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FILED
Clerk of the Superior Court

SEP 22 2022

By: A. Cabrales

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO
CENTRAL DIVISION

**IN RE: FINDINGS TO SUPPORT GOOD
CAUSE TO CONTINUE CRIMINAL CASES**

**GENERAL ORDER OF THE PRESIDING
DEPARTMENT**
ORDER NO. 092222-64

I. INTRODUCTION

“The right to a speedy trial is a fundamental right guaranteed by both the Sixth Amendment to the United States Constitution and article I, section 15 of the California Constitution. [Citation.] The purpose of the speedy trial right is ‘(i) to prevent oppressive pretrial incarceration; (ii) to minimize anxiety and concern of the accused; and (iii) to limit the possibility that the defense will be impaired.’ [Citation.]” (*Hernandez-Valenzuela v. Superior Court* (2022) 75 Cal.App.5th 1108, 1122 (*Hernandez-Valenzuela*); *Elias v. Superior Court* (2022) 78 Cal.App.5th 926, 936 (*Elias*)).

In addition, California has several statutory speedy trial provisions, which are ‘supplementary to and a construction of’ the state constitutional speedy trial guarantee. [Citations.]” (*Elias, supra*, 78 Cal.App.5th at p. 936.)

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1 For example, Penal Code section 859b¹ provides that a preliminary hearing “shall be held
2 within 10 court days of the date the defendant is arraigned or pleads, whichever occurs later, or ...
3 the date criminal proceedings are reinstated.” When the defendant is in custody, the magistrate
4 “shall dismiss the complaint” if the preliminary hearing is set more than “10 court days from the
5 time of the arraignment, plea, or reinstatement of criminal proceedings,” unless the “defendant
6 personally waives his or her right to preliminary examination within the 10 court days” or the
7 “prosecution establishes good cause for a continuance.” (§ 859b; see also *People v. Standish* (2006)
8 38 Cal.4th 858, 870 [Section 859b “is one of a number of statutes ‘that are supplementary to and a
9 construction of the constitutional right to a speedy trial.”]

10 Section 1382 states that, “in a felony case, the court shall dismiss the action when a
11 defendant is not brought to trial within 60 days of his or her arraignment on an indictment or
12 information, unless (1) the defendant enters a general waiver of the 60-day trial requirement, (2) the
13 defendant requests or consents (expressly or impliedly) to the setting of a trial date beyond the 60-
14 day period (in which case the defendant shall be brought to trial on the date set for trial or within 10
15 days thereafter), or (3) ‘good cause’ is shown.” (*Hernandez-Valenzuela, supra*, 75 Cal.App.5th at p.
16 1122 [citation and internal quotations omitted]; see also § 1382(a)(2).) The rules for misdemeanor
17 and infraction cases are the same, but with a shortened time limit of 30 or 45 days, depending on
18 whether the defendant is in custody. (See § 1382(a)(3).) “[I]n making its good-cause
19 determination, a trial court must consider all of the relevant circumstances of the particular case,
20 ‘applying principles of common sense to the totality of the circumstances....’ [Citations.]”
21 (*Hernandez-Valenzuela, supra*, 75 Cal.App.5th at p. 1123.)

22 In considering whether good cause to continue a criminal case exists, it has long been the
23 rule that “unreasonable delay[s] in run-of-the-mill criminal cases cannot be justified by simply
24 asserting that the public resources provided by the State’s criminal-justice system are limited and
25 that each case must await its turn.” (*People v. Johnson* (1980) 26 Cal.3d 557, 570 (*Johnson*).)
26 Such delays have been characterized by the reviewing courts as “chronic congestion.” (*Id.* at p.
27 571; see also *Valenzuela, supra*, 75 Cal.App.5th at p. 1125.)
28

¹ All further references are to the Penal Code unless otherwise stated.

1 However, “while delay because of a failure to provide sufficient resources to dispose of the
2 usual number of cases within the speedy trial limits is not excused, the standard does recognize
3 congestion as justifying added delay when ‘attributable to *exceptional circumstances*. Although it is
4 fair to expect the state to provide the machinery needed to dispose of the usual business of the
5 courts promptly, it does not appear feasible to impose the same requirements when certain *unique*,
6 *nonrecurring events have produced an inordinate number of cases for court disposition.*’ [Citation
7 omitted.]” (*Johnson, supra*, 26 Cal.3d at p. 571 [emphasis added]; see also *People v. Engram* (2010)
8 50 Cal.4th 1131; *Hernandez-Valenzuela, supra*, 75 Cal.App.5th at p. 1124.)

9 The COVID-19 pandemic, exacerbated by a ceiling collapse in the North County Division
10 of the San Diego Superior Court (discussed in further detail below), are precisely the type of
11 “nonrecurring event[s]” that have “produced an inordinate number of cases for court disposition”
12 and which continue to affect the court’s administration. (See *Hernandez-Valenzuela, supra*, 75
13 Cal.App.5th at p. 1125; see also *Stanley v. Superior Court of Contra Costa County* (2020) 50
14 Cal.App.5th 164.)

15 **II. JUDICIAL NOTICE**

16 The court hereby takes judicial notice and incorporates by reference all Executive Orders
17 issued by California Governor Gavin Newsom relating to COVID-19, the orders and guidance
18 issued by California and San Diego County public health officials, the orders issued by the Chief
19 Justice of California and Chair of the Judicial Council related to the COVID-19 emergency, the
20 Emergency Temporary Standards relating to COVID-19 that have been issued by Cal/OSHA, all of
21 the prior General Orders issued by the Presiding Department of the San Diego County Superior
22 Court regarding facilities and operating procedures under the COVID-19 emergency, and the facts
23 set forth in this court’s Requests for Judicial Emergency Orders to extend the time period to hold
24 trials pursuant to Government Code section 68115 (attached as Exhibit A). (Evid. Code, § 452,
25 subs. (b)-(e); see also *Bullock v. Superior Court of Contra Costa County* (2020) 51 Cal.App.5th
26 134, fn. 4.)

27 Archived and current orders may be found at the following links:

- 28 • Executive Order issued by Governor Newsom:
<https://www.gov.ca.gov/category/executive-orders/>.

- 1 • California Department of Public Health Guidelines and Orders:
2 <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/Guidance.aspx>.
- 3 • San Diego County Public Health Orders:
4 https://www.sandiegocounty.gov/content/sdc/hhsa/programs/phs/community_epidemiology/dc/2019-nCoV/health-order.html.
- 5 • Judicial Council of California Statewide Emergency Orders by Tani G. Cantil-Sakauye,
6 Chief Justice of California and Chair of the Judicial Council:
7 <https://newsroom.courts.ca.gov/covid-19-news-center/court-emergency-orders>.
- 8 • General Orders of the San Diego Superior Court Presiding Department:
9 <https://www.sdcourt.ca.gov/sdcourt/generalinformation/announcements>.

10 **III. EXCEPTIONAL CIRCUMSTANCES THAT HAVE LED TO UNEXPECTED** 11 **DELAYS IN CRIMINAL CASES**

12 **A. Relevant Timelines**

13 On March 4, 2020, California Governor Gavin Newsom declared a state of emergency in
14 response to the global outbreak of COVID-19, a “new disease, caused by a novel (or new)
15 coronavirus that has not previously been seen in humans.”² A National Emergency was declared on
16 March 13, 2020.³ Both emergency declarations remain in place.

17 On March 19, 2020, the Governor issued Executive Order N-33-20 that, inter alia, required
18 all Californians to stay at home except for limited activities, and stay at least six feet apart from
19 other persons when leaving their homes.⁴

20 On March 29, 2020, the San Diego County Health Officer also issued a shelter-in-place
21 order, which among other provisions required residents of the county to remain in their homes
22 except when engaging in essential activities, mandated six feet distance be maintained between
23

24
25 ² Executive Department State of California, Proclamation of a State of Emergency (Mar. 4, 2020), available at
26 <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.4.20-Coronavirus-SOE-Proclamation.pdf>.

27 ³ <https://www.federalregister.gov/documents/2020/03/18/2020-05794/declaring-a-national-emergency-concerning-the-novel-coronavirus-disease-covid-19-outbreak>.

28 ⁵ Executive Department State of California, Executive Order N-33-20 (Mar. 19, 2020), available at
<https://www.gov.ca.gov/wp-content/uploads/2020/03/3.19.20-EO-N-33-20-COVID-19-HEALTH-ORDER-03.19.2020-signed.pdf>.

1 residents leaving their homes, and shuttered all public schools, subject to a distance learning
2 curriculum.⁵

3 The San Diego Superior Court (“court”), which employed over 1200 individuals and serves
4 a large population, did not have the ability to effectively implement these requirements and
5 directives in its jury lounges, courtrooms, elevators, and other areas of court facilities. As such,
6 from March 17, 2020 through May 25, 2020, the court closed to the public for all but the most time-
7 sensitive and essential functions.

8 To continue to navigate the fluctuations in case rates, hospitalization, and ever-changing
9 public health orders related thereto, the court reopened slowly and cautiously. The public health
10 concerns and related COVID-19 federal, state, and local public health orders, including strict social
11 distancing requirements, limited the court’s ability to bring in large numbers of jurors for multiple
12 trials at a given time, its ability to coordinate and manage jurors’ movements around the
13 courthouses, and the ability to transport in-custody defendants. In addition, as a direct result of the
14 COVID-19 pandemic, the court suffered from a severely reduced jury pool and workforce due
15 to, inter alia, health concerns, quarantine requirements, and schools being closed. Further
16 details of how these restrictions impacted jury trials during this time are outlined in the prior orders
17 of the Presiding Department and the requests for trial extensions attached as Exhibit A, all of which
18 are incorporated herein by reference.

19 The court reopened on May 26, 2020, but until June 15, 2021, the court’s ability to conduct
20 in-person jury trials remained severely limited.

21 On June 16, 2021, the court generally restored in-person access to pre-pandemic levels while
22 continuing to maintain many of the online and remote options that were introduced during the
23 pandemic.

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26 _____
27 ⁵ See County of San Diego Order of the Health Officer and Emergency Regulations,
28 www.sandiegocounty.gov/content/dam/sdc/hhsa/programs/phs/Epidemiology/covid19/covid19PHOrders/PUBLIC_HEALTH_ORDER_EFFECTIVE_DATE_03.29.20_EXECUTED_DATE_04.03.20_ADDENDUM_1_EFFECTIVE_DATE_04.03.20_EXECUTED_DATE_04.02.2020_ADDENDUM_2_EFFECTIVE_DATE_04.04.20_EXECUTED_04.03.20.pdf.

1 On July 6, 2021, in the Central Courthouse, the court resumed daily in-person reporting of
2 jurors, although the court was summoning approximately half of the average pre-pandemic number
3 of jurors. Jurors called to serve in the North, South, and East Courthouses continue to be on weekly
4 telephone standby.

5 As of July 19, 2021, the court increased the number of jury summonses to pre-pandemic
6 levels and resumed using all courtrooms when physical distancing requirements were lifted.

7 However, the impact of COVID-19 and the numerous orders, rules, and regulations linger
8 and continue to have a profound impact on court participants, court operations, and specifically the
9 ability of the court to conduct jury trials in a timely fashion.

10 **B. Staffing Shortages**

11 The approved budget for fiscal year 2020-2021 significantly cut funding to the California
12 Judicial Branch, including the San Diego Superior Court. This was an unexpected and abrupt
13 financial loss directly related to COVID-19 budgetary restrictions imposed by the Governor and
14 state legislature. In response, the court was forced to implement a Voluntary Separation Incentive
15 Payment (“VSIP”) program. As a result of the VSIP, 47 employees retired and approximately 41
16 elected to take extended unpaid leaves of absence. The court also instituted a hiring freeze for all
17 but its most critical positions from August 2020 to June 30, 2021, reduced its utilization of student
18 workers and retire/rehires, significantly reduced its overtime budget, and scaled back non-essential
19 contracts and purchases.

20 Unfortunately, the court remains severely understaffed as a direct result of the continuing
21 impacts of the COVID-19 pandemic. For example, the court currently has 30 vacancies for court
22 reporters but, since October 2021, the court has only received a handful of applications for that
23 position despite continuously recruiting. The court also remains short more than half a dozen
24 interpreters, despite actively recruiting.⁶ (See Attachment A for further details.)

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28 ⁶ The Bilingual Interpreters Written Examination was suspended in 2020 due to the COVID-19 pandemic, and while it has now re-opened, the delay in the examination led to a lack of newly certified interpreters willing and able to work. (See <https://www.courts.ca.gov/2695.htm>.)

1 **C. Unforeseen Case Continuances or Settlements the Day of Trial**

2 COVID-19 cases in county detention facilities have caused unforeseen continuances
3 throughout the state of emergency. While the numbers have declined since the outset of the
4 Governor’s declaration, numbers have continuously fluctuated, and inmates continue to be in
5 COVID-19 related quarantine and isolation. The detention facility requirements and the effects of
6 COVID-19 on the health of inmates continue to result in in-custody defendants being unable to be
7 transported to the courthouse for pre-trial proceedings or out-of-custody defendants being unable to
8 appear in-person and even remotely at times, including at readiness conferences, preliminary
9 hearings, and trials, which has impacted the court’s ability to move forward with cases and has
10 often stunted case resolution efforts.

11 Similarly, public health quarantine orders for individuals who test positive and/or are
12 symptomatic have affected witness and attorney availability.

13 In addition, since resuming operations in full, the court has frequently had cases settle the
14 day they are set for trial or received same-day requests to continue from counsel. In fact, jurors are
15 often underutilized despite the court having courtrooms available to hold trials. (See Attachment A
16 [outlining month-to-month juror appearance and utilization rates].)

17 In sum, since the court resumed full operations, there have been limited situations where
18 both parties answered ready, but the court did not have a courtroom available. Most of the time
19 there have been more courtrooms available than cases ready to proceed, which has made it difficult
20 to reduce the backlog as new cases also continue to be filed.

21 **D. Ceiling Collapse at the North County Regional Center**

22 The court currently has 64 courtrooms dedicated to criminal matters, including 42 for
23 criminal jury trials, at four building locations: Central, North, East, and South. Unfortunately, at the
24 height of the COVID-19 pandemic, the court experienced another “unique, nonrecurring event” that
25 compounded the delays caused by the COVID-19 declared emergency. Specifically, on November
26 8, 2021, the North County location experienced a ceiling collapse.

27 The building had to be evacuated and closed, impacting 18 courtrooms, the criminal
28 business office, juvenile court business office, Family Court Services, Family Court Facilitator, and

1 children's waiting room. Staff did not have access to criminal case files for several weeks. It was
2 not until June 1, 2022 that regular access to files was restored. Of the courtrooms that were closed,
3 eleven were criminal departments, including eight for criminal jury trials, before the ceiling issue.
4 That location is currently down to eight criminal departments, including four for criminal jury trials,
5 while the repairs are ongoing. Repairs are expected to continue until at least September/October
6 2022. To help alleviate this reduction in courtrooms, the court temporarily relocated two North
7 County criminal trial departments to its Central Courthouse. Nevertheless, this unanticipated loss of
8 courtrooms, loss of full access to criminal and other files, and all the moves, logistical changes, and
9 adaptations the court was required to implement, without notice, has further contributed to the
10 court's inability to significantly reduce or eliminate its trial backlog.

11 **IV. REMEDIAL MEASURES TAKEN BY THE COURT TO REDUCE BACKLOG** 12 **AND LIMIT DELAYS**

13 **A. Alternative Locations and Remote Jury Trials Considered**

14 While social distancing requirements were in place, the court considered the option of
15 holding trials at other facilities, including the San Diego Convention Center. However, the use of
16 alternate facilities was not tenable for several reasons, including that there was not enough security
17 staffing to secure the safety of jurors, courtrooms staff, judges, witnesses, and attorneys at an
18 alternative location, and to also continue to maintain safety in the courthouse buildings and
19 courtrooms.

20 The court also contemplated using remote technology to conduct criminal jury trials.
21 However, based on experience and information received from both the community and justice
22 partners, most (if not all) defendants would have objected to a remote jury trial, and the court could
23 not require remote trials without consent as required by former California Emergency Rules of
24 Court, rules 3 and 5. And with the repeal of the Emergency Rules of Court, remote trials are further
25 restricted. (See § 977.)

26 Moreover, even if a particular defendant had consented to a remote jury trial under the
27 emergency rules of court, the court would have had to overcome other significant hurdles, including
28 the logistics of conducting remote jury selection and deliberations, ensuring daily and continuous

1 remote appearances by all the jurors, and producing the defendant remotely all day, every day of
2 trial. As to the latter point, there was a very limited capacity to have in-custody defendants appear
3 remotely because, countywide, there were only six rooms at one jail facility and four rooms at each
4 of the other six jail facilities that were technologically equipped for remote appearances, and those
5 resources were already stretched to capacity with other remote, non-trial hearings that were being
6 conducted each day.

7 **B. Hiring Efforts Accelerated**

8 While the court hired the largest number of employees ever hired over any past fiscal year,
9 this level of hiring was unable to keep pace with the ongoing high rate of attrition the court has been
10 experiencing. Further, due to unexpected budget impacts for fiscal year 2022-2023, which resulted
11 from legislative changes and the impacts of continuing increases in the cost of operations, the court
12 is unable to hire employees to the level originally planned. As a result, although the court continues
13 to recruit to replace employees as their employment terminates (to maintain the court's current
14 staffing level), at this time the court is unable to fill the more than 100 regular full-time employee
15 positions lost as a result of previous budget cuts caused by the pandemic.

16 **C. Routine Meetings with Justice Partners**

17 The court holds routine meetings with court and justice-partner leadership to specifically
18 address reducing the number of pending criminal cases. The court has been informed that the
19 increase in current workload caused by the COVID-19 pandemic has also affected prosecutors and
20 defense attorneys, as case assignments have increased making it harder to prepare and be ready for
21 readiness conferences, preliminary hearings, and trials. The trickle effect of the COVID-19
22 pandemic has also affected other agencies, such as the San Diego County Medical Examiner's
23 Office, who has advised that the current average time for its office to determine a cause of death is
24 four to six months.⁷

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28 ⁷ See <https://www.sandiegocounty.gov/content/sdc/me/families/theprocess.html#examination>; see also
<https://www.sandiegouniontribune.com/news/public-safety/story/2022-05-30/surge-of-fentanyl-deaths-staffing-shortages-create-backlog-in-county-medical-examiners-office>.

1 **D. Increased Efforts to Settle Cases**

2 Pre-pandemic the court had a long-standing practice of setting at least one pre-preliminary
3 hearing and one pre-trial readiness conference, for a total of two readiness conferences in felony
4 cases. Misdemeanor cases also had a minimum of one readiness conference scheduled. However,
5 the court expanded settlement efforts in May of 2020.

6 Court staff began and continue to review and identify cases set for trial with no intervening
7 readiness conference (because they already had a readiness conference(s) and did not settle) and are
8 encouraging and facilitating further settlement discussions with justice partners.

9 Specifically, defendants in custody with pending cases that were post-arraignment/pre-trial
10 are scheduled for a readiness conference, even if the defendants already had two readiness
11 conferences. If a case does not reach a resolution and the parties indicate a desire to continue
12 settlement negotiations, cases are set for an additional readiness conference. Many in-custody
13 defendants have had more than two readiness conferences to date.

14 Additionally, beginning September 2020, all out-of-custody post-arraignment/pre-trial cases
15 began being calendared for either a trial status conference or regular status conference (depending
16 on the stage of the case). At those hearings, cases with negotiated resolution during the early
17 months of the pandemic were scheduled for a hearing to enter their plea, and those that had not
18 reached resolution were scheduled for a readiness conference (regardless of whether they had
19 already had a prior readiness conference) with a back-up trial date.

20 Currently, there are several readiness departments now operating at each location, with most
21 hearing both in-custody and out-of-custody cases as well as other types of hearings.

22 **E. Temporary Assigned Judges Program and Early Disposition Program**

23 The Temporary Assigned Judges Program (TAJP) of the Judicial Council of California
24 issues temporary judicial assignment orders to active or retired judges and justices to cover
25 vacancies, illnesses, disqualifications, and calendar congestion in courts. (See
26 https://www.courts.ca.gov/documents/TAJP_Fact_Sheet.pdf)

27 The court utilized and continues to utilize temporary judges from TAJF to generally hear
28 criminal matters. Specific to reducing the number of pending cases, the court has also used

1 temporary judges to conduct the deep-dive reviews of serious/violent cases and make attempts to
2 work with the parties to settle such cases.

3 In addition, the court applied for and recently received funding from Chief Justice Tani G.
4 Cantil-Sakauye's Early Disposition Program (EDP) under an allocation plan approved by the
5 Judicial Council of California. The court intends to use the funding in conjunction with TAJP by
6 assigning retired judges to high volume departments to encourage settlement discussions.

7 **F. Allowing Remote Appearances**

8 Within the confines of the law, the court has continued to allow remote appearances by
9 defendants, attorneys, and witnesses to (1) reduce the delays caused by quarantine protocols, and (2)
10 manage the court calendar with the greatest level of efficiency to handle as many cases as possible
11 per day and free up more courtrooms and staff for jury trials.

12 **G. Prioritizing In-Custody Criminal Cases**

13 The court continues to prioritize in-custody criminal jury trials. (See General Order of the
14 Presiding Department 010122-36(A) [In re: Prioritization of Jury Trial Due to the COVID-19
15 Pandemic].)

16 **V. CONCLUSION**

17 In sum, the devastating effects of the COVID-19 pandemic, compounded by the impacts of
18 the ceiling collapse at one of the court's branch locations, has left the court with an inordinate
19 number of cases for court disposition. As of early August 2022, there were more than 8,365
20 criminal cases pending in San Diego County. Of those, more than 2,000 were in custody. Even if
21 the court were operating at its full pre-pandemic capacity of 70-90 jury trials per month (including
22 criminal and civil), it would take more than 22 months to try all the in-custody cases and more than
23 93 months to try both the in-custody and out-of-custody pending cases.

24 For the reasons stated above, the case congestion in the San Diego Superior Court is not
25 chronic. Rather, it has been caused by unique, nonrecurring events that were impossible to
26 anticipate, and the court continues to take pro-active measures to limit delays.

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1 San Diego Superior Court judicial officers may incorporate by reference this order and may
2 rely on the exceptional circumstances and facts set forth herein, in addition to the facts and
3 circumstances specific to the case before them, in determining whether good cause exists to
4 continue a criminal case. Nothing in this order derogates from a Superior Court judicial officer's
5 inherent and independent judicial discretion

6 This order may be deemed part of the record in affected cases for purposes of appeal without
7 the need to file the order in each case.

8
9 IT IS SO ORDERED

10
11 DATED: September 22, 2022


HONORABLE MICHAEL T. SMYTH
PRESIDING JUDGE

EXHIBIT A

TO: Hon. Tani G. Cantil-Sakauye, Chair of the Judicial Council
Judicial Council of California
c/o Legal Services Supervising Attorney Charles Perkins
415-865-4609
charles.perkins@jud.ca.gov
415-865-8767 (fax)

FROM: *Name* : Lorna A. Alksne
Title: Presiding Judge
Court: Superior Court of San Diego County
Telephone: [REDACTED]
Fax: 619-844-5550
E-mail Address: [REDACTED]

DATE: 3/16/2020

SUBJECT: Request for Judicial Emergency Order

I hereby request an order allowing the court to implement the following emergency procedures pursuant to the provisions of section 68115 of the Government Code¹:

- The court may hold sessions anywhere in the county, including in correctional and juvenile detention facilities, on _____ [*or* from _____], to _____, inclusive]. (Gov. Code, § 68115(a)(1).)
(Fill in date(s) above.)
- With the consent of all parties to the case, the court may transfer pending civil cases to a superior court in any county on _____ [*or* from _____], to _____, inclusive]. (Gov. Code, § 68115(a)(2)(A).)
(Fill in date(s) above.)
- Upon a finding by a court that extreme or undue hardship would result unless the case is transferred for trial, the court may transfer pending civil cases to any superior court in an adjacent county or to any superior court within 100 miles of the border of the county in

¹ Government Code section 68115, as amended, effective January 1, 2019, provides that, upon the request of a presiding judge, the Chairperson of the Judicial Council may authorize relief as set forth in the statute, “[w]hen war, an act of terrorism, public unrest or calamity, epidemic, natural disaster, or other substantial risk to the health and welfare of court personnel or the public, or the danger thereof, the destruction of or danger to the building appointed for holding the court, a large influx of criminal cases resulting from a large number of arrests within a short period of time, or a condition that leads to a state of emergency being proclaimed by the President of the United States or by the Governor pursuant to Section 8625, threatens the orderly operation of a superior court location or locations within a county or renders presence in, or access to, an affected court facility or facilities unsafe”

which the court impacted by the emergency is situated on _____ [*or* from _____, to _____, inclusive]. (Gov. Code, § 68115(a)(2)(B).)
(Fill in date(s) above.)

- The court may declare that _____, [*or* from 3/17/2020, to 4/3/2020, inclusive,] be deemed a holiday/holidays for purposes of computing the time for filing papers with the court under Code of Civil Procedure sections 12 and 12a. (Gov. Code, § 68115(a)(4).)
(Fill in date(s) above.)

The court may declare that _____, [*or* from 3/17/2020, to 4/3/2020, inclusive,] be deemed a holiday/holidays for purposes of computing the time under (***check all that apply below***):

(Fill in date(s) above. Pursuant to Government Code section 68115(a)(5), this authority “applies to the fewest days necessary under the circumstances of the emergency, as determined by the Chairperson of the Judicial Council.”)

- Penal Code section 825 (time to bring criminal defendant before magistrate after arrest);
- Welfare and Institutions Code section 313 (time to release minor taken into custody pending dependency proceedings);
- Welfare and Institutions Code section 315 (time to hold detention hearing for minor taken into custody pending dependency proceedings);
- Welfare and Institutions Code section 334 (time to hold hearing on dependency petition);
- Welfare and Institutions Code section 631 (time to release minor taken into custody pending wardship proceedings);
- Welfare and Institutions Code section 632 (time to hold detention hearing for minor taken into custody pending wardship proceedings);
- Welfare and Institutions Code section 637 (time to hold detention rehearing in wardship proceedings if parent/guardian files affidavit asserting lack of notice of hearing or minor requests evidence of prima facie case); or
- Welfare and Institutions Code section 657 (time to hear wardship petition).

(Gov. Code, § 68115(a)(5).)

- The court may extend the time periods provided in sections 583.310 and 583.320 of the Code of Civil Procedure to bring an action to trial by not more than 30 days. (Gov. Code, § 68115(a)(6).)

(Fill in number of days above. Pursuant to Government Code section 68115(a)(6), “[t]he extension shall be for the fewest days necessary under the circumstances of the emergency, as determined by the Chairperson of the Judicial Council.”)

This request applies only to cases in which the statutory deadline otherwise would expire on _____ [or from 3/17/2020, to 4/6/2020, inclusive].

(Fill in date(s) above.)

- The court may extend by not more than 30 days the duration of any temporary restraining order that would otherwise expire because the emergency condition prevented the court from conducting proceedings to determine whether a permanent order should be entered. (Gov. Code, § 68115(a)(7).)

(Fill in date above. Pursuant to Government Code section 68115(a)(7), “[t]he extension shall be for the fewest days necessary under the circumstances of the emergency, as determined by the Chairperson of the Judicial Council.”)

This request applies only to cases in which the restraining order otherwise would expire on _____ [or from 3/17/2020, to 4/6/2020, inclusive].

(Fill in date(s) above.)

- The court may extend the time period provided in section 859b of the Penal Code for the holding of a preliminary examination from 10 court days to not more than 15 court days. (Gov. Code, § 68115(a)(9).)

(Fill in number of court days, not exceeding 15.)

This request applies only to cases in which the statutory deadline otherwise would expire on _____ [or from 3/17/2020, to 4/17/2020, inclusive].

(Fill in date(s) above.)

- The court may extend the time period provided in section 1382 of the Penal Code within which a trial must be held by not more than 30 days. (Gov. Code, § 68115(a)(10).)

(Fill in number of days, not exceeding 30. Pursuant to Government Code section 68115(a)(10), “the trial of a defendant in custody whose time is so extended shall be given precedence over all other cases.”)

This request applies only to cases in which the statutory deadline otherwise would expire on _____ [or from 3/17/2020, to 4/6/2020, inclusive].

(Fill in date(s) above.)

PLEASE NOTE: The following options are only available if the court is within a county in which the President of the United States or the Governor has declared a state of emergency. If

you are unsure whether a state of emergency has been declared, the Judicial Council's Legal Services office can assist you in determining this.

Upon a finding by a court that extreme or undue hardship would result unless the case is transferred for trial, the court, which is within the boundary of a state of emergency proclaimed by the Governor, may transfer pending civil cases to any superior court within 100 miles of the outer boundary of the state of emergency on _____ [or from _____, to _____, inclusive]. (Gov. Code, § 68115(a)(2)(B).)²
(Fill in date(s) above.)

The court may extend the time period provided in section 825 of the Penal Code within which a defendant charged with a felony offense must be taken before a magistrate from 48 hours to not more than 7 days. (Gov. Code, § 68115(a)(8).)

(Fill in number of days, not exceeding seven.)

This request applies only to defendants for whom the statutory deadline otherwise would expire on _____ 3/17/2020, to 4/6/2020, inclusive (Fill in date(s) above.)

The court may extend the time period provided in section 313 of the Welfare and Institutions Code within which a minor taken into custody pending dependency proceedings must be released from custody to not more than 7 days. (Gov. Code, § 68115(a)(11).)

(Fill in number of days, not exceeding seven. Pursuant to Government Code section 68115(a)(11), "[t]he extension of time shall be for the shortest period of time necessary under the circumstances of the emergency.")

This request applies only to minors for whom the statutory deadline otherwise would expire on _____ [or from 3/17/2020, to 4/6/2020, inclusive].

(Fill in date(s) above.)

The court may extend the time period provided in section 315 of the Welfare and Institutions Code within which a minor taken into custody pending dependency proceedings must be given a detention hearing to not more than 7 days. (Gov. Code, § 68115(a)(11).)

² The recent amendments, effective January 1, 2019, to Government Code section 68115 added this provision to account for major emergencies affecting multiple adjacent counties. Where a court-specific emergency exists, the court may be authorized to transfer civil cases to courts located within 100 miles of the border of the county in which the affected court sits. When a state of emergency has been declared, however, a case may be transferred to a court located within 100 miles of the *outer* boundary of the declared emergency zone, which may be more than 100 miles from the boundary of the county of the transferor court. Additionally, whereas all other provisions of authorized relief discussed below apply when a state of emergency has been declared by the President or the Governor, this provision is limited to emergencies proclaimed by the Governor alone. It would seem unlikely, however, that a major emergency in California would lead to the President, but not the Governor, proclaiming a state of emergency.

(Fill in number of days, not exceeding seven. Pursuant to Government Code section 68115(a)(11), “[t]he extension of time shall be for the shortest period of time necessary under the circumstances of the emergency.”)

