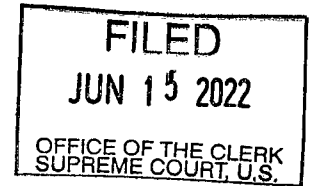


22-5297 ORIGINAL

No. _____



IN THE

SUPREME COURT OF THE UNITED STATES

JEANMAX DARBOUZE — PETITIONER
(Your Name)

vs.

MRS. CATHERINE ALLISON
SECRETARY OF CDCR — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

SUPREME COURT OF CALIFORNIA
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

JEANMAX DARBOUZE
(Your Name)

MULE CREEK STATE PRISON
(Address)

P.O. BOX 109060
IONE, CA 95640

(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

SEE MOTION ATTACHED Pages 5 To 20.

The Respondent violated the Petitioner 8th Amendment Constitutional Rights. Also applied to the State California Via 14th Amendment to the U.S. Constitution:
Helling V. McKinney, 509 U.S. 25, 33 (1993).

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

N/A

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APPENDIX A THIRD OF APPEAL District , State of California.

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APPENDIX F

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix C to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was 3/28/22.
A copy of that decision appears at Appendix C.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

TABLE OF AUTHORITIES CITED

CASES

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STATUTES AND RULES

SEE MOTION ATTACHMENTS PAGES

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OTHER

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

SEE THE ATTACHED MOTION PAGE 5 TO 20.

STATEMENT OF THE CASE

THE RESPONDENT VIOLATED THE PETITIONERS 8th amendment CONSTITUTIONAL RIGHTS. SEE PAGES ², ³, ⁴ OF THE ATTACHED MOTION.

IN THE SUPREME COURT OF THE
UNITED STATES OF AMERICA

Jeanmax Darbouze,
Plaintiff,
vs.
Mr. Cathrine Allison
Secretary of CDCR
Defendant.

No. C 5285

Motion to appeal the
California Supreme
Court Decision to
Deny Petitioner Habeas
Corpus Petition.

Petitioner, Jeanmax Darbouze. Respectfully petitions this court to grant the petition for review, long with the judicial habeas petition form, which is hereby incorporated by reference, by this verified petition sets forth the follow facts and causes for the issuance of this petition.

INTRODUCTION

Petitioner is presently unlaw confined at Mule Creek State Prison California. I have been disabled after sustaining multiple injuries to the head and upper torso in the car accident in november 2011, which resulted in hospitalization and extensive therapy. And also I was violently assaulted by the inmates in the Los Angeles County Jail in July 2015, in which my mental health began to worsen with anxiety, fear, and depression. I have underlying medical health condition. I diagnosed with a colon infection, a cyst in my liver, hernia, very bad asthma/COPD, dizziness, and hemorrhoids.

JURISDICTION

This petition is being filed in this court pursuant to its original habeas corpus jurisdiction. (Cal. Const. ART. VI, § 10) through the District Court of the Northern of California appointed a receiver to supervise the medical care system in California Prison, California Courts still retain jurisdiction to decide habeas corpus cases. In Estevez, 165 Cal. App. 4th 1445 (2008). Involving claims of inadequate medical care.

STATEMENT

Jeanmax Darbouze, (CDCR No. BF9142) I have made many requests to be transferred to a medical facility due to my underlying health medical condition. But CDCR's officials, at Tehachapi, High Desert, and Mule Creek State Prison kept transferring me to different facilities. Mr. Darbouze sought administrative relief seeking medical care closer to his family or temporary release. Mr. Darbouze prevailed on the issues addressed in the administrative review. With an order from the highest level of appeal for the California Department of Corrections, Mr. Darbouze still did not receive the necessary care. Instead of receiving the care ordered and required, Mr. Darbouze was transferred from Tehachapi State Prison to High Desert State Prison. Mr. Darbouze filed a habeas corpus petition seeking a court order to compel the necessary medical care in Lassen County. After the court held the petition for a year, Mr. Darbouze was transferred from High Desert State Prison to Mule Creek State Prison. Because of that transfer, the court of appeal dismissed the habeas corpus petition for medical review directing Mr. Darbouze to begin another habeas corpus petition without granting medical relief or temporary release. Because of the transfer, and the change of judicial distrusts Mr. Darbouze petition was dismissed without relief and directed to begin again.

But transferring from one prison to another prison does not change CDCR's officials misconduct because CDCR's Headquarters office in Sacramento ~~manage~~ call the prison in California. They role on all my grievances. This method of dealing with mandatory health issues, CDCR's officials are avoiding their duties to maintain the health of its inmates.

The petition should have been granted quickly and petitioner should have medical relief. CDCR's officials are avoiding their fundamental duties of care for its prisoners.

"quote from Justice Ketanji Brown Jackson, A writ habeas corpus is guarantee, by U.S. Constitution, and Liberty can not be ~~denied with~~ out due process."

The CDCR's officials are clairly violated Mr. Darbouze, 8th Amend-ment rights. He requested compassion under covid-19 pandemic. Because Mr. Darbouze has underlying health medical condition, before he got covid-19, He almost died in CDCR's official care.

On or about april 18, 2021 I file an emergency 602 petition with High Desert State Prison Officials to be transfered to a medical care facility due to my head injury and other medical issues. but the CDCR's officials hold me at High Desert State Prison.


on april 1st 2020 I was approved by CSR to be transfered.

On april 19, 2021 sergeant Poali called me to his office, I explained to him, I have been suffering with depression, fear, and anxiety. And also asthma/COPD, cyst in the liver, (and) infection in the colon, and dissiness. He stated that he will advise the medical. On april 20, 2021 the tower's officer called me to go to the mental health. when I arrived in the office I met with Mr. Bretz. sup, I told him I am going through some mental trauma I never experienced before in my life. I told him after I had covid-19 and I lost my house, my wife went away with my son. I heard a voice telling me to kill myself. I am fighting that every day, because I am in so much pain. They also denied me the requests to be transfered closer to my family.

