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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SOLANO

UFW FOUNDATION, LAURA HART, JOHN DOE, and JEANNIE PARENT

Petitioners/Plaintiffs,

vs.

THE COUNTY OF KERN, et al.

Respondents/Defendants.

Case No. CU24-03274

Assigned to Hon. Judge Daniel Healy (pursuant to reassignment and transfer orders dated April 10, 2024, issued by Kern County Superior Court, Case No. BCV-23- 101419)

PETITIONERS' OMNIBUS* OPPOSITION TO DEMURRERS
**Pursuant to May 31, 2024 Joint Stipulation & Order*

Date: July 10, 2024
Time: 8:30 a.m.
Department: Courtroom 103, Dpt. 2

Complaint Filed: May 8, 2023
Trial Date: N/A

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INTRODUCTION

Respondents cannot plausibly contend that their uncounseled, fast-track plea system satisfies the legal duties they owe to the thousands of indigent defendants who file through the misdemeanor arraignment courtrooms every year. The law obligates Respondents to guarantee the rights to counsel and due process, nondiscrimination, and court access. Petitioners' allegations show Respondents fail to satisfy their obligations.

Respondents' contentions in demurrer are meritless. Because the merits issues largely dictate the outcome of the jurisdictional issues, Petitioners address the former before addressing the latter. *First*, Respondents' practices are legally indefensible and not within the realm of legitimate discretion. *Second*, Petitioners' allegations establish mandamus jurisdiction over Respondents. *Third*, Petitioners state a claim that Respondents illegally expend government funds in violation of Civil Procedure Code § 526a. *Fourth*, Petitioners need not meet a separate standard for injunctive relief at this stage. *Finally*, this case is not moot.

FACTUAL ALLEGATIONS

Petitioners sued Kern County, County officers, Kern County Superior Court, Court officers, and the Sheriff for operating a fast-track system where judicial and county personnel extract uncounseled guilty pleas at misdemeanor arraignment. (Compl. ¶¶ 1–4, 13–19, 23–30, 42–51.) Petitioners allege that probation officers, with no prosecutorial oversight, determine and convey plea offers to defendants and then pressure defendants to waive their trial rights and enter guilty pleas at arraignment without defense counsel present or providing representation. (*Id.* at ¶¶ 27–30, 42–47, 51–53, 56.) In a brief colloquy, the judge confirms the defendant signed the waiver form before accepting the plea and sentencing the defendant. (*Id.* at ¶¶ 37–39, 49, 51, 54–55.) Kern's practices have resulted in more than 50,000 uncounseled guilty pleas since 2015, with serious consequences for many defendants. (*Id.* at ¶¶ 1, 3–4, 22–56, 60–62, 77–95.)

STANDARD OF REVIEW

"On a demurrer a court's function is limited to testing the legal sufficiency of a complaint." (*Fremont Indemnity Co. v. Fremont General Corp.* (2007) 148 Cal.App.4th 97, 113-114 ["demurrer may not be turned into a contested evidentiary hearing"].) "[I]n testing a pleading

against a demurrer the facts alleged in the pleading are deemed to be true." (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) A demurrer must not be sustained if the pleading states facts from which *any* liability results. (*Siciliano v. Fireman's Fund Ins. Co.* (1976) 62 Cal.App.3d 745, 751, emphasis added.) A petitioner's ability to prove the allegations is irrelevant when reviewing a demurrer. (*Berg & Berg Enterprises, LLC v. Boyle* (2009) 178 Cal.App.4th 1020, 1034.) Moreover, the propriety of ultimate relief is not an issue for demurrer. (*Venice Town Council, Inc. v. City of L.A.* (1996) 47 Cal.App.4th 1547, 1562.)

ARGUMENT

I. Respondents' Misdemeanor Plea Mill Violates the Constitution and State Law.

A. Petitioners State Right to Counsel and Due Process Claims (Counts 1-3).

Contrary to Respondents' assertions (Judicial Respondents' Demurrer [hereinafter "JR"] at 11–14; County Respondents' Demurrer [hereinafter "CR"] at 16–19), the law does not permit Respondents to deny defendants access to defense counsel for critical stages of their criminal proceedings. Nor does it permit summary waivers of trial rights without meaningful individualized advisals; or for probation officers to pressure misdemeanor defendants to accept pleas then endorsed by judges in a fast-track process. Petitioners have alleged facts sufficient to state a claim that Respondents violated their duties to guarantee the rights to counsel and due process.

1. The Law Does Not Allow the Systemic Deprivation of Counsel at Misdemeanor Arraignment Proceedings Where Plea Offers Are Conveyed.

Kern's plea mill systematically deprives defendants of the right to counsel. Petitioners allege that defense counsel are functionally absent during the critical stages of arraignment, plea bargaining, and pleading.[1] The fleeting presence of defense counsel—making a brief statement to assembled defendants, but departing with few if any consultations, and no actual representation—constitutes the denial of counsel. (See *De Roche v. U.S.* (9th Cir. 1964) 337 F.2d 606, 607 [the right to "effective assistance of counsel implicitly embraces adequate opportunity for the accused and his counsel to consult, advise and make such preparation for arraignment and trial as the facts

[1] Respondents contend there is no allegation of the failure to appoint counsel when requested. (CR at 17.) In fact, Petitioners alleged as a specific example a noncitizen who requested counsel only to change course when the judge told him he did not qualify. (Compl. ¶¶ 88–89.)

of the case fairly demand"]; *Hurrell-Harring v. State of N.Y.* (2010) 930 N.E.2d 217, 222–223 [claim for systemic violations in provision of indigent defense was cognizable in part because 10 of 20 plaintiffs "were altogether without representation at the[ir] arraignments" where right to counsel is "fully implicated"].) A criminal proceeding may be unconstitutional because of either actual or constructive denial of counsel. (*U.S. v. Cronic* (1984) 466 U.S. 648, 659–662.)

An arraignment system violates the constitutional right to counsel when, due to structural limitations, counsel is either absent or compromised and pleas are taken. In *Rhyne*, for instance, the Court of Appeal granted a writ of mandate against the Municipal Court for "clear[ly] and wilful[ly] fail[ing] . . . to recognize and to give effect in any real fashion to the constitutionally guaranteed right to counsel." (*Rhyne v. Municipal Court* (1980) 113 Cal.App.3d 807, 821.) The facts in *Rhyne* resemble those alleged by Petitioners here: misdemeanor defendants at arraignment "were asked to initial and sign an advisal of constitutional rights form" with a clerk, and if they "desire[d] to plead guilty" also signed a waiver form; no defense counsel was available at arraignment; all defendants "received a mass admonishment by the court"; and many defendants entered guilty pleas in a constitutionally suspect manner. (*Id.* at pp. 813–814; see also *In re Newbern* (1959) 168 Cal.App.2d 472, 476–77 [denial of constitutional rights where defendants were "advised" of rights by public defender in public address system].)

County Respondents contend that the state legislature has endorsed the deprivation of counsel absent an express request by a defendant or a court order. (CR at 17, *citing* Gov. Code, §§ 27705.1, 27706, subd. (a).) This is not true. "[T]he right to counsel does not depend upon a request by the defendant." (*Brewer v. Williams* (1977) 430 U.S. 387, 404.) Instead, it attaches at all "critical" stages.[2] In Kern, the first critical stage is, at latest, the initiation of the plea process which occurs before formal arraignment. (Compl. ¶¶ 27–30, 52–53.) When such a critical stage occurs before formal arraignment, defendants are entitled to counsel. (See *People v. Reese* (1981) 121 Cal.App.3d 606, 611 ["The return of an indictment or the filing of an information invokes the

[2] Respondents do not, and could not, contest that the right to counsel attaches at all "critical" stages, including arraignment and plea bargaining. (See *Hamilton v. Alabama* (1961) 368 U.S. 52, 54 [arraignment]; *In re Alvernaz* (1992) 2 Cal.4th 924, 933–34 [plea bargaining].)

right to counsel, even before the defendant is arraigned."].) In Kern, counsel does not appear or provide counsel or representation during arraignment in any event. (Compl. ¶¶ 42–47, 56, 62.)

Moreover, the public defender "exercises an original power vested in him by statute, not superior to but coequal with the power of the court to determine whether a person is entitled to be represented by the public defender." (*Gardner v. App. Div. of the Sup. Ct. of San Bernardino Cnty.* (2019) 41 Cal.App.5th 1139, 1146, internal quotation omitted.) Nothing in the statutory framework limits public defenders from counseling defendants at arraignment, or requires court appointment as a prerequisite. Contrary to County Respondents' assertion (CR at 17), Gov. Code § 27706(a) bestows an obligation upon the public defender; it does not relieve the public defender of responsibility absent court action. (See *Joshua P. v. Superior Court* (2014) 226 Cal.App.4th 957, 963–964 ["The public defender is required by statute to determine whom to represent."].) But even if Section 27706(a) were ambiguous, it must be construed to promote rather than defeat the constitutional right. (*In re Johnson* (1965) 62 Cal.2d 325, 330.) The legislature has not overridden, and could not override, the fundamental constitutional guarantee of effective assistance of counsel.

2. The Law Does Not Permit Summary Waivers of Fundamental Trial Rights.

Kern's waiver of counsel procedures are constitutionally defective because they invert the presumption against waiver; lack specific, on-the-record inquiries by the judge which confirm a valid waiver; fail to advise defendants of the dangers of waiving representation; provide inaccurate information to misdemeanor defendants; and fail to take into account the particular obligations required to protect the rights of noncitizens and people with mental disabilities.

