No. _____

IN THE SUPREME COURT OF CALIFORNIA
In re Chloe Watlington,
Petitioner
on habeas corpus

Re: Alameda County Superior Court
Case No. WWM 576370, *People v. Chloe Watlington*
Hon. Philip Sarkisian and Hon. Larry J. Goodman, Presiding & Court of Appeal
No. A136270, *In re Watlington* (First Dist. Div. 5)

Verified Petition for Writ of Habeas Corpus; Memorandum of Points and Authorities [Exhibits Filed Under Separate Cover]

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INTRODUCTION

This habeas petition, like two others filed this same day,[1] presents an important question of first impression in the California courts: what limitations, if any, does the First Amendment impose on a trial court's authority to set conditions of pre-trial release that force protestors to stay away from the public forum where they have been gathering to express themselves? In all three cases, the Alameda County Superior Court ordered Petitioners to stay far away (900 feet in one case, 300 feet in the other two) from the Plaza in front of Oakland City Hall as a condition of their pre-trial release. The orders were based solely on the fact that Petitioners are charged with committing crimes during Occupy-related demonstrations. Petitioners object to these orders on the ground that they want to continue to exercise their constitutional rights to assembly and free speech in that area, which has been the center of the Occupy Oakland movement and is the seat of governmental power in Oakland. They filed habeas petitions in the Superior Court and then in the Court of Appeal, which were denied.

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[1] Counsel has filed petitions this same day in three cases: *In re Casillas, In re Lubin*, and *In re Watlington.* Because all three petitions raise nearly identical issues, Petitioners have moved to consolidate them and have submitted identical Memoranda of Points and Authorities in all three matters so that a reader need not sift through multiple versions of the same arguments as applied to slightly different facts.

The U.S. Supreme Court has held that judicial orders preventing demonstrators from approaching the site of their protest violate the First Amendment unless the government shows that they "burden no more speech than necessary to serve a significant government interest." *Madsen v. Women's Health Center,* 512 U.S. 753, 765 (1994). It has invalidated orders that fail to meet this standard, even when they push protestors with an extensive history of violence and lawlessness only a few feet from the objects of their protest.

The orders here fail this *Madsen* test because they prohibit Petitioners from engaging in protected speech and association in the Plaza, but are not necessary to serve any government interest. Indeed, with one exception,[2] the crimes that Petitioners are charged with did not even occur in the exclusion zone; the only connection between the exclusion zone and the conduct that allegedly supports the orders is that Petitioners are associated with the Occupy movement, and the Occupy movement is associated with, and conducts demonstrations and other expressive activity in, the Plaza.

[2] Although the principal crime that Ms. Watlington is accused of – spraying paint on the outside wall of a hotel – occurred *outside* the exclusion zone, she was arrested inside the zone and is also accused of resisting that arrest. *See* Watlington Pet. ¶ 6.

Even assuming some sort of order regulating Petitioners' conduct in or around the Plaza were appropriate, the absolute exclusion orders that the court imposed are far too broad. That the orders have been imposed as conditions of pre-trial release does not matter, because the government cannot avoid the First Amendment by simply showing probable cause that a person has committed a crime (the protestors in *Madsen* had repeatedly violated the court's original order and engaged in illegal activity) and because the persons involved in this action have a right to pre-trial release. Thus, in what appears to be the only appellate opinion in the nation that has addressed this issue, the Wisconsin Court of Appeal applied standard First Amendment principles to invalidate a similar order, imposed as a condition of bail, that kept a protestor 500 feet away from an abortion clinic where he had been accused of criminal activity, holding that because the government had failed to show that the broad exclusion area was necessary to protect victims, witnesses, or anybody else, the bail condition violated the First Amendment. *State v. Braun*, 449 N.W. 2d 851, 857-58 (Wis. Ct. App. 1989).

The orders in these cases suffer from the same constitutional infirmity, as do the similar orders that the Alameda County Superior Court has issued in other Occupy-related cases. This Court should issue an order to show cause and then grant the petitions, both to vacate these overbroad orders that violate the First Amendment and to provide guidance to our

state's trial courts as to the limitations that the First Amendment imposes on their authority to impose such conditions of pre-trial release.

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Chloe Watlington respectfully petitions this Court for a writ of habeas corpus on the grounds that the conditions imposed upon her as a condition of pre-trial release violate her rights to free speech, to assemble, and to petition for redress in violation of the First Amendment and Article I §§ 2, 3 of the California Constitution. Petitioner is therefore unlawfully restrained of her liberty.

By this verified Petition, Petitioner sets forth the following facts and causes for the issuance of the writ:

1. Petitioner is charged by complaint in the Alameda County Superior Court with three misdemeanor counts, two alleging violations of Penal Code § 594(a) (spaying paint on the outside wall of a hotel) and one a violation of Penal Code § 148(a)(1), in Wiley W. Manuel Courthouse No. 576374. I represent the Petitioner in that matter.

2. Petitioner is currently released pending trial following her January 31, 2012 release on her own recognizance. Petitioner is not on probation and has no prior arrests in connection with Occupy Oakland demonstrations.

3. As a condition of pre-trial release, the Alameda County Superior Court ordered Petitioner to stay at least 300 yards away from Frank Ogawa Plaza ("Plaza"). This order is still in effect. True copies of the

minute order imposing this condition and the court's Order re: O.R./Bail Status are attached to this petition as Exhibit A.

4. Petitioner objected to this condition on the grounds that it violated her free-speech rights. A copy of the transcript of that hearing is attached hereto as Exhibit B.

5. This Court has jurisdiction over these original writs under Article VI § 10 of the California Constitution, because habeas corpus lies to obtain relief from improper conditions of pre-trial release. Petitioner already sought habeas relief in the Alameda County Superior Court, without success. *See* Ex. C (petition in superior court). After requesting and receiving an informal response from the People and a Reply from Petitioner, that court denied the petition without a hearing on June 25, 2012. *See* Ex. D (denial in superior court). Petitioner filed an original writ of habeas corpus in the Court of Appeal, but that court denied the petition. *See* Ex. E (petition in Court of Appeal), F (denial in Court of Appeal). Although the court indicated that the denial was without prejudice for lack of an adequate record, Petitioner has no additional record to provide, having submitted all relevant Superior Court records to the Court of Appeal with her Petition, as well as maps showing the relevant places.

6. The police report that formed the basis for probable cause to hold Petitioner states that the alleged act of spray painting occurred at 1001 Broadway (Marriott Hotel, just southwest of the intersection of 11th St. and

Broadway) and the alleged violation of Penal Code 148(a)(1) occurred at 14th Street at Broadway. The arrest occurred during an Occupy Oakland demonstration.