Mr. Bretz, sup told me I am wasted my time with those 602 forms. Because last year those 602 forms/petition did not help me. Why do I think this 602 form/petition will help me at this time. He refused to listen to me about my mental health illness, and asthma/COPD, a cyst in my liver, colon infection, hernia. I was asking for help he ignored my issues. I told him the medication I am taking are not working, he stated that its not supposed to work for everyone. He asked me to leave his office. On Dec 6th 2021 I went in "hunger strike" they transferred me to Mule Creek State Prison. They neglected my medical need. They played games with my mental illness and my medical need. Since i saw Mr. Bretz, Sup I never heard from anyone. I asked to see a neurologist, CDCR's officials ignored that requests. I am not safe here. I have attached all 602 forms I filed with CDCR's officials concerning my underlying health medical condition. They just waited to see when i will die. CDCR's officials denied my liberty without due process. I belied California Supreme Court did the same. These are the reasons set above I appeal the supreme court decision in this matter.

Petitioner exhausted all his State remedies for both prisons, Mule Creek State Prison and High Desert State Prison. (see Exhibits 1-14). After I have contracted covid-19 the Petitioner becomes sick with the lung issue, brain issue, liver issue, colon issue, dizziness. And they stopped his medications for his ulcer, his arthritis and denied him a breathing machine for his asthma/copd. And also a single cell due to his asthma/copd. They played game with the petitioner. The counselor stated that it is the medical Department duty. As you can see in my 602/petition the office of doctor M. Ullery stated that it is custody issue. They went back and forth. For this reason above CDCR's Officials failed to provide the petitioner adequate care.

REASONS FOR GRANTING THE PETITION

SEE THE ATTACHED MOTION PAGE 4,  TO 22.



Grounds 1: CDCR Is Acting With Deliberate Indifference To The Substantial and UNcontrolled Risk of Exposure to and Death From The COVID-19 Virus In Violation of the 8th Amendment

CDCR is violating the 8th Amendment by 1) creating conditions that create a substantial risk of pain, suffering, serious illness and/or death from COVID-19, and 2) acting with deliberate indifference to the risk it caused.

CDCR is failing to prevent harm to Petitioner because it is subjecting Petitioner to an inescapable risk of contracting COVID-19.

Conditions that pose an unreasonable risk of future harm violate the 8th Amendment. See Helling v. McKinney, 509 U.S. 25, 33 (1993) CDCR has conceded the serious risk of harm that COVID-19 presents and is not challenging that the incarcerated are at higher risk of infection in the unique environment of its overcrowded prisons ECF No. 3291 at 5, Plata v. Newsom, 2020 WL 1908776 (N.D. Cal. Apr.17, 2020) (No. 4:01-cv-01351). Indeed, multiple people in CDCR custody have already died from COVID-19 exposure while they were in CDCR's custody.

The conditions of confinement in California prisons gravely endanger prisoner's lives. California state prisons remain overcrowded, even after the Population Reduction Order upheld by the U.S. Supreme Court in Brown v. Plata, 563 U.S. 493 (2001). Courts have recognized that conditions of confinement such as those petitioner is experiencing here facilitate the spread of COVID-19. See United States v. Roeder, No. 20-1682, 2020 WL 1545872 (3d Cir. Apr. 1, 2020).

In this case, Petitioner's risk of substantial harm is even higher because off pre-existing risk factors and conditions. Petitioner's is medically vulnerable because...

CDCR is violating the second part of the failure to prevent harm test: "a sufficiently culpable state of mind, which in this case requires deliberate indifference to inmate health or safety." ECF No. 3291 at 5, Plata v. Newsom, 2020 WL 19087761 (No. 4:01-cv-01351) (citing Farmer v. Brennan, 511 U.S. 825, 834 (1994)). Petitioner must show that the relevant prison officials must "know[] that inmates face a substantial risk of serious harm and disregard[] that risk by failing to take reasonable measures to abate it." Farmer, 511 U.S. at 847.

Ground 1 - [REDACTED] Supporting Cases, Rules, or other Authorities

The 8th Amendment to the U.S. Constitution as applied to the State California via 14th Amendment to the U.S. Constitution: Helling v. McKinney, 509 U.S. 25, 33 (1993); DeShaney v. Winnebago Cty. Dep't of Soc. Services, 489 U.S. 189, 199-200 (1989) Article I, Section 17 of the California Constitution; Plaintiff's emergency motion to modify population reduction order (Mar. 24, 2020 in Coleman v. Newsom, No: 2:90-cv-00520-KJM-DBPCE (E.D. Cal); California Governor's Executive Order No. N-33-20 (Mar. 19, 2020); California Governor's Executive Order No. N-36-20 (Mar. 24, 2020); Glendale City Emp. S Ass'n. Inc. v. City of Glendale, 15 Cal. 3d 328, 342 (1975) In re Hudson, 143 Cal. App. 4th 1,7-8 (2006) Ogo Assocs. v. City of Torrance, 37 Cal. App. 3d 830, 834 (1974) In re Dexter, 25 Cal. 3d 921, 925 (1979) Gantner & Mattern Co. v. Cal Empit Comm'n, 17 Cal. 2d 314, 318 (1941); In re Thompson, 172 Cal. App. 3d 256, 262-63 (1985); In re Strick, 148 Cal. App. 3d 9,11-12 (1983) Preiser v. Rodriguez, 411 U.S. 475, 489 (1973); In re Crow, 4 Cal. 3d 613, 623 (1971); Stafford v. Briggs, 444 U.S. 527, 548 N .3 (1980) (Stewart, J., Dissenting); Garduno v. McDonald, No. 2:15-cv-02370, 2018 U.S. Dist. LEXIS 204417, at *7 (E.D. Cal. Nov. 30, 2018) and Frias v. Super. Ct., 51 Cal. App. 3d 919, 924 (1975).

Section 7, Grounds for relief #2: I am deprived of my rights to the minimum civilized measures of life's necessities by CDCR.

Ground 2 - Section 7. ☐

I am deprived of my right to the minimum civilized measures of life's necessities, and subjected to the wanton and unnecessary infliction of pain by CDCR.

