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

[Attorney title] \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

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

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

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

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

[youth’s name and last initial]

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

IN THE STATE OF CALIFORNIA

|  |  |
| --- | --- |
| In The Matter Of:  [youth’s name and last initial],  A Minor.  People Of The State Of California,  Plaintiff,  v.  [youth’s name and last initial],  Defendant. | Case No.: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  **petition TO VACATE DJF disposition due to covid-19 PANDEMIC (Welf. & Inst. Code, §779); MEMORANDUM OF POINTS AND AUTHORITIES, DECLARATION IN SUPPORT, and** |

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

The COVID-19 Pandemic places [YOUTH] at serious risk of physical, psychological, and emotional harm, such that the Department of Juvenile Facilities (DJF) commitment in this case fails to provide treatment consistent with Welfare and Institutions Code section 734[[1]](#footnote-1): DJF does not probably benefit this youth. To the contrary, every day this youth spends at DJF places [him, her, them] in great peril. [His, Her, Their] continued confinement makes it significantly more likely that [he, she, they] will contract the COVID-19 virus and become gravely ill, and/or spread it to someone else.

Accordingly, this Court should vacate the DJF commitment under section 779.

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

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

Attorney for [YOUTH]

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

[Attorney title] \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

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

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

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

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

[youth’s name and last initial]

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

IN THE STATE OF CALIFORNIA

|  |  |
| --- | --- |
| In The Matter Of:  [youth’s name and last initial],  A Minor.  People Of The State Of California,  Plaintiff,  v.  [youth’s name and last initial],  Defendant. | Case No.: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  **petition TO VACATE DJF disposition due to covid-19 PANDEMIC (Welf. & Inst. Code, § 779);** **MEMORANDUM OF POINTS AND AUTHORITIES, AND DECLARATION IN SUPPORT** |

**MEMORANDUM OF POINTS AND AUTHORITIES**

1. **Statement of the Case**

[YOUTH] was adjudicated for [DESCRIBE OFFENSE]. On [DATE], the Court committed [YOUTH] to DJF for [PERIOD OF TIME].

1. **The COVID-19 Pandemic, Placing This Youth At** **Serious Risk Of Physical, Psychological, And Emotional Harm, Justifies Immediate Setting Aside Of The Dispositional Order In This Case**

Section 779 authorizes this Court to set aside an order of commitment to Department of Juvenile Facilities (formerly California Youth Authority). The statute allows “the court to change, modify, or set aside an order of commitment after a noticed hearing and upon a showing of good cause that the Youth Authority is unable to, or failing to, provide treatment consistent with Section 734.” For its part, section 734 provides: “No ward of the juvenile court shall be committed to the Youth Authority unless the judge of the court is fully satisfied that the mental and physical condition and qualifications of the ward are such as to render it probable that he will be benefited by the reformatory educational discipline or other treatment provided by the Youth Authority [DJF].”

As discussed below, the COVID-19 Pandemic places this youth at serious risk of physical, psychological, and emotional harm, such that the DJF commitment fails to provide treatment consistent with section 734: DJF will no longer probably benefit this youth. To the contrary, every day this Youth spends at DJF places him in great peril. As such, this Court should vacate the DJF commitment.

Here, as of June 25, 2020, there are almost ten million confirmed cases of COVID-19 worldwide and almost 485,000 deaths.[[2]](#footnote-2) The United States has the highest number of confirmed cases in the world with 2,410,279 confirmed cases and 122,481 confirmed deaths as of June 25, 2020.[[3]](#footnote-3) No one knows precisely how many Americans will perish in this pandemic, but it may reach more than two million fatalities.[[4]](#footnote-4)

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.[[5]](#footnote-5) (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.

1. **Continued Confinement At DJF Places This Youth At Serious Risk Of Physical Harm**

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. (Exhibit 3: Physicians for Criminal Justice Reform [hereafter, “Physicians”], *COVID-19 Risks for Detained and Incarcerated Youth*, March 22, 2020, at p. 2.) “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.” (Exhibit 3, at p. 2.)

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.  For these reasons, if – but more likely when – COVID-19 is introduced into a detention environment, the risks of spread is greatly, if not exponentially, increased as already evidenced by spread of COVID-19 in two other congregate environments: nursing homes and cruise ships.  (Exhibit 1: Declaration of Marc Stern, ¶ 8.)

“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.” (Exhibit 3: Physicians at p. 2.)

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*.)

