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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF KERN**

12 UFW FOUNDATION, LAURA HART, JOHN
DOE, and JEANNIE PARENT

13 Petitioners/Plaintiffs,

14 vs.

15 THE COUNTY OF KERN, THE KERN
16 COUNTY SUPERIOR COURT, RYAN J.
ALSOP, in his official capacity as Chief
17 Administrative Officer for Kern County, TR
MERICKEL, in his official capacity as Chief
18 Probation Officer for Kern County, J. ERIC
BRADSHAW, in his official capacity as
19 Presiding Judge for the Kern County Superior
Court, TAMARAH HARBER PICKENS, in
20 her official capacity as the Court Executive
Officer for Kern County Superior Court, and
21 DONNY YOUNGBLOOD, Sheriff of Kern
County, in his official capacity

22 Respondents/Defendants.

Case No.

**VERIFIED PETITION FOR WRIT OF
MANDATE (CCP § 1085) AND
COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF (CCP § 526A)**

1. Violation of Constitutional Right to Counsel, Cal. Const. Art. I, § 15
2. Violation of Statutory Right to Counsel, Cal. Penal Code § 987.2(i)
3. Violation of the Constitutional Right to Due Process, Art. I, § 15
4. Discrimination Against Limited-English Proficient Defendants, Gov. Code § 11135
5. Discrimination in Violation of the ADA, 42 U.S.C. § 12131, Gov. Code § 11135
6. Violation Right of Public Access to Criminal Proceedings, U.S. Const., Art. I
7. Taxpayer Action, Civ. Proc. Code § 526a

1 **VERIFIED PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR**
2 **DECLARATORY AND INJUNCTIVE RELIEF**

3 **I. INTRODUCTION**

4 1. Kern County (the “County”) and the Kern County Superior Court (“the Superior
5 Court”) systematically violate indigent misdemeanor defendants’ rights to counsel and due
6 process in a fast-track plea system at arraignment. As a result, thousands of indigent defendants
7 plead guilty¹ every year at their first court appearance. The Kern County misdemeanor plea
8 system begins in a courtroom closed to the public where Court officials show unrepresented
9 defendants an inaccurate advisal video en masse. Probation officers then make plea offers to those
10 unrepresented defendants and pressure them to accept the offers. Defendants waive their right to
11 counsel and trial rights by initialing a dense summary waiver form provided by the probation
12 officers. But defendants are not at any point advised of critical information—including the dangers
13 of self-representation, facts essential to understand the charges or defenses, or many consequences
14 that flow directly from their pleas. Nor are prosecutors involved in the formulation, conveyance,
15 or negotiation of the plea offers. Then, when the courtroom doors open, a judge accepts the pleas
16 in individual hearings that typically last a few minutes or less.

17 2. Between 2015 and the date of this filing, more than 50,000 people pled guilty to a
18 misdemeanor without counsel at arraignment in the County’s primary courthouse in Bakersfield
19 and in the County’s outlying courts. Fewer than 5% of misdemeanor defendants were represented
20 by counsel at their arraignment. Over the past year, roughly 60% of all defendants in Bakersfield’s
21 misdemeanor arraignment courtrooms pled guilty, including approximately 62% of all in-custody
22 defendants.

23 3. The consequences of those pleas can be severe. Misdemeanor defendants plead
24 guilty to charges that impose jail time or significant fines, jeopardize housing or child custody,
25 detrimentally affect other rights and privileges, and increase penalties in any future interactions

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27 ¹ Unless otherwise specified, a “guilty” plea refers to a plea of conviction, whether “guilty” or “no
28 contest.”

1 with the criminal legal system. A guilty plea to a misdemeanor can also have serious immigration
2 consequences, but no state actor provides the legally required individualized immigration advisal
3 to non-citizen defendants before they plead. The effects of this system are borne most heavily by
4 people of color, people with limited English proficiency, people with mental disabilities and of
5 limited legal competency, and those who are poor.

6 4. This fast-track misdemeanor plea process began over fifteen years ago in
7 Bakersfield. In a 2008 article, a now-retired Superior Court judge who oversaw the misdemeanor
8 docket described Kern County’s misdemeanor arraignments as “different from anything in the
9 state,” because “[w]e have no deputy district attorney and most of the time we have no public
10 defender.” The article reported that the judge estimated 90% of defendants pled guilty or no
11 contest at arraignment under this system.²

12 5. In 2022, the County and the Court expanded variations of this fast-track
13 misdemeanor plea system to at least four of the County’s outlying courthouses. In response to the
14 threat of litigation, the County has implemented some modest changes in recent weeks, including
15 having a public defender more often present in the courtroom. These changes have not remedied
16 the systemic problems. When public defenders are present in the courtroom, they rarely provide
17 advisals or representation, and they do not act to mitigate the pressure on defendants from the
18 County and the Court to waive their right to counsel and trial rights and to enter a plea.

19 6. Kern County’s misdemeanor arraignment system violates indigent defendants’ rights
20 to counsel and due process, protections against discrimination for people with limited English
21 proficiency and/or people with mental disabilities, and the public right of access to court
22 proceedings pursuant to the First Amendment. Petitioners/Plaintiffs seek injunctive and
23 declaratory relief to end these unconstitutional and illegal practices.

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25
26 ² Steve Swenson, *Misdemeanor cases handled efficiently in Division G*, The Bakersfield
27 Californian (Aug. 10, 2008, updated Sept. 13, 2016),
28 https://www.bakersfield.com/news/misdemeanor-cases-handled-efficiently-in-division-g/article_16f3e613-2f24-5bf6-83c0-a52e0f57148a.html.

1 **II. JURISDICTION AND VENUE**

2 7. This Court has jurisdiction under the California Constitution, Article VI, section 10,
3 and California Code of Civil Procedure, section 410.10.

4 8. Venue may lie in this Court because the action arose in this County and Defendants
5 are situated in Kern County. *See* Cal. Civ. Proc. Code §§ 393(b), 394(a), 395(a).

6 **III. PARTIES**

7 **A. Petitioners/Plaintiffs**

8 9. **UFW Foundation** is the largest legal service provider in rural California and offers
9 critical services and resources to farm worker and immigrant communities. UFW Foundation’s
10 regional offices serve over 100,000 immigrants annually in leading agricultural regions, including
11 in Kern County. UFW Foundation has provided representation in immigration proceedings to
12 noncitizens who had previously entered uncounseled guilty pleas in the Superior Court, and whose
13 pleas resulted in significant detrimental immigration consequences. UFW Foundation is also part
14 of the Rapid Response Network of Kern which has engaged in advocacy since at least 2001 to end
15 the County’s operation of misdemeanor arraignments in which a large number of defendants enter
16 uncounseled pleas at their first appearance. UFW Foundation owns real property, including office
17 space, in Kern County and has paid taxes to the County within the past year.

18 10. **Laura Hart** is a 60-year-old Kern County resident. In 2021, Ms. Hart pled guilty to
19 misdemeanor offenses during her Superior Court arraignment without counsel or any
20 consideration of her legal competency, despite record evidence known to Respondents/Defendants
21 of a prior finding that she was incompetent to stand trial, and even though the Superior Court
22 contemporaneously recognized her continued incompetence to stand trial in a felony criminal
23 proceeding. Ms. Hart was diagnosed with bipolar disorder as a teenager, is on medication to treat
24 that condition, and is under the continuing care of a psychiatrist. Ms. Hart also has a physical
25 disability affecting her vision and balance. Ms. Hart has been without stable housing for the past
26 decade. Her houselessness, mental and physical disabilities, and inconsistent access to mental
27 health treatment have contributed to a series of law enforcement interactions resulting in

1 convictions, including her 2021 uncounseled misdemeanor conviction for possession of drug
2 paraphernalia. Ms. Hart has a mental and physical disability and on that basis is a protected
3 individual for the purposes of California Government Code Section 11135 (“Section 11135”) and
4 a person with a disability for the purposes of the Americans with Disabilities Act (“ADA”). Ms.
5 Hart is a taxpayer of Kern County and the State of California.

6 11. **John Doe**³ is a 59-year-old resident of Kern County and the father of four children.
7 In 2017, Mr. Doe pled guilty at his Superior Court misdemeanor arraignment without speaking to
8 an attorney, without being advised of the immigration consequences of appearing in court, and
9 without anyone evaluating his legal competency. He was sentenced to 30 days in custody and then
10 transferred to immigration detention. Soon after entering an uncounseled plea in Kern County, an
11 immigration judge deemed Mr. Doe incompetent to represent himself and appointed him an
12 attorney for his immigration proceedings.⁴ Mr. Doe has been diagnosed with serious mental
13 disabilities, including psychosis and depression; is on medication to treat those conditions; and is
14 under the continuing care of a psychiatrist. When he is not on his medication, he struggles to
15 perform even the most basic functions, and lacks the capacity to understand legal proceedings. He
16 was not on any medication at the time he entered his uncounseled plea. Mr. Doe has a mental
17 disability and on that basis is a protected individual for the purposes of Section 11135 and a
18 person with a disability for the purposes of the ADA. Mr. Doe is a taxpayer of Kern County and
19 the State of California.

20 12. **Jeannie Parent** is a resident of Kern County. Ms. Parent is a retired English
21 professor and a founding member of the Kern Welcoming and Extending Solidarity to Immigrants
22 (KWESI) network. Since 2015, Ms. Parent has worked with KWESI to provide volunteer services
23 to immigrants detained in the Mesa Verde Detention Center in Bakersfield. On December 19,

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25 ³ Mr. Doe is proceeding under pseudonym to protect his privacy because of the sensitive and
26 highly personal nature of his count, and to protect him from physical harm that can stem from his
27 detention and removal. A motion or stipulation to proceed under pseudonym will be forthcoming.

28 ⁴ In California, immigration authorities must provide representation to noncitizens who are
detained and incompetent to represent themselves in immigration proceedings. *See Franco-
Gonzalez v. Holder*, No. 10-cv-02211, 2014 WL 5475097, at *3 (C.D. Cal. Oct. 29, 2014).

1 2022, Ms. Parent sought to observe misdemeanor arraignment proceedings at the Bakersfield
2 Metro Division Courthouse but was prohibited from entering the courtroom for critical portions of
3 the relevant proceedings where the court provided an advisal en masse and probation officers
4 conveyed plea offers to unrepresented defendants. Ms. Parent is a Kern County resident and
5 taxpayer of Kern County and the State of California.

6 **B. Respondents/Defendants**

7 13. **Kern County** (the “County”) is a legal subdivision of the State of California. Under
8 state law, the County is responsible for financing the Public Defender’s Office, the District
9 Attorney’s Office, and the Probation Department. The County’s Chief Administrative Officer,
10 operating under the direction of the Board of Supervisors, executes and coordinates the Board’s
11 policies and directives and supervises the County’s fiscal affairs. Kern Cnty. Mun. Code
12 § 2.12.020. County officers have a duty of loyalty and a duty of care in fulfilling government
13 service which mandates compliance with federal and state laws and regulations. Kern Cnty. Mun.
14 Code § 2.01.010(A).

15 14. **Kern County Superior Court** (the “Superior Court”) is established under the
16 California Constitution. *See* Cal. Const., Art. VI, § 4. The Superior Court, through its Presiding
17 Judge, is responsible for establishing and implementing the Court’s policies and rules, and
18 allocating resources “in a manner that promotes access to justice for all members of the public.”
19 Cal. R. Ct. 10.603(a)), (b)(1)(G). The Court is obligated to ensure that any waivers of the right to
20 counsel are knowing, intelligent, and voluntary. *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938). The
21 Presiding Judge of the Superior Court also appoints and has oversight responsibility over the Chief
22 Probation Officer, who administers the Probation Department. Cal. Gov’t Code, §§ 27770–27772.
23 The Superior Court must “ensure that persons with disabilities have equal and full access to the
24 judicial system.” Cal. R. Ct. 1.100(b).

25 15. **Ryan J. Alsop** is the Chief Administrative Officer for Kern County. Mr. Alsop is
26 sued in his official capacity. Mr. Alsop leads the County Administrative Office, which is
27 responsible for, among other things, ensuring that County operations comply with federal and
28

1 state law. As an officer of Kern County, Mr. Alsop has a duty of loyalty and a duty of care in
2 fulfilling his government service which mandates compliance with federal and state laws and
3 regulations. Kern Cnty. Mun. Code § 2.01.010(A).

4 16. **TR Merickel** is the Chief Probation Officer for Kern County. Mr. Merickel is sued
5 in his official capacity. Mr. Merickel is responsible for administering community supervision
6 programs, including oversight of the Kern County Probation Office and all its personnel. Cal.
7 Gov't Code § 27771. Mr. Merickel has oversight responsibility over probation officers who
8 determine and convey misdemeanor plea offers in the County's arraignment courts. As an officer
9 of Kern County, Mr. Merickel has a duty of loyalty and a duty of care in fulfilling his government
10 service which mandates compliance with federal and state laws and regulations. Kern Cnty. Mun.
11 Code § 2.01.010(A).