7. Petitioner is a supporter of, and active participant in, Occupy Oakland. Occupy Oakland ("Occupy") was inspired by the greater Occupy Wall Street movement, and seeks to spread a message about wealth disparity and economic and social injustices in order to promote social and political change. Its supporters gather together at general assemblies, at which the Occupy community discusses matters ranging from neighborhood cleanups to community issues, such as helping people facing foreclosures, labor rights, cuts to education, and police misconduct and brutality. The center of Occupy is the Plaza in front of Oakland's City Hall, which is the site of weekly general assemblies, as well as demonstrations, and other expressive activities. This location is significant because it is outside of City Hall and because it was the site of Occupy's original encampment, which was broken up by the police in a highly controversial series of actions that garnered international attention.

8. Petitioner would like to continue to participate in these expressive activities in the Plaza and show her support for the Occupy Movement, but is unable to do so because of the stay-away order here at issue.

9. For example, since Petitioner's stay-away order was issued there have been several Occupy-related marches that have started and/or ended in the Plaza that Petitioner has been unable to attend. Some of these marches were solidarity marches with people who had been arrested, while the motivation for other marches was to protest police brutality. The part of the marches protesting police violence that Petitioner most desires to attend are the "speak outs" - where the families of the victims speak to the marchers - and this part of the march almost always occurs in the Plaza.

10. Petitioner has also been unable to attend fundraising events for Occupy-related groups, such as a benefit for Occupy Patriarchy that recently occurred at Radio Bar, because such benefits are often held within her stay-away zone.

11. Petitioner also desires to visit several art studios that are located within her stay-away zone, including the Joyce Gordon Gallery located at 406 14th Street. Petitioner further desires to attend city-sanctioned art, cultural and recreational festivals that occur in her stay-away zone, such as the Oakland Running Festival.

12. Attached to this Petition as Exhibit G is a true map of the area surrounding the Plaza and Oakland City Hall, showing the location of the Elihu M. Harris State Office Building, Ronald V. Dellums Federal Building (which houses the United States District Court and the IRS) and the 12th

Street Bay Area Rapid Transit Station. This map was prepared using a Google Maps tool, *available at* https://maps.google.com/.

13. Attached to this Petition as Exhibit H is a true map of the area surrounding Oakland City Hall; the overlapping circles show the areas that are within 300 yards of the perimeter of the Plaza. This map was prepared using a Google Maps tool, *available at* http://obeattie.github.com/gmaps-radius/.

14. Attached to this Petition as Exhibit I is a true map showing the distance between where the alleged spray painting took place (The Marriott Hotel at 1001 Broadway) and the closest edge of the Plaza, which is approximately 925 feet or 308 yards. This map was prepared using a Google Maps tool, *available at* http://www.daftlogic.com/projects-google-maps-distancecalculator.htm.

15. Attached to this Petition as Exhibit J is a true and correct copy of the Complaint filed January 31, 2012 in the Alameda County Superior Court.

16. Petitioner has no plain, speedy, or adequate remedy at law to raise the above claim. She has not presented the grounds for relief raised here in any other petition or application to any court other than in the superior court and court of appeal as described above.

WHEREFORE, Petitioner respectfully requests that this Court:

a. Order Respondent to show cause why this Court should not vacate the conditions of Petitioner's pre-trial release that prevent her from engaging in expressive activities in the Plaza.

b. Upon the consideration of Respondent's return and Petitioner's traverse, vacate the stay-away order.

c Declare the rights of the parties, whether or not the writ issues.

d. Grant such other and further relief as the Court determines appropriate, including a writ of habeas corpus.

VERIFICATION

I, Jivaka Candappa, am the attorney for the Petitioner in the above-entitled proceeding. I have read the foregoing petition and declare that its contents are true to my personal knowledge or upon my inspection of the records of the Superior Court.

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

Executed October 23, 2012, at OAKLAND, California.

By: _____
Jivaka Candappa

MEMORANDUM OF POINTS AND AUTHORITIES

These three habeas petitions[3] present an important question of first impression in the California courts: what limitations, if any, does the First Amendment impose on a trial court's authority to set conditions of pre-trial release that force protestors to stay away from the public forum where they have been gathering to express themselves. In all three cases, the Alameda County Superior Court ordered Petitioners to stay far away (900 feet in one case, 300 feet in the other two) from the Plaza in front of Oakland City Hall as a condition of their pre-trial release, without any explanation of why these broad orders, which do not even cover the area where Petitioners are accused of committing crimes,[4] were necessary. Petitioners, all of whom are associated with the Occupy Oakland movement, object to these orders on the grounds that they want to continue to exercise their constitutional right to assembly and free speech in that area, which has been the center of

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[3] As noted above, Counsel has moved to consolidate the petitions in *In re Casillas, In re Lubin,* and *In re Watlington* because they raise nearly identical issues. *See In re Maston,* 33 Cal.App.3d 559, 561 (1973). This Memoranda of Points and Authorities in all three matters is identical, so that a reader need not sift through multiple versions of the same arguments as applied to slightly different facts.

[4] With the one exception of Ms. Watlington's resisting-arrest charge. *See* n. 2, *supra*.

the Occupy Oakland movement and is the seat of governmental power in Oakland.

The U.S. Supreme Court has held that judicial orders preventing demonstrators from approaching the site of their protest violate the First Amendment unless the government shows that they "burden no more speech than necessary to serve a significant government interest." *Madsen v. Women's Health Center,* 512 U.S. 753, 765 (1994). It has invalidated orders that fail to meet this standard, even when they push protestors with an extensive history of violence and lawlessness only a few feet from the objects of their protest.

The orders here fail the *Madsen* test because they are not necessary to serve any government interest; even assuming some sort of order regulating Petitioners' conduct in or around the Plaza were appropriate, the absolute exclusion orders that the court imposed are far too broad. That the orders have been imposed as conditions of pre-trial release does not matter, because the government cannot avoid the First Amendment by simply showing probable cause that a person has committed a crime (the protestors involved in *Madsen* had repeatedly engaged in criminal activity and violated the court's original order) and because the persons involved in this action have a right to pre-trial release. Thus, in what appears to be the only appellate opinion in the nation that has addressed this issue, the Wisconsin Court of Appeal applied standard First Amendment principles to invalidate

a similar order, imposed as a condition of bail, that kept a protestor 500 feet away from an abortion clinic where he had been accused of criminal activity, holding that because the government had failed to show that the broad exclusion area was necessary to protect victims, witnesses, or anybody else, the bail condition violated the First Amendment. *State v. Braun*, 449 N.W. 2d 851, 857-58 (Wis. Ct. App. 1989). The orders in these cases suffer from the same constitutional infirmity, and this Court should issue an order to show cause and then grant the petitions.