Ground 1 Supporting Facts:

I am a 54 year-old Black man diagnosed with a colon infection, a cyst in my liver, and head/brain injury caused by the inmate in LA County Jail. And also I am a disabled man. I have a disease due to pneumonia, I have underlying medical condition. My immune system is very weak. Because my white blood cells is very low. I also suffer with a deep depression. I am taking a bunch of medications. I do not have any family in California. I am in fear for my life in this prison due to COVID-19. This prison has poor medical services, if I get the Corona Virus I will die here with out seeing my family. I would like to see my mother before, she dies, she is 81 years-old. She has a bad blood clot in her left leg and other medical issues. She can not travel to visit me. I was in Tehachapi I was waiting to be transfered to New Hampshire State Prison. ON or about August 25, 2019. the CDCR's officials took me by force and dropped me off to High Desert State Prison. In this prison I can not maintain 6 feet distance from others. Incarceration in this prison increases my risk of COVID-19 infection compared to un carcerated Californian's..There are a few inmates tested positive in building 5. As part of my plan to be transfered to New Hampshire State on parole release. (Attached as Exhibit A,B,C) IN THE LOWER COURT.

Last if I am infected, my immunocompromised status further increases my risk of death from the virus or being severely harmed and needing extreme medical intervention, like a ventlator I am eligible for parole on September 2028 and will live with my family, my two sons, my mother and my wife Eveline Darbouze, at 17-19 Townhouse Rd, Allenstown, NH 03275. My wife is working, my mother is retired, and will provide me with medical assistance and emotional and financial support.

petition has apparent merit and there is some urgency because the petition, for example, alleges entitlement to release on bail... the court may require the custodian or real party in ~~inte~~ interest to submit the return to the writ or order to show cause as little as 24 hours after being served with the petition. See People v. Romero, 8 Cal. 4th 728, 744-45 (1994) (holding a court may grant preliminary relief in a prison conditions case upon filing of petition); Cal. Penal Code, §§ 1475-76 (West); Id. § 1484. Once the return is received, the court may grant relief without an evidentiary hearing if there are no material contested issues of fact. See In re Fields, 51 Cal. 3d 1063, 1070 n.2 (1990).

A petitioner seeking a preliminary injunction or a temporary restraining order (to preserve the status quo of the chance of people in prison to live and not die during the pendency of the litigation) must establish: e

- (1) that he is likely to succeed on the merits;
- (2) that he is likely to suffer irreparable harm in the ~~absen~~ absence of preliminary relief;
- (3) that the balance of equities tips in his favor; and
- (4) that an injunction is in the public interest.

See New Motor Vehicle Bd. v. Orrin W. Fox Co., 434 U.S. 1345 n.2 (1977). The Ninth Circuit adopts a sliding scale approach, where a stronger showing of one element may offset a weaker showing of another. See Pimentel v. Dreyfus, 670 F.3d 1096, 1105 (9th Cir. 2012).

1. Likelihood of Success on the Merits

Here, due to CDCR's inadequate COVID-19 hygiene and safety ~~protée~~ protocols and the virus' high transmission rate, there is a high likelihood of success on the merits. The domestic and ~~internation~~ international legal responses to COVID-19 indicate a trend toward release orders, which forecast likelihood of success in this case. "We have great difficulty agreeing that prison authorities may not be deliberately indifferent to an inmate's current health problems but may ignore a condition of confinement that is sure or very likely to cause serious illness and needless suffering the next week or month or year." Helling v. McKinney, 509 U.S. 25, 33 (1993). Correctional officials have an affirmative obligation to protect inmates from infectious disease. The 8th Amendment "require[s] a remedy" where their jailors knowingly expose them to a risk of contracting serious infectious diseases, even if "it was not alleged that the likely harm would occur immediately and even though the possible infection might not affect all of those exposed." Id. Courts recognize that in CDCR "crowding generates unsanitary conditions, overwhelms the infrastructure of existing prisons, and increases the risk that infectious diseases

will spread." Coleman v. Schwarzenegger, 922 F. Supp. 2d 822, 931 (E.D. Cal. 2009) ("Coleman I") (citing Nov. 9, 2007 Scott Report ¶¶ 17-24, ECF No. 1528/3058). In May 23, 2011, the U.S. Supreme Court upheld a population reduction order. See Brown v. Plata, 563 U.S. 493 (2011).... In particular, extreme population pressures had led to "unsafe and unsanitary living conditions" in living quarters that were described as "breeding grounds for disease" even before COVID-19. Id. at 519-20. Over and over courts deemed CDCR too crowded to provide minimally adequate health care on a daily basis, much less the additional care ~~an~~ needed for the medically vulnerable who will contract COVID-19 with severe complications in large numbers when CDCR does not keep people six feet away from each other or keep facilities clean or issue personal protective equipment to spread transmission. See Stern Decl. ¶¶ 6-7, 9, 17, Coleman v. Newsom, No. 2:90-cv-00520-KJM-DB P (E.D. Cal.); March 25, 2020 Motion Seeking COVID-19 Population Reduction Order, Plata v. Newsom, No. 4:01-cv-01351, 2020 WL 1908776 (N.D. Cal. Apr. 17, 2020).

CDCR's Practices As Applied to Petitioner Indicate A Likelihood of Success on the Merits

As outlined in the Petition and Memorandum of Points and Authorities, which is incorporated by reference, CDCR's treatment of Petitioner is so ~~es~~ egregiously in violation of Petitioner's rights, that Petitioner is likely to succeed on the merits.

2. The Unacceptance of High Likelihood of Irreparable Harm Resulting from COVID-19 Infection Is Recognized By CDCR and Courts Nationwide

These life-and-death stakes are sufficient to establish a likelihood of irreparable harm in support of injunctive relief. In the Plata/Coleman litigation CDCR agreed that COVID-19 poses a substantial risk of serious harm. Petitioner's likelihood of contracting COVID-19 is not speculative but highly likely as evidenced by the epidemiological data cited herein. See Winter v. Nat. Res. Def. Council, Inc., 555 U.S. 7, 20 (2008). These kinds of injuries and deaths cannot wait for a remedy.