12 17. **J. Eric Bradshaw** is the Presiding Judge of the Kern County Superior Court.
13 Respondent Bradshaw is sued in his official capacity. Judge Bradshaw is responsible for leading
14 the Superior Court, establishing policies, and "allocating resources in a manner that promotes
15 access to justice for all members of the public." Cal. R. Ct. 10.603(a). Judge Bradshaw is
16 obligated to ensure that the Court's policies comply with state and federal law. Judge Bradshaw
17 also must "[e]nsure that the court regularly and actively examines access issues, including any
18 physical, language, or economic barriers that impede the fair administration of justice." Cal. R. Ct.
19 10.603(c)(9)(B). Judge Bradshaw is further responsible for appointing and overseeing the Chief
20 Probation Officer. Cal. Gov't Code §§ 27770–27772.

21 18. **Tamarah Harber-Pickens** is the Court Executive Officer for Kern County Superior
22 Court. Ms. Harber-Pickens is sued in her official capacity. Ms. Harber-Pickens, acting under the
23 direction of the Presiding Judge, is responsible for "overseeing the management and
24 administration of the nonjudicial operations of the court." Cal. R. Ct. 10.610(b). Ms. Harber-
25 Pickens is also responsible for "allocating resources in a manner that promotes access to justice
26 for all members of the public." *Id.*

1 19. **Donny Youngblood** is the Sheriff of Kern County. Sheriff Youngblood is sued in
2 his official capacity. As Sheriff, he is responsible for making the policies of his office. Sheriff
3 Youngblood and his office provide security for the Kern County Superior Court. Cal. Gov't Code
4 § 69921.5. In this capacity, he monitors and controls access to the Superior Court and its
5 courtrooms. He and his employees and agents determine who is permitted to physically enter the
6 Superior Court and its courtrooms. As an officer of Kern County, Sheriff Youngblood has a duty
7 of loyalty and a duty of care in fulfilling his government service which mandates compliance with
8 federal and state laws and regulations. Kern Cnty. Mun. Code § 2.01.010(A).

9 **IV. ALLEGATIONS**

10 **A. Kern County's Misdemeanor Arraignment System Systematically Violates** 11 **the Right to Counsel and Due Process.**

12 **1. The County's Misdemeanor Arraignment System Begins with the** 13 **Processing of Criminal Defendants Behind Closed Doors.**

14 20. For most defendants, the path to arraignment on a misdemeanor charge begins with
15 a law enforcement encounter. This can result in either (i) the issuance of a citation with an order to
16 appear for misdemeanor arraignment on a particular date, or (ii) the citation and arrest of the
17 defendant. For people who receive a citation or can afford to post bail upon arrest, they may
18 appear out-of-custody for a misdemeanor arraignment. For those who cannot post bail upon an
19 arrest, they may be held in custody and transferred from jail to the courthouse for their
20 arraignments.⁵

21 21. For individuals arraigned in Kern County, a prosecutor typically files a criminal
22 complaint. In some cases, however, the law enforcement officer directly files misdemeanor
23 charges in Superior Court. On information and belief, prior to filing charges, the prosecutor does
24 not conduct any investigation into the charges and relies only on what is included in the police
25 report.

26
27 ⁵ Misdemeanor defendants might also be denied bail, for instance, due to a warrant in another
28 jurisdiction or a contemporaneous felony charge.

1 22. Arraignment is a defendant’s first court appearance on criminal charges. Prior to an
2 individual’s arraignment in Kern County, there is no opportunity for indigent defendants to meet
3 with a public defender. Indeed, indigent defendants receive limited information about the formal
4 charges against them—and how or whether they should approach counsel—until the misdemeanor
5 arraignment itself.

6 23. Arraignment proceedings typically begin when bailiffs conduct roll call and
7 defendants enter the courtroom.⁶ When defendants enter or (for in-custody defendants) are
8 brought into the courtroom, there is typically no judge, prosecutor, or defense attorney present.
9 Instead, probation officers oversee an off-the-record, closed-door processing of defendants (the
10 “Closed-Door Processing”). The defendants in the courtroom can hear the conversations between
11 other defendants and the probation officers. Yet family members, friends, and members of the
12 public who request access are denied entry, or are forced to leave by court security officers or
13 probation officers if they had previously entered. In denying access, court security or probation
14 officers sometimes assert that the Court’s policy prohibits access to the Closed-Door Processing.
15 There is no apparent written policy requiring that the court be closed at this time.

16 24. During the Closed-Door Processing, the Court shows criminal defendants an
17 outdated official court video that purports to advise them of their rights during the arraignment
18 proceeding. The video includes a “statement of rights” by a long-retired Superior Court judge and
19 a long-retired Chief Public Defender.⁷ The recorded videos are not individualized, and they

20
21 ⁶ The misdemeanor arraignment proceedings described herein primarily reflect court procedures as
22 observed and conducted at the Bakersfield Metro Division courthouse at 1415 Truxtun Avenue in
23 Bakersfield. There are variations at outlying courts, including the manner of advisal of rights (and
24 whether judges rely on the same video), the frequency of uncounseled pleas, and the respective
25 roles, if any, of Probation, the District Attorney and the Public Defender. Although the
26 misdemeanor arraignment procedures vary to some extent in different courthouses in Kern, each
suffers from the same constitutional failings. Indigent defendants in each courtroom appear at
arraignments and enter pleas without first speaking to a defense attorney and without receiving
individualized advice about the consequences of entering a plea or waiving their rights before
trial.

27 ⁷ Retired Judge Robert Tafoya provides the Judge’s statement; he retired in early 2021. *See* Gene
28 Garaygordobil, *Retiring Judge Tafoya Gets Drive-By Parade Send Off*, *The Record* (Feb. 13,
2021), <https://www.bakersfield.com/delano-record/retiring-judge-tafoya-gets-drive-by-parade->

1 employ technical language that may be challenging for many defendants to comprehend,
 2 especially people who have limited English proficiency and people with mental disabilities. For
 3 instance, the judge’s statement provides: “If you plead guilty, you admit the elements of the
 4 offense charged and give up your legal defense,” without explaining any of these terms. The video
 5 effectively discourages defendants from seeking representation. The retired Superior Court judge,
 6 for instance, states that all misdemeanor defendants have a right to an attorney, including at
 7 arraignment, but cautions that exercising this right may delay the arraignment. The judge also
 8 states, incorrectly, that a defendant may need to pay for attorney’s fees if represented.

9 25. In the same video, the retired Chief Public Defender reaffirms, incorrectly, that
 10 individuals who seek to exercise their right to counsel may be asked to repay the costs of that
 11 representation, and suggests that the cost of counsel would likely be hundreds of dollars.⁸ He
 12 provides minimal and general guidance. In their statements, neither the retired Superior Court
 13 judge nor the former Chief Public Defender meaningfully advise defendants about the potentially
 14 serious risks of pleading guilty.

15 26. A managing attorney at the Court admitted in October 2021 that the official video
 16 was “dated.” In fact, the California Legislature enacted a law in 2021 that prohibits counties from
 17 charging indigent defendants for the costs of defense counsel.⁹ Nonetheless, the Superior Court
 18 continues to use the video for misdemeanor arraignments through the date of this filing.

19 _____
 20 send-off/article_11852e9e-6d83-11eb-80a7-47b68f22a25e.html. Former Chief Public Defender
 21 Mark Arnold provides the Public Defender’s statement; he retired in 2009. *See* James Burger,
 22 *Public Defender Announces Retirement*, Bakersfield.com (May 21, 2009),
https://www.bakersfield.com/archives/public-defender-announces-retirement/article_db8c1153-117a-5b61-a3a8-f4ca44b165b4.html.

23 ⁸ The official videotaped Statement of the Public Defender includes this advisal: “If you are
 24 indigent, that is you do not have the funds to hire an attorney, you are entitled to have the court
 25 appoint an attorney to represent you. If you are appointed counsel, there will be a hearing at the
 26 conclusion of your case to determine your ability to repay all or a portion of the court-appointed
 27 attorney costs. Typically these fees are between \$100 and \$500.”

28 ⁹ AB 1869 (Cal. State Assemb. Sess. 2019–2020) repealed Cal. Gov’t Code Sections 27712,
 27753, which authorized counties to collect fees from indigent defendants for the cost of defense
 counsel. The Superior Court is aware of this change in the law and publicized it in a news release.
See Assembly Bill 1869: Criminal Fees, Kern County Superior Court News Release 1 (Oct. 15,
 2021), https://www.kern.courts.ca.gov/system/files?file=october_15-2c_2021_news_release_.pdf.

1 **2. Probation Officers Act Outside Their Authority and Training to**
 2 **Formulate and Convey Plea Offers Without the Participation of**
 3 **Prosecutors or Defense Counsel.**

4 27. During the Closed-Door Processing, County probation officers meet with individual
 5 defendants to inform them of the charges against them. Probation officers present plea offers to
 6 defendants on a take-it-or-leave-it basis. These offers include a recommended sentence and may
 7 also include the dismissal of certain charges.¹⁰ This happens following or during the official video.
 8 On information and belief, probation officers typically formulate the plea offers on the spot during
 9 the Closed-Door Processing, relying on limited information and with limited or no guidance from
 10 a prosecutor. During the Closed-Door Processing, probation officers or court staff also provide
 11 any forms defendants need to sign or initial, including a waiver-of-rights form, and collect the
 12 forms once executed.

13 28. Respondents/Defendants have no policy, and provide no meaningful guidance or
 14 training, concerning how probation officers should determine an appropriate plea or sentence. The
 15 Probation Department only recently created informal and incomplete guidelines, initially at the
 16 request of a Superior Court judge who sought to expand the fast-track misdemeanor arraignment
 17 system to an outlying court unstaffed by probation officers. Even now, the “list of standard plea
 18 offers”—which the Probation Department recently created at the Court’s request—is not provided
 19 to or used by probation officers staffing the misdemeanor arraignment calendar.

20 Respondents/Defendants have delegated the determination of misdemeanor pleas to untrained and
 21 unauthorized probation officers without any standardized procedure or written guidance.

22 29. Aside from the initial charging decision, the Kern County District Attorney’s office
 23 is effectively absent from the arraignment process. There are no deputy district attorneys in the
 24 courtroom. Nor are deputy district attorneys typically even involved outside the courtroom in
 25

26 _____
 27 ¹⁰ In certain outlying courts, the judicial officer communicates the plea offer, typically based on
 28 either an interpretation of the statutory term or information provided by the district attorney who is
 also generally absent from the arraignment.

1 setting or reviewing plea offers, extending pleas, or communicating with defendants or probation
2 officers before or after pleas are accepted.

3 30. Neither the County nor the Court evaluate the fairness of the plea offers that
4 probation officers choose to convey to misdemeanor defendants. On information and belief,
5 probation officers' offers are not consistent with those conveyed by prosecutors in comparable
6 cases of defendants who plead not guilty at arraignment. One Superior Court judge reported that
7 she believed the offers presented at arraignment were often more severe than those presented by
8 prosecutors at subsequent hearings where defendants were represented.

9 Even so, probation officers often tell misdemeanor defendants that the plea offer extended
10 at arraignment is the "best offer" they are likely to get. On information and belief, these assertions
11 by probation officers are unfounded, and wrong in many cases, but defendants nevertheless rely
12 on these misleading assertions in entering guilty pleas.

13 **3. Defendants Are Not Adequately Advised of Their Rights,
14 Leading to Unconstitutional Waivers.**

15 31. During the Closed-Door Processing, probation officers or Court staff present
16 unrepresented defendants with a summary waiver form.¹¹ The one-page waiver form purports to
17 operate as an advisal and waiver of all counsel and trial rights. It is a dense, technical document,
18 laden with legal jargon that requires a level of reading comprehension and a sophistication that
19 many indigent defendants lack. *See* Exhibit A, "Defendants [sic] Acknowledgment of Advisal,
20 Understanding and Waiver of Constitutional Rights."¹² The waiver form requires that defendants
21 initial next to each right that they must waive to enter a plea—a process that probation officers
22 sometimes expedite by indicating with an x-mark in pen on the lines for a signature or initials.

23 32. A completed form provides no insight as to whether a defendant has actually read
24 and understood the rights they are being asked to waive. The standard form requires the defendant
25

26 ¹¹ In at least one outlying court, the form is provided at the entrance to the courthouse and
collected by bailiffs from all misdemeanor defendants at the courtroom door.

27 ¹² There are some limited variations in this form between courtrooms that do not affect the
substantive shortcomings alleged here.

1 to affirm that they “have been advised by the Court or [their] attorney [] of certain constitutional
2 rights,” that “[t]he Court or [their] attorney has fully described the nature of the charges against
3 [them],” and “all the possible consequences of entering a plea.” On information and belief, for
4 most defendants, none of these affirmations are true. Neither the Court nor any attorney provides
5 the requisite advisals on an individual basis. Nor does the Court or any attorney advise defendants
6 of the charges or consequences of entering a plea.

7 33. A review of executed waiver forms accepted by the Superior Court for entry of a
8 guilty plea demonstrates that defendants may not have read or understood the waiver of rights—
9 including names that are spelled wrong or in the wrong place on the form. In some cases where
10 individuals entered uncounseled guilty pleas, the court files lack executed waiver forms altogether.

