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April 29, 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. To accomplish this, the petitioners seek various orders to the Governor and the Attorney General, which are consistent in type, scope, and purpose with the previous emergency COVID-19 orders of the presiding Judge of the Los Angeles County Superior Court, the Chief Justice, and the Judicial Council. Because the relief sought by petitioners is necessary and proper to protect the lives and the fundamental constitutional rights of our clients, the Los Angeles County Public Defender’s Office urges the Court to grant the petition.

The Los Angeles County Public Defender's Office is the largest criminal defense organization in California. A great many of the persons who are the subject of the petition are our clients. Indeed, our office has a dedicated unit specializing in asserting and protecting the legal rights of non-citizens accused or convicted of crimes, the very class of persons for whom the petition seeks relief. To this end, the Los Angeles County Public Defender's Office maintains an Immigration Law Unit. (See Pet. exh. 52, ¶1.) Lawyers in the Immigration Unit are familiar with the conditions in courts, jails, and immigration detention facilities and the patterns of cooperation between local law enforcement and federal immigration agencies that underlie the petition.

In normal times, the Immigration Unit monitors and tracks the transfers of its clients from Los Angeles County Jail to Immigration and Customs Enforcement ("ICE") detention in order to protect our clients' statutory rights under the California Values Act and their constitutional rights under various court decisions. (Pet. exh. 52, ¶3-4.) Now, because of the COVID-19 public health emergency, the California Values Act and California's statutory framework designed to avert unjust transfers from county jails to federal immigration custody have proved inadequate to protect our clients' fundamental constitutional right to not be denied life or liberty without due process of law. The practices and policies in effect at ICE detention facilities, and the physical conditions at every ICE immigration detention facility endanger the safety of every detainee such that *any* transfer to ICE detention by California law enforcement during the public health emergency violates our clients' Fifth and Fourteenth Amendment due process rights to be free of confinement that imposes an imminent, grave risk of death or great bodily injury. Thus, counsel, whose practice specializes in the issues presented in the petition, and whose clients' health, safety, and very lives depend on the relief sought by it, believes that transfers to ICE custody that would be authorized by the California Values Act (Govt. Code, §§ 7284-7284.12) in normal times must nevertheless be enjoined during the COVID-19 public health emergency.

The California Values Act vests law enforcement with *discretion* to cooperate with immigration authorities in the transfer of non-citizens convicted of enumerated offenses, including a lengthy list of misdemeanors, to ICE detention facilities. (Govt. Code, § 7282.5, subd. (a).) Law enforcement cooperation with an ICE administrative detainer is not required by the California Values Act or by any other law. Rather, section 7282.5, subdivision (a), provides that under certain circumstances, law enforcement “shall have discretion” to respond to ICE notification requests, not that it must do so. (*Ibid.*) During the public health emergency, this limited statutory discretion to cooperate has been exercised abusively and unconstitutionally. Law enforcement has conducted business as usual, in complete disregard for the safety of the lives of inmates and public safety generally.

By continuing to make discretionary transfers of inmates to ICE custody, as detailed in the declarations to the petition, law enforcement has been flouting the objectives of the emergency measures of public health officials, prosecutorial agencies, and the judiciary. Specifically, by continuing to cooperate with ICE in transfers as they did before the public health emergency, law enforcement has abused its discretion under California law in a manner that thwarts the two major COVID-19 justice system initiatives.

One, in pursuit of the Chief Justice’s policy goals set forth in the first California Judicial Council emergency advisory recommendation (dated March 20, 2020), the Los Angeles County District Attorney’s Office, the Los Angeles County Public Defender’s Office, the Los Angeles County Alternate Public Defender’s Office, and the Los Angeles County Sheriff’s Department (“LASD”) reached and executed an agreement on March 21, 2020, under which certain pre-trial detainees in the custody of the Los Angeles County Sheriff would be ordered released from jail on their own recognizance. The order recites that “COVID-19 is a pandemic affecting society globally,” and that accordingly release from custody is necessary to protect the health of inmates and by extension the public by preventing or reducing the transmission of COVID-19 in jails. Pursuant to the

order, the Los Angeles County Sheriff was ordered to release approximately 264 individuals from jail. The parties to the stipulated release agreement selected these inmates only after considering their criminal history and their alleged criminal conduct. Each of the inmates selected for emergency release was deemed not to pose a significant risk to public safety because of criminality.