This request applies only to minors for whom the statutory deadline otherwise would expire on _____ [*or* from 3/17/2020, to 4/6/2020, inclusive].

(Fill in date(s) above.)

- The court may extend the time periods provided in sections 632 and 637 of the Welfare and Institutions Code within which a minor taken into custody pending wardship proceedings and charged with a felony offense must be given a detention hearing or rehearing to not more than 7 days. (Gov. Code, § 68115(a)(11).)

(Fill in number of days, not exceeding seven. Pursuant to Government Code section 68115(a)(11), “[t]he extension of time shall be for the shortest period of time necessary under the circumstances of the emergency.”)

This request applies only to minors for whom the statutory deadline otherwise would expire on _____ [*or* from 3/17/2020 to 4/6/2020, inclusive].

(Fill in date(s) above.)

- The court may extend the time period provided in section 334 of the Welfare and Institutions Code within which a hearing on a juvenile dependency petition must be held by not more than 15 days. (Gov. Code, § 68115(a)(12).)

(Fill in number of days, not exceeding 15.)

This request applies only to minors for whom the statutory deadline otherwise would expire on _____ [*or* from 3/17/2020, to 4/6/2020, inclusive].

(Fill in date(s) above.)

- The court may extend the time period provided in section 657 of the Welfare and Institutions Code within which a hearing on a wardship petition for a minor charged with a felony offense must be held by not more than 15 days. (Gov. Code, § 68115(a)(12).)

(Fill in number of days, not exceeding 15.)

This request applies only to minors for whom the statutory deadline otherwise would expire on _____ [*or* from 3/17/2020, to 4/6/2020, inclusive].

(Fill in date(s) above.)

The circumstances necessitating an emergency order are described below. (Please attach additional pages as necessary.)

Please insert description of emergency circumstances:

See Attached

Please insert a description of the service or facilities that have been adversely affected as well as the anticipated duration of any suspension of court operations or facilities closure:

To San Diego Superior court will continue or reset the following:

All Civil, Criminal, Traffic, Juvenile, Family, Unlawful Detainer, Small Claims, Probate; and Off-Site Mental Health hearings, trials, and proceedings except: _____

Initial TRO, DVRO, Civil Harassment and GVRO requests and hearings

Emergency Unlawful Detainer requests for a Stay of Execution

Warrant applications

Guardianship requests where a minor's safety is at risk

Emergency Probate and conservatorship matters

Emergency Family Court matters

Emergency Juvenile Court matters

The public defender, the district attorney, and other interested local entities have / have not (check one box) been notified of this request for emergency order.

The court has / has not (check one box) advised these entities to immediately notify the Judicial Council's Legal Services office of any opposition or questions regarding the request.

Please list the names and telephone numbers of the district attorney, the public defender, and other notified parties affected by the order:

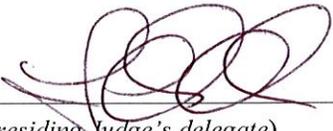
District Attorney: Summer Stephan – by DDA

Public Defender: Randy Mize – by DPD

Other Parties Affected: City Attorney Maura Elliot

The court has / has not (check one box) been informed of any opposition to this request.

If the court has been informed of potential opposition to this request, please state below the party or parties who may oppose the request and any stated reasons for the opposition:

Submitted by:  _____
(Presiding Judge or Presiding Judge's delegate)

Date: 3-16-2020

Description of Emergency Circumstances:

The San Diego Superior Court requests a Judicial Emergency Order enabling it to suspend non-essential services from Tuesday March 17, 2020 through Friday April 3, 2020. The COVID-19 epidemic poses a substantial risk to the health and welfare of Court personnel and the public; threatens the orderly operation of the Court; and renders presence in, or access to, the Court's facilities unsafe.

Governor Newsom has declared a state of emergency and the California Department of Public Health issued guidance that non-essential gatherings that include 250 people or more should be postponed or canceled, and smaller gatherings should allow social distancing of six feet per person. On March 12, 2020, Governor Newsom issued Executive Order N-25-20, which directed all residents to heed orders and guidance of state and local public health officials, including, but not limited to, the imposition of social distancing measures, to control the spread of COVID-19. Also on March 12, 2020, the County of San Diego Health and Human Services Agency issued an order, prohibiting certain gatherings with 250 or more people unless those present are able to practice social distancing of six feet from one another.

On March 13, 2020, President Donald Trump declared a state of emergency and on March 15, 2020, the Centers for Disease Control and Prevention issued guidance recommending that social events consisting of 50 or more people should be canceled for the next eight weeks and that events of any size should only continue if they can adhere to guidelines for protecting vulnerable populations and practicing social distancing. Also on March 15, 2020, Governor Newsom announced a directive advising that high-risk individuals, which includes adults 65 and older and people with underlying chronic health conditions, should self-isolate at home.

The Court, which employs over 1200 employees and serves a large population, does not have the ability to effectively implement these distancing directives in our jury lounge, courtrooms and other areas of our court facilities. In addition, the Public Defender's Office and the District Attorney's Office have informed the Court they do not want to attend any hearings or trials. Our bench, staff and the public have many who are especially vulnerable to this virus. In addition, the COVID-19 epidemic and the declarations and guidelines above have resulted, and are expected to continue to result, in a reduced jury pool and Court personnel staffing. Although Court proceedings are essential, the Court requests to limit its services as described in this request for the protection of public health and safety in accordance with local, state, and federal guidelines.

TO: Hon. Tani G. Cantil-Sakauye, Chair of the Judicial Council
Judicial Council of California
c/o Legal Services Supervising Attorney Charles Perkins
415-865-4609
charles.perkins@jud.ca.gov
415-865-8767 (fax)

FROM: *Name* : Lorna A. Alksne
Title: Presiding Judge
Court: Superior Court of San Diego County
Telephone: [REDACTED]
Fax: 619-844-5550
E-mail Address: [REDACTED]

DATE: 3/30/2020

SUBJECT: Request for Judicial Emergency Order

I hereby request an order allowing the court to implement the following emergency procedures pursuant to the provisions of section 68115 of the Government Code¹:

The court may hold sessions anywhere in the county, including in correctional and juvenile detention facilities, on _____ [or from _____, to _____, inclusive]. (Gov. Code, § 68115(a)(1).)
(Fill in date(s) above.)

With the consent of all parties to the case, the court may transfer pending civil cases to a superior court in any county on _____ [or from _____, to _____, inclusive]. (Gov. Code, § 68115(a)(2)(A).)
(Fill in date(s) above.)

Upon a finding by a court that extreme or undue hardship would result unless the case is transferred for trial, the court may transfer pending civil cases to any superior court in an adjacent county or to any superior court within 100 miles of the border of the county in

¹ Government Code section 68115, as amended, effective January 1, 2019, provides that, upon the request of a presiding judge, the Chairperson of the Judicial Council may authorize relief as set forth in the statute, “[w]hen war, an act of terrorism, public unrest or calamity, epidemic, natural disaster, or other substantial risk to the health and welfare of court personnel or the public, or the danger thereof, the destruction of or danger to the building appointed for holding the court, a large influx of criminal cases resulting from a large number of arrests within a short period of time, or a condition that leads to a state of emergency being proclaimed by the President of the United States or by the Governor pursuant to Section 8625, threatens the orderly operation of a superior court location or locations within a county or renders presence in, or access to, an affected court facility or facilities unsafe”

which the court impacted by the emergency is situated on _____ [or from _____, to _____, inclusive]. (Gov. Code, § 68115(a)(2)(B).)
(Fill in date(s) above.)

- The court may declare that _____, [or from 4/6/2020, to 4/30/2020, inclusive,] be deemed a holiday/holidays for purposes of computing the time for filing papers with the court under Code of Civil Procedure sections 12 and 12a. (Gov. Code, § 68115(a)(4).)
(Fill in date(s) above.)

The court may declare that _____, [or from 4/6/2020, to 4/30/2020, inclusive,] be deemed a holiday/holidays for purposes of computing the time under (**check all that apply below**):

(Fill in date(s) above. Pursuant to Government Code section 68115(a)(5), this authority “applies to the fewest days necessary under the circumstances of the emergency, as determined by the Chairperson of the Judicial Council.”)

- Penal Code section 825 (time to bring criminal defendant before magistrate after arrest);
- Welfare and Institutions Code section 313 (time to release minor taken into custody pending dependency proceedings);
- Welfare and Institutions Code section 315 (time to hold detention hearing for minor taken into custody pending dependency proceedings);
- Welfare and Institutions Code section 334 (time to hold hearing on dependency petition);
- Welfare and Institutions Code section 631 (time to release minor taken into custody pending wardship proceedings);
- Welfare and Institutions Code section 632 (time to hold detention hearing for minor taken into custody pending wardship proceedings);
- Welfare and Institutions Code section 637 (time to hold detention rehearing in wardship proceedings if parent/guardian files affidavit asserting lack of notice of hearing or minor requests evidence of prima facie case); or
- Welfare and Institutions Code section 657 (time to hear wardship petition).

(Gov. Code, § 68115(a)(5).)

**And for purposes of computing time under all provisions under the Penal Code, including but not limited to Penal Code section 859b, the Welfare & Institutions Code, the Probate

Code, the Government Code, the Code of Civil Procedure, the California Rules of Court, and any other timelines created by statute, court rules, regulations or case law.

- The court may extend the time periods provided in sections 583.310 and 583.320 of the Code of Civil Procedure to bring an action to trial by not more than 60 days. (Gov. Code, § 68115(a)(6).)

(Fill in number of days above. Pursuant to Government Code section 68115(a)(6), “[t]he extension shall be for the fewest days necessary under the circumstances of the emergency, as determined by the Chairperson of the Judicial Council.”)

This request applies only to cases in which the statutory deadline otherwise would expire on _____ [or from 4/6/2020, to 5/29/2020, inclusive].

(Fill in date(s) above.)

- The court may extend by not more than 60 days the duration of any temporary restraining order that would otherwise expire because the emergency condition prevented the court from conducting proceedings to determine whether a permanent order should be entered. (Gov. Code, § 68115(a)(7).)

(Fill in date above. Pursuant to Government Code section 68115(a)(7), “[t]he extension shall be for the fewest days necessary under the circumstances of the emergency, as determined by the Chairperson of the Judicial Council.”)

This request applies only to cases in which the restraining order otherwise would expire on _____ [or from 4/6/2020, to 5/29/2020, inclusive].

(Fill in date(s) above.)

- The court may extend the time period provided in section 859b of the Penal Code for the holding of a preliminary examination from 10 court days to not more than 30 court days. (Gov. Code, § 68115(a)(9).)

(Fill in number of court days, not exceeding 15.)

This request applies only to cases in which the statutory deadline otherwise would expire on _____ [or from 3/17/2020, to 5/29/2020, inclusive].

(Fill in date(s) above.)

- The court may extend the time period provided in section 1382 of the Penal Code within which a trial must be held by not more than 60 days. (Gov. Code, § 68115(a)(10).)

(Fill in number of days, not exceeding 30. Pursuant to Government Code section 68115(a)(10), “the trial of a defendant in custody whose time is so extended shall be given precedence over all other cases.”)

This request applies only to cases in which the statutory deadline otherwise would expire on _____ [or from 4/6/2020, to 5/29/2020, inclusive].

(Fill in date(s) above.)

PLEASE NOTE: The following options are only available if the court is within a county in which the President of the United States or the Governor has declared a state of emergency. If you are unsure whether a state of emergency has been declared, the Judicial Council's Legal Services office can assist you in determining this.

Upon a finding by a court that extreme or undue hardship would result unless the case is transferred for trial, the court, which is within the boundary of a state of emergency proclaimed by the Governor, may transfer pending civil cases to any superior court within 100 miles of the outer boundary of the state of emergency on _____ [or from _____, to _____, inclusive]. (Gov. Code, § 68115(a)(2)(B).)²
(Fill in date(s) above.)

The court may extend the time period provided in section 825 of the Penal Code within which a defendant charged with a felony offense must be taken before a magistrate from 48 hours to not more than 7 days. (Gov. Code, § 68115(a)(8).)
(Fill in number of days, not exceeding seven.)

This request applies only to defendants for whom the statutory deadline otherwise would expire on _____ [or from 4/6/2020, to 5/29/2020, inclusive].
(Fill in date(s) above.)

The court may extend the time period provided in section 313 of the Welfare and Institutions Code within which a minor taken into custody pending dependency proceedings must be released from custody to not more than 7 days. (Gov. Code, § 68115(a)(11).)

(Fill in number of days, not exceeding seven. Pursuant to Government Code section 68115(a)(11), “[t]he extension of time shall be for the shortest period of time necessary under the circumstances of the emergency.”)

This request applies only to minors for whom the statutory deadline otherwise would expire on _____ [or from 4/6/2020, to 5/29/2020, inclusive].
(Fill in date(s) above.)

² The recent amendments, effective January 1, 2019, to Government Code section 68115 added this provision to account for major emergencies affecting multiple adjacent counties. Where a court-specific emergency exists, the court may be authorized to transfer civil cases to courts located within 100 miles of the border of the county in which the affected court sits. When a state of emergency has been declared, however, a case may be transferred to a court located within 100 miles of the *outer* boundary of the declared emergency zone, which may be more than 100 miles from the boundary of the county of the transferor court. Additionally, whereas all other provisions of authorized relief discussed below apply when a state of emergency has been declared by the President or the Governor, this provision is limited to emergencies proclaimed by the Governor alone. It would seem unlikely, however, that a major emergency in California would lead to the President, but not the Governor, proclaiming a state of emergency.

- The court may extend the time period provided in section 315 of the Welfare and Institutions Code within which a minor taken into custody pending dependency proceedings must be given a detention hearing to not more than 7 days. (Gov. Code, § 68115(a)(11).)

(Fill in number of days, not exceeding seven. Pursuant to Government Code section 68115(a)(11), “[t]he extension of time shall be for the shortest period of time necessary under the circumstances of the emergency.”)

This request applies only to minors for whom the statutory deadline otherwise would expire on _____ [or from 4/6/2020, to 5/29/2020, inclusive].

(Fill in date(s) above.)

- The court may extend the time periods provided in sections 632 and 637 of the Welfare and Institutions Code within which a minor taken into custody pending wardship proceedings and charged with a felony offense must be given a detention hearing or rehearing to not more than 7 days. (Gov. Code, § 68115(a)(11).)

(Fill in number of days, not exceeding seven. Pursuant to Government Code section 68115(a)(11), “[t]he extension of time shall be for the shortest period of time necessary under the circumstances of the emergency.”)

This request applies only to minors for whom the statutory deadline otherwise would expire on _____ [or from 4/6/2020 to 5/29/2020, inclusive].

(Fill in date(s) above.)

- The court may extend the time period provided in section 334 of the Welfare and Institutions Code within which a hearing on a juvenile dependency petition must be held by not more than 15 days. (Gov. Code, § 68115(a)(12).)

(Fill in number of days, not exceeding 15.)

This request applies only to minors for whom the statutory deadline otherwise would expire on _____ [or from 4/6/2020, to 5/29/2020, inclusive].

(Fill in date(s) above.)

- The court may extend the time period provided in section 657 of the Welfare and Institutions Code within which a hearing on a wardship petition for a minor charged with a felony offense must be held by not more than 15 days. (Gov. Code, § 68115(a)(12).)

(Fill in number of days, not exceeding 15.)

This request applies only to minors for whom the statutory deadline otherwise would expire on _____ [or from 4/6/2020, to 5/29/2020, inclusive].

(Fill in date(s) above.)

**The court may extend the time period provided by Cal. Const., art. 6, section 19, in which a judge of a court of record must issue a decision after a matter has been submitted by not more than 60 days.

The circumstances necessitating an emergency order are described below. (Please attach additional pages as necessary.)

Please insert description of emergency circumstances:

See Attached

Please insert a description of the service or facilities that have been adversely affected as well as the anticipated duration of any suspension of court operations or facilities closure:

See Attached

The public defender, the district attorney, and other interested local entities have / have not (check one box) been notified of this request for emergency order.

The court has / has not (check one box) advised these entities to immediately notify the Judicial Council's Legal Services office of any opposition or questions regarding the request.

Please list the names and telephone numbers of the district attorney, the public defender, and other notified parties affected by the order:

District Attorney: Summer Stephan
Public Defender: Randy Mize
Other Parties Affected: City Attorney Maura Elliot

The court has / has not (check one box) been informed of any opposition to this request.

If the court has been informed of potential opposition to this request, please state below the party or parties who may oppose the request and any stated reasons for the opposition:

Submitted by: 
(Presiding Judge or Presiding Judge's delegate)

Date: 3/30/2020

Attachment to San Diego Superior Court March 30, 2020, Request for Emergency Order

The San Diego Superior Court requests a Judicial Emergency Order enabling it to suspend non-essential services from Tuesday April 7, 2020, through Thursday April 30, 2020. The COVID-19 epidemic increasingly poses a substantial risk to the health and welfare of Court personnel and the public; threatens the orderly operation of the Court; and renders presence in, or access to, the Court's facilities unsafe.

Governor Newsom has declared a state of emergency and the California Department of Public Health issued guidance that non-essential gatherings that include 250 people or more should be postponed or canceled, and smaller gatherings should allow social distancing of six feet per person. On March 12, 2020, Governor Newsom issued Executive Order N-25-20, which directed all residents to heed orders and guidance of state and local public health officials, including, but not limited to, the imposition of social distancing measures, to control the spread of COVID-19. Also on March 12, 2020, the County of San Diego Health and Human Services Agency issued an order, prohibiting certain gatherings with 250 or more people unless those present are able to practice social distancing of six feet from one another.

On March 13, 2020, President Donald Trump declared a state of emergency and on March 15, 2020, the Centers for Disease Control and Prevention issued guidance recommending that social events consisting of 50 or more people should be canceled for the next eight weeks and that events of any size should only continue if they can adhere to guidelines for protecting vulnerable populations and practicing social distancing. Also on March 15, 2020, Governor Newsom announced a directive advising that high-risk individuals, which includes adults 65 and older and people with underlying chronic health conditions, should self-isolate at home.

On March 17, 2020, the County of San Diego Health and Human Services Agency issued an order prohibiting all gatherings of 50 or more people and on March 19, 2020, amended its order to prohibit gatherings of 10 or more people.

Due to the growing severity of the pandemic, on March 19, 2020, Governor Newsom issued Executive Order N-33-20 which, amongst other things, requires individuals to stay at home or at their place of residence with certain specified exemptions.

The Court, which employs over 1200 employees and serves a large population, does not have the ability to effectively implement these requirements and directives in our jury lounge, courtrooms, and other areas of our court facilities. In addition, the Public Defender's Office and the District Attorney's Office have informed the Court they do not want to attend any hearings or trials. Our bench, staff, and the public have many who are especially vulnerable to this virus. In addition, the COVID-19 epidemic and the declarations and guidelines above have resulted, and are expected to continue to result, in a reduced jury pool and Court personnel staffing. Although Court proceedings are essential, the Court requests to limit its services as described in this request for the protection of public health and safety in accordance with local, state, and federal guidelines.

The Court is providing the following emergency services:

- Chamber *Ex-Parte* requests for Gun Violence Protective Orders and Civil Harassment, Domestic Violence, Elder Abuse, Workplace Violence, and School Violence Restraining Orders.
- Emergency *Ex-Parte* Lockout Proceedings (Unlawful Detainer).
- Family Emergency Temporary Restraining Orders.
- Juvenile Temporary Restraining Orders and other Emergency Juvenile Orders.
- Emergency Probate Orders, including Emergency Conservatorships and Emergency Guardianships.
- Search Warrants.
- Petitions for Writ Seeking Emergency Relief in Unlawful Detainer matters.
- Emergency Writs Challenging COVID-19 Quarantines/Emergency Measures.
- Emergency Surrogacy Order Requests.
- Probable cause determinations for persons arrested without a warrant.
- Requests and orders to lower bail or release on defendant's own recognizance pursuant to Penal Code § 1269c.
- Requests and orders for release from custody pursuant to stipulations between defense counsel and prosecution.
- Remote video proceedings where defendants are taking time waivers, hearings are being re-set and defendants are being released (beginning April 6, 2020).

In a further effort to fully protect the rights of those arrested/detained during this time period, and in order to facilitate speedy and possible early resolution of new criminal and juvenile justice cases that will be filed once the Court is fully operational, and in coordination with the Public Defender, the District Attorney, and the City Attorney, the Court is appointing counsel in such cases pursuant to General Order 032720-37. The parties will be conducting discovery and engaging in negotiations for possible early disposition of the cases. In addition, appointing counsel in these cases substantially benefits the defendants/juveniles by giving them access to a lawyer during the shutdown when they would otherwise have to wait until the Court reopens to speak to one.

TO: Hon. Tani G. Cantil-Sakauye, Chair of the Judicial Council
Judicial Council of California
c/o Legal Services Supervising Attorney Charles Perkins
415-865-4609
charles.perkins@jud.ca.gov
415-865-8767 (fax)

FROM: *Name* : Lorna A. Alksne
Title: Presiding Judge
Court: Superior Court of San Diego County
Telephone: [REDACTED]
Fax: 619-844-5550
E-mail Address: [REDACTED]

DATE: 4/27/2020

SUBJECT: Request for Judicial Emergency Order

I hereby request an order allowing the court to implement the following emergency procedures pursuant to the provisions of section 68115 of the Government Code¹:

- The court may hold sessions anywhere in the county, including in correctional and juvenile detention facilities, on _____ [or from _____, to _____, inclusive].
(Gov. Code, § 68115(a)(1).)
(Fill in date(s) above.)
- With the consent of all parties to the case, the court may transfer pending civil cases to a superior court in any county on _____ [or from _____, to _____, inclusive]. (Gov. Code, § 68115(a)(2)(A).)
(Fill in date(s) above.)
- Upon a finding by a court that extreme or undue hardship would result unless the case is transferred for trial, the court may transfer pending civil cases to any superior court in an adjacent county or to any superior court within 100 miles of the border of the county in

¹ Government Code section 68115, as amended, effective January 1, 2019, provides that, upon the request of a presiding judge, the Chairperson of the Judicial Council may authorize relief as set forth in the statute, “[w]hen war, an act of terrorism, public unrest or calamity, epidemic, natural disaster, or other substantial risk to the health and welfare of court personnel or the public, or the danger thereof, the destruction of or danger to the building appointed for holding the court, a large influx of criminal cases resulting from a large number of arrests within a short period of time, or a condition that leads to a state of emergency being proclaimed by the President of the United States or by the Governor pursuant to Section 8625, threatens the orderly operation of a superior court location or locations within a county or renders presence in, or access to, an affected court facility or facilities unsafe”

which the court impacted by the emergency is situated on _____ [or from _____, to _____, inclusive]. (Gov. Code, § 68115(a)(2)(B).)
(Fill in date(s) above.)

- The court may declare that _____, [or from 5/1/2020, to 5/22/2020, inclusive,] be deemed a holiday/holidays for purposes of computing the time for filing papers with the court under Code of Civil Procedure sections 12 and 12a. (Gov. Code, § 68115(a)(4).)
(Fill in date(s) above.)

The court may declare that _____, [or from 5/1/2020, to 5/22/2020, inclusive,] be deemed a holiday/holidays for purposes of computing the time under (**check all that apply below**):

(Fill in date(s) above. Pursuant to Government Code section 68115(a)(5), this authority “applies to the fewest days necessary under the circumstances of the emergency, as determined by the Chairperson of the Judicial Council.”)

- Penal Code section 825 (time to bring criminal defendant before magistrate after arrest);
- Welfare and Institutions Code section 313 (time to release minor taken into custody pending dependency proceedings);
- Welfare and Institutions Code section 315 (time to hold detention hearing for minor taken into custody pending dependency proceedings);
- Welfare and Institutions Code section 334 (time to hold hearing on dependency petition);
- Welfare and Institutions Code section 631 (time to release minor taken into custody pending wardship proceedings);
- Welfare and Institutions Code section 632 (time to hold detention hearing for minor taken into custody pending wardship proceedings);
- Welfare and Institutions Code section 637 (time to hold detention rehearing in wardship proceedings if parent/guardian files affidavit asserting lack of notice of hearing or minor requests evidence of prima facie case); or
- Welfare and Institutions Code section 657 (time to hear wardship petition).

(Gov. Code, § 68115(a)(5).)

- The court may extend the time periods provided in sections 583.310 and 583.320 of the Code of Civil Procedure to bring an action to trial by not more than 60 days. (Gov. Code, § 68115(a)(6).)

(Fill in number of days above. Pursuant to Government Code section 68115(a)(6), “[t]he extension shall be for the fewest days necessary under the circumstances of the emergency, as determined by the Chairperson of the Judicial Council.”)

This request applies only to cases in which the statutory deadline otherwise would expire on _____ [or from 5/1/2020, to 5/22/2020, inclusive].

(Fill in date(s) above.)

- The court may extend by not more than 30 days the duration of any temporary restraining order that would otherwise expire because the emergency condition prevented the court from conducting proceedings to determine whether a permanent order should be entered. (Gov. Code, § 68115(a)(7).)

(Fill in date above. Pursuant to Government Code section 68115(a)(7), “[t]he extension shall be for the fewest days necessary under the circumstances of the emergency, as determined by the Chairperson of the Judicial Council.”)

This request applies only to cases in which the restraining order otherwise would expire on _____ [or from 5/1/2020, to 5/22/2020, inclusive].

(Fill in date(s) above.)

- The court may extend the time period provided in section 859b of the Penal Code for the holding of a preliminary examination from 10 court days to not more than 15 court days. (Gov. Code, § 68115(a)(9).)

(Fill in number of court days, not exceeding 15.)

This request applies only to cases in which the statutory deadline otherwise would expire on _____ [or from 5/1/2020, to 5/22/2020, inclusive].

(Fill in date(s) above.)

- The court may extend the time period provided in section 1382 of the Penal Code within which a trial must be held by not more than 30 days. (Gov. Code, § 68115(a)(10).)

(Fill in number of days, not exceeding 30. Pursuant to Government Code section 68115(a)(10), “the trial of a defendant in custody whose time is so extended shall be given precedence over all other cases.”)

This request applies only to cases in which the statutory deadline otherwise would expire on _____ [or from 5/1/2020, to 5/22/2020, inclusive].

(Fill in date(s) above.)

PLEASE NOTE: The following options are only available if the court is within a county in which the President of the United States or the Governor has declared a state of emergency. If

you are unsure whether a state of emergency has been declared, the Judicial Council's Legal Services office can assist you in determining this.

Upon a finding by a court that extreme or undue hardship would result unless the case is transferred for trial, the court, which is within the boundary of a state of emergency proclaimed by the Governor, may transfer pending civil cases to any superior court within 100 miles of the outer boundary of the state of emergency on _____ [or from _____, to _____, inclusive]. (Gov. Code, § 68115(a)(2)(B).)²
(Fill in date(s) above.)

The court may extend the time period provided in section 825 of the Penal Code within which a defendant charged with a felony offense must be taken before a magistrate from 48 hours to not more than 7 days. (Gov. Code, § 68115(a)(8).)
(Fill in number of days, not exceeding seven.)

This request applies only to defendants for whom the statutory deadline otherwise would expire on _____ [or from 5/1/2020, to 5/22/2020, inclusive].
(Fill in date(s) above.)

The court may extend the time period provided in section 313 of the Welfare and Institutions Code within which a minor taken into custody pending dependency proceedings must be released from custody to not more than 7 days. (Gov. Code, § 68115(a)(11).)
(Fill in number of days, not exceeding seven. Pursuant to Government Code section 68115(a)(11), "[t]he extension of time shall be for the shortest period of time necessary under the circumstances of the emergency.")

This request applies only to minors for whom the statutory deadline otherwise would expire on _____ [or from 5/1/2020, to 5/22/2020, inclusive].
(Fill in date(s) above.)

The court may extend the time period provided in section 315 of the Welfare and Institutions Code within which a minor taken into custody pending dependency proceedings must be given a detention hearing to not more than 7 days. (Gov. Code, § 68115(a)(11).)

² The recent amendments, effective January 1, 2019, to Government Code section 68115 added this provision to account for major emergencies affecting multiple adjacent counties. Where a court-specific emergency exists, the court may be authorized to transfer civil cases to courts located within 100 miles of the border of the county in which the affected court sits. When a state of emergency has been declared, however, a case may be transferred to a court located within 100 miles of the *outer* boundary of the declared emergency zone, which may be more than 100 miles from the boundary of the county of the transferor court. Additionally, whereas all other provisions of authorized relief discussed below apply when a state of emergency has been declared by the President or the Governor, this provision is limited to emergencies proclaimed by the Governor alone. It would seem unlikely, however, that a major emergency in California would lead to the President, but not the Governor, proclaiming a state of emergency.

(Fill in number of days, not exceeding seven. Pursuant to Government Code section 68115(a)(11), “[t]he extension of time shall be for the shortest period of time necessary under the circumstances of the emergency.”)

This request applies only to minors for whom the statutory deadline otherwise would expire on _____ [or from 5/1/2020, to 5/22/2020, inclusive].

(Fill in date(s) above.)

- The court may extend the time periods provided in sections 632 and 637 of the Welfare and Institutions Code within which a minor taken into custody pending wardship proceedings and charged with a felony offense must be given a detention hearing or rehearing to not more than 7 days. (Gov. Code, § 68115(a)(11).)

(Fill in number of days, not exceeding seven. Pursuant to Government Code section 68115(a)(11), “[t]he extension of time shall be for the shortest period of time necessary under the circumstances of the emergency.”)

This request applies only to minors for whom the statutory deadline otherwise would expire on _____ [or from 5/1/2020 to 5/22/2020, inclusive].

(Fill in date(s) above.)

- The court may extend the time period provided in section 334 of the Welfare and Institutions Code within which a hearing on a juvenile dependency petition must be held by not more than 15 days. (Gov. Code, § 68115(a)(12).)

(Fill in number of days, not exceeding 15.)

This request applies only to minors for whom the statutory deadline otherwise would expire on _____ [or from 5/1/2020, to 5/22/2020, inclusive].

(Fill in date(s) above.)

- The court may extend the time period provided in section 657 of the Welfare and Institutions Code within which a hearing on a wardship petition for a minor charged with a felony offense must be held by not more than 15 days. (Gov. Code, § 68115(a)(12).)

(Fill in number of days, not exceeding 15.)

This request applies only to minors for whom the statutory deadline otherwise would expire on _____ [or from 5/1/2020, to 5/22/2020, inclusive].

(Fill in date(s) above.)

The circumstances necessitating an emergency order are described below. (Please attach additional pages as necessary.)

Please insert description of emergency circumstances:

See Attached

Please insert a description of the service or facilities that have been adversely affected as well as the anticipated duration of any suspension of court operations or facilities closure:

See Attached

The public defender, the district attorney, and other interested local entities have / have not (check one box) been notified of this request for emergency order.

The court has / has not (check one box) advised these entities to immediately notify the Judicial Council's Legal Services office of any opposition or questions regarding the request.