11 34. Defendants who waive their rights and enter a plea are provided minimal
12 information about the charges and potential defenses before doing so. Their charges are sometimes
13 included in boilerplate complaints lacking specific factual allegations. For instance, multiple
14 individuals pled guilty at their first appearance to making “criminal threats,” receiving custodial
15 sentences of 30 or 90 days, but no details about the alleged threats appeared in the complaints.
16 One individual pled at his first appearance to exhibiting a deadly weapon, and the Court ordered a
17 90-day sentence. The complaint did not define any particular weapon and reads only: “deadly
18 weapon, to wit: a weapon.” On information and belief, Respondents/Defendants do not typically
19 provide copies of the complaints, or any factual allegations, to unrepresented defendants. On
20 information and belief, numerous cases which are resolved at arraignment lack a sufficient factual
21 basis to substantiate a conviction. But uncounseled defendants are not provided information about
22 the nature of the charges, possible defenses, and other essential facts, and so plead anyway.

23 35. After defendants sign the waiver form and agree to plead, the probation officer
24 submits a written sentencing recommendation to the Court, conveying the “plea offer” sentence.
25 The most recent Probation Department annual report states that in fiscal year 2019-2020,
26 probation officers made thousands of “‘in court’ reports” in misdemeanor arraignment
27
28

1 proceedings and “help[ed] process hundreds of cases daily by reviewing the case, the defendant’s
2 criminal history, and providing appropriate recommendations to the Court.”¹³

3 36. Only once the Closed-Door Processing is largely complete do court officers open the
4 courtroom to family and the public. The judge then takes the bench and commences the formal
5 arraignment (the “Arrestment Proceeding”).

6 37. During the Arrestment Proceeding, the judge sometimes offers a brief group
7 statement of rights to all defendants in the courtroom. The statement provided by the judge at this
8 time is not consistently interpreted for non-English speakers. The judge then arraigns the
9 defendants. In some instances, individuals facing the same charge are called for their arraignments
10 in groups. Many defendants formally enter a guilty plea and are sentenced on the spot, having
11 already allegedly waived their rights.

12 38. The judge’s individual colloquy with defendants is typically brief, superficial and,
13 with exceedingly few exceptions, does not meaningfully probe defendants’ competence, their
14 understanding of the rights they have waived, or the motivations behind the waiver. For example,
15 in misdemeanor arraignment proceedings on January 23, 2023, the extent of the judge’s inquiry
16 into the knowingness and voluntariness of defendants’ waivers generally consisted of three
17 perfunctory yes/no questions. Holding up the defendant’s previously signed waiver form, the
18 judge asked: 1) “Did you read, initial and sign this document?” 2) “Did you understand the rights
19 you have to give up?” 3) “Do you now waive those rights?” In arraignments in April of this year,
20 the judge often spent less than two minutes accepting guilty pleas from uncounseled defendants.
21 In some instances, the colloquy lasted less than 60 seconds.

22 39. The judge relies almost entirely on the pre-filled and signed form, and the inaccurate
23 official video presentation, to summarily conclude that the defendants’ waiver of rights is
24 knowing, intelligent, and voluntary.

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26
27 ¹³ Kern County Probation 2019-2020 Annual Report 18, https://www.kernprobation.com/wp-content/uploads/2022/10/Annual-Report_FY19-20-F_rev-072222.pdf (last visited May 5, 2023).

1 40. Because defendants have already signed forms purporting to waive their rights to
 2 counsel and trial rights and to plead during off-the-record interactions behind closed doors, any
 3 subsequent attempts to provide procedural protections during the formal Arraignment Proceeding
 4 are ineffective. On information and belief, defendants at misdemeanor arraignments almost never
 5 retract waivers or decisions to plead guilty during the Arraignment Proceeding. In one rare
 6 instance where a defendant returned to withdraw her prior plea, the defendant explained that she
 7 had previously pled guilty because she thought that was required to complete the waiver form she
 8 had been given.

9 41. The California Judicial Council “Bench Guide for *Faretta* and *Marsden* Issues”
 10 recommends that criminal defendants seeking to waive their right to counsel must make an
 11 “unequivocal request for self-representation”; that the court must advise the defendant of their
 12 rights, the complexity of their case, and a set of delineated and non-exhaustive “dangers and
 13 disadvantages of self-representation”; and that the court must determine whether the defendant
 14 “has the mental capacity to waive the right to counsel and exercise the right to self-
 15 representation.”¹⁴ No such “unequivocal request” is made by most defendants in the County’s
 16 misdemeanor arraignment courtrooms. Rather, defendants are strongly encouraged to waive their
 17 rights by probation officers extending plea offers in a closed courtroom. Nor does the Court
 18 conduct an adequate advisal or evaluate whether any waiver is done with sufficient mental
 19 capacity.

20 **4. Public Defenders Are Effectively Absent During Misdemeanor**
 21 **Arraignment Proceedings.**

22 42. Public defenders have been inconsistently present at arraignments. Even when
 23 physically present at arraignment, public defenders are not available to represent indigent
 24 defendants, including indigent defendants who plead guilty.

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 26 _____
 27 ¹⁴ *California Judges Benchguides, Faretta and Marsden Issues*, San Bernardino County Law
 28 Library § 54.2 (June 2017),
http://www.sblawlibrary.org/uploads/7/3/1/1/7311175/bg054_2017pt.pdf.

1 43. Beginning in late 2021, a County public defender sometimes entered the courtroom
2 during the Closed-Door Processing and announced that they could consult with any defendants
3 with immigration issues or provide other general information. However, that practice was
4 inconsistent. When the public defender appeared at all, they typically left the courtroom within
5 several minutes, sometimes leaving before all defendants calendared for the day had even arrived
6 and without providing any individual consultations. As a result, indigent defendants entering pleas
7 at arraignment almost never communicated directly with defense counsel. On information and
8 belief, the public defender did not, or only exceedingly rarely, entered a formal appearance on
9 behalf of any misdemeanor defendant at arraignment.

10 44. In recent weeks, in response to the threat of litigation, public defenders have been
11 present for a greater portion of misdemeanor arraignment proceedings. Nonetheless, they are still
12 not consistently present, do not enter an appearance in individual cases, do not give individualized
13 advisals in advance of a waiver of rights, and rarely intervene in any meaningful way.

14 45. In multiple arraignments since this change in practice, the public defender has been
15 present for the entire public session without making a formal appearance on behalf of any
16 defendant, without saying anything on the record, and apparently without communicating with
17 individual defendants. On April 6, 2023, a judge sentenced a defendant to five days in custody for
18 a controlled substance offense, adjourned the proceedings, and then on the advice of the probation
19 officer, recalled the case and resentenced the defendant to 90 days. In another case, on April 7,
20 2023, a judge entered a not guilty plea and returned a defendant to custody without consideration
21 of whether she was eligible for release—even though she was charged with one count of
22 trespassing and did not orally respond to, or appear to comprehend, any questions from the judge.
23 In yet another, on April 27, 2023, a Spanish-speaking defendant who relied on an interpreter pled
24 guilty to a theft-related offense, in an exchange with the judge that lasted less than four minutes.
25 In each case, the public defender, who was present in the courtroom, stood by and did not speak
26 with the defendant or the Court, and did not enter an appearance.

1 46. The Court has not effectively acted to promote representation—or even fleeting
2 legal advice—by public defenders since the change in practice. While the judge in some
3 arraignments in late April 2023 advised defendants, en masse, to speak to an attorney if they were
4 not citizens, this advisal was not interpreted. The judge also made this advisal only *after*
5 defendants had already met with probation officers and, in some cases, signed waivers accepting
6 plea offers. Over multiple arraignment calendars, no defendants, English-speaking or not, spoke to
7 the public defender who was present in court following the mass advisal.

8 47. The fact that the current misdemeanor arraignment system relies so heavily on the
9 *lack* of counsel for indigent defendants is evident from the response of County probation officers
10 to the proposal to begin sending public defenders to some arraignments in late 2021. The Chief
11 Public Defender at the time notified the Probation Department in September 2021 that a public
12 defender would make an appearance to “discuss immigration issues” with some defendants at all
13 misdemeanor arraignments. In response, the County probation officer who oversees misdemeanor
14 arraignment processing in Bakersfield emailed her colleagues that it was “going to be a mess” if
15 defense attorneys were regularly present at arraignments, where indigent defendants would seek
16 access to them whether or not they had immigration issues. However, because the public
17 defender’s presence has been brief and inconsistent, and because it does not allow for a
18 meaningful advisal, this change did not disrupt the existing fast-track waiver and plea system.

19 **5. In-custody Defendants Face Heightened Pressure to Plead at Their First**
20 **Appearance.**

21 48. The County’s misdemeanor arraignment system imposes even greater pressure on
22 in-custody defendants because a not guilty plea almost certainly prolongs a defendant’s pretrial
23 detention. Over 2,000 in-custody defendants in Bakersfield entered uncounseled guilty pleas at
24 their first appearance since January 2022.

25 49. On information and belief, judges do not decide whether in-custody misdemeanor
26 defendants should be released before those defendants are presented with, and accept, a plea offer.
27 Misdemeanor arraignment judges only consider release from custody for defendants who plead
28

1 not guilty. Accordingly, many in-custody defendants accept uncounseled plea offers on the
2 understanding that this will ensure their release from custody immediately or within days of the
3 arraignment. They do not always understand the effects of that guilty plea. Moreover, if a judge
4 first considered their eligibility for release, and ordered their release from custody, this would
5 influence whether some defendants would choose to waive their rights and enter a guilty plea in
6 the first place.¹⁵

7 50. Other in-custody defendants plead guilty or no contest at arraignment to extended
8 custodial sentences of a month or more, or while they remain detained on additional, more serious,
9 charges, suggesting no custodial benefit to the uncounseled plea. For these in-custody defendants,
10 a not guilty plea would have provided an opportunity for counsel to seek to negotiate a more
11 favorable sentence at a subsequent hearing where they could also test the evidence, and which
12 would have occurred before the expiration of the custodial sentence issued through the plea at
13 arraignment or before the resolution of another case. The entry of a guilty plea with no added
14 benefit to the defendant is evidence of the deficiency of the advisal, and the lack of defendants'
15 knowledge and understanding of the charges, consequences, and their rights.

16 51. Defendants who plead not guilty do not receive a fair custody hearing. The absence
17 of representation at misdemeanor arraignments also means that Kern County fails to provide
18 indigent defendants counsel for custody determinations. The judge's determination of whether a
19 defendant should be released with charges pending can include a colloquy in which the defendant
20 is interrogated in open court and on the record, without counsel, about sensitive or important
21 aspects of their lives or their charges—including their family status, substance use, and financial
22 situation. The judge then makes a custody determination on the meager record then available,
23 without the assistance of counsel to provide relevant information. Many in-custody misdemeanor
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25 ¹⁵ Studies have demonstrated that remaining in custody increases the likelihood of an eventual
26 guilty or no contest plea. *See generally* “*Not in it for Justice*”: *How California’s Pretrial*
27 *Detention and Bail System Unfairly Punishes Poor People*, Human Rights Watch (Apr. 11, 2017),
28 <https://www.hrw.org/report/2017/04/11/not-it-justice/how-californias-pretrial-detention-and-bail-system-unfairly>.

1 defendants who plead not guilty at arraignment are not released on their own recognizance, and
2 are unable to post a set bail, meaning that their decision to enter a not guilty plea and seek
3 representation prolongs their detention.

4 **B. The Misdemeanor Arraignment System Fails to Adequately Advise Non-**
5 **Citizens of Immigration Consequences and Discriminates Against Defendants**
6 **with Limited English Proficiency.**

7 **1. Misdemeanor Defendants Are Not Advised of the Immigration**
8 **Consequences of Their Pleas.**

9 52. Probation officers do not consider immigration consequences in formulating plea
10 offers. They also lack any policy, guidance, or training on recognizing, much less avoiding, those
11 consequences. According to an email from the County’s “exclusive [Probation] Department
12 trainer for sentencing or disposition law” over the past decade, the County Probation Department
13 has provided no training on “immigration consequences or 6th Amendment issues” to court
14 hearing officers who are responsible for misdemeanor arraignments. He asserted that his training
15 excludes “those topics” (i.e., immigration and right-to-counsel issues) as they “are the exclusive
16 domain of attorneys and the court, and beyond the scope of probation.” But no attorney is
17 involved in the vast majority of these plea negotiations at all.

18 53. Probation officers are tasked with determining and extending pleas that could have
19 grave immigration consequences even though they are not formally bound by California law
20 which requires prosecutors to “consider the avoidance of adverse immigration consequences in the
21 plea negotiation process as one factor in an effort to reach a just resolution.” Penal Code
22 § 1016.3(b). California law grants prosecutors the exclusive authority to determine and negotiate
23 pleas, and compels them to consider immigration consequences in doing so. But prosecutors are
24 uninvolved in plea determinations in Kern County’s misdemeanor arraignment system.

25 54. Judges in Kern County misdemeanor arraignment court also typically do not provide
26 the requisite judicial advisal of immigration consequences on the record to each defendant, relying
27 primarily on the video for advisals. *See* Penal Code § 1016.5(a). Nor do judges typically make any
28

1 individual inquiries regarding defendants’ possible immigration issues or review the provisions on
2 the waiver form with them before accepting their pleas.

3 55. Those judges also do not typically inform defendants that they can request additional
4 time to “negotiate with the prosecuting agency” regarding the immigration-related impact of a
5 plea. *See* Penal Code § 1016.5(b). Nor do the probation officers who present the plea agreements
6 provide that information.