Before COVID-19, even the failure to test for a disease has been sufficient to support a finding of irreparable harm in support of granting a preliminary injunction. See Boone v. Brown, No. CIV. 05-750(AET), 2005 WL 2006997, at *14 (D.N.J. Aug. 22, 2005) (finding allegation of refusal to provide adequate testing for highly contagious infectious disease sufficient to demonstrate irreparable harm); See also Jolly v. Coughlin, 76 F.3d 468, 477 (2d Cir. 1996) (recognizing state officials have an affirmative obligation to protect prisoners from infectious disease).

Since COVID-19, courts around the country addressing the danger in carceral facilities have specifically held that COVID-19 constitutes an irreparable harm that supports the grant of a TRO. See, e.g., Basank v. Decker, No. 20-cv-2518 (AT), 2020 WL 1295155, at *2 (S.D.N.Y. Mar. 19, 2020) ("[I]nmates may be at a heightened risk of contracting COVID-19 should an outbreak develop."); United States v. Stephens, No. 15-cr-95 (AJN), 2020 WL 1439980, at *1 (N.D. Cal. Mar. 25, 2020) ("By now it almost goes without saying that we should not be adding to the prison population during the COVID-19 pandemic if it can be avoided. Several recent court rulings have explained the health risks-to inmates, guards, and the community at large-created by large prison populations. The chaos has already begun inside federal prisons" (citations omitted)); United States v. Martin, No. CR PWG-19-140-13, 2020 WL 1274857, at *2 (D. Mar Md. Mar. 17, 2020) (noting that incarcerated individuals "may well" have a cognizable substantive due process claim if they can demonstrate exposure to serious illness); Xochihua-Jaimes v. Barr, No. 18-cv-71460, 2020 WL 1429877, at *1 (9th Cir. Mar. 17, 2020) ("In light of the rapidly escalating public health crisis, which public health authorities predict will especially impact immigration detention centers, the court sua sponte orders that Petitioner be immediately released from detention and that removal of Petitioner be stayed pending final disposition by this court.") Castillo v. Barr, No. 20-cv-00605, 2020 WL 1502864, at *6 (C.D. Cal. Mar. 27, 2020) (granting TRO and to immigration detainees due to the COVID-19 pandemic explaining that "[t]his is an unprecedented time in our nations' history, filled with uncertainty fear, and anxiety. But in the time of our fellow human beings."); Thakker v. Doll, No. 1:20-cv-480, 2020 WL 1671563, at *9 (M.D. Pa. Mar. 31, 2020) (granting TRO and finding irreparable injury due to adequate measures not being in place and unable to be taken to protect petitioners from COVID-19); Coronel v. Decker, No. 20-cv-2472, 2020 WL 1487274, at *3 (S.D.N.Y. Mar. 27, 2020) (granting TRO because of the high probability of death for those infected with COVID-19-particularly for inmates with existing medical conditions-and because being confined in a correctional facility places a person at "significantly higher risk of contracting COVID-19"); United States v. Doshi, No. 13-cr-20349, 2020 WL 1527186, at *1 (E.D. Mich. Mar. 31, 2020) (granting home confinement for the remaining sentence of a 64 year old inmate suffering from diabetes and hypertension in light of threat COVID-19 presented to him at prison facility).

In short, people in CDCR face a substantial risk of serious harm if the relief requested herein is not granted expeditiously.

As outlined in the Petition and Memorandum of Points and Authorities, which is incorporated by reference, CDCR's treatment of Petitioner is already causing irreparable harm.

I am requesting release from Mule Creek State Prison due to California Department of Corrections and Rehabilitation's ("CDCR") violation of the 8th and 14th Amendments of the United States Constitution.

Petitioner's continued confinement in light of the COVID-19 Pandemic, which poses dire health risks, constitutes an ~~unreasonable~~ unreasonable risk of future harm - serious illness, pain, suffering, and death - violating the constitutional protections of the Eighth Amendment to the United States Constitution and ~~Art~~ Article I, section 17 of the ~~California~~ California Constitution.

The Pandemic is far from controlled. The United States has seen over 1.6 million contract COVID-19, and California remains under a state of emergency due to its spread. California's prison system has not been spared. As of May 20, 2020, 910 incarcerated people statewide have tested positive for COVID-19. The outbreak at the California Institution for Men (CIM) has grown to 559 people, an increase of 200 people from one week ago and 500 from three weeks ago. There are also 127 cases at California State Prison - Los Angeles County. Three new prisons have experienced outbreaks in the past week. The California ~~Institution~~ Institution for Women (CIW) has 108 cases, an increase of 100 from one week ago. Chuckawalla Valley State Prison (CVSP) has 36 cases and Avenal State Prison has 25. One more incarcerated person died from COVID-19 in prison this week, bringing the total to six. There are 32 patients, including 27 from CIM, in outside hospitals due to complications from COVID-19.

In the face of this threat, Respondents are not taking minimally required steps per U.S. Constitutional guarantees described herein to prevent or limit the introduction and spread of the deadly virus. CDCR plans to reopen ~~intake~~ intake into the Reception Centers and restart transfers out of the ~~Reep~~ Reception Centers to other prisons May 24, 2020.

High Desert is a nightmare facility. Other courts have recognized the need to quickly adjust to address the COVID-19 Pandemic. "[T]he status quo of a mere few weeks ago no longer applies. Our world has been altered with lightning speed, and the results are both unprecedented and ghastly....The choice we now make must reflect this new reality." Thakker v. Doll, No. 1:20-cv-480, 2020 WL 1671563, at *9 (M.D. Pa. Mar. 31, 2020). "[S]hould we fail to afford relief" to medically vulnerable prisoners, the judge ~~warne~~ warned, "we will be a party to an unconscionable and possibly barbaric result." Id. Even the U.S. Justice Department has taken steps to move prisoners to home confinement in response to this emergency.

The constitutional standard in light of COVID-19 is clear in that Defendants must "take adequate steps to curb the spread of disease within the prison system." Order Den. Pl.'s Emerg. Mot. to Modify Pop. Red. Order at 8:1-8:13, ECF No. 3261, Plata v. Newsom, 2020 WL 19087761 (No. 4:01-cv-01351). "Indeed, disease control is one of the areas in which the Plata court previously ~~eee~~ concluded that Defendants fell short," noting failures to address symptoms as people arrived at facilities; finding countertops and surfaces inadequately disinfected; and overall inability to control infectious disease. Id.; See also Wilson v. Seiter, 501 U.S. 294, 302 (1991). "A prison official's duty under the 8th Amendment is to ensure reasonable safety." Farmer, 511 U.S. at 844-45.

