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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

CIVIL DIVISION

**CATALIN VOSS, YUN HONG, KRISTEN BELL, and NICHOLAS MCKEOWN,**

Petitioners,

**v.**

**CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION,**

Respondent.

Case No. CPF-20-517117

**OPPOSITION TO PETITION FOR PEREMPTORY WRIT OF MANDATE, OR ALTERNATIVELY, FOR AN ALTERNATIVE WRIT OF MANDATE, TO ENFORCE THE CALIFORNIA PUBLIC RECORDS ACT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT**

Date: July 16, 2020
Time: 1:30 p.m.
Dept: 302
Judge: Hon. Ethan Schulman

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## INTRODUCTION

Under the California Public Records Act (PRA), petitioners seek an alternative writ or a peremptory writ compelling the California Department of Corrections and Rehabilitation to disclose the race and ethnicity of all individuals who appeared for parole hearings between 2002 and 2019. Petitioners specifically demand that the data be provided in a manner that reveals each person's name and race or ethnicity—that is, they seek this data in identifiable form. But petitioners fail to show that CDCR has a clear and present ministerial duty to release the data in the manner requested, or that they have a clear and present beneficial right to the performance of any duty, as necessary to obtain mandate relief.

Identifiable inmate race and ethnicity data was properly withheld under the PRA's disclosure exemptions; namely sections 6254, subdivisions (c) and (k) of the Government Code.[1] The PRA's exemptions apply here because this data constitutes criminal offender record information not subject to disclosure under the Penal Code. This data also constitutes personal information about inmates or parolees not subject to disclosure under California Code of Regulations, title 15, section 3261.2 (CCR § 3261.2), which has the force and effect of state law.

Releasing the individuals' race and ethnicity data in identifiable form also constitutes an unwarranted invasion of their personal privacy because this information was collected for a law enforcement purpose. As a result, the data cannot simply be used for another purpose or disclosed to a third party, such as to petitioners. Moreover, petitioners do not allege that they cannot perform their research by using de-identified or anonymized data, or in a manner that maintains the privacy of each individual concerned. Accordingly, because CDCR does not have a ministerial duty to provide the data to petitioners in the manner they request and petitioners otherwise have no beneficial right to the data, the petition for an alternative or a peremptory writ should be denied.[2]

Finally, petitioners have asked this Court to rule only on their PRA claims, and to not adjudicate their separate viewpoint discrimination and freedom of association claims, which they

[1] All further statutory references are to the Government Code unless otherwise specified.

[2] Petitioners have also filed a separate petition for a writ of mandate, and CDCR will file a demurrer to this petition.

base on the First Amendment and California Constitution. (Mem. of P's and A's to Petn. at p. 10, fn. 3.) Indeed, petitioners cannot bring these claims in mandate because they have failed to show that there is no plain, speedy, and adequate remedy in the ordinary course of law, by which to bring them. CDCR therefore declines to address the merits of the viewpoint discrimination and freedom of association claims at this juncture. The petition should be denied.

**LEGAL STANDARD**

A writ of mandate will lie only "to compel the performance of an act which the law specially enjoins, as a duty resulting from an office, trust, or station[.]" (Code Civ. Proc., § 1085, subd. (a).) To establish a claim for mandate relief, the petitioner must show that respondent failed to perform a "'clear, present, [and] ministerial duty'" under law, and that the petitioner has a clear, present and beneficial right to the performance of that duty. (*Timmons v. McMahon* (1991) 235 Cal.App.3d 512, 517, citation omitted; *Morris v. Harper* (2001) 94 Cal.App.4th 52, 62 [holding that a ministerial duty is "'an act that a public officer is required to perform in a prescribed manner in obedience to the mandate of legal authority'"], citation omitted.)