I. JURISDICTION AND PROCEDURAL HISTORY

This Court has jurisdiction over these original writs under Article VI § 10 of the California Constitution. Habeas corpus lies to obtain relief from improper conditions of pre-trial release. *In re McSherry*, 112 Cal.App.4th 856, 859-60 (2003); *see In re Smiley*, 66 Cal.2d 606, 611-14 (1967); *In re Harrell*, 2 Cal.3d 675, 682 (1970). Petitioner has already sought habeas relief in the Alameda County Superior Court and the Court of Appeal.[5] After requesting and receiving an informal response from the People and a reply from Petitioner, the Superior Court denied the petitions without a

[5] *See* Casillas Pet. ¶ 9 & Exs. D, F; Lubin Pet. ¶ 5 & Exs. D, F; Watlington Pet. ¶ 5 & Exs. C, E.

hearing on June 25 and 26, 2012.[6] The Court of Appeal summarily denied relief to Mr. Casillas on August 16 and to Mr. Lubin and Ms. Watlington on August 23rd.[7] Petitioners' remedy is therefore to file original petitions in this Court. *See In re Clark,* 5 Cal.4th 750, 767 n.7 (1993).

II. FACTS

A. The alleged offenses, arrests, and stay-away orders.

All three Petitioners were arrested and charged based on alleged conduct that occurred during demonstrations relating to the Occupy Oakland movement on January 28, 2012. As a federal court recently explained, members and supporters of Occupy Oakland "seek to raise awareness about economic inequality, and advocate political and social change. They have repeatedly convened on Frank Ogawa Plaza, in front of Oakland City Hall, with some erecting tents and others periodically gathering there for meetings and rallies. Most of these events, all acknowledge, have transpired without incident," although some have resulted in conflict between the police and members of the public and

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[6] The Watlington petition was denied June 25; the other two on the 26th. Casillas Pet. ¶ 9 & Ex. E; Lubin Pet. ¶ 5 & Ex. E; Watlington Pet. ¶ 5 & Ex. D.

[7] Casillas Pet. ¶9 & Ex. F (petition), G (order); Lubin Pet. ¶ 5 & Ex. F (petition), G (order); Watlington Pet. ¶ 5 & Ex. E (petition), F (order). Although the Court of Appeal denied the Watlington Petition without prejudice to file a Petition with a more complete record from the trial court, the Petition contained all the relevant records and refiling would therefore have been futile.

arrests. *Campbell v. City of Oakland*, 2011 WL 5576921 at *1 (N.D. Cal. Nov. 16, 2011). Frank Ogawa Plaza (hereinafter "the Plaza") is located at the intersection of 14th St. and Broadway, as shown in the maps of downtown Oakland attached to each petition.[8] Copies of three maps, showing the area covered by the stay-away orders, are attached to this Memorandum.[9]

Petitioner Chloe Watlington was arrested on suspicion of spraying paint on the wall of the Marriott Hotel on Broadway at 11th Street, which is approximately 925 feet from the Plaza, and resisting arrest at 14th Street and Broadway, which is near the Plaza. *See* Watlington Pet. ¶¶ 6, 14 & Ex. I. The arrest occurred during an Occupy demonstration. Ms. Watlington was charged with three misdemeanor counts and was released on her own recognizance. As a condition of own recognizance release ("OR"), the government requested and the court ordered Ms. Watlington to stay at least 300 yards away from the Plaza. *Id.* at ¶ 3 & Ex. A.

Petitioner Mario Casillas was arrested on suspicion of assaulting a peace officer. As the prosecution stated at Mr. Casillas's bail hearing, the arrest and alleged offense near 12th St. and Oak St. during an Occupy march. Casillas Pet. Ex B at 11:14-17. This is some 900 yards from the

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[8] Casillas Pet. ¶ 14 & Ex. H; Lubin Pet. ¶ 10 & Ex. H; Watlington Pet. ¶ 12 & Ex. G.

[9] As authorized by Rule of Court 8.204.

Plaza. *Id.* at ¶ 16 & Ex. J. The prosecutor argued that Mr. Casillas should be required to stay away from the Plaza because *other* demonstrators went there after Mr. Casillas was already in custody. Casillas Pet. Ex. B at 11:18-19. He also argued that "because of these allegations, Mr. Casillas has forfeited" his right to "peaceably gather and demonstrate and exercise [his] First Amendment privilege." *Id.* at 11:20-24. As a condition of bail, Mr. Casillas is required to stay at least 100 yards from the perimeter of the Plaza, per the government's request. *Id.* at 14:19-22.

Petitioner Michael Lubin was arrested on suspicion of assaulting two peace officers. The alleged offenses occurred near the intersection of 12th Street and Jackson Street and near the intersection of 19th Street and Rashida Muhammad Street; Mr. Lubin was later arrested in the 2300 block of Broadway. Lubin Pet. ¶ 6. All of these locations are much more than 100 yards from the Plaza. *See id.* ¶¶ 12, 13, 14 & Ex. J, K, L. Nevertheless, the court ordered Mr. Lubin to stay 100 yards away from the perimeter of the Plaza as a condition of bail. *Id.* Ex. C at 14:15-18.

All three of the stay-away orders in question apply at all times and in all circumstances, without any exceptions. The government never presented any evidence to show that the orders were necessary aside from its descriptions of the facts surrounding the arrests, and the magistrates did not provide any explanation of why they imposed these broad stay-away

orders. *See* Watlington Pet. Ex. B at 2-5; Casillas Pet. Ex. B at 10-15; Lubin Pet. Ex. C at 11-21.

All three Petitioners remain out of custody pending trial.

B. The stay-away orders prevent Petitioners from participating in expressive activities.

All three Petitioners want to continue to engage in expressive activities in and around the Plaza but are unable to do so because of the stay-away orders. For example, the stay-away against Ms. Watlington prevents her from attending Occupy-related demonstrations in the Plaza, as well as fund-raising events for Occupy that are held near the Plaza. *See* Watlington Pet. ¶¶ 8-11. Mr. Casillas, who is a philosophy student at San Francisco State University, is no longer able to attend the General Assembly and other meetings in the Plaza at which he engaged in discussions about important social issues, including police brutality, universal health care, and the importance of social-safety-net programs. *See* Casillas Pet. ¶¶ 11-13. The order against Mr. Lubin prevented him from attending Occupy-related events that were held on May Day, as well as other political events, such as a large rally in the Plaza that featured speakers, including city officials, speaking out against federal actions against medical-marijuana dispensaries in Oakland. *See* Lubin Pet. ¶¶ 8-9.