At the institution in which petitioner is currently confined, petitioner's individual experience is that those policies are not followed in practice. The actual behavior of CDCR staff towards P Petitioner does not constitute constitutionally adequate steps to prevent further infection and death from COVID-19.

"Despite new policies about intensified cleaning protocols, I am not provided with adequate cleaning supplies..." And I cannot maintain adequate levels of preventive hygiene. I am required to share or touch objects used by others. Toilets, sinks and showers are shared, without disinfection between each use. CDCR is not providing safe food hygiene.

Thus, Respondents know about and are ignoring the "excessive risk to Petitioner's health and safety" that it is to live under these conditions. Garduno v. McDonald, No. 2:15-cv-02370, 2018 U.S. Dis. Dist. LEXIS 204417, at *7 (E.D. Cal. Nov. 30, 2018). CDCR's choices subject those incarcerated, CDCR staff, and the community to unnecessary risk.

The risk of exposure and safety"-that-it-is-to-live-under-these contraction of COVID-19 is not mitigable with anything but releas release. In order to comply with public health guidance and protect Petitioner, CDCR staff, and the public from this pandemic CDCR must release Petitioner in order to cure the violation.

Grounds 2: CDCR's Failure to properly mitigate the risk of COVID-19 deprives people of the "minimal civilized measure of life's necessities" and involves the wanton and unnecessary infliction of pain.

The 8th Amendment guarantees that the state may not deprive incarcerated people of "the minimal civilized measure of life's necessities." Farmer, 511 U.S. at 834 (1994). When the State "so restrains an individual's liberty that it renders him unable to care for himself, and at the same time fails to provide for his basic human needs... it transgresses the substantive limits on SFA state action." DeShaney v. Winnebago Cty. Dep't of Soc. Servs., 489 U.S. 189, 200 (1989).

Today's "broad and idealistic concepts of dignity, civilized standards, humanity, and decency," and understanding of the minimal civilized measures necessary for survival, are evolving quickly under COVID-19. Estelle v. Gamble, 429 U.S. 97, 102 (1976). CDCR is in violation because it is unable to comply with public health guidelines that would allow Petitioner to sufficiently prevent spread or prevent the illness were an outbreak to occur.

In light of the COVID-19 pandemic, the requirements upon CDCR to provide basic human necessities involve, at a minimum, adequate social distancing and sanitation procedures to protect each person from the droplets that transmit COVID-19. See, e.g., Hudson v. Palmer, 468 U.S. 517, 526-527 (1984); Plata/Coleman filing ECF 3221 (Bien Declaration) at ¶ 21, Doc. 3221-1 Exh. 7 (CDC Interim Guidance).

CDCR has failed to provide these essential basic needs to Petitioner.

Courts across the country have ordered relief when conditions sue such as those to which Respondent has subjected petitioner here detention facilities do not allow for safe distancing. See, e.g., Castillo v. Barr, No. CV2000605TJHAFMX, 2020 WL 1502864, at *5-6 (C.D. Cal. Mar. 27, 2020) (granting temporary restraining order for release of detainees at Adelanto, California detention center in part because conditions of confinement took away ability to socially distance); Basank v. Decker, No. 20 CIV. 2518 (AT), 2020 WL 1481503, at *5-7 (S.D.N.Y. Mar. 26, 2020) (ordering immediate release of alien detainees held by ICE at multiple New Jersey correctional facilities in part because the facilities could not allow inmates to remain six feet apart from one another); Mem. Op., Doc. 21, United States v. Colvin, Davis, No. 1:20-cr-9-ELH, (D. Md. Mar. 30, 2020) (release (releasing defendant because "[s]ocial distancing in a pretrial facility is nearly impossible for anyone who enters its doors, especially detainees"); United States v. Colvin, No. 3:19-cr-179 (JBA), 2020 WL 1613943, at *4-6 (D. Conn. Apr. 2, 2020) (noting defendant's multiple health conditions, including diabetes, and that "she is unable to practice effective social distancing and hygiene to minimize her risk of exposure" as reasons justifying her immediate release).

The facts stated in section 6. A. are incorporated by reference. I do not have a face mask or other personal protective equipment ("PPE") and live in the facility with over 200 inmates. There are not enough medical beds at my facility to support every one becoming infected with the virus. On April 8, 2020, CDCR announce policy changes: only allowing escorted movement, segregation of housing units for programming, feeding, recreation disinfection of showers, phones between uses, and requiring medications and health services to be provided in housing units. These policies are not being followed at my facility: housing units. Staff at my facility are also not disinfecting the showers or phones between uses. I am not allowed to disinfect either the shower or phone on my own prior to my use, even if the inmate who used it before me was coughing. Staff's conduct is placing me in harm's way and causing me to feel anxiety and stress has caused hives and eating disorder. The garbage cans all have lids, and these are not being disinfected or emptied daily even though people in the facility 5, have tested positive for COVID-19. I am terrified of contracting COVID-19 because I have a higher likelihood of dying due to my underlying medical condition and compromised immune system.

