

Case No. _____

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

RODNEY CULLORS, DENEAL YOUNG, JESSICA HAVILAND,
RANY UONG, MARK AVILA, CAROLE DUNHAM, LEANDREW
LEWIS, VICTOR GUTIERREZ, JEREMIAH FARMER, on behalf of
themselves and all others similarly situated, PATRISSE CULLORS,
DIGNITY AND POWER NOW, and YOUTH JUSTICE COALITION
Petitioners,

v.

SUPERIOR COURT OF LOS ANGELES COUNTY
Respondent,
COUNTY OF LOS ANGELES, and ALEX VILLANUEVA, in his official
capacity as the Sheriff for the County of Los Angeles,
Real Parties in Interest.

**PETITION FOR WRIT OF MANDATE AND/OR PROHIBITION OR
OTHER RELIEF; MEMORANDUM OF POINTS AND
AUTHORITIES; SUPPORTING DOCUMENTATION
(SEPARATELY BOUND)**

From the Superior Court of Los Angeles County
The Hon. Samantha P. Jessner, Judge Presiding, Dept. 1, Telephone No.
(213) 633-0601, Case No. 20STCV16414

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

Petitioners hereby certify that they are not aware of any entity or person that rules 8.208 and 8.488 of the California Rules of Court require to be listed in this Certificate.

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PETITION FOR WRIT OF MANDATE

TO THE HONORABLE JUSTICES OF THE SUPREME COURT OF
CALIFORNIA

WHY A WRIT SHOULD ISSUE

In the case below, Petitioners seek urgent injunctive relief to protect Los Angeles County Jail inmates from the rapid spread of COVID-19 in the Jail. In furtherance of that end, on May 21, 2020, petitioners applied in the Superior Court *ex parte* (and were summarily denied) for narrowly drawn, expedited discovery pursuant to this Court’s May 4, 2020 Order in *Nat’l Assoc. of Criminal Defense Lawyers v. Newsom*, (May 4, 2020), Cal. Code Civ. Proc. §§ 2031.020(d), 2030.020(d), 2025.210(b), 2031.260, 2030.260(a), 2025.270(d), and Cal. Rules of Court 3.1200 et seq. The Supreme Court’s order underlined the need to proceed expeditiously in these matters, including by utilizing the full “range of procedural tools to achieve prompt and effective resolution of the matter.” *Nat’l Assoc. of Criminal Defense Lawyers*, No. S261827, slip op. at 2. The Supreme Court instructed the superior courts presiding over COVID-19 jails cases as follows: “In all such matters, the superior court is to proceed as *expeditiously as possible* and to be mindful that conditions associated with COVID-19 in detention facilities and local communities are continually evolving.” *Id.* slip op. at 3. (Emphasis added.)

Petitioners' requested discovery related relief did not go so far as requesting an immediate evidentiary hearing, requesting only narrow and limited discovery. Nonetheless, the Superior Court denied Petitioners' request to have discovery heard on an expedited basis. This was the second time the Superior Court had denied expedited discovery in this case. The court had denied Petitioners' April 29, 2020 *ex parte* application that sought a broader set of discovery tailored to gather evidence in anticipation of a hearing on their motion for a preliminary injunction. The May 21, 2020 discovery was, in contrast, more limited, and was confined to discovery regarding testing and issues related to medically vulnerable prisoners, who are at high risk of serious illness or death should they become infected. In this petition, Petitioners seek relief allowing both sets of expedited discovery, but at minimum, allowing the second, narrower request.

At the time Petitioners filed their initial April 29, 2020 application, 107 Los Angeles County Jail prisoners and 66 Los Angeles County Department employees had tested positive for COVID-19. As of May 28, 2020, 1259 Los Angeles County Jail prisoners and 1903 Los Angeles County Department employees have tested positive. This is a dramatic, more than tenfold increase, demonstrating why news reports throughout the country describe jails and prisoners as epicenters of COVID-19. Given the current outbreak throughout the Los Angeles County Jail, the Superior

Court's orders denying expedited discovery were each an abuse of discretion warranting a writ of mandate instructing the Superior Court to order expedited discovery in this case.

By this verified petition, petitioners hereby represent:

PARTIES

1. **Petitioner Rodney O. Cullors** is a fifty-eight-year-old man who currently resides in Los Angeles County, California. At all times relevant here, Mr. Cullors was in the custody of Los Angeles County at Men's Central Jail. He has several physical and mental health conditions including hypertension; heart problems; spinal damage requiring use of a wheelchair, cane, and leg brace; schizophrenia; bipolar disorder; and manic depression. He is awaiting trial and is presumptively innocent.

2. **Petitioner DeNeal Young** is a forty-nine-year-old man who currently resides in Los Angeles County, California. At all times relevant here, Mr. Young was in the custody of Los Angeles County at Men's Central Jail. He has several health conditions, including blood clots in his legs, which have caused him to lose the ability to walk and confined him to a wheelchair. These blood clots also put him at risk of heart attack, pulmonary embolism, and stroke. He is awaiting a resentencing hearing.

3. **Petitioner Rany Uong** is a thirty-seven-year-old woman who currently resides in Los Angeles County, California. At all times relevant

here, Ms. Uong was in the custody of Los Angeles County at Century Regional Detention Facility. She is serving a sentence.

4. **Petitioner Mark Avila** is a thirty-three-year-old man who currently resides in Los Angeles County, California. At all times relevant here, Mr. Avila was in the custody of Los Angeles County at Men's Central Jail. He has severe chronic asthma, diabetes, liver disease, and a blood disorder. He is awaiting trial and is presumptively innocent.

5. **Petitioner Carole Dunham** is a thirty-year-old woman who currently resides in Los Angeles County, California. At all times relevant here, Ms. Dunham was in the custody of Los Angeles County at Century Regional Detention Facility. She has Type I diabetes. She is serving a sentence.

6. **Petitioner LeAndrew Lewis** is a twenty-eight-year-old man who currently resides in Los Angeles County, California. At all times relevant here, Mr. Lewis was in the custody of Los Angeles County at North County Correctional Facility. He has diabetes, high blood pressure, and has suffered recurrent bouts of bronchitis. He is awaiting trial and is presumptively innocent.

7. **Petitioner Victor Gutierrez** is a twenty-two-year-old man who currently resides in Los Angeles County, California. At all times relevant here, Mr. Gutierrez was in the custody of Los Angeles County at

Twin Towers Correctional Facility. He has asthma, sclerosis, inflamed spinal discs, a caloric deficiency, and is pre-diabetic. He is awaiting trial and is presumptively innocent.

8. **Petitioner Jeremiah Farmer** is a nineteen-year-old man who currently resides in Los Angeles County, California. At all times relevant here, Mr. Farmer was in the custody of Los Angeles County at North County Correctional Facility. He is serving a sentence. He is also awaiting trial on other charges and is presumptively innocent of those charges.

9. **Petitioner Patrisse Cullors** is a taxpayer in the County of Los Angeles. Ms. Cullors resides in the County of Los Angeles and has paid taxes to Los Angeles County in at least the past year and time period relevant to this action.

10. **Petitioner Dignity and Power Now** is a 501(c)(3) non-profit organization based in South Central Los Angeles that advocates for the dignity and power of all incarcerated people, their families, and communities. Dignity and Power Now provides healing and wellness support for all families affected by incarceration through organizing and advocating for policies that improve the lives of affected communities in Los Angeles County and beyond. Dignity and Power Now works to address the short and long term needs and concerns that their community members

face inside and outside of jail. Dignity and Power Now seeks relief on behalf of itself and its members.

11. **Petitioner Youth Justice Coalition** is a 501(c)(3) non-profit organization based in Los Angeles that works to build a youth, family and prisoner-led movement to challenge race, gender and class inequality in California's detention systems through organizing, advocacy, political education and transformative justice. The Youth Justice Coalition is a grass-roots abolition centered organization that is primarily composed of incarcerated and formerly incarcerated people and that advocates for decarceration. Youth Justice Coalition also provides family support and community engagement through political education, court support (participatory defense), helping youth and adults challenge their placement on the CalGang Database, know your rights workshops, and free community legal clinics. Youth Justice Coalition seeks relief on behalf of itself and its members.

12. **Respondent Superior Court of Los Angeles County**, the Honorable Samantha P. Jessner presiding, is now, and at all times mentioned has been, a duly constituted court exercising judicial functions in connection with the underlying action.

13. **Real Party in Interest Los Angeles County ("County")** is a public entity organized and existing under the laws of the State of

California. The Los Angeles County Sheriff's Department ("LASD") is an agency of the County of Los Angeles, which controls and operates the County's jails via the LASD and Sheriff Alex Villanueva. The County is responsible for the custody and care of all persons detained or incarcerated in the County's jails, and it currently has immediate custody over Petitioners and other putative class members. Los Angeles County, through the LASD, maintains and operates the following detention and correctional facilities: Men's Central Jail ("MCJ"); Century Regional Detention Facility ("CRDF"); Twin Towers Correctional Facility ("TTCF") which includes the Inmate Reception Center ("IRC") and Correctional Treatment Center ("CTC"); and Pitchess Detention Center ("PDC"), which is comprised of four different facilities including the PDC-North, PDC-South, PDC-East, and North County Correctional Facility ("NCCF"). The Los Angeles County Jail collectively is the largest jail in the United States.

14. **Real Party in Interest Sheriff Alex Villanueva** is the Sheriff of the LASD. As the Sheriff, Defendant Villanueva has immediate custody of Petitioners, and all people incarcerated in County facilities. Sheriff Villanueva is the highest ranking official and policymaker for the County, and is responsible for developing, administering, and enforcing County policies, including those that relate to health and safety. He is responsible for the promulgation of the policies and procedures of the LASD.

JURISDICTION

15. Article 6, section 10 of the California Constitution vests the Supreme Court with original jurisdiction in proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition. Cal. Const. art. VI, § 10; *see also* Cal. Civ. Proc. Code § 1085; Cal. R. Ct. 8.486. This Court has recognized that it is appropriate to exercise original jurisdiction “where the matters to be decided are of sufficiently great importance and require immediate attention.” *California Redevelopment Ass’n v. Matosantos*, 53 Cal. 4th 231, 253 (2011). This is such a case.