III. DISCUSSION

A. The stay-away orders now before this Court violate the First Amendment because they burden more speech than is necessary to achieve any significant government interest.

Court orders that move protestors away from a public forum where they want to express themselves violate the First Amendment unless they "burden no more speech than necessary to achieve a significant government interest." *Madsen v. Women's Health Center,* 512 U.S. 753, 765-66 (1994). This strict standard applies to all manner of judicial orders, including orders imposed because the protestors have engaged in repeated criminal and violent acts. The orders here keep Petitioners hundreds of feet from Oakland City Hall and the Plaza, which is the exact space where they want to engage in political demonstrations and other expressive activity; and these broad stay-away orders were imposed even though two of the Petitioners are not even accused of having committed crimes anywhere within their exclusion zone. The orders are much broader than could be necessary to serve any legitimate government interest and are therefore invalid under the First Amendment.

1. Under the First Amendment and *Madsen*, court orders that keep speakers away from a public forum cannot burden any more speech than the government has shown to be necessary to serve a significant government interest.

The U.S. Supreme Court has twice examined the constitutionality of court orders imposed on demonstrators as a result of prior disruptive conduct - including assaultive and other criminal conduct - that require the demonstrators to stay away from the locus of their demonstration. *Madsen,* 512 U.S. 753; *Schenck v. Pro-Choice Network of Western New York,* 519 U.S. 357 (1997). In both cases, the Court held that most of the restrictions were unconstitutional because the evidence did not show that they were necessary to serve a significant government interest. The orders in this case are similarly unconstitutional.

Both *Madsen* and *Schneck* involved protests outside abortion clinics. In both cases, the defendants had a long history of engaging in illegal, disruptive, and sometimes violent behavior at the clinics at issue, including harassing and intimidating clinic patients, staff, and even, in *Madsen,* confronting the minor children of staff when they were home alone. *Madsen,* 512 U.S. at 759; *Schenck,* 519 U.S. at 385. Nevertheless, the high Court held that, although court intervention was appropriate to stop the pervasive lawlessness, the trial courts had gone too far by issuing injunctions that burdened more speech than necessary to stop the unlawful

behavior. *Madsen,* 512 U.S. at 771, 773-775; *Schenck,* 519 U.S. at 377. The proponent of such orders has the burden of justifying "each contested provision" of the order. *Madsen,* 512 U.S. at 768.

Madsen was decided on a limited factual record because the demonstrators had failed to provide a complete record, and the Court thus assumed that the record supported the trial court's findings that led it to issue a broad injunction. 512 U.S. at 770-71. The trial court found that protestors had "repeatedly" interfered with access to the clinic, even after it had issued an injunction to prohibit their actions. *Id.* at 768-71. Demonstrators also used bullhorns, other sound-amplification equipment, and car horns to make noise outside the clinic. *Id.* at 772. These activities imperiled not just physical access to the clinic but also the health of the women being treated, who sometimes required additional sedation because of their experience outside and because they could hear the protestors even inside during surgery and recovery. *Id.* at 758-59.

The bulk of the Court's opinion is devoted to determining the proper standard to be used in evaluating court orders that prohibit protestors who have engaged in disruptive or illegal activities from returning to the scene of their protests. Importantly, the Court held that the unique risks that such targeted judicial orders pose to the First Amendment meant that the "standard time, place, and manner analysis" that it uses to evaluate laws of

general application that restrict speech in a public forum is not "sufficiently rigorous" enough to protect speech:

> Ordinances represent a legislative choice regarding the promotion of particular societal interests. Injunctions, by contrast, are remedies imposed for violations (or threatened violations) of a legislative or judicial decree. Injunctions also carry greater risks of censorship and discriminatory application than do general ordinances because they apply only to specific individuals, not to society at large.
> *Id.* at 764-65 (citation omitted).

Instead, court orders restricting the location of speech in a public forum must meet a higher standard than do laws of general application: they are only permissible if their provisions "burden no more speech than necessary to serve a significant government interest." *Id.* at 765-66.

Applying this strict standard, the Court struck down part of the injunction. Most relevant to this case, it invalidated the two parts of the lower court's order that regulated protestors' activities within 100 yards of the clinic or its employees' houses. First, it overturned a provision that kept demonstrators from physically approaching any of the clinic's patients within 100 yards of the clinic, unless the patient indicated a desire to communicate, on the grounds that the restriction "burden[ed] more speech than is necessary to prevent intimidation and to ensure access." *Id.* at 773-74. In addition, the Court struck down a prohibition against picketing within 300 feet of the residences of clinic staff, even acknowledging the importance of protecting the privacy and tranquility of the home, on the

grounds that limitations on the time or manner of such pickets or "a smaller zone could have accomplished the desired result." *Id.* at 775. Notably, neither of the overturned prohibitions was a complete ban on being present or even on speaking or protesting within the exclusion zone, in sharp contrast to the exclusion orders now before this Court. *See id.* at 780-81 (Stevens, J., concurring and dissenting).

The Court did uphold one much narrower part of the injunction that kept protestors off of public property within 5 feet of one side of the clinic and 36 feet of its other three sides, because the protestors' history of blockades demonstrated that a limited stay-away order was necessary to ensure access to the clinic's doors and, on three sides of the clinic, a more limited order was not a viable alternative because it would have meant that protestors would stand in the middle of a street and continue to block traffic. But the Court held that this 36-foot exclusion zone could not cover privately owned property, because there was no "evidence that petitioners standing on the private property ha[d] obstructed access to the clinic, blocked vehicular traffic, or otherwise unlawfully interfered with the clinic's operation." *Id.* at 769-70, 771.

In *Schneck,* the record was more complete and showed that the protestors had engaged in "numerous large-scale blockades" of the clinics, had trespassed inside the clinics, had thrown themselves on the hoods of patients' cars, and had engaged in assault and battery against persons

entering and exiting the clinics by "pushing, shoving, and grabbing" them. 519 U.S. at 362-63. Escorts were "elbowed, grabbed, or spit on." *Id.* Physical fights had broken out between the protestors and men who were escorting women into the clinics. *Id.* at 363.

The continuous protests "overwhelm[ed] police resources." *Id.* When the police did make arrests, demonstrators were rarely prosecuted, because patients were too scared to cooperate, and protestors "who were convicted were not deterred from returning to engage in unlawful conduct." *Id.* at 363-64. The protestors harassed the police verbally and by mail. *Id.* The protestors continued this behavior even after a federal court issued a temporary restraining order prohibiting it. *Id.* at 365. The trial court specifically found that many of the protestors had "been arrested on more than one occasion for harassment, yet persist in harassing and intimidating patients, patient escorts and medical staff." *Pro-Choice Network of Western New York v. Project Rescue Western New York*, 799 F.Supp. 1417, 1425 (W.D.N.Y. 1992), *upheld in relevant part by* 519 U.S. 357; *see also id.* at 1424 (describing physical blockades of clinic by demonstrators); *id.* at 1426-27 ("the record shows that arrest and conviction pursuant to local laws has not deterred defendants from repeatedly engaging in their illegal pattern of activity.").