Respondents do not ensure the "intentional relinquishment or abandonment of a known right or privilege." (*Johnson v. Zerbst* (1938) 304 U.S. 458, 464.) The Court must start from the presumption that there was *not* a valid waiver. (*People v. Marshall* (1997) 15 Cal.4th 1, 20 ["The right to counsel persists unless the defendant affirmatively waives that right" and "[c]ourts must indulge every reasonable inference against waiver[.]"]; *In re Johnson*, *supra*, 62 Cal.2d at p. 334.) Respondents have created a fast-track plea system which tilts steeply in favor of the waiver of fundamental rights, and privileges the preservation of Respondents' resources over all else.

Respondents do not meet their obligations to ensure heightened advisals which are specific

and on the record in advance of an uncounseled plea. (See, e.g., *People v. Howard* (1992) 1 Cal.4th 1132, 1175, 1179; *In re Tahl* (1969) 1 Cal.3d 122.) The trial court has the "serious and weighty responsibility" to determine whether there has been a voluntary, intelligent and competent waiver of the right to counsel. (*Johnson*, *supra*, 304 U.S. at p. 335.) "A perfunctory hearing is improper." (*Curry v. Superior Court* (1977) 75 Cal.App.3d 221, 225.)

> To be valid [a] waiver [of the right to counsel] must be made with an apprehension of the nature of the charges, the statutory offenses included within them, the range of allowable punishments thereunder, possible defenses to the charges and circumstances in mitigation thereof, and all other facts essential to a broad understanding of the whole matter.

(*Von Moltke v. Gilles* (1948) 332 U.S. 708, 724.)[3] Nothing of the sort is provided in Kern. Respondents provide information to defendants that is nonspecific, inaccurate, and coerces a summary waiver. Probation officers provide waiver forms with pre-marked areas for defendants to sign. Respondents show a mass advisal video, not watched by all defendants, that included misrepresentations regarding fees for counsel.[4] (Compl. ¶¶ 24–25, 31–40, 54–56, 103-107.)

County Respondents also argue that any *county* obligations to advise regarding immigration consequences arise only *after* "defense counsel has been assigned." (CR at 20.) But Petitioners have alleged that Respondents have engineered a system that *eliminates* the "assignment of counsel" for a large portion of misdemeanor defendants. (Compl. ¶¶ 45–47, 52–56.) Respondents cannot dispose of their obligations that effortlessly. "It surely cannot be that government, state or federal, is able to evade the most solemn obligations imposed in the Constitution by simply resorting to [another] form." (See *Lebron v. Nat'l R.R. Passenger Corp.* (1995) 513 U.S. 374, 397.) Moreover, the generic court advisal pursuant to Penal Code § 1016.5(a) on its own is insufficient to properly put the defendant on notice of adverse immigration consequences. (*People v. Patterson* (2017) 2 Cal.5th 885, 895–896 ["[T]he 'actual

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[3] The *Rhyne* court held that consultation with counsel prior to a plea was necessary for a "misdemeanor defendant . . . to intelligently and knowledgeably waive his constitutional rights." (*Rhyne*, *supra*, 113 Cal.App.3d at p. 822 ["To leave this function to unexplained forms is to effectively deny advice of counsel."].)

[4] Misstatements by government actors during a discussion on the waiver of rights are sufficient to render the waiver unknowing and involuntary. (See *United States v. Russell* (D.C. Cir. 1982) 686 F.2d 35, 41, abrogated on other grounds by *Padilla v. Kentucky* (2010) 559 U.S. 356.)

risk' that the conviction will lead to deportation—as opposed to general awareness that a criminal conviction 'may' have adverse immigration consequences—will undoubtedly be a 'material matter[ ]' that may factor heavily in the decision whether to plead guilty."].)

Respondents point to *Ruffin* for the proposition that a constitutionally valid waiver does not require specific language. (JR at 12.) However, *Ruffin* recognized that "[t]he record as a whole must demonstrate 'that the defendant understood the disadvantages of self-representation, including the risks and complexities of the particular case.'" (*People v. Ruffin* (2017) 12 Cal.App.5th 536, 543–544, 548–549, citing *People v. Bush* (2017) 7 Cal.App.5th 457, 469.) The record here shows Respondents do not provide misdemeanor defendants with information that would enable that understanding. Moreover, Respondents do not provide any of the warnings that *Ruffin* suggests should be provided *at a minimum* to uncounseled defendants.[5]

Respondents' reliance on *Johnson* and *Mills* is unavailing. (See CR at 16, 19 & JR at 11.) As an initial matter, *Mills* is centered on a review of two scenarios in which *counsel* presented waiver forms and "affirm[ed] that he informed his client of his rights and that his client knowingly and voluntarily waived them." (*Mills v. Municipal Court* (1973) 10 Cal.3d 288, 292.) Neither plea occurred at the first appearance. This is contrary to the facts here. Moreover, the fundamental holding of *Johnson* and *Mills* is that a court must engage in a fact-specific analysis to determine whether the waiver practices satisfy constitutional requirements. In *Mills*, the Supreme Court explained that the waiver of constitutional rights inherent in a guilty plea may be less formal in the context of a misdemeanor charge "so long as fundamental constitutional rights are not sacrificed." (*Id.* at p. 292. See also *In re Johnson*, *supra*, 62 Cal.2d at p. 332 ["no hard and fast rule, no ideal procedure, will accommodate the diverse problems facing our arraignment courts today; rather, the circumstances of each method of informing defendants of their rights should, if challenged, be

[5] These recommended advisals include: "self-representation is almost always unwise;" "the prosecution will be represented by experienced, professional counsel who will have a significant advantage over him[;]"and "he will lose the right to appeal his case on the grounds of ineffective assistance of counsel." (*Id.* at p. 544, citing *People v. Sullivan* (2007) 151 Cal.App.4th 524, 545–546 [Their "total absence is certainly a factor to consider in determining whether the defendant's waiver was knowingly made."]; see also *People v. Lopez* (1977) 71 Cal.App.3d 568, 572–574 [advising certain specified procedures and an inquiry into factors concerning mental capacity].)

carefully weighed in the constitutional balance"].) The practices in Kern are such that systemic deficiencies *do* sacrifice the fundamental constitutional rights of misdemeanor defendants.

First, *Johnson* and *Mills* did not expressly consider a system, as in Kern, which inverts the presumption against waiver by loading the system in favor of waivers. (See p. 18, *supra*.)

Second, *Johnson* and *Mills* considered the "complexity and seriousness" of the charges and penalties in determining whether "a somewhat less stringent rule" regarding waiver of counsel "might be constitutionally permissible in misdemeanor cases." (*Id.* at p. 337 [permitting withdrawal of pleas for defendant sentenced to jail for misdemeanor vehicle code violations as charges had sufficient "complexity and seriousness" to require a well-documented waiver to satisfy the constitutional mandate].) In the half-century since *Johnson* and *Mills* were decided, the consequences for misdemeanor convictions—as well as the legal framework related to potential alternative dispositions—have changed drastically and are sufficiently complex and serious to require a fulsome waiver not found here. A misdemeanor conviction can lead to severe immigration and other consequences.[6] (Compl. ¶¶ 82–107.) There are also myriad alternative dispositions, such that the same misdemeanor offense can result in either jail time and a criminal record, or diversion and dismissal.[7] (*Ibid.*) Defendants arraigned under the challenged system would have no way of knowing about available alternative disposition options prior to a plea.

Finally, there has been a sea change in procedural protections regarding potential immigration consequences and competency. *Mills* predated landmark cases recognizing that the right to counsel *requires* defense counsel to advise noncitizens of the immigration consequences of pleading guilty to a particular offense. (*People v. Soriano* (1987) 194 Cal.App.3d 1470; *Padilla v. Kentucky* (2010) 559 U.S. 356.)[8] It also predated the complete overhaul of the competency

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[6] There are at least 580 distinct collateral consequences for misdemeanor convictions in California alone. (See generally Corda, *Crime and Justice*, 52 CRIME J. 447, 453–454 (2023).)

[7] In the last decades, California has expanded the range of diversion options available to people facing misdemeanor charges to include, e.g., mental health diversion, judicial diversion, military diversion, and drug diversion (Pen. Code, §§ 1000–1000.4, 1001.21, 1001.36, 1001.80, 1001.95.)

[8] Defense counsel also have a duty to try to mitigate immigration consequences by negotiating with the prosecution for an alternative plea, and prosecutors have an affirmative duty to consider

restoration procedures in California, to comply with a constitutional mandate, and more recent reforms that prohibit restoration of individuals deemed mentally incompetent and charged with misdemeanors. (See *In re Davis* (1973) 8 Cal.3d 798; *In re Polk* (1999) 71 Cal.App.4th 1230, 1235–1236; Pen. Code, §§ 1370.01, 1370.2.) Kern's fast-track system fails to identify noncitizens and people with indicia of incompetency entitled to these additional safeguards.

Respondents' other authority is similarly unconvincing. One of those cases, *Sundance* (see CR at 18–19), involved a lower court holding that misdemeanor arraignment practices for public inebriation violated due process. (*Sundance v. Municipal Court* (1986) 42 Cal.3d 1101, 1128.) The California Supreme Court did not upset that uncontested holding. (*Id.* at pp. 1128-1129.) The Supreme Court further recognized that "the elements of the offense must be explained to [] arrestees prior to acceptance of their pleas" and any "waiver of the right to counsel, right to trial, right to confront his accusers and right to be free from compulsory self-incrimination 'must be expressly and individually stated or declared on the record by the defendant to the Court.'" (*Ibid*.)