7 56. During most misdemeanor arraignments, no defense attorney advises noncitizens of
8 the immigration consequences of waiving their rights and pleading guilty. Because of the
9 significant immigration consequences of criminal convictions, the Sixth Amendment to the U.S.
10 Constitution, Article 1, Section 15 of the California Constitution, and California law require
11 defense counsel to fully and adequately advise defendants of possible immigration consequences
12 before they plead to a charge, and to seek alternative dispositions that avoid adverse immigration
13 consequences. *See, e.g.*, Penal Code § 1016.2(e); *People v. Bautista*, 115 Cal.App.4th 229, 242
14 (2004). The County’s misdemeanor arraignment system, however, systematically deprives non-
15 citizens of meaningful access to individualized immigration advisals.

16 **2. Defendants with Limited Proficiency in English Plead Guilty in Grossly**
17 **Disproportionate Numbers.**

18 57. Linguistic barriers exacerbate the absence of counsel. Kern County is composed of
19 diverse ethnic and linguistic groups. According to the 2020 Census, the County is 56.1%
20 “Hispanic or Latino” and 5.6% “Asian.” More than 44% of households speak a language other
21 than English at home. Many non-citizen defendants who appear in Kern County misdemeanor
22 arraignment court are limited-English proficient (“LEP”) and require the service of interpreters.
23 However, Court data shows that interpreters are present at fewer than 10% of those arraignments,
24 raising questions about adequate language access given the County’s linguistic diversity.

25 58. From the beginning of 2015 through February 2023, fewer than 3% of defendants
26 countywide who used an interpreter were represented at misdemeanor arraignment. While rates of
27 representation at arraignment are notably low for all defendants, defendants fluent in English are
28

1 significantly more likely to be represented than LEP defendants.

2 59. In aggregate, indigent defendants who rely on interpreters at their misdemeanor
3 arraignments face radically different outcomes than indigent defendants who are fluent in English.
4 Since January 2022, in the Bakersfield courthouse, approximately 71% of unrepresented
5 defendants who used an interpreter pled guilty. By comparison, over the same time period,
6 approximately 56% of unrepresented English-speaking defendants pled guilty. Unrepresented LEP
7 defendants have thus been significantly more likely to waive their rights and plead guilty at
8 arraignment than unrepresented defendants who are fluent in English.

9 60. These disparities in rates of representation and adverse case outcomes between LEP
10 defendants and the general population of defendants are all the more striking because of the severe
11 potential immigration consequences of a guilty plea for non-citizens. *See* Section IV.E.1, *infra*. On
12 information and belief, LEP defendants are more likely to be non-citizens than defendants who are
13 fluent in English. Thus, LEP defendants are more likely to have adverse immigration
14 consequences resulting from a guilty plea, and would be expected to have lower rates of
15 uncounseled convictions if they truly understood the charges and the potential consequences.¹⁶

16 61. There is also a stark disparity in the type of pleas taken by LEP defendants relative
17 to defendants who are fluent in English. Fewer than 20% of defendants who are fluent in English
18 and enter a plea of conviction at arraignment plead guilty as opposed to no contest. By contrast,
19 more than 50% of defendants relying on an interpreter who enter such a plea at arraignment plead
20 guilty as opposed to no contest. A guilty plea may result in additional exposure to civil liability
21 relating to the conduct underlying a plea, where a plea of no contest does not. On information and
22 belief, LEP defendants plead guilty (as compared to no contest) at such high rates because they are
23 less likely to understand their rights and the consequences of waiving those rights and/or are more
24 susceptible to pressure to waive those rights relative to defendants who are fluent in English.

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27 ¹⁶ *See, e.g.,* Jason Cade, *The Plea Bargain Crisis for Noncitizens in Misdemeanor Court*, 34
28 *Cardozo L. Rev.* 1751 (2013).

1 62. Moreover, in the absence of attorneys, interpreters sometimes play an inappropriate
2 role, essentially acting as both counselor and prosecutor. In some proceedings, the probation
3 officers do not speak directly with LEP defendants at all, and the interpreters independently
4 convey the plea offer to the defendants and review whatever waiver form is being used with the
5 defendants—sometimes making erroneous legal representations to LEP defendants. In one such
6 instance in 2022, the interpreter told an *undocumented non-citizen defendant* that his case “has
7 nothing to do with immigration.” This was undoubtedly incorrect because for an undocumented
8 person criminal convictions nearly always carry immigration consequences. See Section IV.E.1,
9 *infra*.

10 **C. The Misdemeanor Arraignment System Lacks Mechanisms to Meaningfully**
11 **Identify Incompetent Defendants and Discriminates Against Defendants with**
12 **Mental Disabilities.**

13 **1. The Court Does Not Adequately Evaluate the Competency of**
14 **Misdemeanor Defendants in Advance of a Plea.**

15 63. A misdemeanor defendant who enters an uncounseled plea at their first appearance
16 is not afforded an individualized, confidential consultation with anyone. Instead, during the
17 Closed-Door Processing, probation officers have a non-confidential and brief meeting with
18 defendants in a closed courtroom. Probation officers typically do not ask individualized questions
19 designed to identify whether there are questions of competence, even though a defendant cannot
20 legally be prosecuted or convicted if not competent. Moreover, probation officers are not
21 equipped, trained, or authorized to evaluate competency, nor do they see it as part of their
22 responsibility. Probation officers also lack any legal obligation to report indicia of incompetence
23 to the court and are not bound by the Rules of Professional Conduct which govern attorneys.

24 64. The Superior Court also fails to adequately screen for and evaluate the competency
25 of individuals to waive counsel and plead guilty. On information and belief, during arraignment,
26 judges usually do not ask individualized questions designed to identify indicia of incompetence.
27 Public defenders are either not present in the courtroom, or do not attempt to speak with and
28 screen defendants for competency prior to any waiver of rights and entry of a guilty plea. Neither

1 probation officers nor the Court have any tool for screening defendants to ensure that they are
2 competent to proceed.

3 65. Instead, there is only a summary affirmation on the waiver forms that an individual
4 defendant has “full knowledge and understanding” of their rights “and of the effect of waiving
5 them,” followed by the trial judge’s cursory confirmation of “competence” and of a “knowing and
6 voluntary” waiver of trial rights, before the extraction of a plea.

7 66. The Superior Court *has* a *Faretta* waiver form which asks for more detailed
8 background information relevant to a consideration of competency—including education,
9 employment, understanding of the charges, treatment for mental illness, and difficulties in
10 comprehension. But the Superior Court *does not use* this lengthier form in misdemeanor
11 arraignment courtrooms. The result of this system is that defendants who may be incompetent to
12 enter pleas are rarely identified or informed of any opportunity to self-report issues with
13 competence or comprehension.

14 67. Court records reflect that both the Superior Court and probation officers making the
15 plea offers sometimes have evidence in case files which should raise doubts about the legal
16 competency of individual defendants, but nevertheless offer and/or accept uncounseled pleas
17 despite this evidence. Such evidence can be in the form of a police report or a judicial
18 determination from a prior case that an individual was deemed incompetent to stand trial (“IST”).
19 A review of court records reveals multiple people who pled guilty without counsel at their first
20 appearance to serious misdemeanor offenses—including assault with a deadly weapon—despite a
21 prior or subsequent IST finding in unrelated cases. For example, Petitioner/Plaintiff Hart had a
22 prior IST determination in Kern. Yet the judge nonetheless accepted her uncounseled guilty plea
23 at her first appearance. Court records also reveal instances where defendants have entered an
24 uncounseled guilty plea at a misdemeanor arraignment only to later, in a subsequent case with
25 appointed counsel, have their proceedings suspended because of a judicial determination of
26 incompetence to stand trial, or to have another court find them legally incompetent and in need of
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1 counsel for their rights to be protected.¹⁷ Both Petitioners/Plaintiffs Hart and Doe entered
2 uncounseled pleas in Kern’s misdemeanor arraignment court, only to be deemed legally
3 incompetent by a judge in another court soon after. The consequences of the misdemeanor pleas
4 remain, even in these situations where a defendant’s competency has been questioned, or even
5 where (prior or subsequent to their uncounseled guilty plea) they have been found legally
6 incompetent.

7 68. It is common for people who the Superior Court is *currently* evaluating for
8 competency, or who the Superior Court *recently* found incompetent to stand trial, to have *prior*
9 uncounseled misdemeanor convictions. On all but one day in March 2023 where there were
10 hearings scheduled related to competency or conservatorship,¹⁸ there was at least one, and often
11 several, defendants with such hearings who had entered a prior uncounseled guilty plea to a
12 misdemeanor within the past seven years. Over the course of the month of March 2023, the
13 Superior Court held competency or conservatorship hearings for at least 31 individuals who had
14 previously entered one or more uncounseled guilty plea to misdemeanor offenses.

15 69. Further, a review of the Superior Court’s calendar for scheduled hearings related to
16 competency or conservatorship reveals that the Court routinely accepts uncounseled guilty pleas
17 from individuals who the Court had *previously* found incompetent to stand trial. Many individuals
18 had been funneled through the misdemeanor plea mill multiple times, and several had received
19 significant custodial sentences following their uncounseled pleas. One individual had twelve
20 misdemeanor convictions arising from uncounseled guilty pleas over the past seven years. At least
21 three of this person’s convictions post-dated prior IST determinations, and several pleas were
22 entered while in custody for felony proceedings that were ultimately suspended due to
23 competency proceedings. Multiple individuals had entered uncounseled guilty pleas within

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25 ¹⁷ See note 4, *supra*.

26 ¹⁸ This includes an evaluation of cases calendared for a competency hearing (Penal Code § 1368),
27 involuntary medication hearing (Penal Code § 1370), hearing on a certificate of restoration (Penal
28 Code § 1372) or conservatorship hearing. On information and belief, the individuals on the
Court’s calendar with such hearings are mostly there in connection with felony charges where a
public defender has indicated a doubt as to the defendant’s competency.

1 months, weeks, or even days of being arrested and charged in felony cases in which they were
2 found incompetent to stand trial.

3 70. Moreover, many individuals currently deemed incompetent to stand trial had
4 previously received significant custodial sentences as a result of uncounseled guilty pleas to
5 misdemeanor charges. Multiple defendants with hearings in March 2023 related to competency or
6 conservatorship previously received sentences of 30 days, 90 days, and up to 180 days. In some
7 cases, the misdemeanor charges to which individuals pled without counsel were directly tied to
8 prior proceedings in which the defendant was found incompetent to stand trial. For example, one
9 individual was allowed to enter an uncounseled guilty plea to a misdemeanor offense of failing to
10 register as a sex offender after his release on time served with a felony indecent exposure
11 conviction following his IST commitment to the Department of State Hospitals.

12 **2. The County and Court Operate the Misdemeanor Arraignment**
13 **System in a Manner that Discriminates Against Uncounseled**
14 **Defendants with Mental Disabilities.**

15 71. High proportions of criminal defendants have serious mental illnesses and/or
16 cognitive disabilities.

17 72. In a recent report on “Disabilities Among Prison and Jail Inmates,” the U.S.
18 Department of Justice identified that 31% of people incarcerated in jails self-reported a cognitive
19 disability.¹⁹ By contrast, only about 5% of the general population reports such a cognitive
20 impairment.²⁰ The rates of mental disabilities in jails are substantially higher than among the
21 prison population. A 2006 U.S. Department of Justice study of “Mental Health Problems of Prison
22 and Jail Inmates” found that more than half of all individuals in jail had a mental health problem,
23 including 30% with symptoms of major depression and 24% with symptoms that met the criteria
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26 ¹⁹ Jennifer Bronson *et al.*, *Disabilities Among Prison and Jail Inmates, 2011-12*, U.S. Dep’t of
27 Justice, Bureau of Justice Statistics 3 (Dec. 2015),
<https://bjs.ojp.gov/content/pub/pdf/dpji1112.pdf>.

28 ²⁰ *Id.* at 3 (Table 1 & Table 2).

1 for a psychotic disorder.²¹ On information and belief, similar percentages of defendants in the
2 County's misdemeanor arraignment courts have serious mental illnesses and/or cognitive
3 impairments.

4 73. A serious mental illness constitutes a disability under the ADA and Section 11135,
5 laws that protect people with disabilities. Petitioners/Plaintiffs Laura Hart and John Doe each have
6 a serious mental illness, and are qualified individuals protected under these laws. On information
7 and belief, hundreds (if not thousands) of uncounseled defendants with a serious mental illness
8 protected under disability rights laws plead guilty every year in the County's misdemeanor
9 arraignment courts.

10 74. A cognitive disability also constitutes a disability under the ADA and Section
11 11135. On information and belief, hundreds (if not thousands) of uncounseled defendants with a
12 cognitive impairment that qualifies as a disability plead guilty every year in the County's
13 misdemeanor arraignment courts.

14 75. Many uncounseled defendants with a mental disability, including those with mental
15 illness and/or cognitive disabilities, are unable to fully participate in criminal proceedings in the
16 County. On information and belief, many defendants with a mental disability are or have been
17 legally incompetent to stand trial or represent themselves, including Petitioners/Plaintiffs Hart and
18 Doe. Many other defendants with mental disabilities may be competent to stand trial, but still
19 require reasonable modifications to meaningfully participate in the proceedings. These
20 defendants' mental disabilities exacerbate the other legal defects of the misdemeanor waiver and
21 plea system described herein and thus prevent their full participation in the criminal legal process
22 in the County.