Coronel v. Decker, 2020 U.S. Dist. LEXIS 53954 (S.D.N.Y. March 27, 2020) ; United States v. Gabelman, 2020 U.S. Dist. LEXIS 52773 (D. Nev. March 23, 2020) ; United States v. Kennedy, 2020 U.S. Dist. LEXIS 53359 (E.D. Mich. March 27, 2020) ; United State v. Resnick, 2020 U.S. Dist. LEXIS 59091 (S.D.N.Y. April 2, 2020) ; See United States v. Roeder, No. 20-1682, 2020 WL 1545872 (3d Cir. Apr. 1, 2020) ; Brown v. Plata, 563 U.S. 493 (2001); Celmane Coleman v. Brown, 922 F. Supp. 2d 1004, 1008, 1034-43 (E.D. CAL. 2013) ("Coleman v. II") ; Plata v. Schwarzenegger, No. 01-1351-TEH, 2005 WL 2932254, at *12 (N.D. Cal. Oct. 3, 2005); Coleman v. Schwarzenegger, 922 F. Supp. 2d 882, 931 (E.D. Cal. 2009); Hutto v. Finney, 437 U.S. 678, 682-685 (1978); Wilson v. Seiter, 501 U.S. 294, 302 (1991); Labatad v. Corr. Corp. of Am., 714 F. 3d 1155, 1160 (9th Cir. 2013); Estelle v. Gamble, 429 U.S. 97, 102-104 (1976); Youngberg v. Romeo, 457 U.S. 307, 315-316 (1982); Ramos v. Lamm, 639 F. 2d 559, 568 (10th Cir. 1980); Rhodes v. Chapman, 452 U.S. 337, 346 (1981); Castillo v. Barr, CV2000605TJHA FMX, 2020 WL 1502864, at *5-*6 (C.D. Cal. Mar. 27, 2020); Basank v. Decker, No. 20-cv-2518, 2020 WL 1481503, at *5-*6 (S.D.N.Y. Mar. 26, 2020); United States v. Davis, No. 20-cr-9-ELH, Dkt. No. 21 (D. Md. Mar. 30, 2020); United States v. Colvin, No. 3:19-cr-179 (JBA), 2020 WL 1613943, at *4-6 (D. Conn. Apr. 2, 2020); Willey v. Kirkpatrick, 801 F.3d 51 (2d Cir. 2015); Hudson v. Palm Palmer, 468 U.S. 517, 526-527 (1984); YOUNG v. Quinlan, 960 F.2d 351 (3d Cir. 1992); Jackson v. Duckworth, 955 F.2d 21 (7th Cir. 1992); Blissett v. Coughlin, 66 F.3d 531 (2d Cir. 1995), Allah v. Bartkowski, 574 Fed. App'x 135 (3d Cir. 2014); Rice ex rel. Rice v. Correctional Medical Services, 675 F.3d 650 (7th Cir. 2012); Whittington v. Ortiz, 307 Fed. App'x 179 (10th Cir. 2009); James v O'Sullivan, 62 Fed. App'x 636 (7th Cir. 2003); Keenan v. Hall, 83 F.3d 1083 (9th Cir. 1996), opinion amended on denial of reh'g, 43 135 F.3d 1318 (9th Cir. 1998); Smith v. Eovaldi, 112 F. Supp. 3d 779 (S.D. Ill. 2015); McCord v. Maggio, 927 F.2d 844, 847 (5th Cir 1991); Blake v. Hall, 668 F.2d 52 (1st Cir. 1981); Webb v. Deboo, 423 Fed. App'x 299 (4th Cir. 2011); (per curiam); Townsend v. Sisto, 457 Fed. App'x 653 (9th Cir. 2011); Sandin v. Conner, 515 U.S. 472, 472 (2005); Serrano v. Francis, 345 F.3d 1071 (9th Cir. 2003); Madrid v. Gomez, 889 F.Supp. 1146, 1255 (N.D. Cal. 1995); Blair v. Oeseterlein Mach. Co., 275 U.S. 220, 225 (1927); Thakker v. Doll, No. 1:20-cv-480, 2020 WL 1671563, at *9 (M.D. Pa. Mar. 31, 2020); In re Fields, 51 Cal. 3d 1063, 1070 n.2 (1990); New Motor Vehicle Bd. v. Orrin W. Fox Co., 434 U.S. 1345, 1347 n.2 (1977); Pimentel v. Dreyfus, 670 F.3d 1096, 1105 (9th Cir. 2012) Ramirez v. Galaza, 334FF F.3d 850, 860 (9th Cir. 2003); Wolff v. McDonnell, 418 U.S. 539, 563-72 1976; Armstrong v. Wilson, 942 F. Supp. 1252, 1254 (N.D. Cal. 1996), aff'd, 124 F.3d 1019 (9th Cir. 1997); Clark v. State of Cal., 123 F.3d 1267, 1269 (9th Cir. 1997) People v. Duvall, 9 Cal. 4th 464, 474-75 (1995); People v. Romero 8 Cal. 4th 728, 744-45 (1995-5)-(1995) (1994); ECF No. 3291 at 5, Plata v. Newsom, 2020 WL 1908776 (N.D. Cal. Apr. 17, 2020)(No. 4:01-cv-01351); Winter v. Nat. Res. Def Council, Inc., 555 U.S. 7, 20 (2008); Boone v. Brown, No. CIV. 05-750(AET), 2005 WL 2006997, at *14 (D.N.J. Aug. 22, 2005); Jolly v. Coughlin, 76 F.3d 468, 477 (2d Cir. 1996).

A. CDCR's Practices As Applied to Petitioner Are Already Causing Irreparable Harm

As outlined in the Petition and Memorandum of Points and Authorities, which is incorporated by reference, CDCR's treatment of Petitioner is already causing irreparable harm.

B. No Showing Of Harm Is Required Due to CDCR's Constitutional Violations

It is well established that the deprivation of constitutional rights unquestionably constitutes irreparable injury. See Hernandez v. Session, 872 F.3d 976, 994 (9th Cir. 2017). Where, like here, ~~deprivatioe~~ deprivation of a constitutional right is necessary. Hernandez v. Session, 872 F.3d at 994.

3. The Balance of The Equities Tip Sharply In Favor of Incarcerated People; Harm to People Incarcerated in CDCR Outweighs Harm to The Agency

When the Government is the opposing party, the final two factors--balance of equities and public interest--merge. See Drakes Bay Oyster Co. v. Jewell, 747 F.3d 1073, 1092 (9th Cir. 2014). Incarcerated people face irreparable harm to their constitutional rights and health and lives. There is no harm to the Government when a court prevents the Government from engaging in unlawful practices. See Rodriguez v. Robbins, 715 F.3d 1127, 1145 (9th Cir. 2013). The harm incarcerated people face due to the COVID-19 crisis, particularly those most vulnerable, outweigh any possible harm to CDCR.

