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8 UNITED STATES DISTRICT COURTS
9 EASTERN DISTRICT OF CALIFORNIA
10 AND NORTHERN DISTRICT OF CALIFORNIA
11 UNITED STATES DISTRICT COURT COMPOSED OF THREE JUDGES
12 PURSUANT TO SECTION 2284, TITLE 28 UNITED STATES CODE

13 RALPH COLEMAN, et al.,
14 Plaintiffs,

15 v.

16 GAVIN NEWSOM, et al.,
17 Defendants.

Case No. 2:90-CV-00520-KJM-DB
THREE JUDGE COURT

18 MARCIANO PLATA, et al.,
19 Plaintiffs,

20 v.

21 GAVIN NEWSOM,
22 Defendants.

Case No. C01-1351 JST
THREE JUDGE COURT

**DECLARATION OF JAMES AUSTIN
PH.D. IN SUPPORT OF PLAINTIFFS'
REPLY BRIEF**

1 I, JAMES AUSTIN PH.D., declare:

2 1. I am the Senior Policy Analyst for the JFA Institute, a nationally recognized
3 criminal justice and corrections research organization. I have personal knowledge of the
4 matters set forth herein, and if called as a witness, I could and would competently so
5 testify. I make this declaration in support of Plaintiffs' reply brief on their Emergency
6 Motion.

7 2. I received my Ph.D. in sociology from the University of California at Davis
8 in 1980. I am currently the President of JFA Institute, a corrections consulting firm. Prior
9 to that, I was the Director of the Institute of Crime, Justice and Corrections at the George
10 Washington University, and Executive Vice President for the National Council on Crime
11 and Delinquency. I began my career in corrections with the Illinois Department of
12 Corrections in 1970 at Stateville Penitentiary.

13 3. I have implemented inmate classification and risk assessment systems for
14 juvenile and adult custody in over 30 local and state correctional systems.

15 4. I have implemented parole guidelines and related risk assessment systems in
16 a number of states and local jurisdictions including most recently Maryland, Texas,
17 Arkansas, Kentucky, Illinois, South Carolina, Charleston SC, and New Orleans, Louisiana.

18 5. I have assisted a number of states and local jail systems in identifying
19 policies and procedures that have resulted in a safe reduction in their prison and jail
20 systems.

21 6. I correctly argued that the CDCR prison population could be safely reduced
22 from over 170,000 inmates in 2007 to 120,000 without increasing crime rates.

23 7. I was the primary author for the National Institute of Corrections (NIC)
24 manuscript on Objective Prison and Jail Classification Systems, which provides details on
25 the same types of classification systems employed by the California Department of
26 Corrections.

27 8. I have served as the project director of the corrections options technical
28 assistance program of the Bureau of Justice Assistance (BJA), an arm of the U.S.

1 Department of Justice that provides a wide variety of assistance to local jails, probation,
 2 parole, and prison systems.

3 9. In 1991, I was named by the American Correctional Association as its
 4 recipient of the Peter P. Lejin's Research Award. In 1999, I received the Western Society
 5 of Criminology Paul Tappin award for outstanding contributions in the field of
 6 criminology. In 2009, I was the recipient of the Marguerite Q. Warren and Ted B. Palmer
 7 Differential Intervention Award, American Society of Criminology, Corrections and
 8 Sentencing Division.

9 10. In 2006, I was appointed to the Expert Panel on Adult Offender and
 10 Recidivism Reduction Programming, California Department of Corrections and
 11 Rehabilitation.

12 11. The issue to be addressed is whether the current CDCR prison population
 13 can be safely reduced for the purpose of lowering the risk of infection from the COVID-19
 14 virus for inmates and staff.

15 12. Regarding the question of whether prison populations can be safely lowered
 16 without increasing the crime rates or recidivism rates, the scientific answer is clearly yes.
 17 As shown in Table 1, a number of states (including California) have lowered both their
 18 prison populations and crime rates.

19 **Table 1. Prison Population and Crime Rate Reductions in New York, California,
 20 New Jersey, and Maryland**

	NY	CA	NJ	MD
Year Reforms Initiated	1999	2006	1999	2008
Prison Population Before Reform	72,899	175,512	31,493	23,239
2017 Prison Population	49,461	131,039	19,585	19,367
Prison Reduction	-23,438	-44,473	-11,908	-3,872
% Reduction	-32%	-25%	-38%	-17%
UCR Crime Rate Before Reform	3,279	3,743	3,400	4,126
2017 Crime Rate	1,871	2,946	1,785	2,722
Crime Rate Reduction	-1,408	-797	-1,615	1,404
% Reduction	-43%	-21%	-48%	-34%

21 Sources: Bureau of Justice Statistics, Prisoners Series and UCR Crime in the United States series.

1 13. A closer look at California shows that all forms of corrections have declined
2 since 2007 as a number of reforms have been implemented (largely realignment and
3 Propositions 47 and 57). At the same time, crime rates per 100,000 population have
4 declined (Table 2).

