THE SUPERIOR COURT FOR THE COUNTY OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

IN THE STATE OF CALIFORNIA

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| **In re [NAME],**  **Petitioner,**  **On Habeas Corpus.** | **No. \_\_\_\_\_\_\_\_\_\_\_** |

**PETITION FOR WRIT OF HABEAS CORPUS;**

**MEMORANDUM OF POINTS AND AUTHORITIES**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**\*\*\*IMMEDIATE ORDER FOR PETITIONER’S RELEASE FROM [NAME OF INSTITUTION] REQUESTED\*\*\***

[Attorney name] \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[State Bar No.] \_\_\_\_\_\_\_\_\_\_\_

[Address] \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Phone] \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[email] \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Attorney for \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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THE SUPERIOR COURT FOR THE COUNTY OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

IN THE STATE OF CALIFORNIA

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| **In re [NAME],**  **Petitioner,**  **On Habeas Corpus.** | **No. \_\_\_\_\_\_\_\_\_\_\_** |

**PETITION FOR WRIT OF HABEAS CORPUS**

TO THE SUPERIOR COURT AND TO THE DISTRICT ATTORNEY OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ COUNTY:

Petitioner, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, by and through [HIS/HER/THEIR] attorney, respectfully petitions this court for a writ of habeas corpus, and by this verified petition sets forth the following facts and causes for the issuance of this writ:

**I.**

Petitioner is presently unlawfully confined by the [NAME OF INSTITUTION] at [CITY], California. On \_\_\_\_\_\_\_\_\_\_\_\_\_, in Case Number \_\_\_\_\_\_\_\_\_\_, the \_\_\_\_\_\_\_\_\_\_ Court imposed upon petitioner a disposition of \_\_\_\_\_\_ [MONTHS/YEARS] in [NAME OF INSTITUTION].

**II.**

This petition is being filed in this court pursuant to its original habeas corpus jurisdiction. (Calif. Const., Art. VI, sect. 10.)

**III.**

The restriction to petitioner’s liberty is illegal and petitioner’s continued confinement in light of the COVID-19 Pandemic that poses dire health risks constitutes an unreasonable risk of future harm violating the constitutional protections of the Fourteenth Amendment to the United States Constitution and Article I, section 7 of the California Constitution.

**IV.**

Petitioner respectfully requests that this court take judicial notice of the transcripts, files, briefs, motions, and records in this case. (Evid. Code, §§ 452, subd. (d)(1), 453, & 459.)

procedural history

**V.**

In a petition, filed on \_\_\_\_\_\_\_\_\_\_\_, the \_\_\_\_\_\_\_ County District Attorney alleged petitioner committed [LIST OFFENSES].

**VI.**

On \_\_\_\_\_\_\_\_\_\_\_\_, after [A JURISDICTIONAL HEARING; PLEA] [LIST OFFENSES] were sustained.

**VII.**

At a dispositional hearing on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, the court committed petitioner to [NAME OF INSTITUTION] for \_\_\_\_\_\_ [MONTHS/YEARS].

claims for relief

**VIII.**

**CLAIM I:**

**The Failure to Protect Petitioner From A Likely Outbreak Of COVID-19 In Confinement Constitutes a Violation of Due Process Under The Fourteenth Amendment and the California Constitution (Art. I, § (a))**

Conditions that pose an unreasonable risk of future harm to adult prisoners violate the constitutional protections of the Eighth Amendment. (See *Helling v. McKinney* (1993) 509 U.S. 25, 33.) The Eighth Amendment requires that “inmates be furnished with . . . reasonable safety,” and the Supreme Court has explicitly recognized that the risk of contracting “serious contagious diseases” may constitute such an “unsafe, life-threatening condition” that it threatens “reasonable safety.” (*Id*., at pp. 33-34.) Courts have found valid Eighth Amendment claims in cases like petitioner’s, involving contagious disease in carceral environments. (*Allen v. Kramer* (E.D. Cal., 2016) 2016 WL 4613360, at \*1, 11.)

However, the majority of courts have determined that the standard to which conditions of juvenile confinement are subject implicates the Due Process Clause of the Fourteenth Amendment, rather than the Eighth Amendment.[[1]](#footnote-1) (*Gary H. v. Hegstrom* (9th Cir. 1987) 831 F.2d 1430, 1432.) The due process clause implicitly incorporates the cruel and unusual punishments clause standards as a constitutional minimum. (*Ibid*.)

A failure to protect petitioner from a likely outbreak of COVID-19 in confinement most certainly constitutes a violation of due process under the Fourteenth Amendment. Whether confined pre- or post-adjudication, children have a right to care and treatment under the Fourteenth Amendment. (See *Youngberg v. Romeo* (1982) 457 U.S. 307, 317 (“When a person is institutionalized—and wholly dependent on the State[,] . . . a duty to provide certain services and care does exist”; *Bell v. Wolfish* (1979) 441 U.S. 520, 541.)