Respondents' other authority, while accepting *in isolation* one aspect or another of arraignment proceedings that Respondents employ, certainly do not authorize the panoply of deficiencies alleged by Petitioners. (CR at 16, 19, citing *Macias v. Municipal Court* (1986) 178 Cal.App.3d 568, *People v. Shannon* (1981) 121 Cal.App.3d Supp. 1, 6, *People v. Torres* (1979) 96 Cal.App.3d 14, 19; JR at 11, *citing Ganyo v. Municipal Court* (1978) 80 Cal.App.3d 522.) In *Macias*, the court took pains to identify that the arraignment procedures, as a whole, did not evince a "gross, consistent pattern of denial of most fundamental constitutional rights."[9] (*Macias*, *supra*, 178 Cal.App.3d at p. 577.) In particular, the court found "substantial evidence" that constitutionally adequate judicial admonishments were typically provided in that court in advance of guilty pleas. (*Id.* at p. 578.) That is not true here. Moreover, *Shannon* and *Torres* found that a defendant may waive counsel without understanding the dangers of self-representation as to

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the avoidance of adverse immigration consequences. (See Pen. Code, §§ 1016.2, 1016.3, 1473.9, subd. (a)(1); *People v. Bautista* (2004) 115 Cal.App.4th 229, 240-242.)

[9] *Frederickson* and *Bloom* (see CR at 16; JR at 12) are inapposite as defendants *had* advisory counsel even after valid *Faretta* waivers. (*People v. Frederickson* (2020) 8 Cal.5th 963, 991-92; *People v. Bloom* (1989) 48 Cal.3d 1194, 1225.)

certain particularly simple misdemeanors. But that conclusion does not support the dismissing of Petitioners' counsel-related claims that apply to *all misdemeanors*. (Compl. ¶¶ 31, 34, 70 [alleging months-long jail sentences for many defendants].) *Ganyo*, for its part, did not involve the compound errors at issue in this case, but simply challenged "the method of recording the answers" in a plea colloquy. (*Ganyo*, 80 Cal.App.3d at p. 529.) Finally, *Shannon, Torres,* and *Ganyo* concerned individual post-conviction relief rather than systemic challenges, which requires a different analysis involving different interests. (See *Kuren v. Luzerne Cnty.* (2016) 637 Pa. 33, 85–86 [identifying divergence between "structural claim[s]" and "individual one[s] in light of, e.g., 'deference' to initial judgment and 'interests in avoiding a retrial'"].)

3. Respondents' Arraignment Practices Violate Due Process.

Petitioners have alleged facts showing at least three manner of due process violations in Kern's misdemeanor arraignments.[10] First, the waiver of rights by misdemeanor defendants are not knowing and voluntary. Second, Kern's misdemeanor arraignments are not fundamentally fair under California's evolving rules and procedures to protect the rights of criminal defendants, particularly non-citizens, those with cognitive or mental health disabilities, and those who may be eligible for alternative dispositions. Finally, additional procedural safeguards, including a meaningful opportunity to consult with counsel, are necessary to make misdemeanor arraignments fair under the balancing test of *Mathews v. Eldridge* (1976) 424 U.S. 319, as incorporated in state constitutional doctrine.

As an initial matter, the unlawful waiver of rights described above (Section I.A.2, *supra*), which violates the constitutional right to counsel, *also* violates due process. (See *Boykin v. Alabama* (1969) 395 U.S. 238, 243 fn. 5 [unless a waiver is "equally voluntary and knowing, it has been obtained in violation of due process and is therefore void[]"].)

Kern misdemeanor arraignments also violate due process because they are fundamentally unfair. The fundamental fairness doctrine involves a fact-intensive inquiry and recognizes that

[10] In criminal proceedings, due process has an "independent potency" relative to enumerated individual rights, like those in Article I, Section 15. (*Adamson v. California* (1947) 332 U.S. 46, 66 (Frankfurter, J., concurring).)

"even longstanding practices are subject to constitutional scrutiny and must meet the advancing standards of due process." (*Gordon v. Justice Court* (1974) 12 Cal.3d 323, 328.) "What is fair in one set of circumstances may be an act of tyranny in others." (*Snyder v. Mass.* (1934) 291 U.S. 97, 117, overruled on other grounds by *Malloy v. Hogan* (1964) 378 U.S. 1.)[11] Here, even *if* the right to consult with counsel prior to deciding whether to plead guilty at arraignment were *not* protected by Article I, Section 15 and other due process principles, it would be protected by fundamental fairness, particularly in light of the significant legal changes favoring misdemeanor defendants over the past several decades which are lost when an uncounseled misdemeanor defendant pleads guilty at arraignment. (See pp. 21–22, *supra.*)

Finally, Petitioners also state a due process claim because *Mathews*-type balancing demonstrates that additional procedural safeguards, including a meaningful opportunity to consult with counsel before a defendant decides whether to waive their rights and plead guilty, are necessary to make Kern misdemeanor arraignments fair. Under California law, four factors determine whether additional procedural safeguards are necessary: (1) the individual's private liberty interest, (2) the risk of an erroneous deprivation of liberty absent those safeguards, (3) the government's interest in existing procedures, and (4) "the dignitary interest in informing individuals of the nature, grounds, and consequences of the action and in enabling them to present their side of the story before a responsible government official." (*In re Harris* (2021) 71 Cal.App.5th 1085, 1099 (cleaned up), quoting *Today's Fresh Start, Inc. v. L.A. Cnty. Off. of Educ.* (2013) 57 Cal.4th 197, 212.)[12] Applying these factors to Petitioners' allegations demonstrates the need for an opportunity to, at minimum, consult with counsel before a guilty plea at arraignment.

First, freedom from even a relatively brief detention or imprisonment is an exceptionally weighty interest. (*See Iraheta v. Superior Court* (1999) 70 Cal.App.4th 1500, 1506 [this "factor []

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[11] Fundamental fairness has, for example, required the appointment of counsel in circumstances where the state asserted no such right existed under other constitutional precedent. (See *Powell v. Alabama* (1932) 287 U.S. 45, 68-69 [holding that due process required appointment of counsel and noting, "[t]he right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel"].)

[12] The California Supreme Court granted review of *In re Harris* on other grounds, but directed that it remain published and citable pending review. (*Harris on H.C.* (2022) 506 P.3d 2.)

implicitly recognizes the significance of a defendant's particularly weighty interest in physical freedom"].) Kern misdemeanor defendants face mandatory jail time for some of the most common charges (e.g., a DUI under Vehicle Code section 23152), and regularly face sentences of weeks or months. (Compl. ¶¶ 86, 103, 104 fn. 29, 105–107.)

Second, the risk of erroneous deprivation—*i.e.*, a guilty plea where one would not have otherwise been entered, or a so-called "false conviction" (a guilty plea despite factual or legal innocence)—is significant without an opportunity to consult with counsel. Misdemeanor defendants face a barrage of incorrect and incomplete information and what is effectively a pitch by probation officers to plead. (*Id.* at ¶¶ 27–31, 52-53, 62–63.) The risk of erroneous deprivation is heightened for defendants of limited English proficiency ("LEP") and/or cognitive or mental disabilities. (*Id.* at ¶¶ 57–62, 64–70, 97–102.) Respondents cannot evade the numerous additional protections and benefits provided by state law for noncitizens, those with mental disabilities, and those eligible for diversion (see pp. 21–22, *supra*) by engineering a plea system that does not include defense counsel. (See *Cleveland Bd. of Educ. v. Loudermill* (1985) 470 U.S. 532, 541 [a liberty interest "cannot be defined by the procedures provided for its deprivation"].)

Third, while Respondents may ultimately seek to prove that misdemeanor arraignments are more efficient and inexpensive without counsel, there are no facts in the record supporting greater efficiency or cost savings. Accordingly, any hypothetical weight this factor might bear would be "speculation" which the court "does not consider" at this stage. (*Shea Homes Ltd. P'ship v. Cnty. of Alameda* (2003) 110 Cal.App.4th 1246, 1254.) In any event, resource constraints cannot nullify the right to counsel. (See *Argersinger v. Hamlin* (1972) 407 U.S. 25, 37 fn. 7.)

Fourth, defendants have a strong dignitary interest in access to counsel prior to deciding whether to plead guilty. Kern's perfunctory and uncounseled misdemeanor procedures "dispose of a person's significant interest without offering him a chance to be heard [which] risk[s] treating him as a nonperson, an object, rather than a respected, participating citizen." (*People v. Ramirez* (1979) 25 Cal.3d 260, 267–268, quotation omitted.) Kern misdemeanor defendants face a beguiling experience involving a mass, defective video advisal; plea offers by probation officers whose role is murky; the utilization of a dense waiver form; and brief interactions with the judge.

(Compl. ¶¶ 24–41.) These procedures inhibit their meaningful participation, further weighting the analysis in favor of additional procedural safeguards.

B. Petitioners State a Claim Under Gov. Code § 11135 for Disparate Impact Discrimination Against Limited English Proficient Defendants (Count 4).

Respondents' position that they supply ample interpretation services (JR at 13; see also CR at 20–21) simply misunderstands Petitioners' Government Code section 11135 claim (Count 4). While additional interpretation may be necessary (Compl. ¶ 62), Petitioners' allegations focus on the disparate outcomes between LEP defendants and others. Those allegations state a claim under Section 11135 by showing that Kern's arraignment system disproportionately harms LEP individuals, protected under the statute. (*Id.* at ¶¶ 57–62.)

