reserved=0) directing CDCR to suspend intake into state correctional facilities for 30 days. All persons convicted of felonies shall be received, detained, or housed in a jail or other facility currently detaining or housing them for that period. The order allows Secretary Diaz to grant one or more 30-day extensions if suspension continues to be necessary to protect the health, safety, and welfare of inmates and juveniles in CDCR's custody and staff who work in the facilities.

CDCR has suspended transfers of inmates into the Male Community Reentry Program (https://gcc01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.cdcr.ca.gov%2Frehabilitation%2Fmcrp%2F&data=02%7C01%7CDana.Simas%40cdcr.ca.gov%7Cb289a7c86e924c100f6708d7d127c0c3%7C0662477dfa0c4556a8f5c3bc62aa0d9c%7C0%7C0%7C637207840984524088&sdata=TUbKWRsQ%2BUUOazKP%2FWwNSQ62HNe3jYqPcdoLYGg2pHM%3D&reserved=0) (MCRP), the Custody to Community Transitional Reentry Program (https://gcc01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.cdcr.ca.gov%2Fadult-operations%2Fcustody-to-community-transitional-reentry-program%2F&data=02%7C01%7CDana.Simas%40cdcr.ca.gov%7Cb289a7c86e924c100f6708d7d127c0c3%7C0662477dfa0c4556a8f5c3bc62aa0d9c%7C0%7C0%7C637207840984534085&sdata=6QxnVgYRFZEpkzr53XrFQKlPGrN7izJffrZIs1l9aTA%3D&reserved=0) (CCTRP), and the Alternative Custody Program (https://gcc01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.cdcr.ca.gov%2Fadult-

operations%2Facp%2F&data=02%7C01%7CDana.Simas%40cdcr.ca.gov%7Cb289a7c86e924c100f6708d7d127c0c3%7C0662477dfa0c4556a8f5c3bc62aa0d9c%7C0%7C0%7C637207840984534085&sdata=LOmec3UwbZNH6nLMVKBDJ6SBGycVBA7lMvLxdddfPkE%3D&reserved=0) (ACP) through April 6,2020. CDCR has taken this step to limit potential exposure of staff to COVID-19 during inmate transfers to the community. Additionally, as part of this program, incarcerated persons remain under the jurisdiction and responsibility of CDCR, to include providing any required medical attention. Releasing incarcerated persons to these programs could potentially expose them to COVID-19 in the community which would require their transfer back to an institution for medical care for non-emergent health care needs, increasing risk for potential exposure within our institutions.

CDCR has also suspended transfers of inmates to the Conservation Camp program until further notice. Inmate transfers previously initiated under the approved guidelines, who are currently on layover, will be moved to their final destination.

Department of State Hospitals and CDCR/CCHCS will not transfer patients between the two mental health treatment agencies for the next 30 days. All appropriate health care services will be provided to the patient by the current housing agency.

All Interstate Compact Agreement transfers of out-of-state parolees and inmates to California will cease for 30 days.

To mitigate workload when non-essential movement resumes, this cancellation of all non-essential inmate movement impacts movement only; classification committees and review processes will move ahead as normal.

While it's required to have three staff members to make a quorum, it is only required, during this unique time, to have two staffers physically present in the committee room with the remaining committee member joining by call. All present in the room should practice social distancing.

Visiting

As part of CDCR's COVID-19 prevention efforts, normal visiting at adult and juvenile facilities is canceled statewide until further notice based on California Department of Public Health guidance for mass gatherings. This includes overnight family visits and Division of Juvenile Justice visiting.

Institutions have been instructed to find opportunities to allow increased phone access for the incarcerated population so they may keep in touch with their support system, while also practicing social distancing and other infectious disease safety protocols.

At this time, legal/attorney visits are being held for urgent needs only. Hospice visits will no longer be held until further notice. Marriages will be postponed; those affected are encouraged to work with the institution's Community Resource Manager regarding rescheduling for a later date.

CDCR's inmate telephone network provider Global Tel Link (GTL) has offered the adult incarcerated population three days of free phone calls each week through the end of April. There is no limit on the number of calls; however, each institution may limit time to accommodate need. The following days are designated for free calling:

Week 1: March 31, April 1, April 2

Week 2: April 7, 8, 9

Week 3: April 14, 15, 16

Week 4: April 21, 22, 23

Week 5: April 28, 29, 30

CDCR's electronic messaging provider for the incarcerated population, JPay, is providing reduced-priced emails to those incarcerated at the pilot institutions and free emails for those inmates who cannot afford it. The five pilot sites that currently have the technology include: High Desert State Prison, Kern Valley State Prison, California Institution for Women, Central California Women's Facility, and Substance Abuse Treatment Facility. At some of these institutions, only certain yards currently have this technology. Details will be provided to the incarcerated population at the institutions.

The youth within the Division of Juvenile Justice already receive free phone calls and have begun using free Skype video calls for visiting.

Rehabilitative programs and volunteers

Non-CDCR/CCHCS/CALPIA staff will not be permitted to enter state prison until further notice. This includes people who enter state prison as volunteers, or to facilitate rehabilitative programs. Paid union representatives, and Inmate Ward Labor (IWL) staff will be permitted. CalVet representatives and contractors who work with institution staff to conduct interviews and provide forensic evaluations for incarcerated veterans to receive federal disability benefits for themselves and their families pursuant to Senate Bill 776 will also be permitted.

No rehabilitative programs, group events, or in-person educational classes will take place until further notice. At this time, all tours and events have been postponed, and no new tours are being scheduled.

Education

The Office of Correctional Education is working with institution principals, library staff, and teachers to provide in-cell assignments where possible in order for students to continue their studies, legal library access and educational credit-earning opportunities.

For those in our incarcerated population who need supplementary academic support, CDCR has encouraged Disability Placement Program, Developmental Disability Program, and Every Student Succeeds Act staff to coordinate with the institution instructor to provide additional assistance to enrolled students where possible.

Standardized testing has stopped until further notice, although we are encouraging education staff to continue to engage their students as much as possible to stay focused on their rehabilitation and positive programming during this time.

Recreation and Law Library Services will continue to be available to the incarcerated population even if physical access is restricted due to safety and security measures.

Religious programs

CDCR recognizes the importance of religion in the daily life and spiritual growth of incarcerated people. Unfortunately, the department has limited group religious programming for upcoming holidays such as Ramadan, Passover, and Easter. These services will be provided as in-cell services as an alternative. CDCR will provide the appropriate Ramadan and Passover daily meals to allow incarcerated people to observe their religious meal traditions, including appropriately beginning and breaking their Ramadan fast.

Chaplains will conduct individual religious counseling as appropriate while maintaining social distancing, and CDCR is working to provide televised religious services to the population.

Health care services

The health and safety of our population is of critical importance to CDCR and CCHCS. While our agency is working together to prepare for and respond to COVID-19, we will continue to provide urgent health care services. To reduce risks to both patients and staff, inmate movement will be minimized. In addition, some specialty and routine care may be delayed as a result of both internal redirections and external closures. All cancelled appointments will be rescheduled as soon as safely possible. Health care staff will continue to see and treat patients through the 7362 process and those with flu-like symptoms will be tested for COVID-19 as appropriate.

On March 20, CCHCS issued COVID-19: Interim Guidance for Health Care and Public Health Providers. This document provides clinical guidelines to health care providers in response to COVID-19 cases in the California prison system. View guidelines distributed to institution staff on March 20, 2020. (https://www.cdcr.ca.gov/covid19/wp-content/uploads/sites/197/2020/03/R_CCHCS-COVID-19-Interim-Guidance-3.19.2020.pdf?label=COVID-19:%20Interim%20Guidance%20for%20Health%20Care%20and%20Public%20Health%20Providers%20&from=https://www.cdcr.ca.gov/covid19/memos/)

CDCR and CCHCS have launched an internal patient registry to assist institutions in monitoring patients with suspected or confirmed COVID-19. The COVID-19 Registry also tracks all individuals by risk. The registry is updated twice daily and draws from multiple data sources, including the electronic health record system, claims data, and the Strategic Offender Management System to compile risk factor data. This registry also includes release date information for each individual, in the event that individuals are to be considered for early release during the pandemic. This tool is not publically available as it contains personal health care information protected by medical privacy laws.