Even in light of this extensive record of pervasive lawlessness that overwhelmed police resources, the Court overturned 15-foot "floating

buffer zones" around patients and vehicles, on the grounds that a "more limited" order would be sufficient to ensure physical access to the clinics and that the "15-foot floating buffer zones would restrict the speech of those who simply line the sidewalk or curb in an effort to chant, shout, or hold signs peacefully." 519 U.S. at 380. It upheld a 15-foot stay-away from the doors and driveways of the clinic because the protestors' actions in blocking doors, even after a temporary restraining order had issued to stop them from doing so, meant that this total - albeit limited - exclusion was "the only way to ensure access" to the clinic. *Id.* at 380-81 & n.11. Integral to the Court's decision was the fact that the protestors' past actions - including harassment of the police who tried to respond to problems - made it clear that neither a ban only on blocking access to the clinic nor a 5- or 10-foot buffer zone would suffice to allow access to the clinic. *Id.* at 381-82.

This Court applied *Madsen* to an even more extreme situation in evaluating an injunction against gang members whose conduct had created a four-square-block "urban war zone" where residents were "prisoners in their own homes." *People ex rel. Gallo v. Acuna*, 14 Cal.4th 1090, 1100 (1997). "Murder, attempted murder, drive-by shootings, assault and battery, vandalism, arson, and theft [were] commonplace," as were other serious criminal activities. *Id.* This Court nonetheless closely examined the evidence to see whether each provision of the injunction against the gangs

and individual gang members met "the constitutional test formulated by the Supreme Court in *Madsen*, by `burden[ing] no more speech than necessary to serve' an important governmental interest." *Id.* at 1120 (citation omitted). It applied this test even with respect to individuals shown to have engaged in specific criminal acts. *Id.* at 1125. And it did so even though the gangs at issue had no constitutionally protected associational rights or "constitutionally protected or even lawful goals" in the area subject to the injunction. *See id.* at 1111, 1121.

California courts, too, have addressed stay-away orders in similar cases involving an extensive record of blockades, harassment, and violations of prior orders by anti-abortion protestors. This Court has upheld the same types of orders that the *Madsen* court approved, on nearly identical facts, on the grounds that they were necessary to ensure access to the clinic, that a "less restrictive alternative [injunction] had been tried and found wanting," and that the court's order allowed the protesters "to communicate their viewpoint without subjecting patients to physical intimidation." *Planned Parenthood Shasta-Diablo, Inc. v. Williams*, 10 Cal.4th 1009, 1020-21, 1024 (1995). This Court contrasted the limited orders it was upholding with the "exceptionally large" 100-yard "'no approach zone'" struck down in *Madsen*. *Id.* at 1025. Thus, when our Court of Appeal confronted an injunction that required protestors to stay 250 feet away from an apartment complex in which a doctor resided, it

followed *Planned Parenthood Shasta-Diablo* and *Madsen* and struck it down because the "250-foot zone denies the protesters any opportunity to demonstrate in front of [the doctor's] building" and the trial court had failed to first try "a less restrictive approach." *Planned Parenthood Assn. v. Operation Rescue*, 50 Cal.App.4th 290, 302 (1996). When First Amendment rights are involved, a court does not have the usual broad discretion to craft injunctive relief; *"Madsen* requires a more laser-like approach." *Id.* at 302. *See generally In re Berry*, 68 Cal.2d 137, 154-57 (1968) (invalidating injunction prohibiting defendants from demonstrating near government buildings as overbroad and vague). The exclusion orders here at issue are just the type of very large zones—imposed without any determination that a less-restrictive approach would be ineffective—that these cases forbid.

2. The orders before the Court are governed by the same First Amendment standards as are any other judicial orders.

None of this analysis is affected by the fact that the orders were issued as part of pre-trial release, because the government cannot circumvent a person's constitutional rights by charging him with a crime and then forcing him to forfeit that right as a condition of bail. As a matter of California pre-trial-release law, this is made clear by *Gray v. Superior Court*, 125 Cal.App.4th 629 (2005). In that case, Dr. Gray was charged

with a number of felonies, including sexually exploiting a patient or former patient and possession of child pornography and drugs. *Id.* at 635. As a condition of bail, the court ordered him to surrender his medical license. *Id.* The First District held that this violated Gray's constitutional rights, because the bail hearing failed to provide him with the same procedural rights that he would have been entitled to had the government moved in a separate proceeding to suspend or terminate his license, including notice, proof by clear-and-convincing evidence, and prompt review. *Id.* at 638-40.

Here, as in *Gray*, the Petitioners all have a right to be released pre-trial. Two of them have posted bail. *See id.* at 644. Ms. Watlington is charged only with misdemeanors and thus has a right to be released on her own recognizance. *See* Penal Code § 1270.[10] In both situations, they "ha[ve] a right to be free from confinement. The trial court cannot justify imposing bail conditions in a manner depriving [them] of due process *or other constitutional rights* on the ground that [they] would otherwise be confined and effectively deprived of those rights." *Gray*, 125 Cal.App.4th

[10] In the superior court, the government argued that because Ms. Watlington is released on her own recognizance the less-stringent standard of *In re York*, rather than *Madsen*, applies. But *York* itself expressly states that its holding does not apply to persons like Ms. Watlington who are "charged only with having committed a misdemeanor, such persons having a statutory right to OR release 'unless the court makes a finding upon the record that an [OR] release will not reasonably assure the appearance of the defendant as required.'" *In re York*, 9 Cal.4th 1133, 1138 n.2 (1995) (citing Penal Code § 1270).

at 644 (emphasis added). *See also United States v. Scott*, 450 F.3d 863, 864-75 (9th Cir. 2006) (court could not condition bail on waiver of Fourth Amendment rights).[11]

The First Amendment requires the same result, because the government cannot strip somebody of his free-speech rights simply by offering probable cause to show that he has committed a crime. *See Braun*, 449 N.W. 2d at 857 ("We reject the view that a person charged with a crime, but not convicted, forfeits his or her First Amendment rights."). [12] The concerns about the dangers that court orders, as opposed to statutes or ordinances, pose to free-speech that led the *Madsen* Court to craft its stringent standard apply equally to all types of court orders, whether they are styled as injunctions or conditions of release.[13] *See Madsen*, 512 U.S. at 764-65. *Madsen* and *Schneck* both involved protestors who had been arrested and prosecuted for crimes relating to the demonstration at issue; in *Acuna* this Court applied the *Madsen* standard to evaluate public-nuisance

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[11] Even the Ninth Circuit judges who disagreed with the *Scott* majority agreed that the government could not condition bail on a waiver of First Amendment rights. *See Scott*, 450 F.3d. at 896 (Callahan, J., dissenting from denial of rehearing en banc).