4. The Public Interest In Reducing The Tsunami of People from Prison Flooding Local Hospitals Favors Release

The public has a critical interest in preventing the further spread of COVID-19. Transmission in prison exacerbates community transmission through prison staff. The United Nations High Commissioner for Human Rights has urged that detention of people in jails "should be a measure of last resort, particularly during this crisis," due to the ease of transmission of the pathogen and the density of detention centers. See Basank v. Decker, No. 20-cv-2518 (AT), 2020 WL 1481503, at *6 (S.D.N.Y. Mar. 26, 2020). Furthermore, "it is always in the public interest to prevent the violation of a party's constitutional rights." Melendres v. Arpaio, 695 F.3d 990, 1002 (9th Cir. 2012). The public interest favors the Court granting the requested relief.

Conclusion

Incarcerated people seek to have their health and safety provided for during this time of global crisis so that they do not needlessly perish. Time is of the essence for any effective measures to further stem the rapid spread of this deadly virus within CDCR.

C. Petitioner Lives in Crowded And Unhygienic Conditions
Where CDCR Does Not Permit Six Feet of Distance Between
People or Permit Other Preventative Measures

I live in a facility with 200 other Inmates. I can not avoid coming within six feet of people in the dayroom, and I stay in a cell with another inmate.

On April 8, 2020, CDCR announced policy changes: only allowing escorted movement, segregation of housing units for programming/feeding/recreation, disinfection of showers and phones between uses, and requiring health services to move to housing units. These policies are not being followed at my facility. Staff are not ~~being~~ disinfecting the showers or phones between uses. I am not allowed to disinfect either the shower or phone on my own prior to my use.

The garbage cans in my housing unit are not being disinfected or emptied daily even though people in this facility have tested positive for COVID-19.

CDCR's policies, practices, and the physical architecture of my facility prevent me from practicing basic hygiene and social distancing recommended by CDC, WHO and public health officials in California. I am terrified of contracting COVID-19 because I have a likelihood of dying due to my health elements compromising my immune system.

D. I am not Receiving Adequate Medical Care for my Health
Issues Due to CDCR's COVID-19 Policies and Practices

(See EXHIBITS 1 to 12)

The U.S. Supreme Court has held that if a remedy is not available "the inmate has no obligation to exhaust the remedy"; "§1997e(a) poses no bar." Ross v. Blake, 136 S.Ct. 1850, 1859-60 (2016); see also Malik v. D.C., 574 F.3d 781, 785 (D.C. Cir. 2009). The California Supreme Court has also recognized three major exceptions to the general rule requiring exhaustion of remedies; Petitioner meets all three.

First, the exhaustion doctrine is inapplicable when pursuit of an administrative remedy would result in irreparable harm. See Abelleira v. Dist. Court of Appeal, Third Dist., 17 Cal.2d 280, 296-297 (1941). The CDCR's administrative appeal process can take over 120 days to exhaust: after a person in prison or on parole files an administrative appeal ("602 appeal process"), ~~pr~~ prison staff have 30 working days to respond at the first formal level of review; 30 working days at the second level of review; and 60 working days at the third level of review. Cal. Code Regs. tit. 15, § 3084.8(c) (2020). Even through an emergency appeal, it can ~~also~~ still take more than two months to exhaust remedies. Id. § 3084.9(a). CDCR can also unilaterally grant itself a time extension and in practice frequently does this. Given reduced staffing and overwhelmed operational staff scrambling to address this pandemic, it is unlikely CDCR would grant emergency ~~process~~ processing status.

COVID-19 poses a high risk of serious illness or death. If there were any administrative remedies available to Petitioner, in two months' time, Petitioner may be seriously ill from COVID-19 or worse. Thus, this pandemic creates a rare situation where the exhaustion of remedies rule does not apply because denial of immediate judicial relief would result in irreparable damage to Petitioner's life or health. See Fletcher v.* Menard Correctional center, 623 F.3d 1171, 1173 (7th Cir. 2010) ("If it takes two wee weeks to exhaust a complaint that the ~~empa~~ complainant is in danger of being killed tomorrow, there is no 'possibility of some relief' and so nothing for the prisoner to exhaust.") Inmates from Reception Center, spreading the COVID-19 on or about June, and July 2020, there is a few cases in building #5.

Second, "the requirement of exhaustion of remedies does not apply if the remedy is inadequate." Glendale City Employees' Assn., Inc v. City of Glendale, 15 Cal.3d 328, 342 (1975). Petitioner is aware of the California Department of Justice April 14, 2020, No. 2020-DLE-05 Information Bulletin: "COVID-19 and Statutory Authority Under Gov. Code § 8658," which would permit the CDCR, ~~in~~ in an emergency, to remove or release inmates from a prison suffering from the outbreak. However, there ~~remove-or-release inmates-from-a-prison~~ is no procedure by which the inmate may initiate a request that the warden exercise its discretion to release under Cal. Gov't Code § 8658 (West). See In re Hudson, 143 Cal. App. 4th 1, 7-8 (2006) (holding that prisoner had exhausted his administrative remedies because there was no administrative process available to grant the relief sought).

This petition states a prima facie case for relief on multiple grounds. To ensure that these claims are decided on a fully-developed factual record, this Court should issue an Order to Show Cause, Ex Parte Temporary Restraining Order, and preliminary Injunction at the earliest opportunity. The State has a duty to protect incarcerated people from unlawful and onerous treatment, mental or physical, and habeas relief is the only remedy available in such circumstances. See Preiser v. Rodriguez, 411 U.S. 475, 489 (1973). A California habeas petition is a proper vehicle for the presentation of a claim of deprivation of federal constitutional rights as well as state constitutional and statutory rights. "[T]he high purpose of the writ of habeas corpus" is to provide "an efficacious means of vindicating an individual's fundamental rights." In re Crow, 4 Cal. 3d 613, 623 (1971). In this case, the appropriate flexible administration of the writ includes a prompt order directing CDCR to release Petitioner through issuing an Order to Show Cause and a Temporary Restraining Order pending an evidentiary hearing on the habeas claims.

Immediate release pursuant to a writ of habeas corpus is available to address constitutional violations arising from conditions of confinement, such as a violation of the obligation to protect against infectious disease and imminent harm to future health. See Malam v. Adducci, No. 20-10829, 2020 WL 1672662 (E.D. Mich. Apr. 5, 2020), as amended (Apr. 6, 2020) (granting release to ICE detainee; holding that ongoing detention was unlawfully punitive given the grave threat posed by detention during the coronavirus pandemic).