16. The Los Angeles County Jail (“LACJ”) is the largest jail system in the country, housing nearly 12,000 incarcerated persons. In the words of Inspector General for the LASD Max Huntsman, there is “an epidemic within a pandemic” in the LA County Jail.¹ This epidemic threatens the health, wellbeing and lives of all prisoners, and particularly medically vulnerable prisoners.

17. This Court has exercised its original jurisdiction in other cases that raise urgent matters of public interest. In *San Francisco Unified School District v. Johnson*, 3 Cal. 3d 937 (1971), the Court reviewed a

¹ Cindy Chang, *Coronavirus infection rates in some parts of L.A. County jails are 40% or higher*, Los Angeles Times (May 27, 2020) <https://www.latimes.com/california/story/2020-05-27/coronavirus-infection-rates-los-angeles-county-jails>.

petition that raised issues concerning the constitutionality of compulsory busing, because the matter affected pupil assignment across the state and promptness was necessary for compliance with Supreme Court directives on school desegregation. *Id.* at 944–45. Similarly, in *Strauss v. Horton*, 46 Cal. 4th 364 (2009), the Court exercised original jurisdiction to review the constitutionality of a voter initiative that sought to define marriage as: “Only marriage between a man and a woman is valid or recognized in California.” *Id.* at 385; *see also California Redevelopment Assn. v. Matosantos*, 53 Cal. 4th 231 (2011) (challenge to legislation providing for dissolution of redevelopment agencies); *Ramirez v Brown*, 9 Cal. 3d 199, 203 (1973) (petition by ex-felons to compel election officials to register them as voters); *Jolicoeur v Mihaly*, 5 Cal. 3d 565, 570 n. 1 (1971) (mandate issued to election officials after refusal to register young persons who were not living with parents).

18. In a recent case involving the COVID-19 pandemic, this Court acknowledged that there are “urgent questions concerning the responsibility of state authorities to ensure the health and safety of individuals confined in county jails and juvenile facilities in light of the ongoing COVID-19 pandemic.” *National Association of Criminal Defense Attorneys, et al., v. Newsom, et al.*, No. S261827 (May 4, 2020) (“*National Association*”). In deferring the matter to the superior courts of appropriate

counties, this Court directed the superior court to “proceed as expeditiously as possible and to be mindful that conditions associated with COVID-19 in detention facilities and local communities are continually evolving.” *Id.* at 2. This Court has invited petitions raising similar claims if circumstances warrant. *Id.* at 3. The circumstances at LACJ now warrant this Court’s intervention.

19. This petition raises questions about the Superior Court’s adherence to this Court’s instruction to California courts in *National Association* to achieve “prompt and effective resolution” of matters relating to COVID-19, in this instance in the Los Angeles County Jail. Conducting “evidentiary hearings, briefing, and any joint discussions for resolution” under normal circumstances will take months. Since April 29, 2020—the date Petitioners first sought expedited discovery—the number of COVID-19 positive cases in the LACJ has increased by over 1,000%, a reflection of both increased testing LACJ has begun as well as the spread of the disease. More tellingly perhaps is that, around May 1, 2020, the County began testing all new admittees to the jail, including asymptomatic people, and began testing prisoners in some housing units. The available data demonstrate that while only about 3% of people entering the Jail test positive, 34% of prisoners in tested housing units do. This is compelling

evidence from the County's own data that COVID-19 rapidly infects uninfected prisoners after entering the general population.

20. Those who are medically vulnerable—either by reason of their age or underlying chronic medical condition—face a high risk of serious illness and death should they become infected. The risk of infection of medically vulnerable prisoners at LACJ rises by the day. Petitioners cannot tell this Court the precise number of medically vulnerable housed in LACJ, as this was among the expedited discovery the Superior Court denied them. To the extent medically vulnerable prisoners remain jailed, the special precautions for this population to mitigate the risk of infection have not been implemented. The Superior Court denied Petitioners' request for expedited discovery as to this population, thwarting their efforts to secure their release and preliminary relief to protect them while incarcerated.

21. The Superior Court's orders denying expedited discovery will hamper Petitioners' ability to timely develop a full and accurate record for a motion for preliminary injunction, delay a hearing and eventual ruling by the court, and will cause irreparable harm to the Petitioners, including likely serious illness or death to medically vulnerable prisoners. By the time discovery is completed on a regular schedule, hundreds or thousands of

incarcerated people and staff will have contracted the disease, with potentially disastrous results for medically vulnerable prisoners.

22. This Court has already recognized the need for extraordinary action to protect against COVID-19. Orders by this Court and the Judicial Council have fundamentally altered courtroom practice to prevent courts from becoming hot spots of infection. *See* March 16, 2020 Supreme Court Order Admin. 2020-03-13 (suspending in-person oral arguments); March 18, 2020 Supreme Court Amendment to Rule 2 (requiring electronic filings); March 23, 2020 Judicial Council Order (suspending all jury trials for 60 days and allowing courts to adopt new rules to mitigate infection risk). Similar relief is urgently needed in the Los Angeles County Jail. Given the pace at which the pandemic is unfolding, and the increased exposure facing incarcerated people and staff at the jail with every passing day, meaningful relief requires direction from this Court to the Superior Court presiding in this case. Petitioners urge this Court to invoke its original jurisdiction and to intervene immediately to protect not only the health of incarcerated people, but the health of all Californians. Only urgent action by this court to correct the Superior Court's failure to follow this Court's previous guidance can effectively and timely remedy this situation.

23. Petitioners recognize that seeking relief in the first instance from this Court is exceptional, but submit that the circumstance of this once

in a century pandemic warrant it. This is an issue that will likely recur, and the direct action of this Court will provide important guidance in both this and other comparable cases that may arise.

FACTS²

A. COVID-19 Has Taken Hold at the Los Angeles County Jail

24. COVID-19 is a severe pandemic caused by a unique infectious viral pathogen that has the ability to be easily transmitted from person to person and from direct/indirect contact transmission. Vol. 4, Tab 26, p. 881 (Franco-Paredes (May 21, 2020) ¶ 9(a)).

25. Los Angeles County has become the epicenter of the COVID-19 pandemic in California. Both the Governor and Los Angeles County officials have declared emergencies and issued “Safer at Home” orders.

26. The Los Angeles County Jail (“LACJ”) is the largest jail system in the country, housing nearly 12,000 incarcerated persons.

27. Infectious disease doctor Carlos Franco Parades estimates that, given the high population density of the LA County Jail System and the ease of transmission of the pathogen, the infection rate in the jails will

² All the exhibits in the Appendix filed in support of this Petition are true and correct copies of the provided documents that have been obtained by Petitioners and their counsel. The exhibits are incorporated herein by reference as if fully set forth in this Petition.

be exponential. Vol. 2, Tab 3, p. 199 (Franco-Paredes (April 29, 2020) ¶ 22).

28. This has borne out in a very short amount of time. On April 29, the date Petitioners first sought expedited discovery, 107 Los Angeles County Jail prisoners and 66 Los Angeles County Department employees had tested positive for COVID-19.³ As of May 28, 1259 Los Angeles County Jail prisoners and 1903 Los Angeles County Department employees have tested positive.⁴ This is a dramatic increase of over 1,000% in positive tests in the prisoner population, a reflection of both increased testing as well as the spread of the disease.

29. More telling perhaps is that, around May 1, 2020, the County began testing all new admittees to the jail, including asymptomatic people, and began testing prisoners in some housing units (which housing units and the plans for testing throughout the Jail are not currently known to Petitioners, and are sought by the denied expedited discovery). The available data demonstrate that while only about 3% of people entering the Jail test positive, 34% of prisoners in tested housing units do. Vol. 1, Tab 26, p. 881 (Franco-Paredes (May 21, 2020) ¶ 11). The significant disparity

³ Los Angeles County Sheriff's Department, *Coronavirus Information Updates* (last updated Apr. 28, 2020), <https://lasd.org/covid19updates/> (accessed Apr. 29, 2020).

⁴ *Id.* (accessed May 27, 2020).

between these two numbers establishes that prisoners are entering the Jail uninfected and are becoming infected due to the conditions they are exposed to while held at LACJ. Equally significant is that these were both tests of primarily asymptomatic people, establishing that screening for COVID-19 symptoms is of no value to prevent spread of the disease within the Jail.

30. Testing has revealed high rates of infection throughout the LACJ. Among 600 prisoners at North County Correctional Facility who were living in the general population, 40% tested positive for COVID-19.⁵ Inspector General for the LASD Max Huntsman stated last week: “There’s now a full-blown epidemic within a pandemic in our jail” and further stated that the jails are violating guidelines from the federal Centers for Disease Control and Prevention for physical distancing and testing in correctional facilities.⁶

31. That LACJ prisoners are becoming infected by exposure to conditions at the jail is entirely predictable. Normal civilian recommendations that are made with the expectation that individuals can safely shelter in place or, when going out, avoid crowds, are not relevant to

⁵ Cindy Chang, *Coronavirus infection rates in some parts of L.A. County jails are 40% or higher*, Los Angeles Times (May 27, 2020) <https://www.latimes.com/california/story/2020-05-27/coronavirus-infection-rates-los-angeles-county-jails>.

⁶ *Id.*

a jail where officials force congregate living on all (or almost all) who enter. People in detention facilities typically sleep in close quarters, often sharing multiple bunk beds in a single room. Common areas are likewise shared, but by even larger groups of people. Toilets, showers, sinks, and telephones are also communal, and are not adequately disinfected after each use, which is especially important during the current pandemic when more frequent cleaning and disinfecting are required. Even in housing units where detainees sleep in individual cells, or share small cells with one or more other people, common areas, equipment and facilities like showers can be communal as well. *See, infra*, paras. 46-54; *see also* Vol. 1, Tab 2, p. 85.

32. Jails and prisons are long known to rapidly spread air-borne respiratory infection like COVID-19 because they house large number of persons held in cramped conditions with inadequate air flow. The CDC has recognized that correctional and detention facilities “present unique challenges for control of COVID-19 transmission among incarcerated/detained persons, staff, and visitors.”⁷

⁷ Centers for Disease Control, *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities*, <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html>, at 2.