In mandate proceedings, a court may issue "an alternative writ which commands the respondent to act in conformity with the prayer of the petition or, alternatively, show cause before the [court] why it should not be ordered to so act." (*Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 177.) In lieu of an alternative writ, a court can also issue a peremptory writ in the first instance if respondent has received notice and an opportunity to file an opposition. (*Id.* at pp. 177-178 [courts should first request from respondent an "informal opposition prior to the issuance of an alternative or peremptory writ"].) However, a "court may issue a peremptory writ in the first instance only when petitioner's entitlement to relief is so obvious that no purpose could reasonably be served by plenary consideration of the issue[.]" (*Lewis v. Superior Court* (1999) 19 Cal.4th 1232, 1241, internal quotations and citation omitted.) Specifically, a peremptory writ is only proper when the petitioner's "entitlement [to mandate relief] is conceded [by the respondent] or when there has been clear error under well-settled principles of law and undisputed facts[.]" (*Ibid.*, internal quotations and citations omitted; *Palma v. Superior Court, supra*, 36 Cal.3d at p. 178 [holding that issuance of a peremptory writ in the first instance is

proper only if "the petition and opposing papers on file adequately address the issues raised by the petition, that no factual dispute exists, and that additional briefing that would follow issuance of an alternative writ is unnecessary to disposition of the petition"], citations omitted.)

## ARGUMENT

### I. PETITIONERS FAIL TO SHOW THAT CDCR HAS A CLEAR AND PRESENT LEGAL DUTY UNDER THE PRA TO DISCLOSE IDENTIFIABLE INMATE RACE AND ETHNICITY DATA.

Given the PRA exemptions that apply to the sought data, petitioners' request for an alternative or a peremptory writ should be denied.

#### A. The Right to Disclosure of Public Records Under the PRA Is Not Absolute Given Countervailing Privacy Rights.

The PRA provides for the disclosure of public records maintained by state and local agencies. (Gov. Code, § 6260 et seq.) But the "right of access to public records under the [PRA] is not absolute." (*L.A. United School Dist. v. Superior Court* (2014) 228 Cal.App.4th 222, 238 (*LAUSD*), citing *Copley Press Inc. v. Superior Court* (2006) 39 Cal.4th 1272, 1282.) Indeed, the PRA "bespeaks legislative concern for individual privacy as well as disclosure 'concerning the conduct of the people's business.'" (*Black Panther Party v. Kehoe* (1974) 42 Cal.App.3d 645, 652 (*Black Panther Party*).) To this end, the PRA contains specific disclosure exemptions "designed to protect the privacy of persons whose data or documents come into government possession." (*Ibid.* ["The objectives of the Public Records Act thus include preservations of islands of privacy upon the broad seas of enforced disclosure"].)

As the following analysis details, several PRA disclosure exemptions apply here to protect the privacy rights of the individuals whose personal information petitioners seek.

#### B. Identifiable Inmate Race and Ethnicity Data Was Properly Withheld Under Section 6254, Subdivision (k) of the PRA, Which Incorporates Statutory and Regulatory Disclosure Prohibitions.

Under section 6254, subdivision (k) of the PRA, a state agency is not required to release information or public "[r]ecords, the disclosure of which is exempt or prohibited pursuant to

federal or state law[.]"[3] (Gov. Code, § 6254, subd. (k).) In effect, the PRA "incorporates other [disclosure] prohibitions established by law." (*Long Beach Police Officers Assn. v. City of Long Beach* (2014) 59 Cal.4th 59, 61, internal quotations and citations omitted.)

Here, as explained below, inmate race and ethnicity data in identifiable form constitutes criminal offender record information prohibited from disclosure under the Penal Code. (Pen. Code, §§ 11076, 13202.) This data is also prohibited from being disclosed under CCR § 3261.2 because it constitutes "inmate or parolee" data, which cannot be released without a valid written authorization from the individual inmate or parolee. Given these disclosure prohibitions, CDCR properly withheld the sought data under section 6254, subdivision (k) of the PRA.

**1. The Sought Data Constitutes Criminal Offender Record Information Under the Penal Code, and Thus, CDCR Was Barred From Releasing It.**

CDCR was compelled to withhold identifiable inmate race and ethnicity data because it constitutes criminal offender record information. As codified in the Penal Code, the Legislature has established "a comprehensive legislative scheme or pattern of criminal record dissemination which preempts . . . general legislation such as the Public Records Act." (*Younger v. Berkeley City Council* (1975) 45 Cal.App.3d 825, 832, emphasis added.) The Penal Code strictly governs the collection and dissemination of criminal offender record information, and imposes criminal penalties for its unauthorized dissemination and possession. (Pen. Code, §§ 11075 et seq., 11105 et seq., 13200 et seq.; *Housing Auth. of the County of Sacramento v. Van de Kamp* (1990) 223 Cal.App.3d 109, 112 (*Van de Kamp*) [holding "the Legislature has narrowly defined the instances in which [criminal offender record] information may be disseminated"].) The term "'criminal offender record information' means records and data compiled by criminal justice agencies for the purposes of identifying criminal offenders" and documenting their criminal history. (Pen. Code, §§ 11075, subd. (a), 13102.) A person's race or ethnicity is among the basic personal identification data that a criminal justice agency, such as CDCR, must collect as criminal offender