Two, the Judicial Council adopted an emergency bail schedule, effective April 13, 2020. (Cal. Rules of Court, emergency rule 4.) Thereunder, bail must be set at \$0 for many offenses. In Los Angeles County, lawyers of the Los Angeles County Public Defender's Office have been working tirelessly on behalf of all eligible clients to secure the protections afforded under the emergency rule. The rule limits its application to persons whose charges do not indicate a risk to public safety because of criminality that would outweigh the health benefits to the detained individual and to the public by limiting the spread of COVID-19.

In conflict with these emergency measures, law enforcement continues to cooperate with ICE by turning over inmates to ICE agents or ICE representatives, conducting business with ICE as usual, despite the COVID-19 emergency. One example is described in the Declaration of Head Deputy Public Defender Graciela Martinez, exhibit 52 to the petition at paragraphs 7-9. This individual is one whom the Los Angeles Justice Partners collectively agreed should not be jailed because of the risk posed to him by COVID-19 and in consideration of his criminal history and charges. Accordingly, the superior court ordered him released, yet he remains jailed because the Los Angeles County Sheriff's Department cooperated with ICE to effectuate his transfer to an ICE detention facility.

In the months of March and April 2020, LASD transferred nine individuals to ICE. Three of these transfers happened before the defendants' cases were resolved. In each of these instances, the individual was ordered released "OR"; however, instead of returning safely home, each was transferred to the ICE Adelanto Detention Facility. These transfers effectively nullified

the court orders, placing these individuals in unconstitutionally dangerous confinement, and jeopardizing their statutory and constitutional rights to a speedy trial. In addition to Los Angeles County Public Defender clients, the petition recounts instances and provides statistics of similar abuses statewide. These transfers continue to undermine the criminal justice system efforts, policies, and rules intended to minimize COVID-19 disease.

In addition to the due process violation caused by transferring an inmate to immigration custody under the prevailing circumstances, transfer to ICE detention also implicates and often violates our clients' statutory and constitutional rights to adjudication of the matters on which we represent them. A client who is released from county jail under the Justice Partner's stipulation, or with \$0 bail under the emergency rules of court, and who is then transferred to ICE detention becomes unable to attend criminal court to resolve the criminal charges. Sometimes, the interruption of the criminal case caused by a transfer to ICE custody prejudices the defense of the criminal case by causing defense evidence or witnesses to become unavailable. In other cases, the pendency of the case has immigration consequences, and the transfer places the client in the untenable position of defending an immigration case that depends on the resolution of a criminal case that he or she can no longer defend.

This creates a dysfunctional force in the justice system's COVID-19 response. Inside Los Angeles County courtrooms, judges, prosecutors, and defense attorneys work tirelessly to bring and adjudicate bail motions at hearings often advanced solely for the purpose of applying the Judicial Council's emergency bail schedule. The accused are granted release on their own recognizance ("OR") or \$0 bail so they may shelter at home and no longer contribute to dangerous over-crowding in the jails. All this is to allow for social distancing and the ultimate common goal of saving lives. When LASD nevertheless transfers inmates to ICE detention, it defeats the efforts of the courts to curb COVID-19. The courts, and the emergency policies

contemplate that a release order will actually result in a release from *all* confinement.

COVID-19 infects and kills human beings. This is what the judicial emergency response including especially the carceral depopulation orders seek to stop, the loss of human life. In an adversarial environment such as criminal courthouses, often divided by absolutes such as “us” and “them,” and defined by verdicts of “guilty” or “not guilty,” COVID-19 is the great equalizer. This disease reminds us that above all else we are human beings, and we are so irrespective of our immigration status. This disease reminds us of our common humanity. This is the fact of nature upon which we derive our credo that the Constitution is color-blind and that all persons are endowed equally with the right to life, our common humanity.

This Court should grant the relief sought by petitioner, thereby suspending transfers of individuals to ICE detention centers during the pandemic.

Respectfully submitted,

/s/ RICARDO D. GARCIA
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PROOF OF SERVICE

Re: *CACJ v. Newsom and Becerra*, S261829

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 29, 2020, I served the within AMICUS LETTER on each of the persons named below 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 29, 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 29, 2020, at Los Angeles, California.

By: /s/ Rose Trenado

Document received by the CA Supreme Court.