Under the Fourteenth Amendment, youth must be protected from punishment and known risks of harm. (See, e.g., *Natale v. Camden Cty. Corr. Facility* (3d Cir. 2003) 318 F.3d 575, 581 (“the Fourteenth Amendment affords pretrial detainees protections ‘at least as great as the Eighth Amendment protections available to a convicted prisoner’”) (quoting City of *Revere v. Mass. Gen. Hosp.* (1983) 463 U.S. 239, 244; *Helling, supra,* 509 U.S. at p. 33 (the State violates the Eighth Amendment when it crowds prisoners into cells with others who have “infectious maladies”) (citing *Hutto v. Finney, supra,* 437 U.S. at p. 682.) A fortiori, exposing youth in custody to a high risk of contracting COVID-19 violates their right to be protected from a serious risk of harm and their right to be free from punishment.

Among the additional guarantees to children under the Fourteenth Amendment is a right to treatment and rehabilitation. (See *Youngberg,* 457 U.S. at pp. 321–322; *Nelson v. Heyne* (7th Cir. 1974) 491 F.2d 352, 360 (children have a right to “rehabilitative treatment” because the State has assumed the role of the parent and such treatment must be “what proper parental care would provide”); see also *C.P.X. v. Garcia,* No. 4:17-cv-00417, Trial Order (S.D. Iowa Mar. 30, 2020) (holding that juvenile facility’s failure to provide appropriate mental health care violates children’s substantive due process rights under the Fourteenth Amendment). Depriving youth of programming, education, and social interactions and keeping them isolated in conditions known to cause long-term psychological harm falls far short of this standard.

As detailed in the accompanying Memorandum of Points and Authorities, the State’s inability at this critical juncture to provide petitioner with reasonable safety from a likely outbreak Of COVID-19 in confinement constitutes a violation of Due Process under the Fourteenth Amendment and the California Constitution (Art. I, §(a)).

**IX.**

The allegations of this petition are supported by the record in this case, and by the accompanying declarations and exhibits. The foregoing allegations are amplified in the accompanying Memorandum of Points and Authorities, which is incorporated by reference.

**X.**

Petitioner has no plain, speedy, or adequate remedy at law to raise these claims because they rest in large part on materials not included in the record.

**XI.**

This petition is being presented in the first instance to this Court under its original habeas corpus jurisdiction.

**XII.**

This petition states a prima facie case for relief. To ensure that this claim is decided on a fully-developed factual record, this Court should issue an Order to Show Cause at the earliest opportunity.

PRAYER

Wherefore, petitioner [NAME] asks this Court to:

1. Take judicial notice of the record, briefs, and all other pleadings in this case.
2. Issue an Order to Show Cause, directing the State to show cause why petitioner should not be released.
3. Meanwhile as an adjunct to that order command respondent to immediately release petitioner on [PROBATION].
4. Grant whatever further relief this Court finds appropriate and in the interests of justice.

Dated: \_\_\_\_\_\_\_\_\_\_\_ Respectfully submitted,

[Attorney signature] \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Attorney name] \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Attorney for [NAME]

VERIFICATION

I, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, declare:

I am a member of the Bar of the State of California and the appointed attorney on appeal for [NAME] who is authorized to file this petition for writ of habeas corpus on his behalf. I am making this verification on his behalf because the matters alleged here are more within my knowledge. The allegations of this petition are based on the record in this case, and the additional declarations and exhibits accompanying this petition.

I have read the foregoing petition and verify that the facts alleged are true of my own personal knowledge or are supported by citations to the record in [CASE NUMBER] or by citations to the accompanying exhibits and declarations.

I certify under penalty of perjury that the foregoing is true and correct. Executed on [DATE], at [CITY OR COUNTY], California.

[Attorney signature] \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Attorney name] \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Attorney for [NAME]

MEMORANDUM OF POINTS AND AUTHORITIES

IN SUPPORT OF PETITION

FOR WRIT OF HABEAS CORPUS

Introduction

California today is under a state of emergency due to the spread of the novel coronavirus and COVID-19, the deadly disease it causes. Like the rest of the country and the world, the State is bracing for the potentially catastrophic ravages of this pandemic. The Governor has taken significant steps to flatten the curve of new cases before hospitals are overwhelmed and the death toll skyrockets, as it has elsewhere.[[2]](#footnote-2) (Newsom March 19, 2020 Executive Order N-33-20.) The Governor’s order requires all California residents to stay home, except to facilitate certain authorized activities, and to keep a distance of at least six feet apart at all times. In the absence of such appropriate steps to mitigate the spread of the virus, the Governor’s office predicts as many as 56% of all Californians will contract the virus. (*Ibid*.)

Governor Newsom has recognized the specific risk to incarcerated people during the Pandemic by issuing Executive Order, N-36-20, halting all movement by prisoners from county jails and juvenile halls to adult prisons and the Department of Juvenile Justice for 30 days, with the ability to extend that order in 30 day increments as deemed necessary. (Newsom March 24, 2020 Executive Order N-36-20.) That order represents a recognition by the highest executive authority of the enhanced danger to incarcerated people from the COVID-19 Pandemic.