Please list the names and telephone numbers of the district attorney, the public defender, and other notified parties affected by the order:

District Attorney: Summer Stephan

Public Defender: Randy Mize

Other Parties Affected: City Attorney Mara Elliot

The court has / has not (check one box) been informed of any opposition to this request.

If the court has been informed of potential opposition to this request, please state below the party or parties who may oppose the request and any stated reasons for the opposition:

Submitted by: 
(Presiding Judge or Presiding Judge's delegate)

Date: 4/27/2020

Attachment to San Diego Superior Court April 27, 2020, Request for Emergency Order

The World Health Organization, the United States Centers for Disease Control and Prevention, the State of California, and counties throughout the state, including the County of San Diego, have recognized that we are all facing a life-threatening pandemic caused by the COVID-19 virus.

On March 4, 2020, Governor Newsom declared a state of emergency and, on March 13, 2020, President Donald Trump declared a national emergency. Due to the growing severity of the pandemic, on March 19, 2020, Governor Newsom issued Executive Order N-33-20 which, amongst other things, requires individuals to stay at home or at their place of residence with certain specified exemptions. Currently, the County of San Diego is under a Shelter-In-Place order which, amongst other things, precludes gatherings of more than one person, requires schools to remain closed (except for distance learning), and requires all non-essential businesses to remain closed (except where employees can provide its services from home).

The Court, which employs over 1200 employees and serves a large population, does not have the ability to effectively implement these requirements and directives in our jury lounge, courtrooms, and other areas of our court facilities. Our bench, staff, and the public have many who are especially vulnerable to this virus. In addition, the COVID-19 epidemic and the declarations and guidelines above have resulted, and are expected to continue to result, in a reduced jury pool and Court personnel staffing.

The Court is mindful of the fact that it provides an essential service. To that end, the Court continues to devise and implement new technology and procedures so that it can safely and effectively provide such services. Since its last emergency order request, the Court has added significantly more services that it is now safely able to provide to the public. Attached hereto is a current list of these services. However, the emergency relief requested is necessary so that the Court can continue to limit its services for the protection of the health and safety of the public, its judicial officers and its employees, and in order to comply with local, state, and federal guidelines.



SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO

SERVICES THAT MAY BE PROVIDED BY THE SAN DIEGO SUPERIOR COURT DURING THE COVID-19 PANDEMIC

Due to the ongoing health and safety concerns related to the COVID-19 pandemic, the emergency declarations and orders of government officials related thereto, and San Diego Superior Court General Orders, all courthouses, courtrooms, and services are closed to the public except for certain time-sensitive and essential functions.

This document, referenced and authorized by General Order of the Presiding Department of the San Diego Superior Court, Order No. 042320-46, enumerates all services that may be provided by the court during the COVID-19 pandemic court closure.

This document is current as of **April 23, 2020**, and will continue to be updated as additional services are authorized by the Presiding Judge.

The services available during the current court closure are as follows:

| Case-Type | Services |
|---|---|
| General / All Case Types | <ul style="list-style-type: none"> • Upon remittitur from the California Supreme Court or a California Court of Appeal, the issuance, filing, and processing of documents, including orders and judgments, to effectuate orders issued by the appellate court. • The court may issue orders in cases in which the matter has been under submission and the court finds it necessary to issue and file the order in order to comply with the ninety (90) day deadline set forth by article VI, section 19 of the California Constitution. |
| Civil | <ul style="list-style-type: none"> • Initial <i>ex parte</i> requests for gun violence emergency protective orders, and civil harassment, elder abuse, gun violence, workplace violence, and school violence temporary restraining orders. • Requests to renew restraining orders that are expiring. • Emergency (<i>ex parte</i>) lockout proceedings in landlord-tenant disputes (Unlawful Detainer). • Petitions for writs seeking emergency relief in landlord-tenant matters (Unlawful Detainer). • Emergency writs challenging COVID-19 quarantines/emergency measures. • Motions for new trial pursuant to Code Civ. Proc. §§ 656 et seq. • Motions for judgment notwithstanding the verdict pursuant to Code Civ. Proc. § 629. • Abatement warrants. • Starting April 29, 2020, <i>Ex parte</i> requests seeking emergency temporary restraining or protective orders of any type. • Starting April 29, 2020, Emergency <i>ex parte</i> hearings regarding claims of exemption. • Starting April 29, 2020, <i>Ex parte</i> petitions to approve compromised/disputed claims (for minors or disabled persons only). • Starting April 29, 2020, <i>Ex parte</i> hearings to stop utility shut-offs from occurring. • Starting April 29, 2020, Claim of right to possession in Unlawful Detainer proceedings. |

| Case-Type | Services |
|----------------------|---|
| Criminal | <ul style="list-style-type: none"> • In-custody miscellaneous criminal hearings including, but not limited to, change of pleas, arraignments, and preliminary hearings, via video/audio systems. • Petitions for writs of habeas corpus, including related motions and filings. • Requests and orders to lower or increase bail or order pre-arraignment release on defendant's own recognizance. • Requests and orders to release from custody (pre-sentencing or in connection with revocation proceedings) pursuant to stipulation and stipulated Pen. Code § 977 waivers for preliminary hearings with defendant's release. • Probable cause determinations for persons arrested without a warrant. • Search warrant requests by law enforcement. |
| Family | <ul style="list-style-type: none"> • Initial <i>ex parte</i> requests for domestic violence temporary restraining orders. • Requests to renew restraining orders that are expiring. • <i>Ex parte</i> requests for emergency orders for all types of Family matters. • Emergency surrogacy order requests. |
| Juvenile | <ul style="list-style-type: none"> • Juvenile temporary restraining orders and other emergency Juvenile orders. • Juvenile dependency detention hearings with all parties appearing remotely. • Juvenile justice detention hearings with all parties appearing remotely. • Juvenile justice in-custody cases where resolution is reached, with all parties appearing remotely. • Emergency requests pursuant to Welf. & Inst. Code § 827. • <i>Ex parte</i> Juvenile dependency requests asking the court to adopt the recommendations of the child welfare agency (including but not limited to family maintenance reviews, post permanency planning reviews, and 6-month, 12-month, and 18-month reviews) where all counsel have submitted written stipulations (pursuant to Emergency Rules of Court, rule 6(c)(5)). |
| Probate | <ul style="list-style-type: none"> • Emergency Probate orders, including emergency conservatorships and emergency guardianships |
| Mental Health | <ul style="list-style-type: none"> • Lanterman-Petris-Short (LPS) Act (Welf. & Inst. Code § 5332) petitions regarding capacity to consent to or refuse antipsychotic medication (<i>Riese</i> Hearings) and, for these patients, Welf. & Inst. Code §5254 certification review hearings, remotely via telephone conference. • Additional certification review hearings will be progressively calendared during the closure in cooperation with the Office of the Public Defender and the Office of Patient Advocacy. • Writs and appeals arising from the above-described Mental Health hearings (LPS <i>Riese</i> and certification review hearings) that have taken place while the court is closed, with all parties appearing remotely. |

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TO: Hon. Tani G. Cantil-Sakauye, Chair of the Judicial Council
Judicial Council of California
c/o Legal Services Supervising Attorney Charles Perkins
415-865-4609
charles.perkins@jud.ca.gov
415-865-8767 (fax)

FROM: *Name* : Lorna A. Alksne
Title: Presiding Judge
Court: Superior Court of San Diego County
Telephone: [REDACTED]
Fax: 619-844-5550
E-mail Address: [REDACTED]

DATE: 5/29/2020

SUBJECT: Request for Judicial Emergency Order

I hereby request an order allowing the court to implement the following emergency procedures pursuant to the provisions of section 68115 of the Government Code¹:

- The court may extend the time period provided in section 1382 of the Penal Code within which a trial must be held by not more than 30 days. (Gov. Code, § 68115(a)(10).)
(Fill in number of days, not exceeding 30. Pursuant to Government Code section 68115(a)(10), "the trial of a defendant in custody whose time is so extended shall be given precedence over all other cases.")
This request applies only to cases in which the statutory deadline otherwise would expire on _____ *or* from 6/16/2020, to 7/17/2020, inclusive*.
(Fill in date(s) above.)

***This request applies to cases in which the original or previously-extended statutory deadline otherwise would expire from June 16, 2020, to July 17, 2020, inclusive.**

The circumstances necessitating an emergency order are described in the attached document.

¹ Government Code section 68115, as amended, effective January 1, 2019, provides that, upon the request of a presiding judge, the Chairperson of the Judicial Council may authorize relief as set forth in the statute, "[w]hen war, an act of terrorism, public unrest or calamity, epidemic, natural disaster, or other substantial risk to the health and welfare of court personnel or the public, or the danger thereof, the destruction of or danger to the building appointed for holding the court, a large influx of criminal cases resulting from a large number of arrests within a short period of time, or a condition that leads to a state of emergency being proclaimed by the President of the United States or by the Governor pursuant to Section 8625, threatens the orderly operation of a superior court location or locations within a county or renders presence in, or access to, an affected court facility or facilities unsafe"

The public defender, the district attorney, and other interested local entities have / have not (check one box) been notified of this request for emergency order.

The court has / has not (check one box) advised these entities to immediately notify the Judicial Council's Legal Services office of any opposition or questions regarding the request.

Please list the names and telephone numbers of the district attorney, the public defender, and other notified parties affected by the order:

District Attorney: Summer Stephan

Public Defender: Randy Mize

Other Parties Affected: City Attorney Mara Elliot; San Diego Sheriff Bill Gore

The court has / has not (check one box) been informed of any opposition to this request.

If the court has been informed of potential opposition to this request, please state below the party or parties who may oppose the request and any stated reasons for the opposition:

Submitted by: _____



(Presiding Judge or Presiding Judge's delegate)

Date: 5/29/2020

The San Diego Superior Court is hereby requesting an order allowing the court to extend the time period provided in Penal Code section 1382, within which a trial must be held, by not more than 30 days. This request applies to cases in which the original or previously-extended statutory deadline otherwise would expire from June 16, 2020, to July 17, 2020, inclusive.

I. BACKGROUND INFORMATION AND BASIS FOR REQUEST

The numerous federal, state and local public health orders that have been issued in response to the COVID-19 pandemic are well-known and have been detailed in prior Judicial Council orders and memoranda, as well as this Court's prior requests for relief from the Chief Justice. Accordingly, they will not be repeated here, although the court will update the specific information for San Diego County.

Very recently, on May 20, 2020, San Diego County received approval to move further into Stage 2 of the State of California's Resilience Roadmap, in response to its request for a variance. Just two days ago, on May 27, 2020, the San Diego County Health Officer issued the county's most recent Shelter-In-Place order. The order still generally prohibits gatherings of more than one person, but it implements measures to allow for additional business and recreational activities consistent with Stage 2 protocol. All such essential and reopened businesses must comply with 6-foot social distancing requirements, conduct temperature screenings of employees, and require employees to wear face coverings. The order further strongly recommends that all persons who are 65 years old or older, or who have a compromised immune system, to self-quarantine at home or in a suitable location.

The last emergency order the court received from the Chief Justice, issued on April 29, 2020, provided relief under multiple provisions of Government Code section 68115, through May 22, 2020. Since the first emergency order, which was effective March 17, the court has worked continuously to develop and implement numerous additional technologies and procedures so that it can serve the public in a manner that is safe for all. Since April 6, the Court has equipped 14 criminal courtrooms and 5 juvenile courtrooms across the county with video remote systems to be able to hear urgent in-custody criminal and juvenile matters and, as set forth in more detail below, has been utilizing that equipment to hold numerous remote hearings in an attempt to move cases along, including the holding of arraignments and preliminary hearings for in-custody criminal defendants. The court is currently in the process of adding another 28 family courtrooms to be video capable, 15 of which were completed today. The court has also significantly increased remote work options for staff members to be able to access phone lines from home to field incoming calls from the public to the Court, and to also enable them to access critical court business applications and data in order to perform case management work and assist the public. The court also created and implemented a Civil Status Conference Hearing online application to enable attorneys to schedule status conferences to be held remotely. The court has also increased capabilities for telephonic appearances and continues to expand the availability of remote video hearings where possible. Last week, the court was able to launch a new ability to eFile in Family cases. In sum, since the court's initial closure on March 17, 2020, the Presiding Judge has continued to re-evaluate and increase the scope of services available by determining which services

could be safely resumed by modifying procedures, technology, infrastructure and staffing while still obeying the strict safety protocol under the health orders.

As a result of the court's continuous efforts, as summarized above, the court has been able to gradually restore almost all services, at least remotely, since March 17. Accordingly, at this time the court is only requesting further relief with regard to the trial deadlines provided by Penal Code section 1382.¹ (Gov. Code, § 68115, subd.(a)(10).)

As set forth in the court's response to question 5 below, the court has been regularly meeting with and working with its justice partners to reduce the jail population and settle as many cases as possible since the time the court closed on March 17, 2020. Notwithstanding these efforts, the court has approximately 850 cases in which the last day for trial will occur between June 16 and July 15. At the same time, and as detailed below, there are multiple unprecedented safety and constitutional issues that need to be addressed in order for the court to begin resuming jury trials. What makes this process particularly difficult is that the potential solutions for addressing health and safety concerns are frequently at odds with constitutional requirements.

In order to address and resolve all of these issues, and in order to develop new procedures for summoning jurors and conducting trials, the court has organized a Jury Trial Working Group, comprised of judicial officers, court staff, the Public Defender's Office, the District Attorney, the City Attorney's Office, and a representative from the private defense bar. Given all of the many issues presented, along with the substantial amount of other work the court continues to conduct in new and unprecedented ways, the court cannot resolve these many issues and develop and implement new technologies and procedures overnight. Also, until the county issued its May 27, 2020 order (a mere two days ago), the court did not believe that it was safe or appropriate to begin issuing jury summonses. Moreover, it would be irresponsible of the court to issue thousands of jury summonses to cover 850 trials before it has adopted a plan to conduct the trials in a safe manner that also passes constitutional muster. The requested additional continuance will provide the working group and the court with the essential time they need to develop and implement this plan. The District Attorney's Office, the City Attorney's Office, the Office of the Public Defender, and the Sheriff's Department each support this request. (Attached to this request are letters of support from each of these justice partners.)

II. ANSWERS TO SPECIFIC QUESTIONS SET FORTH IN THE MAY 14, 2020 JUDICIAL COUNCIL MEMORANDUM

- 1. How many criminal cases have last-day deadlines under Penal Code section 1382 during the period of time for which the court is requesting a first extension under Government Code section 68115 (please provide daily breakdown)?**

Because the court did not start arraignments and preliminary hearings until late April, these numbers are currently low, yet they will continue to grow as the court continues to hold more

¹ The court is still evaluating whether it needs further relief under Welfare & Institutions Code section 657.

hearings. Because this court deals with paper files, it would be burdensome to determine the exact numbers of cases because it would have to pull all the files and check if the case settled or the defendant entered a time waiver. While the number of these cases might not be unwieldy in and of themselves, when combined with the number and nature of the cases set forth below in question 2, the court would not be able to try all of these cases during this time period. The court believes there are 15 to 20 felony trials that fall within this category. However, based on the general information set forth above, along with the case numbers and other information set forth below, the court would not be able to try all of these cases during this time period.

2. How many criminal cases are coming up to the limit already extended for 90 days by the statewide orders (please provide a daily breakdown)? Is the court requesting a further extension of time on any of these cases?

There are approximately 850 cases that fall within this category. Because these cases all have paper files, the court would have to manually pull all of the 850 case files to determine the date set for trial, whether there is a time waiver, and if so whether it is general or limited. Given the reduced staffing resulting from COVID-19, along with the social distancing requirements, the court simply does not have the resources to provide these specific numbers at this time. However, the court can provide the following rough statistics for a general idea:

Felonies:

June 15 through June 29 deadlines: There are over 70 felony cases that had trial dates previously set between March 16 and March 30. (1 on March 16; 2 on March 17; 2 on March 18; 4 on March 19; 2 on March 20; 16 on March 23; 17 on March 24; 12 on March 25; 4 on March 26; 1 on March 27; 14 on March 30.) Assuming the set trial date was the last day for trial, with the 90-day extension provided by the Chief Justice's statewide orders, these cases would now have a last day for trial between June 15 and June 29 (meaning they would need to be set for trial between June 5 to June 19 to have a 10-day cushion).

June 30 through July 15 deadlines: In addition, there over 140 felony cases that had trial dates previously set between April 1 and April 16. (1 on April 1; 4 on April 2; 4 on April 3; 16 on April 6; 11 on April 7; 15 on April 8; 6 on April 9; 10 on April 10; 20 on April 13; 26 on April 14; 18 on April 15; and 12 on April 16.) Assuming the set trial date was the last day for trial, with the 90-day extension provided by the Chief Justice, these cases would now have a last day for trial between June 30 and July 15 (meaning they would need to be set for trial between June 20 to July 5 to have a 10-day cushion).

Misdemeanors:

June 15 through June 29 deadlines: There are over 130 misdemeanor cases that had trial dates set between March 16 and March 30. (5 on March 16; 20 on March 17; 11 on March 18; 7 on March 19; 1 on March 20; 26 on March 23; 17 on March 24; 10 on March 25; 6 on March 26; 1 on March 27; and 33 on March 30.) Assuming the set trial date was the last day for trial, with the 90-day extension provide by the Chief Justice, these cases would now have a last day for trial

between June 15 and June 29 (meaning they would need to be set for trial between June 5 to June 19 to have a 10-day cushion).

June 30 through July 15 deadlines: In addition, there are over 500 misdemeanor cases that had trial dates set between April 1 and April 16. (30 on April 1; 11 on April 2; 7 on April 3; 29 on April 6; 49 on April 7; 89 on April 8; 39 on April 9; 11 on April 10; 80 on April 13; 67 on April 14; 86 on April 15; and 43 on April 16.) Assuming the set trial date was the last day for trial, then with the 90-day extension, these cases would now have a last day for trial between June 30 and July 15 (meaning they would need to be set for trial around June 20-July 5 to have a 10-day cushion).

Summary:

Based on the above, there are roughly 200 cases in which the last day for trial will occur between June 16 and June 29. There are also roughly 650 cases in which the last day for will run between June 30 and July 15. Pursuant to the information received by the District Attorney's Office, the impacted jury trials "are overwhelmingly serious and violent trials where the stakes are high for both sides." This also means the trials will be longer, further heightening the concerns of congregating large numbers of people and increasing the risk that the limited number of alternate jurors that could be allowed with the social distancing requirements will not be sufficient.

3. What logistical or other issues prevent the court from holding trials within the time provided in Penal Code section 1382? How is the court planning to address any of these issues?

As mentioned in section I above, the court has organized a Jury Trial Working Group to investigate and address the numerous and unprecedented logistical, safety and legal issues that must be considered and resolved in order to safely conduct thousands of jury trials, many of which will be lengthy. Some of the issues include:

County Public Health Order and Safety Issues:

- Social Distancing Requirements (6-foot distance between individuals) severely impacts the number of persons that can be in the courthouse, the courtrooms, the jury lounges, the elevators and the restrooms.
- As required by the county's order, the court prohibits employees from entering the courthouse if they have a temperature of 100 degrees or more; consistently, the court also imposes this restriction on judicial officers and members of the public.
- No more than 2 persons per elevator.
- For many, public transportation would have to be used (due to parking issues downtown, where most of our courtrooms are located).
- The Sheriff's Department would have to transport hundreds of in-custody defendants back and forth between the jail and the courthouses.
- Notwithstanding these measures, the virus may be spread by asymptomatic persons.

Jury Issues:

- The court expects a very low yield of jurors summoned. The court normally experiences about a 10% report rate for newly summoned jurors if it issues the summonses at least 6-weeks prior to the report date. (Although the court is only required to provide 10-days' notice, under normal circumstances this only yields approximately 5% of newly summoned jurors appearing). Assuming the court provides its usual 6-week notice, because of the pandemic the court expects it would experience about a 3% - 5% report rate.
- Given the number of trials that need to be scheduled, along with the current health orders and circumstances created by the pandemic, the court would have an insufficient number of available jurors to meet the court's needs through the end of the year. To cover the approximately 850 trials running up on their deadlines between June 16, 2020 and July 17, 2020, the court would need to summon over 400,000 jurors. However, for each calendar year, San Diego only has approximately 1.8 million individuals available in the pool of individuals available to issue jury summons to. Accordingly, if the court were required to continue to issue summonses in the volume set forth above, the court would run out of jurors to summons before the end of the year.
- Jurors appearing might not be a representative cross-section because, for example, we would expect significantly lower numbers of elderly persons, immune-compromised persons, and parents with children (the private defense bar has raised this concern).
- Attorneys have expressed concerns with jurors wearing masks during voir dire and during trial as it would eliminate or severely limit their ability to see the jurors' facial expressions.
- Attorneys have asserted that private voir dire would constitute structural error.
- The Jury Trial Working Group is working on modifying the juror summons and is exploring other, remote means of screening jurors.
- The Jury Trial Working Group is exploring ways to properly and effectively conduct voir dire given the social distancing requirements.
- Currently, jurors will not be able to deliberate in the deliberation rooms due to the social distancing requirements. This will likely result in the jury using the courtrooms for deliberations, which will mean the courtroom will not be available for hearings and trials.
- There is an increased likelihood of losing jurors mid-trial due to the court's temperature screening requirement and also because more jurors will likely be excused if they start to exhibit physical symptoms consistent with COVID-19 symptoms. At the same time, due to space limitations in courtrooms, the court is unable to have more than 1 alternate juror except with respect to a small percentage of courtrooms countywide (assuming little to no public presence in the courtrooms).
- Food/meal access: there are presently very limited food options around the courthouses.

Judicial Officer Issues:

- 73 of the court's 130 judges are 60 years-old and older (39 are age 60-64; 34 are age 65 and above).

Court Staffing Issues:

The court employs approximately 1200 employees. However, as a result of COVID-19, the court is experiencing significant staffing and budgetary issues.

- To date, 140 employees have requested FFCRA or another type of leave as a result of COVID-19.
- As a result of the Governor's revised budget, the court estimates that it will need to make \$12 - \$15 million in cuts to its fiscal year 2020-21 budget. Accordingly, the court has instituted a hiring freeze and it recently implemented a Voluntary Separation Incentive Payment ("VSIP") program. VSIPs during prior years have resulted in reductions of between 65 – 103 employees each time.

Facilities/Logistical Issues:

- The court's main courthouse, the Central Courthouse, is a high-rise building with courtrooms on 22 separate floors. This necessitates heavy elevator use to operate at full capacity. However, given the current limitations of only having 2 persons on an elevator at a time, the courthouse is not able to conduct multiple trials on multiple floors given the large numbers of jurors, attorneys, parties, families, and court staff who would be present (even if members of the public were not allowed to be present).
- Even assuming the defendants would be willing to consent to appear for trial remotely (which they likely will not be, given the court's experience with this issue thus far), there is a very limited capacity to have in-custody defendants appear remotely because, countywide, there are only 3-4 rooms at each of the 7 jail facilities that are equipped for this purpose.
- There are severe limitations on the court's ability to assemble jurors in a jury lounge in all of its locations while complying with social distancing requirements: (i) the Central Courthouse, which is the main courthouse, will only accommodate 71 jurors; (ii) the East County courthouse can only accommodate 64 jurors; (iii) the South Bay facility can only accommodate 31 jurors; and (iv) the North County courthouse can only accommodate 56 jurors.
- Even without allowing public access to the courtrooms (which raises significant constitutional concerns), only 20 of the court's 150 courtrooms can accommodate more than 13 jurors with appropriate social distancing in place: (i) the Central Courthouse has 3 such courtrooms; (ii) the Hall of Justice has 16 such courtrooms (15 can accommodate 15 jurors and 1 can accommodate 25 jurors); and (iii) the East County courthouse has 1 such courtroom (and it can only accommodate 14 jurors). Neither the South County nor the North County courthouses can accommodate more than 13 jurors. Considering the number of serious and lengthy trials at issue, along with the higher than normal likelihood of needing alternate jurors, this facility issue poses a significant impediment to conducting a voluminous number of trials.
- Even without allowing public access to the courtrooms, there are also a limited number of courtrooms that can accommodate 13 jurors with appropriate social distancing in place. Excluding the courtrooms mentioned above, the total number of such courtrooms is 44 (43

at the Central Courthouse and 1 in the East County courthouse). None of the other courthouses can accommodate these juries. Again, given the number of trials at issue, along with the increased likelihood of needing additional alternates, this creates a significant obstacle to conducting multiple trials at one time. Exacerbating the situation is the fact that courtrooms will also need to be used as deliberation rooms.

- Even in those courtrooms that can accommodate a full jury, the space in the courtrooms may not allow for ancillary trial participants, such as interpreters, victim support or investigating officers.
- Bathroom breaks during trial would be prolonged due to social distancing requirements in restrooms.
- Handling of evidence (touching issues) will need to be addressed.

Other Legal Issues, Including The Rights Of Defendants, Victims and the Public:

- Limitations on a defendant's access to counsel during trial preparation and trial (raised by private defense bar).
- Defendant's right to be present (based on the court's experience thus far, it does not expect this right to be waived except in possibly a few cases).
- Having defendants, witnesses, and jurors wear masks may constitute a violation of defendant's due process /confrontation rights.
- Defense counsel has raised concerns that jurors may feel bias/resentment towards the defendant for forcing a trial under the circumstances.
- Even in those courtrooms that can accommodate a full jury, the space in the courtrooms would not allow for any (or very limited) public access, including the defendant's family, the victim/victim's family, the general public and the media.

4. How is the court planning to conduct criminal trials? Does the court intend to use technology to assist in holding criminal trials?

As set forth above, the court does not believe it will be able to summon enough jurors to meet its current trial needs and also comply with the Penal Code section 1382 time requirements. However, as it begins to schedule and hold trials, it will use courtrooms where it can socially distance the jurors, the judge, court staff, the attorneys, the defendants, the witnesses, and any ancillary individuals. Under the current circumstances, the court would not be able to allow the public to attend at all, or very minimally. Instead, the court would provide audio livestreaming, as it is currently doing, subject to California Rules of Court, rule 1.1.50.

The working group is exploring various options, but the court would only be able to summons enough jurors such that they can socially distance in the jury lounge (perhaps one group for a.m. and one for p.m. with cleaning in between).

Although the court and the Sheriff's Department have spent a considerable amount of time and effort developing technology options to enable remote appearances, this is not a feasible option for trials. The court cannot require defendants to appear remotely and the court has received numerous objections from the defendants even for pre-trial proceedings. The defense bar has also

indicated they would object to witnesses appearing remotely. Accordingly, the court must plan trials on the assumption that the defendants and witnesses will be appearing in person. Finally, even if the defendants consented to a remote appearance, there is limited space in the jails for in-custody defendants to appear remotely, and the public defender and private defense bar have informed the court they have not yet set up a mechanism to have out-of-custody defendants appear remotely.

5. What efforts has the court made to work with justice partners to encourage and facilitate expeditious settlement, where possible, of cases pending before the court?

Since the court closed on March 17, 2020, it has been working continuously and diligently in collaboration with the Public Defender, District Attorney, City Attorney, and Sheriff to secure the release of inmates who do not present a public safety risk, including, but not limited to: creating a procedure for and processing requests for lower bail or own-recognizance release pursuant to Penal Code § 1269c; creating a procedure for and processing requests for release pursuant to stipulation of the parties; authorizing the Sheriff to accelerate the release of sentenced defendants up to 30 days pursuant to Penal Code § 4024.1; authorizing the Sheriff to accelerate the release of sentenced defendants up to 60 days pursuant to an Advisory from the Chief Justice of the Supreme Court of California dated March 30, 2020; and, prior to adoption of the statewide emergency bail schedule, implementing a modification to the San Diego Countywide Bail Schedule temporarily reducing bail to zero for over 60 offenses.

Based on information received from the District Attorney's Office, these efforts resulted in a reduction of approximately 1,200 inmates before the statewide emergency bail schedule took effect. According to the District Attorney's Office, as a result of these efforts the pre-disposition jail population consists of approximately 90 percent felony cases with 72 percent being serious/violent felonies. Only about 10 percent constitute misdemeanors, mostly comprised of domestic violence and repeat DUIs or defendants who are in violation of probation for a serious/violent felony offense.

Finally, the court has, together with the District Attorney's Office, Public Defender's Office, and Sheriff, set up various video and telephonic remote proceedings and calendars to move criminal cases along, including holding bail review hearings, readiness (settlement) conferences, arraignments, preliminary hearings, sentencing hearings, change of plea hearings, and handling probation violation and extradition matters. All in-custody defendants have been given at least one, and sometimes more, telephonic and/or video readiness (settlement) conference hearing to attempt to settle the cases. The court is caught up on necessary felony arraignments and preliminary hearings.

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May 29, 2020

Honorable Tani Cantil-Sakauye
Chief Justice of the California Supreme Court

RE: Letter in support of San Diego County Superior Court jury trial extension request

Dear Chief Justice Cantil-Sakauye:

I'm writing in support of the request for an extension of criminal jury trials by the Honorable Lorna Alksne, Presiding Judge for the San Diego County Superior Court. In my role as San Diego County's District Attorney, it has been an honor to participate in the minimum weekly COVID-19 Planning Meetings organized and lead by our Presiding Judge, Court Leadership Judges and key Justice Partners including the Public Defender, Sheriff and City Attorney. This pandemic didn't come with a handbook but these meetings allowed us to stay focused on the mission of advancing access to justice while not compromising life and health for inmates, court, prosecutor, defense attorney, transport deputies, jail nurses and the community at large. We have been able to implement all of your recommendations and many of our own that we created from scratch or expanded to accomplish the goal. I will provide some key data point statistics that will demonstrate our combined efforts and how we safely implemented confidential communication for defense attorneys, arraignments, preliminary hearings, dispositions and releases. However, despite our best efforts, we are not ready to safely conduct jury trials in San Diego County which is the second largest county in California with a population of 3.3 million people and multiple courthouses.

My office looks forward to engaging in jury trials again which we consider to be the pinnacle evidence of a thriving democracy and we are concerned about delaying justice for many victims of homicide and sexual assault along with the right of an accused but having thoroughly weighed the issues, I cannot in good faith support the creation of a harmful congregate environment which at this point is inevitable for jury trials. A temporary extension for jury trials is necessary in our county because starting June 15, jury trial demand dates for many of our most serious in-custody cases will require prolonged jury selection and lengthy trials – putting at risk the health and safety of all parties including the defendant. Specifically-identified cases that will need to be tried in late June and July involve attempted murders, great bodily injury allegations, robberies with gun use, and shooting at residential dwellings. The lower-level jury trials have already been accounted for with collaborative justice partner efforts to release defendants, resolve the cases or continue the trials. The remaining serious and violent imminently pending jury trials will require

larger amounts of prospective jurors for selection and multiple active courtrooms for more lengthier and extended evidentiary presentations. As collaborative and successful as our justice partners have been developing solutions during COVID, including our ability to reduce the jail population from 5500 to 3686, becoming a national leader in development of remote hearings via Microsoft Teams, and resolving hundreds of cases to reduce backlog, we simply are not prepared to conduct jury trials safely. A temporary extension will ensure defendant's right to a fair jury pool, ensure defendant's constitutional jury trial right of confrontation, lessen the high infection risks present to all parties in a jury trial environment, and give our local criminal justice partners and our already-active Jury Trial Task Force the time needed to further develop and finalize a health-department approved Jury Trial Protocol.