33. Jails and prisons around the country have become incubators for the virus. For example, dramatic outbreaks have taken hold in the Cook County Jail⁸ and Rikers Island in New York City, where the transmission rate for COVID-19 was for a time estimated to be the highest in the world.⁹ At Rikers Island, between the mornings of Wednesday, April 1 and Thursday, April 2, the number of COVID-19 positive incarcerated individuals and staff members grew by 47 and 57 people, respectively, upping the jail's total numbers of confirmed cases to 231 among the incarcerated population and 223 among staff.¹⁰ The first known case of COVID-19 at Rikers was confirmed on Wednesday, March 18,¹¹ illustrating just how quickly this disease can and will overwhelm detention facilities. Confirmed prisoner COVID-19 cases at LACJ exceed the foregoing figures for Rikers.

⁸ See *supra* note 6.

⁹ Craig McCarthy and Natalie Musumeci, *Top Rikers Doctor: Coronavirus 'Storm is Coming,'* New York Post (March 19, 2020), <https://cutt.ly/ptRSnVo>.

¹⁰ Julia Craven, *Coronavirus Cases Are Spreading Rapidly on Rikers Island,* Slate (Apr. 2, 2020), <https://slate.com/news-and-politics/2020/04/rikers-coronavirus-cases-increase.html>.

¹¹ *As Testing Expands, Confirmed Cases of Coronavirus in N.Y.C. Near 2,000* N.Y. Times (Mar. 18, 2020), <https://www.nytimes.com/2020/03/18/nyregion/coronavirus-new-york-update.html>.

B. The Risks to Petitioners are Life-Threatening and Growing

34. The long-term health consequences of COVID-19 are severe. Preliminary evidence suggests COVID-19 may render lasting organ damage in even minimally symptomatic or completely asymptomatic patients. In serious cases, COVID-19 causes acute respiratory disease syndrome (ARDS), which is life-threatening: those who receive even the best medical care with ARDS have a 30% mortality rate.¹² COVID-19 can also damage other vital organs.¹³

35. COVID-19 may also target the heart muscle, causing a medical condition called myocarditis, or inflammation of the heart muscle. Myocarditis can affect the heart muscle and electrical system, reducing the heart's ability to pump. This reduction can lead to rapid or abnormal heart rhythms in the short term, and long-term heart failure that limits exercise tolerance and the ability to work. Vol. 2, Tab 3, p. 199 (Franco-Paredes Dec. (Apr. 29, 2020) ¶ 29).

¹² Letter from Faculty at Johns Hopkins School of Medicine, School of Nursing, and Bloomberg School of Public Health to Hon. Larry Hogan, Gov. of Maryland, March 25, 2020, <https://cutt.ly/stERiXk>.

¹³ Centers for Disease Control and Prevention, *Interim Clinical Guidance for Management of Patients with Confirmed Coronavirus Disease (COVID-19)*, <https://cutt.ly/etRPVRI>.

36. Emerging evidence also suggests that COVID-19 can trigger an over-response of the immune system, further damaging tissues in a cytokine release syndrome that can result in widespread damage to other organs, including permanent injury to the kidneys and neurologic injury. These complications can manifest at an alarming pace. Vol. 2, Tab 3, p. 199 (Franco-Paredes Dec. (Apr. 24, 2020) ¶ 31).

37. Complications from COVID-19 infection can manifest at an alarming pace. Patients can show the first symptoms of infection in as little as two days after exposure, and their condition can seriously deteriorate in as little as five days or sooner.¹⁴

38. For people who are considered higher risk, COVID-19 can cause “long-term cognitive impairment, psychological morbidities, neuromuscular weakness, pulmonary dysfunction, and ongoing healthcare utilization with reduced quality of life and need for rehabilitation services.” Vol. 2, Tab 3, p. 199 (Franco-Paredes (Apr. 24, 2020) ¶ 28).

C. Medically Vulnerable Prisoners Face Higher Risk of Severe Illness and Death If Infected with COVID-19

39. The U.S. Centers for Disease Control and Prevention (“CDC”) has explained that those medically vulnerable to COVID-19 are “older adults and people of any age who have serious underlying medical

¹⁴ CDC, *Interim Clinical Guidance*.

conditions might be at higher risk for severe illness from COVID-19.” It defines those as “at high-risk for severe illness from COVID-19” as:

- People 65 years and older
- People who live in a nursing home or long-term care facility
- People with chronic lung disease (such as chronic obstructive pulmonary disease (COPD) (including emphysema and chronic bronchitis), idiopathic pulmonary fibrosis and cystic fibrosis), or moderate to severe asthma
- People who have serious heart conditions (including heart failure, coronary artery disease, congenital heart disease, cardiomyopathies, and pulmonary hypertension)
- People who are immunocompromised (many conditions can cause a person to be immunocompromised, including cancer treatment, smoking, bone marrow or organ transplantation, immune deficiencies, poorly controlled HIV or AIDS, and prolonged use of corticosteroids and other immune weakening medications)
- People with severe obesity (body mass index [BMI] of 40 or higher)
- People with diabetes (including type 1, type 2, or gestational)
- People with chronic kidney disease undergoing dialysis

- People with liver disease.
- Hemoglobin disorders such as sickle cell disease (SCD) and thalassemia.¹⁵

40. While the CDC identifies those as over 65 as being at high risk, state data shows that COVID-19-associated hospitalizations in the United States are highest among older adults, with the jump in increased rates of hospitalizations beginning at ages 50-64.¹⁶ According to the CDC's "Weekly Summary of U.S. COVID-19 Hospitalization Data," individuals above the age of 50 face an acute risk of hospitalization if infected.¹⁷ Accordingly, individuals within the age range of 18-49 have a 6.3% hospitalization rate. The risk of hospitalization increases dramatically for individuals in the age group 50-64, with a 20.7% rate. Individuals above 65

¹⁵ People Who Are At Higher Risk For Severe [COVID-19] Illness, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html>; *Groups at Higher Risk for Severe Illness*, <https://www.cdc.gov/coronavirus/2019-ncov/need-extraprecautions/groups-at-higher-risk.html>

¹⁶ Shika Garg et al., *Hospitalization Rates and Characteristics of Patients Hospitalized with Laboratory-Confirmed Coronavirus Disease 2019 — COVID-NET, 14 States, March 1–30, 2020*, Centers for Disease Control Morbidity and Mortality Weekly Report, Vol. 69, No. 15 458 (April 17, 2020), <https://cutt.ly/jt4nzXp>.

¹⁷ Centers for Disease Control, COVID-NET: A Weekly Summary of U.S. COVID-19 Hospitalization Data, Laboratory Confirmed COVID-19-Associated Hospitalizations, (accessed April 17, 2020, 4:42 PM), <https://cutt.ly/Xt4nmzX>.

have a 38.7% hospitalization rate. Given the particularly severe health status of prisoners, these risks are greater for prisoners than the general population. *See* Vol. 2, Tab 3, p. 259 (Goldenson ¶ 28); Vol. 4, Tab 30, p. 881 (Franco-Paredes ¶ 28).

41. Six Petitioners and many more putative class members have health conditions that render them medically vulnerable and put them at risk of serious injury or death if they contract COVID-19. *See, e.g.*, Vol. 1, Tab 2, p. 148 (Jones ¶ 4) (respiratory illness, debilitating pneumonia, bronchitis, diminished lung capacity, and a heart condition); Vol. 1, Tab 2, p. 172 (Venegas ¶ 3) (asthma and epilepsy); Vol. 1, Tab 2, p. 113 (Dunham ¶ 2) (Type I diabetes); Vol. 1, Tab 2, p. 177 (Young ¶ 4) (severe obesity and an undiagnosed heart condition); Vol. 1, Tab 2, p. 109 (Davidson ¶ 6-7) (asthma and immunocompromised due to cancer history); Vol. 1, Tab 2, p. 160 (Livotto ¶ 2) (asthma); Vol. 1, Tab 2, p. 89 (Avila ¶ 6) (chronic asthma, diabetes, liver disease, and blood disorder); Vol. 1, Tab 2, p. 103 (Cullors ¶ 2) (58 years old and suffers from hypertension, spinal damage, and heart problems); Vol. 1, Tab 2, p. 133 (Gutierrez ¶ 6) (asthma and pre-diabetes). Defendants are aware of these medical conditions, but keep Petitioners in conditions that threaten their lives. *See, e.g.*, Vol. 1, Tab 2, p. 148 (Jones ¶ 10, 18) (jail staff physically forced Jones out of his medical cell into general population despite knowing he suffers from respiratory illness);

Vol. 1, Tab 2, p. 125 (Fuentes ¶ 5) (Fuentes informed guards at booking of his medical concerns including hepatitis and a compromised immune system due to a bone marrow transplant, but they made no effort to screen, isolate, or protect him).

42. A significant number of medically vulnerable prisoners are being housed in dormitories, where social distancing is not possible and the threat of spreading the disease is particularly great.

43. Petitioners' counsel has made contact with at least fifteen putative class members in LASD jails who fall into the category of "medically vulnerable" as defined by the CDC and who are housed in dormitories with anywhere between 16 and 96 prisoners with no room to socially distance. Vol. 4, Tab 29, p. 870 (Zhen ¶ 8). Seven medically vulnerable prisoners provided information that they were being transported by LASD in conditions where they were in close proximity to others for long periods of time, potentially exposing them to the disease. Vol. 4, Tab 29, p. 870 (Zhen ¶ 8).

44. Rather than be protected, Petitioner Carole Dunham was ordered to clean the cell of a prisoner who tested positive. After a prisoner tested positive in her module, Ms. Dunham and the other diabetic prisoners in the module were not quarantined or separated from the other prisoners in

the module. Ms. Dunham was not given any test despite developing symptoms. See Vol. 1, Tab 2, p. 113 (Dunham ¶ 13-16).

45. Similarly, Petitioner Mark Avila, who has chronic asthma, is regularly made to walk down the hallways near quarantined areas where air is still circulating between the quarantined areas and the hallways. Vol. 1, Tab 2, p. 89 (Avila ¶ 18).