[3] This section provides in full: "Except as provided in Sections 6254.7 and 6254.13, this chapter does not require the disclosure of any of the following records . . . (k) Records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege." (Gov. Code, § 6254, subd. (k).)

record information. (*Id.* at §§ 13125, 13101, subd. (a).)

Here, inmate race and ethnicity data constitutes criminal offender record information under the Penal Code because CDCR collected this data along with each individual's criminal histories for the purpose of identifying them. (Exh. 1, Decl. by. J. Campbell at ¶¶ 4-5; Pen. Code, §§ 11075, subd. (a), 13102.) As a criminal justice agency, CDCR was "required to record 'criminal offender record information' in a form authorized by statute.'" (*Westbrook v. County of L.A.* (1994) 27 Cal.App.4th 157, 160-161 (*Westbrook*), citing Pen. Code, § 13125.) Specifically, to obtain and verify inmates' race and ethnicity data and their criminal histories, CDCR staff reviewed several sources. (Exh. 1 at ¶ 5.) They reviewed the individuals' Life Cycle and Criminal Identification and Information rap sheet, which was generated and provided by the California Department of Justice through its California Law Enforcement Telecommunications Systems database. (*Ibid.*) CDCR staff also reviewed the individuals' probation reports, abstracts of judgment, and jail records to confirm their race, ethnicity, and criminal history data. (*Ibid.*) This data was then inputted into CDCR's electronic database (Strategic Offender Management System, or SOMS), so that correctional staff could readily identify the inmates. (Exh. 1 at ¶ 5.)

Citing to *Weaver v. Superior Court* (2014) 224 Cal.App.4th 746, 749-750, petitioners suggest they are entitled to inmate race and ethnicity data because this information may be gleaned from the individuals' probation reports that are filed in the courts. (Mem. of P's and A's of Petn. at p. 15.)[4] But Penal Code section 1203.05 provides that probation reports are confidential and are not publicly discloseable after 60 days from the date the defendant's judgment is pronounced. (Pen. Code, § 1203.05, subd. (a).) After this 60-day period, members of the public seeking probation reports, or information contained in those reports, must petition the court so the defendant has notice and an opportunity to object to the release of his or her personal information. (*Id.* at § 1203.05, subd. (c); *People v. Conner* (2004) (2004) 115 Cal.App.4th 669, 686 [finding that 60 days following judgment, a defendant's probation report containing personal information is "no longer generally available or still a matter of *public*

[4] While abstracts of judgment are also filed with the court, they do not contain race and ethnicity data, and petitioners do not contend otherwise.

record"].) In short, under Penal Code section 1203.05, CDCR is precluded from disclosing probation reports here, including any race and ethnicity data that may be therein, because those reports are no longer public records.

Additionally, the PRA specifically provides that "criminal offender record information" may be withheld given the restrictions on the dissemination of such information under the Penal Code. (Gov. Code, §§ 6276, 6276.12, citing Pen. Code, §§ 11076, 13202.) Penal Code section 11076 states that criminal offender record information "shall be disseminated, whether directly or through any intermediary, only to such *agencies* as are, or may subsequently be, authorized access to such records by statute." (Pen. Code, § 11076, emphasis added.) In short, under the Penal Code's "complementary and interlocking" provisions, only certain agencies or persons may access criminal offender record information for a legitimate governmental purpose. (*Loder v. Municipal Court* (1976) 17 Cal.3d 859, 876; *Younger v. Berkeley City Council, supra*, 45 Cal.App.3d at pp. 830-833 [invaliding city ordinance that allowed individuals to access their own arrest records because it conflicted with Penal Code].)