As discussed below, petitioner’s continued confinement in light of the COVID-19 Pandemic that poses dire health risks constitutes an unreasonable risk of future harm violating the constitutional protections of the Fourteenth Amendment and Article I, Section 17 of the California Constitution.

1. A Failure to Protect Petitioner From A Likely Outbreak Of COVID-19 In Confinement Constitutes a Violation of Due Process Under The Fourteenth Amendment and the California Constitution (Art. I, § 7 Subd. (a))

Conditions that pose an unreasonable risk of future harm to adult prisoners violate the constitutional protections of the Eighth Amendment. (See *Helling v.* *McKinney* (1993) 509 U.S. 25, 33 (*Helling*) (“That the Eighth Amendment protects against future harm to inmates is not a novel proposition”) In *Helling*, a plaintiff alleged that he was assigned to a cell with another inmate who smoked five packs of cigarettes per day. (*Helling*, at p. 28.) At issue was whether this exposure to environmental tobacco smoke (ETS) could constitute a valid claim under the Eighth Amendment, even though the plaintiff had not yet suffered harm. (*Id*., at p. 30.) The Supreme Court upheld the lower court decision, finding that the plaintiff stated “a cause of action under the Eighth Amendment by alleging that petitioners have, with deliberate indifference, exposed him to levels of ETS that pose an unreasonable risk of serious damage to his future health.” (*Id*., at p. 35.)

The Eighth Amendment requires that “inmates be furnished with the basic human needs, one of which is ‘reasonable safety.’” (*Helling*, 509 U.S. at p. 33.) It requires that “inmates be furnished with . . . reasonable safety,” and the Supreme Court has explicitly recognized that the risk of contracting “serious contagious diseases” may constitute such an “unsafe, life-threatening condition” that it threatens “reasonable safety.” (*Id*., at pp. 33-34 (internal quotations omitted); see also *Hutto v. Finney* (1978) 437 U.S. 678, 682-685 (recognizing the need for a remedy where prisoners were crowded into cells and some had infectious diseases).

Courts have found claims of future harms cognizable under the Eighth Amendment that involved risks posed by contaminated water (*Carroll v. DeTella* (7th Cir. 2001) 255 F.3d 470, 472), use of chemical toilets (*Masonoff v. DuBois* (D. Mass. 1995) 899 F. Supp. 782, 797) and paint toxins (*Crawford v. Coughlin* (W.D.N.Y. 1999) 43 F. Supp. 2d 319, 325). Courts have also found valid Eighth Amendment claims in cases like petitioner’s, involving contagious disease in carceral environments. Relying on *Helling*, courts have found valid claims based on relatively high risk of contracting Valley Fever in California prisons. (*Allen v. Kramer* (E.D. Cal., 2016) 2016 WL 4613360, at \*1, 11.)

As discussed below, if risks posed by secondhand smoke, contaminated water, use of chemical toilets, paint toxins, or Valley Fever constitute an “unsafe, life-threatening condition” that threatens “reasonable safety” of adults in a carceral setting, petitioner’s continued confinement in light of the COVID-19 Pandemic—which poses dire health risks, killing thousands of people in this country—would certainly constitute an unreasonable risk of future harm violating the constitutional protections of the Eighth Amendment and the California Constitution.

However, the majority of courts have determined that the standard to which conditions of juvenile confinement are subject implicates the Due Process Clause of the Fourteenth Amendment, rather than the Eighth Amendment.[[3]](#footnote-3) (*Gary H. v. Hegstrom* (9th Cir. 1987) 831 F.2d 1430, 1432; *H.C. ex rel. Hewett v. Jarard* (11th Cir. 1986) 786 F.2d 1080, 1084-1085; *Milonas v. Williams* (10th Cir. 1982) 691 F.2d 931, 942; *Alexander S. v. Boyd* (D.S.C. 1995) 876 F. Supp. 773; *Santana v. Collazo* (1st Cir. 1983) 714 F.2d 1172, 1179.) This is so because juveniles are not subject to “punishment,” as the word is used in the Eighth Amendment. The due process clause implicitly incorporates the cruel and unusual punishments clause standards as a constitutional minimum. (*Gary H. v. Hegstrom, supra,* 831 F.2d at p. 1432.)

A failure to protect petitioner from a likely outbreak of COVID-19 in confinement most certainly constitutes a violation of due process under the Fourteenth Amendment. Whether confined pre- or post-adjudication, children have a right to care and treatment under the Fourteenth Amendment. (*Youngberg v. Romeo* (1982) 457 U.S. 307, 317 (“When a person is institutionalized—and wholly dependent on the State[,] . . . a duty to provide certain services and care does exist.”).