5 14. This is not because reductions in correctional populations “caused” crime
6 rates to decline. Rather we now know that crime rates and the rates of incarceration are
7 largely unrelated to one another. Crime rates are more associated with the far more
8 powerful demographic (aging population, lower and delayed birth rates, smaller
9 households, declining juvenile arrests) and economic (lower interest rates, low inflation)
10 factors that dwarf the impact of incarceration.¹

11 **Table 2. Changes in California Corrections Populations and Crime Rates**
12 **2007-2019**

Year	CDCR Prison	Jail	Parole	Felony Probation	Grand Totals	Crime Rates	Violent Rates
2007	173,312	83,184	126,330	269,384	652,210	3,556	523
2008	171,085	82,397	125,097	269,023	647,602	3,461	506
2009	168,830	80,866	111,202	266,249	627,147	3,204	473
2010	162,821	73,445	94,748	255,006	586,020	3,070	440
2011	160,774	71,293	90,813	247,770	570,650	2,995	411
2012	133,768	80,136	69,453	249,173	532,530	3,185	424
2013	132,911	82,019	51,300	254,106	520,336	3,054	403
2014	134,433	82,896	44,499	244,122	505,950	2,838	396
2015	127,421	73,045	45,473	221,243	467,182	3,056	428
2016	129,416	73,174	43,814	190,686	437,090	2,995	445
2017	129,192	73,548	45,261	183,623	431,624	2,959	453
2018	124,837	74,377	47,370	166,745	413,329	2,828	447
2019	124,027	73,047	51,923	NA	NA	NA	NA
Change	-49,285	-8,807	-78,960	-102,639	-238,881	-728	-76

13 15. Ironically, these reductions in the CDCR population have created a larger
14 pool of inmates who are assessed as low risk to recidivate. Based on a 2009 data file I
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17 ¹ Austin, James, Todd Clear, and Richard Rosenfield. 2019. *Explaining the Past and*
18 *Projecting Future Crime Rates*: Washington, DC: JFA Institute.

1 received from the CDCR, there were approximately 164,000 inmates who were scored on
2 the Static Risk Assessment instrument. Of that population, 35% were scored as Level 1 or
3 Low Risk. The most recent publication by the CDCR shows that the percentage scored as
4 Low Risk has increased to 50% even as the prison population has declined by about 50,000
5 inmates.

6 16. The declining prison population and the increased percentage of low risk
7 inmates is the result of Realignment, Proposition 47 and Proposition 57 targeting prisoners
8 with non-violent and drug possession crimes, which tend to have higher recidivism rates,
9 and providing credits for participation in certain programs.

10 17. The CDCR's Static Risk Assessment (CSRA) instrument is a statistically
11 valid instrument that incorporates the nature of the commitment offense, including whether
12 an individual has been convicted of a violent crime.

13 18. Mr. Green in his declaration makes the analytic mistake of associating a
14 current violence conviction as a predictor of future recidivism or future violent crimes. The
15 relationship is just the opposite. CDCR's own data show that people convicted of violent
16 crimes have significantly lower recidivism rates.

17 19. The CDCR's own publication on recidivism shows an inverse relationship
18 between the severity of the sentencing offense and recidivism rates.² Specifically,
19 prisoners with a conviction for violent crimes have reconviction rates that are about half
20 the rates of the prisoners convicted of non-violent crimes.³

21 20. Further, for all of California's released prisoners, only 7% are convicted for
22 violent crime after release.⁴

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24 ² CDCR Recidivism Report for Offenders Released From The California Department Of
Corrections And Rehabilitation In Fiscal Year 2014-15. Figure 12, p. 23

25 ³ CDCR Recidivism Report For Offenders Released From The California Department Of
26 Corrections And Rehabilitation In Fiscal Year 2014-15. Figure 12, p. 23.

27 ⁴ CDCR Recidivism Report For Offenders Released From The California Department Of
28 Corrections And Rehabilitation In Fiscal Year 2014-15. Page 10.