Since congregate environments place people at substantial risk of illness and death, reducing the number of individuals housed in detention facilities immediately is necessary for the health and safety of the of those facilities and our communities. (Exhibit 1 (Stern) at ¶19-20; Exhibit 2: Haney, ¶17-18)

According to Maureen Washburn, Policy Analyst for the Center on Juvenile and Criminal Justice, “Youth at DJJ are highly susceptible to contagious illnesses given the facilities’ structure and large populations (Each facility holds over 150 youth.) They have daily physical contact with one another, particularly in large open dormitory units, and are subjected to substandard conditions within their living units, including communal bathroom areas.”[[6]](#footnote-6) “It is simply a matter of time before COVID-19 arrives at DJJ. Prison walls and guard towers do not stop the spread of disease. They accelerate it. The longer we wait before drastically reducing DJJ’s population and implementing safety measures, the greater the potential harm to youth and staff.” (*Ibid*.)

Community spread is in the U.S., and staff at juvenile facilities have tested positive for COVID19. 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.[[7]](#footnote-7) 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.[[8]](#footnote-8) Moreover, among the children tracked in the study, nearly six percent developed severe to critical cases of COVID-19.[[9]](#footnote-9) 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.[[10]](#footnote-10)

[IF YOUR YOUTH IS MEDICALLY VULNERABLE, DISCUSS HERE, AND ARGUE INCREASE RISK OF HARM]

1. **Continued Confinement At DJF Places This Youth At Serious Risk Of Psychological and Emotional Harm**

Penal settings have limited options to implement the social distancing that is now required in response to the COVID pandemic. [IF YOU KNOW YOUR YOUTH IS BEING HELD IN SOLITARY CONFINEMENT, STATE HERE, DISCUSS IN YOUR DECLARATION, AND MODIFY THE FOLLOWING AS NEEDED] Such settings are likely to resort to solitary confinement. (Exhibit 2: Haney, ¶9) Section 208.3 provides an exception to the statutory prohibition of juvenile solitary confinement for more than four hours, “during an extraordinary, emergency circumstance that requires a significant departure from normal institutional operations, including a natural disaster or facility-wide threat that poses an imminent and substantial risk of harm to multiple staff, minors, or wards.” (§ 208.3(h).) In light of this statutory authorization, it is likely that youths will be subjected to extended, psychologically damaging, periods of solitary confinement.

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. (*Id*., at ¶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.” (Exhibit 3: 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.” (Exhibit 3: Physicians at p. 3.)

1. **[YOUTH] Can Be Safely Be Released To [Parent, Guardian, Family Member] [Under The Following Circumstances: List]**

[DISCUSS PROPOSED NEW DISPOSITION IN DETAIL, AND REFERRING TO STATEMENTS IN YOUR DECLARATION]

**CONCLUSION**

The COVID-19 Pandemic places [YOUTH] at serious risk of physical, psychological, and emotional harm, such that the DJF commitment in this case fails to provide treatment consistent with section 734: DJF will no longer probably benefit this youth. To the contrary, every day this youth spends at DJF places him in great peril. [His, Her, Their] continued confinement makes it significantly more likely that [he, she, they] will contract the COVID-19 virus and become gravely ill, and/or spread it to someone else.

Accordingly, this Court should vacate the DJF commitment under section 779.

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

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

Attorney for [YOUTH]

**DECLARATION OF [ATTORNEY]**

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

1. I am the attorney appointed to represent \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ in this case.
2. [DISCUSS CURRENT DJF DISPOSITION]
3. [DETAIL KNOWN RISKS OF PHYSICAL AND PSYCHOLOGICAL HARM OF DISPOSITION AND PARTICULAR VULNERABILITIES OF YOUTH]
4. [DISCUSS HOW YOUTH CAN BE SAFELY BE RELEASED TO PARENT, GUARDIAN, FAMILY MEMBER AND DETAIL THE CIRCUMSTANCES]

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 [YOUTH]

Exhibit 1

Declaration of Marc Stern

Exhibit 2

Declaration of Craig W. Haney

Exhibit 3

Physicians for Criminal Justice Reform *COVID-19 Risks for Detained and Incarcerated Youth*

1. All further statutory references are to the Welfare and Institutions Code unless otherwise specified. [↑](#footnote-ref-1)
2. As of June 25, 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-2)
3. *Id*., at fn. 2. [↑](#footnote-ref-3)
4. “The Global Impact of COVID-19 and Strategies for Mitigation and Suppression,” 26 March 2020 Imperial College COVID-19 Response Team, p. 7. <https://www.imperial.ac.uk/media/imperial-college/medicine/sph/ide/gida-fellowships/Imperial-College-COVID19-Global-Impact-26-03-2020.pdf> [↑](#footnote-ref-4)
5. <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-5)
6. 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-6)
7. 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-7)
8. 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-8)
9. *Id.*, fn. 6. [↑](#footnote-ref-9)
10. 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 childrens’ 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-10)