Section 11135 prohibits recipients of state funding from discriminating "on the basis of . . . national origin [or] ethnic group identification[.]" (Gov. Code § 11135, subd. (a).) "In establishing a claim [under Section 11135], the plaintiffs must plead facts that establish a facially neutral policy or practice that causes a disproportionate harm to persons in a protected class." (*Villafana v. Cnty. of San Diego* (2020) 57 Cal.App.5th 1012, 1017.) Petitioners have done so. Petitioners have pleaded statistical facts showing that Kern's misdemeanor arraignments disproportionately harm LEP individuals. Petitioners allege that "indigent defendants who rely on interpreters at their misdemeanor arraignments face radically different outcomes than indigent defendants who are fluent in English." (Compl. ¶¶ 59–60 [stark disparities from official court data].) "The difference in [these] numbers can demonstrate the harm arising from the disparate impact." (*Villafana*, *supra*, 57 Cal.App.5th at p. 1020.) And LEP individuals are a protected class under Section 11135's "national origin" and "ethnic group identification" categories. (2 C.C.R. § 14020, subds. (q), (dd)(1)(A) [implementing regulations define "national origin" and "ethnic group identification" to include "linguistic characteristics"]. See *Lau v. Nichols* (1974) 414 U.S. 563, 566–68, abrogation on other grounds recognized by *Alexander v. Sandoval* (2001) 532 U.S. 275.[13])

C. Petitioners State a Claim for Disability Discrimination in Violation of the

[13] *Lau* was brought under Title VI, the federal correlate to Section 11135. "Federal law provides important guidance in analyzing state disparate impact claims [under section 11135]." (*Villafana*, *supra*, 57 Cal.App.5th at p. 1017 fn. 6.)

Americans with Disabilities Act and Gov. Code § 11135 (Count 5).

Petitioners state a claim under the Americans with Disabilities Act ("ADA") and Section 11135 by alleging that Kern's misdemeanor arraignments discriminate against defendants with cognitive or mental disabilities by 1) denying them equal opportunities to participate effectively in their legal proceedings; 2) relying on methods of administration that are unduly burdensome; and 3) failing to provide reasonable accommodations. (Compl. ¶¶ 10–11, 24, 63–76, 96–102, 141–156.) Here, too, Respondents misunderstand Petitioners' claim. (JR at 13–14; CR at 21–22.) Both the ADA and Section 11135 allow for a cause of action where, as here, facially neutral policies are discriminatory or unduly burdensome. (U.S.C. § 12132; 28 C.F.R. § 35.130, subds. (a), (b)(1); *Crowder v. Kitagawa* (1996) 81 F.3d 1480, 1484 [holding that facially neutral state policy of quarantining dogs to avoid the spread of rabies constituted discrimination against people with disabilities who rely on guide dogs].)[14]

First, Respondents deny equal opportunities to misdemeanor defendants with cognitive or mental disabilities because they fail to identify defendants with such disabilities, including failing to assess indicia of incompetence. (Compl. ¶¶ 63–64.) Because Respondents do not take steps to identify who has a disability, it is impossible for Respondents to provide the accommodations required for their full participation in their criminal proceedings. (*Id*. at ¶¶ 63–76, 141–56.) Defendants at misdemeanor arraignment accept pleas after only a summary conversation with probation officers neither equipped nor authorized to evaluate disability. (*Id.* at ¶ 63.) Judges then endorse these pleas after only a cursory colloquy affirming the defendant signed the waiver form, but without individualized questions designed to identify disability or indicia of incompetence.[15] (*Id.* at ¶¶ 64–66.) Public defenders are either absent or, if present, neither screen for disability or

[14] Section 11135 requires that government programs "meet the protections and prohibitions" of the ADA. (Gov. Code, § 11135, subd. (b). See also 2 C.C.R. §§ 14026, subd. (a), 14326.) Limitation in access is as much a violation as is denial of services. (*Doran v. 7–Eleven, Inc.* (9th Cir. 2008) 524 F.3d 1034, 1041 fn. 4.)

[15] Respondents' single case in support of its assertion that a summary waiver is sufficient where competency is disputed (CR at 21) is inapposite as it concerns a defendant who, *with counsel*, engaged in a long colloquy with a judge who advised him of the dangers of self-representation and asked pointed questions to ensure he understood his rights. (*People v. Orosco* (2022) 82 Cal.App.5th 348, 353-55 [reversible error to deny competently executed *Faretta* waiver].).

competency, nor provide or request accommodations. (*Ibid.*)

Second, Respondents' methods of administering misdemeanor arraignments place a harsher burden on people with disabilities. Petitioners have pled facts establishing a facially neutral policy or practice causing disproportionate harm to persons in a protected class. (*Id.* at ¶¶ 63–70, 96–102.) For example, judges found Petitioners Laura Hart and John Doe were not legally competent to represent themselves in other legal proceedings *shortly after* a judge permitted them to enter uncounseled guilty pleas in Kern's challenged plea mill.[16] (*Id.* at ¶¶ 10–11, 67, 98–102.) Contrary to Respondents' assertions, the experiences of Petitioners Hart and Doe are not the "sole support for this alleged discrimination claim." (JR at 14.) Petitioners further allege that in numerous other cases individuals were permitted to enter uncounseled guilty pleas at their first appearance to serious misdemeanor offenses despite a prior or subsequent incompetent to stand trial ("IST") finding in unrelated cases. (Compl. ¶¶ 67-70.) Petitioners also allege it is "common for people who the Superior Court is *currently* evaluating for competency, or who the Superior Court *recently* found [IST], to have *prior* uncounseled misdemeanor convictions"; and that the Superior Court "routinely accepts uncounseled guilty pleas from individuals who the Court had *previously* found [IST]." (*Id.* at ¶¶ 68-69, emphasis in original.)[17]

Finally, Petitioners properly allege that Respondents violate the ADA and Section 11135 by failing to provide reasonable accommodations necessary to avoid discrimination. (28 C.F.R. § 35.130, subd. (b)(7); see *McGary v. City of Portland* (9th Cir. 2004) 386 F.3d 1259, 1267 ["The purpose of the ADA's reasonable accommodation requirement is to guard against the facade of

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[16] The significance of representation for Ms. Hart is apparent: In her felony case, Ms. Hart was represented and her attorney expressed a doubt as to her competency which the judge confirmed. (*Id*. at ¶¶ 67, 98-101.) In Mr. Doe's case, immediately after his plea, Respondent Kern County transferred him to federal immigration authorities. An immigration judge then determined he was not legally capable of representing himself, only months after the Kern arraignment judge endorsed his plea with nothing more than a cursory colloquy. (Compl. ¶¶ 98, 102.)

[17] While incompetency may be a transitory state (JR at 14), the definition of "disability" in the ADA and Section 11135 includes history of a disability. (42 U.S.C. § 12102, subd. (1); Gov. Code §§ 11135, 12926, subd. (j). See also 42 U.S.C. § 12102(4)(A) ["The definition of disability . . . shall be construed in favor of broad coverage of individuals[.]"].) Because Respondents fail to make *any* inquiry into whether defendants have previously been found IST, there is no way for them to know whether a person has regained capacity, requires accommodations, or is still IST.

'equal treatment' when particular accommodations are necessary to level the playing field."].) Here, the necessary accommodations for people with disabilities are, at minimum, individualized consultations with counsel prior to any waiver, to assess disability, evaluate competency, and meaningfully advise the defendant and court.[18] For such an accommodation to be implemented, there must be a system that allows for effective evaluations of whether defendants *have* cognitive or mental disabilities such that an accommodation is necessary. (See Compl. ¶¶ 152–153.)[19]

The holding and reasoning from the *Franco* litigation illustrate why Petitioners state a disability discrimination claim. In *Franco*, a federal court found the government violated disability discrimination law where individuals in immigration court were "unable to meaningfully access the benefit offered—[] full participation in their removal and detention proceedings—because of their [mental] disability." (*Franco-Gonzalez v. Holder* (C.D. Cal. Apr. 23, 2013) 2013 WL 3674492, at *4.) There is no right to appointed counsel in immigration court proceedings. Nevertheless, the *Franco* court held that "paid appointed counsel" constituted a "reasonable accommodation" necessary to overcome the violation of the Rehabilitation Act where individuals with disabilities in immigration court could not otherwise access "adequate representation." (*Franco-Gonzales v. Holder* (C.D. Cal. 2010) 767 F.Supp.2d 1034, 1056, 1058.)[20] The *Franco* court also held that the pre-existing "safeguards" for people with mental disabilities—e.g., the

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[18] This is not to say that *all* defendants should not have, at minimum, consultation with counsel prior to a summary waiver of rights. But the ADA and Section 11135 require this for those with cognitive and mental disabilities. (Compl. ¶¶ 96–102.) Defendants with disabilities face even greater barriers than the general defendant pool in understanding and advocating for themselves in this process. The dense, complicated language of the waiver form and video, and the fast, crowded proceedings, are particularly impenetrable for defendants with mental disabilities. (See *id.* at ¶¶ 24, 75–76.) For defendants who are legally IST, the harm is stark: state law prohibits the restoration to competency and prosecution of individuals charged with misdemeanors who are found IST. They must have their charges dismissed or benefit from mental health diversion absent a proceeding to justify conservatorship due to a grave disability. (Pen. Code, § 1370.01.)

[19] County Respondents seek to absolve themselves of the responsibility of guaranteeing that misdemeanor defendants are not subject to disability-related discrimination in the County's arraignment courtrooms. (CR at 21.) But the necessary accommodations include the presence and active participation of public defenders who are employed by the County.

[20] For present purposes, the ADA is largely co-extensive with Section 504 of the Rehabilitation Act. (*Vinson v. Thomas* (9th Cir. 2002) 288 F.3d 1145, 1152 fn. 7.)

prohibition against accepting admissions of removability for unassisted individuals with mental disabilities and the authorization of a "representative" to appear for them—were insufficient to ensure adequate protection. (*Id*. at pp. 1052–53.) Here, too, the procedures in Kern misdemeanor courts fail to safeguard the rights of people with mental disabilities.[21]

D. Petitioners State a Claim for Violation of the Right of Public Access to Criminal Proceedings in Violation of the First Amendment (Count 6).