It is beyond dispute that the State has a heightened duty to any pre-trial detainee, child or adult. In *Bell v. Wolfish* (1979) 441 U.S. 520, the U.S. Supreme Court held that because they have not been “convicted of any crimes,” pre-trial detainees cannot be subjected to conditions that “amount to punishment.” (*Id*., at p. 541, see also *Kingsley v. Hendrickson* (2015) 135 S. Ct. 2466, 2473-2474 (clarifying that the Fourteenth Amendment excessive force standard applicable to pre-trial detainees is more protective than the Eighth Amendment standard); *Youngberg, supra,* 457 U.S. at pp. 321–322 (clarifying that involuntarily committed individuals “are entitled to more considerate treatment and conditions of confinement” than individuals post-conviction whose conditions of confinement are “designed to punish”). “[A]s a general matter, the due process standard applied to juvenile pretrial detainees should be more liberally construed than that applied to adult detainees.” (*A.J. ex rel. L.B. v. Kierst* (8th Cir. 1995) 56 F.3d 849, 854.)

Following the U.S. Supreme Court’s reasoning in *Youngberg* and *Bell*, courts throughout the nation have concluded that the Fourteenth Amendment also provides heightened protections to youth held post-adjudication. Like pre-trial detainees and involuntarily committed patients, youth in state custody due to a delinquency adjudication are not confined for punitive purposes. (See, e.g., *Vann v. Scott* (7th Cir. 1972) 467 F.2d 1235, 1239 (applying the Fourteenth Amendment because the purpose of the “delinquent” classification is “to afford the State an adequate opportunity to rehabilitate and safeguard delinquent minors rather than to punish them”); see also *A.J. ex rel. L.B. v. Kierst, supra,* 56 F.3d at p. 854; *Gary H. v. Hegstrom, supra,* 831 F.2d at pp. 1431–1432; *H.C. ex rel. Hewett v. Jarrard* (11th Cir. 1986) 786 F.2d 1080, 1084–85; *Alexander S. ex rel. Bowers v. Boyd* (D. S.C. 1995) 876 F. Supp. 773, 795–796.)

Under the Fourteenth Amendment, youth must be protected from punishment and known risks of harm. (See, e.g., *Natale v. Camden Cty. Corr. Facility* (3d Cir. 2003) 318 F.3d 575, 581 (“the Fourteenth Amendment affords pretrial detainees protections ‘at least as great as the Eighth Amendment protections available to a convicted prisoner’”) (quoting City of *Revere v. Mass. Gen. Hosp.* (1983) 463 U.S. 239, 244; *Helling, supra,* 509 U.S. at p. 33 (the State violates the Eighth Amendment when it crowds prisoners into cells with others who have “infectious maladies”) (citing *Hutto v. Finney, supra,* 437 U.S. at p. 682.) A fortiori, exposing youth in custody to a high risk of contracting COVID-19 violates their right to be protected from a serious risk of harm and their right to be free from punishment.

Among the additional guarantees to children under the Fourteenth Amendment is a right to treatment and rehabilitation. (See *Youngberg,* 457 U.S. at pp. 321–322; *Nelson v. Heyne* (7th Cir. 1974) 491 F.2d 352, 360 (children have a right to “rehabilitative treatment” because the State has assumed the role of the parent and such treatment must be “what proper parental care would provide”); see also *C.P.X. v. Garcia,* No. 4:17-cv-00417, Trial Order (S.D. Iowa Mar. 30, 2020) (holding that juvenile facility’s failure to provide appropriate mental health care violates children’s substantive due process rights under the Fourteenth Amendment). Depriving youth of programming, education, and social interactions and keeping them isolated in conditions known to cause long-term psychological harm falls far short of this standard.

Here, as of April 12, 2020, there are almost two million confirmed cases of COVID-19 worldwide and over 113,000 deaths.[[4]](#footnote-4) The United States has the highest number of confirmed cases in the world with almost half a million confirmed cases and 18,516 confirmed deaths as of April 12, 2020.[[5]](#footnote-5) These numbers are growing exponentially. Projections of the Centers for Disease Control and Prevention (“CDC”) show that, without effective public health intervention, more than 200 million people in the United States could be infected with COVID-19, with as many as 1.7 million deaths in the most severe projections.[[6]](#footnote-6)

There is no vaccine for COVID-19, and there is no cure. (Exhibit 1: Declaration of Marc Stern, ¶ 4.) No one has prior immunity. (*Ibid*.) It is easily transmissible—spreading “through droplets generated when an infected person coughs or sneezes, or through droplets of saliva or discharge from the nose.” (*Ibid*.) It is believed “that a significant amount of transmission may be from people who are infected but asymptomatic or pre-symptomatic.” (*Id*., at ¶ 5.) Once a person has been exposed to the virus, she may show symptoms within as little as two days, and her condition might “seriously deteriorate in as little as five days (perhaps sooner) after that.” (*Ibid*.) The effects of COVID-19 are very serious and can include severe respiratory illness, major organ damage, and, for a significant number of people, death. (*Id*., at ¶ 7.)