D. Defendants' Failure to Adequately Address COVID-19 Places Petitioners at an Ongoing Risk

46. In many of LACJ's dayrooms, bunks are stacked three high and only separated from each other by 2-3 feet or less such that prisoners can touch the bunk next to them or feel the breath of people sleeping near them. Vol. 1, Tab 2, p. 121 (Farmer ¶ 6); Vol. 1, Tab 2, p. 133 (Gutierrez ¶ 13); Vol. 1, Tab 2, p. 160 (Livotto ¶ 4); Vol. 1, Tab 2, p. 155 (Lewis ¶ 6); Vol. 1, Tab 2, p. 172 (Venegas ¶ 4).

47. Corrections expert Eldon Vail, speaking of the triple bunks, states that they are "a rare practice I have only witnessed in California state prisons during their period of their worse overcrowding" and states that "[o]n its face, in my opinion triple bunking represents an overcrowded condition." Vol. 2, Tab 3, p. 290 (Vail ¶ 48).

48. Meals are eaten communally, with prisoners close enough to bump elbows. Vol. 1, Tab 2, p. 133 (Gutierrez ¶ 14). People in cells find it

impossible to maintain 6 feet of distance from their cellmates. Vol. 1, Tab 2, p. 167 (Uong ¶ 11); Vol. 1, Tab 2, p. 177 (Young ¶ 5); Vol. 1, Tab 2, p. 148 (Jones ¶ 8). When prisoners line up for food service, it is impossible for them to stay 6 feet away from each other. Vol. 1, Tab 2, p. 172 (Venegas ¶ 6).

49. Defendants fail to protect prisoners during and after transport, e.g., for court appearances and medical appointments. Defendants crowd numerous prisoners together into vans and, after transport, places prisoners together in holding tanks with no room to socially distance. *See* Vol. 1, Tab 2, p. 103 (Cullors ¶ 15); Vol. 1, Tab 2, p. 97 (Balderrama ¶ 4); Vol. 1, Tab 2, p. 160 (Livotto ¶ 15); Vol. 1, Tab 2, p. 141 (Haviland ¶ 8). Defendants handcuff prisoners from different parts of the jail and from different jail facilities to one another, facilitating the exchange of infection between prisoners of different jail facilities. Vol. 2, Tab 3, p. 259 (Goldenson ¶ 46); Vol. 1, Tab 2, p. 89 (Avila ¶ 20). At an April 16 Sheriff Civilian Oversight Commission meeting, Inspector General Max Huntsman, stated “Trips back and forth (to court) are very bad.” Vol. 2, Tab 3, p. 290 (Vail ¶ 60). Correctional expert Eldon Vail recommends that, when mass transportation is unavoidable, prisoners should be given protective equipment and medical attention if they come into contact with others who appear to be sick. Vol.

2, Tab 3, p. 290 (Vail Dec. ¶ 61). Defendants have not taken these steps.

Vol. 1, Tab 2, p. 89 (Avila ¶ 20).

50. The CDC and LA Department of Public Health (“DPH”) recommend soap (liquid, if possible) be provided free to prisoners. Vol. 2, Tab 3, p. 259 (Goldenson ¶ 40); Appx. Vol. 2, Tab 3, p. 290 (Vail ¶ 31). Some prisoners are given one small bar weekly and if it runs out, they either borrow soap from others or use their limited funds to buy it from the commissary. Vol. 1, Tab 2, p. 121 (Farmer ¶ 10); Vol. 1, Tab 2, p. 133 (Gutierrez ¶ 5); Vol. 1, Tab 2, p. 89 (Avila ¶ 15); Vol. 1, Tab 2, p. 148 (Jones ¶ 14); Vol. 1, Tab 2, p. 103 (Cullors ¶ 4). Some were given a bar of soap upon arrival in the jail, but have not been given more since. Vol. 1, Tab 2, p. 177 (Young ¶ 10); Vol. 1, Tab 2, p. 172 (Venegas ¶ 11). The CDC and LA DPH guidelines recommend providing prisoners with access to paper towels. Vol. 2, Tab 3, p. 259 (Goldenson ¶ 40); Vol. 2, Tab 3, p. 290 (Vail Dec. ¶ 37). LACJ does not provide access to paper towels, hand sanitizer, nor to regularly laundered towels, bedding or clothing. Vol. 1, Tab 2, p. 113 (Dunham ¶ 9); Vol. 1, Tab 2, p. 125 (Fuentes ¶ 11); Vol. 1, Tab 2, p. 141 (Haviland ¶ 16); Vol. 1, Tab 2, p. 155 (Lewis ¶ 9). “Such substandard hygiene conditions are known to contribute to the spread of viruses.” Vol. 2, Tab 3, p. 259 (Goldenson Dec. ¶ 50).

51. The CDC and LA DPH recommend continual cleaning throughout the day, routine and effective disinfecting of frequently touched surfaces and objects and use of EPA-registered disinfectants effective against the virus that causes COVID-19. Vol. 2, Tab 3, p. 290 (Vail ¶¶ 23-24). The cleaning supplies given to prisoners who clean the jails are so watered down that they are almost odorless. Vol. 1, Tab 2, p. 89 (Avila ¶ 16); Vol. 1, Tab 2, p. 141 (Haviland ¶ 19). There is no way for prisoners to avoid touching common surfaces and no way to disinfect surfaces between use. Vol. 1, Tab 2, p. 160 (Livotto ¶ 13); Vol. 1, Tab 2, p. 172 (Venegas ¶ 5). Prisoners who are exposed to others' bodily fluids while they clean the jails are given insufficient protective equipment. Vol. 1, Tab 2, p. 113 (Dunham ¶ 5); Vol. 1, Tab 2, p. 133 (Gutierrez ¶ 22).

52. On April 10, in some of the facilities, LACJ distributed one non-medical cloth mask per person, with no instructions on how to properly use the mask or keep it clean. Vol. 1, Tab 2, p. 121 (Farmer ¶ 5); Vol. 1, Tab 2, p. 89 (Avila ¶ 11); Vol. 1, Tab 2, p. 103 (Cullors ¶ 12); Vol. 1, Tab 2, p. 148 (Jones ¶ 12); Vol. 1, Tab 2, p. 109 (Davidson ¶ 9). The CDC's recommendation is that cloth face coverings "should be changed if they become soiled, damp, or hard to breathe through, laundered regularly (e.g. daily and when soiled), and hand hygiene should be performed immediately before and after any contact with the cloth face covering." Vol. 2, Tab 3, p.

259 (Goldenson ¶ 52). LACJ has not distributed replacement masks if the prisoner's mask broke or became unusable.

53. Additionally, LACJ has not instituted contact investigations or proper quarantine and monitoring practices for those in close contact with symptomatic prisoners consistent with public health guidelines. Vol. 2, Tab 3, p. 259 (Goldenson ¶ 55); Vol. 1, Tab 2, p. 141 (Haviland ¶¶ 10-12); Vol. 1, Tab 2, p. 113 (Dunham ¶ 13). A large number of incarcerated people at LACJ are classified as “in quarantine.” They are quarantined because they have had close contact with persons under investigation (PUIs), who may have had the virus. As of May 21, 5,162 incarcerated people—43.5% of all those incarcerated in the Jails—are in quarantine due to such exposure. Appx. ___ (Littman ¶ 6).

54. The Jail has not timely isolated symptomatic prisoners to mitigate the risk of transmission. “The failure to promptly isolate symptomatic persons has already resulted in the spread of infection within the jail.” Vol. 2, Tab 3, p. 259 (Goldenson ¶ 53) (discussing Balderrama's placement in a holding cell with a prisoner who was coughing and visibly sick and subsequent diagnosis of COVID-19 and concluding “LASD is not promptly medically isolating positive and suspected COVID-19 cases and quarantining close contacts of COVID-19 cases consistent with CDC guidelines”); Vol. 1, Tab 2, p. 160 (Livotto ¶ 4) (quarantining only two-

thirds of a dorm despite potential exposure to the entire dorm); Vol. 1, Tab 2, p. 155 (Lewis ¶ 5). Any attempts at quarantining certain areas of LACJ are ineffective because trustees and deputies move between areas, inconsistently wearing masks. Vol. 1, Tab 2, p. 133 (Gutierrez ¶ 27-28); Vol. 1, Tab 2, p. 160 (Livotto ¶ 4); Vol. 2, Tab 3, p. 290 (Vail Dec. ¶ 64). Petitioners and putative class members who are symptomatic have not received tests for COVID-19 despite exhibiting a cough, fever, and/or other symptoms. Vol. 1, Tab 2, p. 141 (Haviland ¶ 15); Vol. 1, Tab 2, p. 177 (Young ¶ 8); Vol. 1, Tab 2, p. 113 (Dunham ¶ 16); Vol. 1, Tab 2, p. 148 (Jones ¶ 20). “If these persons were in the community, they would be entitled to a test for displaying active symptoms of the disease. At LACJ, they are denied tests, even though by reason of being jailed they pose a far higher risk of transmitting COVID-19 to others.” Vol. 2, Tab 3, p. 259 (Goldenson ¶ 54).

E. COVID-19 Risks Remain for Medically Vulnerable Prisoners as Well as all Prisoners Even If Universal Testing is Implemented

55. Testing alone will not eradicate the risk of transmission. The tests used to detect the COVID-19 virus result in significant numbers of false negative results—that is, persons who are infected with COVID-19 nevertheless test negative. (This is likely why LASD requires 2 negative

tests before a patient can be released from medical isolation.) Vol. 4, Tab 23, p. 790 (Goldenson Supp ¶ 14); Vol. 4, Tab 22, p. 780 (Paredes ¶ 11). Studies have shown that false negative results can range up to 30% in administered tests. Therefore, the social distancing and other protective measures to mitigate transmission (use of protective equipment, cleaning and disinfecting practices, etc...) remain necessary to stop the spread of the virus, even with universal testing. Vol. 4, Tab 23, p. 790 (Goldenson Supp ¶ 22).