Dental care

The California Dental Association recommends that all non-urgent dental care be suspended for the next 14 days. Effective immediately and until further notice, dental treatment shall be limited to Dental Priority Classification (DPC) 1 conditions (urgent care). For more information on what qualifies as urgent care, view HCDOM 3.3.5.4 (https://gcc01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fcchcs.ca.gov%2Fwp-content%2Fuploads%2Fsites%2F60%2FHC%2FHCDOM-ch03-art3.5.4.pdf&data=02%7C01%7CDana.Simas%40cdcr.ca.gov%7Cb289a7c86e924c100f6708d7d127c0c3%7C0662477dfa0c4556a8f5c3bc62aa0d9c%7C0%7C1%7C637207840984544076&sdata=32JMHUCxD1BMpHxflLgoCWd9lkcCakt9D9QfSGWqPFg%3D&reserved=0).

Specialty care appointments

In order to reduce risks to patients and staff, all non-urgent offsite specialty appointments will be re-scheduled to a later time. Telemedicine appointments will continue at this time.

Board of Parole Hearings/Parole suitability hearings

All in-person Board of Parole Hearings (BPH) adult parole suitability hearings are postponed for a minimum of 60 days. BPH is working to develop a process for conducting parole hearings by videoconference for all participants to attend, including incarcerated persons, attorneys, commissioners, and victims/victims next-of-kin. That process is expected to be in place by mid-April, per the Governor's Executive Order (https://gcc01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.gov.ca.gov%2F2020%2F03%2F24%2Fgovernor-newsom-issues-executive-order-on-state-prisons-and-juvenile-facilities-in-response-to-the-covid-19-outbreak%2F&data=02%7C01%7CDana.Simas%40cdcr.ca.gov%7Cb289a7c86e924c100f6708d7d127c0c3%7C0662477dfa0c4556a8f5c3bc62aa0d9c%7C0%7C1%7C637207840984544076&sdata=bKbYLUqwNc3%2FP9%2Fw%2FuK04kBuOYlR6LjFP%2F6H6uBRQrc%3D&reserved=0).

Board of Juvenile Hearings proceedings will take place as scheduled via video conference only. Go to the Board website for more information. https://www.cdcr.ca.gov/juvenile-justice/juvenile-parole-board/ (https://gcc01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.cdcr.ca.gov%2Fjuvenile-justice%2Fjuvenile-parole-board%2F&data=02%7C01%7CDana.Simas%40cdcr.ca.gov%7Cb289a7c86e924c100f6708d7d127c0c3%7C0662477dfa0c4556a8f5c3bc62aa0d9c%7C0%7C0%7C637207840984554073&sdata=i%2FP%2F76ZpNHbLKipVcF4iFzbJi7mkldzbFlkQsk3rP3k%3D&reserved=0)

Division of Adult Parole Operations

The Division of Adult Parole Operations (DAPO) is committed to the safety of the community, staff, and those in its care. Given the increased risk associated with the use of mass/public transportation and those under parole supervision deemed a high-risk population (older adults and those with known serious chronic medical conditions), DAPO will make some operational changes to support both staff and the individuals under their care and supervision, including suspending lobby traffic except for initial parole interviews and emergencies, and suspending office visits for those age 65 and older and/or with chronic medical conditions.

All parolees' conditions of parole remain in place, with the exception of the items listed above. DAPO administrators and supervisors will assess all measures being implemented and adjust, modify, or waive required specifications as appropriate. Any questions parolees may have related to COVID-19 prevention efforts should be directed to their Parole Agent. Learn more here (https://gcc01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.cdcr.ca.gov%2Fcovid19%2Fdivision-of-adult-parole-operations%2F&data=02%7C01%7CDana.Simas%40cdcr.ca.gov%7Cb289a7c86e924c100f6708d7d127c0c3%7C0662477dfa0c4556a8f5c3bc62aa0d9c%7C0%7C0%7C637207840984554073&sdata=oKcA3WPjx9T3e8uMvYuzuiXyJEiAi%2BW7VevmFtxaCPQ%3D&reserved=0).

Modified Community Correctional Facilities and Community Reentry Programs

CDCR's in-state contract facilities are conducting verbal screenings of staff and participants who enter the facilities. Those attempting to enter one of these facilities are required to verbally respond if they currently have symptoms of a respiratory illness.

Visiting has also been halted at these facilities until further notice.

CDCR is committed to continuing education programs and limiting the impact our COVID-19 response has on positive rehabilitative programming for our Community Reentry Programs. Rehabilitative programs at the reentry facilities will continue with modifications made to class sizes to encourage social distancing, with some potential program closures.

At this time, participants are generally restricted from leaving the facilities outside of mandated legal reasons, urgent medical needs, if they are employed in the community, or for critical reentry services related to those within 30-45 days of release.

Participants age 65 or older are only eligible for passes to go out in the community for emergency situations only.

Visiting has been canceled at the Community Prisoner Mother Program (CPMP) in line with recommendations from public health officials and the cessation of visiting at CDCR locations statewide. This includes scheduled off-site visits for children residing at CPMP with their mothers. Family members may continue to drop approved items such as diapers, wipes, baby food and baby snacks (for children under 1), during normal visiting hours even during closure. CPMP staff are diligently working to ensure the mothers' and children's needs are met and supplies are readily available with a surplus where needed. They are working closely with community healthcare providers and medical staff at nearby California Institution for Women to keep all required appointments for mothers and children.

Division of Juvenile Justice

While physical visits have been suspended, beginning March 26, the Division of Juvenile Justice (DJJ) will be providing free Skype virtual video visits to youth for approved visitors, starting at the Pine Grove Youth Conservation Camp in Amador County. DJJ is working to provide this service to youth at other facilities soon. Directions for approved visitors to download the free Skype for Business App on their smartphone or computer will be posted on the DJJ homepage (https://www.cdcr.ca.gov/juvenile-justice/) in English and Spanish. There is no cost to create an account. The Skype application and a valid email address is all that is needed.

Directions will be posted around the DJJ facilities so that youth can share the information with their support system.

Effective March 18, no volunteers will be allowed to enter DJJ until further notice. All volunteer programs are postponed. Innovative Grant programs may continue, if grantees are able. When entering, all staff, volunteers and visitors will be given the same verbal health screenings in place at other state institutions.

The California Education Authority is continuing high school classes for youth in DJJ, while practicing social distancing (https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/Gathering_Guidance_03.11.20.pdf).

We also encourage letter writing as a way to stay in touch and are increasing the number of postage stamps available to youth.

Board of Juvenile Hearings proceedings will take place as scheduled via videoconference only. Go to the Board website for more information: https://www.cdcr.ca.gov/juvenile-justice/juvenile-parole-board/ (https://www.cdcr.ca.gov/juvenile-justice/juvenile-parole-board/)

For the latest on steps DJJ is taking to protect youth from COVID-19, visit the DJJ webpage here (https://www.cdcr.ca.gov/juvenile-justice/).

