

MAY 4 2020

Jorge Navarrete Clerk

S261827

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**IN THE SUPREME COURT OF CALIFORNIA** Deputy**En Banc**

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NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS et al., Petitioners,

v.

GAVIN NEWSOM, as Governor, etc., Respondent;

XAVIER BECERRA, as Attorney General, etc., Respondent.

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This mandate proceeding raises 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. The Governor of California declared a state of emergency on March 4, 2020 (Gov. Code, §§ 8558, 8625), and numerous orders to slow the spread of the virus have issued from all levels of government. According to the state Department of Public Health, there were 53,616 confirmed cases and 2,138 deaths in California associated with COVID-19 as of May 2, 2020. County-level data indicate several hundred confirmed cases of COVID-19 infection among inmates and staff in jails and juvenile detention facilities.

On March 27, 2020, the U.S. Centers for Disease Control and Prevention (CDC) issued guidance observing that conditions in correctional and detention facilities present “unique challenges for control of COVID-19 transmission among incarcerated/detained persons, staff, and visitors.” (U.S. Centers for Disease Control and Prevention, Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities (Mar. 27, 2020) p. 2 (CDC Guidance).) Petitioners contend that numerous jails and juvenile detention facilities throughout the state are not in compliance with CDC guidelines for preventing and limiting the spread of infection, thereby endangering the health and safety of inmates, staff, and the public at large. Petitioners allege, with supporting declarations, that various facilities do not practice appropriate social distancing, do not maintain sanitary conditions in cells and common areas, do not provide adequate medical care to inmates with possible symptoms of infection, and do not provide inmates with masks or supplies for basic hygiene, such as soap or hand sanitizer. Petitioners contend that these conditions amount to a violation of inmates’ constitutional rights that respondents, the Governor and the Attorney General, have a legal duty to remedy. Respondents contend that the duty to remedy any violations rests with local officials in charge of the facilities and that the factual issues presented are best resolved by trial courts in the first instance.

The CDC guidance cited by petitioners underscores that it “may need to be adapted based on individual facilities’ physical space, staffing, population, operations, and other resources and conditions.” (CDC Guidance, *supra*, at p. 1, boldface omitted.) In a jurisdiction as large and diverse as California, it is evident that current conditions in detention facilities with regard to the COVID-19 pandemic are not uniform throughout the state. Petitioners have provided declarations from witnesses describing specific conditions in facilities in the following 15 counties: Alameda, Contra Costa, Fresno, Los Angeles, Monterey, Orange, Riverside, Sacramento, San Bernardino, San Diego, San Francisco, Santa Barbara, Santa Clara, Tulare, and Yuba. They have not provided specific information concerning conditions in other counties.

The issues raised in the petition call for prompt attention in a manner that considers the diversity of local conditions throughout the state. In order to promote expeditious and tailored resolution of petitioners’ claims, and cognizant of the important questions raised concerning the balance of local and state responsibility for addressing conditions in jails and juvenile facilities, the court hereby orders the following:

The petition for writ of mandate is denied without prejudice to the institution of actions raising similar claims against these respondents or other officials or entities in the superior courts of appropriate counties.

For any such filing, the superior court should be mindful of a range of procedural tools to achieve prompt and effective resolution of the matter. Those tools include the authority to:

- join all parties necessary for full inquiry into the issues raised and for development and implementation of any appropriate relief (Code Civ. Proc., § 389, subd. (a));
- consolidate the action with any similar actions pending in the court, in the interest of efficiency and in light of public health concerns (Code Civ. Proc., § 1048, subd. (a));
- transfer and consolidate matters across counties upon a motion by any party when such transfer and consolidation would promote efficient utilization of judicial resources and otherwise satisfy applicable standards (Code Civ. Proc., §§ 403, 404.1);
- assign a single bench officer or appoint one or more referees or special masters to bring swift and focused attention to the issues raised (Cal. Rules of Court, rule 3.734; Code Civ. Proc., §§ 638, 639);
- facilitate discussion among all parties to achieve a negotiated resolution that is responsive to local conditions and avoids protracted litigation;

- order interim relief, as appropriate, during the pendency of the action; and
- give the matter expedited consideration for evidentiary hearings, briefing, and any joint discussions for resolution.

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.

Given the dynamic nature of the pandemic, the denial of the petition is without prejudice to the filing of a new petition in this court raising similar claims if circumstances warrant.

Petitioners' application to file portions of the record under seal is granted as to the declarations described in their application. (Cal. Rules of Court, rules 2.550(d), 8.46(b).) In ordering the sealing, this court makes the findings required by California Rules of Court, rules 2.550(d) and 8.46(d)(6). The clerk of this court is directed to file under seal the declarations described in petitioners' application. The request for judicial notice is granted except as to "Government Records" items 1–8, 14–24, and 29–32. (Req. for Jud. Not., at pp. 5–6.)

CANTIL-SAKAUYE

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*Chief Justice*