San Diego County's track record shows we've been thoughtful and proactive resulting in a drastic jail reduction and the ability to keeping critical criminal justice systems open and operating safely. We worked collaboratively and proactively with our Sheriff, our defense bar and our Presiding Judge even before the pandemic to swiftly reduce our jail population by 22%. Each party became comfortable with the "uncomfortable" having to give and compromise on cases that would normally settle or resolve differently pre-pandemic. Of important note is that our jail population was dropped to about 4300 instead of normal 5500 even *before* the zero bail initiative took effect showing our dedication to moving criminal cases along based on risk assessment and overall safety of inmates and our community. We employed our own carefully revised emergency bail schedule, utilizing Penal Code section 1269 to conduct pre-arraignment virtual bail hearings, 30 and 60-day early kicks and a close review of vulnerable inmates with compromised health issues. We followed and implemented the suggestions of the Chief Justice and used some of our own risk assessment strategies to expand our existing assessment tools which do not rely on wealth or status of those who can afford bail, but rather on objective criteria. The court set multiple remote "triage and readiness" calendars that were equipped with the ability for the attorney and client to communicate confidentially in order to lessen jury-trial backlog and ensure release of appropriate defendants with dates to return.

Here are the key outcomes of our county's focused, thoughtful, and balanced approach, our pre-disposition jail population in San Diego consists of 91% felony cases with 72% serious/violent felonies. Only 9% are misdemeanors, mostly domestic violence and repeat driving under the influence cases or defendants who are now in violation of probation for a serious/violent felony offense.

Guided by previous orders of this Court, we quickly got to work and conducted hundreds of remote arraignments within a short period of time. We have been a nationwide leader in our development of remote preliminary hearing procedures where we have conducted full hearings safely with all parties appearing remotely via a Microsoft Teams Platform with public access via Microsoft Teams Live Event streaming via YouTube. We successfully implemented a system for remote matters such as remote plea negotiations, substitutions of counsel, case continuances, revocation matters, and other proceedings that further an accused's case through the system. Our proven track record has afforded criminal defendants the ability to get their cases handled, even during a time where our entire county and country is sheltering in place. We're a county that has already rolled up its sleeves, gotten to work, and shown we're willing to continue justice for our accused and for our community.

Safely resuming jury trials however, presents a unique set of challenges that we can overcome given sufficient time and allowing for the expansion of our region's testing, tracing and treatment capacity. Our criminal justice partners have been meeting weekly throughout the pandemic to brainstorm and tackle every challenge we've faced. Currently, a dedicated Jury Trial Task force lead by the Assistant Presiding Judge and made up of all relevant stakeholders is convening, receiving input, vetting ideas, and developing strategies to conduct jury trials safely. Some of specific and focused questions the Jury Trial Task Force is tackling include:

- How will we summons jurors that may be afraid to serve because of health risks?
- How will we protect against inadvertently excluding an entire class of jurors such as the elderly, who have highest risk during the pandemic?
- How can we safely socially distance a jury venire that typically involves hundreds of citizens converging on one jury lounge?
- How can we conduct a jury trial when courtrooms are not built for necessary and mandated social distancing?
- How can we protect a defendant's constitutional jury trial right of confrontation when our current county health orders require masks for all individuals in the same room?

We've begun brainstorming solutions such as exploring alternative venues such as gymnasiums or other county facilities, working with our public health department to have them analyze our ultimate policies to ensure the public feels comfortable about our planning, re-configuring courtrooms with plastic partitions for jurors and or witnesses, using extra sanitization teams throughout the trial, and completely transforming how exhibits are handled to prevent contact by the parties. We've also discussed whether any portions of the trial could be done remotely, while at the same time maintaining the integrity of the defendant's constitutional rights.

Simply put, we need more time to properly analyze and safely bring necessary participants back to a jury trial environment while correctly balancing the paramount goal of protecting a defendant's constitutional trial rights.

Specific facts supporting our county's extension request include:

A temporary extension best ensures a defendant's right to a fair jury pool.

Defendants' rights to a jury from a representative cross section of the community is currently weakened because of the natural collision between a court-ordered summons to appear for jury service and current county health orders. First, even getting jurors to respond to a summons during this time is questionable at best. One Ohio jurisdiction, Champaign County, compared their grand jury response rate and approved excusal rate for grand juries pre-COVID and during COVID and found that they would need to summons almost 3 times as many jurors for jury trials to ensure enough for a complete venire. For every 50 jurors summonsed pre-COVID they will now summons 135. The 2010 census reported the population of Champaign county to be 40,097.¹ San Diego, with 3.34 million people is the second largest jurisdiction in our entire state. Pre-pandemic, on average our county sends out about 820,000 jury summons each year, and about 230,000 (28%) already don't respond to their civic duty². We will need more time to

¹ State and County *Quick facts* retrieved April 19, 2020.

² Channel 10 News; *Empty Threat? Thousands of San Diegans blow-off jury duty.* www.10news.com;

develop at a minimum an infrastructure just to get jurors to respond physically to our courthouses, as opposed to requesting immediate pandemic-related deferrals or simply ignoring the summons outright. Secondly, immunocompromised and elder persons³ will hesitate to appear for jury service especially since our current San Diego county Health orders “strongly recommend” that these specific individuals self-quarantine even despite some businesses beginning to reopen.⁴ Additionally, because our schools and many child care establishments remain closed, persons with children cannot report for jury service. Lastly, people who care for immunocompromised or elder persons cannot appear for jury service because of care duties and the potential for infecting those immunocompromised and elder persons. This vast spectrum of citizens who simply cannot report for service significantly dilutes the jury pool and calls into question the gravamen of a fair venire the representative cross-section. A temporary extension until such a time as health orders are relaxed, or when groups of people feel safer about reporting for service is a reasoned solution.

A temporary extension best ensures defendant’s constitutional trial right of confrontation.

The United States Supreme Court has held the Confrontation Clause’s preference “for face-to-face confrontation at trial . . . must occasionally give way to considerations of public policy and the necessities of the case. . .”. (*Maryland v. Craig* (1990) 497 U.S. 836, 849.) A “defendant’s right to confront accusatory witnesses may be satisfied absent a physical, face-to-face confrontation” even *at trial* “where denial of such confrontation is necessary to further an important public policy and only where the reliability of the testimony is otherwise assured.” (*Id.* at p. 850.)⁵ There must be a “case-specific” finding of necessity. (*Id.* at p. 855.)⁶ It should be noted, however, that while certain specific witnesses have been permitted by the courts to testify remotely through video conferencing⁷ because of the specific needs and circumstances identified in those cases, no courts have permitted a blanket allowance for all witnesses to testify remotely. So, while this exception to the Sixth Amendment may be useful

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³ Centers for Disease Control and Prevention; People Who are at Higher Risk for Severe Illness <<https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html>> [as of May 12, 2020].)

⁴ San Diego County Public Health Order dated 5/27/2020. <https://www.sandiegocounty.gov/content/dam/sdc/hhsa/programs/phs/Epidemiology/HealthOfficerOrderCOVID19.pdf> [Places of Worship - Effective May 27, 2020, religious services and cultural ceremonial activities may be conducted in conformance with the State Guidance pursuant to sections 11 and 12, above. Given the high risk of this activity, outdoor ceremonies are encouraged and vulnerable members of the population (**over 65 years old, compromised immune system or underlying condition**) are strongly encouraged to participate through streaming or some other form of remote technology. (emphasis added)]; Section 18: “A strong recommendation is made that all persons who are 65 years old or older, have a chronic underlying condition, or have a compromised immune system self-quarantine themselves at home or other suitable location. (emphasis added).]”

⁵ “[T]he word ‘confronted,’ as used in the Confrontation Clause, cannot simply mean face-to-face confrontation, for the Clause would then, contrary to our cases, prohibit the admission of any accusatory hearsay statement made by an absent declarant—a declarant who is undoubtedly as much a ‘witness against’ a defendant as one who actually testifies at trial.” (*Maryland v. Craig* (1990) 497 U.S. 836, 849.)

⁶ In *Craig*, the Court stated a trial court deciding whether to allow use of the one-way closed circuit television procedure would need to hear evidence that the procedure was “necessary to protect the welfare of the particular child witness who seeks to testify” and “that the child witness would be traumatized, not by the courtroom generally, but by the presence of the defendant.” (*Id.* at pp. 855-856.)

⁷ See *People v. Lujan* (2012) 211 Cal.App.4th 1499.

for particularly vulnerable witnesses on a case-by-case basis, we cannot expect that all witnesses will be allowed to testify remotely through videoconferencing or that this practice will survive a constitutional legal challenge.⁸

Arguably, allowing jury trial testimony from remote witnesses could further the public policy of reducing infection. However, because remote witness testimony only reduces the courtroom population by one person, it is not the sole fix to the health risks a jury trial presents to all others involved. A better solution would be allowing our county a temporary extension in order for our task force to thoughtfully develop proper and safe procedures blessed by our county health department that would also protect defendant's constitutional right to confrontation. Some potential solutions we've already considered involve moving the witness stand (currently within inches of the judge and less than 6 feet from some jurors and the court reporter) to a routinely sanitized location in the courtroom, appropriately distanced from the other parties, that is visible to all jurors spread throughout a larger room.

An additional challenge is that our current county health orders require anyone over 2 years of age wear a mask whenever they are in a business or within six feet of another person who is not a member of their family or household.⁹ This means that all of our prospective jurors, witnesses, and parties in the jury trial courtroom will be wearing masks, including the accused. This will make it difficult for the parties to read facial expressions and assess credibility throughout every stage of the jury trial process. Jury selection is as much about what a prospective juror says as it is about their facial expressions while saying it. Observing one juror's facial reaction to what another juror has said is also an important aspect of jury selection. The inability to make these important observations can affect a defendant's constitutional right to confrontation and a fair trial because striking for cause could be hampered when the lawyers and defendant cannot get a full read on the speaker's credibility. Delaying jury trials until a time when jurors' faces are not obscured benefits the defendant and all parties to the lawsuit.

A temporary extension lessens the high infection risks present in a jury trial environment. Courtrooms are unique environments and are vectors for spreading the virus. Social distancing guidelines do not protect people in indoor spaces for long periods of time. Viral exposure multiplies with time, increasing a person's viral load, which increases the chance of infection. Social distancing rules do not protect people when they are exposed for a lengthy period of time in an enclosed room, even as large as a courtroom. A significant percentage of infections occur from asymptomatic people, who shed the virus up to five days before any symptoms begin.¹⁰

⁸ See *People v. Arredondo* (2019) 8 Cal.5th 694 [circumstances of testifying witness did not compel need for remote testimony]

⁹ San Diego County Public Health order, effective 5/27/2020. ["All persons two-year-old or older who are present in the county shall have possession of a face covering described in California Department of Public Health Face Covering Guidance issued on April 1, 2020, (available at: <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/FaceCoverings-Guidance.aspx>), when they leave their home or place of residence, shall wear the face covering whenever they are in a business or within six feet of another person who is not a member of their family or household. Persons with a medical or mental health condition, or developmental disability that prevents wearing a face covering shall be exempt from this requirement.]

¹⁰ Xi He, Eric H. Y. Lau, "Temporal Dynamics in Viral Shedding and Transmissibility of COVID-19,"

The need for this temporary extension is also driven by the potential devastation that the presence of just one positive individual in a jury trial could cause. For example, in early March 2020, a Dougherty County (Georgia) courtroom was conducting a high-profile murder trial. Over 100 people were summoned to jury duty. On the third day of trial, one juror reported she felt ill. The following day she was hospitalized and became the first county resident to test positive for COVID-19. That one person exposed the court bailiffs, the judge, court reporter, other court personnel, the defendant, defense counsel, the prosecutor, and 109 other people in the jury pool to the virus. Despite their efforts to disinfect the courthouse, staff throughout the courthouse began testing positive. Less than two weeks after the exposure, 23 court employees (including employees working for the district attorney and public defender) tested positive for COVID-19; one judge died.¹¹

A case example in our own county also makes this point. In February 2020, before shelter in place and before declaration of the pandemic, one of our prosecutors was in a courtroom trial where the jury was selected from 150 prospective jurors. Two days into the actual trial the prosecutor became ill. Then four jurors became ill, and the judge became ill all within a period of four additional days. The judge delayed the trial to give everyone the time to recover. Once the trial resumed a week later, several other jurors complained of not feeling well and the bailiff who had been present for the entirety of the case also became sick. In mid-May 2020, when our prosecutor got an antibody test once testing became more prevalent, the finding was that the prosecutor had COVID-19. It's simply too soon to risk sending our own, the accused, and all the other parties into this jury trial environment when we simply don't have the infrastructure in place yet to protect the health of all involved, including the defendant.

Transporting defendants daily to and from a jury trial is additionally still too dangerous. A defendant's daily transport to and from a jury trial is subject to the Sheriff's ability to transport in light of health and safety risks to jail staff, the inmate, the court, and the public. As we have seen in news reports, the numbers of infections among inmates is growing, as evident from infections of 11 inmates in Riverside County¹², five inmates in Orange County and at least one inmate in San Diego County¹³. These infections can be deadly for Sheriff's deputies. Recently, in Riverside County, Sheriff's Deputy Terrell Young died from COVID-19. His death was traced to the transport of an inmate.¹⁴

Nature Medicine <www.nature.com/articles/s41> (April 15, 2020); see also Bromage, Erin, "The Risks—Know Them—Avoid Them" <www.erinbromage.com> [as of May 15, 2020].)

¹¹ Whether other jurors tested positive was not reported. <Law.com/dailyreportonline/2020/04/07/juror-zero-how-covid-19-spread-through-the-dougherty-county-courthouse> (as of May 11, 2020); <https://www.wsbtv.com/news/georgia/georgias-judicial-system-under-pressure-responding-coronavirus-crisis/BK4MVO2HCNEQJOK3QITX3SZXE4/> (as of May 11, 2020).

¹² See <<https://ktla.com/news/local-news/riverside-county-sheriffs-deputy-dies-of-covid-19/>> as of April 8, 2020.

¹³ See <<https://www.sandiegouniontribune.com/news/watchdog/story/2020-04-03/four-sheriffs-employees-jail-inmate-test-positive-for-covid-19-department-says>> as of April 8, 2020.

¹⁴ See <<https://www.latimes.com/california/story/2020-04-03/second-riverside-county-sheriffs-deputy-dies-from-covid-19-complications>> as of April 8, 2020; see also <<https://ktla.com/news/local-news/2nd-riverside-county-sheriffs-deputy-dies-of-covid-19/>> as of April 8, 2020.

Finally, *People v. Tucker* (2011) 196 Cal.App.4th 1313 instructs well here. In *Tucker*, the defendant claimed a speedy trial violation under Penal Code section 1382 because he did not waive the 60-day time limit and there was no good cause for delay. The court disagreed. In light of the global pandemic of H1N1 influenza occurring at that time, the court in *Tucker* stated, “Good cause for the delay of a trial exists when an incarcerated criminal defendant is under quarantine to prevent the spread of infectious disease. A contrary holding would require trial court personnel, jurors, and witnesses to be exposed to debilitating and perhaps life-threatening illness. Public health concerns trump the right to a speedy trial.” (*Id.* at p. 1314.) Our San Diego inmates sit similarly with those in *Tucker* as the are at the highest risk for both transporting and becoming infected with our current virus. *Tucker*’s reasoning and its prioritization of public health over a jury trial deadline squarely supports our ask of this court.

Rushing the transport of jury trial defendants is counterintuitive to everything our county has done to keep the virus at bay and at balance health with public safety. Now is simply too soon.

A temporary extension is necessary because our county is not currently prepared to safely and securely conduct jury trials remotely.

San Diego County is a demonstrated leader because of our quick development of remote appearances for arraignments, preliminary hearings and other matters. San Diego County already uses Microsoft Teams for remote appearances, with public access through YouTube video streaming. However, notwithstanding the additional 6th amendment concerns unique to jury trials, and even with defendant permission to conduct a jury trial remotely, the San Diego Superior Court is not yet logistically equipped to permit remote hearings for jury selection of upwards of sometimes over 100 jurors. Nor is it equipped to ensure a jury of 12+ alternates can safely and securely attend by remote hearing without technological glitches and free from outside distraction, threats or outside pressure during their remote jury service. Our justice partners and information technology teams are currently collaborating to determine if remote technology can support a jury trial where defendants consent, but we are simply not prepared yet to effectively label remote jury trials as a prudent or safe solution.

Related concerns involve harmonizing the technological constraints of a remote jury trial with a defendant’s right to due process. Will all jurors have access to a working laptop or remote device? Will they have access to the high-speed internet required to participate in a platform like Microsoft Teams? The Federal Communications Commission’s latest report claims that, as of 2017, 21 million Americans lacked access to high speed internet. However, other reports indicate that figure is grossly underestimated, and the figure may be as many as 42 million Americans.¹⁵ We don’t want to be in a position where only affluent or technologically savvy individuals get to serve on juries. We cannot sacrifice expediency and ease of technology for the revered constitutional protections contained in a jury trial.

A temporary extension is reasonable given our county’s continued and current justice partner collaboration dedicated to development of a jury trial protocol.

¹⁵ <https://www.businessinsider.com/americans-lack-of-internet-access-likely-underestimated-by-government-2020-3> [retrieved May 27, 2020]

We want to resume trials. Under the excellent leadership of our Superior Court, A Jury Trial Task Force made of all relevant stakeholders is already working and planning. Thoughtful recommendations have already been proposed including those that consider how we will message the safety of our jury trial protocol to the community and to our potential jury pool. For instance, we're thinking about issuing a joint letter from our Presiding Judge along with our Public Health director listing all the health precautions we will take throughout the jury trial process. We're considering supplementing that statement with a joint letter from our prosecution and defense bar reiterating the long tradition of jury trials and how reporting for jury duty is inextricably linked to the continuance of a just society. We're brainstorming whether plastic partitions need to be added in a reconfigured courtroom or multi-purpose room transformed into a courtroom. We're considering using other venues for jury selection such as gymnasiums, other county buildings, school auditoriums, banquet rooms, or civil courtrooms that are currently not in use. However, due to the fact that 72 percent of our in-custody felony cases are serious/violent cases, security concerns are high and selecting a location that is not built for security could add additional unwarranted safety risks. We're strategizing what COVID-specific screening questions need to be included in our jury summons letters, as well as how to socialize the re-introduction of safe jury trials through social media and other press engagement. We're determining whether the use of mailed jury questionnaires can cut down on the number of citizens that we need to bring into our buildings. We've taken inventory of our courthouse spaces to determine which rooms are equipped to handle a socially distanced jury. We've discussed providing personal protective equipment to all jurors with items like disposable pens and notebooks. We are diligently working to avoid further extension requests by seeking to achieve the correct the balance between health and safety and a defendant's rights.

A temporary extension is warranted because Covid-19 infections and deaths continue to rise and health officials continue to advise caution.

As of May 27, 2020, the CDC reports 1,678,843 reported infections and 99,031 deaths in the United States, with California numbers showing 96,733 reported infections and 3,814 deaths¹⁶. San Diego County numbers reflect 6,983 reported cases and 255 deaths¹⁷. The Centers for Disease Control and Prevention (CDC) expects that widespread transmission of COVID-19 in the United States *will* occur and that in the coming months, most of the population in the United States will be exposed to the virus.¹⁸ The CDC recommends that to protect from the virus people should stay home. As of May 8, 2020, the San Diego County Sheriff's Department reported 38 inmates in isolation for COVID-19 related precautions, one inmate in custody that tested positive for COVID-19, and 10 Sheriff employees that tested positive for COVID-19.¹⁹

We're not out of this yet – and we don't see the health experts changing their message anytime soon. Notably, on May 12, 2020, Dr. Anthony Fauci told the Senate Health, Education, Labor and Pensions Committee that failure to follow reopening guidelines could have “really serious”

¹⁶ <[cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us](https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us)> (as of May 27, 2020).

¹⁷ www.sandiegocounty.gov (as of May 27, 2020)

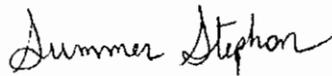
¹⁸ Centers for Disease Control and Prevention, Testing for Covid-19, <<https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/testing.html>> [as of April 2, 2020].

¹⁹ San Diego County Sheriff's Department, COVID-19 Jail Update and Figures (5/8/20) <<https://www.sdsheiff.net/newsroom/links/dsb-covid19.pdf>> [as of May 10, 2020].

consequences.²⁰ Los Angeles County health director Dr. Barbara Ferrer stated that “with all certainty,” Los Angeles County will extend stay-at-home orders through August. (*Ibid.*) San Diego County’s Public Health Officer, Dr. Wilma Wooten, recently stated that stay-at-home orders and social distancing prevented thousands of deaths in the county. She also expressed great concern over the impending reopening of several local casinos and “want[ed] to make it perfectly clear” that she did not agree with the reopenings at this time²¹ The substantial concern expressed by health officials further supports our county’s request for a temporary extension for jury trials. We must not lose sight of the data and the medical experts during this critical time where we innovate to resume jury trials.

Our mission is to pursue a fair and equal justice for all and build safe neighborhoods in partnership with the communities we serve and I’m honored that we have been able to continue fulfilling that mission despite the pandemic through collaboration and innovation. We will strive to do that with Jury Trials given more time.

Respectfully Submitted,



Summer Stephan
District Attorney, San Diego County

²⁰ (<<https://www.usatoday.com/story/news/health/2020/05/12/coronavirus-update-fauci-senate-testing-stimulus-payments/3109600001/>> (as of May 13, 2020).)

²¹(San Diego County Daily Press Briefing, May 13, 2020 <[kusi.com/dr-wilma-wooten-says-many-thousands-more-would-have-died-if-it-wasnt-for-her-lockdown-orders/](https://www.kusi.com/dr-wilma-wooten-says-many-thousands-more-would-have-died-if-it-wasnt-for-her-lockdown-orders/)> (as of May 13, 2020).)



Office of the San Diego City Attorney

Mara W. Elliott
City Attorney

May 28, 2020

The Honorable Lorna Alksne
Presiding Judge
Central Courthouse
1100 Union Street
Tenth Floor
San Diego, CA 92101

Subject: Letter of Support - Criminal Trials Deadline Extension

Dear Presiding Judge Alksne,

The San Diego City Attorney's Office supports the San Diego Superior Court in its request for an additional thirty-day extension of criminal trials. The requested time extension is minimal and prudent in light of the complexity of the current public health emergency. The extra time will provide all parties with a meaningful opportunity to coordinate a comprehensive case disposition strategy.

Sincerely,

A handwritten signature in cursive script, reading "Mara W. Elliott".

Mara W. Elliott
San Diego City Attorney

MWE:sne

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RANDY MIZE
PUBLIC DEFENDER

May 28, 2020

The San Diego Public Defender supports the request of the San Diego Presiding Judge to extend the continuance of Jury Trials for another 30 days to July 17th 2020.

The Chief Justice extended the time in which to conduct criminal trials under Penal Code section 1382 to 90 days. The decision was based on the global pandemic and a finding that courts are “clearly places of high risk. The 90-day extension was designed to balance “the constitutional due process rights of parties in criminal proceedings with the health and safety of these parties, the public, court staff, judicial officers, attorneys, witnesses, jurors, and others present at these proceedings.”

The authority to grant the extension was based on Governor Newsom’s emergency declaration, the California Constitution (article VI, section 6), and Government Code section 68115.

The Public Defender’s Office has worked closely with the court since the beginning of this pandemic. We are currently involved in the Superior Court’s working group on jury trials which is trying to find a safe and constitutional way to conduct jury trials. As we try to address the myriad of legal, ethical, and practical issues, we are afraid the looming trial extension deadline set by the Chief Justice will lead to unsafe conditions that fail to protect those for whom the extension was originally granted. If trials begin without allowing the parties to ensure adequate safety precautions, the due process rights sought to be protected will fall by the wayside. A defendant’s due process rights are not protected by a jury venire that does not represent a cross-section of the community, by jurors who are so focused on their own health and safety that they cannot listen to the evidence, and by social distancing requirements that would deny a defendant the basic right to sit next to his or her attorney reflecting human dignity and respect.

While we want trials to begin, they need to be done in a safe manner to protect everyone who would need to be in a courtroom for a jury trial. The request by Presiding Judge Alksne to extend the continuance for another 30 days to July 17, 2020 helps to ensure precautions and procedures are put in place to protect everyone involved.

Respectfully,

Randy Mize
Public Defender, County of San Diego



Michael R. Barnett
Undersheriff

San Diego County Sheriff's Department

William D. Gore, Sheriff



May 28, 2020

The Honorable Tani Cantil-Sakauye, Chief Justice
Supreme Court of California
350 McAllister St.
San Francisco, CA 94102-4797

To the Honorable Tani Cantil-Sakauye, Chief Justice of California:

As Sheriff of San Diego County, I am writing to express my support of the request by the Superior Court for an additional 30 day extension (through July 15, 2020) before the resumption of jury trials. The San Diego County Sheriff's Department is responsible for providing a safe and secure environment that enables the judicial system to serve the community effectively.

The security and logistical challenges associated with conducting criminal jury trials during this pandemic requires careful and significant planning. I am aware that the San Diego County Superior Court, having successfully implemented the resumption of arraignments and preliminary hearings, is now focused on developing a plan to safely resume criminal jury trials. This is a far more difficult undertaking, as planning must take into account the safety and security of not only the court staff and attorneys, but of defendants, witnesses, jurors, and any members of the public who may wish to witness the trial, as is their right. Jury trials in San Diego County will require planning including ensuring that spaces are large enough to accommodate, with social distancing requirements, the number of court staff, counsel, witnesses, potential jurors and members of the public that will be entering the courthouse to participate or witness the proceedings.

It should also be noted that the resumption of criminal jury trials will involve the movement of incarcerated defendants. This movement will involve exposing inmates to locations, persons, and surfaces that may increase their risk of contracting COVID-19.

I am confident that the court can devise a plan that allows for the resumption of safe criminal jury trials during the pandemic, but such planning should be done carefully and deliberately rather than with the goal of meeting an arbitrary deadline. The deputies of my department are the ones who will be tasked with maintaining order, safety, and security in the courtrooms, including the enforcement of social distancing, when criminal trials are taking place. As a result, it is of critical importance to me that there be a well thought-out, manageable plan in place before criminal jury trials resume.

I therefore ask that the Judicial Council grant the San Diego County Superior Court the additional time it is requesting to formulate a plan that will allow for the successful and safe resumption of jury trials in San Diego County.

Respectfully,

William D. Gore, Sheriff

Keeping the Peace Since 1850

Post Office Box 939062 • San Diego, California 92193-9062

TO: Hon. Tani G. Cantil-Sakauye, Chair of the Judicial Council
Judicial Council of California
c/o Legal Services Supervising Attorney Charles Perkins
415-865-4609
charles.perkins@jud.ca.gov
415-865-8767 (fax)

FROM: *Name* : Lorna A. Alksne
Title: Presiding Judge
Court: Superior Court of San Diego County
Telephone: [REDACTED]
Fax: 619-844-5550
E-mail Address: [REDACTED]

DATE: 6/22/2020

SUBJECT: Request for Judicial Emergency Order

I hereby request an order allowing the court to implement the following emergency procedures pursuant to the provisions of section 68115 of the Government Code¹:

The court may extend the time period provided in section 1382 of the Penal Code within which a trial must be held by not more than 30 days. (Gov. Code, § 68115(a)(10).)

(Fill in number of days, not exceeding 30. Pursuant to Government Code section 68115(a)(10), "the trial of a defendant in custody whose time is so extended shall be given precedence over all other cases.")

This request applies only to cases in which the statutory deadline otherwise would expire on _____ *or* from 7/14/2020, to 8/17/2020, inclusive*.

(Fill in date(s) above.)

***This request applies to cases in which the original or previously-extended statutory deadline otherwise would expire from July 14, 2020, to August 17, 2020, inclusive.**

Although the previous Emergency Order provides relief for cases in which the trial deadline falls on July 14, 2020, through July 17, 2020, the court has determined those days also need to be included in the current request. The April 29, 2020 statewide order granting up to a 90-day

¹ Government Code section 68115, as amended, effective January 1, 2019, provides that, upon the request of a presiding judge, the Chairperson of the Judicial Council may authorize relief as set forth in the statute, "[w]hen war, an act of terrorism, public unrest or calamity, epidemic, natural disaster, or other substantial risk to the health and welfare of court personnel or the public, or the danger thereof, the destruction of or danger to the building appointed for holding the court, a large influx of criminal cases resulting from a large number of arrests within a short period of time, or a condition that leads to a state of emergency being proclaimed by the President of the United States or by the Governor pursuant to Section 8625, threatens the orderly operation of a superior court location or locations within a county or renders presence in, or access to, an affected court facility or facilities unsafe"

extension was effective for cases with a last day for trial of March 16, 2020, through June 15, 2020. A last day for trial of March 16, 2020, with a 90-day extension, had a new last day for trial of June 14, 2020. Because June 14 was a Sunday, the last day for trial for such cases was really June 15, 2020. Our court-specific order granted an additional 30 days to previously extended deadlines starting on June 15, 2020. A last day for trial of June 15, 2020, with a 30-day extension, is July 15, 2020, but counting from the original June 14, 2020 date would be July 14, 2020. It is not clear whether the deadline for such cases should be counted from June 14 or June 15, but out an abundance of caution the court is including July 14, 2020 trial deadlines in this request.

In addition, our court-specific 30-day extension applies to new cases (no previous extensions) with a last day for trial of June 16, 2020 through July 17, 2020. A last day for trial of June 16, 2020, with a 30-day extension, is July 16, 2020. Accordingly, we are including the July 16 and July 17 cases in our request as well.

The circumstances necessitating an emergency order are described in the attached document.

The public defender, the district attorney, and other interested local entities have / have not (check one box) been notified of this request for emergency order.

The court has / has not (check one box) advised these entities to immediately notify the Judicial Council's Legal Services office of any opposition or questions regarding the request.

Please list the names and telephone numbers of the district attorney, the public defender, and other notified parties affected by the order:

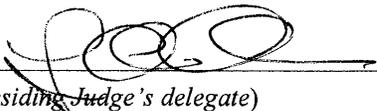
District Attorney: Summer Stephan

Public Defender: Randy Mize

Other Parties Affected: City Attorney Mara Elliot; San Diego Sheriff Bill Gore

The court has / has not (check one box) been informed of any opposition to this request.

