



ALAMEDA COUNTY  
**PUBLIC DEFENDERS**

**BRENDON D. WOODS**  
*Public Defender*  
**YOUSEEF J. ELIAS**  
*Chief Assistant Public Defender*

May 1, 2020

The Honorable Chief Justice Tani G. Cantil-Sakauye  
The Honorable Associate Justices  
Supreme Court of California  
350 McAllister Street  
San Francisco, CA 94102-4797

**Re: Letter of Amici Curiae in Support of Petition for Writ of Mandate in California Attorneys for Criminal Justice, et. al v. Gavin Newsom, Governor, et al., Supreme Ct. No. S261829**

Dear Chief Justice Cantil-Sakauye and Hon. Justices of the California Supreme Court:

Pursuant to Rule 8.500(g) of the California Rules of Court, the undersigned Public Defender Offices from throughout the State of California strongly urge this Court to grant Petitioners’ petition for writ of mandate, and halt state and local cooperation with U.S. Immigration and Customs Enforcement (“ICE”) notification and transfer requests.

During this emergency pandemic period, local and state entities – including this Court, the State of California, and justice partners in many counties – have made changes to criminal procedures to protect constituents from the heightened risk of COVID-19 in congregate settings. Some of these procedures, by necessity or policy choice, have disrupted the due process protections normally in place that allow us to competently advise noncitizen defendants about the immigration consequences of arrests and convictions. To allow local and state entities to cooperate with ICE and transfer individuals from criminal custody to immigration custody during this period when defendants are not afforded their full rights, is unfair and directly undermines due process.

Per our commitments under Padilla v. Kentucky, 130 S. Ct. 1473 (2010), and even earlier under California law, our offices provide immigration advice to non-citizen clients about the immigration consequences of their arrests and convictions. To provide accurate advice, we must first investigate our clients’ immigration and criminal histories through client interviews and documentary records. Based on this information, we then advise clients on the specific immigration consequences of pending charges or offers, and assist in mitigating the consequences of any convictions. Significantly, we also advise clients on whether ICE has issued a notification request in their case, and whether the jail or prison may share their release date and time with ICE under the California Values Act and local policies. In certain counties, when clients are arrested by ICE, we may represent them in immigration court proceedings or connect them to immigration counsel.

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Since the beginning of this unprecedented pandemic, our offices have been urgently working to depopulate local jails and prisons. We have collaborated with our local courts, district attorneys, sheriff's offices, and probation departments to reduce the numbers of persons in criminal custody. This collaboration has taken place due to joint recognition that jails and prisons are not safe for the staff or inmates, and in light of growing numbers of confirmed COVID-19 cases in our local facilities. Many of these policies are also directly responsive to emergency rule changes made by the Judicial Council, and directives from the Governor and State of California, intended to promote public health and safety.

As a result of these efforts, procedural and policy changes have been swift and constant (though they still fall far short of the depopulation needed to protect lives). The depopulation of our jails has taken place through a range of different mechanisms in each county: issuing citations instead of arrests for many offenses, creating zero-bail and low-bail policies, allowing defendants to waive their appearances at hearings, holding custodial hearings via video conference, agreeing to deals that do not involve further custodial time or in which defendants agree to return to custody in the future to serve their jail time, and permitting early releases for defendants who have served a significant portion of their sentences and are deemed safe for release into the community.

Notably, though, some of these changes have complicated and prevented the delivery of timely immigration advice to non-citizen defendants. For example, the new zero- and low-bail policies have meant that numerous defendants are offered the opportunity for immediate release from criminal custody before or at their arraignment. Yet prior to their arraignment, counsel has not been appointed. And even if appointed at the arraignment, counsel is not always able to talk confidentially with clients at the hearing via video conference to identify if the client is a non-citizen, analyze prior criminal history, and provide meaningful immigration advice. As a result, non-citizen defendants are making decisions about whether to secure their release, without receiving critical warnings about whether they are subject to arrest by ICE upon their release. In many other cases, the district attorney and sheriff have released clients early from their sentences and only notified counsel about the release after the fact. While this results in rapid jail release – which we all believe is critically necessary at this time - in these cases, we are unable to check for ICE notifications and appropriately advise clients before they are potentially transferred to ICE custody.

Once in civil immigration custody, our clients are back in immediate danger. Immigration detention centers have regularly come under fire for maintaining substandard or dangerous conditions of confinement. Alarming, once in civil immigration custody, securing release is far more challenging. Many of the safeguards available to individuals in criminal proceedings (right to appointed counsel, Eighth Amendment protections, speedy trial rights, etc.) are absent in civil deportation proceedings, including bond hearings. In fact, large classes of people are categorically subject to “mandatory detention” (unique to immigration law) which means that an Immigration Judge is unable to consider their release. As an example, the mandatory detention category is so broad that it includes anyone convicted of two petty theft convictions (considered to be crimes of moral turpitude). Given legal schemes that make it difficult to impossible to secure release during the pendency of immigration proceedings, numerous individuals may spend months to several years in immigration custody fighting their

cases. In short, once our clients are lost to the immigration system, prospects of getting them home to their families - for the same reasons that they were released in the first place – are grim.