For example, in *Westbrook*, a private citizen sought criminal offender data, including race and ethnicity information, about a large number of defendants, so he could then compile and sell this information. (*Westbrook, supra,* 27 Cal.App.4th at pp. 160-161.) The court in *Westbrook* held that the sought data constituted criminal offender record information that was not subject to disclosure, where the private citizen failed to show he was a person or entity specifically authorized under the Penal Code to receive such information. (*Id.* at pp. 166-167) As in *Westbrook*, petitioners here are not agency employees authorized under the Penal Code to receive criminal offender record information. (*Ibid.*; Pen. Code, §§ 11105, subd. (b), 11076.) Releasing the data to petitioners could thus subject the responsible CDCR employee to criminal liability. (Pen. Code, §§ 11141, 11142 [it is a misdemeanor for any person authorized to receive criminal offender record information to knowingly furnish such information to a person not authorized to receive it].) Petitioners could also be held criminally liable for the unauthorized receipt or possession of such data. (*Id.* at § 11143 [it is a misdemeanor for an unauthorized person to receive or possess criminal offender record information].) In short, criminal offender record

information is "virtually treated as contraband," as only authorized agencies or persons can receive and exchange such information. (*Loder v. Municipal Court, supra*, 17 Cal.3d at p. 873.)

Further, as the court held in *Younger v. Berkeley City Council*, "the restrictions upon the release of [criminal offender record information] are so carefully set out in the Penal Code . . . that it is inconceivable that the general terms of the Public Records Act were intended to render them void." (*Younger v. Berkeley City Council, supra*, 45 Cal.App.3d at p. 832; *Van de Kamp, supra*, 223 Cal.App.3d at p. 116 [holding that "nondisclosure of criminal records is the general rule," "exceptions [under the Penal Code] are to be narrowly construed," and "all doubts are resolved against disclosure"].) Consequently, under section 6254, subdivision (k) of the PRA, CDCR properly withheld the data as constituting criminal offender record information.

**2. Identifiable Inmate Race and Ethnicity Data Constitutes "Inmate or Parolee Data" That Is Prohibited From Disclosure Under CCR § 3161.2, Which Has the Force and Effect of State Law.**

CCR § 3261.2 provides a separate basis for nondisclosure of the sought data under section 6254, subdivision (k) of the PRA. Again, Government Code section 6254, subdivision (k) exempts "records, the disclosure of which is exempt or *prohibited* pursuant to federal or state law." (Gov. Code, § 6254, subd. (k), emphasis added.) As the California Supreme Court has held, a duly promulgated regulation, such as CCR § 3261.2, has the force and effect of state law. (*Agricultural Labor Relations Bd. v. Superior Court* (1976) 16 Cal.3d 392, 401; *In re Lomax* (1998) 66 Cal.App.4th 639, 643; *Homan v. Gomez* (1995) 37 Cal.App.4th 597, 601.)

CCR section 3261.2, which has the force and effect of state law, prohibits CDCR from disclosing to the public all but a few specific categories of "inmate or parolee data" about current and former inmates. (Cal. Code Regs., tit. 15, § 3261.2, subds. (d), (e); *Agricultural Labor Relations Bd. v. Superior Court, supra*, 16 Cal.3d at p. 401.) Neither inmates' race nor ethnicity are among the categories of "inmate or parolee" data that CDCR is authorized to release under CCR section 3261.2, without the inmate's or parolee's written authorization. Petitioners also have not shown that they obtained or sought to obtain written authorizations from the inmates or parolees whose individual race or ethnicity they seek. (See generally Petn.) Under CCR § 3261.2, therefore, CDCR withheld disclosure of the data to protect the personal information of

the individuals concerned. (*Ibid.*) Because CCR § 3261.2 constitutes a prohibition on the release of "inmate or parolee data," CDCR properly withheld the data under section 6254, subdivision (k) of the PRA.

### C. Under Section 6254, Subdivision (c) of the PRA, Identifiable Inmate Race and Ethnicity Data Was Also Properly Withheld Because Disclosing It Constitutes an Unwarranted Invasion of Personal Privacy.

The current and former inmates here have a privacy interest in their personal information contained in prison records, where there would be no limits on how that information could be used or disseminated once released via a PRA request. Article I, section 1, of the California Constitution includes "privacy" among the inalienable rights guaranteed all citizens. In "enacting the [PRA], the Legislature was 'mindful of the right of individuals to privacy.'" (*LAUSD, supra*, 228 Cal.App.4th at p. 238, citing Gov. Code, § 6250.) Thus, under section 6254, subdivision (c) of the PRA, disclosure is not required if the records sought are "[p]ersonnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy." (Gov. Code, § 6254, subd. (c).) "The term 'similar files' has been interpreted to 'have broad, rather than a narrow, meaning.'" (*LAUSD, supra*, 228 Cal.App.4th at p. 239, citation omitted.) "They need not contain intimate details or highly personal information." (*Ibid.*) Rather, the "files may simply be government records containing 'information which applies to a particular individual.'" (*Ibid.*, citation omitted.)