If the court has been informed of potential opposition to this request, please state below the party or parties who may oppose the request and any stated reasons for the opposition:

Submitted by: 
(Presiding Judge or Presiding Judge's delegate)

Date: 6/22/2020

The San Diego Superior Court is hereby requesting an order allowing the court to extend the time period provided in Penal Code section 1382, within which a trial must be held, by not more than 30 days. This request applies to cases in which the original or previously-extended statutory deadline otherwise would expire from July 14, 2020, to August 17, 2020, inclusive. In the court's May 29, 2020 request for an Emergency Order for additional time to conduct trials, it submitted letters of support from the District Attorney's Office, the City Attorney's Office, the Office of the Public Defender, and the Sheriff's Department. Each of these justice partners has confirmed that they also fully support this request.

I. BACKGROUND INFORMATION AND BASIS FOR REQUEST

The numerous federal, state, and local public health orders that have been issued in response to the COVID-19 pandemic are well-known and have been detailed in prior Judicial Council orders and memoranda, as well as this court's prior requests for relief from the Chief Justice. Accordingly, they will not be repeated here, except as needed to provide relevant updates since the court's last Emergency Order request.

Statewide, California is in early Stage 2 of its Resilience Roadmap for reopening, and San Diego County remains approved with a variance to move further ahead, subject to industry-specific guidance provided by the state and the approval of, and limitations imposed by, county health authorities. Although several business activities and sectors have been added since the court's previous request, activities involving congregations of large groups of people, including concerts, live-audience sports, festivals, and theme parks, are still prohibited, and other venues such as places of worship and movie theatres are limited to the lower of 25% of capacity or 100 attendees. However, even with this trend of continuing to allow additional business activities and sectors to reopen, San Diego County announced it has identified and is continuously tracking 13 specific triggers that, if met, would prompt a pause or reversal of re-openings. On June 18, 2020, one of these triggers was met. Accordingly, San Diego County announced it would pause any re-openings announced by the state going forward. Therefore, even if the state eases restrictions on public gatherings in the future, it is unlikely that San Diego County would immediately follow.

On June 18, 2020, Governor Newsom announced sweeping new California Department of Public Health guidance requiring all people in California to wear face coverings when inside of, or in line to enter, any indoor public space and all employees when interacting in-person with any member of the public; working in any space visited by members of the public, regardless of whether anyone from the public is present; working in or walking through common areas; or in any room or enclosed area when unable to physically distance. The San Diego County Health Officer's most recent stay-at-home order, which was effective June 19, 2020, still generally prohibits gatherings of more than one person, but it implements measures to allow for additional business and recreational activities with modifications consistent with Stage 2 protocol. All such essential and reopened businesses must comply with 6-foot social distancing requirements, conduct temperature, symptom, and exposure screenings of employees, and require employees to wear face coverings consistent with the state guidance. The order further strongly recommends that all persons who are 65 years old or older, have a chronic underlying condition, or have a compromised immune system self-quarantine at home or in a suitable location.

Since the court received its first Emergency Order related to the pandemic, which was effective March 17, the court has worked continuously to develop and implement numerous additional technologies and procedures so that it can serve the public in a manner that is safe for all. As a result of the court's continuous efforts, the court has been able to gradually restore almost all services, at least remotely. The court has equipped multiple criminal, juvenile, family, probate, and civil courtrooms with video remote systems, increased its telephonic hearing capabilities, and has developed entirely new processes and procedures for handling these matters. The court has utilized this new equipment and these new procedures to hold numerous remote hearings, including the holding of arraignments and preliminary hearings for in-custody criminal defendants. The court has also significantly increased remote work options for staff members to be able to access phone lines from home to field incoming calls from the public to the court and to also enable them to access critical court business applications and data in order to perform case management work and assist the public. The court created and implemented a Civil Status Conference Hearing online application to enable attorneys to schedule status conferences to be held remotely and launched a new ability to eFile in family cases.

Since the court's May 29, 2020 trial extension request, it has added or is in the process of adding new technology and procedures for holding additional criminal proceedings. A criminal Homicide trial that was suspended when the court closed is scheduled to resume on June 25, 2020, with closing arguments and jury deliberations. The court will hold the closing argument in the Jury Lounge to allow for all jurors, the defendant, the attorneys, the judge and court staff to remain 6 feet apart at all times. The court is also scheduling and holding status conferences for its capital cases, with the defendant appearing in person. Starting on July 7th, the court will launch a "walk up court," which will enable an out-of-custody defendant to come to the first floor of the Central Courthouse and be able to use a computer to make a remote appearance for any courtroom proceeding in the county. After this pilot "walk up" court is tested in Central, it will be replicated in every courthouse, on the first floor, to allow the court to handle out-of-custody cases while minimizing the safety risks to the court staff and the public, by keeping members of the public out of the elevators and multiple courtrooms. In addition, in August, the court will hear remote status conferences for all out-of-custody cases to address issues and schedule matters prior to trial.

As set forth in the court's response to question 5 below, over the past few months the court has been regularly meeting with and working with its justice partners to reduce the jail population and settle as many cases as possible. Notwithstanding these efforts, the court has approximately 1,800 cases in which the last day for trial will occur between July 18 and August 17, 2020. At the same time, and as detailed below, there are still multiple unprecedented safety and constitutional issues that have been identified and are being addressed in order for the court to begin resuming jury trials. What makes this process particularly difficult is that the potential solutions for addressing health and safety concerns are frequently at odds with constitutional requirements.

As stated in the court's May 29, 2020 request for an Emergency Order, the court organized a Jury Trial Working Group comprised of judicial officers, court staff, the Public Defender's Office, the District Attorney, the City Attorney's Office, and a representative from the private defense bar. Specific information concerning the progress this working group has made to enable

the court to safely hold jury trials, while at the same time satisfying constitutional requirements, is provided in response to question 4, below.

II. ANSWERS TO SPECIFIC QUESTIONS SET FORTH IN THE MAY 14, 2020 JUDICIAL COUNCIL MEMORANDUM

1. How many criminal cases have last-day deadlines under Penal Code section 1382 during the period of time for which the court is requesting a first extension under Government Code section 68115 (please provide daily breakdown)?

Because the court did not start arraignments and preliminary hearings until late April, these numbers are currently low, yet they will continue to grow as the court continues to hold more hearings. Because this court deals with paper files, it would be burdensome to determine the exact number of cases because it would have to pull all the files and check if the defendant entered a time waiver and, if so, what type and for how long. However, there are approximately 15 felony cases in which the statutory time for trial, without any extensions, would expire July 18 through August 14. There are also approximately 30 misdemeanor trials in this category. While the number of these cases might not be unwieldy in and of itself, when combined with the number and nature of the cases set forth below in question 2, the court would not be able to try all these cases during this time period.

2. How many criminal cases are coming up to the limit already extended for 90 days by the statewide orders (please provide a daily breakdown)? Is the court requesting a further extension of time on any of these cases?

The response to this question includes those cases that were extended for 90 days by the statewide orders plus the cases that received an additional 30 days pursuant to the Chief's June 4, 2020 Emergency Order. There are over 1,800 cases that fall within this category. Because these cases all have paper files, the court would have to manually pull all the case files to determine the date set for trial, whether there is a time waiver, and, if so, what type and for how long. Given the reduced staffing resulting from COVID-19, along with the social distancing requirements, the court simply does not have the resources to provide these specific numbers at this time. However, the court can provide the following rough statistics for a general idea:

As noted in the prior extension request, there are over 200 felony cases that had trial dates previously set on and between March 16 and April 16. Assuming the set trial date was the last day for trial, with the 90-day extension provided by the Chief Justice's statewide orders and the additional 30-day extension authorized by the Chief's June 4, 2020 Emergency Order, these cases would now have a last day for trial between July 14 and August 14 (meaning they would need to be set for trial between July 3 to August 4 to have a 10-day grace period).

As set forth in the court's prior extension request, there are over 630 misdemeanor cases that had trial dates set on and between March 16 and April 16. Assuming the set trial date was the last day for trial, with the 90-day extension provided by the Chief Justice's statewide orders and the additional 30-day extension authorized by the Chief's June 4, 2020 Emergency Order, these

cases would now have a last day for trial between July 14 and August 14 (meaning they would need to be set for trial between July 3 to August 4 to have a 10-day grace period).

In addition, there are over 200 felony cases and over 650 misdemeanor cases that had trial dates previously set from April 20¹ through May 15. Assuming the set trial date was the last day for trial, with the 90-day extension provided by the Chief Justice, these cases would now have a last day for trial on and between July 20 and August 13 (meaning they would need to be set for trial between July 10 to August 3 to have a 10-day grace period).

Finally, there are over 90 felony cases and over 90 misdemeanor cases that had or have trial dates set on and between June 16 and July 15. Assuming the set trial date was/is the last day for trial, with the 30-day extension authorized by the Chief's June 4, 2020 Emergency Order, these cases would now have a last day for trial between July 16 and August 14 (meaning they would need to be set for trial between July 6 to August 10 to have a 10-day grace period).

Summary:

Based on the above, there are roughly 1,800 cases in which the last day for trial will occur between July 14 and August 14. Pursuant to the information received by the District Attorney's Office, the impacted jury trials "are overwhelmingly serious and violent trials where the stakes are high for both sides." This also means the trials will be longer, further heightening the concerns of congregating large numbers of people and increasing the risk that the limited number of alternate jurors that could be allowed with the social distancing requirements will not be sufficient.

3. What logistical or other issues prevent the court from holding trials within the time provided in Penal Code section 1382? How is the court planning to address any of these issues?

The Jury Trial Working Group has been investigating and devising solutions to address the numerous and unprecedented logistical, safety, and legal issues that must be considered and resolved in order to safely conduct thousands of jury trials, many of which will be lengthy. The court's current plans to address these issues, and hold trials, are set forth in the answer to question 4 below. Following are some of the logistical, safety, constitutional, and legal issues that have been identified.

State and County Public Health Orders and Safety Issues:

- Social Distancing Requirements (6-foot distance between individuals) severely impacts the number of persons that can be in the courthouse, the courtrooms, the jury lounges, the elevators, and the restrooms.
- Effective June 18, 2020, with limited exceptions, Governor Newsom has ordered all persons to wear face coverings while in public places, even if they are able to maintain a 6-foot distance between each other.

¹ Cases previously set for Friday, April 17, 2020, would have a new last date for trial of August 17, 2020, after the 90-day extension provided by the Chief Justice, and the additional 30-day extension for this court authorized by the Chief Justice and Presiding Judge of this court.

- As required by the county's order, the court prohibits employees from entering the courthouse if they have a temperature of 100 degrees or more; consistently, the court also imposes this restriction on judicial officers and members of the public.
- For many, public transportation would have to be used (due to parking issues downtown, where most of our courtrooms are located).
- The Sheriff's Department would have to transport hundreds of in-custody defendants back and forth between the jail and the courthouses.
- Notwithstanding these measures, the virus may be spread by asymptomatic persons.

Jury Issues:

- The court expects a very low yield of jurors summoned. The court normally experiences about a 10% report rate for newly summoned jurors if it issues the summonses at least 6-weeks prior to the report date. (Although the court is only required to provide 10-days' notice, under normal circumstances this only yields approximately 5% of newly summoned jurors appearing). The court plans to provide 4-weeks' notice, which, because of the pandemic and shortened notice, will likely result in less than a 3% - 5% report rate.
- Given the number of trials that need to be scheduled, along with the current health orders and circumstances created by the pandemic, the court would have an insufficient number of available jurors to meet the court's needs through the end of the year. To cover the approximately 1,800 trials running up on their deadlines between July 18, 2020 and August 17, 2020, the court would likely need to summon over 850,000 jurors. However, for each calendar year, San Diego only has approximately 1.8 million individuals available in the pool of individuals available to issue jury summons to. Accordingly, if the court were required to continue to issue summonses in the volume set forth above, the court would run out of jurors to summon before the end of the year.
- Concerns have been raised that the jurors appearing might not be a representative cross-section because, for example, we would expect significantly lower numbers of elderly persons, immune-compromised persons, and parents with children (the private defense bar has raised this concern).
- Attorneys have expressed concerns with jurors wearing face coverings during voir dire and during trial as it would eliminate or severely limit their ability to see the jurors' facial expressions.
- Attorneys have asserted that private voir dire would constitute structural error.
- Voir dire will need to be conducted while adhering to the social distancing requirement.
- Currently, jurors will not be able to deliberate in the deliberation rooms due to the social distancing requirements. This will likely result in the jury using the courtrooms for deliberations, which will mean the courtroom will not be available for other hearings and trials.
- There is an increased likelihood of losing jurors mid-trial due to the court's temperature screening requirement and also because more jurors will likely be excused if they start to exhibit physical symptoms consistent with COVID-19. At the same time, due to space

limitations in courtrooms, the court is unable to have more than 1 alternate juror except with respect to a small percentage of courtrooms countywide (assuming little to no public presence in the courtrooms).

- Food/meal access: there are presently limited food options around the courthouses.

Judicial Officer Issues:

- 73 of the court's 130 judges are 60 years old or older (39 are age 60-64; 34 are age 65 and above).

Court Staffing Issues:

- The court employs approximately 1,200 employees. However, as a result of COVID-19, the court is experiencing significant staffing and budgetary issues at a time when it needs significantly more, not less, resources/staffing to devise and implement all of the new processes and procedures, as well as the backlog, resulting from the pandemic.
- Numerous employees have requested FFCRA or another type of leave as a result of COVID-19. Child care FFCRA leave is expected to be utilized by employees for several more months, as some school districts in San Diego County have already indicated that they will continue distance learning for the first month of the fall semester. In addition, the court has offered intermittent unpaid furloughs in an effort to deal with the budget deficit. Numerous employees have begun using this program on a sporadic basis, and within less than a month of the program being introduced, more than 20 employees requested a reduced schedule for FY 20-21 (such as two unpaid days off per week).
- As a result of the Governor's revised budget, the court estimates that it will need to make \$12 - \$15 million in cuts to its fiscal year 2020-21 budget. Accordingly, the court has instituted a hiring freeze and has implemented a Voluntary Separation Incentive Payment ("VSIP") program. The court expects that over 40 employees will retire and approximately 30 will elect to take an extended unpaid leave of absence as a result of this program. The savings from the VSIP program are anticipated to result in approximately \$5 million during FY 20-21. While this is welcome, the court will still have a long way to go to address the projected deficit. In addition, the impacts of the pandemic upon civil assessments have yet to be determined, and we do not know if we will face additional revisions to the state budget during 20-21. It is clear that these budget cuts will have a significant impact on the court.

Facilities/Logistical Issues:

- The court's main courthouse, the Central Courthouse, is a high-rise building with courtrooms on 22 separate floors. This necessitates heavy elevator use to operate at full capacity. However, given the current limitations of only allowing no more than 4 persons on an elevator at a time, the courthouse is not able to conduct multiple trials on multiple floors given the large numbers of jurors, attorneys, parties, families, and court staff who would be present (even if members of the public were not allowed to be present).

- Even assuming the defendants would be willing to consent to appear for trial remotely (which they likely will not be, given the court's experience with this issue thus far), there is a very limited capacity to have in-custody defendants appear remotely because, countywide, there are only 3-4 rooms at each of the 7 jail facilities that are equipped for this purpose.
- There are severe limitations on the court's ability to assemble jurors in a jury lounge in all of its locations while complying with social distancing requirements: (i) the Central Courthouse, which is the main courthouse, will only accommodate 71 jurors; (ii) the East County courthouse can only accommodate 64 jurors; (iii) the South Bay facility can only accommodate 31 jurors; and (iv) the North County courthouse can only accommodate 56 jurors.
- Even without considering public access to the courtrooms, only 20 of the court's 150 courtrooms can accommodate more than 13 jurors with appropriate social distancing in place: (i) the Central Courthouse has 3 such courtrooms; (ii) the Hall of Justice has 16 such courtrooms (15 can accommodate 15 jurors and 1 can accommodate 25 jurors); and (iii) the East County courthouse has 1 such courtroom (and it can only accommodate 14 jurors). Neither the South County nor the North County courthouses can accommodate more than 13 jurors. Considering the number of serious and lengthy trials at issue, along with the higher than normal likelihood of needing alternate jurors, this facility issue poses a significant impediment to conducting a voluminous number of trials.
- Even without considering public access to the courtrooms, there are also a limited number of courtrooms that can accommodate 13 jurors with appropriate social distancing in place. Excluding the courtrooms mentioned above, the total number of such courtrooms is 44 (43 at the Central Courthouse and 1 in the East County courthouse). None of the other courthouses can accommodate these juries. Again, given the number of trials at issue, along with the increased likelihood of needing additional alternates, this creates a significant obstacle to conducting multiple trials at one time. Exacerbating the situation is the fact that courtrooms will also need to be used as deliberation rooms.
- Even in those courtrooms that can accommodate a full jury, the space in the courtrooms may not allow for ancillary trial participants, such as interpreters, victim support, or investigating officers.
- Bathroom breaks during trial would be prolonged due to social distancing requirements in restrooms.
- Handling of evidence (touching issues) will need to be addressed.

Other Legal Issues, Including The Rights Of Defendants, Victims, and the Public:

- Limitations on a defendant's access to counsel during trial preparation and trial (raised by private defense bar).
- Defendant's right to be present.
- Concerns have been raised that having defendants, witnesses, and jurors wear face coverings may constitute a violation of defendant's due process /confrontation rights.

- Defense counsel has raised concerns that jurors may feel bias/resentment towards the defendant for forcing a trial under the circumstances.
- Even in those courtrooms that can accommodate a full jury, the space in the courtrooms would not allow for any (or very limited) physical public access, including the defendant's family, the victim/victim's family, the general public, and the media.

4. How is the court planning to conduct criminal trials? Does the court intend to use technology to assist in holding criminal trials?

The court cannot require defendants to appear remotely and, based on its experience and the information it has received from the community, the court must plan trials on the assumption that the defendants and witnesses will be appearing in person.

Given the many logistical, safety and legal limitations described in the preceding section, along with the fact that new procedures will need to be tested and adjusted to resolve the many issues that will certainly arise, the court cannot initially resume jury trials at full capacity. Instead, the court will enter this uncharted territory by setting no more than one trial per day in the Central Courthouse. Presently, the court plans to issue its first group of summonses on or around July 15, 2020. The Jury Trial Working Group is working with our justice partners to identify a test case, and a method to prioritize cases to bring to trial thereafter.

The Jury Trial Working Group has drafted an initial proposed plan, which it is currently vetting with its justice partners. In summary, the current plan is to have jurors summoned on a daily basis to the jury lounge, with a goal of having the maximum number of jurors the room will hold appear each day (this is approximately 70 jurors in the Central Courthouse under the current 6-foot distancing requirements). Summoned jurors will complete an online questionnaire in advance, which will expedite jury selection, as well as allow the court to excuse or reschedule some jurors prior to them coming to the courthouse. The court will use one of its three large courtrooms for jury selection, as with some creativity we can seat as many as 30 prospective jurors in these courtrooms. Once the jury is selected, they trial will move to a regular trial courtroom, where, again with some creativity, we can seat 14 or 15 jurors, while having some seats available for public access. Some of the more specific issues and the current plans to address them are as follows:

a. Juror Summons and Jury Selection

The court is working diligently on developing an online juror portal whereby the court would be able to excuse or reschedule jurors without them having to come to court. Via the portal, prospective jurors would also be able to answer a standard courtroom questionnaire prior to service. Finally, the portal would enable the court to communicate to jurors any changes or other information regarding their service. The court is working to have this functionality go live as soon as possible, but a key piece is out of our hands as the portal changes must be made by Jury Systems Incorporated.

The summonses are also being changed. The group is working on verbiage for an insert to be mailed that, among other things, would inform prospective jurors of the safety precautions being taken and provide links to and information about the portal and online questionnaire.

Jury selection/voir dire will take place in one of the court's three large courtrooms at its Central Courthouse, with batches of 30 socially distanced jurors present at a time. Jurors not yet called would remain in the jury lounge. The group is exploring various options of rotating jurors in and out of these courtrooms until 12 jurors and enough alternates are selected. If a jury is not selected from the available jurors, the court will contact jury services for available jurors either the same day or the next day if necessary. Jurors selected for trial will either be told in person or notified by email/text when and where they need to report.

b. Conducting Trial

Jurors will be met in the hallway by staff/bailiff and directed to wait on the marked, socially distanced benches until they are called into the courtroom. Standard-sized courtrooms will have additional chairs placed, and the appropriate chairs marked, for the jurors. The jurors will be spread out, including in the gallery, but will essentially be on one side of the courtroom. The smaller gallery section will be available for the public and media.

Unless the public health guidelines change, all court staff, attorneys, defendant, and all others in the courtroom will wear face coverings, including while speaking. Regarding witnesses, the court is exploring: (i) installation of plexiglass around the witness box in at least some of its courtrooms, which would allow a witness to remove their face covering while testifying and (ii) the use of face shields in lieu of face coverings. However, given the Governor's June 18, 2020 order concerning face coverings in public areas, it is not clear whether the court will be able to utilize either of these options.

A sanitation protocol will be in place and explained to the jurors. Attorneys will examine witnesses from their chair position, preferably sitting. Each juror will receive his or her own copy of the jury instructions and may take them into the deliberation room.

c. Jury Deliberations

There are only a few options in the court's Central/HOJ Courthouse complex that would allow jurors to deliberate comfortably while socially distanced. The great likelihood is that many of our juries will have to deliberate in a courtroom, such as an adjacent unused courtroom. Measures will be taken to arrange the deliberation room, whatever it is, in such a way as to facilitate open deliberation.

5. What efforts has the court made to work with justice partners to encourage and facilitate expeditious settlement, where possible, of cases pending before the court?

Since the court closed on March 17, 2020, it has been working continuously and diligently in collaboration with the Public Defender, District Attorney, City Attorney, and Sheriff to secure the release of inmates who do not present a public safety risk, including, but not limited to: creating

a procedure for and processing requests for lower bail or own-recognition release pursuant to Penal Code § 1269c; creating a procedure for and processing requests for release pursuant to stipulation of the parties; authorizing the Sheriff to accelerate the release of sentenced defendants up to 30 days pursuant to Penal Code § 4024.1; authorizing the Sheriff to accelerate the release of sentenced defendants up to 60 days pursuant to an Advisory from the Chief Justice of the Supreme Court of California dated March 30, 2020; and, prior to adoption of the statewide emergency bail schedule, implementing a modification to the San Diego Countywide Bail Schedule temporarily reducing bail to zero for over 60 offenses.

Based on information received from the District Attorney's Office, these efforts resulted in a reduction of approximately 1,200 inmates before the statewide emergency bail schedule took effect. According to the District Attorney's Office, as a result of these efforts the pre-disposition jail population consists of approximately 90 percent felony cases with 72 percent being serious/violent felonies. Only about 10 percent constitute misdemeanors, mostly comprised of domestic violence and repeat DUIs or defendants who are in violation of probation for a serious/violent felony offense.

Finally, the court has, together with the District Attorney's Office, Public Defender's Office, and Sheriff, set up various video and telephonic remote proceedings and calendars to move criminal cases along, including holding bail review hearings, readiness (settlement) conferences, arraignments, preliminary hearings, sentencing hearings, change of plea hearings, and handling probation violation and extradition matters. All in-custody defendants have been given at least one, and sometimes more, telephonic and/or video readiness (settlement) conference hearing to attempt to settle their case. The court is caught up on necessary felony arraignments and preliminary hearings.

TO: Hon. Tani G. Cantil-Sakauye, Chair of the Judicial Council
Judicial Council of California
c/o Legal Services Supervising Attorney Charles Perkins
415-865-4609
charles.perkins@jud.ca.gov
415-865-8767 (fax)

FROM: *Name* : Lorna A. Alksne
Title: Presiding Judge
Court: Superior Court of San Diego County
Telephone: [REDACTED]
Fax: 619-844-5550
E-mail Address: [REDACTED]

DATE: 7/28/2020

SUBJECT: Request for Judicial Emergency Order

I hereby request an order allowing the court to implement the following emergency procedures pursuant to the provisions of section 68115 of the Government Code¹:

The court may extend the time period provided in section 1382 of the Penal Code within which a trial must be held by not more than 30 days. (Gov. Code, § 68115(a)(10).)

(Fill in number of days, not exceeding 30. Pursuant to Government Code section 68115(a)(10), "the trial of a defendant in custody whose time is so extended shall be given precedence over all other cases.")

This request applies only to cases in which the statutory deadline otherwise would expire on _____ *or* from 8/13/2020, to 9/17/2020, inclusive*.

(Fill in date(s) above.)

***This request applies to cases in which the original or previously-extended statutory deadline otherwise would expire from August 13, 2020, to September 17, 2020, inclusive.**

Although the previous Emergency Order issued June 30, 2020, already provides relief for cases in which the trial deadline falls on July 14, 2020, through August 17, 2020, the court has determined that August 13, 2020, through August 17, 2020, also need to be included in the

¹ Government Code section 68115, as amended, effective January 1, 2019, provides that, upon the request of a presiding judge, the Chairperson of the Judicial Council may authorize relief as set forth in the statute, "[w]hen war, an act of terrorism, public unrest or calamity, epidemic, natural disaster, or other substantial risk to the health and welfare of court personnel or the public, or the danger thereof, the destruction of or danger to the building appointed for holding the court, a large influx of criminal cases resulting from a large number of arrests within a short period of time, or a condition that leads to a state of emergency being proclaimed by the President of the United States or by the Governor pursuant to Section 8625, threatens the orderly operation of a superior court location or locations within a county or renders presence in, or access to, an affected court facility or facilities unsafe"

current request. The April 29, 2020 statewide order granting up to a 90-day extension was effective for cases with a last day for trial of March 16, 2020, through June 15, 2020. With this statewide 90-day extension, as well as the two prior 30-day extensions authorized for this court, a case with a last day for trial of March 16, 2020, through March 20, 2020, or April 19, 2020, would now have a last day for trial of August 13, 2020, through August 17, 2020. In addition, our prior court-specific 30-day extensions apply to some newer cases (no 90-day extension applicable) that have original last-day deadlines of June 16 through June 18, and July 18, making their current last day deadlines fall in the window of August 15, 2020, through August 17, 2020. Accordingly, we are including the August 13 through August 17 in our request.

The circumstances necessitating an emergency order are described in the attached document.

The public defender, the district attorney, and other interested local entities have / have not (check one box) been notified of this request for emergency order.

The court has / has not (check one box) advised these entities to immediately notify the Judicial Council's Legal Services office of any opposition or questions regarding the request.

Please list the names and telephone numbers of the district attorney, the public defender, and other notified parties affected by the order:

District Attorney: Summer Stephan

Public Defender: Randy Mize

Other Parties Affected: City Attorney Mara Elliot; San Diego Sheriff Bill Gore

The court has / has not (check one box) been informed of any opposition to this request.

If the court has been informed of potential opposition to this request, please state below the party or parties who may oppose the request and any stated reasons for the opposition:

Submitted by: 
(Presiding Judge or Presiding Judge's delegate)

Date: 7/28/2020

The San Diego Superior Court is hereby requesting an order allowing the court to extend the time period provided in Penal Code section 1382, within which a trial must be held, by not more than 30 days. This request applies to cases in which the original or previously-extended statutory deadline otherwise would expire from August 13, 2020, to September 17, 2020, inclusive. In the court's May 29, 2020,¹ request for an Emergency Order for additional time to conduct trials, it submitted letters of support from the District Attorney's Office, the City Attorney's Office, the Office of the Public Defender, and the Sheriff's Department. Each of these justice partners has confirmed that they also fully support this additional request.

I. BACKGROUND INFORMATION AND BASIS FOR REQUEST

The California Department of Public Health has indicated that community spread of infection is of increasing concern across the state and is of particular concern in congregate settings, including nursing homes, homeless shelters, jails, and prisons. According to the CDPH, public health studies have shown that the risk of transmission is exacerbated in indoor spaces due to the release of infectious particles into the air when someone speaks, coughs, sneezes, or sings, particularly when lacking appropriate ventilation. The highest risk activities are those that are indoors where individuals congregate and mix with others that are not in their households for long periods of time. A study cited by the CDPH suggests that the odds of an infected person transmitting the virus in a closed environment are 18.7 times greater than in an open-air environment. The Centers for Disease Control and Prevention mirrors these concerns and also identifies the number of people at a particular activity as an increased risk factor. Indeed, a COVID-19 Event Risk Assessment Planning Tool provided by Georgia Tech and Applied Bioinformatics Laboratory (available at <https://covid19risk.biosci.gatech.edu/>) estimates the chances that at least one COVID-19 positive individual will be present at an event in San Diego County, given the size of the event, is as follows: 10 people–25%, 25 people–42%, 50 people–66%, and 100 people–89%.

The numerous federal, state, and local public health orders that have been issued in response to the COVID-19 pandemic are well-known and have been detailed in prior Judicial Council orders and memoranda, as well as this court's prior requests for relief from the Chief Justice. Accordingly, they will not be repeated here, except as needed to provide relevant updates since the court's last emergency order request.

At the time of the court's last request for Penal Code section 1382 relief, which was submitted on June 22, San Diego County was approved with a variance to move further ahead in the State of California's Resilience Roadmap for reopening, subject to the approval of, and limitations imposed by, county health authorities. However, as discussed in the court's June 22 request, the county had crossed the threshold of one of its internal metrics that would trigger a pause or reversal of re-openings. Unfortunately, since the court's June 22 request, San Diego County, along with much of the state, has seen a significant increase in community outbreaks, cases, and hospitalizations.

¹ All further references to dates are to 2020.

Accordingly, on July 1, the state mandated that several business sectors in counties that had been on the state's County Monitoring List ("CML") for three consecutive days or more cease all indoor operations for at least three weeks, including restaurants, bars, breweries, wineries, movie theatres, family entertainment centers, museums, zoos, and cardrooms. On July 6, San Diego County had been on the CML for three consecutive days and implemented the mandated restrictions on indoor operations effective July 7.

On July 13, because COVID-19 transmission rates had continued to increase, the state announced indoor operations for the above business sectors would need to be closed statewide. In addition, counties that had been on the CML for three or more consecutive days were required to prohibit all indoor operations at additional business sectors, including gyms and fitness centers, places of worship, indoor protests, offices for non-critical infrastructure sectors, personal care services, hair salons and barbershops, and malls. Notably, the restrictions announced on July 13 are to remain in effect until further notice rather than the three-week period previously announced on July 1. Because San Diego County was (and is) still on the CML, the county implemented the restrictions on the additional business sectors effective July 15.

On July 17, the state announced a framework for reopening in-person learning in K-12 schools. Pursuant to the criteria, schools may only reopen for in-person instruction if they are located in a jurisdiction that has not been on the CML within the prior fourteen days. San Diego County has been on the CML since July 4 based on the metric of having a case rate greater than 100 per 100,000 people. As of July 27, San Diego County's case rate was 144 per 100,000. In order to get off of the CML, San Diego County would need to average fewer than 234 reported cases daily for fourteen days; it reported 523 cases on July 27. If San Diego County remains on the CML and, therefore, cannot allow in-person instruction, the court anticipates it will likely have further staffing limitations due to child care issues.