[12] Because Ms. Watlington is charged with having committed misdemeanor crimes and is not in custody, the government did not have to make a showing of probable cause to proceed with the criminal prosecution against her.

[13] The one exception to this is an order that follows a criminal conviction, such as orders granting probation, where the court has the authority to use conditions to punish and rehabilitate.

injunctions against gangs, even though the gang members' conduct was necessarily criminal and the government could have pursued prosecutions as well as an injunction. *Acuna,* 14 Cal.4th at 1108-09 ("Acts or conduct which qualify as public nuisances are enjoinable as civil wrongs or prosecutable as criminal misdemeanors ...."); *id.* at 1120-22 (applying *Madsen).*[14]

Here, as in other contexts, the First Amendment requires the court to make an independent evaluation of the evidence in deciding whether the challenged orders restricting free speech are justified. *See In re George T.*, 33 Cal.4th 620, 631 (2004); *Planned Parenthood Assn. v. Operation Rescue,* 50 Cal.App.4th 290, 294 (1996). The prosecution does not get to make that call. It is immaterial whether the government's request for stay-away orders is in a civil case (as in *Acuna)* or in criminal proceedings. In either case, the government is requesting judicial orders restricting speech,

[14] The *Acuna* court upheld some parts of the injunction there at issue because none of the gang's conduct was protected by the First Amendment. 14 Cal.4th at 1110-12; *id.* at 1121 ("the gangs appear to have had no constitutionally protected or even lawful goals" in the area affected). Here, by contrast, Petitioners and the Occupy movement itself are engaged in core political speech.

backed by the court's contempt power,[15] and the court must decide whether such orders comport with the First Amendment.

Thus, in *Braun,* the appellate court applied standard First Amendment principles to invalidate an order, imposed as a condition of bail, that kept a protestor 500 feet away from an abortion clinic, holding that because the government had failed to show that the broad exclusion area was "necessary to protect victims, witnesses, or other members of the community," the order violated the First Amendment. *Braun*, 449 N.W. 2d at 857-58.

Similarly, the United States Court of Appeal has held that standard First Amendment doctrine applies to restrictions on First Amendment associational rights imposed as a condition of pre-trial release. *See United States v. Spilotro,* 786 F.2d 808, 816-17 (8th Cir. 1986); *cf Keenan v. Superior Court of Los Angeles County*, 27 Cal.4th 413, 432-33 (2002) (applying standard First Amendment principles to persons convicted of crimes after sentence completed).

Finally, it is important to remember that the government bears the burden of proof to show that the conditions at issue are constitutional, for two separate reasons. First, the government generally bears the burden at a

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[15] Indeed, *any* judicial order requiring a person to refrain from doing something is properly classified as an injunction. *See Luckett v. Panos*, 161 Cal.App.4th 77, 84-85 (2008).

bail hearing with respect to all issues other than the defendant's ties to the community. *Van Atta v. Scott*, 27 Cal.3d 424, 434-44, 446 (1980), *abrogated on other grounds by In re York*, 9 Cal.4th 1133 (1995). Thus, when the government seeks to impose a bail or OR condition it must justify the condition with evidence. *See People v. Stone*, 123 Cal.App.4th 153, 160-61 (2004) (overturning protective order under Penal Code § 136.2 because "no evidence in the record to support" it).

Second, under the First Amendment, the government *always*[16] bears the burden of proof when it seeks to restrict expressive activities. *United States v. Playboy Entertainment Group, Inc.*, 529 U.S. 803, 816-17 (2000) ("When the Government restricts speech, the Government bears the burden of proving the constitutionality of its actions."); *see Schenck*, 519 U.S. at 868. Thus, when the government seeks to impose a condition of pre-trial release that restricts activities protected by the First Amendment, it bears the burden of justifying those restrictions. *See Braun*, 449 N.W.2d at 857-58. And because such orders can infringe on a defendant's free-speech rights, it must meet this burden with clear-and-convincing evidence. *People v. Englebrecht*, 88 Cal.App.4th 1236, 1256-57 (2001). Thus, the question is whether the government can demonstrate that every aspect of

[16] Again, with the possible exception of persons serving sentences following their conviction of crimes.

the orders here at issue is clearly necessary to achieve a significant government interest. Because these are original habeas petitions raising a First Amendment question, this Court evaluates this evidence independently to see whether it justifies the orders, without deference to the superior court. *In re Darr*, 143 Cal.App.3d 500, 888 (1983); *see In re George T.*, 33 Cal.4th at 631 (First Amendment requires independent review); *In re Branch*, 70 Cal.2d 200, 203 n.1 (independent examination of evidence on habeas).

3. The orders here fail the *Madsen* test because they burden more speech than has been shown to be necessary.

First, some fundamental principles: Petitioners' protests against economic inequality and advocacy for political and social change constitute "core political speech," entitled to the highest constitutional protections. *Meyer v. Grant*, 486 U.S. 414, 421-422 (1988); *see Burson v. Freeman*, 504 U.S. 191, 196 (1992); *Mitchell v. City of New Haven*, 854 F.Supp.2d 238, 246 (D. Conn. 2012) ("The [Occupy] demonstrators' signs, flags, chanting, and art all constitute political speech in its purest form.") And the Plaza and the surrounding streets and sidewalks all constitute public fora under the First Amendment and Article I § 2 of the California Constitution, which means they are places where the right of free speech "is at its most protected." *Madsen*, 519 U.S. at 377; *see Burson*, 504 U.S. at 196-97; *Planned Parenthood*, 50 Cal.App.4th at 299; *see also Prisoners Union v.*

Department of Corrections, 135 Cal.App.3d 930, 938-40 (1982). In such spaces, our protections for free speech means that individuals, not the government, get to decide where they want to speak; a speaker "is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place." *Schneider v. New Jersey*, 308 U.S. 147 (1939); *accord Best Friends Animal Society v. Macerich Westside Pavilion Property LLC*, 193 Cal.App.4th 168, 175-78 (2011).