Construction projects

On March 20, 2020, CDCR suspended large-scale construction projects located within the secure perimeter of CDCR facilities. Limited construction activities are continuing as necessary to make work areas safe and protect construction areas from deterioration during the suspension. While the construction industry overall has been identified as an essential business/service under Executive Order E-33-20, the interest of CDCR as a construction owner is unique. Construction occurring at facilities under CDCR jurisdiction impacts the health and safety of thousands of employees and persons incarcerated in youth and adult institutions. The action to suspend large-scale construction projects was consistent with earlier preventive actions, such as the cancelation of visiting and volunteer entries statewide, and seeks to reduce and minimize the number of non-CDCR employees that enter CDCR institutions on a daily basis. These decisions are not made lightly, and are taken with the safety of all who work in, live in, and visit our facilities in mind.

Peace officer hiring and academies

Written peace officer exams are suspended until April 6, 2020. The health and safety of our staff, cadets, and candidates is a top priority. CDCR is taking all the available precautions to ensure a safe and healthy environment. These precautions include regular office cleanings, hand sanitizer/gloves when applicable, reduced testing and physical fitness group sizes, and social distancing.

The Basic Correctional Officer Academy (BCOA) that is currently underway has been accelerated to allow graduation to move from May 1, 2020, to April 7, 2020. The BCOA scheduled to start Tuesday, March 24, will be postponed for at least 30 days.

Population communication

CDCR Secretary Ralph Diaz will be releasing regular video message updates directly to the incarcerated population. You can see the latest message from March 25 here (https://gcc01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fvimeo.com%2F400758862%2F824c4cf567&data=02%7C01%7CDana.Simas%40cdcr.ca.gov%7Cb289a7c86e924c100f6708d7d127c0c3%7C0662477dfa0c4556a8f5c3bc62aa0d9c%7C0%7C1%7C637207840984564065&sdata=rGtZkMRcnQN1Y5CBJdpiW27scQ3MLaG3NKEzNHib0PA%3D&reserved=0).

Wardens, captains, public information officers, and other institution executives have been instructed to meet with their respective Inmate Advisory Councils either individually or in small groups where social distancing can be maintained. This is to encourage an open line of communication between the incarcerated population and the institution leaders in charge of their care in order to quickly and efficiently meet their needs.

To keep members of our population informed, we have created and distributed fact sheets and posters in both English and Spanish that provide education on COVID-19 and precautions recommended by CDC, which expand upon those advised during cold and flu season. We have also begun streaming CDC educational videos on the CDCR Division of Rehabilitative Programs inmate television network and the CCHCS inmate health care television network. Learn more here (https://gcc01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.cdcr.ca.gov%2Fcovid19%2Fpopulation-

communications%2F&data=02%7C01%7CDana.Simas%40cdcr.ca.gov%7Cb289a7c86e924c100f6708d7d127c0c3%7C0662477dfa0c4556a8f5c3bc62aa0d9c%7C0%7C0%7C637207840984564065&sdata=LQUKzZExIzF0YcnEHrTdezSZLSUkAA%2FulwfKSVIIDYI%3D&reserved=0).

Additionally, we are providing regular department updates regarding COVID-19 response to the Statewide Inmate Family Council and all institutional Inmate Family Councils who serve the family and friends of the incarcerated population to ensure they are aware of the steps the department is taking to protect their loved ones housed in our institutions.

Communication and guidance to staff

CDCR Secretary Ralph Diaz will be releasing regular video message updates directly to CDCR staff. You can see the latest message from March 25 here (https://gcc01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fvimeo.com%2F400756098%2F8d895b053b&data=02%7C01%7CDana.Simas%40cdcr.ca.gov%7Cb289a7c86e924c100f6708d7d127c0c3%7C0662477dfa0c4556a8f5c3bc62aa0d9c%7C0%7C1%7C637207840984574058&sdata=YiKdJAZUjC0D8l8k8dzGDVtRisPci%2B8QocgA8OCfLKs%3D&reserved=0).

Federal Receiver J. Clark Kelso released a video message (https://www.cdcr.ca.gov/insidecdcr/2020/03/31/message-to-all-cdcr-cchcs-staff-from-receiver-j-clark-kelso/) to all CCHCS and CCHCS staff.

Only in-service training (IST) for range, weapons, and chemical agents qualifications and training shall continue as long as social distancing can be achieved. All other IST has been postponed until July.

We have worked continuously to keep staff informed of the evolving situation, including creating internal and external webpages with health-related information from CDC and California Department of Public Health on how they can protect themselves against COVID-19. We have also provided staff with California Department of Human Resources (CalHR) updates on personnel and work-related questions specific to the COVID-19 issue.

CDCR and CCHCS care for the health and wellness of its workforce and have been working to accommodate those who have been impacted by this evolving situation. We will continue to work diligently with CalHR and labor organizations on how we can best keep our workforce protected and provide for the safety and security of our institutions.

For more employee resources related to COVID-19, see our webpage here: https://www.cdcr.ca.gov/covid19/information/ (https://gcc01.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.cdcr.ca.gov%2Fcovid19%2Finformation%2F&data=02%7C01%7CDana.Simas%40cdcr.ca.gov%7Cb289a7c86e924c100f6708d7d127c0c3%7C0662477dfa0c4556a8f5c3bc62aa0d9c%7C0%7C0%7C637207840984574058&sdata=CtPoh6zi3sKjB5BJ8ZhWCIZZRWfvC8B9zqL%2Ffr6ZmMQ%3D&reserved=0).

EXHIBIT D

CDCR/CCHCS COVID-19 Employee Status

Updated 5:10 p.m. Tuesday, March 31, 2020
Staff information is self-reported

Locations	Staff Confirmed
California Health Care Facility	1
California Institution for Men	11
California State Prison, Sacramento	4
CDCR/CCHCS Worksite Location—Riverside County	1
Folsom State Prison	1
Northern California Youth Correctional Center	1
Richard A McGee Correctional Training Center—Galt	1
Salinas Valley State Prison	1
San Quentin State Prison	1
Substance Abuse Treatment Facility and State Prison, Corcoran *please note this is a separate facility from Corcoran State Prison*	1
Wasco State Prison	2
TOTAL	25

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UNITED STATES DISTRICT COURTS
EASTERN DISTRICT OF CALIFORNIA
AND NORTHERN DISTRICT OF CALIFORNIA
UNITED STATES DISTRICT COURT COMPOSED OF THREE JUDGES
PURSUANT TO SECTION 2284, TITLE 28 UNITED STATES CODE

RALPH COLEMAN, et al., Plaintiffs, v. GAVIN NEWSOM, et al., Defendants.	Case No. 2:90-CV-00520-KJM-DB **THREE JUDGE COURT**
MARCIANO PLATA, et al., Plaintiffs, v. GAVIN NEWSOM, Defendants.	Case No. C01-1351 JST **THREE JUDGE COURT** **DECLARATION OF JAMES AUSTIN PH.D. IN SUPPORT OF PLAINTIFFS' REPLY BRIEF**

I, JAMES AUSTIN PH.D., declare:

1. I am the Senior Policy Analyst for the JFA Institute, a nationally recognized criminal justice and corrections research organization. I have personal knowledge of the matters set forth herein, and if called as a witness, I could and would competently so testify. I make this declaration in support of Plaintiffs' reply brief on their Emergency Motion.

2. I received my Ph.D. in sociology from the University of California at Davis in 1980. I am currently the President of JFA Institute, a corrections consulting firm. Prior to that, I was the Director of the Institute of Crime, Justice and Corrections at the George Washington University, and Executive Vice President for the National Council on Crime and Delinquency. I began my career in corrections with the Illinois Department of Corrections in 1970 at Stateville Penitentiary.

3. I have implemented inmate classification and risk assessment systems for juvenile and adult custody in over 30 local and state correctional systems.

4. I have implemented parole guidelines and related risk assessment systems in a number of states and local jurisdictions including most recently Maryland, Texas, Arkansas, Kentucky, Illinois, South Carolina, Charleston SC, and New Orleans, Louisiana.