Moreover, a state agency violates an individual's constitutional right to privacy if it engages in the "improper use of information properly obtained for a specific purpose," where that information is used for "another purpose" or disclosed to "some third party." (*Porten v. Univ. of S.F.* (1976) 64 Cal.App.3d 825, 830-832 [holding plaintiff stated constitutional right to privacy claim where university disclosed his academic record to state scholarship commission without plaintiff's prior consent], citing *White v. Davis* (1975) 13 Cal.3d 757, 775, internal quotations omitted.) If a court finds that disclosure of public records containing personal information could violate an individual's right to privacy, the court must balance the public's interest in disclosure against the private interests in nondisclosure. (*LAUSD, supra*, 228 Cal.App.4th at p. 239.) The records need not be disclosed if the individual's privacy rights outweigh the public's interest in

disclosure. (*Ibid.*)

Here, because CDCR collected the race and ethnicity data for the specific purpose of identifying the individuals while they were in CDCR's custody (Pen. Code, § 13125), it would violate their constitutional right to privacy if CDCR were to use it for another purpose or disclose it to a third party, like petitioners. (*Porten v. Univ. of S.F., supra*, 64 Cal.App.3d at p. 830-832; *White v. Davis, supra*, 13 Cal.3d at p. 775.) Accordingly, CDCR properly withheld the data under section 6254, subdivision (c) of the PRA, as disclosure would constitute an unwarranted invasion of the individuals' personal privacy.

Indeed, as in *Sander v. State Bar of California*, the individuals here have "some expectation of privacy" over prison files containing their personal information. (*Sander v. State Bar of Cal.* (2013) 58 Cal.4th 300, 306, 310-311 (*Sander I*).) In their PRA request, the researchers in *Sander I* likewise sought the race and ethnicity data of state bar applicants. (*Ibid.*) But to prevent a violation of the bar applicants' privacy rights, the researchers there sought this information in a "'de-identified' form" only, or in a manner that did not reveal the "applicant's names or other information that could be used to identify an individual." (*Ibid.*) After the California Supreme Court remanded the case to the lower court for further proceedings, the researchers remained mindful of the privacy rights of the bar applicants. (*Sander v. State Bar of Cal.* (2018) 26 Cal.App.5th 651, 658 (*Sander II*).) The researchers thus went to great lengths to maintain the anonymity of the sought race and ethnicity data, proposing "four different protocols . . . to de-identify or 'anonymize'" the data to ensure it could not be linked to any particular "individual or small group of individuals." (*Ibid.*)

The privacy rights enjoyed by bar applicants apply no less to the individuals here, whose personal information is contained in prison files. (*Sander I, supra*, 58 Cal.4th at pp. 310-311; *Sander II, supra*, 26 Cal.App.5th at p. 658.) But unlike the researchers in *Sander I* and *II*, petitioners here seek personal information in a manner that would make apparent the identities of the current and former inmates. (*Sander I, supra*, 58 Cal.4th at pp. 310-311; *Sander II, supra*, 26 Cal.App.5th at p. 658.) These individuals have no notice of petitioners' PRA request or an opportunity to object to the disclosure of their personal information, which would be released

under the PRA with no restrictions on its use or dissemination. (*City of San Jose v. Superior Court* (1999) 74 Cal.App.4th 1008, 1018 ["once a public record is disclosed to the requesting party, it must be made available for inspection by the public in general"]; *Black Panther Party, supra*, 42 Cal.App.3d at p. 656 [holding that under the PRA, "records are either completely public or completely confidential"].) Some of the individuals, therefore, may have strong objections to the release and publication of their race or ethnicity, along with their crimes and names, because it could cause them public embarrassment or shame within their respective communities. (*Black Panther Party, supra*, 42 Cal.App.3d at p. 654 ["[o]verbroad claims to disclosure may threaten the privacy of individual citizens and accelerate the advent of the Orwellian state"].) Certainly, for those individuals who have already been released from prison and are rebuilding their lives, they have a strong privacy right "'to be let alone'" and to not have details of their personal lives published for the world to see for all time. (*Id.* at p. 651, citation omitted; see *LAUSD, supra*, 228 Cal.App.4th at p. 245 [holding that courts look "to human experience in order to form conclusions on the likely effect of disclosure"].)