In about 19 percent of cases, COVID-19 illness is severe, including pneumonia with respiratory failure, septic shock, multiorgan failure, and even death. Some people are at higher risk of getting severely sick from this illness, including people who have serious chronic medical conditions like asthma, lung disease, and diabetes, and those who are immunocompromised. There are currently no antiviral drugs licensed by the U.S. Food and Drug Administration to treat COVID-19, or post-exposure prophylaxis to prevent infection once exposed.[[7]](#footnote-7)

Leading public health officials have warned that unless courts act immediately, the “epicenter of the pandemic will be jails and prisons.”[[8]](#footnote-8) As the CDC has explained, correctional facilities “present[] unique challenges for control of COVID-19 transmission among incarcerated/detained persons, [detention center] staff, and visitors.”[[9]](#footnote-9)

“Prisons are epicentres for infectious diseases because of the higher background prevalence of infection, the higher levels of risk factors for infection, the unavoidable close contact in often overcrowded, poorly ventilated, and unsanitary facilities, and the poor access to health- care services relative to that in community settings. Infections can be transmitted between prisoners, staff and visitors, between prisons through transfers and staff cross-deployment, and to and from the community. As such, prisons and other custodial settings are an integral part of the public health response to coronavirus disease 2019 (COVID-19).”[[10]](#footnote-10)

More specifically, medical professionals have called on state governors, courts, and departments of corrections to “[i]mmediately release youth in detention and correctional facilities who can safely return to the home of their families and/or caretakers, with community-based supports and supervision, in order to alleviate potential exposure to COVID-19.” (Letter from Physicians, at p. 1.)

“COVID-19 cases have already been confirmed in detention facilities in which young people live in close quarters, which have subpar infection control measures in place, and whose population represents some of the most vulnerable. In this setting, we can expect spread of COVID-19 in a manner similar to that at the Life Care Center of Kirkland, Washington, at which over 50 percent of residents have tested positive for the virus and over 20 percent have died in the past month.” (Letter from Physicians, at p. 2.)

Infection rates in carceral settings will most certainly explode and many deaths—perhaps many hundreds or thousands—will result. ***This Court must act now.***

Infectious diseases like COVID-19 are spread by sharing or touching objects used by others, and the diseases are spread through the air or by touch. Controlling the spread of the virus by limiting person-to-person contact is critical to saving lives. This is very challenging in confinement because people are detained in congregate environments (places where people live and sleep in close proximity). Social distancing in ways that are recommended by public health officials can be difficult, if not impossible, in this environment, and they are sharing or touching objects used by others. (Exhibit 1: Declaration of Marc Stern, ¶ 8.)

Dr. Craig W. Haney, Distinguished Professor of Psychology and UC Presidential Chair at the University of California Santa Cruz, observes: “Juvenile facilities in particular lack the operational capacity to address the needs of youth in custody in a crisis of this magnitude. They do not have the resources needed to provide youth with ready access to cleaning and sanitation supplies, or to ensure that staff sanitize all potentially contaminated surfaces during the day. Most lack the capacity to provide more than minimal emergency mental health or medical care. Yet the demand for such services in this crisis will grow, stretching already scarce treatment resources even further.” (Exhibit 2: Declaration of Craig W. Haney, ¶8.) Dr. Haney adds, “juvenile facilities cannot readily protect youth from contact with staff who regularly enter facilities after having been in the outside world. Staff members are at risk of contracting COVID-19 and then transmitting it to both youth and other staff inside.” (*Ibid*.)

The time course of the disease can be very rapid. Individuals 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 (perhaps sooner) after that. It is believed that people can transmit the virus without being symptomatic and, indeed, that a significant amount of transmission may be from people who are infected but asymptomatic or pre-symptomatic. (Exhibit 1: Declaration of Marc Stern, ¶ 5.)

Community spread is in the U.S., and staff at juvenile facilities have tested positive for COVID-19. The number of cases is growing exponentially, and health systems are already being strained. Social distancing measures recommended by the Centers for Disease Control are nearly impossible in detention and correctional facilities, and testing remains largely unavailable. In facilities that are already crowded, large scale quarantines, which means isolation in many facilities, is neither feasible nor humane.

Despite early observations that young people are not contracting the Coronavirus, and even if they are, they do not suffer any physical harm as a result, a recent epidemiological study of pediatric COVID-19 indicates that the virus poses a greater risk of severe illness to children (ages 0 to 18 years) than scientists once realized.[[11]](#footnote-11) In what is thought to be “the first retrospective study on the epidemiological characteristics and transmission dynamics of children’s COVID-19 in China,” researchers found that children were clearly contracting COVID-19 through person-to-person transmission.[[12]](#footnote-12) Moreover, among the children tracked in the study, nearly six percent developed severe to critical cases of COVID-19.[[13]](#footnote-13) Although the study showed that children (5.9%) were less likely than their adult counterparts (18.5%) to develop the most concerning cases of the disease, the study clearly demonstrates that the current pandemic poses a significant risk of harm to younger persons.[[14]](#footnote-14)

The effects of COVID-19 are very serious, especially for people who are most vulnerable. Vulnerable people include those of any age with underlying health problems such as—but not limited to—weakened immune systems, hypertension, diabetes, blood, lung, kidney, heart, and liver disease, and possibly pregnancy. (Exhibit 1: Declaration of Marc Stern, ¶ 6.)