5. I have assisted a number of states and local jail systems in identifying policies and procedures that have resulted in a safe reduction in their prison and jail systems.

6. I correctly argued that the CDCR prison population could be safely reduced from over 170,000 inmates in 2007 to 120,000 without increasing crime rates.

7. I was the primary author for the National Institute of Corrections (NIC) manuscript on Objective Prison and Jail Classification Systems, which provides details on the same types of classification systems employed by the California Department of Corrections.

8. I have served as the project director of the corrections options technical assistance program of the Bureau of Justice Assistance (BJA), an arm of the U.S.

Department of Justice that provides a wide variety of assistance to local jails, probation, parole, and prison systems.

9. In 1991, I was named by the American Correctional Association as its recipient of the Peter P. Lejin's Research Award. In 1999, I received the Western Society of Criminology Paul Tappin award for outstanding contributions in the field of criminology. In 2009, I was the recipient of the Marguerite Q. Warren and Ted B. Palmer Differential Intervention Award, American Society of Criminology, Corrections and Sentencing Division.

10. In 2006, I was appointed to the Expert Panel on Adult Offender and Recidivism Reduction Programming, California Department of Corrections and Rehabilitation.

11. The issue to be addressed is whether the current CDCR prison population can be safely reduced for the purpose of lowering the risk of infection from the COVID-19 virus for inmates and staff.

12. Regarding the question of whether prison populations can be safely lowered without increasing the crime rates or recidivism rates, the scientific answer is clearly yes. As shown in Table 1, a number of states (including California) have lowered both their prison populations and crime rates.

Table 1. Prison Population and Crime Rate Reductions in New York, California, New Jersey, and Maryland

	NY	CA	NJ	MD
Year Reforms Initiated	1999	2006	1999	2008
Prison Population Before Reform	72,899	175,512	31,493	23,239
2017 Prison Population	49,461	131,039	19,585	19,367
Prison Reduction	-23,438	-44,473	-11,908	-3,872
% Reduction	-32%	-25%	-38%	-17%
UCR Crime Rate Before Reform	3,279	3,743	3,400	4,126
2017 Crime Rate	1,871	2,946	1,785	2,722
Crime Rate Reduction	-1,408	-797	-1,615	1,404
% Reduction	-43%	-21%	-48%	-34%

Sources: Bureau of Justice Statistics, Prisoners Series and UCR Crime in the United States series.

13. A closer look at California shows that all forms of corrections have declined since 2007 as a number of reforms have been implemented (largely realignment and Propositions 47 and 57). At the same time, crime rates per 100,000 population have declined (Table 2).

14. This is not because reductions in correctional populations "caused" crime rates to decline. Rather we now know that crime rates and the rates of incarceration are largely unrelated to one another. Crime rates are more associated with the far more powerful demographic (aging population, lower and delayed birth rates, smaller households, declining juvenile arrests) and economic (lower interest rates, low inflation) factors that dwarf the impact of incarceration.[1]

Table 2. Changes in California Corrections Populations and Crime Rates 2007-2019

Year	CDCR Prison	Jail	Parole	Felony Probation	Grand Totals	Crime Rates	Violent Rates
2007	173,312	83,184	126,330	269,384	652,210	3,556	523
2008	171,085	82,397	125,097	269,023	647,602	3,461	506
2009	168,830	80,866	111,202	266,249	627,147	3,204	473
2010	162,821	73,445	94,748	255,006	586,020	3,070	440
2011	160,774	71,293	90,813	247,770	570,650	2,995	411
2012	133,768	80,136	69,453	249,173	532,530	3,185	424
2013	132,911	82,019	51,300	254,106	520,336	3,054	403
2014	134,433	82,896	44,499	244,122	505,950	2,838	396
2015	127,421	73,045	45,473	221,243	467,182	3,056	428
2016	129,416	73,174	43,814	190,686	437,090	2,995	445
2017	129,192	73,548	45,261	183,623	431,624	2,959	453
2018	124,837	74,377	47,370	166745	413,329	2,828	447
2019	124,027	73047	51923	NA	NA	NA	NA
Change	-49,285	-8,807	-78,960	-102,639	-238,881	-728	-76

15. Ironically, these reductions in the CDCR population have created a larger pool of inmates who are assessed as low risk to recidivate. Based on a 2009 data file I

[1] Austin, James, Todd Clear, and Richard Rosenfield. 2019. *Explaining the Past and Projecting Future Crime Rates:* Washington, DC: JFA Institute.

received from the CDCR, there were approximately 164,000 inmates who were scored on the Static Risk Assessment instrument. Of that population, 35% were scored as Level 1 or Low Risk. The most recent publication by the CDCR shows that the percentage scored as Low Risk has increased to 50% even as the prison population has declined by about 50,000 inmates.

16. The declining prison population and the increased percentage of low risk inmates is the result of Realignment, Proposition 47 and Proposition 57 targeting prisoners with non-violent and drug possession crimes, which tend to have higher recidivism rates, and providing credits for participation in certain programs.

17. The CDCR's Static Risk Assessment (CSRA) instrument is a statistically valid instrument that incorporates the nature of the commitment offense, including whether an individual has been convicted of a violent crime.

18. Mr. Green in his declaration makes the analytic mistake of associating a current violence conviction as a predictor of future recidivism or future violent crimes. The relationship is just the opposite. CDCR's own data show that people convicted of violent crimes have significantly lower recidivism rates.

19. The CDCR's own publication on recidivism shows an inverse relationship between the severity of the sentencing offense and recidivism rates.[2] Specifically, prisoners with a conviction for violent crimes have reconviction rates that are about half the rates of the prisoners convicted of non-violent crimes. [3]

20. Further, for all of California's released prisoners, only 7% are convicted for violent crime after release.[4]

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[2] CDCR Recidivism Report for Offenders Released From The California Department Of Corrections And Rehabilitation In Fiscal Year 2014-15. Figure 12, p. 23

[3] CDCR Recidivism Report For Offenders Released From The California Department Of Corrections And Rehabilitation In Fiscal Year 2014-15. Figure 12, p. 23.

[4]CDCR Recidivism Report For Offenders Released From The California Department Of Corrections And Rehabilitation In Fiscal Year 2014-15. Page 10.

21. The National Bureau of Justice Statistics' recidivism studies, which California participates in, shows that released prisoners convicted of violent crimes have equivalent re-arrest rates with 2/3rds not being arrested for a violent crime.[5] The percentage convicted of a violent crime is even lower.

22. California prisoners convicted of violent crimes who have longer lengths of stay have significantly lower rates of recidivism than other prisoners largely because they are older, which lowers their risk of recidivism.[6]

23. These facts also explain why the overall CDCR recidivism rates (re-arrest, reconviction, and re-incarceration) have all significantly declined since FY 2010-11.[7]

24. In summary, California has reduced its entire correctional system and at the same time has lowered its prisoner recidivism rates and crime rates. And, the current CDCR population now poses less of a threat to public safety as compared to the prisoner population that existed in 2009.

25. Significant reductions in the current prison population can be quickly achieved without increasing recidivism or crime rates.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that this declaration is executed at Camden, Carolina this 1st day of April, 2020.

/s/ James Austin Ph.D.
JAMES AUSTIN PH.D.

[5] Bureau of Justice Statistics. April 2014. Recidivism of Prisoners Released in 30 states in 2005: Patterns from 2005 to 2010, April 2014. Table 10, p. 9.

[6] CDCR Recidivism Report for Offenders Released From The California Department Of Corrections And Rehabilitation In Fiscal Year 2014-15. Appendix To The Recidivism Report For Offenders Released From The California Department Of Corrections And Rehabilitation In Fiscal Year 2014-15, Table 20, p. 44.