The San Diego County Health Officer's most recent stay-at-home order, which became effective July 21, still generally prohibits gatherings of more than one person and implements the above-referenced restrictions on indoor operations for certain business sectors. All essential businesses, including the court, and reopened businesses must comply with six-foot social distancing requirements, conduct temperature, symptom, and exposure screenings of employees, and require employees to wear face coverings consistent with the state guidance. The order further strongly recommends that all persons who are 65 years old or older, have a chronic underlying condition, or have a compromised immune system self-quarantine at home or in a suitable location.

On July 28, the San Diego Public Health Officer, Wilma J. Wooten, M.D., M.P.H., visited the Central Courthouse to generally assess the court's operations and to inspect its courtrooms, including one that the court recently mocked up with plexiglass partitions in the jury box, around the witness box, at counsel tables, and at the bailiff's desk (see photographs below). After an inspection of the court's facilities and meeting with court personnel, **Dr. Wooten recommended against bringing jurors into the courthouse and holding trials at the current time.** Her recommendation was regardless of whether the courtroom was measured to allow for social distancing or mocked up with plexiglass partitions.



Since the court received its first Emergency Order related to the pandemic, which was effective March 17, the court has worked continuously to develop and implement numerous additional technologies and procedures so that it can serve the public in a manner that is safe for all. As a result of the court's continuous efforts, the court has been able to gradually restore almost all services, at least remotely. The court has equipped multiple criminal, juvenile, family, probate, and civil courtrooms with video remote systems, increased its telephonic hearing capabilities, and developed entirely new processes and procedures for handling these matters. The court has utilized this new equipment and these new procedures to hold numerous remote hearings, including the holding of arraignments and preliminary hearings for in-custody criminal defendants. The court has also significantly increased remote work options for staff members to be able to access phone lines from home to field incoming calls from the public to the court and to also enable them to access critical court business applications and data in order to perform case management work and assist the public. The court created and implemented a Civil Status Conference Hearing online application to enable attorneys to schedule status conferences to be held remotely and launched a new ability to eFile in family cases.

Since the court's June 22 trial extension request, it has added, or is in the process of adding, new technology and procedures for holding additional criminal proceedings. For example, a criminal homicide trial that was suspended when the court closed resumed with closing arguments and jury deliberations. The court held the closing arguments in the jury lounge to allow for all jurors, the defendant, the attorneys, the judge, and court staff to remain six feet apart at all times and set up a separate large room to allow for social distancing during jury deliberations. Although this trial was successfully completed, it required a significant amount of time and effort to set up the jury lounge for use as a courtroom and a separate conference room for use as a jury deliberation room. In all, court IT and property staff spent approximately twenty man hours and \$500 in costs to set up for this trial.

The court has started hearing almost all in-custody pretrial motions remotely, including, but not limited to, motions to dismiss (Pen. Code, § 995), pre- and post-preliminary examination motions to suppress (Pen. Code, § 1538.5), *Pitchess* motions, discovery motions, mental health diversions (Pen. Code, § 1001.36), Penal Code section 1368 competency calendars, and lengthy, multiple-defendant preliminary examinations. In addition, the court is scheduling and holding status conferences for its capital cases, with the defendant appearing in person.

In August, the court plans to hear remote status conferences for all out-of-custody cases to address issues and schedule matters prior to trial. Also, the court is working with its justice partners to identify out-of-custody misdemeanor cases that have negotiated a plea and waived appearance (Pen. Code, § 977), and the court will be setting up calendars to hear those matters for the week of August 10. To date, the court has received notice of approximately 150 out-of-custody misdemeanor change of pleas. The court is also exploring the possibility of conducting remote bench trials, including competency trials and non-complex civil matters.

However, since its June 22 request, the court has experienced some setbacks that are directly attributable to the increased restrictions imposed by the state and county. Specifically, the court had planned on launching a "walk-up court" program on July 7 that would have enabled an

out-of-custody defendant to come to the first floor of the Central Courthouse and use a computer to make a remote appearance in any courtroom proceeding in the county. Additionally, the court planned on issuing its first group of jury summonses on or around July 15. Unfortunately, these dates coincided with the announcement and wide press coverage of additional restrictions on indoor activities by the state and county, and the court believed it would be neither appropriate nor productive to invite or require more people to come inside the court's facilities at that time.

As set forth in the court's response to question 5 below, over the past several months, the court has been regularly meeting and working with its justice partners to reduce the jail population and settle as many cases as possible. Notwithstanding these efforts, the court has approximately 2,400 cases in which the last day for trial will occur between August 13 and September 17, inclusive. At the same time, and as detailed below, there are still multiple unprecedented safety and constitutional issues that have been identified and are being addressed in order for the court to begin resuming jury trials. What makes this process particularly difficult is that the potential solutions for addressing health and safety concerns are frequently at odds with constitutional requirements.

As stated in the court's May 29 request for an Emergency Order, the court organized a Jury Trial Working Group comprised of judicial officers, court staff, the Public Defender's Office, the District Attorney, the City Attorney's Office, and a representative from the private defense bar. Specific information concerning the progress this working group has made to enable the court to safely hold jury trials, while at the same time satisfying constitutional requirements, is provided in response to question 4 below.

II. ANSWERS TO SPECIFIC QUESTIONS SET FORTH IN THE MAY 14, 2020, JUDICIAL COUNCIL MEMORANDUM

1. How many criminal cases have last-day deadlines under Penal Code section 1382 during the period of time for which the court is requesting a first extension under Government Code section 68115 (please provide daily breakdown)?

Because this court deals with paper files, it would be burdensome to determine the exact numbers of cases because it would have to pull all the files and check if the defendant entered a time waiver, what type, and for how long. Given the reduced staffing resulting from COVID-19, along with the social distancing requirements, the court simply does not have the resources to provide specific numbers at this time. However, the court can provide the following rough statistics for a general idea:

For felony cases with no prior extensions, to have a last-day deadline between August 13 and September 17, inclusive, the defendant would be arraigned on an Information between June 19² and July 19. The court has incomplete statistics for this time period, but there were approximately 35 felony arraignments from June 19 through July 15 (most of these defendants are

² Although the "request period" is August 13 through September 17, the first last-day deadline for a case in this category in this court (i.e. no prior extensions) would be August 18.

still in custody). There were also approximately 43 felony arraignments in the previous 30-day period (May 19 through June 18) (32 of these defendants remain in custody). Based on these known numbers, the court estimates that over 35 felony cases with no prior extensions will have a last-day deadline during the request period.

For misdemeanor in-custody cases with no prior extensions, to have a last-day deadline between August 13 and September 17, inclusive, defendants would have arraignment dates between July 19 (see footnote 2) and August 18. The court does not have statistics for this time period. However, there were approximately 133 misdemeanor arraignments in the most recently preceding 30-day period for which statistics are available (June 16-July 16), and 71 of those are still in custody. Using those numbers as a guide, the court estimates that approximately 70 misdemeanor in-custody cases with no prior extensions will have a last-day deadline during the request period.

For misdemeanor out-of-custody cases with no prior extensions, to have a last-day deadline between August 13 and September 17, inclusive, defendants would have arraignment dates between July 4 (see footnote 2) and August 3. The court has incomplete statistics for this time period, but there were 73 arraignments from July 4 through July 16, and 26 of these defendants are now out of custody. And as noted above, there were approximately 133 misdemeanor arraignments in the most recently preceding 30-day period for which statistics are available (June 16-July 16), and 62 of those defendants are now out of custody. Based on these known numbers, the court estimates that there will be over 50 misdemeanor out-of-custody cases with no prior extensions that will have a last-day deadline during the request period.

In sum, the court estimates that 150 cases with no prior extensions will have the trial deadline come due during the period of August 13 through September 17. The court recognizes a number of these cases, being new, may settle or defendant may enter a time waiver prior to the last-day deadline, but the court cannot predict what percentage of cases that may be. Even assuming a 50% settlement/waiver rate, which would be high, that still leaves approximately 75 cases with original last-day deadlines falling within the request period.

2. How many criminal cases are coming up to the limit already extended for 90 days by the statewide orders (please provide a daily breakdown)? Is the court requesting a further extension of time on any of these cases?

The response to this question includes those cases which were extended for 90 days by the statewide orders, those cases that have received two additional court-specific 30-day extensions pursuant to the Chief's June 4 and June 30 Emergency Orders, and those cases that have received one court-specific 30-day extension pursuant to the Chief's June 30 Emergency Order. Because these cases all have paper files, the court would have to manually pull all of the case files to determine the date set for trial, whether there is a time waiver, what type, and for how long. Given the reduced staffing resulting from COVID-19, along with the social distancing requirements, the court simply does not have the resources to provide specific numbers at this time. However, assuming the last set trial date was the last day for trial, the court can provide the following rough statistics for a general idea:

There are approximately 24 felony cases that, with all the previous extensions, now have trial deadlines between August 13 and August 17 (8 of which are in custody). There are also approximately 3 in-custody misdemeanor cases, and 35 out-of-custody misdemeanor cases, that with all the extensions have trial deadlines between August 13 and August 17.

In addition, there are approximately 560 felony cases (170 in custody), approximately 75 in-custody misdemeanor cases, and approximately 1,600 out-of-custody misdemeanor cases that, with all prior extensions, now have trial deadlines between August 18 and September 17.

In sum, the court estimates that approximately 2,300 previously extended cases will have the trial deadline come due during the period of August 13 through September 17.

Summary:

Based on the above, in both categories (questions 1 and 2), there are roughly 2,400 cases in which the last day for trial will occur between August 13 and September 17. Pursuant to information received by the District Attorney's Office, many of the felony in-custody trials involve serious charges, meaning the stakes are high, the jury pools will need to be larger, and trials will be longer, further heightening the concerns of congregating large numbers of people and increasing the risk that the limited number of alternate jurors that could be allowed with the social distancing requirements will not be sufficient.

3. What logistical or other issues prevent the court from holding trials within the time provided in Penal Code section 1382? How is the court planning to address any of these issues?

The Jury Trial Working Group has been investigating and devising solutions to address the numerous and unprecedented logistical, safety, and legal issues that must be considered and resolved in order to safely conduct thousands of jury trials, many of which will be lengthy. The court's current plans to address these issues, and hold trials, are set forth in the answer to question 4 below. Following are some of the logistical, safety, constitutional, and legal issues that have been identified.

State and County Public Health Orders and Safety Issues:

- Social Distancing Requirements (6-foot distance between individuals) severely impact the number of persons that can be in the courthouse, the courtrooms, the jury lounges, the elevators, and the restrooms.
- Effective June 18, with limited exceptions, the state and county have ordered all persons to wear face coverings while in public places, even if they are able to maintain a 6-foot distance between each other.
- As required by the county's order, the court prohibits employees from entering the courthouse if they have a temperature of 100 degrees or more; consistently, the court also imposes this restriction on judicial officers and members of the public.
- For many, public transportation would have to be used (due to parking issues downtown, where most of our courtrooms are located).

- The Sheriff's Department would have to transport hundreds of in-custody defendants back and forth between the jail and the courthouses. As discussed above, and, sadly, has been evidenced in San Quentin recently, jails and prisons are among the highest risk congregate settings.
- Notwithstanding these measures, the virus may be spread by asymptomatic persons.

Jury Issues:

- The court expects a very low yield of jurors summoned. The court normally experiences about a 10% report rate for newly summoned jurors if it issues the summonses at least 6-weeks prior to the report date. (Although the court is only required to provide 10-days' notice, under normal circumstances this only yields approximately 5% of newly summoned jurors appearing). The court plans to provide 4-weeks' notice, which, because of the pandemic and shortened notice, will likely result in less than a 3% - 5% report rate.
- Given the number of trials that need to be scheduled, along with the current health orders and circumstances created by the pandemic, the court would have an insufficient number of available jurors to meet the court's needs through the end of the year. To cover the approximately 2,400 trials running up on their deadlines between August 13 and September 17, the court would likely need to summon over 1,150,000 jurors. However, for each calendar year, San Diego only has approximately 1.8 million individuals in the pool of individuals available to issue jury summons to, and the court already summoned approximately 180,000 jurors before the closure. Accordingly, if the court were required to continue to issue summonses in the volume set forth above, the court would run out of jurors to summon before the end of the year.
- Concerns have been raised that the jurors appearing might not be a representative cross-section because, for example, we would expect significantly lower numbers of elderly persons, immune-compromised persons, and parents with children (the private defense bar has raised this concern).
- Attorneys have expressed concerns with jurors wearing face coverings during voir dire and during trial as it would eliminate or severely limit their ability to see the jurors' facial expressions.
- Attorneys have asserted that private voir dire would constitute structural error.
- Voir dire will need to be conducted while adhering to the social distancing requirement.
- Currently, jurors will not be able to deliberate in the deliberation rooms due to the social distancing requirements. This will likely result in the jury using the courtrooms for deliberations, which will mean the courtroom will not be available for other hearings and trials.
- There is an increased likelihood of losing jurors mid-trial due to the court's temperature screening requirement and also because more jurors will likely be excused if they start to exhibit physical symptoms consistent with COVID-19. At the same time, due to space limitations in courtrooms, the court is unable to have more than 1 alternate juror except with respect to a small percentage of courtrooms countywide (assuming little to no public presence in the courtrooms).

Judicial Officer Issues:

- 73 of the court's 130 judges are 60 years old or older (39 are age 60-64; 34 are age 65 and above).

Court Staffing Issues:

- The court employs approximately 1,200 employees. However, as a result of COVID-19, the court is experiencing significant staffing and budgetary issues at a time when it needs significantly more, not less, resources/staffing to devise and implement all of the new processes and procedures, as well as manage the backlog, resulting from the pandemic.
- Approximately 20% of the court's workforce (242 employees) have requested FFCRA or another type of leave as a result of COVID-19. At any point in time, approximately 14% of the workforce is utilizing leave for child care purposes. Child care FFCRA leave is expected to be utilized by employees for several more months, as some school districts in San Diego County have already indicated that they will continue distance learning for the first month of the fall semester. In addition, the court has offered intermittent unpaid furloughs in an effort to deal with the budget deficit. Thirty employees have used this program to request a reduced schedule for FY 20-21 (such as two unpaid days off per week), and additional employees continue to use the program on a sporadic basis.
- As a result of the Governor's revised budget, the court estimates that it will need to make \$12 - \$15 million in cuts to its fiscal year 2020-21 budget. Accordingly, the court has instituted a hiring freeze and has implemented a Voluntary Separation Incentive Payment ("VSIP") program. As a result of the VSIP, 44 employees will retire and approximately 39 have elected to take an extended unpaid leave of absence. The savings from the VSIP program are anticipated to result in approximately \$5 million during FY 20-21. While this is welcome, the court will still have a long way to go to address the projected deficit. In addition, the impacts of the pandemic upon civil assessments have yet to be determined, and we do not know if we will face additional revisions to the state budget during 20-21. It is clear that these budget cuts will have a significant impact on the court.
- As evidenced in the court's July 20 emergency request regarding its Juvenile Courthouse, the county's contact tracing and quarantining protocols can quickly and significantly impact the court's staffing levels, even when the potential exposure/transmission does not occur in the court's facilities. Currently, when an employee exhibits symptoms or tests positive for COVID-19, the court conducts contact tracing and quarantines any employee that had close contact with the symptomatic or positive employee for at least fourteen days.

Facilities/Logistical Issues:

- The court's main courthouse, the Central Courthouse, is a high-rise building with courtrooms on 22 separate floors. This necessitates heavy elevator use to operate at full capacity. However, given the current limitations of only allowing no more than 4 persons

on an elevator at a time, the courthouse is not able to conduct multiple trials on multiple floors given the large numbers of jurors, attorneys, parties, families, and court staff who would be present (even if members of the public were not allowed to be present).

- Even assuming the defendants would be willing to consent to appear for trial remotely (which they likely will not be, given the court's experience with this issue thus far), there is a very limited capacity to have in-custody defendants appear remotely because, countywide, there are only 3-4 rooms at each of the 7 jail facilities that are equipped for this purpose.
- There are severe limitations on the court's ability to assemble jurors in a jury lounge in all of its locations while complying with social distancing requirements: (i) the Central Courthouse, which is the main courthouse, will only accommodate 71 jurors; (ii) the East County courthouse can only accommodate 64 jurors; (iii) the South Bay facility can only accommodate 31 jurors; and (iv) the North County courthouse can only accommodate 56 jurors.
- Even without considering public access to the courtrooms, only 20 of the court's 150 courtrooms can accommodate more than 13 jurors with appropriate social distancing in place: (i) the Central Courthouse has 3 such courtrooms; (ii) the Hall of Justice has 16 such courtrooms (15 can accommodate 15 jurors and 1 can accommodate 25 jurors); and (iii) the East County courthouse has 1 such courtroom (and it can only accommodate 14 jurors). Neither the South County nor the North County courthouses can accommodate more than 13 jurors. Considering the number of serious and lengthy trials at issue, along with the higher than normal likelihood of needing alternate jurors, this facility issue poses a significant impediment to conducting a voluminous number of trials.
- Even without considering public access to the courtrooms, there are also a limited number of courtrooms that can accommodate 13 jurors with appropriate social distancing in place. Excluding the courtrooms mentioned above, the total number of such courtrooms is 44 (43 at the Central Courthouse and 1 in the East County courthouse). None of the other courthouses can accommodate these juries. Again, given the number of trials at issue, along with the increased likelihood of needing additional alternates, this creates a significant obstacle to conducting multiple trials at one time. Exacerbating the situation is the fact that courtrooms will also need to be used as deliberation rooms.
- Even in those courtrooms that can accommodate a full jury, the space in the courtrooms may not allow for ancillary trial participants, such as interpreters, victim support, or investigating officers.
- At best, the court anticipates only two or three juries could be selected per week using its three large courtrooms for voir dire.
- At best, the court anticipates only being able to utilize one courtroom per floor in its Central Courthouse due to social distancing requirements.
- Bathroom breaks during trial would be prolonged due to social distancing requirements in restrooms.
- Handling of evidence (touching issues) will need to be addressed.

Other Legal Issues, Including the Rights of Defendants, Victims, and the Public:

- Limitations on a defendant's access to counsel during trial preparation and trial (raised by private defense bar).
- Defendant's right to be present.
- Concerns have been raised that having defendants, witnesses, and jurors wear face coverings may constitute a violation of defendant's due process/confrontation rights.
- Defense counsel has raised concerns that jurors may feel bias/resentment towards the defendant for forcing a trial under the circumstances.
- Even in those courtrooms that can accommodate a full jury, the space in the courtrooms would not allow for any (or very limited) physical public access, including the defendant's family, the victim/victim's family, the general public, and the media.
- The court is exploring the possibility of streaming jury selection to an adjacent courtroom via closed circuit audio/visual, which would provide public access to jury selection but would further limit the number of courtrooms available for other matters.

4. How is the court planning to conduct criminal trials? Does the court intend to use technology to assist in holding criminal trials?

The court cannot require defendants to appear remotely and, based on its experience and the information it has received from the community, the court must plan trials on the assumption that the defendants, witnesses, attorneys, and jurors will be appearing in person, which, again, the San Diego Public Health Officer has specifically recommended against at this time.

Given the many logistical, safety, and legal limitations described in the preceding section, along with the fact that new procedures will need to be tested and adjusted to resolve the many issues that will certainly arise, the court cannot initially resume jury trials at full capacity. Instead, the court will enter this uncharted territory by setting no more than one trial per day in the Central Courthouse. Presently, the court is evaluating when it may be able to issue its first group of summonses given the current climate. The Jury Trial Working Group is working with our justice partners to identify a test case, and a method to prioritize cases to bring to trial thereafter.

The Jury Trial Working Group has drafted an initial proposed plan, which it is currently vetting with its justice partners. In summary, the current plan is to have jurors summoned on a daily basis to the jury lounge, with a goal of having the maximum number of jurors the room will hold appear each day (this is approximately 70 jurors in the Central Courthouse under the current 6-foot distancing requirements). Summoned jurors will complete an online questionnaire in advance, which will expedite jury selection, as well as allow the court to excuse or reschedule some jurors prior to them coming to the courthouse. The court will use one of its three large courtrooms for jury selection, as with some creativity we can seat as many as 30 prospective jurors in these courtrooms. Once the jury is selected, they trial will move to a regular trial courtroom, where, again with some creativity, 14 or 15 jurors can be seated, while having some seats available for public access. Some of the more specific issues and the current plans to address them are as follows:

a. Juror Summons and Jury Selection

The court is still working on its online juror portal whereby the court would be able to excuse or reschedule jurors without them having to come to court. Via the portal, prospective jurors will be able to answer a standard courtroom questionnaire prior to service. The portal will also enable the court to communicate to jurors any changes or other information regarding their service. The court is working to have this functionality go live as soon as possible, but a key piece is out of the court's hands because the portal changes must be made by Jury Systems Incorporated.

The court has also created several inserts to go along with its standard juror summonses. These inserts will inform prospective jurors of the safety precautions being taken by the court for their safety and provide links to and information about the portal and online questionnaire.

Jury selection/voir dire will take place in one of the court's three large courtrooms at its Central Courthouse, with batches of 30 socially distanced jurors present at a time. Jurors not yet called would remain in the jury lounge. The group is exploring various options of rotating jurors in and out of these courtrooms until 12 jurors and enough alternates are selected. If a jury is not selected from the available jurors, the court will contact jury services for available jurors either the same day or the next day, if necessary. Jurors selected for trial will either be told in person or notified by email/text when and where they need to report.

b. Conducting Trial

Jurors will be met in the hallway by staff/bailiff and directed to wait on the marked, socially distanced benches until they are called into the courtroom. Standard-sized courtrooms will have additional chairs placed, and the appropriate chairs marked, for the jurors. The jurors will be spread out, including in the gallery, but will essentially be on one side of the courtroom. The smaller gallery section will be available for the public and media.

Unless the public health guidelines change, all court staff, attorneys, defendant, and all others in the courtroom will wear face coverings, including while speaking. Regarding witnesses, the court is exploring: (i) installation of plexiglass around the witness box in at least some of its courtrooms, which would allow a witness to remove their face covering while testifying and (ii) the use of face shields in lieu of face coverings. However, given the Governor's June 18 order concerning face coverings in public areas, it is not clear whether the court will be able to utilize either of these options.

A sanitation protocol will be in place and explained to the jurors. Attorneys will examine witnesses from their chair position, preferably sitting. Each juror will receive his or her own copy of the jury instructions and may take them into the deliberation room.

c. Jury Deliberations

There are only a few options in the court's Central/HOJ Courthouse complex that would allow jurors to deliberate comfortably while socially distanced. The great likelihood is that many juries will have to deliberate in a courtroom, such as an adjacent unused courtroom. Measures will

be taken to arrange the deliberation room, whatever it is, in such a way as to facilitate open deliberation.

5. What efforts has the court made to work with justice partners to encourage and facilitate expeditious settlement, where possible, of cases pending before the court?

Since the court closed on March 17, it has been working continuously and diligently in collaboration with the Public Defender, District Attorney, City Attorney, and Sheriff to secure the release of inmates who do not present a public safety risk, including, but not limited to: creating a procedure for and processing requests for lower bail or own-recognizance release pursuant to Penal Code § 1269c; creating a procedure for and processing requests for release pursuant to stipulation of the parties; authorizing the Sheriff to accelerate the release of sentenced defendants up to 30 days pursuant to Penal Code § 4024.1; authorizing the Sheriff to accelerate the release of sentenced defendants up to 60 days pursuant to an Advisory from the Chief Justice of the Supreme Court of California dated March 30, 2020; and, prior to adoption of the statewide emergency bail schedule, implementing a modification to the San Diego Countywide Bail Schedule temporarily reducing bail to zero for over 60 offenses. After the statewide emergency bail schedule was rescinded, the court resurrected an amended version of the temporary modifications to the Countywide Bail Schedule, which sets bail at zero for all misdemeanor and infraction offenses except for 26 specified offenses. It also sets bail at zero for over 62 felony offenses.

Based on information received from the District Attorney's Office, these efforts resulted in a reduction of approximately 1,200 inmates before the statewide emergency bail schedule took effect. According to the District Attorney's Office, as a result of these efforts the pre-disposition jail population consists of approximately 90 percent felony cases with 72 percent being serious/violent felonies. Only about 10 percent constitute misdemeanors, mostly comprised of domestic violence and repeat DUIs or defendants who are in violation of probation for a serious/violent felony offense.

Finally, the court has, together with the District Attorney's Office, Public Defender's Office, and Sheriff, set up various video and telephonic remote proceedings and calendars to move criminal cases along, including holding bail review hearings, readiness (settlement) conferences, arraignments, preliminary hearings, sentencing hearings, change of plea hearings, and handling probation violation and extradition matters. All in-custody defendants have been given at least one, and sometimes more, telephonic and/or video readiness (settlement) conference hearing to attempt to settle their case. The court is caught up on necessary felony arraignments and preliminary hearings.

TO: Hon. Tani G. Cantil-Sakauye, Chair of the Judicial Council
Judicial Council of California
c/o Legal Services Supervising Attorney Charles Perkins
415-865-4609
charles.perkins@jud.ca.gov
415-865-8767 (fax)

FROM: *Name* : Lorna A. Alksne
Title: Presiding Judge
Court: Superior Court of San Diego County
Telephone: [REDACTED]
Fax: 619-844-5550
E-mail Address: [REDACTED]

DATE: 9/3/2020

SUBJECT: Request for Judicial Emergency Order

I hereby request an order allowing the court to implement the following emergency procedures pursuant to the provisions of section 68115 of the Government Code¹:

The court may extend the time period provided in section 1382 of the Penal Code within which a trial must be held by not more than 30 days. (Gov. Code, § 68115(a)(10).)

(Fill in number of days, not exceeding 30. Pursuant to Government Code section 68115(a)(10), "the trial of a defendant in custody whose time is so extended shall be given precedence over all other cases.")

This request applies only to cases in which the statutory deadline otherwise would expire on _____ **or** from 9/12/2020, to 10/18/2020, inclusive*.

(Fill in date(s) above.)

***This request applies to cases in which the original or previously-extended statutory deadline otherwise would expire from September 12, 2020, to October 18, 2020, inclusive.**

Although the previous Emergency Order issued August 7, 2020, already provides relief for cases in which the trial deadline falls on August 13, 2020, through September 17, 2020, the court has determined that September 12, 2020, through September 17, 2020, also need to be included in

¹ Government Code section 68115, as amended, effective January 1, 2019, provides that, upon the request of a presiding judge, the Chairperson of the Judicial Council may authorize relief as set forth in the statute, "[w]hen war, an act of terrorism, public unrest or calamity, epidemic, natural disaster, or other substantial risk to the health and welfare of court personnel or the public, or the danger thereof, the destruction of or danger to the building appointed for holding the court, a large influx of criminal cases resulting from a large number of arrests within a short period of time, or a condition that leads to a state of emergency being proclaimed by the President of the United States or by the Governor pursuant to Section 8625, threatens the orderly operation of a superior court location or locations within a county or renders presence in, or access to, an affected court facility or facilities unsafe"

the current request. The April 29, 2020, statewide order granting up to a 90-day extension was effective for cases with a last day for trial of March 16 through June 15, 2020. With this statewide 90-day extension, as well as the three prior 30-day extensions authorized for this court, a case with a last day for trial of March 16-20, April 19-20, May 20, June 16-19, July 18-19, and August 18, 2020, would now have a last day for trial of September 12 through September 17, 2020. Accordingly, the court is including September 12 through September 17 in its request.

The circumstances necessitating an emergency order are described in the attached document.

The public defender, the district attorney, and other interested local entities have / have not (check one box) been notified of this request for emergency order.

The court has / has not (check one box) advised these entities to immediately notify the Judicial Council's Legal Services office of any opposition or questions regarding the request.

Please list the names and telephone numbers of the district attorney, the public defender, and other notified parties affected by the order:

District Attorney: Summer Stephan

Public Defender: Randy Mize

Other Parties Affected: City Attorney Mara Elliot; San Diego Sheriff Bill Gore

The court has / has not (check one box) been informed of any opposition to this request.

If the court has been informed of potential opposition to this request, please state below the party or parties who may oppose the request and any stated reasons for the opposition:

Submitted by:  _____

(Presiding Judge or Presiding Judge's delegate)

Date: 9/3/2020

The San Diego Superior Court hereby requests an order allowing the court to extend the time period provided in Penal Code section 1382, within which a trial must be held, by not more than 30 days. This request applies to cases in which the original or previously extended statutory deadline otherwise would expire from September 12, 2020, to October 18, 2020, inclusive. In the court's May 29, 2020,¹ request for an Emergency Order for additional time to conduct trials, the court submitted letters of support from the District Attorney's Office, the City Attorney's Office, the Office of the Public Defender, and the Sheriff's Department. Each of these justice partners has confirmed that they also fully support this additional request.

I. BACKGROUND INFORMATION AND BASIS FOR REQUEST

A. COVID-19 in San Diego County

The numerous federal, state, and local public health orders that have been issued in response to the COVID-19 pandemic are well known and have been detailed in prior Judicial Council orders and memoranda, as well as this court's prior requests for relief from the Chief Justice. Accordingly, they will not be repeated here, except as needed to provide relevant updates since the court's last emergency order request.

The California Department of Public Health ("CDPH") recently indicated that community spread of infection remains a significant concern across the state. Congregate settings, including nursing homes, homeless shelters, jails, and prisons, are particularly susceptible to expanded transmission of COVID-19, and infection of vulnerable populations in these settings can be catastrophic. The COVID-19 pandemic, and the public health authorities' understanding of it, has continued to evolve. For example, the CDPH now knows that outdoor activities are much safer than indoor activities and that face coverings are critical to limiting the spread of the disease. Additionally, the CDPH has identified the following factors for evaluating the risk level for activities, some of which are applicable to jury trials:

- Ability to accommodate face covering wearing at all times (e.g. eating and drinking would require removal of face covering)
- Ability to physically distance between individuals from different households
- Ability to limit the number of people per square foot
- Ability to limit duration of exposure
- Ability to limit amount of mixing of people from differing households and communities
- Ability to limit amount of physical interactions of visitors/patrons
- Ability to optimize ventilation (e.g. indoor vs outdoor, air exchange and filtration)
- Ability to limit activities that are known to cause increased spread (e.g. singing, shouting, heavy breathing; loud environs will cause people to raise voice)

¹ All subsequent date references are to 2020.

At the time of the court’s last request for Penal Code section 1382 relief, which was submitted on July 28, San Diego County was on the state’s County Monitoring List (“CML”). As a result, indoor operations were prohibited for several business sectors, including restaurants, bars, breweries, wineries, movie theatres, family entertainment centers, museums, zoos, cardrooms, gyms and fitness centers, places of worship, indoor protests, offices for non-critical infrastructure sectors, personal care services, hair salons and barbershops, and malls.

Fortunately, since the court’s July 28 request, San Diego County’s COVID-19 monitoring metrics have improved, and the county came off the CML on August 18. However, county public health authorities continued the above-referenced prohibitions on indoor operations pending further guidance from the state.