This is particularly true where, as here, the location is itself part of the message because of the place's history or symbolic meaning or the simple fact that others have exercised their constitutional rights to assemble there to make their voices heard together. *See Galvin v. Hay*, 374 F.3d 739, 749-53 (9th Cir. 2004). "The Occupy movement…aims…to express the desire that the economically disenfranchised become more central to American public life by literally placing the economically disenfranchised in the center of America's public spaces." *Mitchell*, 854 F.Supp.2d at 247. In addition, as discussed above, the Plaza is the historical center of Occupy Oakland and the movement continues to hold expressive events there, including weekly general assembly meetings. *See* Casillas Pet. ¶ 10; Lubin Pet. ¶ 8; Watlington Pet. ¶ 7; http://occupyoakland.org/our-general-assembly/ (last visited October 3, 2012).

Moreover, holding a political demonstration in front of city hall has a special value that the First Amendment protects, because it is "the seat of authority against which the protest is directed." *Galvan,* 374 F.3d at 752 (citation omitted); *see Berry*, 68 Cal.2d at 154 (invalidating injunction against demonstrations in front of certain government buildings because those "public buildings ... are the very places where communication of the content of the Union's grievances would be most effective"); *Prisoners Union*, 135 Cal.App.3d at 941. As Mr. Casillas puts it, "City Hall is not just associated with Occupy but is also the heart of politics in Oakland; having these meetings and discussions about social and political change there is uniquely powerful and visible to the public." Casillas Pet. ¶ 12. Access to such "government offices and public places" is so important that courts have limited authority to restrict such access even as a condition of probation imposed on somebody convicted of a felony, where the court may lawfully impose orders to punish and rehabilitate the offender. *People v. Perez*, 176 Cal.App.4th 380, 384-86 (2009) (striking condition requiring felony probationer to stay 500 feet from court unless appearance required); *cf. Van Atta*, 27 Cal.3d at 445 (pre-trial bail may not be used for punitive purposes, unlike probation or bail on appeal).

Although the magistrates did not provide any explanation of why they were imposing these broad exclusion orders,[17] the government asserts an interest in preventing future crimes and maintaining public order. But although these are valid government interests, they cannot support these orders, for four distinct reasons.

First, as *Madsen* and *Schneck* demonstrate, the mere fact that a person has been arrested and charged with a crime does not justify this type of limitation on free-speech rights. As the federal courts have long made clear in this context, "[t]he law does not permit us to infer because a person has resorted to violence on some past occasions that he will necessarily do so in the future" such that the government can deny him the right to demonstrate in a public forum. *Collin v. Chicago Park District,* 460 F.2d 754 (7th Cir.1972); *accord Million Youth March, Inc. v. Safir, 63* F.Supp.2d 381, 393-94 (S.D.N.Y. 1999). Although pervasive, repeated violations of the law may in some cases justify a court order to prevent additional violations, Petitioners here are not accused of any such pattern of

[17] The trial court's failure to explain why it was issuing these orders may itself require reversal. *See In re Pipinos,* 33 Cal.3d 189, 205 (1982) (reversing bail denial because superior court failed to provide adequate statement of reasons, even though facts could support such denial); *cf.* Watlington Pet. Ex. B at 2-5; Casillas Pet. Ex. B at 10-15; Lubin Pet. Ex. C at 11-21.

unlawful conduct. And, as the Ninth Circuit has held, without such an extreme pattern of continual unlawful behavior,

> [t]he law is clear that First Amendment activity may not be banned simply because prior similar activity led to or involved instances of violence. There are sound reasons for this rule. Demonstrations can be expected when the government acts in highly controversial ways, or other events occur that excite or arouse the passions of the citizenry. The more controversial the occurrence, the more likely people are to demonstrate. Some of these demonstrations may become violent. The courts have held that the proper response to potential and actual violence is for the government to ensure an adequate police presence, and to arrest those who actually engage in such conduct, rather than to suppress legitimate First Amendment conduct as a prophylactic measure.[18]

Even in cases that do not involve First Amendment freedoms, a single act of violence may not demonstrate that future harm is probable so as to support an injunction. Prohibitory injunctive relief is not available unless there is evidence of future harm. *See Russell v. Douvan,* 112 Cal.App.4th 399, 401, 404 (2003). That Petitioners are alleged to have broken the law on a single occasion simply does not demonstrate any need for these broad exclusion orders that infringe upon their First Amendment rights.

Second, stay-away orders are not necessary here because the government has the ability to prohibit future unlawful conduct in ways that are far less-restrictive than absolute bans on even being present in the Plaza

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[18] *Collins v. Jordan,* 110 F.3d 1363, 1372 (9th Cir. 1996) (citations omitted).

and the area around City Hall. For example, if a person released pending trial commits a new crime he or she can be arrested and the amount of bail increased. Penal Code §§ 1275, 1289. If the crimes are felonies, the sentencing enhancement of Penal Code § 12022.1 is intended to deter persons released from committing new crimes. *People v. Ormiston*, 105 Cal.App.4th 676, 687 (2003). And violation of a narrower pre-trial order - for example, one that required Petitioners to obey all laws - would itself be a crime that could result in arrest and jail time. *See* Penal Code § 166(a)(4). Because there is no evidence that these less-restrictive deterrent measures that are an inherent part of the pre-trial release system are insufficient to prevent Petitioners from engaging in wrongful acts, the imposition of the stay-away orders violates the First Amendment. *Planned Parenthood*, 50 Cal.App.4th at 302 (striking down 250 foot exclusion zone in part because "a less restrictive approach has never been tried. It must be."); *cf. Planned Parenthood Shasta-Diablo, Inc. v. Williams*, 10 Cal.4th 1009, 1025 (1995) (upholding limited order keeping protestors off of sidewalk immediately in front of clinic because a less-restrictive injunction had proved insufficient and "[f]rom their vantage across the street petitioners may convey their anti-abortion message to clinic patients and staff, without obstructing access to the clinic or physically intimidating patients in the process.").

Third, two of the orders at issue are invalid because they require Petitioners to stay away from the Plaza without any evidence that they engaged in illegal conduct in that area. Mr. Casillas is accused of committing crimes some 900 yards away from the Plaza. Mr. Lubin's alleged offenses took place approximately 660 yards and 310 yards from the Plaza, respectively, and he was arrested approximately 980 yards from the Plaza. There is no indication that either protester engaged in unlawful conduct in or within 100 yards of the Plaza. Similarly, the order in Ms. Watlington's case does not prohibit her from returning to the hotel she is accused of spray-painting. It does prohibit her from returning to the location where she was arrested (and is accused of resisting arrest), but there is little reason to think that she is any more likely to resist arrest in the Plaza (or even encounter the officer who arrested her there) than anywhere else. *Madsen* specifically holds that the First Amendment prohibits orders that keep persons from demonstrating in places where they have not previously engaged in unlawful behavior. *Madsen,* 512 U.S. at 771 (restrictions could not apply to certain locations because no evidence that protestors in that location had impeded access to clinic); *accord Huntingdon Life Sciences, Inc. v. Stop Huntingdon Animal Cruelty USA, Inc.,* 129 Cal.App.4th 1228, 1266 (2005) (overturning order prohibiting picketing of home because defendants had not previously engaged in that specific conduct).