56. The information currently available to petitioners indicates that LACJ is cohorting prisoners in housing units based on testing results. This practice includes not only cohorting groups of persons with positive laboratory results, but also moving dozens of individuals, who were exposed to positive persons but nonetheless tested negative, into dorms with other persons who tested negative, including dorms where high numbers of medically vulnerable persons are housed. Based on the recent testing of persons in K6G (three dorms reserved for Gay, Bisexual and Transgender (“GBT”) prisoners), LACJ designated MCJ dorm 9500 for GBT prisoners who tested negative, while designating 9300 and 9400 for prisoners who tested positive. LACJ then moved people new people into 9500 from 9300/9400 based on negative test results, without first sequestering them for 14 days. Some of those new individuals appear to

have developed symptoms after they were moved to 9500. There are more than 25 medically vulnerable individuals on 9500, out of a population of 122, including at least several persons with HIV, diabetes and COPD. Given the high risk of false negatives associated with even the most accurate tests, cohorting in dorms based on recent negative test results, without first sequestering new admittees for 14 days, is an unacceptable cohorting practice, particularly for dorms. Vol. 4, Tab 30, p. 881 (Franco-Paredes (May 21, 2020) ¶ 19).

57. The Inmate Reception Center where new entrants are processed is failing to adhere to CDC guidelines by requiring new entrants to stay for multiple days in a holding tank with dozens of other new entrants, where the size of the cell and the number of occupants makes it impossible to physically distance. People who have medical vulnerabilities are not sequestered or segregated to ensure protection from transmission. Vol. 4, Tab 29, p. 870 (Zhen ¶ 10). Further, newly admitted prisoners are not quarantined for fourteen days. Such quarantining is necessary to account for the risk of transmission from newly admitted and infected prisoners who nevertheless test negative due to the lack of sensitivity of testing, or early infection, that leads to false negative results. Vol. 4, Tab 23, p. 790 (Goldenson Supp ¶ 15).

58. While testing has been expanded to newly admitted prisoners and those housed in selected units in the jail, the extent of this testing regime, the frequency of tests, and exactly how this testing is being used to determine housing is unknown to Petitioners. Nor do Petitioners know the extent to which testing is now being offered to civilian and custodial staff at LACJ, and whether the criteria of staff testing has changed in the past several weeks. All of this information was sought by Petitioners, but denied by the Superior Court. Vol. 4, Tab 25, p. 812 (5/5 Minute Order); Vol. 4, Tab 34, p. 940 (5/22 Minute Order).

**F. Petitioners Seek Expedited Discovery, Jail Inspection,
And Person Most Knowledgeable Deposition**

59. On April 29, 2020, Petitioners filed Ex Parte Applications for (1) Temporary Restraining Order and Motion for Preliminary Injunction Re Injunctive Relief (Vol. 2, Tab 4, p. 334), (2) for Temporary Restraining Order and Motion for Preliminary Injunction Re Habeas/Mandamus Relief (Vol. 2, Tab 5, p. 356), and (3) Expedited Discovery (Vol. 2, Tabs 6-7, p. 379, 387).

60. Petitioners' April 29, 2020 request for expedited discovery sought the following items: 1) parallel interrogatories and requests for documents seeking information related to matters relevant to their pending motions for preliminary injunction and habeas/mandamus relief, including

evidence as to the actions taken by Defendants to address the COVID-19 pandemic at Los Angeles County Jail facilities, testing and population data, evidence as to the measures taken on behalf of medically vulnerable prisoners, prisoner requests for medical treatment, and grievances related to COVID-19; 2) one Person Most Qualified deposition regarding the practices and policies undertaken by Defendants to address COVID-19 at the Los Angeles County Jails; and 3) an unimpeded inspection of all jail facilities by Petitioners' counsel and their experts, which will allow Petitioners a more complete understanding of the appropriate, preliminary relief to be sought in this matter. *See* Vol. 2, Tab 7, p. 387 (Sukhija-Cohen Dec. and Exhibits).

61. On May 5, 2020, County of Los Angeles Superior Court Judge Samantha P. Jessner denied the requested relief in its entirety. Vol. 4, Tab 25, p. 812. Specifically, as relevant here, the Court denied Petitioners' ex parte request to set expedited deadlines for the County of Los Angeles to respond to Petitioners' Special Interrogatories. Set One (Nos. 1-20) (Vol. 2, Tab 7, p. 416), Demand for Production of Documents, Set One (Nos. 1-29) (Vol. 2, Tab 7, p. 404), and the deposition of the County of Los Angeles' person most knowledgeable (topics 1-14) (Vol. 2, Tab 7, p. 391).

62. On May 21, 2020, after learning new information about recent testing results, Petitioners filed an ex parte application seeking

expedited deadlines for a limited deposition of the County of Los Angeles' Person Most Knowledgeable (topics 1-10) (Vol. 4, Tab 26, p. 855), Petitioners' Special Interrogatories, Set Two (Nos. 48-54) (Vol. 4, Tab 26, p. 839), and Demand for Production of Documents, Set Two (Nos. 82-91) (Vol. 4, Tab 26, p. 847). In addition to written discovery and a PMK deposition, Petitioners also sought a jail inspection by a qualified expert and counsel of each of the Los Angeles County jail facilities. All these discovery requests were limited to topics related to testing and medically vulnerable prisoners, and were significantly narrowed from the expedited discovery requested on April 29, 2020.

63. Petitioners' May 21, 2020 request sought the following more limited items, confined to testing and medically vulnerable prisoners: 1) parallel interrogatories and requests for documents seeking information related to the identification of medically vulnerable prisoners, measures to protect medically vulnerable prisoners, complete testing results, and current hospitalizations, in order to present to the court in the motion for a preliminary injunction a full picture of those who are most at risk, and identify appropriate relief; 2) a limited Person Most Qualified deposition (without prejudice to an expanded one on the same topics in the future) regarding the steps presently planned or under way regarding prisoner testing and the protection of the medically vulnerable; and 3) an unimpeded

inspection of all jail facilities by Petitioners' counsel and their experts, which will allow Petitioners a more complete understanding of the appropriate, preliminary relief, particularly as it relates to medically vulnerable prisoners. *See, generally*, Vol. 4, Tab 26, p. 814.

64. On May 22, 2020, County of Los Angeles Superior Court Judge Samantha P. Jessner considered Petitioners' Second Ex Parte Application for Expedited Discovery. Vol. 4, Tab 34, p. 940. Without hearing argument, the Court denied the requested relief, stating that "Petitioners' second ex parte application constitutes an improper and untimely request for reconsideration of the court's prior order. (CCP § 1008.) Moreover, Petitioners' second ex parte application asserts the same arguments based upon the same law and solely relies upon the County's recent increased testing data. (Littman Decl. ¶¶ 1-10. See April 29, 2020 Ex Parte Application for Expedited Discovery.) Nothing in Petitioners' second ex parte application warrants the court altering its prior decision denying Petitioners' request for expedited discovery in this matter." Vol. 4, Tab 34, p. 940.

CLAIMS ASSERTED

65. Petitioners seek a peremptory writ of mandate compelling the court to set expedited deadlines for Respondents to respond to Petitioners' foregoing Demands for Production of Documents and Petitioners'

Interrogatories, a Person Most Knowledgeable Deposition pursuant to C.C.P. § 2025.230, and an expedited briefing schedule to resolve any objections. see Civ. Proc. Code §§1087–1088, 1104–1105; *Bolles v. Superior Court*, 15 Cal. App. 3d 962, 963, 93 Cal. Rptr. 719 (Ct. App. 1971), (“[B]ecause of the urgency created by the impending trial,” a peremptory writ should issue to compel the deposition of an expert witness); *Certainfeed Corp. v. Sup.Ct. (Hart)* (2014) 222 CA4th 1053, 1062-1063, 166 CR3d 539, 545 (A peremptory writ in the first instance was appropriate where the trial court erroneously denied a motion for additional time to complete the deposition of plaintiff, a 76-year-old man seeking damages for exposure to asbestos and not expected to live beyond a few weeks' time; the state of plaintiff's health, his right to trial preference and the imminent trial date constituted “exigent circumstances” justifying the immediate relief). This court need not wait for oral argument or draft an appellate opinion, but may issue a peremptory writ in the first instance. *Lewis v. Superior Court*, 19 Cal. 4th 1232, 1241, 970 P.2d 872, 879 (1999).

RELIEF SOUGHT

Wherefore, Petitioners respectfully request that this Court:

1. Immediately, or as soon as practicable, issue a peremptory writ of mandate in the first instance, directing the Superior Court to set expedited deadlines for the County of Los Angeles to respond to both sets

of Plaintiffs' expedited discovery requests, i.e., the set denied on May 5, 2020 (Vol 2, Tab 7, pp. 387-425) and the set denied on May 22, 2020 (Vol. 4, Tab 34, p. 940): 1) parallel interrogatories and requests for documents seeking information related to matters relevant to their pending motions for preliminary injunction and habeas/mandamus relief, including evidence as to the actions taken by Defendants to address the COVID-19 pandemic at Los Angeles County Jail facilities; testing hospitalization and population data; identification of medically vulnerable prisoners; evidence as to the measures taken on behalf of medically vulnerable prisoners; prisoner requests for medical treatment; and grievances related to COVID-19, as well as the more limited but distinct requests issued on May 21 and denied on May 22 (described in the following paragraph) (*See* Vol. 2, Tab 7, p. 403-414, 415-425); 2) a Person Most Qualified deposition (without prejudice to an expanded one on the same topics in the future) regarding the practices and policies undertaken by Defendants to address COVID-19 at the Los Angeles County Jails, including the steps presently planned or under way regarding prisoner testing and the protection of the medically vulnerable (*See* Vol. 2, Tab 7, p. 390-402); and 3) an unimpeded inspection of all jail facilities by Petitioners' counsel and their experts, which will allow Petitioners a more complete understanding of the appropriate,

preliminary relief to be sought in this matter, particularly with regard to medically vulnerable prisoners.

2. As a lesser alternative, Petitioners seek a writ of mandate compelling the Superior Court to set expedited deadlines for the County of Los Angeles to respond to Plaintiff's discovery requests denied on May 22, 2020 (Vol. 4, Tab 34, p. 940): 1) parallel interrogatories and requests for documents seeking information related to matters relevant to testing and medically vulnerable prisoners (Vol. 4, Tab 26, p. 839; 847); 2) a limited Person Most Qualified deposition (without prejudice to an expanded one on the same topics in the future) regarding the steps presently planned or under way regarding prisoner testing and the protection of the medically vulnerable (Vol. 4, Tab 26, p. 855); and 3) an unimpeded inspection of all jail facilities by Petitioners' counsel and their experts, which will allow Petitioners a more complete understanding of the appropriate, preliminary relief, particularly as it relates to medically vulnerable prisoners, which were issued on May 21 as part of Petitioners' application for expedited discovery and denied on May 22, 2020. (Vol. 4, Tab 34, p. 940)

3. Order appointment of a special master, or remand with instructions for the superior court to consider appointment of a special master to oversee discovery matters in this case.