On August 28, the CDPH issued a new public health order that established the Blueprint for a Safer Economy (“Blueprint”)² to replace the CML/Resilience Roadmap framework for reopening. Under the Blueprint, each county is categorized into one of four colored tiers, which will indicate whether and how certain business sectors can operate. In order of most to least restrictive, the tiers are: 1-purple (widespread), 2-red (substantial), 3-orange (moderate), and 4-yellow (minimal). The tiers are based on two metrics: number of new cases per 100,000 residents and percentage of positive tests.

By design, the Blueprint is a stringent and slow approach to reopening. Counties must remain in a tier for a minimum of three weeks before being able to advance to a less restrictive tier and must meet both of the next tier’s criteria for two consecutive weeks before moving. In addition, counties may only progress one tier at a time, even if they qualify for a more advanced tier. Conversely, counties will be required to move to a more restrictive tier if they fail to meet their current tier’s criteria for two consecutive weeks. The CDPH will assess the metrics weekly.

Based on recent data, San Diego County was initially placed in the red (substantial) tier 2, which includes the following restrictions:

| SECTOR | STATUS (Red Tier 2) |
|--|---|
| Critical Infrastructure | Open with modifications |
| Limited Services | Open with modifications |
| Hair Salons & Barbershops | Open indoors with modifications |
| All Retail (except standalone grocers) | Open indoors with modifications – max 50% capacity |
| Shopping Centers | Open indoors with modifications – max 50% capacity, closed common areas, reduced capacity food courts |
| Personal Care Services | Open indoors with modifications |
| Museums, Zoos, and Aquariums | Open indoors with modifications – indoor activities max 25% capacity |
| Places of Worship | Open indoors with modifications – fewer of max 25% capacity or 100 people |

² The Blueprint is formally known as California’s Plan for Reducing COVID-19 and Adjusting Permitted Sector Activities to Keep Californians Healthy and Safe.

| SECTOR | STATUS (Red Tier 2) |
|---|---|
| Movie Theatres | Open indoors with modifications – fewer of max 25% capacity or 100 people |
| Hotels and Lodging | Open with modifications – fitness centers limited to 10% capacity |
| Gyms and Fitness Centers | Open indoors with modifications – max 10% capacity |
| Restaurants | Open indoors with modifications – fewer of max 25% capacity or 100 people |
| Wineries | Outdoor only with modifications |
| Bars, Breweries, and Distilleries with no meal provided | Closed |
| Family Entertainment Centers | Outdoor only with modifications |
| Cardrooms and Satellite Wagering | Outdoor only with modifications |
| Offices | Remote |
| Professional Sports | Open with modifications – no live audiences |
| Schools | Permitted to open for in-person instruction with modifications |

These restrictions show the state’s intent, applicable to the red tier 2 counties, to limit activities involving indoor, static congregations of large groups of people for extended durations of time, such as places of worship, movie theatres, and restaurants, to the lower of 25% of capacity or 100 people. Although the court falls under the critical infrastructure category, it recognizes that jury trials also involve indoor, static congregations of people, and the court intends to comply with the applicable restrictions identified for similar activities.

The San Diego County Health Officer’s most recent stay-at-home order, which became effective September 1, generally prohibits gatherings of more than one person, requires face coverings to be worn consistent with state guidance, and implements the above-referenced restrictions on business sectors. All essential businesses, including the court, must comply with applicable state guidance, such as requiring employees to wear face coverings when there is a high risk of exposure; conducting temperature, symptom, and exposure screenings of employees; implementing cleaning and disinfecting protocols; and implementing six-foot social distancing requirements.

B. Measures the Court Has Implemented to Date

Since the court received its first Emergency Order related to the pandemic, which was effective March 17, the court has worked continuously to develop and implement numerous additional technologies and procedures so that it can serve the public in a manner that is safe for all. As a result of the court’s continuous efforts, the court has been able to gradually restore almost all services, at least remotely. The court has equipped multiple criminal, juvenile, family, probate, and civil courtrooms with video remote systems, increased its telephonic hearing capabilities, and developed entirely new processes and procedures for handling these matters. The court has utilized this new equipment and these new procedures to hold numerous remote hearings, including the

holding of arraignments and preliminary hearings for in-custody criminal defendants. The court has also significantly increased remote work options for staff members to be able to access phone lines from home to field incoming calls from the public and to enable them to access critical court business applications and data in order to perform case management work and assist the public. The court created and implemented a Civil Status Conference Hearing online application to enable attorneys to schedule status conferences to be held remotely and launched a new ability to e-file in family cases.

The court also started hearing almost all in-custody pretrial motions remotely, including, but not limited to, motions to dismiss (Pen. Code, § 995), pre- and post-preliminary examination motions to suppress (Pen. Code, § 1538.5), *Pitchess* motions, discovery motions, mental health diversions (Pen. Code, § 1001.36), Penal Code section 1368 competency calendars, and lengthy, multiple-defendant preliminary examinations. In addition, the court is scheduling and holding status conferences for its capital cases, with the defendant appearing in person. Also, the court worked with its justice partners to identify out-of-custody misdemeanor cases that have negotiated a plea and waived appearance (Pen. Code, § 977), and the court set up calendars to hear those matters.

The court has been conducting remote bench trials in family, traffic, small claims, and probate matters. Also, the court is exploring the possibility of expanding remote bench trials to other case types, including competency trials and non-complex civil matters. The court plans to hold one remote bench trial in a civil matter in October.

As stated in the court's May 29 request for an Emergency Order, the court organized a Jury Trial Working Group comprised of judicial officers, court staff, the Public Defender's Office, the District Attorney, the City Attorney's Office, and a representative from the private defense bar. Specific information concerning the progress this working group has made to enable the court to safely hold jury trials, while at the same time satisfying constitutional requirements, is provided in response to question 4 below.

The San Diego County Public Health Officer has provided the Superior Court guidance related to safety protocols. In response, the court has instituted a range of measures to comply with the current health directives issued by federal, state, and local officials. These measures include:

- Everyone entering the courthouses is subject to temperature and symptom screening, conducted by the Sheriff's Department.
- Strict social distancing is enforced between employee work stations.
- Floor stickers and signage provide visible markers of 6-foot distances for customer lines in business offices and lobbies. Plexiglass screens have been installed in business offices and other public areas.
- Each employee must wear a face covering in accordance with state and local health orders and whenever they are within six feet of another person who is not a member of their family or household. Court visitors are required to wear face coverings at all times when in court facilities.

- The public is required to wait outside the courthouses in a socially distanced queue. Court staff members determine the needs of those in line. Individuals who cannot be assisted via leaving paperwork in the court's drop box or information provided outside the courthouse, and who have court business to conduct, are permitted to enter with masks and social distancing.
- Drinking fountains have been shut off in all courthouses.
- The number of persons in elevators and restrooms at any one time is limited.
- The court has implemented increased cleaning of all high-touch areas in the courthouses, including door handles and elevator buttons.
- Hand sanitizer is widely available in public spaces within the courthouses.
- Children's waiting rooms located within court facilities remain closed until further notice.
- Video-remote technology has been implemented in many courtrooms, with the parties participating remotely.
- As many processes as possible have, or will be, converted to online, telephone, or video services available to the public.

C. The Court's Upcoming Plans

Beginning September 10, the court plans to hear trial status conferences remotely for all out-of-custody cases, starting with cases that were set for trial March 17. After working through the cases that were previously set for trial, the court plans to work through all other out-of-custody cases with a pre-trial status or those pending sentencing/disposition. In support of this, the court plans to launch its "walk-up court" program on September 10, which will enable an out-of-custody defendant to come to a designated room in each courthouse, with or without their attorney, and use the court's technology to make a remote appearance.

Also beginning September 10, the court will open access to certain portions of its facilities with capacity limits to allow for adequate social distancing. Currently, most public-facing services are being provided in the lobby area of each courthouse. Although some personnel will remain in the lobbies, the following locations will be accessible to persons with court business:

- Central Courthouse: 1st through 4th Floors (Business Offices) and 14th Floor (Central Records)
- Hall of Justice: 1st and 2nd Floors (Business Offices)
- Kearny Mesa Traffic Court
- East County Regional Center: Ground and 1st Floors (Business Offices)
- North County Regional Center: South Building Lobby, North Building and Annex (Business Offices)

- South County Regional Center: 1st through 3rd Floors (Business Offices)
- Juvenile Court: 1st and 2nd Floors (Business Offices)

Beginning October 13, the court plans to gradually resume criminal jury trials. The court mailed out summonses this week for jury duty beginning October 9. The court plans to hold one trial beginning October 13, a second trial beginning October 19, and two trials per week starting October 26. Jury trials will resume in the Central Courthouse and will eventually expand to the East, North, and South County Courthouses. The number of jury trials that can be held simultaneously will be limited by the size of the jury lounges, which will have decreased capacity to maintain social distance, and the number of courtrooms that can provide adequate spacing or are equipped with protective barriers.

In addition to the above-referenced precautionary measures already enacted to promote the safety of all court visitors and employees (temperature/symptom screenings, mandatory facial coverings, required social distancing, increased cleaning with a focus on high-touch areas, etc.), the following additional precautions relative to prospective jurors will be implemented:

- Significantly fewer jurors are being summoned. For example, the Central Courthouse jury assembly room that typically receives 350-400 people on a regular day will be reduced to 18-20% of the usual capacity.
- A telephone standby process will be implemented. Summoned jurors will begin their service on a Friday and may be directed to call in each day for up to five days to determine if they need to report in-person the next day.
- A new online portal will allow potential jurors to register their phone number and email address to receive an alert if they are not needed to come into the courthouse.
- Available seating in the jury lounge will be spaced out and marked to maintain social distancing. Juror interviews will take place in settings that permit six feet of distance between people.
- Individuals selected to serve on a jury will be spaced at least six feet apart in the courtroom or seated in a jury box with clear protective panels installed between each juror and other courtroom participants.
- Deliberation will take place in another courtroom or a larger meeting room to allow for more distance between jurors.
- Jury assembly rooms and restrooms will be cleaned and sanitized before the arrival of each new jury panel, with special attention to door handles and other high-touch surfaces.
- Jurors are encouraged to bring their own water, coffee, snacks, and other comfort needs.
- The court has prepared a video, which will be posted on the court's website, to illustrate the above precautions and explain the jury process.

The following photographs illustrate some of the protective measures described above:

Protective partitions surrounding each seat in the jury box:



Additional protective partitions in the courtroom:



Social distancing markers in the courtroom and jury assembly room:



D. The Court's Request for an Extension

As set forth in the court's response to question 5 below, over the past several months, the court has been regularly meeting and working with its justice partners to reduce the jail population and settle as many cases as possible. Notwithstanding these efforts, the court has approximately 2,400 cases in which the last day for trial will occur between September 12 and October 18, inclusive.

Given the many logistical, safety, and legal issues described in the court's response to question 3 below, along with the fact that new procedures have been developed and will need to be tested and adjusted to resolve the many issues that will certainly arise, the court cannot initially resume jury trials at full capacity. Instead, the court will enter this uncharted territory gradually beginning October 13 while continuously assessing and considering the health and safety of everyone involved and the potential constitutional issues that have been raised below. Therefore, due the enormous backlog and the anticipated pace of proceeding with jury trials, the court requests an order allowing the court to extend the time period provided in Penal Code section 1382, within which a trial must be held, by not more than 30 days.

II. ANSWERS TO SPECIFIC QUESTIONS SET FORTH IN THE MAY 14, 2020, JUDICIAL COUNCIL MEMORANDUM

1. How many criminal cases have last-day deadlines under Penal Code section 1382 during the period of time for which the court is requesting a first extension under Government Code section 68115 (please provide daily breakdown)?

Because this court deals with paper files, it would be burdensome to determine the exact numbers of cases because the court would have to pull all the files and check if the defendant entered a time waiver, what type, and for how long. Given the reduced staffing resulting from COVID-19, along with the social distancing requirements, the court simply does not have the resources to provide specific numbers at this time. However, the court can provide the following rough statistics for a general idea:

For felony cases with no prior extensions, to have a last-day deadline between September 12 and October 18, inclusive, the defendant would be arraigned on an Information between July 20³ and August 19. Of the cases still pending trial, there were 41 felony bindovers after preliminary hearing during this timeframe, and 28 felony bindovers in the preceding 30-day period (June 19-July 19). Thus, the court approximates there were 35 felony arraignments during the period of July 20-August 19, meaning approximately 35 felony cases with no prior extensions that are still pending trial will have a last-day deadline for trial during the request period.

For misdemeanor in-custody cases with no prior extensions, to have a last-day deadline between September 12 and October 18, inclusive, defendants would have arraignment dates between August 19 (see footnote 3) and September 18. The court does not have complete statistics

³ Although the "request period" is September 12 through October 18, the first last-day deadline for a case in this category in this court (i.e. no prior extensions) would be September 18.

for this time period. However, of the cases still pending trial, there were approximately 33 misdemeanor arraignments between August 19 and August 24, and 22 of these defendants are still in custody. In addition, there were approximately 159 misdemeanor arraignments in the most recently preceding 30-day period for which statistics are available (July 25-August 24), and 79 of those defendants are still in custody. Using those numbers as a guide, the court estimates that over 75 misdemeanor in-custody cases with no prior extensions that are still pending trial will have a last-day deadline during the request period.

For misdemeanor out-of-custody cases with no prior extensions, to have a last-day deadline between September 12 and October 18, inclusive, defendants would have arraignment dates between August 4 (see footnote 2) and September 3. The court has incomplete statistics for this time period, but of the cases still pending trial, there were 123 misdemeanor arraignments from August 4 through August 24, and 57 of these defendants are now out of custody. And as noted above, there were approximately 159 misdemeanor arraignments in the most recently preceding 30-day period for which statistics are available (July 25-August 24), and 80 of those defendants are now out of custody. Based on these known numbers, the court estimates that there will be approximately 80 misdemeanor out-of-custody cases with no prior extensions that are still pending trial that will have a last-day deadline during the request period.

In sum, the court estimates that approximately 190 cases with no prior extensions will have the trial deadline come due during the period of September 12 through October 18. The court recognizes a number of these cases, being new, may settle or defendant may enter a time waiver prior to the last-day deadline, but the court cannot predict what percentage of cases that may be. Even assuming a 50% settlement/waiver rate, which would be high, that still leaves approximately 80 cases with original last-day deadlines falling within the request period.

2. How many criminal cases are coming up to the limit already extended for 90 days by the statewide orders (please provide a daily breakdown)? Is the court requesting a further extension of time on any of these cases?

The response to this question includes those cases that were extended 90 days by the statewide orders and those cases that have received any or all of the previous three court-specific 30-day extensions granted to this court pursuant to the Chief's June 4, June 30, and August 7 Emergency Orders. Because these cases all have paper files, the court would have to manually pull all of the case files to determine the date set for trial, whether there is a time waiver, what type, and for how long. Given the reduced staffing resulting from COVID-19, along with the social distancing requirements, the court simply does not have the resources to provide specific numbers at this time. However, assuming the last set trial date was the last day for trial, the court can provide the following rough statistics for a general idea:

There are approximately 37 felony cases that, with all the previous extensions, now have trial deadlines between September 12 and September 17 (5 of which are in custody). There are also approximately 3 in-custody misdemeanor cases, and 166 out-of-custody misdemeanor cases, that with all the extensions have trial deadlines between September 12 and September 17.

In addition, there are approximately 500 felony cases (115 in custody), approximately 77 in-custody misdemeanor cases, and approximately 1482 out-of-custody misdemeanor cases that, with all prior extensions, now have trial deadlines between September 18 and October 18.

In sum, the court estimates that approximately 2265 previously extended cases will have the trial deadline come due during the period of September 12 through October 18.

Summary:

Based on the above, in both categories (questions 1 and 2), there are roughly 2,400 cases in which the last day for trial will occur between September 12 and October 18. Pursuant to information received by the District Attorney's Office, many of the felony in-custody trials involve serious charges, meaning the stakes are high and trials will be longer, further heightening the concerns of congregating large numbers of people and increasing the risk that the limited number of alternate jurors that could be allowed with the social distancing requirements will not be sufficient.

3. What logistical or other issues prevent the court from holding trials within the time provided in Penal Code section 1382? How is the court planning to address any of these issues?

The Jury Trial Working Group has been investigating and devising solutions to address the numerous and unprecedented logistical, safety, and legal issues that must be considered and resolved in order to safely conduct thousands of jury trials, many of which will be lengthy. The court's current plans to address these issues, and hold trials, are set forth in the answer to question 4 below. Following are some of the logistical, safety, constitutional, and legal issues that have been identified.

State and County Public Health Orders and Safety Issues:

- Social Distancing Requirements (6-foot distance between individuals) severely impact the number of persons that can be in the courthouse, the courtrooms, the jury lounges, the elevators, and the restrooms.
- Effective June 18, with limited exceptions, the state and county have ordered all persons to wear face coverings while in public places, even if they are able to maintain a 6-foot distance between each other.
- As required by county and state guidance, the court prohibits employees from entering the courthouse if they have a temperature of 100 degrees or more; consistently, the court also imposes this restriction on judicial officers and members of the public.
- The Sheriff's Department would have to transport in-custody defendants back and forth between the jails and the courthouses. As discussed above, jails and prisons are among the highest risk congregate settings.
- Notwithstanding these measures, the virus may be spread by asymptomatic persons.

Jury Issues:

- The court expects a very low yield of jurors summoned. The court normally experiences about a 10% report rate for newly summoned jurors if it issues the summonses at least 6-weeks prior to the report date. (Although the court is only required to provide 10-days' notice, under normal circumstances this only yields approximately 5% of newly summoned jurors appearing). The court has provided approximately 6-weeks' notice for the October 13 trial, which, given the pandemic, the court hopes will result in a 5% - 7% report rate.
- Concerns have been raised that the jurors appearing might not be a representative cross-section because, for example, we would expect significantly lower numbers of elderly persons, immune-compromised persons, and parents with children (the private defense bar has raised this concern).
- Attorneys have expressed concerns with jurors wearing face coverings during voir dire and during trial as it would eliminate or severely limit their ability to see the jurors' facial expressions.
- Currently, jurors will not be able to deliberate in the deliberation rooms due to the social distancing requirements. This will likely result in the jury using the courtrooms for deliberations, which will mean the courtroom will not be available for other hearings and trials.
- There is an increased likelihood of losing jurors mid-trial due to the court's temperature screening requirement and also because more jurors will likely be excused if they start to exhibit physical symptoms consistent with COVID-19. At the same time, due to space limitations in courtrooms, the court is unable to have more than 1 alternate juror except with respect to a small percentage of courtrooms countywide (assuming little to no public presence in the courtrooms).

Judicial Officer Issues:

- 73 of the court's 130 judges are 60 years old or older (39 are age 60-64; 34 are age 65 and above).

Court Staffing Issues:

- The court employs approximately 1,200 employees. However, as a result of COVID-19, the court is experiencing significant staffing and budgetary issues at a time when it needs significantly more, not less, resources/staffing to devise and implement all of the new processes and procedures, as well as manage the backlog, resulting from the pandemic.
- Approximately 20% of the court's workforce (242 employees) have requested FFCRA or another type of leave as a result of COVID-19. At any point in time, approximately 14% of the workforce is utilizing leave for childcare purposes. Childcare FFCRA leave is expected to be utilized by employees for several more months, as most school districts in San Diego County are currently distance learning. In addition, the court has offered intermittent unpaid furloughs in an effort to deal with the budget deficit. Thirty employees

have used this program to request a reduced schedule for FY 20-21 (such as two unpaid days off per week), and additional employees continue to use the program on a sporadic basis.

- As a result of the Governor's revised budget, the court needs to make approximately \$13 million in cuts to its fiscal year 2020-21 budget. Accordingly, the court implemented a Voluntary Separation Incentive Payment ("VSIP") program. As a result of the VSIP, 46 employees have retired or will soon retire and approximately 39 have elected to take an extended unpaid leave of absence. The court also instituted a hiring freeze for all but critical positions, reduced student workers and retire/rehires, significantly reduced its overtime budget, and scaled back non-essential contracts and purchases. These actions will save an estimated \$8 million. This leaves a remaining gap of approximately \$5 million, which is being addressed through a mandatory work furlough program. Each court employee will be required to take 10 days / 80 hours of mandatory unpaid furlough time during the 20-21 fiscal year. In addition, the impacts of the pandemic upon civil assessments have yet to be determined, and the court does not know if it will face additional revisions to the state budget during 20-21. It is clear that these budget cuts will have a significant impact on the court and its ability to provide services.
- As evidenced in the court's July 20 emergency request regarding its Juvenile Courthouse, the county's contact tracing and quarantining protocols can quickly and significantly impact the court's staffing levels, even when the potential exposure/transmission does not occur in the court's facilities.

Facilities/Logistical Issues:

- The court's main courthouse, the Central Courthouse, is a high-rise building with courtrooms on 22 separate floors. This necessitates heavy elevator use to operate at full capacity. However, given the current limitations of only allowing no more than 4 persons on an elevator at a time, the courthouse is not able to conduct multiple trials on multiple floors given the large numbers of jurors, attorneys, parties, families, and court staff who would be present (even if members of the public were not allowed to be present).
- Even assuming the defendants would be willing to consent to appear for trial remotely (which they likely will not be, given the court's experience with this issue thus far), there is a very limited capacity to have in-custody defendants appear remotely because, countywide, there are only 6 rooms at 1 facility and 4 rooms at each of the other 6 jail facilities that are equipped for this purpose. Currently the court is holding between 150 and 175 remote hearings at the detention facilities per day. On most days, the court's resources in the jail facilities are stretched to capacity with respect to conducting these non-trial hearings. Accordingly, it is logistically impossible for the court to simultaneously hold all of these hearings and also conduct numerous trials remotely.
- There are severe limitations on the court's ability to assemble jurors in a jury lounge in all of its locations while complying with social distancing requirements: (i) the Central Courthouse, which is the main courthouse, will only accommodate 71 jurors; (ii) the East County courthouse can only accommodate 64 jurors; (iii) the South Bay facility can only

accommodate 31 jurors; and (iv) the North County courthouse can only accommodate 56 jurors.

- Even without considering public access to the courtrooms, only 20 of the court's 150 courtrooms can accommodate more than 13 jurors with appropriate social distancing in place: (i) the Central Courthouse has 3 such courtrooms; (ii) the Hall of Justice has 16 such courtrooms (15 can accommodate 15 jurors and 1 can accommodate 25 jurors); and (iii) the East County courthouse has 1 such courtroom (and it can only accommodate 14 jurors). Neither the South County nor the North County courthouses can accommodate more than 13 jurors. Considering the number of serious and lengthy trials at issue, along with the higher than normal likelihood of needing alternate jurors, this facility issue poses a significant impediment to conducting a voluminous number of trials.
- Even without considering public access to the courtrooms, there are also a limited number of courtrooms that can accommodate 13 jurors with appropriate social distancing in place. Excluding the courtrooms mentioned above, the total number of such courtrooms is 44 (43 at the Central Courthouse and 1 in the East County courthouse). None of the other courthouses can accommodate these juries. Again, given the number of trials at issue, along with the increased likelihood of needing additional alternates, this creates a significant obstacle to conducting multiple trials at one time. Exacerbating the situation is the fact that courtrooms will also need to be used as deliberation rooms.
- Even in those courtrooms that can accommodate a full jury, the space in the courtrooms may not allow for ancillary trial participants, such as interpreters, victim support, or investigating officers.
- At best, the court anticipates only two or three juries could be selected per week using its three large courtrooms for voir dire.
- At best, the court anticipates only being able to utilize one courtroom per floor in its Central Courthouse due to social distancing requirements.
- Breaks during trial would be prolonged due to social distancing requirements in restrooms.
- Handling of evidence (touching issues) will need to be addressed.

Other Legal Issues, Including the Rights of Defendants, Victims, and the Public:

- Limitations on a defendant's access to counsel during trial preparation and trial (raised by private defense bar).
- Concerns have been raised that having defendants, witnesses, and jurors wear face coverings may constitute a violation of defendant's due process/confrontation rights.
- Defense counsel has raised concerns that jurors may feel bias/resentment towards the defendant for forcing a trial under the circumstances.
- Even in those courtrooms that can accommodate a full jury, the space in the courtrooms would not allow for any (or very limited) physical public access, including the defendant's family, the victim/victim's family, the general public, and the media.

- The court is exploring the possibility of streaming jury trials to an adjacent courtroom via closed circuit audio/visual, which would provide public access to jury selection but would further limit the number of courtrooms available for other matters.

4. How is the court planning to conduct criminal trials? Does the court intend to use technology to assist in holding criminal trials?

The court cannot require defendants to appear remotely and, based on its experience and the information it has received from the community, the court must plan trials on the assumption that the defendants, witnesses, attorneys, and jurors will be appearing in person. As detailed above, there are multiple unprecedented safety and constitutional issues that have been identified and are being addressed in order for the court to begin resuming jury trials. What makes this process particularly difficult is that the potential solutions for addressing health and safety concerns are frequently at odds with constitutional requirements.

The Jury Trial Working Group is working with the court's justice partners to identify a test case and a method to prioritize cases to bring to trial thereafter. The current plan is to have jurors summoned on a daily basis to the jury lounge, with a goal of having the maximum number of jurors the room will hold appear each day (this is approximately 70 jurors in the Central Courthouse under the current 6-foot distancing requirements). Summoned jurors will have the option of completing an online questionnaire in advance, which will expedite jury selection, as well as allow the court to excuse or reschedule some jurors prior to them coming to the courthouse. The court will use one of its three large courtrooms for jury selection, as, with some creativity, as many as 30 prospective jurors can be seated in these courtrooms. Once the jury is selected, they trial will move to a regular trial courtroom either outfitted with plexiglass barriers or where, again with some creativity, 14 or 15 jurors can be seated, while having some seats available for public access.

Some of the more specific issues and the current plans to address them are as follows:

a. Juror Summonses and Jury Selection

The court is still working on its online juror portal whereby the court would be able to excuse or reschedule jurors without them having to come to court. Via the portal, prospective jurors will be able to answer a standard courtroom questionnaire prior to service. The portal will also enable the court to communicate to jurors any changes or other information regarding their service. The court is working to have this functionality go live before jurors are to begin reporting on October 9.

The court has also created several inserts to go along with its standard juror summonses. These inserts will inform prospective jurors of the safety precautions being taken by the court for their safety and provide links to and information about the portal and online questionnaire. The court will also post information on its website, including a video of what prospective jurors can expect when they report.

Jury selection/voir dire will take place in one of the court's three large courtrooms at its Central Courthouse, with batches of 30 socially distanced jurors present at a time. Jurors not yet

called would remain in the jury lounge. The group is exploring various options of rotating jurors in and out of these courtrooms until 12 jurors and enough alternates are selected. If a jury is not selected from the available jurors, the court will contact jury services for available jurors either the same day or the next day, if necessary. Jurors selected for trial will either be told in person or notified by email/text when and where they need to report.

b. Conducting Trial

Jurors will be met in the hallway by staff/bailiff and directed to wait on the marked, socially distanced benches until they are called into the courtroom. Standard-sized courtrooms will have additional chairs placed, and the appropriate chairs marked, for the jurors. Unless the courtroom has plexiglass barriers, the jurors will be spread out, including in the gallery, but will essentially be on one side of the courtroom. The smaller gallery section will be available for the public and media.

Unless the public health guidelines change, all court staff, attorneys, defendant, and all others in the courtroom will wear face coverings, including while speaking. Regarding witnesses, the court is exploring: (i) installation of plexiglass around the witness box in at least some of its courtrooms, which would allow a witness to remove their face covering while testifying and (ii) the use of face shields in lieu of face coverings. However, given the Governor's June 18 order concerning face coverings in public areas, it is not clear whether the court will be able to utilize either of these options.

A sanitation protocol will be in place and explained to the jurors. Attorneys will examine witnesses from their chair position, preferably sitting. Each juror will receive his or her own copy of the jury instructions and may take them into the deliberation room.

c. Jury Deliberations

There are only a few options in the court's Central/HOJ Courthouse complex that would allow jurors to deliberate comfortably while socially distanced. The great likelihood is that many juries will have to deliberate in a courtroom, such as an adjacent unused courtroom. Measures will be taken to arrange the deliberation room, whatever it is, in such a way as to facilitate open deliberation.

5. What efforts has the court made to work with justice partners to encourage and facilitate expeditious settlement, where possible, of cases pending before the court?

Since the court closed on March 17, it has been working continuously and diligently in collaboration with the Public Defender, District Attorney, City Attorney, and Sheriff to secure the release of inmates who do not present a public safety risk, including, but not limited to: creating a procedure for and processing requests for lower bail or own-recognition release pursuant to Penal Code § 1269c; creating a procedure for and processing requests for release pursuant to stipulation of the parties; authorizing the Sheriff to accelerate the release of sentenced defendants up to 30 days pursuant to Penal Code § 4024.1; authorizing the Sheriff to accelerate the release of sentenced defendants up to 60 days pursuant to an Advisory from the Chief Justice of the Supreme Court of

California dated March 30, 2020; and, prior to adoption of the statewide emergency bail schedule, implementing a modification to the San Diego Countywide Bail Schedule temporarily reducing bail to zero for over 60 offenses. After the statewide emergency bail schedule was rescinded, the court resurrected an amended version of the temporary modifications to the Countywide Bail Schedule, which sets bail at zero for all misdemeanor and infraction offenses except for 26 specified offenses. It also sets bail at zero for over 62 felony offenses.

Based on information received from the District Attorney's Office, these efforts resulted in a reduction of approximately 1,200 inmates before the statewide emergency bail schedule took effect. According to the District Attorney's Office, as a result of these efforts the pre-disposition jail population consists of approximately 90 percent felony cases with 72 percent being serious/violent felonies. Only about 10 percent constitute misdemeanors, mostly comprised of domestic violence and repeat DUIs or defendants who are in violation of probation for a serious/violent felony offense.

Finally, the court has, together with the District Attorney's Office, the City Attorney's Office, the Office of the Public Defender, and the Sheriff's Department, set up various video and telephonic remote proceedings and calendars to move criminal cases along, including holding bail review hearings, readiness (settlement) conferences, arraignments, preliminary hearings, sentencing hearings, change of plea hearings, and handling probation violation and extradition matters. All in-custody defendants have been given at least one, and sometimes more, telephonic and/or video readiness (settlement) conference hearing to attempt to settle their case. The court is caught up on necessary felony arraignments and preliminary hearings.

###

TO: Hon. Tani G. Cantil-Sakauye, Chair of the Judicial Council
Judicial Council of California
c/o Legal Services Supervising Attorney Charles Perkins
415-865-4609
charles.perkins@jud.ca.gov
415-865-8767 (fax)

FROM: *Name* : Lorna A. Alksne
Title: Presiding Judge
Court: Superior Court of San Diego County
Telephone: [REDACTED]
Fax: 619-844-5550
E-mail Address: [REDACTED]

DATE: 10/2/2020

SUBJECT: Request for Judicial Emergency Order

I hereby request an order allowing the court to implement the following emergency procedures pursuant to the provisions of section 68115 of the Government Code¹:

- The court may extend the time period provided in section 1382 of the Penal Code within which a trial must be held by not more than 30 days. (Gov. Code, § 68115(a)(10).)
(Fill in number of days, not exceeding 30. Pursuant to Government Code section 68115(a)(10), “the trial of a defendant in custody whose time is so extended shall be given precedence over all other cases.”)
This request applies only to cases in which the statutory deadline otherwise would expire on _____ *or* from 10/12/2020, to 11/18/2020, inclusive*.
(Fill in date(s) above.)