[7] CDCR Recidivism Report For Offenders Released From The California Department Of Corrections And Rehabilitation In Fiscal Year 2014-15. Figure 2, p. 3

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UNITED STATES DISTRICT COURTS
EASTERN DISTRICT OF CALIFORNIA
AND NORTHERN DISTRICT OF CALIFORNIA
UNITED STATES DISTRICT COURT COMPOSED OF THREE JUDGES
PURSUANT TO SECTION 2284, TITLE 28 UNITED STATES CODE

RALPH COLEMAN, et al., Plaintiffs, v. GAVIN NEWSOM, et al., Defendants.	Case No. 2:90-CV-00520-KJM-DB **THREE JUDGE COURT**
MARCIANO PLATA, et al., Plaintiffs, v. GAVIN NEWSOM, Defendants.	Case No. C01-1351 JST **THREE JUDGE COURT** **SUPPLEMENTAL DECLARATION OF MARC STERN, M.D. IN SUPPORT OF PLAINTIFFS' EMERGENCY MOTION**

DECLARATION OF MARC STERN, M.D.

I, Marc Stern, declare as follows:

1. My qualifications are set forth in my previous declaration in this action, filed on March 25, 2020. (Docket No. 3219-4.)

2. Defendants have stated that the release of medically at-risk patients from prison "is very likely to cause harm to public safety by straining the already taxed local health care systems." Def's Opp'n to Pltfs' Emergency Mot. To Modify Population Reduction Order at p. 23.

3. According to Defendants, the risk of releasing medically at-risk people from prison is that when they return to their communities, they may seek health care from their local emergency department and hospital and access other community resources.

4. This risk pales in comparison to the risk that groups of medically at-risk people living in crowded congregate housing will become seriously ill with the virus. The level of crowding in the California state prisons makes rapid transmission inevitable once the virus enters the facility. When people who are already medically at-risk contract the virus, they are at heightened risk of severe disease and are much more likely to access the community health care system. The level of care they will require at that point will far exceed the level of care Defendants expect them to require if they are released free of COVID-19.

5. If and when the virus becomes prevalent in the prisons, the rural or semi-rural community hospitals that serve the prisons will quickly become overwhelmed with a high concentration of very sick and possibly dying people who require intensive care. Inundated with very ill patients from the prisons, the hospitals will lack the space, staff and equipment to serve the larger community.

6. This is not an abstract hypothetical. In Illinois, according to a news report, 14 incarcerated people from the Stateville Correctional Center required hospitalization, dozens of inmates and staff have been isolated with coronavirus symptoms, and one inmate

has died from the virus. The National Guard was called in today to assist overwhelmed local hospitals.

7. I agree with Defendants that for those individuals who are so fragile as to require continuing care in a community skilled-nursing or assisted living facility, they might not benefit from release if they were placed in a community facility crowded to similar degree as the prison. However, based on my knowledge of the health status of individuals in prison, the vast majority of medically at-risk individuals would not require such continuing care.

8. The Defendants' assertion that released individuals would burden emergency departments and hospitals in the community is based on a 2018 study of criminal justice involved individuals by Dr. Brie Williams and others. Their reliance on this study suffers from two important limitations. First, the study was conducted in 2014. It is unreasonable to assume that the use of hospital resources by criminal justice involved individuals for non-COVID-19 problems now would be similar to the use of those resources during normal times. Second, the researchers did not distinguish between individuals who were criminal justice involved due to involvement with jails vs. prisons. If a large part of the individuals they followed were, in fact, people who had recently released from jail – something that is very possible – then any inferences drawn from that study have little or no relevance to the issue at hand.

9. In any case, Dr. Brie Williams strongly favors decreasing population density in prisons to reduce risk of COVID-19 spread in the Department of Corrections, including by accelerating release of people 50 years of age or older within two years of their release date, and the seriously ill. See "COVID-19 in Correctional Setting: Immediate Population Reduction Recommendations," March 30, 2020, attached as Exhibit A.

10. Releasing incarcerated individuals, including those who are medically at-risk, will permit them to self-isolate and maintain a sanitary environment outside of a congregate setting. By practicing social distancing in their community, they will greatly reduce the risk of contracting the virus. The health of the community is far better served

by ensuring that people who are especially vulnerable to the virus are able to socially distance and practice proper hygiene.

Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 1st day in April, 2020 in Tumwater, Washington.

Dr. Marc Stern

Exhibit A

AMEND
CHANGING CORRECTIONAL CULTURE

COVID-19 in Correctional Settings:
Immediate Population Reduction Recommendations

March 30, 2020

Please visit https://amend.us/covid for additional information and to ensure that you are referencing our most up-to-date recommendations.

Amend at UCSF is a health-focused correctional culture change program led by experts in medicine (geriatrics, infectious diseases, family medicine), public health, and correctional health and policy.

As we confront a rapidly worsening COVID-19 epidemic, **reducing population density inside correctional facilities is an urgent first-line public health measure.** Failure to reduce populations smartly and safely will significantly increase the likelihood of disease transmission in these uniquely vulnerable settings.[1] This document provides recommended immediate **first steps** towards purposeful and public health-oriented population reduction at Departments of Corrections with the goal of optimizing the health and safety of patients and staff.

The Public Health Rationale for Population Reduction

1. **Medical vulnerability**. Correctional populations are enriched with medically vulnerable patients (people of older age or with chronic medical conditions) who have the highest risk of serious illness when infected with COVID-19. This risk is compounded by limited space and few private rooms with solid doors, **making effective social distancing and compliance with "shelter-in-place" guidance virtually impossible in U.S. jails and prisons, most of which are operating at or above capacity.** In a growing number of U.S. jurisdictions, social distancing and/or "shelter-in-place" directives are the community standard healthcare recommendations. In the context of a highly transmissible infectious disease like COVID-19, it can be argued that correctional systems have a constitutional obligation to provide these same public health protections to their residents.
2. **Prisons are not isolated from local communities.** Hundreds of thousands of correctional officers and correctional healthcare workers enter these facilities every day, returning to their families and their communities at the end of each shift. The risk of transmission between correctional settings and surrounding communities is particularly elevated because COVID-19 is highly transmissible, including by asymptomatic carriers. **Decreasing population density inside U.S. jails and prisons will reduce COVID-19 transmission risk inside these facilities *and* in local communities.**

[1] For more on the unique challenges to slowing the spread of coronavirus faced by U.S. correctional systems, see Amend's guidance on *COVID-19 in Correctional Settings: Unique Challenges and Proposed Responses* at http://amend.us/covid.

3. **Jails and prisons have far less medical treatment capacity than community hospitals**. Correctional healthcare systems are designed to treat relatively mild types of respiratory problems for a limited number of people. This means that **a surge in incarcerated people with serious respiratory illness is likely to impose an unmanageable burden on community hospitals**, particularly in rural areas where many U.S. prisons are located.

The Immediate Public Health Goal of Population Reduction

The immediate public health goals of population reduction are to enable social distancing and to free up beds in every correctional facility so that *medical* isolation and quarantine wings can be created for patients diagnosed or awaiting laboratory results for COVID-19 infection. As population reduction results in increased bed space, medical isolation and quarantine units should be developed using as little population movement within the facility as possible since every new contact carries with it the potential to transmit the infection.

Immediate Steps to Take to Reduce Risk of COVID-19 Spread in Departments of Corrections

1. **Close Intake immediately.** Since it will be impossible to adequately assess recent exposures for most new admissions, any newly admitted residents should immediately enter quarantine. However, if prison intake units continue to function at their usual pace, the need to quarantine new admissions would impose considerable and *avoidable* strain on valuable resources (including areas to use for quarantine). Thus, all new admissions into U.S. prisons should be immediately suspended until medical leadership has developed an effective containment strategy for the facility, and no new infections have been recorded for 14 days. All new admissions into U.S. jails should be similarly suspended except in cases of a serious, credible threat to public safety.

