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A Statewide Association of Public Defenders and Criminal Defense Counsel

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April 30, 2020

Jorge E. Navarrete, Clerk
California Supreme Court
350 McAllister Street
San Francisco, CA 94102

Re: *CACJ v. Newsom and Becerra*, S261829
In Support of a Petition for Writ of Mandate

Dear Mr. Navarrete:

Before this court in the above-referenced matter is a petition for a writ of mandate seeking orders that would cause local law enforcement and the California Department of Corrections and Rehabilitation to cease all transfers from California jails and prisons to Immigration and Custom Enforcement (“ICE”) detention facilities for the duration of the COVID-19 emergency. Because the relief sought by petitioners is necessary and proper to protect the lives and the fundamental constitutional rights of our members’ clients, the California Public Defenders Association (CPDA) urges the Court to grant the petition. CPDA is a statewide organization of public defenders, private defense counsel, and investigators. Its members practice in the trial, juvenile, and appellate courts statewide. CPDA promotes the legal rights of Californians accused of crimes, as well as the interests of all Californians in the fair administration of justice. CPDA is particularly concerned with voicing the concerns in these areas of the most voiceless Californians. These include California’s communities of non-citizens, immigrants, and their families. CPDA believes that all Californians, irrespective of immigration status, are equally entitled to the blessings

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of law and public policy that recognize and protect their human dignity. To advance these values, CPDA has championed legislation that expands the legal protections of all Californians, including non-citizens. Progress has been substantial and steady, reflecting that CPDA's values align with those of the people of California.

CPDA is committed to the perspective of lawyers who represent persons accused of crimes who are unable to afford counsel, and most members are employed by publicly-funded agencies, or accept publicly-funded court appointment. In certain communities, political realities make it difficult for our members to advocate public policy on behalf of non-citizens, and specifically to challenge local law enforcement's policies of cooperating with ICE in the transfer of individuals to ICE detention centers. Funding for the organizations with which our members are affiliated or by whom they are employed often comes under threat because of policy advocacy on behalf non-citizens. Also, a defense lawyer's effectiveness in the trial courts of the jurisdiction in which they practice can be compromised by a public reputation that is dissonant with the attitudes of a majority of jurors in the locality. CPDA, as a statewide organization, is positioned to relate to this Court the expertise and experience of those members who, because of these concerns, individually cannot.

A history highlighting the California legislation that CPDA has helped to enact and to implement will show the framework of law that California has been building to protect the dignity, the peace, and the safety of all Californians, irrespective of immigration status, from those who would only accord respect for these rights to some Californians, casting others of us behind the walls of concrete and steel that they so relentlessly have been building.

In 2014, to prevent some deportations of persons convicted of minor crimes, Penal Code section 18.5 was enacted, lowering the maximum sentence of most misdemeanors from 365 to 364 days. In 2016, the Legislature explicitly codified that the rights of California's noncitizen population are protected within the criminal justice system, and noted, inter alia, "It is estimated that 50,000 parents of California United States citizen children were deported in a little over two years." (Pen. Code, § 1016.2, subd. (g).) In 2016,

in response to ICE having issued hundreds of detainers for youth in juvenile detention centers in California, youth were accorded confidentiality rights against disclosure to ICE, irrespective of their immigration status. (Welf. & Inst. Code, § 831.) In 2017, The Truth Act became law, creating *Miranda*-like advisories for Californians interrogated by ICE in California jails, and creating public transparency for cooperation between California law enforcement and ICE. (Govt. Code, § 7283.1.) In 2017, post-conviction relief vehicles were created and eligibility for existing ones was expanded, to protect non-citizens against deportation and other immigration consequences based on defective or minor California convictions. (Pen. Code, §§ 18.5, subd. (b) [reduction from 365 to 364 days may be entered retroactively]; Pen. Code §1473.7 [convictions entered based on prejudicial error about immigration consequences may be vacated after habeas period.]) In 2018, the controlled substances diversion scheme was amended to obviate entry of a plea of guilty, thereby preventing immigration consequences because of participation in diversion. (Pen. Code, § 1000 et seq.) In 2018, The California Values Act (SB 54) took effect. Its main feature is to limit cooperation between state and local law enforcement with ICE. (Govt. Code, §§ 7284-7284.12.) Rules of evidence constrain the disclosure of a person's immigration status in open court. (Evid. Code, § 351.4.) Occupational licensure generally may not be denied based on immigration status. (Bus. & Prof. Code § 135.5, subd. (b).) “Notwithstanding subdivision (a) of Section 30, and except as required by subdivision (e) of Section 7583.23, no entity within the department shall deny licensure to an applicant based on his or her citizenship status or immigration status.” (Bus. & Prof. Code, § 135.5, subd. (b).) An person without immigration status may be admitted to the state bar. (Bus & Prof. Code, § 6064; *In re Garcia* (2014) 58 Cal.4th 440.)