While there is a public interest in studying the state's parole decisions, petitioners do not specifically allege that it is necessary for them to learn the names of these individuals to conduct their research. (See generally Petn.) As noted above, the researchers in *Sander I* and *Sander II* also sought race and ethnicity data contained in government files, but they could have readily conducted their research by obtaining it in de-identified or anonymized form. (*Sander I, supra*, 58 Cal.4th at pp. 310-311; *Sander II, supra*, 26 Cal.App.5th at p. 658.) In short, while there is a public interest in shedding light on how parole decisions are made, there is a minimal public interest in knowing (and potentially publishing) the specific names and race and ethnicity of each current and former inmate involved. (*LAUSD, supra*, 228 Cal.App.4th at p. 242.) The privacy rights of these individuals thus outweigh the minimal public interest, where petitioners do not allege that identifiable race and ethnicity data is necessary to conduct their research. (See *ibid.*)

Accordingly, CDCR properly withheld the data under section 6254, subdivision (c) of the PRA, as disclosure constitutes an unwarranted invasion of personal privacy.

## II. NOR DO PETITIONERS HAVE A SEPARATE CONSTITUTIONAL RIGHT TO IDENTIFIABLE INMATE RACE AND ETHNICITY DATA.

There is a "connection between First Amendment freedoms and access to government files," but "judicial decisions have not yet assigned a constitutional ground for this right of access." (*Black Panther Party, supra*, 42 Cal.App.3d at p. 654.) Instead, the Legislature has "balanced competing interests and demarcated a limited area of permissive disclosure" through the PRA, which contains constitutionally valid disclosure exemptions. (*Ibid.*) Petitioners thus have no freestanding constitutional right of action by which to seek the data. (*Ibid.*)

## III. PETITIONERS CANNOT RAISE THEIR VIEWPOINT DISCRIMINATION AND FREEDOM OF ASSOCIATION CLAIMS IN MANDATE BECAUSE THEY HAVE ALTERNATIVE LEGAL REMEDIES.

Petitioners ask this Court to rule only on their PRA claims, and have properly asked this Court to refrain from ruling on their separate viewpoint discrimination and freedom of association claims, which they base on the First Amendment and California Constitution. (Mem. of P's and A's to Petn. at p. 10, fn. 3.) Indeed, petitioners cannot bring these claims in mandate because they have failed to demonstrate that they have no "plain, speedy, and adequate remedy, in the ordinary course law." (Code Civ. Proc., § 1086; *Flores v. Dept. of Corrections and Rehabilitation* (2014) 224 Cal.App.4th 199, 205.) The burden is on the petitioners to show that they have no adequate, alternative legal remedy. (*Phelan v. Superior Court* (1950) 35 Cal.2d 363, 366.) And here, petitioners have not alleged or shown that they cannot raise their viewpoint discrimination and freedom of association claims in an ordinary civil action, or in a complaint for declaratory or injunctive relief. (*Ibid.*) Mandate relief is therefore unavailable. (Code Civ. Proc., § 1086.)

## IV. PETITIONERS FAIL TO STATE A BASIS FOR WRIT RELIEF.

Because CDCR properly withheld identifiable inmate race and ethnicity data under section 6254, subdivisions (c) and (k) through incorporation of the disclosure prohibitions within the Penal Code and CCR § 3261.2, petitioners fail to state a basis for mandate relief. That is, petitioners have failed to show that CDCR has a clear and present ministerial duty to release inmate race and ethnicity data in identifiable form under the PRA. (Code Civ. Proc., § 1085,

subd. (a); *Timmons v. McMahon, supra*, 235 Cal.App.3d at p. 517.) Nor have petitioners shown that their entitlement to relief is apparent based on "well-settled principles of law and undisputed facts," as necessary to obtain a peremptory writ in the first instance. (*Lewis v. Superior Court, supra*, 19 Cal.4th at p. 1241.) Accordingly, this Court should deny petitioners' request for an alternative or a peremptory writ, and should specifically deny their prayer for a permanent injunction barring CDCR from withholding identifiable inmate race and ethnicity data. (Code Civ. Proc., §§ 1085, subd. (a), 1088.) Further, petitioners' request for reimbursement of court costs and attorneys' fees should also be denied given the valid grounds here for opposing their PRA request. (Gov. Code, § 6259, subd. (d).)