4. Should the Court deem such action necessary and appropriate, issue an alternative writ of mandate or order to show cause compelling Respondents to demonstrate why a writ of mandate should not issue and, upon return of the alternative writ or order to show cause, if any, issue a peremptory writ as set forth above;

5. Award Petitioners attorneys' fees and costs under Code of Civil Procedure § 1021.5 and other applicable law; and

6. Grant any further relief to which Petitioners are entitled.

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I, Dan Stormer, declare as follows:

I am one of the attorneys for Petitioners in this matter, and I am authorized to execute this verification on their behalf. I have read the foregoing petition and know its contents. The facts alleged in the petition are within my knowledge, and I know these facts to be true. Because of my familiarity with the relevant facts pertaining to the trial court proceedings, I, rather than Petitioners, verify this petition.

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

Executed on May 29, 2020, at Los Angeles, California.



Dan Stormer

MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

In denying Petitioners' motions for expedited discovery, the Superior Court put Petitioners to a Hobson's Choice: Proceed to a preliminary injunction hearing without full evidence, risking a denial, and thereby risking that they will get sick or die before being able to obtain court relief; or wait for the regular discovery schedule to proceed while each day the infection spreads, prisoners get sick, and hundreds more people are booked into the jail who will then be exposed to what the LASD's Inspector General has called "a full-blown epidemic within a pandemic in our jail."¹⁸

In Petitioners' first application for expedited discovery, Petitioners presented evidence that prisoners held at the Los Angeles County Jail were exposed to an unreasonable risk of being infected by COVID-19 through a host of policies, practices and omissions by the County of Los Angeles and Los Angeles government officials. This included evidence that prisoners were being held in crowded dorms, holding tanks, housing units, and transported and moved in ways that exposed them to being infected because

¹⁸ Cindy Chang, *Coronavirus infection rates in some parts of L.A. County jails are 40% or higher*, Los Angeles Times (May 27, 2020) <https://www.latimes.com/california/story/2020-05-27/coronavirus-infection-rates-los-angeles-county-jails>.

they could not practice social distancing; that hygiene and cleaning practices were poor and unreliable; that personal protective equipment was either not provided or not timely replaced; that prisoners exhibiting symptoms of infection were not timely assessed or isolated; that medically vulnerable prisoners remained jailed and thereby exposed to an unreasonable risk of serious illness and death; and that other mitigation efforts dictated by public health and medical evidence to reduce the risk of transmission of COVID-19, and to ensure adequate treatment, were not carried out. The Superior Court summarily denied this request.

For their second application for expedited discovery, Petitioners presented evidence based on updated data showing that medically vulnerable prisoners in particular were not being protected adequately from the coronavirus, including evidence that medically vulnerable prisoners were being quarantined together with others that tested positive in their housing modules or dorms, and that medically vulnerable prisoners were being exposed when those who tested positive in other facilities were moved into their dorms before adequately testing negative. Petitioners also presented evidence that prisoners who were on intake were moved into dorms prior to receiving test results and that medically vulnerable prisoners were exposed to prisoners who were segregated in an intake module on elevators and during transport. Petitioners further showed that testing begun

after their first discovery application showed that the conditions in LACJ were resulting in a rapid spread of COVID-19, and that newly admitted prisoners, including those who are medically vulnerable, not infected upon admission, faced a high risk of becoming infected due to the conditions inside LACJ.¹⁹

The Superior Court denied expedited discovery in the second instance, stating “Petitioners’ second ex parte application constitutes an improper and untimely request for reconsideration of the court’s prior order. (CCP § 1008.) Moreover, Petitioners’ second ex parte application asserts the same arguments based upon **the same law and solely relies upon the County’s recent increased testing data.**” (Emphasis supplied.)

Petitioners/Petitioners seek expedited discovery in this court in order to address the emergency situation at the Jail, to gather evidence that can support their motion for preliminary relief, particularly their motions seeking the release of and protections for the medically vulnerable prisoners who are at serious risk of grave illness and death from COVID-19.

¹⁹ Plaintiffs also submitted CPRA requests as a means of obtaining some of the necessary information. In response, the County stated that it needed more time in order to produce the plans and information requested. No information has been provided to date.

DISCUSSION

A. Petitioners Are At Risk of Serious Illness and Death if They Cannot Get the Information They Seek

Recent jail figures provide a new and stark portrait of a heavily infected jail population in which the vast majority enter uninfected, and at least a large minority are likely infected after they are housed in the jail (even though few were infected when they entered). The new data includes testing all new admittees to the Jail (which was not occurring at the time of the TRO hearing) and testing of prisoners in some housing units (which housing units and the plans for testing throughout the Jail are not currently known to Petitioners). While LACJ has only begun to do the testing needed for a full picture of the spread of COVID-19 in the Jail, these new data demonstrate that 1) the infection rate of new entries is very low, around 3% (based on post-April 29 testing of new prisoners entering the jail), and 2) assuming that the results of the currently reported asymptomatic housing units to date is indicative of the overall situation in the jail, the infection rate in the general population is approximately 34%. (These figures do not factor in that 20-30% of tests yield false negatives, which would push the infection rate significantly higher).

These figures show a significant likelihood that people in the jail will be infected with a serious disease that is “a lot more frightening” than

the flu.²⁰ The sensation of acute respiratory distress syndrome has been compared to “essentially drowning in [one’s] own blood.”²¹ Even relatively young people with minimal health history can be “wiped out” by the virus, “like they’ve been hit by a truck,” and people who are infected by the virus can “all of a sudden” go into complete respiratory failure.²² According to recent estimates, the fatality of people infected with COVID-19 is about ten times higher than a severe seasonal influenza, even in advanced countries with highly effective healthcare systems.²³

The figures showing the infection rate within the general population of LACJ are particularly significant for medically vulnerable prisoners, who face a substantial risk of serious illness and death should they become infected. *See Facts, supra*, ¶¶ 39-45. Protecting the medically vulnerable is “the cornerstone of reducing the impact of the COVID-19 pandemic inside a correctional facility.” Vol. 1, Tab 26, p. 881 (Franco-Paredes (May 21, 2020) ¶ 9.

²⁰ Lizzie Presser, *A Medical Worker Describes Terrifying Lung Failure From COVID-19 — Even in His Young Patients*, Propublica (Mar. 21, 2020), <https://www.propublica.org/article/a-medical-worker-describes--terrifying-lung-failure-from-covid19-even-in-his-young-patients> (last accessed Apr. 13, 2020)

²¹ *Id.*

²² *Id.*

²³ Betsy McKay, *Coronavirus vs. Flu Which Virus is Deadlier*, WALL ST. J. (Mar. 10, 2020), <https://www.wsj.com/articles/coronavirus-vs-flu-which-virus-is-deadlier-11583856879>

The most recent evidence Petitioners have been able to gather suggests that medically vulnerable prisoners continue to be exposed to an unreasonable risk of becoming infected while housed at LACJ. Petitioners have provided declarations from counsel (based on extensive interview of persons housed in the Jail) establishing good cause to believe that large numbers of medically vulnerable prisoners are being housed in dorms, where the threat of spread of the disease is particularly great, and that no special measures are taken for medically vulnerable prisoners in those dorms.

Due to the grave risks those who are medically vulnerable face while jailed, Petitioners ultimately seek their immediate release to the extent possible, and meaningful and effective mitigation of their risks of becoming infected to the extent they remain jailed. Petitioners further seek preliminary relief to mitigate the worst risks posed to the jail population as a whole. The evidence Petitioners need to timely and meaningfully support this relief (and to tailor it to current conditions) has been denied by the Superior Court. Petitioners are thus placed in the untenable position of being denied critical evidence they need for preliminary relief, while COVID-19 continues to spread throughout the jail facilities at an alarming rate, and daily more persons—those who are medically vulnerable, staff, and new admissions—are exposed to the risk of infection, serious illness, and

death.

**B. The Discovery Petitioners Request is Limited in Scope
and Narrowly Tailored**

Conscious of the time constraints, Petitioners have carefully tailored their initial and subsequent discovery requests to minimize the burdens on Defendants' time and resources. Petitioners' requests focus solely on matters relevant to the pending motions for interim injunctive and habeas/mandamus relief in these exigent circumstances. Courts routinely grant requests for expedited discovery in advance of hearings on motions for provisional injunctive relief. See *Whyte v. Schlage Lock Co.*, 101 Cal. App. 4th 1443, 1449 (2002) (granting expedited discovery for use in support of and opposition to application for a preliminary injunction); see also, e.g., See *L'Oreal USA Creative, Inc. v. Tsui*, No. CV 16-8673 FMO (FFMx), 2016 U.S. Dist. LEXIS 191653, at *17 (C.D. Cal. Dec. 22, 2016) (same); *Hands & Nail Harmony, Inc. v. ABC Nail & Spa Prods.*, No. 16-969, 2016 U.S. Dist. LEXIS 82147, at *24-25 (C.D. Cal. June 14, 2016) (same); *GmbH & Co. KG v. Wnzhou New Century Int'l*, No. 15-8157, 2015 U.S. Dist. LEXIS 147637, at *35 (C.D. Cal. Oct. 19, 2015) (same); *Sas v. Sawabeh Info. Servs. Co.*, No. CV 11-04147 GAF (MANx), 2011 U.S. Dist. LEXIS 161041, at *23 (C.D. Cal. May 17, 2011) (same).

Petitioners' initial request dated April 29, 2020, contained targeted

discovery requests (twenty demands for production of documents, twenty-nine interrogatories, and fourteen topics for a PMK deposition) that were specifically narrowed for the purposes of identifying information relevant to a preliminary injunction motion. Petitioners' demands addressed LASD's policies, procedures and practices around social distancing, cleaning, hygiene, sanitization, medical treatment, personal protective equipment, and testing practices.