Vulnerable people who are infected by the novel coronavirus can experience severe respiratory illness, as well as damage to other major organs. Treatment for serious cases of COVID-19 requires significant advanced support, including ventilator assistance for respiration and intensive care support. An outbreak of COVID-19 could put significant pressure on or exceed the capacity of local health infrastructure. In the absence of a vaccine and a cure, a significant number of people who are infected with the virus will die. To the extent that the health care infrastructure is overloaded, people will die unnecessarily because necessary respirators and hospital facilities are unavailable. (Exhibit 1: Declaration of Marc Stern, ¶ 7.)

[IF YOUR YOUTH IS MEDICALLY VULNERABLE, DISCUSS HERE AND IN DECLARATION; IF DOCUMENTS RECORDING THEM EXIST, ATTACH THEM AS EXHIBITS, AND ARGUE INCREASE RISK OF HARM]

Penal settings have limited options to implement the social distancing that is now required in response to the COVID pandemic. Such settings are likely to resort to solitary confinement. (Exhibit 2: Haney, ¶9) [IF YOU KNOW YOUR CHILD IS BEING HELD IN SOLITARY CONFINEMENT, STATE HERE, DISCUSS IN YOUR DECLARATION, AND MODIFY THE FOLLOWING AS NEEDED] The experience of solitary confinement inflicts an additional set of very serious harmful effects that significantly undermine mental and physical health. Children are categorically more vulnerable to harsh conditions of solitary confinement and which potentially results in irreversible mental and physical harm. (Exhibit 2: Haney, ¶11.) According to Dr. Haney,

The COVID-19 Pandemic will be a traumatic experience for many, especially for children. In the case of children housed in juvenile institutions, this trauma will affect an already highly traumatized population. In addition to the traumatic effects of incarceration itself for children, [footnote] and the added trauma produced by harsh conditions of juvenile confinement (such as solitary confinement), it is important to recognize that most incarcerated children have already experienced numerous childhood “risk factors” or “adverse childhood experiences.” [footnote.] Thus, juvenile incarceration represents a form of “retraumatization” for many of them. And even this retraumatization can be made worse, for example by placement in solitary confinement. It is thus hard to imagine a more vulnerable population whose very significant needs should be treated with the utmost sensitivity in the face of this Pandemic.

(Exhibit 2: Haney, ¶12)

“The United States Center for Disease Control and Prevention (CDC) has acknowledged that the COVID-19 Pandemic poses a threat to the mental as well as physical health of the nation, especially to its children and teens.” (Exhibit 2: Haney, ¶13.) “Similarly, the World Health Organization (WHO) also has recognized that the COVID-19 poses an existential threat to the mental health of children.” (*Id*., at ¶14.) Haney catalogues the recommendations of the CDC and WHO for the appropriate way to address the needs of children. (*Id*., at ¶13-14.)

The COVID-19 Pandemic is a natural disaster that has already had a significant worldwide impact whose catastrophic effects are beginning to mount in the United States. The Pandemic has traumatic psychological as well as physical consequences. The consequences are especially severe for children who are not only experiencing the Pandemic but also trying to comprehend its magnitude and implications. They are seeking safety in an otherwise suddenly unsafe-feeling world. Not surprisingly, the CDC and WHO both recommend intense and expansive forms of family support, caring, and coping to ameliorate these traumatic effects. Yet this kind of familial support, caring, and coping is simply unavailable in (and in essence precluded by) juvenile institutions.

(Exhibit 2: Haney, ¶15.)

Dr. Haney concludes, “Thus, it should be obvious that few if any of the CDC or WHO recommendations for the appropriate way to address the needs of children in light of the present Pandemic can be effectively implemented in a secure juvenile facility.” (Exhibit 2: Haney, ¶16.) Haney opines “that returning incarcerated children to their families, where they can receive the kind of familial support that the CDC and WHO recommend, is the best possible course of action to take in response to the COVID-19 Pandemic.” (*Id*., at ¶18.)

“No one is sure when this crisis will abate, and we are all feeling fear and uncertainty about the future. However, it is magnified for the families who are separated from their children because their children are incarcerated. The anxiety and emotional distress youth may feel when removed from the home and incarcerated is certainly exacerbated by the current pandemic.” (Letter from Physicians, at p. 3.) “Many detention and correctional facilities have not communicated with youths’ parents, except to tell them they cannot visit.” (*Ibid*.) “[T]his vast lack of communication increases the uncertainty, anxiety, and fear on the part of families and their children.” (*Ibid*.) Children “with preexisting mental health conditions are among those ‘who many respond more strongly’ to the stress and fears associated with the outbreak of this disease. In essence, a preexisting mental health condition renders a youth more vulnerable to increased distress related to the current health crisis.” (*Ibid*.)