The public has a presumptive right of access to criminal proceedings which may be overridden only upon findings that closure is narrowly tailored and essential to preserve higher values. (*Press-Enterprise Co. v. Superior Court* (1986) 106 S.Ct. 2735, 2737). Here, Petitioners allege that misdemeanor arraignments are not open to the public during critical portions of the proceedings when defendants waive their rights and receive plea offers; and that Respondents neither give the public notice and an opportunity to object to the closure nor make findings of a compelling interest that would justify it. (Compl. ¶¶ 12, 23–24, 27, 36, 160–161.) Respondents do not demur to this cause of action on the merits.[22]

II. The Court Has Jurisdiction.

Despite operating a misdemeanor arraignment system that, per Petitioners' allegations, violates the foundational constitutional right to counsel and other rights, Respondents collectively make technical jurisdictional arguments which, if accepted, would prevent the Court from even addressing the challenged practices. However, "every right must have a remedy." (*People v. Picklesimer* (2010) 48 Cal.4th 330, 339. See also *Marbury v. Madison* (1803) 5 U.S. 137, 147 [same].) As explained below, Respondents' jurisdictional arguments are wrong. Respondents are violating constitutional and statutory duties, giving rise to writ of mandate jurisdiction.

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[21] Respondents' extrinsic evidence, even if considered, provides them little support as the Superior Court's website detailing procedures for accommodations may be inaccessible to people with mental disabilities, particularly those unhoused, in custody, and/or LEP; and the Superior Court's accommodation request form has limited language access and burdensome time limits. (JR at 14, *citing* Patterson Decl., Exhs. L-M; JR RJN ¶¶ 11–12.) Moreover, the discriminatory process, writ large, cannot be remedied by these piecemeal efforts.

[22] Judicial Respondents argue only that this claim is moot. County Respondents demur only asserting that no relief is available as to County Respondents. (CR at 22; JR at 14–15.) These are not valid demurrer grounds. (See p. 16, *supra*; sections II.A.3.a, IV, *infra*.)

Respondents are also spending public resources unlawfully, giving rise to taxpayer jurisdiction.

A. Mandamus Jurisdiction Is Proper.

Petitioners satisfy the two essential elements of writ of mandate jurisdiction by pleading (1) a clear duty to act by Respondents to follow the constitutional requirements and other laws set out in the Petition's counts and/or an abuse of discretion; and (2) a beneficial and/or public interest in Respondents' adherence to those constitutional requirements and laws. (See *Picklesimer*, *supra*, 48 Cal.4th at p. 340.) While these elements are all that are required for mandamus jurisdiction under applicable law, if the Court were to consider the other purported requirements advanced by County Respondents–ability to perform the duty, failure to perform the duty, and absence of other remedies–Petitioners satisfy those as well. (See JR at 4–10; CR at 11, 13–23.) Judicial Respondents are also properly named as respondents because they are "persons" within the terms of the writ of mandate statute.

1. Petitioners Identify Clear, Mandatory Duties and, in the Alternative, an Abuse of Discretion.

The first requirement for mandamus jurisdiction is satisfied. Respondents have clear statutory and constitutional duties regarding access to counsel, waivers, nondiscrimination, and open courts. (See *Common Cause of Cal. v. Bd. of Supervisors* (1989) 49 Cal.3d 432, 442. ["Mandamus . . . is the traditional remedy for the failure of a public official to perform a legal duty."].) In the alternative, the first requirement for mandamus jurisdiction is satisfied because Respondents abuse their discretion in administering the misdemeanor arraignment system. (*Alameda Health System v. Alameda Cnty. Pub. Emp. Ret. Ass'n* (2024) 100 Cal.App.5th 1159, 1177 [mandamus abuse of discretion review "addresses whether the public entity's action was arbitrary, capricious or entirely without evidentiary support, and whether it failed to conform to procedures required by law"], quotations omitted.)

As described above (Section I.A, *supra*), Respondents violate the constitutional right to counsel under both Article I, Section 15 and due process. Precedential case law *specifically holds* that mandamus jurisdiction lies to enforce the right to counsel under Article I, Section 15 in misdemeanor arraignments. *Rhyne*, which also concerned systemically uncounseled pleas at

misdemeanor arraignment, held mandamus appropriate since there was a "duty owed to [plaintiff] … [which] is rooted in constitutional origin[,]" specifically "Article I, section 15 of the California Constitution guarantee[ing] the defendant in a criminal cause … the right … to have assistance of counsel for the defendant's defense[.]" (*Rhyne*, *supra*, 113 Cal.App.3d at p. 820.) *Rhyne* so held despite recognizing that in "misdemeanor arraignment proceedings, the court has a modicum of discretion as to the method it utilizes in advising defendants of their constitutional rights, including the right to counsel." (*Ibid*.) Despite that discretion, "there can be no impairment of the fundamental constitutional rights of any defendant." (*Ibid.*) *Rhyne* is precedent that the Court must follow on the question of whether mandamus jurisdiction is appropriate to enforce Article I, Section 15 as superior courts are bound by out-of-district holdings where there is no binding authority on the holding in question within the superior court's own appellate district. (See *Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455; *Lafferty v. Wells Fargo Bank* (2013) 213 Cal.App.4th 545, 569.)

Mandamus jurisdiction to enforce Section 987.2 (Count 2) is also proper as that provision imposes clear statutory right to counsel duties. (See *Johnny S. v. Superior Court* (1979) 90 Cal.App.3d 826 [issuing writ of mandate and finding that respondent had duty to consider merits of request for investigator funds].)[23] So too may the Court exercise mandamus authority in connection with the systemic due process violation alleged (Count 3). (See *Stiavetti v. Clendenin* (2021) 65 Cal.App.5th 691 [affirming writ of mandate for systemic due process violation of long treatment delays for people deemed incompetent to stand trial].)

The anti-discrimination statutes in Counts 4 and 5, like other statutory mandates, also furnish clear duties actionable in a writ of mandate. (See *Fry v. Saenz* (2002) 98 Cal.App.4th 256, 261 [granting a writ of mandate and finding state agency violated Government Code § 11135 and the ADA in discriminating in provision of benefits based on disability]; *City of Dinuba v. Cnty. of Tulare* (2007) 41 Cal.4th 859, 870 [concluding mandamus was appropriate and that a county "may

[23] *Williams v. Superior Court* (1996) 46 Cal.App.4th 320, 329 ["The laws governing the priority appointment of the public defender are clearly set forth in . . . Penal Code § 987.2, eliminating any void compelling the application of discretion."].

not . . . refuse to comply with [a] statutory duty"].) Both Section 11135 and the ADA include language expressing a mandatory duty. Section 11135(a) provides in part that "[n]o person in the State of California *shall* . . . be unlawfully subjected to discrimination[.]" (Gov. Code, § 11135, subd. (a), emphasis added.) In this statute, "'Shall' means mandatory." (2 C.C.R. § 14020, subd. (tt).) The ADA likewise provides that "no qualified individual with a disability *shall*, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs or activities of a public entity, or be subjected to discrimination by any such entity." (42 U.S.C. § 12132, emphasis added.) And a public entity "*shall* make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability[.]" (28 C.F.R. §§ 35.130, subds. (b)(7)(i), emphasis added.) The word "shall" in both statutes expresses a duty enforceable in mandamus. (*San Francisco Bay Area Rapid Transit Dist. v. Superior Court* (1979) 97 Cal.App.3d 153, 160 [concluding that there existed a "statutory duty [which] is *mandatory* and may be compelled by mandate" where the relevant provision included "shall"].) The ADA also provides that a public entity "*may not* . . . [p]rovide" people with disabilities with services that are "not as effective in affording equal opportunity to obtain the same result" or "utilize criteria or methods of administration" that have discriminatory effects. (28 C.F.R. 35.130, subds. (b)(1)(iii), (b)(3).) "May not," here, is also mandatory.[24] "Where permissive use of the word 'may' renders criteria in a statute illusory, particularly one involving a public duty, 'may' means 'must.'" (*Cal. Corr. Peace Officers Ass'n v. Tilton* (2011) 196 Cal.App.4th 91, 99. See also *Ramirez v. Superior Court* (2023) 88 Cal.App.5th 1313, 1323, 1333 [holding mandamus proper to enforce statute prohibiting electronically conducted hearing without consent, where statute used the phrase "may not conduct"].)

A writ of mandate is also appropriate for Petitioners' First Amendment claim, which evinces a clear duty. (*NBC Subsidiary (KNBC-TV), Inc. v. Superior Court* (1999) 20 Cal.4th 1178

[24] The regulations implementing Section 11135 make clear the mandatory nature of the parallel provisions. (Cal. Code Regs. tit. 2, §§ 14026, subd. (a), 14326 ["It is a prohibited practice . . . to treat in purpose or effect any person unfavorably without legal justification on the basis of the protected class of the person, including by," e.g., denying access to a program or benefit, limiting the exercise of a right, utilizing discriminatory methods of administration].)

[affirming writ of mandate for court closure in violation of First Amendment].) Respondents do not contest this except to say that reasonable time, place and manner restrictions can justify limitations on access. (JR at 8 fn. 8.) Yet Respondents have made no such assertion of permissible justifications; and the Complaint alleges none have been provided. (Compl. ¶ 23.)