Under normal circumstances, non-citizen defendants may choose to remain in custody longer, prioritizing their need to receive accurate and competent advice regarding immigration consequences, given how drastic those consequences can be. However, as a result of COVID-19 and the dangers it poses, release from custody becomes – as it should – the priority for survival. In these extraordinary times, a defendant should not be forced to choose between his or her safety and receiving constitutionally-required immigration advice.

In some of our counties, we have asked sheriff’s offices to observe a moratorium on responding to ICE transfer and/or notification requests during the pandemic period, but the sheriffs have not agreed to do so. As a result, we continue to see resources invested into identifying individuals who can and should be released in light of this extraordinary health crisis, only to have them ushered into a new system of confinement.

Thus, we strongly support Petitioners’ petition for writ of mandate to halt our local state and local enforcement agencies from cooperating with ICE during this extraordinary period, during which normal criminal procedures and rights have been suspended in the name of public safety. Everyone in our communities should be afforded reasonable safety without forfeiting the due process to which they are entitled.

Respectfully submitted,

Alameda County Public Defender  
Contra Costa Public Defender  
Fresno County Public Defender  
Los Angeles County Alternate Public  
Defender  
Marin County Public Defender  
Mendocino County Public Defender  
Monterey County Public Defender  
Napa County Public Defender  
Nevada County Public Defender

Orange County Public Defender  
Riverside County Public Defender  
San Bernardino County Public Defender  
San Joaquin County Public Defender  
Santa Barbara County Public Defender  
Santa Clara County Public Defender  
Sonoma County Public Defender  
Tulare County Public Defender  
Ventura County Public Defender  
Yolo County Public Defender

Dated: May 1, 2020

/s/ Brendon D. Woods  
Public Defender of Alameda County

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**PROOF OF SERVICE**

I am employed in the County of Alameda, California. I am over the age of 18 and not a party to the within action. My business address is: 545 4th Street, Oakland, CA 94607-3510.

On May 1, 2020, I served the foregoing document(s), described as:

**AMICUS LETTER IN SUPPORT OF PETITION FOR WRIT OF MANDATE IN CALIFORNIA ATTORNEYS FOR CRIMINAL JUSTICE, ET. AL V. GAVIN NEWSOM, GOVERNOR, ET AL., SUPREME CT. NO. S261829**

on the interested parties in this action by e-mail or electronic service [C.C.P. § 1010.6; CRC 2.250-2.261]. The documents listed above were transmitted via e-mail to the e-mail addresses on the attached service list.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this May 1, 2010 at Richmond, CA.

/s/ Avantika Shastri

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**SERVICE LIST**

| Respondent  | E-Mail   |
|---|--|
| <p>Xavier Becerra<br/>State of California Department of Justice<br/>1300 I Street, Suite 1740<br/>Sacramento, CA 95814-2954</p> <p>Governor Gavin Newsom<br/>1303 10th Street, Suite 1173<br/>Sacramento, CA 95814<br/>(916) 445-2841</p>   | <p>Xavier.becerra@doj.ca.gov</p> <p>Kelli Evans.Kelli.Evans@gov.ca.gov<br/>David Sapp, David.Sapp@gov.ca.gov<br/>Alisa Hartz, alisa.hartz@gov.ca.gov</p>   |
| <p>Office of the Clerk<br/>California Supreme Court<br/>350 McAllister Street, Room 1295<br/>San Francisco, CA 94102-3600</p>   | <p>Not required until further notice from the court.</p>   |
| <p>Jennifer Pasquarella, SBN 263241<br/>Liga Chia, SBN 328143<br/>Michelle (Minju) Cho, SBN 321939<br/>Jessica Bansal, SBN 277347<br/>Jordan Wells, SBN 326491<br/>Melissa Goodman, SBN 289464</p> <p>ACLU Foundation of Southern California<br/>1313 W Eighth St.<br/>Los Angeles, CA 90017<br/>(213) 977-5236</p> <p>Bardis Vakili, SBN 247783<br/>Monika Langarica, SBN 308518<br/>ACLU Foundation of San Diego &amp; Imperial Counties<br/>P.O. Box 87131<br/>San Diego, CA 92138-7131</p> <p>Angelica Salceda, SBN 296152<br/>William S. Freeman, SBN 82002<br/>ACLU Foundation of Northern California<br/>39 Drumm Street<br/>San Francisco, CA 94111</p> | <p><a href="mailto:jpasquarella@aclusocal.org">jpasquarella@aclusocal.org</a><br/><a href="mailto:lchia@aclusocal.org">lchia@aclusocal.org</a><br/><a href="mailto:mcho@aclusocal.org">mcho@aclusocal.org</a><br/><a href="mailto:jbansal@aclusocal.org">jbansal@aclusocal.org</a><br/><a href="mailto:jwells@aclusocal.org">jwells@aclusocal.org</a><br/><a href="mailto:mgoodman@aclusocal.org">mgoodman@aclusocal.org</a></p> <p><a href="mailto:bvakili@aclusandiego.org">bvakili@aclusandiego.org</a><br/><a href="mailto:mlangarica@aclusandiego.org">mlangarica@aclusandiego.org</a></p> <p><a href="mailto:asalceda@aclunc.org">asalceda@aclunc.org</a><br/><a href="mailto:wfreeman@aclunc.org">wfreeman@aclunc.org</a></p> |

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