23 76. Under the ADA and Section 11135, the County and Court must make reasonable
24 modifications to its misdemeanor arraignment proceedings in order to give defendants with
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27 ²¹ Doris James & Lauren Glaze, *Mental Health Problems of Prison and Jail Inmates*, Bureau of
28 Justice Statistics, U.S. Dep't of Justice 1 (Dec. 14, 2006),
<https://bjs.ojp.gov/content/pub/pdf/mhppji.pdf>.

1 disabilities an equal opportunity to participate in the criminal legal process they operate. The
 2 County and Court have failed to make such modifications. The County and Court must ensure that
 3 the “methods of administration” of its programs do not discriminate against people with
 4 disabilities. By maintaining a fast-track system that depends on high levels of literacy and
 5 comprehension of complicated legal principles, and provides no individualized assistance, people
 6 with disabilities cannot participate in the Court’s proceedings. By failing to identify and
 7 accommodate defendants with disabilities—including those who are legally incompetent to stand
 8 trial and those who are entitled to reasonable accommodations—the Court and County are
 9 violating disability rights laws.

10 **D. The County’s Misdemeanor Arraignment System Has Deprived Tens of
 11 Thousands of Defendants of Their Constitutional Rights.**

12 77. Data from the Superior Court reveal high rates of uncounseled pleas entered at
 13 arraignment, and significant disparities in plea outcomes for misdemeanor defendants.

14 78. Countywide, the overwhelming majority of misdemeanor defendants are
 15 unrepresented at their first appearance. Fewer than five percent of defendants are represented.

16 79. Over the past eight years, more than 50,000 individual defendants entered
 17 uncounseled guilty pleas in more than 70,000 discrete misdemeanor cases countywide. Over 20%
 18 of those individuals had more than one misdemeanor conviction stemming from an uncounseled
 19 plea. More than 700 individuals pled guilty without counsel in six or more cases over that time.

20 80. Data over the past eight years show over 55% of uncounseled defendants in
 21 Bakersfield pled guilty to at least one charge at arraignment. The rates of uncounseled guilty pleas
 22 at arraignment are substantially higher in Bakersfield than in outlying courts, though there are
 23 significant numbers of defendants entering uncounseled guilty pleas in all Kern County courts.²²

24 81. The data also evidence racial disparities. Black defendants appear in misdemeanor
 25 arraignment court, and enter uncounseled guilty pleas, at a rate that is twice their share of the
 26 overall population of Kern County. Latinx defendants also plead guilty at higher rates than

27 ²² Court data reveal that between 18% and 39% of defendants at each of the County’s five outlying
 28 courthouses pled uncounseled at their arraignment over the past eight years.

1 unrepresented white defendants.

2 **E. Individuals Convicted through Kern County’s Misdemeanor Arraignment**
 3 **System Face Serious Consequences.**

4 **1. The Denial of Counsel for Misdemeanor Defendants Results in Serious**
 5 **Immigration Consequences.**

6 82. For non-citizens, misdemeanor convictions may result in a range of negative
 7 immigration consequences that U.S. citizens do not face. One set of consequences of criminal
 8 convictions concerns “admissibility” under federal immigration law. An undocumented non-
 9 citizen seeking to become a lawful permanent resident (“LPR”) must show that they are
 10 “admissible” (or that a waiver of a ground of “inadmissibility” applies), and a LPR can be barred
 11 from returning to the United States after traveling abroad if they are not admissible. Many
 12 misdemeanor pleas common in Kern County Superior Court could render a non-citizen
 13 inadmissible. These include convictions for possession of drug paraphernalia or a controlled
 14 substance (Health & Safety Code §§ 11350(a), 11364, 11377(a)); being under the influence of a
 15 controlled substance (Health & Safety Code § 11550(a)); petty theft (Penal Code § 484); and
 16 solicitation (Penal Code § 647(b)). Other common convictions, like driving under the influence
 17 (“DUI”), sometimes render a non-citizen inadmissible, with the recency of the conviction being
 18 the determinative factor.

19 83. Another set of consequences of criminal convictions concerns “deportability” under
 20 federal immigration law. When a conviction renders a non-citizen deportable, it allows the
 21 government to deprive them of their lawful status and expel them from the country. Many of the
 22 misdemeanor convictions listed above, ¶ 82, *supra*, may render a non-citizen deportable. In
 23 addition, the following common misdemeanor convictions do the same: violation of a restraining
 24 order (Penal Code § 273.6), corporal injury on a spouse (Penal Code § 273.5(a)), and criminal
 25 threats (Penal Code § 422).

26 84. Further, a misdemeanor offense in criminal court can nonetheless be considered an
 27 “aggravated felony” in immigration court. A conviction for an aggravated felony is a ground of
 28 deportability and a bar to almost all forms of relief, including asylum. A conviction for the sale,

1 transport for sale, or cultivation of a federally controlled substance constitutes an aggravated
2 felony with these severe immigration consequences, even when charged as a misdemeanor in state
3 court. For instance, misdemeanor cultivation or sale of even small quantities of marijuana both
4 constitute aggravated felonies rendering a noncitizen without options in immigration court.

5 85. There are other circumstances in which misdemeanor convictions result in negative
6 immigration consequences. For instance, individuals who have a form of humanitarian relief
7 known as Temporary Protected Status (“TPS”) are rendered ineligible with the conviction of any
8 two misdemeanors. *See* 8 U.S.C. § 1254a(c)(2)(B)(i). A misdemeanor DUI conviction or another
9 “serious” misdemeanor will also prohibit a non-citizen from applying for Deferred Action for
10 Childhood Arrivals (“DACA”), a federal program that provides protection from deportation to
11 eligible immigrant youth. Certain misdemeanor convictions also render a LPR ineligible for
12 cancellation of removal, a form of relief that can be granted by immigration judges to allow LPRs
13 who are otherwise deportable to maintain their status and avoid deportation.

14 86. Misdemeanor convictions can also result in the Department of Homeland Security
15 (“DHS”) detaining non-citizens in prison-like immigration detention centers. Following time
16 served for criminal sentences, many noncitizens are served by DHS with Notices to Appear or are
17 otherwise arrested and placed in detention centers pending the outcome of removal proceedings.
18 Non-citizens may be held in detention centers for many months or even years. Detention center
19 conditions are sometimes worse than prison conditions, yet immigration officials will rely on
20 uncounseled guilty pleas to justify a non-citizen’s continued detention. Many common
21 misdemeanor convictions in Kern County, including controlled substance convictions, result in
22 “mandatory” immigration detention, where the non-citizen is not eligible for release until their
23 removal proceedings are completed.

24 87. For most common misdemeanor convictions, there are alternative dispositions that
25 avoid adverse immigration consequences. For example, a conviction for a “wet reckless” is an
26 alternative to a DUI conviction that does not imperil DACA status. Similarly, as an alternative to a
27 conviction under Penal Code section 273.5 (corporal injury to a spouse), a misdemeanor
28

1 conviction of Penal Code section 243(e) (domestic violence battery) does not render an LPR
2 deportable. *See In Re Sanudo*, 23 I. & N. Dec. 968 (BIA 2006); *Ortega-Mendez v. Gonzales*, 450
3 F.3d 1010, 1016 (9th Cir. 2006). Having the advice of defense counsel is necessary to understand
4 and negotiate these alternative dispositions and indeed a defense attorney is required to advise of
5 immigration-friendly pleas. *See e.g.*, Penal Code § 1016.2(e).

6 88. The situation of J.P.M. provides an example of the devastating effects of
7 uncounseled misdemeanor pleas for noncitizens. J.P.M. is a 25-year-old resident of Kern County
8 who has lived in the United States since the age of two. In 2014, J.P.M. was granted DACA. In
9 2018 and 2019 respectively, J.P.M. was arrested and charged with driving under the influence of
10 alcohol. In each case, he pled guilty without the benefit of counsel at his first appearance in the
11 Bakersfield courthouse, without knowing what impact entering a plea would have on his DACA,
12 and without any individualized immigration advisal. Both convictions were ultimately vacated,
13 but not without disastrous and irreparable consequences for J.P.M., including the loss of his
14 DACA, an immigration court order that he be removed from the United States, and 18 months in
15 immigration detention. J.P.M. cannot regain protection from deportation under DACA because
16 that form of relief is now only available to individuals who have maintained DACA.

17 89. Following J.P.M.'s first arrest in 2018, he sought to plead not guilty and have an
18 attorney appointed to contest the charges. But after affirming that J.P.M. intended to plead not
19 guilty, the judge informed him that he did not "meet the criteria for the Court to appoint an
20 attorney to represent [him]," and that he would have to "hire [his] own lawyer." The judge's
21 statement was incorrect. But because the judge informed J.P.M. he was not entitled to publicly-
22 funded counsel, J.P.M. changed his plea to "no contest." J.P.M. also lacked an understanding of
23 the role of the probation officer who formulated and conveyed his plea offer, facilitated his waiver
24 of counsel and trial rights, and presented the plea and waiver to the Court. J.P.M. refers only to
25 "the people here" who "gave me the paper to see if I wanted to sign."

26 90. During his 2019 arraignment, J.P.M. again appeared without counsel and only
27 spoke seven words: yes, yes, yes, no, guilty, and thank you. In neither instance did the Court or
28

1 County ever advise J.P.M. of the extraordinary and severe immigration consequences of these
2 pleas. Nor did the Court engage in any on-the-record consideration of whether the waivers were
3 knowing, intelligent, and voluntary.

4 91. In February 2020, J.P.M. was detained by U.S. Immigrations and Customs
5 Enforcement (“ICE”) agents after ICE pulled over a car in which he was a passenger. Due
6 primarily to his two uncounseled misdemeanor convictions, J.P.M. was repeatedly denied release.
7 J.P.M.’s asylum application was also denied in part due to his DUI convictions. J.P.M.’s removal
8 case is now administratively closed, but he remains at risk of forcible deportation under the extant
9 immigration court removal order.

10 92. Petitioner/Plaintiff Doe has lived in the United States for approximately 40 years,
11 and was initially granted Lawful Permanent Resident (“LPR”) status approximately 30 years ago.
12 In 2007, due to a misdemeanor conviction, Mr. Doe was stripped of his green card and LPR
13 status.²³ Then, in 2017, Mr. Doe was arrested and charged with making criminal threats. This
14 time, Mr. Doe pled guilty at his misdemeanor arraignment without speaking to an attorney. No
15 one advised Mr. Doe of the immigration consequences of a conviction. The Court sentenced
16 Mr. Doe to 30 days in custody.²⁴

17 93. After entering the plea, Mr. Doe was released from jail with no knowledge that he
18 would be placed into immigration custody and that his removal order could be reinstated.
19 Immigration officials immediately arrested Mr. Doe and transported him to an immigration
20 detention facility, where he remained detained for over a year. While Mr. Doe was unrepresented,
21 immigration officials promptly reinstated his removal order. The reinstatement of his removal
22 order severely limited his options for immigration relief.

23 94. Mr. Doe’s appointed immigration attorney was later able to assist Mr. Doe in
24

25 ²³ While Mr. Doe had an attorney at the time he pled guilty to a misdemeanor in 2007, the loss of
26 his LPR status illustrates the devastating immigration consequences that stem from misdemeanor
convictions.

27 ²⁴ Nor did the probation officer or judge assess Mr. Doe’s competence or ask if he has a mental
28 disability, despite the fact that an immigration judge found him to be legally incompetent and
appointed counsel to represent him in his subsequent immigration proceedings. *See infra* ¶ 102.

1 vacating his prior 2005 conviction and re-pleading to a plea that would not have such severe
2 immigration consequences. However, this relief came too late to help Mr. Doe because of the
3 reinstatement of his removal order.²⁵

4 95. If Mr. Doe had been represented in his 2017 misdemeanor arraignment, a defense
5 attorney could have evaluated his competency, informed him of his likely arrest by ICE following
6 the arraignment, advised him of the potential reinstatement of his removal order upon transfer to
7 ICE custody, and identified the need for Mr. Doe to be quickly connected with immigration
8 counsel to assist him in avoiding this reinstatement of removal. If Mr. Doe had been able to avoid
9 the reinstatement of his prior removal order, this would have rendered him eligible for additional
10 forms of relief in his subsequent immigration proceedings—including the potential readjustment
11 to his LPR status and asylum. Instead, he has severely limited options for relief.

12 **2. The Denial of Counsel for Misdemeanor Defendants Results in the**
13 **Prosecution of Incompetent Defendants Statutorily Entitled to the**
14 **Dismissal of Charges or Diversion.**

15 96. The Constitution and state law prevent incompetent defendants from being
16 prosecuted for criminal charges. *See Cooper v. Oklahoma*, 517 U.S. 348, 354 (1996); Penal Code
17 § 1367(a). “[T]he prohibition [against trying an incompetent person] is fundamental to an
18 adversary system of justice.” *Drope v. Missouri*, 420 U.S. 162, 172 (1975).

19 97. Since January 2022, California state law has further barred courts from seeking to
20 restore defendants charged with misdemeanors to competency for subsequent prosecution.
21 Competence to stand trial, SB 317, 2021-2022 Reg. Sess. (Cal. 2021) § 1. California law now
22 requires that, if a misdemeanor defendant is found mentally incompetent, courts must either
23 dismiss the charges, grant mental health diversion for up to a year, or if the court finds an
24 individual ineligible for diversion, consider alternative options including a modified treatment

25 _____
26 ²⁵ The law prohibits the reopening of a removal order once it has been reinstated. However,
27 immigration counsel can seek to avoid the reinstatement of a removal order, particularly for
28 noncitizens with mental disabilities. In such cases, immigration counsel seek instead for ICE to
issue a notice to appear for conventional removal proceedings. This is a regular occurrence in
reinstatement-eligible cases where there is a question of competency.