Plainly, California has striven to build a legal framework capable of guaranteeing non-citizens the same basic rights and privileges as all Californians. This is a work in progress, however, with every session of the Legislature occupied with guaranteeing equal legal and civil rights and privileges to all Californians irrespective of immigration

status; over one hundred bills related to this project are pending in the current session.

At the outset of the project of inclusion, it was understood and anticipated that California's efforts to guarantee Californians basic rights irrespective of immigration status would be challenged. In his State of the State speech in 2017, Governor Jerry Brown said, "We may be called upon to defend those laws and defend them we will. And let me be clear: we will defend everybody – every man, woman and child – who has come here for a better life and has contributed to the well-being of our state." (Governor Edmund G. Brown Jr, State of the State Speech 2017 <https://www.ca.gov/archive/gov39/2017/01/24/news19669/index.html> .)

Governor Brown anticipated, correctly, that the State would come under legal ¹ and fiscal ² attack because of its protective measures. Governor Brown could not have anticipated, however, that California's yet-unfinished structure of protection would be overrun by a global pandemic. No statutory scheme for the protection of immigrants and their families could have factored in the current public health emergency, and California's does not. The Legislature has addressed the conditions in ICE detention facilities by blocking private ones from operating. (E.g., AB32, Pen. Code, § 9500 et seq.) But the Legislature did not contemplate that the conditions of confinement in ICE detention facilities would develop that put each detainee at grave risk of death.

If the Legislature could have so foreseen, and further could have foreseen that California law enforcement agencies

¹ (E.g., Justice Department Sues Over Sanctuary Laws in California, N.J. and Seattle, <https://www.nytimes.com/2020/02/10/us/politics/justice-department-sanctuary-law.html>)

² (E.g., "Trump Suggest Corona virus Funding for States Could Be Tied to Santurary City Policies"<https://thehill.com/homenews/administration/495170-trump-suggests-coronavirus-funding-for-states-could-be-tied-to>)

would exercise their discretion under the California Values Act to cooperate with ICE in a manner that would result in individuals being transferred into the life-threatening conditions of confinement detailed in the petition, then the Legislature simply would not have granted law enforcement the broad discretion to cooperate in the transfer of individuals to ICE detention provided for by Government Code section 7282.5. Instead, petitioners in the instant case now are defenseless against the very peril from which California has been legislating to protect them: the denial of their basic humanity because of their immigration status.

The Judicial Council and the courts have attempted to institute the measures necessary to protect human life. For instance, the Judicial Council adopted an emergency bail schedule, effective April 13, 2020 (Cal. Rules of Court, emergency rule 4), and, on March 21, 2020, the Los Angeles County Superior Court entered a stipulated release order for many county jail pre-trial detainees. These measures, while effective for many Californians, have not been so for all Californians because no measure has closed the statutory gap in the Trust Act. As detailed in the declarations to the petition, individuals ordered released under the emergency judicial measures have been and continue to be transferred to ICE detention.

For the individuals who have fallen through this hole in the existing emergency measures, time is of the utmost essence. To illustrate, ever since the petition that this letter supports was filed, our members have observed transfers from local custody to ICE detention. Most recent to the time of the writing of this letter, on Sunday, April 26, a client of a CPDA member in Sonoma County was transferred from county to jail to ICE detention. To end this, petitioners have no remedy in the Legislature because it cannot reform the California Values Act in time to stop these abusive and unconstitutional transfers detailed in the petition. Only this Court, under its equitable power to enforce petitioners' constitutional rights to be free of confinement that imposes an imminent, grave risk of death, can act before lives are wrongfully lost.

Californians have come so far in extending our liberties and the laws that protect them to all irrespective of immigration status. Yet now transfers to ICE custody are

imperiling the very lives of some because their of immigration status. This is intolerable, contrary to our core values, not who we are and not what we do. For these reasons and those set forth in the petition, CPDA joins petitioners in turning to this Court to carry out Governor Brown's vow to “defend everybody – every man, woman and child – who has come here for a better life and has contributed to the well-being of our state” without regard to immigration status. The Court should grant the petition.

Respectfully submitted,

/s/ Oscar Borow
OSCAR BOROW
PRESIDENT
CALIFORNIA PUBLIC DEFENDER
ASSOCIATION

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Declaration of Service

I, the undersigned, declare I am over eighteen years of age, and not a party to the within cause; my business address is 320 West Temple Street, Suite 590, Los Angeles, California 90012; that on April 30, 2020, I served the within **Amicus Letter**, in *CACJ v. Newsom and Becerra*, S261829, on each persons named by depositing a true copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail in the County of Los Angeles, addressed as follows.

By TrueFiling:

On April 30, 2020, I served via TrueFiling, and no error was reported, a copy of the document identified above on:

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I declare under penalty of perjury that the foregoing is true
and correct. Executed on April 30, 2020, at Los Angeles, California.

By: /s/ Rose D. Trenado

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