Third, exhaustion doctrine does not apply if seeking an administrative remedy would be futile. See In re Thompson, 172 Cal. App. 3d 256, 263 (1985). Seeking a remedy is futile when the aggrieved party can positively state what the administrative agency's decision in his particular case would be. See Ogo Assocs., 37 Cal App. 3d at 834. Here, because the relief sought -- release -- is unavailable, it can be positively stated that CDCR's decision would be to deny Petitioner's request for relief, and thus the 602 appeals process is futile. Here the 602 appeal process is inadequate as it does not provide release as a remedy, and CDCR will not change its longstanding policy based on COVID-19. In the Plata case, CDCR reaffirmed its longstanding policy that it will not authorize release of incarcerated people through the 602 process. [If anyone responded to your appeal in person or in writing that you would not obtain release through a 602 form, described that here.] Accordingly, Petitioner is not required to pursue administrative remedies when it is "inconceivable" that the CDCR would suddenly change its tune. See Ogo Assocs. v. City of Torrance, 37 Cal. App. 3d 830, 834 (1974).

Petitioner has a clear and stable plan

My release plans are follows. I will live at 17-19 Townhouse Rd, Allenstown, NH 03275, which is a sober living environment that will enable me to shelter in place, with other support for my health through my wife work place and financial support from my family members, 7 and Church members where I used to be a

preacher. I have secured an offer to work for the church again, at Grace of God Revival. I have a plan to pursue employment that respects the social distancing limitations on the hiring process amid the COVID-19 crisis. I have a relapse prevention/continue counseling plan; I know where and when the support groups, classe programs will be meeting in my parole area, Allenstown, NH, and I can contact them for information on digital meetings. I have both short-term plans for remaining safe and stable during the COVID-19 crisis, including going back to school to finish my PHD in Psychology. And long-term plans for when the COVID-19 crisis is over. My short-term plan includes concrete ways that I can follow the center for disease control's recommendations about mitigating the spread of COVID-19, including the ways I can obtain masks, safely shop for groceries, avoid impacting 20 Cal. hospitals. I have family members, friends, mentors, organizations that can support me, including I would like to plain my ~~backgroun~~ background. I never got in trouble with the law before in my life I was working two jobs, I worked full-time for my security company and part-time counseling. All the intent and purpose I was a pillar in my community. I ran for county in my community, Manchester, NH, Town Council, Bedford, NH. I was a pastor in the small church. I was a cheif security for the Department Health, and Human Services in NH, I was a Correction Officer, also I was a private investigator for my company. I was on bail for 7 months, I never missed any court dates. I have two young boys 7 and 14 years old. I lost everything, house, company, etc. I came to Hollywood to assist my daughter with her music career which unfortunately lead to my incarcerated. If the court grants the Relief. I will be an advocate in my community. I am willing to wear an ankle monitor at all time. Organizations will be able to help with my recovery.

V. CONTENTIONS

Grounds 1: CDCR Is Acting With Deliberate Indifference To The Substantial and Uncontrolled Risk of Exposure to and Death From The COVID-19 Virus In Violation of the 8th Amendment.

Grounds 2: CDCR's Failure to properly mitigate the risk of COVID-19 deprives people of the "minimal civilized measure of life's necessities" and involves the wanton and unnecessary infliction of pain.

Grounds 3: CDCR Is Failing to Provide Adequate Medical Care for Petitioner's Serious Medical Needs During the COVID-19 Pandemic.

Grounds 4: Indefinite Lockdown and Lack of Programming For Months or Years Is an Atypical and Significant Hard ship That Violates the 8th Amendment.

Grounds 5: CDCR's Practice In Response to COVID-19 Fail to Accommodate Disabilities.

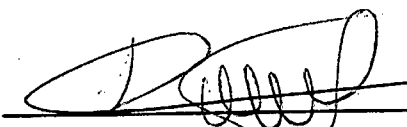
VI. PRAYER FOR RELIEF

In light of the unprecedented threat of death posed by COVID-19, and for the foregoing reasons, the Court should.

- (1) Take judicial notice of CDCR and court responses to COVID-19 along with all documents referenced in this Petition, the accompanying Memo of Points and Authorities, and the accompanying motion for Temporary Restraining Order and Preliminary Injunction;
- (2) Issue a Temporary Restraining Order and Preliminary Injunction for my immediate release within one day of this order pending an evidentiary hearing;
- (3) Issue an Order to Show Cause;
- (4) Conduct an evidentiary hearing at which proof may be offered concerning the allegations of this petition;
- (5) Grant petitioner authority to proceed in forma pauperis and grant authority to obtain subpoenas without fee for witnesses and documents necessary to prove the facts alleged in this petition,
- (6) Allow petitioner to amend this Petition, for good cause, when further inquiry requires new evidence and claims; an and
- (7) Appoint counsel.
- (8) Order to put the petitioner in the facility closer to his family in New Hampshire.

I declare under penalty of perjury under the laws of the State of California that the states allegations and statements are true and correct, except as to matters that are stated on my information and belief, and as to those matters, I believe them to be true.

Date: 7/26/22

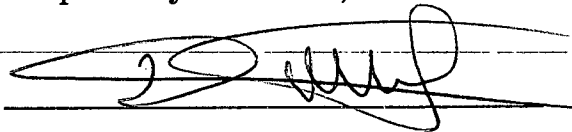

(SIGNATURE OF PETITIONER)

(SEE MOTION ATTACHED PAGES 23)

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to be "J. S. Murphy", written over a horizontal line.

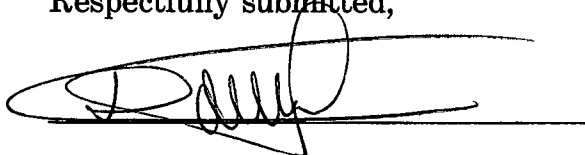
Date: 07/26/22

(See Motion pages 23)

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to be "D. Sullivan", written over a horizontal line.

Date: 07/26/22