2. **Decrease population density using a purposeful strategy focusing on the following high medical risk populations:**
   - **Persons 50 years of age or older within 2 years of a parole or release date.** Accelerate release for all those in age brackets known to be disproportionately vulnerable to serious illness following COVID-19 diagnosis who are scheduled to return to the community, have a home to go to, and are eligible for Medicaid or VA health benefits.[2] Increase discharge/reentry planning staff to support housing, health insurance enrollment, and medical care planning for this group.
   - **People of any age who have already completed compassionate release or medical parole request paperwork and have a housing and medical plan in place.** Prioritize seriously ill incarcerated patients for immediate release to free up medical beds in prisons, lower the likelihood of COVID-19 mortality inside these facilities, and allow correctional healthcare staff to focus attention on COVID-19 patients. In some states, Governors can take immediate action for these patients using commutation or reprieve (temporary sentence suspension) powers.
   - **All who have been successful at pardon or parole hearings but remain incarcerated pending administrative processes** (e.g. approval of housing plans already assessed by a parole board).

[2] Older age, stable housing, and access to health care are all associated with a low likelihood of recidivism. This accelerated release proposal aims to reduce the likelihood of COVID-19 exposure for correctional staff and lower the public health risks associated with a surge of patients in need of critical care via urgent transfer from prisons to community hospitals.

Individuals of all ages who meet this criterion should be released to impove outcomes for those who remain incarcerated. Particular priority should be given to those with a chronic health condition (e.g. diabetes) that increases the risk of serious illness from COVID-19.

3. **Document the medical / public health rationale for each release** to ensure decision-making is well supported by relevant medical guidance, responsive to the urgent call to action necessitated by the rapidly worsening COVID-19 pandemic, and transparent. A template for documenting essential medical / public health release information is provided in an *Appendix* to this guidance.

While undertaking medically-informed, decisive action to decrease prison populations may seem to some like an overreaction to the COVID-19 crisis, it is a critical public health intervention that will save the lives of incarcerated people, correctional staff, and people living in surrounding communities.

Amend COVID-19 Guidance & Tools developed by:

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Cyrus Ahalt, MPP

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Amend at UCSF fundamentally transforms culture inside prisons and jails to reduce their debilitating health effects. We provide a multi-year immersive program drawing on public health-oriented correctional practices from Norway and elsewhere to inspire changes in correctional cultures and create environments that can improve the health of people living and working in American correctional facilities.

Amend is currently focused on providing resources, expertise, and support to correctional systems confronting the global COVID-19 pandemic.

For more information:

https://amend.us

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Appendix. Documenting the Medical / Public Health Rationale for Accelerated Release to Mitigate Exposure and Adverse Health Consequences Associated with COVID-19

The following guidance is adapted from best practices developed by correctional healthcare providers writing narrative letters of support for patients being considered for compassionate release. Such letters are not typically required for compassionate release hearings but are employed by experienced correctional clinicians with the goal of providing decision-makers with (1) a clear understanding of the medical rationale for release, and (2) an explanation of why the correctional setting and/or the correctional healthcare delivery system is insufficient to deliver a community standard of care in the case. Regardless of the applicant's outcome, these letters are placed in the patient's file.

***Editable versions of the following template and sample letters can be found at https://amend.us/covid*

Effective letters documenting decision-making in COVID-19 accelerated release cases should include:

1. A list of the patient's medical conditions using lay terminology as much as possible.
2. A comment on the patient's general health and prognosis, including:
   - Any health conditions undermining their ability to meet the demands of daily prison life
   - Any demographic or chronic health condition(s) making them vulnerable to serious illness and/or a higher likelihood of ICU need or death from COVID-19, including the following (listed in descending order of risk severity based on knowledge as of the date this document was created):
     - Age 60-69, 70-79, or age 80 or older
     - Cardiovascular disease
     - COPD
     - Cerebrovascular disease, hypertension, diabetes
     - Other major medical conditions *such as asthma, chronic kidney disease, cancer, HIV/AIDS, etc*
3. A comment on relevant critical care capacity, including:
   - A "boilerplate" description of the facility's critical care capacity
   - A "boilerplate" description of critical care capacity at the area hospital(s) where the facility transfers patients (include any important information about COVID-19 prevalence and/or critical care burden in those communities surrounding area hospitals)
   - An estimate of how patient's release will free up healthcare staff resources
4. A comment on how exposure to COVID-19 for this patient is likely to be reduced outside prison and/or how their treatment for COVID-19 will differ in the community.
5. A short example describing how the patient's health condition affects their ability to perform basic tasks in prison, increases their medical or social vulnerability inside, or how their ongoing incarceration increases their health risk and/or health-related suffering

***An editable version of this 2-pg letter template can be found at https://amend.us/covid*

Template: COVID-19 Accelerated Release Letter [*fill-in / check box where indicated*]

The following letter documents the medical rationale for recommending this patient's immediate release in response to the risks posed by the ongoing COVID-19 pandemic. A copy has been forwarded to the appropriate authority and is included in the patient's medical record.

Based on current knowledge, AGE is the greatest risk factor for ICU need and mortality from COVID-19. *[Patient name]* is a *[age]*-year-old who falls into the following high-risk category [*choose one*]:

- ☐ Age 60 – 69
- ☐ Age 70-79
- ☐ Age 80 years or older**

***As currently understood, age 80 years or older confers the greatest risk of ICU need or death among all known risk factors. Being age 60 - 79 also substantially increases risks (risk increasing as age increases). Risks may also be elevated for those age 50-59.*

Based on current knowledge, the following comorbid conditions substantially increase risks for ICU need and mortality. This patient has the following high-risk comborbid conditions:

- ☐ Cardiovascular disease**
- ☐ COPD**
- ☐ Diabetes
- ☐ Hypertension
- ☐ Cerebrovascular disease
- ☐ Other major medical conditions that likely increase risk of serious illness, hospitalization, and/or mortality in the event of COVID-19 infection: [*list other major medical conditions such as asthma, chronic kidney disease, cancer, HIV/AIDS, etc.]*

_____

***As currently understood, cardiovascular disease and COPD confer the greatest risk among comorbid conditions. Many other comorbid conditions, particularly those listed here, also increase risk of hospitalization, ICU need, and/or death.*

This patient has / has not *[circle one]* been hospitalized in the past year for:

_____

Due to his/her poor health, this patient requires the following:

- ☐ wheelchair
- ☐ walker
- ☐ supplemental oxygen
- ☐ assistance with basic functions, such as bathing, dressing, feeding, transferring, and/or toileting
- ☐ other: *list any other special needs the patient may have*

_____

In his/her current health status, this patient requires significant medical resources, including:

- ☐ medical appointments weekly / monthly / every 2 months *[circle one]*
- ☐ frequent adjustment of medications and/or laboratory evaluation (e.g. at least once a month)
- ☐ frequent specialty care (e.g. at least every two months)

Given the above health factors, this patient poses a high risk of of critical care need and mortality if s/he contracts COVID-19. Our facility has _____ *[enter brief description of number of medical beds at your facility, if any].* If s/he were living in the community, this patient would be able to shelter-in-place and practice appropriate social distancing, which would significantly decrease his/her risk of contracting COVID-19. Such social distancing is not feasible in our institution.

Of note, the nearest community hospital has _____ *[fill in number if known; can also write "<5" or "<10" if only an approximate number is known]* ICU beds.

[If patient has changed his/her behavior in any way out of fear of COVID-19, enter a narrative description here.]

Managing this patient's health requires significant medical resources from correctional and community healthcare staff. Upon this patient's release from custody, these critical resources could be reallocated to care for the expected surge in patients affected by COVID-19.