“Research has consistently demonstrated the prevalence of mental health disorders among youth in the detention center is at least twice that of youth who are not detained. These uncertain times are traumatic for the country and the world. According to the American Academy of Pediatrics, ‘[c]hildren who suffer potentially traumatic events are more likely to develop lasting emotional problems if they are not with their parents – or are separated from their parents – immediately after the event.’ Allowing youth to ‘shelter in place’ with their families can potentially reduce the negative emotional impact that this global crisis may have on their current well-being and long-term adjustment.” (Letter from Physicians, at p. 3.)

[DISCUSS PARTICULAR FACTS DEMONSTRATING THE INSTITUTION’S FAILURE TO PROVIDE REASONABLE SAFETY (E.G., NO SOCIAL DISTANCING, SANITIZING, TESTING OF STAFF, ETC.) AND INCLUDE IN DECLARATION BY SOMEONE WITH PERSONAL KNOWLEDGE]

Accordingly, petitioner’s continued confinement in light of the COVID-19 Pandemic that poses dire health risks constitutes an unreasonable risk of future harm violating the constitutional protections of the Fourteenth Amendment and Article I, Section 17 of the California Constitution.

1. This Court Should Act at Once To Issue an Order for Respondent to Show Cause Why It Should Not Grant the Relief Requested, and Meanwhile as an Adjunct to that Order Command Respondent to Immediately Release Petitioner on [PROBATION]

This Court should find that the petition states a prima facie case for relief. In determining that threshold question, this Court should take the petition’s factual allegations as true and consider whether those facts, if proven, would entitle petitioner to relief. (*People v. Romero* (1994) 8 Cal.4th 728, 737 (*Romero*); *People v. Duvall* (1995) 9 Cal.4th 464, 474-475.) If so, issuance of an order to show cause (OSC) is “mandatory,” to ensure final disposition of the proceeding on a fully-developed factual record. (*Romero, supra,* 8 Cal.4th at p. 740.)

The Supreme Court has sanctioned the grant of preliminary relief on habeas corpus in appropriate cases. The Court has stressed that “obtaining relief through habeas corpus proceedings [need not] be slow or cumbersome”:

If the claim asserted in the petition has apparent merit and there is some urgency because the petition, for example, alleges entitlement to release on bail or challenges the validity of a contempt order, the court may require the custodian or real party in interest to submit the return to the writ or order to show cause as little as 24 hours after being served with the petition. (Pen. Code, § 1475, pars. 3-4.) Pending the outcome of the habeas corpus proceeding, the court may order that the petitioner be temporarily released from custody. (See id., § 1476 [court may “admit [the petitioner] to bail, if the offense is bailable”]; *In re William M.* (1970) 3 Cal.3d 16, 22 [minor ordered released pending habeas corpus petition’s determination]; *In re Newbern* (1960) 53 Cal.2d 786, 788 [petitioner released on own recognizance pending outcome of habeas corpus proceeding].) Once the return is received, the court may grant relief without an evidentiary hearing if there are no material contested issues of fact. (*In re Fields* [(1990]) 51 Cal.3d 1063, 1070, fn. 2.)

(*People v. Romero, supra,* 8 Cal.4th at pp. 744–745; cf*. In re Alcala* (1990) 222 Cal.App.3d 345, 352 [preliminary relief granted by trial court in prison conditions case upon filing of petition].).)

The Court’s power to grant preliminary relief, explicitly recognized by the Supreme Court in *Romero*, is inherent in its power to grant the writ:

The writ of habeas corpus is the fundamental instrument for safeguarding individual freedom against arbitrary and lawless state action. Its pre-eminent role is recognized by the admonition in the Constitution that: ‘The Privilege of the Writ of Habeas Corpus shall not be suspended.’ U.S. Const., Art. I, s 9, cl. 2. The scope and flexibility of the writ—its capacity to reach all manner of illegal detention—its ability to cut through barriers of form and procedural mazes—have always been emphasized and jealously guarded by courts and lawmakers. The very nature of the writ demands that it be administered with the initiative and flexibility essential to ensure that miscarriages of justice within its reach are surfaced and corrected.

(*Harris v. Nelson* (1969) 394 U.S. 286, 290–291.)

“[T]he high purpose of the writ of habeas corpus” (*In re Crow* (1971) 4 Cal.3d 613, 623) is to provide “an efficacious means of vindicating an individual's fundamental rights.” (*Ibid*.) The Penal Code accordingly grants broad powers and flexibility to the courts to determine the writ and to fashion the appropriate remedy should there be merit to the petitioner’s claim. (See, e.g., Pen. Code, § 1484 [after issuance of order to show cause, habeas court shall “dispose of such party as the justice of the case may require and have full power and authority … to do and perform all … acts and things necessary to a full and fair hearing and determination of the case”].) This Court accordingly enjoys great discretion on habeas corpus to effect substantial justice by ordering the preliminary relief here requested.