Upon receiving new information regarding the heightened risk of medically vulnerable putative class members and the spread within the Jail of COVID-19 infections to those previously not infected, on May 21, 2020, Petitioners submitted a subsequent ex parte application for expedited discovery containing further narrowed discovery (eight interrogatories, ten demands for production of documents, and ten topics for a PMK deposition). Petitioners sought narrow interrogatory responses addressing the number of medically vulnerable persons within the jail, assessment of their eligibility for release, measures to protect medically vulnerable individuals, quarantine and cohort practices, complete testing data and information related to hospitalizations. Plaintiff also sought documents, including database discovery, addressing the same topics without specific identifying information (so as to protect privacy and avoid HIPAA issues). Petitioners' requests included an expedited inspection of the Jail by

Petitioners' counsel and experts, allowing access to every part of all the Jail's facilities. Lastly, Plaintiff sought a limited PMK deposition with ten narrowed topics similarly addressing the identification of medically vulnerable individuals, assessment of medically vulnerable individuals' eligibility for release, measures to protect medically vulnerable individuals, hospitalizations, quarantine practices, and all testing data.

In both requests, Petitioners crafted narrowly tailored requests to reduce the burden on Defendants while ensuring that Petitioners obtain the necessary discovery to curtail an outbreak in the LACJ. The risk to Defendants was de minimis because Petitioners sought information that they would have ordinarily sought in the case, and would be entitled to in due course. See *L'Oreal USA Creative, Inc. v. Tsui*, No. CV 16-8673 FMO (FFMx), 2016 U.S. Dist. LEXIS 191653, at *17 (C.D. Cal. Dec. 22, 2016) (“The burden on defendants is de minimis, as the discovery Petitioners [seek] is what they would ordinarily seek in the course of the case.”); *Sas v. Sawabeh Info. Servs. Co.*, No. CV 11-04147 GAF (MANx), 2011 U.S. Dist. LEXIS 161041, at *23 (C.D. Cal. May 17, 2011) (“[B]ecause the information sought by Petitioners is relevant to this lawsuit, Defendants are unlikely to be prejudiced by an order granting expedited discovery because Defendants will likely produce this evidence during the normal course of discovery.”).

Without this expedited discovery, Petitioners are severely prejudiced. Denial or delay of discovery irreparably harms Petitioners and the putative class members they represent. With each passing day, more prisoners fall victim to the pandemic inside the jails and Petitioners find themselves without judicial recourse to protect them from harm and even death. See *Hands & Nail Harmony, Inc. v. ABC Nail & Spa Prods.*, No. 16-969, 2016 U.S. Dist. LEXIS 82147, at *25 (C.D. Cal. June 14, 2016) (“[I]t is possible Petitioners will suffer a denial of evidence and information necessary for their case because evidence may be secreted, [or] concealed....”).

The Superior Court disregarded the obviously compelling need for expedited discovery. The fact that no LACJ prisoners have yet died (a point made by Defendants and endorsed by the Superior Court) does not obviate the need for expedited treatment to ensure, to the extent possible, that no deaths occur in the future. *Helling v. McKinney*, 509 U.S. 25, 36 (1993) (housing individuals in crowded conditions where they are at risk of infectious disease is unconstitutional even when it “is not alleged that the likely harm would occur immediately and even though the possible infection might not affect all of those exposed”).

C. Extraordinary Circumstances Warrant this Interlocutory Writ Due to the Urgency of the Situation.

“A writ of mandate is the proper remedy to review discovery orders and procedures.” *White v. Superior Court*, 102 Cal. App. 4th Supp. 1, 4, (Cal. App. Dep't Super. Ct. 2002). There is a compelling need in this case for an interlocutory writ to issue. A writ of mandate is appropriate where either the trial court has abused its discretion or neglected the ministerial duty to consider a case. *Safai v. Safai*, 164 Cal. App. 4th 233, 242 (2008)(where a trial court had a duty to rule on objections but failed to do so, a writ of mandamus was the appropriate relief). The requirement of a ministerial duty to act “may be greatly relaxed, if not virtually abandoned, where the question is one of public interest.” *Roger v. Cty. of Riverside*, 44 Cal. App. 5th 510, 530 (Ct. App. 2020), reh'g denied (Jan. 29, 2020), review denied (Apr. 15, 2020) (compelling the Riverside Sheriff’s Department to improve its recordkeeping practices).

Here, this Court has already recognized that the matter is of public interest. On May 4, 2020, this Court issued an en banc decision in a case contesting the failure to follow CDC guidelines that would lead to the rapid spread of COVID-19 in California’s county jails. *National Association of Criminal Defense Attorneys, et al., v. Newsom, et al.*, No. S261827 (May 4, 2020). In that matter, this Court, recognized an urgent need “for prompt

attention in a manner that considers the diversity of local conditions throughout the state.” *Id.* at 2. Rather than rule upon that writ of mandate itself, the Court instructed the superior courts of the appropriate counties to make individual determinations “adapted based on individual facilities’ physical space, staffing, population, operations, and other resources and conditions,” *id.* (citing to CDC Guidance). Importantly, it urged superior courts to “to proceed as expeditiously as possible,” using all tools at their disposal, including by facilitating discussion between the parties and holding evidentiary hearings. *Id.*

The Superior Court failed to implement these directives and essentially treated this case as no different from a routine injunctive relief situation, rather than one involving a once in a century deadly pandemic whose epicenter is in congregate living environments such as jails and prisons. Petitioners did not request a full evidentiary hearing in connection with this request, and instead simply asked the court to set deadlines for expedited discovery in order to facilitate both discussion between the parties and a proposed preliminary injunction. The court denied this simple request. In denying this request, the court failed 1) to comply with this Court’s *National Association* order, which was an abuse of discretion in both the original motion for expedited discovery and the second motion, and 2) failed to substantively consider and rule upon the new facts

presented to it in the second application for expedited discovery (summarily dismissing it as not new facts), therefore abandoning its ministerial duty to rule on the motion presented to it. As discussed below, the court abused its discretion in not finding good cause for the limited expedited discovery Petitioners requested.

It is especially critical that this Court intervene not only to protect the Petitioners here, but to clarify the need for courts throughout California to treat the COVID-19 threat in jails and prisons as the urgent situation it is. LACJ is the largest jail by far in the state (indeed, the country). Making clear the need for urgent consideration of the merits of the instant claim will inform how other courts faced with similar issues should address the situation.

D. Superior Court’s Denial Of Application For Expedited Discovery Was An Abuse Of Discretion That Disregarded Both This Court’s Order And Petitioners’ Compelling Need For Expedited Discovery

- 1. This Court’s Order To Proceed Expeditiously And Use All Tools At Its Disposal Was Not Followed By The Superior Court.*

As explained in the preceding section, this court ordered the superior courts to supervise jails’ compliance with CDC guidelines and response to

COVID-19, using all the tools at their disposal and “as *expeditiously as possible* and to be mindful that conditions associated with COVID-19 in detention facilities and local communities are continually evolving.” *National Association*, slip op. at 3. (Emphasis added.) The order instructed the court to keep an eye on the conditions over time, including by allowing evidentiary hearings and by scrutinizing new information brought to their attention. *Id.* The superior court had the authority to grant leave to a plaintiff to serve discovery requests at an earlier time upon a showing of good cause. Cal. Code Civ. Proc. §§ 2031.020(d), 2030.020(d), 2025.210(b). A court may also order a shortened time for a response to discovery requests, or shorten the notice period for depositions. Cal. Code Civ. Proc. §§ 2031.260, 2030.260(a), 2025.270(d). There was good cause to grant both Petitioners’ original Request for Expedited Discovery and Petitioners’ second Request for Expedited Discovery. This Court should grant this writ of mandate and order the court to set expedited discovery deadlines in accordance with the order in *Nat’l Ass’n of Criminal Defense Lawyers*.

Other courts have granted expedited discovery requests due to the pandemic. For example, the Eastern District of New York granted many of the same types of information sought here because of the need for urgent action to safeguard inmates’ health. *Chunn v. Edge*, No. 20-cv-1590 (RPK)

(E.D.N.Y. Apr. 14, 2020) (attached as Vol. 4, Tab 37, p. 979); ; *A.S.M. v. Donohue*, No. 7:20-cv-00062-CDL-MSH, Order Granting Limited Expedited Discovery (M.D. Ga May 7, 2020) (finding that expedited discovery was warranted by the pandemic) (attached as Vol. 4, Tab 37, p. 989). Such discovery has also included a requirement to provide a list of medically vulnerable inmates. *Carranza v. Reams*, No. 20-cv-00977-PAB, 2020 U.S. Dist. LEXIS 82299 (D. Colo. May 11, 2020).

These orders demonstrate also that Petitioners' suggested time period of one week to produce this list of medically vulnerable prisoners was eminently reasonable. *See, e.g., Carranza*, 2020 WL 2320174 at *15 (ordering production of such a list in one week); *Martinez-Brooks v. Easter*, No. 3:20-cv-00569 (MPS), 2020 WL 2405350, at *101 (D. Conn. May 12, 2020) (ordering an at least partial list to be produced within three days); *Fraihat v. U.S. Immigration & Customs Enf't*, No. 19-cv-1546-JGB, 2020 WL 1932570, at *29 (C.D. Cal. Apr. 20, 2020) ("Defendants shall identify and track all ICE detainees with Risk Factors. Most should be identified within ten days of this Order or within five days of their detention, whichever is later"). As a court found weeks ago, "The fact that ICE does not have such a list [of medically vulnerable detainees] at the ready, six weeks after Governor Newsom shut down the entire state and one week after this lawsuit was filed, speaks volumes about where the safety of the

people at these facilities falls on ICE's list of priorities.” *Rivas v. Jennings*, No. 20-cv-02731-VC, 2020 WL 2059848, at *2 (N.D. Cal. Apr. 29, 2020).

Courts have also found outside the COVID context that a medical threat and an insufficient government response necessitates expedited discovery to prevent fatal harm. *See, e.g., United States v. Erie Cty.*, No. 09-CV-849S, 2010 U.S. Dist. LEXIS 144503 (W.D.N.Y. Mar. 6, 2010) (expedited discovery warranted where episodic suicides happening in a jail).