In the alternative, even if Petitioners' claims did not involve clear duties, the court could exercise writ of mandate jurisdiction to correct Respondents' abuses of discretion. (See JR at 7–9; CR at 11–22.)[25] "Mandamus may issue . . . to compel an official both to exercise his discretion (if he is required by law to do so) and to exercise it under a proper interpretation of the applicable law." (*Common Cause*, *supra*, 49 Cal.3d at p. 442.) Government actors, including judges, lack discretion to violate the law.[26] (*Rhyne*, *supra*, 113 Cal.App.3d at p. 820; *In re Johnson*, *supra*, 62 Cal.2d at p. 427 [no discretion to accept waivers that are not voluntary and intelligent, because doing so would violate law]; *Morris v. Harper* (2001) 94 Cal.App.4th 52, 60 ["no discretion to engage in an unjustified, unreasonable delay in the implementation of statutory commands"].)[27]

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[25] "The fact that an agency's decision is subject to its broad discretion does not mean mandate is unavailable to aggrieved parties as a matter of law. . . It is well settled that mandamus will lie to correct an abuse of discretion by a public official or agency." (*Cal. Hosp. Ass'n. v. Maxwell-Jolly* (2010) 188 Cal.App.4th 559, 570–571.)

[26] Petitioners here do not dispute the Superior Court's authority to manage its docket *so long as* doing so does not undermine the constitutional and statutory rights of defendants, as the challenged practices here do. Judicial Respondents' cases recognizing a court's "inherent authority to adopt procedures . . . to manage and control their dockets" did not concern practices that violated the constitutional and statutory rights of defendants. (*See* JR at 11, citing, e.g., *In re Reno* (2012) 55 Cal.4th 428, 522 [page limits on certain petitions].) Even Judicial Respondents concede that the Superior Court's "inherent authority" does not immunize procedures which deny defendants their fundamental rights. (*Ibid.* [asking this Court to sustain the demurrer "so long as the Superior Court's chosen method of handling misdemeanor arraignments is constitutionally sound"].) The other cases upon which Judicial Respondents rely have no relevance as they were challenges to "wholly" or largely discretionary actions, whereas judges have only a "modicum" of discretion—within legal bounds—when it comes to arraignment procedures. (*See* JR at 8, citing *Alvarez v. Superior Court* (2010) 183 Cal.App.4th 969, 980 [challenge to court rule directing pleas to be entered by particular department, which court deemed "wholly discretionary"] & *County of San Diego v. State* (2008) 164 Cal.App.4th 580, 596 [challenge which would have impinged on discretionary authority of the legislature].)

[27] Neither *Alejo* nor *Collins* supports Respondents' argument. (CR at 11–12.) While *Alejo* cautioned that allegations against a single component of a larger discretionary program would not suffice for mandamus (*Alejo v. Torlakson* (2013) 212 Cal.App.4th 768, 781-82), the instant case challenges a wholesale failure in the operation of misdemeanor arraignment proceedings. The

The multiple violations Petitioners allege constitute a clear abuse of discretion by Respondents.

2. Petitioners Have a Beneficial and/or Public Interest in Issuance of a Writ.

Respondents incorrectly argue that a writ of mandate may only be granted where petitioners will suffer substantial damage absent it. (JR at 9.) A writ of mandate is indeed available to Petitioners as beneficially interested persons. Petitioner UFW Foundation represents noncitizens who suffer immigration consequences due to uncounseled pleas; Petitioners Hart and Doe remain at risk of being arraigned through practices that discriminate against them and deprive them of access to counsel; and Petitioner Jeannie Parent faces continued denial of court access. (Compl. ¶¶ 9–12.) But regardless, Petitioners may proceed in mandamus under the public interest exception. "Where the question is one of public right and the object of the mandamus is to procure the enforcement of a public duty, the [petitioner] need not show that he has any legal or special interest in the result, since it is sufficient that [the petitioner] is interested as a citizen in having the laws executed and the duty in question enforced." (*Save the Plastic Bag Coal. v. City of Manhattan Beach* (2011) 52 Cal.4th 155, 166, internal quotations omitted.) The public right exception to the beneficial interest requirement is satisfied here where Petitioners are challenging unlawful arraignment procedures affecting tens of thousands of people and seeking to compel Respondents to comply with their constitutional and statutory duties.

3. Petitioners Meet the Other Purported Requirements for Mandamus Jurisdiction Advanced by County Respondents.

County Respondents suggest that Petitioners must satisfy three additional requirements–

"holistic attack on the [] defendants' use of their discretion when implementing the law is the type of challenge contemplated by *Alejo* and is sufficient to state a claim." (*Collins v. Thurmond* (2019) 41 Cal.App.5th 879, 918 [holding mandamus jurisdiction appropriate for violation of state law requiring monitoring despite that implementation of some components of the relevant law were "discretionary by nature"].) While *Collins* rejected mandamus jurisdiction to challenge allegedly unequal education across the state, finding education to be "a highly discretionary area . . . not broadly amenable to a writ" (*id.* at p. 915), the constitutional and statutory rights at issue here concern a single court system and are clear because each count involves a duty to act that Respondents have not attempted to undertake. (See Section I, *supra.*) In any event, *Collins* is in tension with the many courts that have held–even as to the broad constitutional requirement of equal protection–that mandamus jurisdiction over an equal protection claim is proper. (See *Molar v. Gates* (1979) 98 Cal.App.3d 1, 25 [so holding and citing cases].)

ability to perform the duty, failure to perform the duty or abuse of discretion, and absence of other remedies–to establish writ of mandate jurisdiction. (CR at 11, citing *Collins*.) However, *Collins* was decided by a distant court of appeal. The California Supreme Court and the First District Court of Appeal have made clear that the two requirements addressed above (Sections II.A.1, 2, *supra*) are the only essential elements to mandamus jurisdiction. (See *Crawley v. Alameda Cnty. Waste Mgmt. Auth.* (2015) 243 Cal.App.4th 396, 403, quoting *Santa Clara Cnty. Counsel Atty's. Ass'n v. Woodside* (1994) 7 Cal.4th 525, 539-540.) Judicial Respondents identify the same essential elements. (JR at 7.) But even if the Court were to evaluate the additional purported requirements put forward by County Respondents, mandamus jurisdiction remains.

a. County Respondents Are Able to Perform Their Duties, Have Failed to So Perform Them, and Cannot Absolve Themselves of Responsibility by Pointing to Judicial Respondents' Role.

County Respondents take what is an astounding position (CR at 10, 14–22): that they have no constitutional duties at all in the misdemeanor arraignment system, despite the fact that county employees and resources are enmeshed in that system. Their position is plainly wrong. "[A]ll branches of government are required to comply with constitutional directives or prohibitions." (*Katzberg v. Regents of University of Cal.* (2002) 29 Cal.4th 300, 306–307, citations omitted.) The Court should overrule County Respondents' demurrer to jurisdiction on this principle alone. But even if the Court engages fully with County Respondents' attempts to thinly slice their own duties, their shared responsibility for the challenged practices is clear.

Contrary to County Respondents' arguments, the duties here run to *both* Judicial *and* County Respondents.[28] (See *Young v. Cnty. of Marin* (1987) 195 Cal.App.3d 863, 869–870 ["both the state and federal Constitutions require the state to provide legal counsel for indigent persons accused of crimes . . . [T]he primary obligation of providing defense counsel rests with the county in which the accused has been charged[.]"], citing Pen. Code § 987.2, subd. (a); *Rivero v. Lake Cnty. Bd. of Supervisors* (2014) 232 Cal.App.4th 1187, 1194–1195 ["there is no dispute that the

[28] Respondents' argument for demurrer on the ground that Petitioners are "not entitled to any relief" (CR at 10; see also JR at 10) is irrelevant at this stage: the propriety of relief is not a consideration at the demurrer stage. (See p. 16, *supra*.)

county had a duty to provide independent counsel to [plaintiff] or that [plaintiff] was entitled to a writ of mandate."].)[29]

County Respondents argue that they "must obey all lawful orders" of the Kern County Superior Court. (CR at 14–15.) But there is *nothing* in the Complaint suggesting that the Superior Court or its judges have *ordered* the Sheriff or Chief Probation Officer ("CPO") to engage in the challenged arraignment conduct. County Respondents' argument thus rests on nonexistent facts, and cannot be credited at this stage, where the facts actually in the record must be construed in Petitioners' favor. In any event, County Respondents cannot avoid following the law merely because they may be acting in concert with Judicial Respondents in violating individuals' rights.[30]

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[29] There is nothing unusual about holding a county, state, or non-judicial executive officers responsible for access-to-counsel violations. Courts around the country have done so on causes of action that resemble those in this case. (See, e.g., *Betschart v. Oregon* (9th Cir. May 31, 2024) 2024 WL 2790334 [upholding preliminary injunction against Oregon for systemic indigent defense crisis resulting in defendants being delayed appointment of counsel]; *Luckey v. Harris* (11th Cir. 1988) 860 F.2d 1012, 1018 [claim against governor for, e.g., "systemic delays in the appointment of counsel"]; *Duncan v. State* (Mich. Ct. App. 2009) 774 N.W.2d 89, 121, 132, affirmed in *Duncan v. Michigan* (Mich. Ct. App. 2013) 832 N.W.2d 761, 765-76, 768-69 [claim against governor and state for deprivation of right to counsel where counsel failed "to converse with plaintiffs in a meaningful manner," thus engaging in "representation . . . that fell below an objective standard of reasonableness"]; *Wilbur v. City of Mount Vernon* (W.D. Wash. 2013) 989 F.Supp.2d 1122, 1124, 1133 [finding "systemic deprivation of the right to the assistance of counsel and the Cities' responsibility for the deprivation" upon showing that "services [] offered . . . amounted to little more than a 'meet and plead system'"]; *Tucker v. State* (2017) 162 Idaho 11, 21 ["[t]he State ... has the ultimate responsibility to ensure that the public defense system passes constitutional muster"]; *Kuren v. Luzerne Cnty.* (2016) 637 Pa. 33 [holding county liable for systemic deprivation of counsel].)