Further, the justification for a broad exclusion zone is much weaker here than in the abortion-protestor cases described above, where the persons to be restrained had essentially laid siege to the clinics. The unlawful conduct and harassment in those cases was concerted and ongoing, even in the face of prior court orders, and was focused on people who worked or were undergoing sensitive medical procedures at the clinics as well as on the private homes of clinic staff. As noted above, the only crimes that any of Petitioners is even alleged to have committed at the Plaza, or within the exclusion zones, is that Ms. Watlington supposedly resisted arrest there. But there is no evidence to suggest that she is any more likely to encounter the officer she is accused of trying to resist while she is in the Plaza than she would be anywhere else in Oakland. In short, Petitioners here are not accused of doing – much less proved to have done –anything to anybody whose house or place of business lies within the exclusion zone, and there is little justification for keeping them away from the Plaza and City Hall.

In fact, that the stay-away orders are formulated not to prevent Petitioners from returning to the scenes of their alleged crimes but to keep them away from the Plaza demonstrates that the actual purpose of the orders is to prohibit Petitioners from associating with other Occupy supporters in the center of the Occupy Oakland movement: the *only* connection between two of the Petitioners and the Plaza is that they were participating in Occupy-related events, and the Plaza is associated with

Occupy. Not only does this flunk the *Madsen* standard, it is a direct affront to Petitioners' First Amendment right to associate with others to advance their calls for social and political change. *See NAACP v. Patterson,* 357 U.S. 449, 460-61 (1958) ("Effective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association.... [S]tate action which may have the effect of curtailing the freedom to associate is subject to the closest scrutiny."). Preventing Petitioners from demonstrating or associating with Occupy in the Plaza is not a legitimate governmental interest, much less a significant one. *See Sorrell v. IMS Health Inc.*, 131 S.Ct. 2653, 2664 (2011) (facially neutral regulation would violate First Amendment if motivated by intent of "frustrating an impending demonstration.").

Finally, the orders are overbroad. The complete exclusion orders at issue are far more restrictive than the orders invalidated in prior cases: *Madsen* invalidated as overbroad an order that merely prohibited protestors from approaching patients within 300 feet of the clinic as well as an order prohibiting "picketing, demonstrating, or using sound amplification equipment" within 300 feet of clinic staffers' residences. 512 U.S. at 773-75. This Court has labeled the 100-yard partial exclusion zone struck down in *Madsen* "exceptionally large." *Planned Parenthood Shasta-Diablo, Inc.*, 10 Cal.4th at 1025 (contrasting permissible order keeping protesters off of sidewalk immediately in front of clinic because "[f]rom

their vantage across the street petitioners may convey their anti-abortion message to clinic patients and staff, without obstructing access to the clinic or physically intimidating patients in the process."). And in *Planned Parenthood v. Operation Rescue*, the Court of Appeal held that an order forcing protestors to stay 250 feet from a physician's residence was overbroad. 50 Cal.App.4th at 301-02. The two smallest exclusion zones here at issue are equally huge as the "exceptionally large" zone struck down in *Madsen*, while the 300-yard order against Ms. Watlington encompasses an area nine times as big. As the maps attached to these petitions show, Ms. Watlington's order prohibits access to City Hall, the Dellums Federal Building (which houses the federal district court, the IRS, and the U.S. Attorney's Office, among other agencies),[19] and the Eilhu Harris State Office Building (which houses the offices of State Senator Hancock and Assembly members Skinner and Swanson).[20] If the ceaseless, concerted campaigns of violence and harassment against the patients and staff of medical clinics did not justify orders that merely restricted what the offenders could do while still being physically present within 250 or 300 feet of the clinics they were besieging, the offenses that Petitioners are

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[19] *See* http://www.justice.gov/usao/can/contact.html; http://www.irs.gov/localcontacts/article/0,,id=98259,00.html (last visited October 4, 2012).

[20] http://www.buildings.dgs.ca.gov/ElihuMHarrisbuilding/TenantList/default.htm (last visited October 4, 2012).

alleged to have committed certainly cannot justify the equally large - and in one case much larger - complete exclusion zones imposed here.

IV. CONCLUSION

Because these stay-away orders violate Petitioners' fundamental state and federal rights to free speech, this Court should order the People to show cause why this Court should not vacate the pre-trial orders that require Petitioners to stay away from the Plaza, and grant other appropriate relief. *See* Rule of Court 8.385(d) ("If the [habeas] petitioner has made the required prima facie showing that he or she is entitled to relief, the court must issue an order to show cause."). Petitioners also request a "declaration of [their] rights in the prevailing circumstances." *In re Walters,* 15 Cal.3d 738, 744 & n. 3 (1975); *see In re Pipinos,* 33 Cal.3d at 204-206 (denying writ but reversing bail order); 6 Witkin Cal. Crim. L. 3d Criminal Writs § 17, Writ Denied but Rights Declared (2000).

DATED: October __, 2012 Respectfully Submitted,

_____

Michael T. Risher
Attorney for Petitioner

CERTIFICATE OF WORD COUNT

I certify pursuant to CCR 8.204(c)(1) that the Petition for Writ of Habeas Corpus is proportionately spaced, has a typeface of 13 points or more, contains _____ words, excluding the cover, the tables, the signature block and this certificate, which is less than the total number of words permitted by the Rules of Court. Counsel relies on the word count of the Microsoft Word word-processing program used to prepare this brief.

Dated: _____

Respectfully submitted,

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By: _____

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PROOF OF SERVICE

I, the undersigned, certify that I am employed in the City of San Francisco, County of San Francisco, California; that I am over the age of eighteen years and not a party to the within action. My business address is 39 Drumm Street, California 94111. On October 23, 2012, I served the following document(s):

Verified Petition for Writs of Habeas Corpus
And
Memorandum of Points and Authorities
And
Exhibits in support of Writs of Habeas Corpus
And
Motion to Consolidate Petitions for Writs of Habeas Corpus
And
Memorandum of Points and Authorities in Support of Motion to Consolidate Petitions for Writ of Habeas Corpus

In the Following Three Cases
In re Mario Casillas, In Re Chloe Watlington and In Re Michael Lubin

on the parties stated below by the following means of service:

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I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on October 23, at San Francisco, California.

_____
Nishtha Jolly