The failure to follow the Supreme Court’s order and the decision to allow the Los Angeles Sheriff’s Department to hide and delay the information concerning the pandemic was an abuse of discretion. As LASD Inspector General Max Huntsman said, LACJ has an epidemic inside the pandemic. Vol. 4, Tab 37, p. 972. It is a matter of great public importance whether the jails are spreading COVID-19 in ways that could be avoided. Both the original denial of the first motion for expedited discovery and the second denial of the more narrowly tailored motion are an abuse of discretion and an abdication of responsibility by the Superior Court.

2. *The Second Request For Expedited Discovery Was Not An Improper Request For Reconsideration*

As a result of the evolving circumstances surrounding COVID-19, Petitioners filed a second request for expedited discovery only after

obtaining and presenting new information that surfaced after the filing of the initial application. Petitioners' brief and supporting documents make this abundantly clear. *See e.g.*, Vol. 4, Tab 26, p. 814 at *1 (“recent jail figures – not available at the time of the May 5 TRO – provide a new and start portrait of a heavily infected jail population...”); *id.* at *6 (citing infection rates of prisoners after testing began on May 1, 2020); *id.* at *12 (citing numerous relevant legal decisions issued after the May 5 TRO decision). Petitioners also attached Declarations of Aaron Littman, Theresa Zhen, and Carlos Franco-Paredes containing new information not previously available to Petitioners when they filed their initial application. *Decl. of Aaron Littman* (Vol. 4, Tab 28, p. 865) (describing compilation of data made available on a public database after May 1, 2020); *Decl. of Carlos Franco-Paredes* (Vol. 4, Tab 30, p. 881) (analyzing data compiled after May 1, 2020); *Decl. of Theresa Zhen* (Vol. 4, Tab 29, p. 870) (describing interviews with or regarding 48 medically vulnerable prisoners in the period of April 2020 to the present, including the time period after filing the April 29 initial application). As such, Plaintiffs properly made a subsequent application for expedited discovery on the basis of “new or different facts, circumstances, or law” that were not available at the time of the original application filed April 29, 2020. *See* Cal. Civ. Pro. 1008(b).

The superior court wrongly denied Petitioners' second expedited

discovery request on the ground that it was “an improper and untimely request for reconsideration of the court’s prior order. (CCP § 1008)” and “assert[ed] the same arguments based upon the same law and solely relie[d] upon the County’s recent increased testing data.” Because the court ruled on the papers, and Petitioners’ papers did not address § 1008 specifically, the court never provided Petitioners an opportunity to respond on this issue. The Superior Court’s reliance on § 1008 was erroneous and highly prejudicial. The Superior Court had a duty to rule on the issues before it, but did not, warranting a writ of mandate ordering the Superior Court to consider the new facts and set expedited deadlines. *Safai v. Safai*, 164 Cal. App. 4th 233, 242 (2008) (where a court fails to consider and rule on a motion properly before it, a writ of mandamus is appropriate).

First, to the extent § 1008 was applicable (and for reasons we explain, it was not), Petitioners’ motion constituted a renewed request under § 1008(b) and not a request for reconsideration under § 1008(a), *see California Corr. Peace Officers Assn. v. Virga*, 181 Cal. App. 4th 30, 45 (Ct. App. 2010)). § 1008(a), which covers motions for reconsideration, addresses a motion “to reconsider the matter and modify, amend, or revoke the prior order,” It, unlike § 1008(b), has a ten-day limitation. But Petitioners’ second application did not seek modification of the prior order, and rather sought a wholly new, and far more limited, order for expedited

discovery. Thus, it was, if § 1008 applied at all, a renewed motion under § 1008(b), which has no time limitation.

§ 1008(b) applies to requests for the “same order.” Petitioners’ did not request the “same order” but rather an order for far more limited expedited discovery than previously requested. The previous document request sought a range of COVID-19 related documents, and reached far more broadly than the instant request, which focused on information regarding only testing and medically vulnerable prisoners. *See, e.g., Standard Microsystems Corp. v. Winbond Electronics Corp.*, 179 Cal.App.4th 868 (2009) (second motion was not seeking the same order because, while the first moved to set aside the default, the second sought to set aside the default and the judgment); *Schmidlin v. City of Palo Alto*, 157 Cal. App. 4th 728, 765, 69 Cal. Rptr. 3d 365, 394 (2007), *as modified* (Jan. 2, 2008) (“an application for a ruling does not seek ‘the same order’ as a previous application merely because it depends on a contention of law that has once been made” and rejected); *California Corr. Peace Officers Assn.*, 181 Cal. App. 4th at 43 (where Petitioners “requested \$370,529.29 in attorney fees in their original motion, and they sought the identical amount in their second motion” for attorney’s fees, the “second motion for attorney fees was a motion for ‘the same order’ (§ 1008, subd. (b)) as they sought in their first motion, because they sought *identical*

relief in both motions”) (original emphasis).

Finally, even if this was a renewed motion under § 1008(b), grant of the motion is proper (applicable under both 1008(a) and (b)) based “upon new or different facts, circumstances, or law.” Both exist here. New law existed because, although this Court’s directive in *National Association* was submitted on the eve of the first (May 5) hearing, the Superior Court did not rely on or reference it; thus, it was appropriate to treat this as new law. In any event, even if that order did not constitute new law, the renewed application arose from significant new facts, which were presented as the basis for the request. The renewed application explained that new data from the jail itself established that new entrants had only an approximately 3% infection rate, but *asymptomatic* testing of housing units had approximately 34% infection rate, meaning that entrants were infected by asymptomatic prisoners after entering the Jail. Petitioners also presented declarations demonstrating that persons were being quarantined in improper ways and that the practice had increased since the prior motion due to new outbreaks. Vol. 4, Tab 29, p. 870 (Zhen ¶ 7). These were new and dramatic facts that cast a different and urgent light on the situation. It was an abuse of discretion to deny the second application based on these undisputed facts.

To the extent that this court disagrees and finds that the new application for expedited discovery should have been a request for

reconsideration, the original request for expedited discovery should have been granted. Thus, this writ of mandate is still proper because the court also abused its discretion in denying the original request.

CONCLUSION

Petitioners ask that this Court immediately issue a peremptory writ of mandate directing the Superior Court to set expedited deadlines for real parties in interest to respond to Petitioners' expedited discovery requests, dated April 29, 2020 and May 21, 2020. In the alternative, Petitioners respectfully request that this Court find that the Superior Court so abused its discretion by twice denying expedited discovery, that the Superior Court shall appoint a special master to oversee the discovery process in the underlying matter.

DATED: May 29, 2020

Respectfully submitted,

By: 

Dan Stormer

By: /s/ Barrett S. Litt

Barrett S. Litt

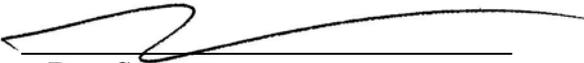
Attorneys for Petitioners
Rodney O. Cullors, et al.

CERTIFICATE OF WORD COUNT

(Cal. Rules of Court, Rule 8.204(c))

I, the undersigned counsel for Petitioners, relying on the word count function of Microsoft Word, the computer program used to prepare this document, certify that the foregoing Petition and Memorandum of Points and Authorities contain 12,971 words, excluding the words in the sections that California Rules of Court, rules 8.204(c)(3) and 8.486(a)(6) instruct counsel to exclude.

DATED: May 29, 2020

By: 

Dan Stormer

Attorneys for Petitioners Rodney O.
Cullors, et al.

PROOF OF SERVICE

I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 128 N. Fair Oaks Avenue, Pasadena, California 91103.

On May 29, 2020, I served the foregoing document described as:

PETITION FOR WRIT OF MANDATE AND/OR PROHIBITION OR OTHER RELIEF; MEMORANDUM OF POINTS AND AUTHORITIES; SUPPORTING DOCUMENTATION (SEPARATELY BOUND) on the interested parties in this cause as follows:

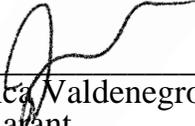
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|--|--|
| Los Angeles County Superior Court—Dept. 1 111 North Hill Street Los Angeles, CA 90012 Email: SMCdept1@lacourt.org | Respondent SUPERIOR COURT OF LOS ANGELES COUNTY |
| Paul B. Beach, Esq. Justin W. Clark, Esq. LAWRENCE BEACH ALLEN & CHOI, PC 100 W. Broadway, Suite 1200 Glendale, CA 91210 Emails: pbeach@lbaclaw.com jclark@lbaclaw.com | Attorneys for Defendants-Real Parties in Interest COUNTY OF LOS ANGELES, LOS ANGELES COUNTY SHERIFF ALEX VILLANUEVA |
| Andrew Baum, Esq. GLASER WEIL FINK HOWARD AVCHEN & SHAPIRO LLP 10250 Constellation Boulevard, 19th Floor Los Angeles, California 90067 Email: abaum@glaserweil.com | Attorneys for Defendants-Real Parties in Interest COUNTY OF LOS ANGELES, LOS ANGELES COUNTY SHERIFF ALEX VILLANUEVA |

XX BY EMAIL

XX I caused the foregoing document(s) to be transmitted to the addressees listed above, and to the best of my knowledge, the transmission was complete and without error in that I did not receive an electronic notification to the contrary.

Executed on May 29, 2020, at Pasadena, California.

XX (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.



Jessica Waldenro
Declarant

PROOF OF SERVICE

I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 128 N. Fair Oaks Avenue, Pasadena, California 91103.

On May 29, 2020, I served the foregoing document described as:
PETITION FOR WRIT OF MANDATE AND/OR PROHIBITION OR OTHER RELIEF; MEMORANDUM OF POINTS AND AUTHORITIES; SUPPORTING DOCUMENTATION (SEPARATELY BOUND) on the interested parties in this cause as follows:

Los Angeles County Superior
Court--Stanley Mosk
ATTN: Dept. 14
111 North Hill Street
Los Angeles, CA 90012

XX **BY MAIL**

XX I am readily familiar with the firm’s practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on the same day with postage thereon fully prepaid at Pasadena, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing this affidavit.

Executed on May 29, 2020, at Pasadena, California.

XX (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.



Jessica Valdenegro
Declaran