For these reasons, the healthcare team strongly recommends this patient's immediate release, pending an appropriate housing and medical discharge plan.

***An editable version of this sample letter can be found at https://amend.us/covid*

Sample: COVID-19 Accelerated Release Letter

Mr. A is a 54-year-old man with severely reduced heart function resulting from multiple heart attacks in the past. His heart is extremely weak and he uses oxygen. He also has diabetes. He has been hospitalized in the past 6 months for heart failure. He spends most of his time in bed or in a wheelchair due to shortness of breath and fatigue, and he uses a walker. He is short of breath even when at rest.

Mr. A's overall medical vulnerability and his medical conditions mean he is at extremely high risk of critical care need and mortality if he contracts COVID-19. Studies have shown that cardiac disease alone and diabetes alone each carry a four-fold increased risk of death or ICU admission from COVID-19 and we estimate Mr. A's risk to be substantially higher given that he carries both of these diagnoses and his heart failure is particularly advanced.

Of note: our facility has 4 medical beds for patients in need of critical, all of which are currently occupied. The community hospital in our county has only 4 ICU beds and cases of COVID-19 have been identified in our surrounding communities.

Mr. A poses a high risk of requiring a medical bed or transfer to outside medical care even if he does not contract COVID-19. In his current stable status, Mr. A requires a weekly clinic appointment, close monitoring of his weight, frequent adjustment of medications, and twice monthly labs. Managing Mr. A's health requires significant medical resources from the correctional and community healthcare staff. These critical resources could be reallocated to the expected surge in COVID-19 cases upon Mr. A's release from custody.

Mr. A has expressed fear and increased anxiety related to a possible COVID-19 infection to his healthcare providers and appears to have changed his behavior, refusing to come out of his cell for recreation or day room and missing pill call while increasing the frequency of sick calls. These behavioral changes both elevate his risk of worsening health and/or death and increase healthcare staff time spent caring for Mr. A.

For these reasons, the healthcare team strongly recommends Mr. A's immediate release, pending an appropriate housing and medical discharge plan.

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UNITED STATES DISTRICT COURTS
EASTERN DISTRICT OF CALIFORNIA
AND NORTHERN DISTRICT OF CALIFORNIA
UNITED STATES DISTRICT COURT COMPOSED OF THREE JUDGES
PURSUANT TO SECTION 2284, TITLE 28 UNITED STATES CODE

RALPH COLEMAN, et al., Plaintiffs, v. GAVIN NEWSOM, et al., Defendants.	Case No. 2:90-CV-00520-KJM-DB **THREE JUDGE COURT**
MARCIANO PLATA, et al., Plaintiffs, v. GAVIN NEWSOM, Defendants.	Case No. C01-1351 JST **THREE JUDGE COURT** **SUPPLEMENTAL DECLARATION OF THOMAS HOFFMAN IN SUPPORT OF PLAINTIFFS' EMERGENCY MOTION**

I, Thomas Hoffman, declare:

1. I provide this declaration in response to the State's discussion of public safety in their opposition brief filed on March 31, 2020, and the factual assertions in the Declaration of Jeffrey Green filed the same day.

2. During my time as DAPO Director, I worked with Mr. Green, and assigned Mr. Green to sensitive, high level administrative assignments, mentored him and encouraged him to promote within the Division leadership structure. He served as part of my executive management team. I must, however, respectfully disagree with the way his March 31, 2020 declaration characterizes my statements about the usefulness of the California Static Risk Assessment. In addition, while Mr. Green's lengthy description of the current pre-parole process (the design of which I managed as Director) appears accurate as to the steps involved, it is presented in a way that gives the impression of a cumbersome process that cannot possibly accommodate the expedited releases necessary to prevent a massive COVID-19 outbreak in the prisons. In my opinion, the process that we designed is not that cumbersome, but rather is flexible enough to accommodate a release program that includes not only the persons within 60-days of release that are in the State's current plan, but that could include people within 90, 120 and 180-days of release. Finally, Mr. Green's description of the capacity of DAPO's supervision and programming resources leaves out the important and necessary option of reducing DAPO's caseload by discharging persons who are being unnecessarily maintained on parole with no benefit to public safety. Below I will address each of these items in turn.

SIGNIFICANCE OF RISK ASSESSMENT SCORES OF CURRENT CDCR POPULATION

3. Mr. Green's declaration and the State's brief accuse me of misunderstanding the California Static Risk Assessment (CSRA) tool, its purpose and its limitations. This is a strange accusation considering that the shift to a risk and needs focused supervision model, supported by an evidence based, validated risk assessment instrument that was implemented in way that was consistent with the findings and recommendations of

academic experts and practicing professionals all across this nation was first pursued in DAPO during my tenure. Furthermore, the working relationship and collaboration with the UCI Center for Evidence Based Corrections (who ultimately constructed the CSRA) was significantly strengthened and expanded during my tenure. To this day, I am in routine contact with the leadership of the Center. Pre-Parole Planning and COMPAS were both programs that I personally oversaw, encouraged and supported during my tenure. Contrary to the declaration and brief, I did not say in my declaration that CDCR should simply release people based CSRA scores, or that CSRA scores are perfect predictions of whether a person will present a danger to public safety.

4. In Paragraph 8 of my principal declaration I refer to the CDCR's publicly released recidivism statistics to show the correlation between age and recidivism as measured by new convictions. The point of this assertion is that the group most vulnerable to COVID-19 is also the group that tends to have the lowest recidivism rates, as measured by new convictions within three years of release. The State appears to be asking the Court to ignore this data based on the assertion in Mr. Green's declaration that some people re-offend without getting caught, and therefore do not show up in the statistics on which the risk assessments are based. This misunderstands the use of recidivism data to measure the differential in risk across demographic groups. The comparison between older and younger groups is valid regardless of whether some people in both groups also offend without getting caught. The purpose of risk assessment is to get useful information regarding the predictive power of factors like age in making decisions, as Mr. Green acknowledges in his declaration with regard to levels of parole supervision. (Green Decl. Para. 50.) The same thing applies to the CDCR in-custody population—the risk assessment tool shows that some segments of the population present a lower risk than other segments, especially based on age as the reports CDCR publish clearly confirm.

5. Nowhere in my principal declaration did I assert that CDCR should release people based on CSRA score alone. On the contrary, as Mr. Green's declaration points out, CDCR has many more pre-release tools at its disposal, many of which I oversaw the

implementation of for this very reason, and in routine use to reduce risks to public safety presented by the 38,000 people currently released per year, tools that can also be used to reduce public safety risks presented by expedited releases.

PRE-RELEASE PROCESS

6. I led the design of the pre-release process that Mr. Green describes in Paragraphs 3-40 of his declaration. I am aware that the process has evolved since then, but the basic outline is the same. I understand and empathize with Mr. Green's "serious concerns" about the impact of expedited releases on this process. I note that Mr. Green, however, did not say that the process is not up to the task of handling expedited release, just that he has "serious concerns." The process that Mr. Green describes is not so cumbersome or inflexible that it cannot handle the expedited pace of releases necessary to prevent a massive COVID-19 outbreak inside the prisons.

7. The risk assessment step, which Mr. Green places at 270 days before parole, is based on survey tools that were designed to be simple to administer. As Mr. Green states, the CSRA is entirely automated, and the STATIC 99R takes up to 1 ½ hours to complete. As Mr. Green states, however, the STATIC 99R is used only for male sex offenders, along with the version for female sex offenders mentioned in Paragraph 7 of this declaration.

8. The Criminogenic Needs Assessment at between 180-210 days before parole uses the COMPAS tools that I brought into the department during my tenure. This is a valuable tool for assessment the parolee's need for services on release, and as Mr. Green states it takes about 1 ½ hours to complete.