## CONCLUSION

The petition for an alternative or a peremptory writ should be denied because petitioners have failed to establish that CDCR has a legal duty to provide identifiable inmate race and ethnicity data, or that they have a beneficial right to the performance of any ministerial duty. Nor can petitioners raise their viewpoint discrimination and freedom of association claims in mandate, where they have alternative legal remedies by which to raise these claims.

Dated: July 9, 2020

Respectfully Submitted,

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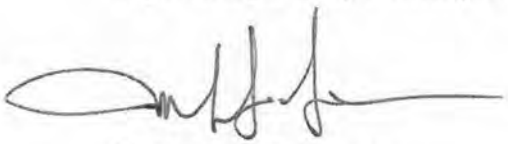

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# EXHIBIT 1

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

CIVIL DIVISION

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| **CATALIN VOSS, YUN HONG, KRISTEN BELL, and NICHOLAS MCKEOWN,**<br><br>Petitioners,<br><br>**v.**<br><br>**CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION,**<br><br>Respondent. | Case No. CPF-20-517117<br><br>**DECLARATION OF JANEL CAMPBELL IN SUPPORT OF OPPOSITION TO PETITION FOR A PEREMPTORY OR ALTERNATIVE WRIT OF MANDATE** |

I, Janel Campbell, declare:

1. The following facts are based on my own personal knowledge, except for those facts based on information and belief, which I believe to be true. If called to testify, I could and would competently testify about this information.

2. For the past 19 years, I have been employed by the California Department of Corrections and Rehabilitation. For the past year and eight months, I have served as a

correctional case records administrator within CDCR's Case Records Services unit. Before this, I served as a staff services manager, an associate governmental program analyst, and a correctional case records supervisor, among other positions.

2. CDCR's Case Records Services is responsible for reviewing and maintaining accurate inmate records to ensure, among other things, that inmates are discharged from custody and considered for parole on a timely basis. As a correctional case records administrator for Case Records Services, I assist the Chief of this unit in formulating statewide policies and procedures on how to process inmate records. I review statutes and court orders regarding inmates' convictions, the length of their prison sentences, and their eligibility for release on parole. I also review CDCR regulations on what types of custody credits may be awarded to inmates for completion of educational and rehabilitation programs, as these credits accelerate the inmates' release or parole-eligibility dates. I also review Board of Parole Hearings regulations governing which inmates are eligible for parole consideration and how to calculate their parole-eligibility dates, among other duties.

3. Based on this review, I helped to draft statewide policies and procedures on how to gather and verify inmates' personal identification information, ascertain their commitment offenses and sentences, record their criminal histories, and calculate their release or parole-eligibility dates. I train case records staff at the various prisons on these and other issues, and serve as their supervisor.

4. I am familiar with how case records staff at the various prisons review and process inmate records. When inmates are transferred from the county jails to CDCR following their convictions, case records staff review and document the inmates' personal identification information, controlling offenses and sentences, and criminal histories for the purpose of identifying the inmates while they are in CDCR's custody. For personal identification purposes, case records staff must collect and record the inmates' full names, dates of birth, and race or ethnicity, among other information.

5. To determine the inmates' race and ethnicity and criminal histories, case records staff review several sources of information. This includes reviewing the inmates' Life Cycle and

Criminal Identification and Information rap sheet, which is generated and maintained by the California Department of Justice (DOJ) through its California Law Enforcement Telecommunications System (CLETS) database. Only authorized case records staff can access DOJ's CLETS database to obtain such highly confidential criminal offender record information. Other sources that case records staff review to determine and verify inmates' race and ethnicity and criminal histories are the inmates' probation reports, abstracts of judgment, and jail records. Once case records staff obtains race and ethnicity and criminal history data for each inmate, they manually input this information into CDCR's electronic database (Strategic Offender Management System, or SOMS), so that correctional staff can readily identify the inmates.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on June 29 2020 in Sacramento, California.

Janel Campbell
Correctional Case Records Administrator
Case Records Services, CDCR

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