[30] None of the authority cited by County Respondents regarding the relationship between courts and county officers is relevant to this demurrer. There are no "orders" at issue, so Government Code § 69922(a) and *Vallindras v. Massachusetts Bonding & Ins. Co*. (1954) 42 Cal.2d 149, are irrelevant. There are also no issues relating to a sheriff's memorandum of understanding concerning court security. (Gov. Code, § 69926.) Moreover, whether sheriff's deputies are "state actors" for purposes of Eleventh Amendment immunity in a federal civil rights lawsuit (*Black Lives Matter-Stockton Chapter v. San Joaquin County Sheriff's Office* (E.D. Cal. 2019) 398 F.Supp.3d 660), has nothing to do with whether a sheriff can be sued in mandamus in state court. Nor does the fact that the court has some appointment and supervision authority over the probation office as a matter of statute (Gov. Code, § 27770, *et seq*.; *In re D.N.* (2022) 14 Cal.5th 202) matter in *this case*, where probation officers act *independently and outside their authority* (in place of district attorneys), rather than acting pursuant to any particular direction from the court. (Compl. ¶¶ 23-24, 27-30.) Finally, the fact that the county cannot merge other county offices into the probation office (CR 15:16-19) clearly has no bearing on this dispute.

(*People for Ethical Operation of Prosecutors etc. v. Spitzer* (2020) 53 Cal.App.5th 391, 404 ["It is elementary that public officials must themselves obey the law."]; see also *Culbertson v. Cnty. of Santa Clara* (1968) 261 Cal.App.2d 274, 275 [finding liability for a deputy sheriff carrying out a court order because of the "failure of the deputy sheriff to perform the duty specifically imposed upon him by the statute"].) Here, Petitioners have pleaded facts showing County Respondents' involvement in and responsibility for operating misdemeanor arraignments outside legal bounds.

Specifically, Petitioners allege that probation officers, acting outside of their statutory authority, form and offer plea deals to uncounseled misdemeanor defendants, without any involvement of the prosecutor in a closed courtroom, and pressure defendants to accept them without either the presence or involvement of defense counsel. (Compl. ¶¶ 1, 23, 27–35, 41, 45–47, 52–53, 62–64, 67.) County Respondents defend these practices on the ground that the CPO "is appointed, supervised, or removed by the superior court." (CR at 15.) But the County Respondents concede that the CPO is a county officer. (*Ibid.*) And the Superior Court cannot delegate authority it does not have. Only the prosecutor is authorized to negotiate a plea agreement on behalf of the state. (*People v. Orin* (1975) 13 Cal.3d 937, 943 ["The court has no authority to substitute itself as the representative of the People in the negotiation process and under the guise of 'plea bargaining' to 'agree' to a disposition of the case over prosecutorial objection."]; see also Gov. Code, § 27771; Pen. Code, § 830.5 [detailing and limiting authority of probation officers, and not including counseling defendants pre-trial or determining or conveying plea offers].)[31] Moreover, the Superior Court is bound by the constitutional and statutory mandates violated here.

Petitioners also allege that the Sheriff prohibits court access in violation of the First Amendment. (Compl. ¶¶ 19, 23, 159–63.)[32] The statutory mandates relied upon by County Respondents do not help their case as they permit the Sheriff's compliance only with *lawful* court

[31] Respondents' contention that probation officers are not "negotiat[ing]" pleas, but just determining and extending them to defendants, and "recommend[ing]" them to the court, is mere semantics. (CR at 19.) It is also factually inaccurate. (Compl. ¶¶ 27–30.)

[32] Respondents' reliance on *Baldwin* for the proposition that access to courtrooms is controlled by courts, not counties, is misplaced as *Baldwin* was a challenge *to the court* and so does not consider county obligations. (CR at 22, citing *People v. Baldwin* (2006) 142 Cal.App.4th 1416.)

orders. (See CR at 14, citing Gov. Code, § 69922 [mandating that the sheriff "obey all *lawful* orders and directions of all courts" (emphasis added)].) No court orders are in the record; and to the extent that any such orders exist, Petitioners have alleged sufficient facts that they would run afoul of the First Amendment.

Finally, the County's Chief Administrative Officer ("CAO") also has a requisite duty to follow the Constitution. (See CR at 13.) County Respondents admit as much, noting the CAO's "duty of loyalty and a duty of care . . . which mandates compliance with federal and state laws and regulations." (CR at 13; Compl. ¶¶ 13, 15.) This is sufficient to constitute a ministerial duty for which writ relief is properly asserted.[33] (*Jenkins v. Knight* (1956) 46 Cal.2d 220, 224 ["[t]he provisions of our Constitution are mandatory and prohibitory unless expressly declared to be otherwise (see Cal. Const., art. I, § 22)"].)[34]

b. No Other Plain, Speedy, or Adequate Remedy Exists.

Respondents assert that an "adequate and available remedy exists," barring writ relief. (JR at 6–7; CR at 22–23.) This is false. Respondents point to the availability of methods of post-conviction relief—specifically the withdrawal of guilty pleas for good cause. (JR at 6–7 & CR at 22–23, citing Pen. Code, §§ 1016.5, 1018.) However, these remedies for individual post-conviction relief fail to account for the "wholesale deficiencies" of Kern's challenged practices. (*Knoff v. City & Cnty. Of San Francisco* (1969) 1 Cal.App.3d 184, 199 [holding that taxpayers were not required to exhaust remedies before administrative body responsible for correcting erroneous tax assessments prior to pursuing mandamus action to "correct[] . . . wholesale deficiencies" in assessment practices].) Nor do these methods of post-conviction relief eliminate harms including incarceration, deportation, and collateral consequences that cannot be undone after the fact. And prior post-conviction challenges by individual defendants have done nothing to halt or alter the long-lasting systemic violations. Moreover, as Respondents concede, post-

[33] The CAO has other duties relevant here. (See, e.g., Kern. Ord. 2.12.020 [CAO executes Board directives and furnishes advice to department heads].)

[34] To the extent that a different County official should be named for an indisputably County function, Petitioners contend this is a mixed question of law and fact that should be developed in discovery subsequent to the demurrer; and alternatively, Petitioners seek leave to amend to name the Public Defender in his official capacity.

conviction relief is discretionary. (JR at 6 fn. 6.) Any defendant who seeks withdrawal or vacatur of a plea would be faced with the prospect of seeking that relief from Respondents who were initially responsible for accepting the plea, and who now before this Court contend that the proceedings within which the pleas were taken were proper and the advisals adequate.

4. The Court Has Jurisdiction to Exercise Mandamus Jurisdiction Over Judicial Respondents, Who Are "Persons" Within the Scope of the Statute.

Judicial Respondents argue that "[n]either the Superior Court, nor its judges and officers acting in their official capacities, is an inferior tribunal to this Court," and that mandamus jurisdiction is thus improper. (JR at 4.) Petitioners have *not* named the Superior Court as a respondent in the mandamus counts (Counts 1–6). So there is no tribunal—superior or inferior—sued in mandamus at all. Regardless, mandamus jurisdiction is proper against the Judicial Respondents as "persons" within the scope of Section 1085. In *Trafficschoolonline, Inc.*, a court of appeal found that writ of mandate jurisdiction existed *in the superior court* over a court administrator sued in his official capacity. The court of appeal started with plain terms of the mandamus statute, which state that "[a] writ of mandate may be issued by any court, . . . to any . . . person[.]" (*Trafficschoolonline, Inc. v. Superior Court* (2001) 89 Cal.App.4th 222, 234, quoting Code Civ. Proc., § 1085.) As the court noted, "court clerks, or as they are also referred to, executive officers, are subject to writs of mandate issued by appellate courts." (*Id*. at pp. 235–36.) But, as the court reasoned, "[t]he fact that the present case was filed in the respondent court does not change the result. [The court administrator] *is a person* and the parties agree he would be the responsible officer for determining whether to certify plaintiff as a traffic school provider." (*Ibid*.) So too are Judicial Respondents "persons" for purposes of mandamus jurisdiction here, even though this action—like the one in *Trafficschoolonline, Inc*.—originates in a superior court. (See *id*. at 237 ["Code of Civil Procedure section 1085, subdivision (a) explicitly vest[s] the power to issue a writ of mandate in the superior court; i.e., to order a person such as [the court administrator] to comply with an alleged legal duty."].)

This suit also does not implicate the principles underlying the "inferior tribunal" doctrine, which seeks to avoid having one court review a parallel court's judgment or process in a particular

case. This is not an action where the Petitioners seek to "set aside" an "order" or "judgment" by a parallel court. (*Haldane v. Superior Court* (1963) 221 Cal.App.2d 483, 485; *Ford v. Superior Court* (1986) 188 Cal.App.3d 737, 741.) Nor is it an action challenging the way a parallel court is exercising its discretion in a particular case. (See *People v. Davis* (2014) 226 Cal.App.4th 1353, 1371 [challenging *Brady* procedures in a defendant's case].) Such cases eschew mandamus jurisdiction to avoid "conflicting adjudications of the same subject-matter by different departments of the one court" or of different courts. (*Ford*, *supra*, 188 Cal.App.3d at p. 742, internal quotation omitted.) There is no risk of that here, as Petitioners are not challenging an order, judgment, or judicial process in any particular case. Rather, this action challenges as illegal a set of unwritten policies and practices undertaken by superior court and county personnel.[35]

B. Petitioners State a Claim that Respondents Make Illegal Expenditures of Government Funds in Violation of Civil Procedure Code § 526a (Count 7).