9. The Release Program Study at between 180-210 days before release was already in place during my tenure at DAPO and provides a summary for the supervising agent. As Mr. Green states, it takes about 1 hour to complete.

10. The Transitional Case Management Program (90-120 days before parole) was expanded significantly during my tenure at DAPO and is important for connecting

parolees with available public benefits. Mr. Green does not provide any time estimates for this process. I estimate 1½ hours for each parolee.

11. As Mr. Green states, the Out of State Transfer process (90-120 days before parole) is suspended during the COVID-19 emergency, but even if this casework is still happening, his estimate of about 1 hour per case appears accurate. Most parolees, however, are not candidates and therefore would not require this work, even without the current suspension.

12. Direct Placement of parolees into DAPO funded services (30-90 days before release) does not apply to all parolees, as DAPO does not provide such services to all parolees. For those few fortunate people to whom DAPO does offer such services, Mr. Green's estimate of 3 hours of work per case seems plausible, though somewhat high.

13. Prerelease Video Conferencing (30-90 days before release) is a new process as part of the realignment of supervision from parole to Post Release Community Supervision. Although this process was not in place during my tenure, the estimate of 1 hour seems appropriate. It only applies to persons being released to county supervision.

14. The service of parole conditions and reporting instructions (30-90 days before release) has been a standard part of the pre-release process, and the estimate of 1 hour appears appropriate.

15. All these workload estimates, (excluding the suspended Out of State Transfer process) total 6.5 hours for persons being released without any Direct Placement to DAPO funded services, and 9.5 hours for persons with Direct Placement. For persons already within 180 days of release, the first three steps, or 4 hours of workload, have already been done, leaving a 2.5-hour workload for non-Direct Placement parolees, and 5.5 hours for Direct Placement parolees. It is my opinion that such an additional workload is feasible and worthwhile to prevent a massive outbreak of COVID-19 in the prisons, and the resulting impact such an outbreak would have in the larger community. According to its website, CDCR is already deploying "on-site multidisciplinary teams at each institution to expedite the pre-release coordination." *See*

https://www.cdcr.ca.gov/news/2020/03/31/cdcr-announces-plan-to-further-protect-staff-and-inmates-from-the-spread-of-covid-19-in-state-prisons/. In addition, CDCR and DAPO have publicly announced the creation of strike teams to work overtime on this process. *See* https://www.cdcr.ca.gov/covid19/frequently-asked-questions-for-plan-on-expedited-release-and-increased-physical-space-within-state-prisons/.

SUPERVISION CAPACITY

16. Mr. Green describes the limitations of rehabilitative services and housing for parolees, and expressed concerns about overtaking resources. There is a key step that the State can and should take to make more resources available for parole supervision, and at the same time bring California into line with the evidence and research-based practices in parole supervision. I have been working with criminal justice stakeholders for several years to bring about a necessary reduction in the California parole caseload. California currently wastes a significant portion of its supervision resources on parolees who have been crime and violation free for significant periods, and for which the public sees no public safety benefit from continued supervision. In fact, the waste of supervision resources on long-term, low-risk parolees harms public safety by diverting resources that could be better spend on newly released individuals, and high-risk individuals already on parole.

17. DAPO can and should immediately audit the existing parole population to identify all persons who can be immediately discharged from parole. This population reduction will allow agents to focus on newly released people. Recent estimates are that many people currently under DAPO control will meet this threshold and therefore could be discharged. Reducing the parole population in safe and evidence-based manner is necessary so that DAPO will have the staffing and program capacity to effectively evaluate, supervise and provide services to persons released under a COVID-19 plan.

18. Research demonstrates that persons who have been violation and crime free for the first six months of supervision present an extremely low risk for future offenses. DAPO can and should immediately discharge from parole all persons who have served the

initial 180 days without a violation or the commission of a new offense, unless the person does not consent to discharge, or unless DAPO can objectively demonstrate that the parolee should be retained on parole based on current behavior showing a likelihood that they parolee will be involved in a violent crime absent continued supervision and monitoring. Discharging parolees from supervision at 180 days is already authorized under Section 3001 of the Penal Code. This release policy is based on evidence that persons who are violation-free and crime free during the initial six months are very unlikely to recidivate, regardless of commitment offense. This includes persons released from life sentences. The evidence shows that persons paroled from life sentences are more likely to successfully reintegrate into society than all other populations released from prison, due in part to their age. This fact is supported by the recidivism data CDCR itself publishes.

19. Discharging compliant parolees would free up resources not only for expedited releases, but also for reducing agent caseloads, and allowing a transition from the current "specifications" model of parole supervision to an individual casework model. The "specifications" model simply encourages parole agents to "check the boxes" for a certain number of contacts, drug tests, etc. Conversely, the casework model encourages the parole agent to thoughtfully develop a supervision strategy that is individual specific and evaluated on the basis of the strategies ability to improve the likelihood the person will successfully reintegrate into society, not in the swift and harsh recognition of his/her missteps and failures as is so often the case today. Evidence shows that personalized reintegration strategies built around a reward and incentive-based program that are strengthened by a shared commitment to develop informed relationships between agents and people under their control significantly improves outcomes and promotes public safety.

20. Mr. Green expresses concern about the county probation caseloads for persons released to county supervision. Counties, like DAPO, are also carrying too many people on continued supervision well past the point of any public safety benefit. County

probation departments can reduce their caseloads by also discharging from supervision all persons who have served the initial 180 days without a violation or new crime unless the person does not consent to discharge, or unless the supervising agency can objectively demonstrate that the person should be retained on supervision based on current behavior showing a likelihood that they will be involved in a violent crime absent continued supervision and monitoring. Discharging persons from county supervision is already authorized by Section 3456 of the Penal Code. Governor Newsom's proposed budget for the next fiscal year already includes significant probation reform, to include reducing the terms of probation for convicted offenders. *See* http://www.ebudget.ca.gov/2020-21/pdf/BudgetSummary/PublicSafety.pdf, at pages 141.

21. CDCR and DAPO can take additional steps to ensure successful expedited releases. For example, CDCR can and should modify the requirement that newly released prisoners must report to the parole office within 48 hours. This requirement does not work when prisoners must travel across the state, during times of reduced mass transit service. Instead reporting times should be set based on the distance the parolee must travel and provide a realistically achievable mechanism (state funded transportation to the DAPO office) that this requirement can be realistically met by the person being released from an institution. Ensuring people safely and promptly are united with the Agent in charge of their supervision will improve outcomes and public safety in our communities. DAPO's COVID-19 announcement addresses changes to routine reporting requirements, but not this initial 48-hour reporting deadline. *See* https://www.cdcr.ca.gov/covid19/division-of-adult-parole-operations/. It is my opinion that DAPO has the ability to address this challenge, and has already done so, as shown by the transportation section of its recently updated website page on expedited releases. *See* https://www.cdcr.ca.gov/covid19/frequently-asked-questions-for-plan-on-expedited-release-and-increased-physical-space-within-state-prisons/

22. CDCR and DAPO can also take steps to reduce the risks of homelessness by increasing the availability of housing subsidies, and replacing the "gate money" frozen at

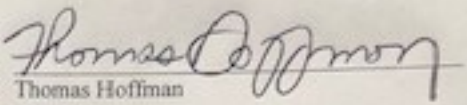
$200 since the 1970s with a larger and more realistic amount delivered in ways that channel the money toward housing.

23. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration is executed at Folsom, California this 1st day of April, 2020.

/s/ Thomas Hoffman
Thomas Hoffman

$200 since the 1970s with a larger and more realistic amount delivered in ways that channel the money toward housing.

23. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration is executed at Folsom, California this 1st day of April, 2020.



Thomas Hoffman