The writ’s “function has been to provide a prompt and efficacious remedy for whatever society deems to be intolerable restraints.” (*Fay v. Noia* (1963) 372 U.S. 391, 401–402.) Its essence is the provision of effective speedy and efficacious relief from illegal confinement without protracted and complicated litigation. (See, e.g., *Stafford v. Briggs* (1980) 444 U.S. 527, fn. 3 (dis. opn. of Stewart J) [“‘The Great Writ’ … thus must be administered flexibly to insure it serves its purposes”].)

In this case the appropriate flexible administration of the writ includes a prompt order directing respondent to release petitioner on [PROBATION]. After all, “habeas corpus delayed is habeas corpus denied.” (*Frias v. Superior Court* (1975) 51 Cal.App.3d 919, 924.)

CONCLUSION

For the reasons discussed above, this Court should issue an Order to Show Cause, directing the State to show cause why the petitioner should not be released. Meanwhile as an adjunct to that order command respondent to immediately release petitioner on [PROBATION], and grant whatever further relief this Court finds appropriate and in the interests of justice.

Dated: \_\_\_\_\_\_\_\_\_\_\_ Respectfully submitted,

[Attorney signature] \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Attorney name] \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Attorney for [NAME]

1. The Supreme Court has not announced the appropriate federal standards by which to judge state juvenile detention facility conditions. (See *Ingraham v. Wright* (1977) 430 U.S. 651, 669 n. 37 (expressly reserving the question whether the cruel and unusual punishments clause applies to juvenile institutions). [↑](#footnote-ref-1)
2. <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.19.20-attested-EO-N-33-20-COVID-19-HEALTH-ORDER.pdf> [↑](#footnote-ref-2)
3. The Supreme Court has not announced the appropriate federal standards by which to judge state juvenile detention facility conditions. (See *Ingraham v. Wright* (1977) 430 U.S. 651, 669 n. 37 (expressly reserving the question whether the cruel and unusual punishments clause applies to juvenile institutions). [↑](#footnote-ref-3)
4. As of April 12, 2020, according to *Coronavirus COVID-19 Global Cases* by the Center for Systems Science and Engineering at Johns Hopkins University, <https://gisanddata.maps.arcgis.com/apps/opsdashboard/index.html#/bda7594740fd40299423467b48e9ecf6> [↑](#footnote-ref-4)
5. World Health Org., *Coronavirus Disease (COVID-2019) Situation Reports – 83*, (Apr. 12, 2020) <https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200412-sitrep-83-covid-19.pdf?sfvrsn=697ce98d_4> [↑](#footnote-ref-5)
6. Sheri Fink, *Worst-Case Estimates for U.S. Coronavirus Deaths*, N.Y. Times (Mar. 18, 2020), <https://nyti.ms/2JrLgal> [↑](#footnote-ref-6)
7. Letter from Physicians for Criminal Justice Reform to State Governors, State and Local Juvenile Detention and Correctional Departments, and Juvenile Court Judges and Magistrates, *COVID-19 Risks for Detained and Incarcerated Youth*, (March 22, 2020) [hereafter “Letter from Physicians”] at p. 2, <https://bit.ly/3az51sz> [↑](#footnote-ref-7)
8. Amanda Klonsky, *An Epicenter of the Pandemic Will Be Jails and Prisons, if Inaction Continues*, N.Y. Times (Mar. 16, 2020), <https://nyti.ms/3aycWX4> [↑](#footnote-ref-8)
9. Ctrs. for Disease Control & Prevention, *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities* (“*CDC Guidance*”) (Mar. 23, 2020), <https://bit.ly/2ygqU1k> [↑](#footnote-ref-9)
10. Stuart A Kinner, et al, *Prisons and custodial settings are part of a comprehensive response to COVID-19*, The Lancet, Vol 5 April 2020, p. e188, www.thelancet.com/public-health [↑](#footnote-ref-10)
11. Washburn, *Here Is How California Must Protect Youth In State Lock-Ups During The COVID-19 Crisis*, Witness LA, March 30, 2020 <https://witnessla.com/here-is-how-california-must-protect-youth-in-state-lock-ups-during-the-covid-19-crisis/> [↑](#footnote-ref-11)
12. Dong, Y., Mo, X., Hu, Y., Qi, X., Jiang, F., Jiang, Z., and Tong, S. (2020). *Epidemiological Characteristics of 2143 Pediatric Patients With 2019 Coronavirus Disease in China*. Pediatrics. <https://pediatrics.aappublications.org/content/early/2020/03/16/peds.2020-0702> [↑](#footnote-ref-12)
13. *Id.*, fn. 6. [↑](#footnote-ref-13)
14. The authors of the Chinese study admitted that they were not clear why it was that children tended to have less severe cases of COVID-19 than adults; however, they suspected that the children’s environment played a role. Specifically, the report noted that the children studied “were usually well cared for at home and might have relatively less opportunities to expose themselves to pathogens and/or sick patients.” As stated above, this type of protective environment is not available to children who are kept in custody. (*Id*., fn. 6.) [↑](#footnote-ref-14)