1 plan, assisted outpatient treatment, or a referral to conservatorship proceedings. Penal Code §
2 1370.01(b). The court must also dismiss pending revocation of probation matters for all
3 defendants deemed incompetent to stand trial. *See* Penal Code § 1370.01(c). California state law
4 also provides opportunities for people with mental disabilities—whether or not they are found
5 incompetent to stand trial—to be eligible for a pre-plea diversion of their charges. Penal Code §
6 1001.36.

7 98. Both Petitioners/Plaintiffs Hart and Doe entered uncounseled guilty pleas despite
8 having serious mental disabilities and likely being legally incompetent to do so at the time.

9 99. Petitioner/Plaintiff Hart has struggled with poverty, homelessness, mental health
10 disabilities, and substance use, all of which were exacerbated by the loss of her home in 2014.
11 Since then, she has had a number of interactions with law enforcement which resulted in several
12 criminal cases charged in Kern County Superior Court. In 2014, in connection with a criminal
13 charge, the Court found Ms. Hart legally incompetent to stand trial. She was then hospitalized at
14 Patton State Hospital before returning to the County and pleading guilty to misdemeanor drug
15 possession and resisting arrest.

16 100. In 2021, Ms. Hart was arrested and charged with a felony. At the time of her arrest,
17 Ms. Hart was living on the street, in the midst of a severe mental crisis, and was suicidal. After a
18 month in custody, and with her felony charge pending, Ms. Hart was arraigned on two pending
19 misdemeanor cases for possession of drug paraphernalia. Ms. Hart reports being in a very poor
20 mental state at the time. She had limited mental health treatment at the jail, made worse by a lack
21 of appropriate accommodations for her physical disability. She refused to be transported to court
22 four times, and only came with force. At her arraignment at the Mojave courthouse, there was no
23 public defender to advise or assist her. Without any advice from counsel, judicial consideration of
24 her competency, or evaluation of her eligibility for mental health diversion, Ms. Hart pled guilty to
25 possession of drug paraphernalia in both cases on the day of the arraignment and was sentenced to
26 65 days in custody for each offense, served concurrently.

27 101. The Court ordered Ms. Hart returned to Lerdo Detention Facility. Within weeks, a
28

1 different judge suspended Ms. Hart’s felony criminal proceedings for a competency evaluation
2 pursuant to Penal Code section 1368, which requires the suspension of proceedings where a doubt
3 is raised as to the competency of a defendant. Ms. Hart was deemed incompetent to stand trial and,
4 soon after, she was committed to the Department of State Hospitals. Ms. Hart has since been
5 released and is now facing the challenge of rebuilding her life with limited economic resources,
6 without a home, and with a criminal record, including convictions stemming from guilty pleas she
7 entered while not legally competent.

8 102. In Petitioner/Plaintiff Doe’s case, he entered an uncounseled guilty plea to a
9 misdemeanor offense of criminal threats. Soon after, while in immigration proceedings, an
10 immigration judge determined that Mr. Doe was incompetent to represent himself and appointed
11 an immigration attorney to represent him.²⁶ In stark contrast, Respondents/Defendants had only
12 months earlier offered no mechanism for screening Mr. Doe for possible incompetency and
13 summarily accepted his uncounseled guilty plea even though Mr. Doe was likely legally
14 incompetent during the criminal proceedings as he was before the immigration judge.

15 **3. The Denial of Counsel for Misdemeanor Defendants Results in Other**
16 **Harms.**

17 103. On information and belief, indigent defendants in Kern County who plead guilty at
18 their first appearance regularly experience: pleas to inappropriate or unsupported charges; waiver
19 of meritorious defenses; compelled waiver of their right to counsel and trial rights; wrongful
20 denial of representation; convictions without adequate knowledge and awareness of the full
21 consequences; harsher sentences than the facts of the case warrant and few alternatives to
22 conviction or incarceration; and, in some cases, even wrongful conviction.²⁷ Misdemeanor
23 convictions also result in court and probation oversight and fines, and contribute to individuals
24 cycling through the legal system and facing progressively more serious penalties in the event of
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26

27 ²⁶ See note 4, *supra*.

28 ²⁷ See generally Alexandra Natapoff, *Misdemeanors*, 85 S. Cal. L. Rev. 1313 (2012).

1 subsequent arrests.²⁸

2 104. On information and belief, when resolving cases at arraignment, probation officers
 3 do not consider or offer diversion, or other alternatives to convictions, for eligible defendants, and
 4 including where diversion referrals are mandatory for qualified individuals.²⁹ The County
 5 probation officer who oversees the misdemeanor arraignment courts stated in an email that, if a
 6 “defendant or defense attorney asks for any other type of alternative plea, [probation officers]
 7 advise [the] defendant or attorney to go to the pre-trial conference to talk to the [District Attorney]
 8 about it.” Access to diversion or alternative pleas is thus disproportionately limited to well-
 9 resourced defendants who have private counsel, or well-informed defendants who have the
 10 knowledge to inquire about it.

11 105. Misdemeanor convictions can also detrimentally impact housing, employment, and
 12 other rights and privileges.³⁰ For instance, numerous driving-related misdemeanor convictions
 13 result in mandatory or discretionary restrictions on driving, which can also detrimentally affect
 14 access to employment or education. *See, e.g.*, Veh. Code §§ 13350 *et seq.* Superior Court data
 15 reveal that over 8,000 people have entered uncounseled pleas to such misdemeanors over the past
 16 eight years. Misdemeanor convictions can also directly affect child custody and visitation rights.³¹
 17 In California, misdemeanor convictions can also trigger an automatic loss of firearm rights for ten

18 _____
 19 ²⁸ *See, e.g.*, Amanda Agan, Jennifer Doleac & Anna Harvey, *Misdemeanor Prosecution*,
 20 (National Bureau of Economic Research Working Paper No. 28600, Mar. 2020, rev. Aug. 2022),
 21 <https://www.nber.org/papers/w28600> (diversion from misdemeanor convictions results in
 22 decreased return to court and improved public safety).

23 ²⁹ *See, e.g.*, Penal Code § 1000 (drug diversion referrals are mandatory for qualifying individuals,
 24 and prosecuting attorney is required to review file to determine eligibility). Probation officers have
 25 reported in an email that the numbers for misdemeanor drug diversion are “so low”—“almost
 26 none”—that they “feel like it’s a dying program.”

27 ³⁰ For instance, California law authorizes eviction proceedings against a tenant who commits
 28 certain offenses. Code Civ. Proc. § 1161(4); Civ. Code § 3485. Certain convictions may likewise
 limit access to public or subsidized housing. *See, e.g.*, 24 C.F.R. §§ 5.855, 5.858, 5.859,
 960.203(c)(1)–(3), 982.553; 42 U.S.C. § 13661. Licensing boards may also deny a license to an
 applicant convicted of certain offenses. Bus. & Prof. Code §§ 475(a)(2), 480(a)(1).

³¹ Fam. Code § 3030 (presumption against custody and visitation for convictions of, *e.g.*, Penal
 Code §§ 273(a), 273(d), 647.6); Fam. Code § 3044 (rebuttable presumption against custody for
 party who perpetrated domestic violence within previous five years).

1 years or life, thereby also increasing the risk of future criminalization in the event of law
2 enforcement interaction.³²

3 106. Misdemeanor convictions can require registry as a sex offender with a minimum
4 obligation of ten years on the sex offense registry³³ and with concomitant effects on housing,
5 custody, employment, and travel for those who register,³⁴ and increased penalties for any failure to
6 register. Penal Code §§ 290, 290.018, 290(e). Superior Court data reveal that people have entered
7 uncounseled pleas to misdemeanor offenses which require sex offender registry.

8 107. Those who are in custody at arraignment also often experience, as a result of being
9 uncounseled, unnecessary or prolonged pretrial detention; and excessive or inappropriate bail
10 determinations, which have been shown to increase the likelihood of conviction. Custodial
11 sentences may also result in family separation, and lost wages and earning capacity. Detention
12 further carries risks of serious physical and emotional harm, particularly for people with mental
13 disabilities.³⁵

14 **V. PETITIONERS/PLAINTIFFS ARE ENTITLED TO EQUITABLE RELIEF**

15 108. The denial of fundamental rights for indigent defendants in Kern County constitutes
16 an ongoing controversy between the parties.

18 ³² See, e.g., Penal Code § 29805 (prohibiting those with enumerated misdemeanor convictions—
19 including threats, witness intimidation, weapons, and domestic violence—from owning,
20 purchasing, receiving, or possessing any firearm for 10 years after their conviction); Penal Code
21 §§ 29805(b), 273.5, 29800(a)(1), 23515(a), 245, 23515(b), 246, 23515(d), 417(c)), 29800(a)(2),
22 417 (lifetime firearms ban); 18 U.S.C. § 922(g)(9) (lifetime ban on possessing firearms and
ammunition for those convicted of misdemeanor domestic violence charges, as defined in 18
U.S.C. §§ 921(a)(33)(A)).

23 ³³ Tier I registrants, with the least severe offenses, may petition the court for relief from the
registry requirements after a minimum of ten years. Penal Code § 290.5(a)(1).

24 ³⁴ See, e.g., *No Easy Answers: Sex Offender Laws in the U.S.*, Human Rights Watch (Sept. 2007),
at <https://www.hrw.org/reports/2007/us0907/us0907web.pdf>.

25 ³⁵ Notably, in the first two months of 2023 alone, three people died in the custody of the Kern
26 County Sheriff's Office ("KCSO"). Kern County's jail suicide rate is the highest among
27 California's largest jail systems, and the Sheriff's Department's response has been to increase the
use of isolation cells for those deemed a suicide risk, which is not recommended by mental health
28 experts. In 2018, a state board inspector cited KCSO for 27 violations, most of which were related
to the use of extreme isolation.

1 109. Petitioners/Plaintiffs have a beneficial interest and/or public interest in the issuance
2 of a writ.

3 110. Respondents/Defendants Alsop, Merickel, Youngblood, Bradshaw and Harber
4 Pickens have a mandatory ministerial duty to comply with the California and U.S. Constitutions
5 and state and federal law.

6 111. County Respondents/Defendants Alsop, Merickel and Youngblood all have a duty
7 of loyalty and duty of care in fulfilling their government service which mandates compliance with
8 state and federal laws and regulations. Kern Cnty. Mun. Code § 2.01.010(A).

9 112. Separately, Court Respondents/Defendants Bradshaw and Harber Pickens have the
10 duty to “allocat[e] resources in a manner that promotes access to justice for all members of the
11 public.” Cal. R. Ct. 10.603(a), 10.610(b). Finally, Respondent/Defendant Bradshaw also has a
12 duty to “ensure that the court regularly and actively examines access issues, including any
13 physical, language, or economic barriers that impede the fair administration of justice.” Cal. R. Ct.
14 10.603(c)(9)(B).

15 113. All Respondents/Defendants expend taxpayer money to engage in Kern County’s
16 unlawful practices in the operation of the County’s misdemeanor arraignment courts.

17 114. Plaintiffs have no plain, speedy or adequate remedy at law to compel
18 Respondents/Defendants to perform their duties and cease engaging in unlawful practices.
19 Individuals subjected to Respondents/Defendants’ unlawful practices will lack awareness of their
20 right to challenge the system. Post-conviction relief in an individual case would also not prevent
21 the ongoing and systemic harm, and in many cases would not even prevent the harm for that one
22 individual.

23 115. Respondents/Defendants have the authority to provide the relief requested.
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CLAIMS FOR RELIEF

COUNT ONE:

**Violation of the Constitutional Right to Counsel
under Article I, § 15 of the California Constitution
Writ of Mandate (Code Civ. Proc., § 1085)**

**(All Petitioners/Plaintiffs Against
Respondents/Defendants Alsop, Bradshaw, and Harber Pickens)**

116. Petitioners/Plaintiffs incorporate by reference the allegations in the preceding paragraphs as though fully set forth herein.

117. Respondents/Defendants have violated and will continue to violate Article I, Section 15 of the California Constitution by systematically depriving indigent defendants accused of misdemeanor offenses of access to counsel at arraignment where pleas are conveyed and, in many cases, accepted.

118. Respondents/Defendants have a clear and present duty under Article I, Section 15 of the California Constitution to ensure that all defendants in criminal cases have the right to the assistance of counsel in their defense. The right to counsel anchors all other rights for individuals charged with crimes. *See United States v. Cronin*, 466 U.S. 648, 653–54 (1984) (citations omitted) (“Of all the rights that an accused person has, the right to be represented by counsel is by far the most pervasive for it affects his ability to assert any other rights he may have.”).

119. The right to counsel applies to all persons charged with misdemeanors. *Rodriguez v. Municipal Court*, 25 Cal.App.3d 521, 527 (1972). “The pleading—and plea bargaining—stage of a criminal proceedings is a critical stage in the criminal process at which a defendant is entitled to the effective assistance of counsel guaranteed by the federal and California Constitutions.” *In re Alvernaz*, 2 Cal.4th 924, 933 (1992). *See also Lafler v. Cooper*, 566 U.S. 156, 162 (2012); *Missouri v. Frye*, 566 U.S. 134, 143 (2012).