Petitioners state a claim pursuant to Civil Procedure Code section 526a that Respondents illegally "expend taxpayer funds to run [a] misdemeanor arraignment process" in violation of the Constitution and state and federal law. (Compl. ¶ 166 [alleging systematic deprivation of access to counsel and due process; discrimination; and deprivation of public access to court proceedings].) There is no real dispute as to the viability of taxpayer standing. (See, e.g., *Weatherford v. City of San Rafael* (2017) 2 Cal.5th 1241, 1251 [California courts have "always construed section 526a liberally . . . in light of its remedial purpose."].) Respondents' arguments to the contrary fall flat.

First, County Respondents do not dispute that a taxpayer action is proper as to them so long as they violated clear duties which Petitioners have sufficiently alleged. (See Section II.A.1, *supra*.) For the reasons elaborated herein (Sections I & II.A), Respondents' fast-track arraignment system is outside the realm of permissible discretion.[36] (See CR at 12.) "Where the government

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[35] Judicial Respondents' concern about interference with the discretion bestowed upon them by the California Rules of Court (JR at 5 fn. 4) is misplaced because Petitioners challenge only Respondents' illegal practices, not their lawful exercise of discretion.

[36] *San Bernardino County*, relied upon by Respondents, is inapposite as it was a challenge to a "decision whether or not to perform a *discretionary* act, not a failure to discharge a mandatory duty that involved some exercise of discretion in the manner of performance." (*Raju v. Superior Court* (2023) 92 Cal.App.5th 1222, 1248-49, rev. granted Sept. 13, 2023 [rejecting relevance of *San Bernardino Cty. v. Superior Court* (2015) 239 Cal.App.4th 679].) And Petitioners' challenge

has a *duty* to act, [precedent] does not preclude a statutory taxpayer claim merely because fulfilling the duty involves some exercise of discretion." (*Raju v. Superior Court* (2023) 92 Cal.App.5th 1222, 1248, rev. granted Sept. 13, 2023,[37] emphasis in original.) Petitioners also properly allege that the County is responsible for the implementation of the challenged practices. (See Compl. ¶¶ 13, 15, 19, 29, 42–44, 110–113, 159; section II.A.3.a, *supra*.)

Second, taxpayer claims may proceed against a court or judge. (See JR at 6.) The Court of Appeal held as much in *Raju*, consistent with a long history of jurisprudence recognizing the propriety of taxpayer actions against courts, and judicial and other state actors. (See, e.g., *Blair v. Pitchess* (1971) 5 Cal.3d 258, 268 [statutory taxpayer standing to bring claim against county and court personnel for expending time to execute provisions of unconstitutional law].)[38] Moreover, Petitioners' action challenges a policy decision regarding the operation of a misdemeanor arraignment system, not actions in an individual criminal case. Remedying the systemic violations would not upset a delicate balance. (See JR at 5.) A challenge to the systemic denial of counsel, "properly understood, . . . does not threaten but endeavors to preserve our means of criminal adjudication from the inevitably corrosive effects and unjust consequences of an unfair adversary process." (*Hurrell-Harring*, *supra*, 15 N.Y.3d at p. 26.)

Finally, County Respondents contend that a taxpayer action "cannot be maintained where there is an adequate remedy at law." (CR at 13.) This is "plainly without merit." (*Raju*, *supra*, 92 Cal.App.5th at p. 1251. See *Spitzer*, *supra*, 53 Cal.App.5th at pp. 406–407 ["'taxpayers may maintain an action under section 526a to challenge an illegal expenditure of funds even though

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is *not* just to "an alleged mistake . . . involving the exercise of judgment or wide discretion." (See CR at 12, citing *Coshow v. City of Escondido* (2005) 132 Cal.App.4th 687, 714.)

[37] *Raju* is currently pending review by the California Supreme Court, but the Court of Appeal decision maintains persuasive authority. (Cal. Rules of Court, rule 8.115, subd. (e).)

[38] Decades of precedent hold that Section 526a allows taxpayers to sue state actors. (See *Los Altos Property Owners Ass'n v. Hutcheon* (1977) 69 Cal.App.3d 22, 27–28 [collecting cases].) Common law taxpayer actions against courts have an even longer history. (*Id.* at p. 1249 [describing evolution of common law taxpayer standing].) At minimum, if the Court sustains the demurrer as to the statutory taxpayer claim, it should grant leave to amend for Petitioners to bring a common law taxpayer action.

persons directly affected by the expenditure also have standing to sue'"].)[39]

III. Injunctive Relief is Available, and Petitioners Need Not Show Irreparable Harm.

Respondents' argument that Petitioners must make a significant showing of irreparable injury fails as it relies on the wrong standard. (JR at 10.) Petitioners need not make a showing of irreparable injury as they do not seek preliminary injunctive relief.[40] (See *White v. Davis* (2003) 30 Cal.4th 528, 555 [distinguishing between the general interest needed to obtain a permanent injunction and the irreparable harm showing for preliminary injunctive relief].) Here, "[w]here the ultimate relief sought includes an injunction and a writ of mandate," the relevant assessment for the Court is "under the rubric of mandamus rather than injunction." (*Ass'n of Deputy Dist. Att'ys for Los Angeles Cnty. v. Gascon* (2022) 79 Cal.App.5th 503, 522.) Further, contrary to Respondents' argument (JR at 9), the Court can issue injunctive relief for the same reasons that a writ of mandate is available. (See *Venice Town Council, Inc. v. City of L.A.* (1996) 47 Cal.App.4th 1547, 1565 [plaintiffs need not "show a separate basis for standing to obtain a preliminary injunction, distinct from the basis for their standing to seek a writ of mandate"].)

IV. This Case Is Not Moot.

Respondents seek to introduce evidence which they assert moots portions of this case. (JR at 14–15.) The Court should disregard this argument as the evidence is not subject to judicial notice for the reasons elaborated in Petitioners' opposition to the Request for Judicial Notice. (See *Litwin v. Estate of Formela* (2010) 186 Cal.App.4th 607, 612 fn. 5.) Further, Respondents fail to lay a foundation for the evidence meaningfully altering the challenged practices. Specifically,

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[39] The cases cited by Respondents are misplaced. (CR at 12-13, citing *Animal Legal Defense Fund v. Cal. Exposition & State Fairs* (2015) 239 Cal.App.4th 1286 & *Batt v. City and Cnty. of S.F.* (2007) 155 Cal.App.4th 65.) Each concerns a "carefully crafted legislative mechanism" as an alternative remedy for violations. (See *Animal Legal Defense Fund*, *supra*, 239 Cal.App.4th at p. 1301.) Here, by contrast, the entire system subverts the constitutional and statutory framework. No piecemeal alternative remedy would suffice. (See also Section II.A.3.b, *supra*.)

[40] *Tahoe Keys* is inapposite as the plaintiffs there were seeking *preliminary* injunctive relief. (See JR at 10, *citing Tahoe Keys Property Owners' Ass'n v. State Water Res. Control Bd.* (1994) 23 Cal.App.4th 1459, 1471.) Nevertheless, Petitioners *have* shown substantial harm. (Compl. ¶¶ 2, 45–47, 50–51. See e.g., *Kuren v. Luzerne Cnty.* (2016) 637 Pa. 33, 89 [plaintiffs showed "likelihood of substantial and immediate irreparable injury" with allegation of system-wide deprivation of counsel].)

Respondents seek to introduce a revised video transcript and waiver forms without even an assertion concerning their use or significance; and two emails, neither of which demonstrate a meaningful change.[41] (See Patterson Decl., Exh. B at pp. 18–19, citing tabs G & H.)

Moreover, Respondents fail to provide evidence of having permanently undone longstanding practices. The voluntary cessation of illegal conduct renders an action moot only if there is no reasonable expectation the conduct will be repeated. (*Robinson v. U-Haul Co. of Cal.* (2016) 4 Cal.App.5th 304, 315–16.) Respondents' evidence shows only informal communication, not formal policy change. (See Patterson Decl., Exhs. D & E.) Simply telling employees to cease unlawful conduct, without enforcing the change and ensuring implementation, is insufficient evidence of an effective policy change. (See *Roger v. Cnty. of Riverside* (2020) 44 Cal.App.5th 510, 531 [finding likelihood of recurrence where defendants "presented no evidence they have or will develop a policy" formalizing the purported change]; *Robinson, supra*, 4 Cal.App.5th at pp. 316–17 ["Where, as here, a company has not taken action to bind itself legally to a violation-free future, there may be reason to doubt the bona fides of its newly established law-abiding policy."].) Respondents also fail to concede wrongdoing (JR at 10–14; CR at 15–22) which is itself significant evidence in considering whether Respondents will "ensur[e] a change of practice in the future." (*Robinson, supra*, 4 Cal.App.5th at pp. 316–17.)[42]

CONCLUSION

For these reasons, Respondents' demurrers should be overruled. If the Court sustains the demurrer in any respect, Petitioners respectfully request leave to amend the complaint.[43]

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[41] In a September 18, 2023 email, Judge John Lua provided a "note" to various judges and probation personnel about limits for probation officers in connection with plea offers going forward. (Patterson Decl., Exh. D.) But nothing in the email confirms a policy change that prevents probation officers from determining and conveying plea offers to uncounseled defendants (the challenged practices); or the consistent and effective implementation of any such change. In a September 27, 2023 email, Judge Lua referenced a purported April policy change "disseminated verbally" with no apparent written record. (*Id.* at Exh. E.) This suggests the *lack* of a clear and effective policy regarding public access to the court.

[42] Regardless, a public interest exception should apply even if there is ground for mootness. (See *Johnson v. Hamilton* (1975) 15 Cal.3d 461, 465.)

[43] "The denial of leave to amend is appropriate only when . . . there is no possibility of alleging facts under which recovery can be obtained." (*Cabral v. Soares* (2007) 157 Cal.App.4th 1234, 1240.)

Respectfully submitted,

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