120. It is a constitutional violation where, through structural limitations, representation is either absent or compromised. *See, e.g., Kuren v. Luzerne County*, 637 Pa. 33, 82 (2016) (recognizing a systemic deprivation of the right to counsel when “the traditional markers of representation—such as timely and confidential consultation with clients, appropriate

1 investigation, and meaningful adversarial testing of the prosecution’s case—are absent or
2 significantly compromised” and “substantial structural limitations . . . cause that absence or
3 limitation on representation.”). *See also Luckey v. Harris*, 860 F.2d 1012, 1018 (11th Cir. 1988);
4 *Hurrell-Harring v. State of New York*, 930 N.E.2d 217, 224 (N.Y. Ct. App. 2010); *Wilbur v. City*
5 *of Mount Vernon*, 989 F.Supp.2d 1122, 1131–32 (W.D. Wash. 2013).

6 121. A waiver of the right of counsel must be knowing, voluntary, and competent, and
7 must be supported by the record. *Faretta v. California*, 422 U.S. 806, 835 (1975). “Waiver
8 requires a voluntary act, knowingly done, with sufficient awareness of the relevant circumstances
9 and likely consequences. There must be actual or constructive knowledge of the existence of the
10 right to which the person is entitled.” *Kelly v. William Morrow & Co.*, 186 Cal.App.3d 1625, 1635
11 (1986) (citation omitted).

12 122. “To be valid [a] waiver [of the right to counsel] must be made with an apprehension
13 of the nature of the charges, the statutory offenses included within them, the range of allowable
14 punishments thereunder, possible defenses to the charges and circumstances in mitigation thereof,
15 and all other facts essential to a broad understanding of the whole matter.” *Von Moltke v. Gillies*,
16 332 U.S. 708, 723–24 (1984).

17 123. The trial court bears the responsibility to ensure the appropriateness and legality of
18 waivers. “A waiver of a constitutional right is ‘not to be implied and is not lightly to be found.’”
19 *Petrillo v. Bay Area Rapid Transit Dist.*, 197 Cal.App.3d 798, 810 (1988). There is a presumption
20 against the waiver of counsel and other fundamental rights. *People v. Dunkle*, 36 Cal.4th 861, 908
21 (2005).

22 124. The waiver of the right to counsel in the Kern misdemeanor arraignment system is
23 defective and does not satisfy Respondents/Defendants’ obligation to ensure that any waiver is
24 knowing, intelligent and voluntary. The waiver is defective because, *inter alia*, 1) the waiver is
25 primarily based on an outdated mass advisal providing inaccurate information contrary to state
26 law; 2) the waiver is secondarily based on a written waiver form that is not intelligible to many
27 defendants, and inaccurate in its affirmations; 3) the Superior Court does not properly advise
28

1 defendants of the dangers and disadvantages of self-representation prior to the waiver; 4) the
 2 Court does not properly inform defendants of all facts essential to an understanding of the charges,
 3 range of punishments, and possible defenses to the charges; 5) probation officers often encourage,
 4 implicitly and/or explicitly, defendants to waive their rights and plead guilty, unduly influencing
 5 the waiver decision; and 6) counsel is not consistently available to represent defendants who seek
 6 representation.

7 125. Respondents/Defendants' denial of the fundamental rights of indigent defendants
 8 constitutes an ongoing controversy between the parties. Respondents/Defendants have a
 9 ministerial duty to comply with the constitutional obligation to guarantee the right to counsel.
 10 Petitioners/Plaintiffs have a beneficial and/or public interest in the issuance in a writ. Issuance of a
 11 writ of mandate compelling Respondents/Defendants to perform their duties is required because
 12 there exists no plain, speedy, and adequate remedy in the ordinary course of law that would
 13 protect Petitioners/Plaintiffs' rights and interests.

14 **COUNT TWO:**
 15 **Violation of the Statutory Right to Counsel under Cal Penal Code § 987.2(i)**
 16 **Writ of Mandate (Code Civ. Proc., § 1085)**

17 **(All Petitioners/Plaintiffs Against Respondents/Defendants Bradshaw & Harber Pickens)**

18 126. Petitioners/Plaintiffs incorporate by reference the allegations in the preceding
 19 paragraphs as though fully set forth herein.

20 127. Under California Penal Code § 987.2(i), a court must appoint counsel in
 21 misdemeanor cases if "necessary to provide an adequate and effective defense for the defendant."

22 128. Respondents/Defendants, acting under color of state law, have violated the statutory
 23 right to counsel under California Penal Code § 987.2(i) by operating an arraignment process in a
 24 manner that systematically deprives indigent defendants of the right to counsel where necessary
 25 for an adequate and effective defense. Counsel is necessary for an adequate and effective defense
 26 during Kern County's misdemeanor arraignments because:

- 27 a. Plea offers are being determined and conveyed by probation officers without
 28 statutory authority, training, or clear policy to do so;

- 1 b. Misdemeanor defendants are not properly advised of the dangers of waiving
- 2 their right to counsel, and are pressured to waive this fundamental right
- 3 based on a deficient waiver;
- 4 c. Charging documents sometimes fail to adequately allege a proper factual
- 5 basis;
- 6 d. Noncitizen defendants are not individually advised of the immigration
- 7 consequences of plea offers;
- 8 e. Defendants who are legally incompetent to stand trial are not evaluated for
- 9 incompetency, and pressured to waive their rights and plead without
- 10 sufficient capacity to do so, in violation of the Constitution and state law;
- 11 and
- 12 f. Defendants are not provided information about what they are giving up in
- 13 waiving their rights, including the potential for reduced charges or diversion,
- 14 and they believe incorrectly that they are facing an exploding offer that will
- 15 get worse if they plead not guilty.

16 129. Respondents/Defendants’ denial of fundamental rights of indigent defendants
 17 constitutes an ongoing controversy between the parties. Respondents/Defendants have a
 18 ministerial duty to comply with the constitutional obligation to guarantee the right to counsel.
 19 Petitioners/Plaintiffs have a beneficial and/or public interest in the issuance in a writ. Issuance of a
 20 writ of mandate compelling Respondents/Defendants to perform their duties is required because
 21 there exists no plain, speedy, and adequate remedy in the ordinary course of law that would
 22 protect Petitioners/Plaintiffs’ rights and interests.

**COUNT THREE:
 Violation of the Constitutional Right to Due Process
 under Article I, § 15 of the California Constitution
 Writ of Mandate (Code Civ. Proc., § 1085)**

**(All Petitioners/Plaintiffs Against
 Respondents/Defendants Alsop, Merickel, Bradshaw, and Harber Pickens)**

27 130. Petitioners/Plaintiffs incorporate by reference the allegations in the preceding

28

1 paragraphs as though fully set forth herein.

2 131. Article I, Section 15 of the California Constitution provides that “Persons may not . .
3 . be deprived of life, liberty, or property without due process of law.”

4 132. Respondents/Defendants, acting under color of state law, have violated the right to
5 due process established by Article I, Section 15 of the California Constitution in the operation of
6 its misdemeanor arraignment system which deprives misdemeanor defendants of the right to
7 counsel and trial rights.

8 133. Respondents/Defendants deprive misdemeanor defendants of due process by
9 operating a misdemeanor arraignment system which, by design and in its implementation:

- 10 a. Deputizes probation officers to act outside of their statutory authority,
11 training, and without clear policy, and perform a function expressly afforded
12 only to prosecutors. *See People v. Segura*, 44 Cal. 4th 921, 930 (2008)
13 (“[O]nly the prosecutor is authorized to negotiate a plea agreement on
14 behalf of the state.”);
- 15 b. Relies on deficient waivers of the right to counsel and trial rights;
- 16 c. Fast-tracks the conveyance and acceptance of plea offers based on
17 complaints which can lack a factual basis, and where defendants are
18 pressured to waive their right to counsel and trial rights, preventing any
19 challenge to the insufficient factual basis;
- 20 d. Deprives noncitizen defendants of information about the immigration
21 consequences of plea offers while pressuring them to accept the offers,
22 including by failing to provide attorney consultations to noncitizen
23 defendants prior to a waiver of rights and guilty plea, and failing to consider
24 immigration consequences in the determination of a plea;
- 25 e. Does not employ procedures to protect against the trial of legally
26 incompetent defendants, and pressures defendants—including those of
27 limited legal competency—to plead, in violation of the Constitution and state
28

1 law, *see People v. Hale*, 44 Cal.3d 531, 539 (1988) (“the failure of a trial
2 court to employ procedures to protect against trial of an incompetent
3 defendant deprives the defendant of his due process right to a fair trial and
4 requires reversal of his conviction”); and

- 5 f. Deprives defendants of information about what they are giving up in waiving
6 their rights, including the potential for reduced charges or diversion, and
7 presenting an exploding offer that they assert will get worse if they plead not
8 guilty.

9 134. Respondents/Defendants’ denial of fundamental rights of indigent defendants
10 constitutes an ongoing controversy between the parties. Respondents/Defendants have a
11 ministerial duty to comply with the constitutional obligation to guarantee the right to due process.
12 Petitioners/Plaintiffs have a beneficial and/or public interest in the issuance in a writ. Issuance of a
13 writ of mandate compelling Respondents/Defendants to perform their duties is required because
14 there exists no plain, speedy, and adequate remedy in the ordinary course of law that would
15 protect Petitioners/Plaintiffs’ rights and interests.

16 **COUNT FOUR**
17 **Discrimination Against Limited-English Proficient Defendants**
18 **in Violation of Government Code § 11135**
19 **Writ of Mandate (Code Civ. Proc., § 1085)**

20 **(All Petitioners/Plaintiffs against**
21 **Respondents/Defendants Alsop, Merickel, Bradshaw, and Harber Pickens)**

22 135. Petitioners/Plaintiffs incorporate by reference the allegations in the preceding
23 paragraphs as though fully set forth herein.

24 136. Section 11135(a) provides in part that “[n]o person in the State of California shall,
25 on the basis of sex, race, color, religion, ancestry, national origin, ethnic group identification, age,
26 mental disability . . . be unlawfully subjected to discrimination under, any program or activity that
27 is conducted, operated, or administered by the state or by any state agency[.]”

28 137. Regulations implementing Section 11135 prohibit discriminatory effects with
respect to several of the statutorily protected classes, including “ethnic group identification.”

1 Under those regulations, “[i]t is a discriminatory practice for a recipient, in carrying out any
2 program or activity directly” to, among other things, “utilize criteria or methods of administration
3 that: (1) have the purpose or effect of subjecting a person to discrimination on the basis of ethnic
4 group identification . . . ” or “(2) have the purpose or effect of defeating or substantially impairing
5 the accomplishment of the objectives of the recipient’s program with respect to ethnic group
6 identification . . .” 2 C.C.R. § 11154.

7 138. Other regulations implementing Section 11135 define “ethnic group identification”
8 to include linguistic characteristics. “‘Color or ethnic group identification’ means the possession
9 of the racial, cultural or linguistic characteristics common to a racial, cultural or ethnic group or
10 the country or ethnic group from which a person or his or her forebears originated.” 2 C.C.R. §
11 11161(b).

12 139. Respondents/Defendants discriminate against LEP indigent defendants in violation
13 of Section 11135 and its implementing regulations because, at a minimum,
14 Respondents/Defendants’ method of administering misdemeanor arraignments results in a greater
15 proportion of indigent LEP defendants who rely on an interpreter pleading guilty than indigent
16 defendants who are fluent in English and who do not rely on an interpreter.
17 Respondents/Defendants’ operation of misdemeanor arraignments thus has the purpose or effect
18 of subjecting defendants to discrimination on the basis of ethnic group identification.
19 Respondents/Defendants’ operation of misdemeanor arraignments also has the purpose or effect of
20 defeating or substantially impairing the accomplishment of the objectives of
21 Respondents/Defendants’ program—which include equal access to justice—on the basis of ethnic
22 group identification.

23 140. Respondents/Defendants’ discrimination against indigent defendants constitutes an
24 ongoing controversy between the parties. Respondents have a ministerial duty to comply with the
25 statutory prohibition against discrimination contained in Section 11135 and its implementing
26 regulations. Petitioners/Plaintiffs have a beneficial and/or public interest in the issuance in a writ.
27 Issuance of a writ of mandate compelling Respondents/Defendants to perform their duties is
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1 required because there exists no plain, speedy, and adequate remedy in the ordinary course of law
2 that would protect Petitioners/Plaintiffs' rights and interests.

3 **COUNT FIVE**

4 **Disability Discrimination in Violation of the Americans with Disabilities Act,**
5 **42 U.S.C. § 12131, et seq., and Government Code § 11135**
6 **Writ of Mandate (Code Civ. Proc., § 1085)**

7 **(All Petitioners/Plaintiffs Against**
8 **Respondents/Defendants Alsop, Merickel, Bradshaw, and Harber Pickens)**

9 141. Petitioners/Plaintiffs incorporate by reference the allegations in the preceding
10 paragraphs as though fully set forth herein.

11 142. The ADA was enacted "to provide a clear and comprehensive national mandate for
12 the elimination of discrimination against people with disabilities" with "clear, strong, consistent,
13 enforceable standards . . . in order to address the major areas of discrimination faced day-to-day
14 by people with disabilities." 42 U.S.C. § 12101(b).

15 143. All public entities, including state and local governments and their departments,
16 agencies, and instrumentalities, must comply with Title II of the ADA.

17 144. Title II of the ADA provides that "no qualified individual with a disability shall, by
18 reason of such disability, be excluded from participation in or be denied the benefits of the
19 services, programs, or activities of a public entity, or be subjected to discrimination by such
20 entity." 42 U.S.C. § 12132.

21 145. Title II of the ADA requires covered entities to provide people with disabilities
22 meaningful access to programs, services, and activities. *Crowder v. Kitagawa*, 81 F.3d 1480, 1484
(9th Cir. 1996).

23 146. The ADA defines a disability as either having a "physical or mental impairment that
24 substantially limits one or more major life activities;" a history of such an impairment; or being
25 "regarded as having such an impairment." 42 U.S.C. § 12102(1). The definition of disability in the
26 ADA "shall be construed in favor of broad coverage of individuals under this chapter, to the
27 maximum extent permitted." 42 U.S.C. § 12102(4)(A).

28 147. The U.S. Department of Justice Regulations implementing Title II of the ADA

1 (“Title II Regulations”) regarding these specific requirements provide important guidance
2 regarding what steps may be necessary to ensure that people with disabilities have meaningful
3 access to a benefit or service, and the Court may accept them as authoritative interpretations of the
4 statute by the agency charged with enforcement.

5 148. The Title II Regulations clarify that “[a] public entity, in providing aid, benefit or
6 service, may not . . . on the basis of disability . . . [d]eny a qualified individual with a disability the
7 opportunity to participate in or benefit from the aid, benefit, or service; [a]fford a qualified
8 individual with a disability an opportunity to participate in or benefit from the aid, benefit, or
9 service that is not equal to that afforded others;” or “[o]therwise limit a qualified individual with a
10 disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others
11 receiving the aid, benefit, or service.” 28 C.F.R. § 35.130(b)(1).

12 149. The Title II Regulations also clarify that public entities may not use “criteria or
13 methods of administration . . . [t]hat have the effect of subjecting qualified individuals with
14 disabilities to discrimination on the basis of disability” or “[t]hat have the purpose or effect of
15 defeating or substantially impairing accomplishment of the objectives of the public entity’s
16 program with respect to individuals with disabilities[.]” 28 C.F.R. § 35.130(b)(3)(i), (ii).

17 150. The Title II Regulations further clarify that “[a] public entity shall make reasonable
18 modifications in policies, practices, or procedures when the modifications are necessary to avoid
19 discrimination on the basis of disability, unless the public entity can demonstrate that making the
20 modifications would fundamentally alter the nature of the service, program, or activity.” 28 C.F.R.
21 § 35.130(b)(7).

22 151. The protections afforded against disability discrimination under Section 11135 and
23 its implementing regulations are at least as strong as the protections against disability
24 discrimination under the ADA. See *Bassilios v. City of Torrance*, 166 F. Supp. 3d 1061, 1084
25 (C.D. Cal. 2015) (ADA and Section 11135 are co-extensive); *D.K. ex rel. G.M. v. Solano County*
26 *Office of Educ.*, 667 F. Supp. 2d 1184, 1191 (E.D. Cal. 2009) (Section 11135 is “identical” to the
27 Rehabilitation Act, which overlaps with the ADA, except that the entity must receive State
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1 financial assistance rather than Federal financial assistance”).

2 152. In the design and operation of the Kern County misdemeanor arraignment system,
3 Respondents/Defendants discriminated, and continue to discriminate, against people with mental
4 disabilities, and particularly those who are or may be legally incompetent, by:

- 5 a. Denying people with mental disabilities the opportunity for full participation in their
6 own criminal defense proceedings;
- 7 b. Failing to afford people with disabilities the opportunity for full participation in their
8 own criminal defense proceedings;
- 9 c. Otherwise limiting people with mental disabilities in the full participation in their
10 own criminal defense proceedings;
- 11 d. Using methods of administration that discriminate against people with disabilities;
12 and
- 13 e. Failing to make reasonable accommodations in the administration of the
14 misdemeanor arraignment court to avoid discrimination on the basis of mental
15 disability.

16 153. Reasonable accommodations necessary to avoid discrimination on the basis of
17 mental disability include 1) establishing a process to evaluate whether people have mental
18 disabilities (including but not limited to incompetency to stand trial), and 2) ensuring defendants
19 with mental disabilities have an individualized consultation with counsel prior to the waiver of
20 counsel or trial rights in order to understand and participate in the proceedings. For defendants
21 with disabilities, the right to counsel stems both from the constitutional claims described above
22 and from their rights under disability rights laws.

23 154. Petitioners/Plaintiffs Laura Hart and John Doe are protected people with mental
24 disabilities under the ADA and Section 11135 who are permitted to bring a claim. As a result of
25 the discrimination, Ms. Hart and Mr. Doe have sustained injuries described herein.

26 155. Kern County and Kern County Superior Court constitute public entities within the
27 meaning of the ADA. The County and Court also constitute covered recipients of state financial
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1 assistance under Section 11135.

2 156. Respondents/Defendants' discrimination against indigent defendants constitutes an
3 ongoing controversy between the parties. Respondents/Defendants have a ministerial duty to
4 comply with the statutory prohibition against discrimination contained in Title II of the ADA and
5 its implementing regulations and Section 11135 and its implementing regulations.
6 Petitioners/Plaintiffs have a beneficial and/or public interest in the issuance in a writ. Issuance of a
7 writ of mandate compelling Respondents/Defendants to perform their duties is required because
8 there exists no plain, speedy, and adequate remedy in the ordinary course of law that would
9 protect Petitioners/Plaintiffs' rights and interests.

10 **COUNT SIX**

11 **Violation of the Right of Public Access to Criminal Proceedings**
12 **First Amendment to the U.S. Constitution**
13 **Writ of Mandate (Code Civ. Proc., § 1085)**

14 **(All Petitioners/Plaintiffs Against**
15 **Respondents/Defendants Bradshaw, Harber Pickens and Youngblood)**

16 157. Petitioners/Plaintiffs incorporate by reference the allegations in the preceding
17 paragraphs as though fully set forth herein.

18 158. Under the First Amendment, the public has a presumptive right to attend criminal
19 trials and pre-trial proceedings, unless the court makes factual findings that closure is necessary to
20 serve an overriding interest and is narrowly tailored to serve that interest. The First Amendment
21 requires the entire arraignment, including the Closed-Door Processing, to be presumptively open
22 to the public.

23 159. Kern County and the Kern County Superior Court systematically closes the
24 courtroom during the Closed-Door Processing portion of the arraignment. Bailiffs and probation
25 officers prevent members of the public from entering the courtroom based on an asserted Superior
26 Court policy. Members of the public are as a rule not permitted to observe this fundamental part of
27 the misdemeanor arraignment proceedings in which defendants are (nominally) informed of their
28 rights through an official video court presentation, decide whether to waive those rights, and may
accept uncounseled plea offers.

1 166. Respondents/Defendants expend taxpayer funds to run the misdemeanor
2 arraignment process described above that systematically deprives indigent defendants of
3 meaningful access to counsel and due process in violation of the California Constitution and state
4 law; discriminates against people on the basis of ethnic group identification in violation of state
5 law; discriminates against people with mental disabilities in violation of state and federal law; and
6 deprives the public of access to court proceedings in violation of the U.S. Constitution.
7 Respondents/Defendants will continue to expend taxpayer funds on this unlawful and
8 unconstitutional system absent relief from this Court.

9 **VI. PRAYER FOR RELIEF**

10 167. Petitioners/Plaintiffs incorporate by reference the allegations in the preceding
11 paragraphs as though fully set forth herein.

12 168. Petitioners/Plaintiffs respectfully request that the Court:

- 13 A. Declare that Respondents/Defendants are violating the constitutional and
14 statutory right to counsel and due process of indigent defendants,
15 Government Code Section 11135, and Title II of the ADA, by engaging in
16 the practices, acts, and omissions described herein;
- 17 B. Declare that Respondents/Defendants are violating the constitutional right of
18 public access to courtrooms by closing the courtroom and denying public
19 access during the Closed-Door Processing at the start of arraignment
20 proceedings;
- 21 C. Grant injunctive relief and/or issue a writ of mandate:
- 22 1. Prohibiting Respondents/Defendants from conducting and/or
23 participating in a misdemeanor arraignment proceeding unless, in
24 advance of waiving any trial rights or the right to counsel, the
25 defendant charged with a misdemeanor has a confidential and
26 individualized consultation with counsel that includes, inter alia, an
27 evaluation of their competency and, where required, an
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individualized immigration advisal;

2. Prohibiting Respondents/Defendants from relying on Probation Department personnel to determine, convey, and/or negotiate plea offers for criminal defendants charged with misdemeanors;
3. Directing Respondents/Defendants to guarantee public access to misdemeanor arraignment courtrooms for the operative part of the arraignment proceedings, including where defendants are advised of their rights;
4. Providing any other relief restraining Respondents/Defendants from violating the rights to counsel and/or due process, in the operation of the misdemeanor arraignment system in Kern County, and requiring Respondents/Defendants to take specific steps to ensure meaningful access to such counsel;
5. Providing any other relief restraining Respondents/Defendants from discriminating against indigent defendants on the basis of ethnic group identification and/or disability, in the operation of the misdemeanor arraignment system in Kern County, and requiring Respondents/Defendants to guarantee the rights of indigent defendants with limited English proficiency and/or mental disabilities arraigned on misdemeanors in Kern County;

D. Order Respondents/Defendants to pay Petitioners/Plaintiffs’ attorneys’ fees and costs under California Code of Civil Procedure § 1021.5, 42 U.S.C. § 1988, and any other applicable statutes; and

E. Grant Petitioners/Plaintiffs any other relief as the Court deems just and proper.

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Respectfully submitted,



Dated: May 8, 2023

Emi MacLean
American Civil Liberties Union Foundation
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Exhibits

Letter	Exhibit Name
A	Kern County Superior Court Waiver of Rights Form

EXHIBIT A

IN THE SUPERIOR COURT
COUNTY OF KERN, STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA)
Plaintiff)
vs.)
Defendant)

No. _____

DEFENDANTS ACKNOWLEDGEMENT
OF ADVISAL, UNDERSTANDING AND
WAIVER OF CONSTITUTIONAL RIGHTS

I, the undersigned defendant in the above entitled action, understand and have been advised by the Court or my attorney, of certain constitutional rights, to wit:

1. MY RIGHT TO HAVE AN ATTORNEY. I understand that I have the right to retain and consult an attorney. If I cannot afford to hire an attorney, I understand that the Court must appoint an attorney. I understand that I have the right to have an attorney present during all proceedings.

[] Inapplicable: represented by counsel.

I UNDERSTAND AND GIVE UP THIS RIGHT _____

2. MY RIGHT TO TRIAL BY JURY. I understand that I have the right to have my guilt or innocence decided by twelve (12) persons of the community sitting as a jury and if I give up my right to trial by jury. I have the right to be tried by a judge sitting without a jury. I have the right to present a defense.

I UNDERSTAND AND GIVE UP THIS RIGHT _____

3. MY RIGHT TO A SPEEDY TRIAL. I understand that I have a right to enter a plea of nolo contendere or guilty or to be brought to trial within thirty (30) days from the date of my arraignment if I am in custody, or forty-five (45) days from the date of my arraignment if I am not in custody and that if I am not brought to trial or enter a plea within the statutory period of time. I have a right to have my case dismissed unless I personally waive the statutory time limit.

I UNDERSTAND AND GIVE UP THIS RIGHT _____

4. MY RIGHT TO CONFRONTATION OF WITNESSES. I understand I have the right to be confronted by the witnesses against me and to use the process of the court to subpoena witnesses on my behalf and to cross-examine witnesses that testify against me. I have the right to testify on my own behalf.

I UNDERSTAND AND GIVE UP THIS RIGHT _____

The Court or my attorney has fully described the nature of the charges against me. The Court or my attorney also has informed me of all the possible consequences of entering a plea of either guilty or nolo contendere including but not limited to the possible maximum jail sentence that could be imposed on this charge.

I understand that a plea of nolo contendere has the same effect as a plea of guilty but cannot be used against me in any possible civil action arising out of this incident.

Having been advised of the rights set forth above, and with full knowledge and understanding of those rights and of the effect of waiving them, I hereby specifically waive each and every one of said rights and enter a plea of guilty or nolo contendere, myself or by my attorney.

I hereby declare that no one has told me or promised me or suggested to me that I would receive a lighter sentence or probation or any favors nor has anyone threatened or promised to reward me, my family or anyone else in order to induce me to sign this waiver.

I understand that I have the right to have my case heard by a Judge of the Superior Court. I waive this right and agree that this case may be heard and sentence imposed by the Superior Court Commissioner as a temporary Judge.

DATED: _____

Defendant

I, _____, truly translated this form and all the statements therein to the defendant in the _____ language.

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

DATED _____

Official Court Interpreter

ATTORNEY'S STATEMENT

I am the attorney of record for the defendant. I have gone over the form with my client. I have explained each of the defendant's rights to the defendant and answered all the defendant's questions in regard to this plea. I have discussed the facts of the defendant's case with the defendant, and explained the consequences of this plea, the elements of the offenses, and the possible defenses. I agree to explain fully to the defendant the provisions of Penal Code Section 1203.3 and Section 1203.4.

DATED: _____

Attorney for Defendant