***This request applies to cases in which the original or previously-extended statutory deadline otherwise would expire from October 12, 2020, to November 18, 2020, inclusive.**

Although the previous Emergency Order issued September 4, 2020, already provides relief for cases in which the trial deadline falls on September 12, 2020, through October 18, 2020, the court has determined that October 12, 2020, through October 18, 2020, also need to be included

¹ Government Code section 68115, as amended, effective January 1, 2019, provides that, upon the request of a presiding judge, the Chairperson of the Judicial Council may authorize relief as set forth in the statute, “[w]hen war, an act of terrorism, public unrest or calamity, epidemic, natural disaster, or other substantial risk to the health and welfare of court personnel or the public, or the danger thereof, the destruction of or danger to the building appointed for holding the court, a large influx of criminal cases resulting from a large number of arrests within a short period of time, or a condition that leads to a state of emergency being proclaimed by the President of the United States or by the Governor pursuant to Section 8625, threatens the orderly operation of a superior court location or locations within a county or renders presence in, or access to, an affected court facility or facilities unsafe”

in the current request. The April 29, 2020, statewide order granting up to a 90-day extension was effective for cases with a last day for trial of March 16 through June 15, 2020. With this statewide 90-day extension, as well as the four prior 30-day extensions authorized for this court, a case with a last day for trial of March 16-20, April 19-21, May 20-21, June 16-20, July 18-20, August 18-19, and September 18, 2020, would now have a last day for trial of October 12 through October 18, 2020. Accordingly, the court is including October 12 through October 18 in its request.

The circumstances necessitating an emergency order are described in the attached document.

The public defender, the district attorney, and other interested local entities have / have not (check one box) been notified of this request for emergency order.

The court has / has not (check one box) advised these entities to immediately notify the Judicial Council's Legal Services office of any opposition or questions regarding the request.

Please list the names and telephone numbers of the district attorney, the public defender, and other notified parties affected by the order:

District Attorney: Summer Stephan

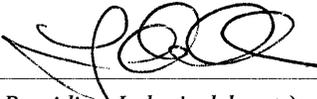
Public Defender: Randy Mize

Other Parties Affected: City Attorney Mara Elliot; San Diego Sheriff Bill Gore

The court has / has not (check one box) been informed of any opposition to this request.

If the court has been informed of potential opposition to this request, please state below the party or parties who may oppose the request and any stated reasons for the opposition:

The Public Defender, Randy Mize, informed the court on September 30, 2020, that he "cannot support another 1382" extension on behalf of his clients.

Submitted by:  _____
(Presiding Judge or Presiding Judge's delegate)

Date: 10/2/2020

The San Diego Superior Court hereby requests an order allowing the court to extend the time period provided in Penal Code section 1382, within which a trial must be held, by not more than 30 days. This request applies to cases in which the original or previously extended statutory deadline otherwise would expire from October 12 to November 18, 2020,¹ inclusive.

I. BACKGROUND INFORMATION AND BASIS FOR REQUEST

Since the court's last request for Penal Code section 1382 relief, which was submitted on September 3, San Diego County's status within California's Blueprint for a Safer Economy has remained unchanged, and the court has successfully progressed with its plan as outlined in the September 3 request and remains on track to gradually resume criminal jury trials beginning October 13. However, as described below, the court still faces an enormous backlog of approximately 1,600 cases in which the last day for trial will occur between October 12 and November 18. Even in pre-pandemic conditions, it would be impossible to hold jury trials for this number of cases in such a short period of time, and this challenge is even more pronounced given the anticipated pace of proceeding with jury trials due to the many logistical, safety, and legal issues described in the court's previous requests.

Because the court is largely in the same position and facing the same issues as when it submitted its September 3 request, this memorandum will only briefly address relevant changes since the last request, and the court has attached its September 3 memorandum to this request for reference. (See Attachment 1.) In addition, the numerous federal, state, and local public health orders that have been issued in response to the COVID-19 pandemic are well known and have been detailed in prior Judicial Council orders and memoranda as well as this court's prior requests for relief from the Chief Justice. Accordingly, they will not be repeated here, except as necessary to provide relevant updates.

A. COVID-19 in San Diego County

San Diego County remains in the red (substantial) tier 2 of the Blueprint for a Safer Economy after narrowly avoiding being required to move into the more restrictive purple (widespread) tier 1. The tier assignments are based on adjusted case rate and test positivity metrics, which the California Department of Public Health assesses weekly, every Tuesday. Counties are required to move to a more restrictive tier if they fail to meet their current tier's criteria for two consecutive weeks. On September 15, San Diego County's adjusted case rate rose into the purple tier (more than 7 daily new cases per 100,000 residents); however, the rate fortunately fell to 6.9 on September 22, and San Diego County was therefore permitted to remain in the red tier. On September 29, San Diego County's adjusted case rate remained in the red tier at 6.7, which means San Diego County will still be in the red tier when jurors start reporting on October 9 regardless of the metrics that will be assessed on October 6.

¹ All subsequent date references are to 2020.

The San Diego County Health Officer's most recent stay-at-home order, which became effective September 30, still generally prohibits gatherings of more than one person (with certain exceptions, including operations of essential sectors such as the court). All essential businesses, including the court, must comply with applicable state guidance, such as requiring employees to wear face coverings when there is a high risk of exposure; conducting temperature and/or symptom screenings of employees; implementing cleaning and disinfecting protocols; and implementing six-foot social distancing requirements.

B. Activity Since the Court's September 3 Request

As planned, the court began remotely hearing trial status conferences on September 10 for all out-of-custody cases that were previously set for trial, and this process is expected to be completed at all locations by October 5. At these conferences, approximately 10-15% of the cases settled, and most, if not all, of the remaining cases were set for future trial dates. Generally, felonies were set 120 days out (beginning in January), and misdemeanors were set 180 days out (beginning in March). However, although these trial dates are no longer included in the number of cases in which the last day for trial will occur between October 12 and November 18, they are still on calendar and will contribute to the backlog in 2021.

The court has already started hearing status conferences on the next group of out-of-custody cases, which includes post-arraignment/pre-preliminary hearing, post-preliminary hearing/no trial date, and post-conviction cases. This group consists of approximately 13,000 cases, and the court expects to work through these cases by the end of October. Starting November 2, the court plans to begin hearing out-of-custody arraignments, which includes approximately 7,000 cases.

The court is still on track to gradually resume jury trials beginning October 13, with jurors reporting October 9. The Court plans to hold one trial beginning October 13, a second trial beginning October 19, and two trials per week starting October 26. Jury trials will resume in the Central Courthouse and will eventually expand to the East, North, and South County Courthouses. However, the number of jury trials that can be held simultaneously will be limited by the size of the jury lounges, which will have decreased capacity to maintain social distancing, and the number of courtrooms that can provide adequate spacing or are equipped with protective barriers.

Juror turnout also remains a significant concern. For example, the court summoned approximately 800 jurors for the first week, and, to date, approximately 250 have postponed or requested an excuse due to COVID-19. For the second week, the court summoned approximately 950 jurors, and approximately 300 have postponed or requested an excuse due to COVID-19. In an effort to improve juror turnout, the court's Presiding Judge, the Honorable Lorna A. Alksne, has reached out to the community by way of multiple interviews with media, including television, radio, and print, to highlight the court's safety precautions and to stress the importance of jurors reporting and fulfilling this critical public service. The court has also fielded calls from summoned jurors and explained the safety protocols that are in place, and the court has posted a video on its website explaining these protocols and the new jury service process (<http://www.sdcourt.ca.gov/pls/portal/docs/PAGE/SDCOURT/JURY2/JURY%20SERVICE%20>

[DURING%20COVID-19.M4V](#)). However, even with these efforts, the court currently anticipates an approximate yield of 7.5% based on the requests the court has received to date and historical turnout.

C. The Court's Request for an Extension

In the court's May 29, 2020, request for an Emergency Order for additional time to conduct trials, the court submitted letters of support from the District Attorney's Office, the City Attorney's Office, the Office of the Public Defender, and the Sheriff's Department, and each of these justice partners supported the court's previous requests. With the exception of the Public Defender, each of these justice partners has confirmed that they also fully support this additional request; however, the Public Defender notified the court that, on behalf of his clients, "he cannot support another 1382" extension. Notwithstanding this withdrawal of support, the Public Defender Association of San Diego County recently submitted a public records request to the court seeking extensive records related to the court's cleaning and safety protocols. The request suggests safety concerns and hesitance by the association with regard to its members physically coming into the courthouse and also meeting with their clients.

Regardless, as set forth in the court's response to questions 1 and 2 below, the court has approximately 1,600 cases in which the last day for trial will occur between October 12 and November 18, inclusive. Even if the court were operating at full pre-pandemic capacity of 70-90 jury trials per month (including criminal and civil), it would be impossible to hold 1,600 jury trials in this time frame. Given the many logistical, safety, and legal issues described in the court's previous requests, along with the fact that new procedures have been developed and will need to be tested and adjusted to resolve the many issues that will certainly arise, the court cannot initially resume jury trials at full capacity. Instead, the court will enter this uncharted territory gradually beginning October 13 while continuously assessing and considering the health and safety of everyone involved and the potential constitutional issues that have been raised below. Therefore, due the enormous backlog and the anticipated pace of proceeding with jury trials, the court requests an order allowing the court to extend the time period provided in Penal Code section 1382, within which a trial must be held, by not more than 30 days.

II. ANSWERS TO SPECIFIC QUESTIONS SET FORTH IN THE MAY 14, 2020, JUDICIAL COUNCIL MEMORANDUM

1. How many criminal cases have last-day deadlines under Penal Code section 1382 during the period of time for which the court is requesting a first extension under Government Code section 68115 (please provide daily breakdown)?

Because this court deals with paper files, it would be burdensome to determine the exact numbers of cases because the court would have to pull all the files and check if the defendant entered a time waiver, what type, and for how long. Given the reduced staffing resulting from COVID-19, along with the social distancing requirements, the court simply does not have the

resources to provide specific numbers at this time. However, the court can provide the following rough statistics for a general idea:

For felony cases with no prior extensions, to have a last-day deadline between October 12 and November 18, inclusive, the defendant would be arraigned on an Information between August 20² and September 19. Of the cases still pending trial, there were roughly 37 felony bindovers after preliminary hearing during this timeframe (August 20-September 19), and roughly 40 felony bindovers in the preceding 30-day period (July 20-August 19). Thus, assuming the defendants had immediate arraignments after the bindover, the court approximates there were at least 35 felony arraignments during the period of August 20-September 19, meaning at least 35 felony cases with no prior extensions that are still pending trial will have a last-day deadline for trial during the request period. Most of the defendants in this category are still in custody.

For misdemeanor in-custody cases with no prior extensions, to have a last-day deadline between October 12 and November 18, inclusive, defendants would have arraignment dates between September 19 (see footnote 2) and October 19. The court does not have complete statistics for this time period. However, of the cases still pending trial, there were approximately 179 misdemeanor arraignments in the last 30 days for which statistics are available (August 24-September 23), and approximately 108 of those defendants are still in custody. In the 30 days before that (July 24-August 23), there were approximately 109 misdemeanor arraignments, and approximately 33 of those defendants remain in custody. Using those numbers as a guide, the court estimates that about 70 misdemeanor in-custody cases with no prior extensions that are still pending trial will have a last-day deadline during the request period.

For misdemeanor out-of-custody cases with no prior extensions, to have a last-day deadline between October 12 and November 18, inclusive, defendants would have arraignment dates between September 4 (see footnote 2) and October 4. The court has incomplete statistics for this time period, but of the cases still pending trial, there were 111 misdemeanor arraignments from September 4 through September 23, and 30 of these defendants are now out of custody. And as noted above, there were approximately 179 misdemeanor arraignments in the last 30 days for which statistics are available (August 24-September 23), and 71 of those defendants are now out of custody. Based on these known numbers, the court estimates that there will be approximately 55 misdemeanor out-of-custody cases with no prior extensions that are still pending trial that will have a last-day deadline during the request period.

In sum, the court estimates that approximately 160 cases with no prior extensions will have their trial deadline come due during the period of October 12 through November 18. The court recognizes a number of these cases, being new, may settle or defendant may enter a time waiver prior to the last-day deadline, but the court cannot predict what percentage of cases that may be. Assuming a 50% settlement/waiver rate, that still leaves about 80 cases with original last-day deadlines falling within the request period.

² Although the “request period” is October 12 through November 18, the first last-day deadline for a case in this category in this court (i.e. no prior extensions) would be October 19.

2. How many criminal cases are coming up to the limit already extended for 90 days by the statewide orders (please provide a daily breakdown)? Is the court requesting a further extension of time on any of these cases?

The response to this question includes those cases which were extended 90 days by the statewide orders, and those cases that have received the benefit of any of the previous four court-specific 30-day extensions granted to this court pursuant to the Chief's June 4, June 30, August 7, and September 4 Emergency Orders. Because these cases all have paper files, the court would have to manually pull all of the case files to determine the date set for trial, whether there is a time waiver, what type, and for how long. Given the reduced staffing resulting from COVID-19, along with the social distancing requirements, the court simply does not have the resources to provide specific numbers at this time. However, assuming the last set trial date was the last day for trial, the court can provide the following rough statistics for a general idea:

There are approximately 20 felony cases that, with all the previous extensions, now have trial deadlines between October 12 and October 18 (3 of which remain in custody). There are also approximately 3 in-custody misdemeanor cases, and 58 out-of-custody misdemeanor cases, that with all the extensions have trial deadlines between October 12 and October 18.

In addition, there are approximately 400 felony cases (approximately 240 in custody), approximately 195 in-custody misdemeanor cases, and approximately 880 out-of-custody misdemeanor cases that, with all prior extensions, now have trial deadlines between October 19 and November 18.

In sum, the court estimates that approximately 1,550 previously extended cases will have their trial deadline come due during the period of October 12 through November 18.

Summary:

Based on the above, in both categories (questions 1 and 2), there are over 1,600 cases in which the last day for trial will occur between October 12 through November 18. Pursuant to information received by the District Attorney's Office, many of the felony in-custody trials involve serious charges, meaning the stakes are high, and trials will be longer, further heightening the concerns of congregating large numbers of people and increasing the risk that the limited number of alternate jurors that could be allowed with the social distancing requirements will not be sufficient.

The court's responses to questions 3-5 have not changed since its September 3 request (attached), and those responses are incorporated herein by reference.

###

ATTACHMENT 1

Memorandum Supporting the Court's **September 3 Request for Penal Code** **Section 1382 Relief**

The San Diego Superior Court hereby requests an order allowing the court to extend the time period provided in Penal Code section 1382, within which a trial must be held, by not more than 30 days. This request applies to cases in which the original or previously extended statutory deadline otherwise would expire from September 12, 2020, to October 18, 2020, inclusive. In the court's May 29, 2020,¹ request for an Emergency Order for additional time to conduct trials, the court submitted letters of support from the District Attorney's Office, the City Attorney's Office, the Office of the Public Defender, and the Sheriff's Department. Each of these justice partners has confirmed that they also fully support this additional request.

I. BACKGROUND INFORMATION AND BASIS FOR REQUEST

A. COVID-19 in San Diego County

The numerous federal, state, and local public health orders that have been issued in response to the COVID-19 pandemic are well known and have been detailed in prior Judicial Council orders and memoranda, as well as this court's prior requests for relief from the Chief Justice. Accordingly, they will not be repeated here, except as needed to provide relevant updates since the court's last emergency order request.

The California Department of Public Health ("CDPH") recently indicated that community spread of infection remains a significant concern across the state. Congregate settings, including nursing homes, homeless shelters, jails, and prisons, are particularly susceptible to expanded transmission of COVID-19, and infection of vulnerable populations in these settings can be catastrophic. The COVID-19 pandemic, and the public health authorities' understanding of it, has continued to evolve. For example, the CDPH now knows that outdoor activities are much safer than indoor activities and that face coverings are critical to limiting the spread of the disease. Additionally, the CDPH has identified the following factors for evaluating the risk level for activities, some of which are applicable to jury trials:

- Ability to accommodate face covering wearing at all times (e.g. eating and drinking would require removal of face covering)
- Ability to physically distance between individuals from different households
- Ability to limit the number of people per square foot
- Ability to limit duration of exposure
- Ability to limit amount of mixing of people from differing households and communities
- Ability to limit amount of physical interactions of visitors/patrons
- Ability to optimize ventilation (e.g. indoor vs outdoor, air exchange and filtration)
- Ability to limit activities that are known to cause increased spread (e.g. singing, shouting, heavy breathing; loud environs will cause people to raise voice)

¹ All subsequent date references are to 2020.

At the time of the court’s last request for Penal Code section 1382 relief, which was submitted on July 28, San Diego County was on the state’s County Monitoring List (“CML”). As a result, indoor operations were prohibited for several business sectors, including restaurants, bars, breweries, wineries, movie theatres, family entertainment centers, museums, zoos, cardrooms, gyms and fitness centers, places of worship, indoor protests, offices for non-critical infrastructure sectors, personal care services, hair salons and barbershops, and malls.

Fortunately, since the court’s July 28 request, San Diego County’s COVID-19 monitoring metrics have improved, and the county came off the CML on August 18. However, county public health authorities continued the above-referenced prohibitions on indoor operations pending further guidance from the state.

On August 28, the CDPH issued a new public health order that established the Blueprint for a Safer Economy (“Blueprint”)² to replace the CML/Resilience Roadmap framework for reopening. Under the Blueprint, each county is categorized into one of four colored tiers, which will indicate whether and how certain business sectors can operate. In order of most to least restrictive, the tiers are: 1-purple (widespread), 2-red (substantial), 3-orange (moderate), and 4-yellow (minimal). The tiers are based on two metrics: number of new cases per 100,000 residents and percentage of positive tests.

By design, the Blueprint is a stringent and slow approach to reopening. Counties must remain in a tier for a minimum of three weeks before being able to advance to a less restrictive tier and must meet both of the next tier’s criteria for two consecutive weeks before moving. In addition, counties may only progress one tier at a time, even if they qualify for a more advanced tier. Conversely, counties will be required to move to a more restrictive tier if they fail to meet their current tier’s criteria for two consecutive weeks. The CDPH will assess the metrics weekly.

Based on recent data, San Diego County was initially placed in the red (substantial) tier 2, which includes the following restrictions:

| SECTOR | STATUS (Red Tier 2) |
|--|---|
| Critical Infrastructure | Open with modifications |
| Limited Services | Open with modifications |
| Hair Salons & Barbershops | Open indoors with modifications |
| All Retail (except standalone grocers) | Open indoors with modifications – max 50% capacity |
| Shopping Centers | Open indoors with modifications – max 50% capacity, closed common areas, reduced capacity food courts |
| Personal Care Services | Open indoors with modifications |
| Museums, Zoos, and Aquariums | Open indoors with modifications – indoor activities max 25% capacity |
| Places of Worship | Open indoors with modifications – fewer of max 25% capacity or 100 people |

² The Blueprint is formally known as California’s Plan for Reducing COVID-19 and Adjusting Permitted Sector Activities to Keep Californians Healthy and Safe.

| SECTOR | STATUS (Red Tier 2) |
|---|---|
| Movie Theatres | Open indoors with modifications – fewer of max 25% capacity or 100 people |
| Hotels and Lodging | Open with modifications – fitness centers limited to 10% capacity |
| Gyms and Fitness Centers | Open indoors with modifications – max 10% capacity |
| Restaurants | Open indoors with modifications – fewer of max 25% capacity or 100 people |
| Wineries | Outdoor only with modifications |
| Bars, Breweries, and Distilleries with no meal provided | Closed |
| Family Entertainment Centers | Outdoor only with modifications |
| Cardrooms and Satellite Wagering | Outdoor only with modifications |
| Offices | Remote |
| Professional Sports | Open with modifications – no live audiences |
| Schools | Permitted to open for in-person instruction with modifications |

These restrictions show the state’s intent, applicable to the red tier 2 counties, to limit activities involving indoor, static congregations of large groups of people for extended durations of time, such as places of worship, movie theatres, and restaurants, to the lower of 25% of capacity or 100 people. Although the court falls under the critical infrastructure category, it recognizes that jury trials also involve indoor, static congregations of people, and the court intends to comply with the applicable restrictions identified for similar activities.

The San Diego County Health Officer’s most recent stay-at-home order, which became effective September 1, generally prohibits gatherings of more than one person, requires face coverings to be worn consistent with state guidance, and implements the above-referenced restrictions on business sectors. All essential businesses, including the court, must comply with applicable state guidance, such as requiring employees to wear face coverings when there is a high risk of exposure; conducting temperature, symptom, and exposure screenings of employees; implementing cleaning and disinfecting protocols; and implementing six-foot social distancing requirements.

B. Measures the Court Has Implemented to Date

Since the court received its first Emergency Order related to the pandemic, which was effective March 17, the court has worked continuously to develop and implement numerous additional technologies and procedures so that it can serve the public in a manner that is safe for all. As a result of the court’s continuous efforts, the court has been able to gradually restore almost all services, at least remotely. The court has equipped multiple criminal, juvenile, family, probate, and civil courtrooms with video remote systems, increased its telephonic hearing capabilities, and developed entirely new processes and procedures for handling these matters. The court has utilized this new equipment and these new procedures to hold numerous remote hearings, including the

holding of arraignments and preliminary hearings for in-custody criminal defendants. The court has also significantly increased remote work options for staff members to be able to access phone lines from home to field incoming calls from the public and to enable them to access critical court business applications and data in order to perform case management work and assist the public. The court created and implemented a Civil Status Conference Hearing online application to enable attorneys to schedule status conferences to be held remotely and launched a new ability to e-file in family cases.

The court also started hearing almost all in-custody pretrial motions remotely, including, but not limited to, motions to dismiss (Pen. Code, § 995), pre- and post-preliminary examination motions to suppress (Pen. Code, § 1538.5), *Pitchess* motions, discovery motions, mental health diversions (Pen. Code, § 1001.36), Penal Code section 1368 competency calendars, and lengthy, multiple-defendant preliminary examinations. In addition, the court is scheduling and holding status conferences for its capital cases, with the defendant appearing in person. Also, the court worked with its justice partners to identify out-of-custody misdemeanor cases that have negotiated a plea and waived appearance (Pen. Code, § 977), and the court set up calendars to hear those matters.

The court has been conducting remote bench trials in family, traffic, small claims, and probate matters. Also, the court is exploring the possibility of expanding remote bench trials to other case types, including competency trials and non-complex civil matters. The court plans to hold one remote bench trial in a civil matter in October.

As stated in the court's May 29 request for an Emergency Order, the court organized a Jury Trial Working Group comprised of judicial officers, court staff, the Public Defender's Office, the District Attorney, the City Attorney's Office, and a representative from the private defense bar. Specific information concerning the progress this working group has made to enable the court to safely hold jury trials, while at the same time satisfying constitutional requirements, is provided in response to question 4 below.

The San Diego County Public Health Officer has provided the Superior Court guidance related to safety protocols. In response, the court has instituted a range of measures to comply with the current health directives issued by federal, state, and local officials. These measures include:

- Everyone entering the courthouses is subject to temperature and symptom screening, conducted by the Sheriff's Department.
- Strict social distancing is enforced between employee work stations.
- Floor stickers and signage provide visible markers of 6-foot distances for customer lines in business offices and lobbies. Plexiglass screens have been installed in business offices and other public areas.
- Each employee must wear a face covering in accordance with state and local health orders and whenever they are within six feet of another person who is not a member of their family or household. Court visitors are required to wear face coverings at all times when in court facilities.

- The public is required to wait outside the courthouses in a socially distanced queue. Court staff members determine the needs of those in line. Individuals who cannot be assisted via leaving paperwork in the court's drop box or information provided outside the courthouse, and who have court business to conduct, are permitted to enter with masks and social distancing.
- Drinking fountains have been shut off in all courthouses.
- The number of persons in elevators and restrooms at any one time is limited.
- The court has implemented increased cleaning of all high-touch areas in the courthouses, including door handles and elevator buttons.
- Hand sanitizer is widely available in public spaces within the courthouses.
- Children's waiting rooms located within court facilities remain closed until further notice.
- Video-remote technology has been implemented in many courtrooms, with the parties participating remotely.
- As many processes as possible have, or will be, converted to online, telephone, or video services available to the public.

C. The Court's Upcoming Plans

Beginning September 10, the court plans to hear trial status conferences remotely for all out-of-custody cases, starting with cases that were set for trial March 17. After working through the cases that were previously set for trial, the court plans to work through all other out-of-custody cases with a pre-trial status or those pending sentencing/disposition. In support of this, the court plans to launch its "walk-up court" program on September 10, which will enable an out-of-custody defendant to come to a designated room in each courthouse, with or without their attorney, and use the court's technology to make a remote appearance.

Also beginning September 10, the court will open access to certain portions of its facilities with capacity limits to allow for adequate social distancing. Currently, most public-facing services are being provided in the lobby area of each courthouse. Although some personnel will remain in the lobbies, the following locations will be accessible to persons with court business:

- Central Courthouse: 1st through 4th Floors (Business Offices) and 14th Floor (Central Records)
- Hall of Justice: 1st and 2nd Floors (Business Offices)
- Kearny Mesa Traffic Court
- East County Regional Center: Ground and 1st Floors (Business Offices)
- North County Regional Center: South Building Lobby, North Building and Annex (Business Offices)

- South County Regional Center: 1st through 3rd Floors (Business Offices)
- Juvenile Court: 1st and 2nd Floors (Business Offices)

Beginning October 13, the court plans to gradually resume criminal jury trials. The court mailed out summonses this week for jury duty beginning October 9. The court plans to hold one trial beginning October 13, a second trial beginning October 19, and two trials per week starting October 26. Jury trials will resume in the Central Courthouse and will eventually expand to the East, North, and South County Courthouses. The number of jury trials that can be held simultaneously will be limited by the size of the jury lounges, which will have decreased capacity to maintain social distance, and the number of courtrooms that can provide adequate spacing or are equipped with protective barriers.

In addition to the above-referenced precautionary measures already enacted to promote the safety of all court visitors and employees (temperature/symptom screenings, mandatory facial coverings, required social distancing, increased cleaning with a focus on high-touch areas, etc.), the following additional precautions relative to prospective jurors will be implemented:

- Significantly fewer jurors are being summoned. For example, the Central Courthouse jury assembly room that typically receives 350-400 people on a regular day will be reduced to 18-20% of the usual capacity.
- A telephone standby process will be implemented. Summoned jurors will begin their service on a Friday and may be directed to call in each day for up to five days to determine if they need to report in-person the next day.
- A new online portal will allow potential jurors to register their phone number and email address to receive an alert if they are not needed to come into the courthouse.
- Available seating in the jury lounge will be spaced out and marked to maintain social distancing. Juror interviews will take place in settings that permit six feet of distance between people.
- Individuals selected to serve on a jury will be spaced at least six feet apart in the courtroom or seated in a jury box with clear protective panels installed between each juror and other courtroom participants.
- Deliberation will take place in another courtroom or a larger meeting room to allow for more distance between jurors.
- Jury assembly rooms and restrooms will be cleaned and sanitized before the arrival of each new jury panel, with special attention to door handles and other high-touch surfaces.
- Jurors are encouraged to bring their own water, coffee, snacks, and other comfort needs.
- The court has prepared a video, which will be posted on the court's website, to illustrate the above precautions and explain the jury process.

The following photographs illustrate some of the protective measures described above:

Protective partitions surrounding each seat in the jury box:



Additional protective partitions in the courtroom:



Social distancing markers in the courtroom and jury assembly room:



D. The Court's Request for an Extension

As set forth in the court's response to question 5 below, over the past several months, the court has been regularly meeting and working with its justice partners to reduce the jail population and settle as many cases as possible. Notwithstanding these efforts, the court has approximately 2,400 cases in which the last day for trial will occur between September 12 and October 18, inclusive.

Given the many logistical, safety, and legal issues described in the court's response to question 3 below, along with the fact that new procedures have been developed and will need to be tested and adjusted to resolve the many issues that will certainly arise, the court cannot initially resume jury trials at full capacity. Instead, the court will enter this uncharted territory gradually beginning October 13 while continuously assessing and considering the health and safety of everyone involved and the potential constitutional issues that have been raised below. Therefore, due the enormous backlog and the anticipated pace of proceeding with jury trials, the court requests an order allowing the court to extend the time period provided in Penal Code section 1382, within which a trial must be held, by not more than 30 days.

II. ANSWERS TO SPECIFIC QUESTIONS SET FORTH IN THE MAY 14, 2020, JUDICIAL COUNCIL MEMORANDUM

1. How many criminal cases have last-day deadlines under Penal Code section 1382 during the period of time for which the court is requesting a first extension under Government Code section 68115 (please provide daily breakdown)?

Because this court deals with paper files, it would be burdensome to determine the exact numbers of cases because the court would have to pull all the files and check if the defendant entered a time waiver, what type, and for how long. Given the reduced staffing resulting from COVID-19, along with the social distancing requirements, the court simply does not have the resources to provide specific numbers at this time. However, the court can provide the following rough statistics for a general idea:

For felony cases with no prior extensions, to have a last-day deadline between September 12 and October 18, inclusive, the defendant would be arraigned on an Information between July 20³ and August 19. Of the cases still pending trial, there were 41 felony bindovers after preliminary hearing during this timeframe, and 28 felony bindovers in the preceding 30-day period (June 19-July 19). Thus, the court approximates there were 35 felony arraignments during the period of July 20-August 19, meaning approximately 35 felony cases with no prior extensions that are still pending trial will have a last-day deadline for trial during the request period.

For misdemeanor in-custody cases with no prior extensions, to have a last-day deadline between September 12 and October 18, inclusive, defendants would have arraignment dates between August 19 (see footnote 3) and September 18. The court does not have complete statistics

³ Although the "request period" is September 12 through October 18, the first last-day deadline for a case in this category in this court (i.e. no prior extensions) would be September 18.

for this time period. However, of the cases still pending trial, there were approximately 33 misdemeanor arraignments between August 19 and August 24, and 22 of these defendants are still in custody. In addition, there were approximately 159 misdemeanor arraignments in the most recently preceding 30-day period for which statistics are available (July 25-August 24), and 79 of those defendants are still in custody. Using those numbers as a guide, the court estimates that over 75 misdemeanor in-custody cases with no prior extensions that are still pending trial will have a last-day deadline during the request period.

For misdemeanor out-of-custody cases with no prior extensions, to have a last-day deadline between September 12 and October 18, inclusive, defendants would have arraignment dates between August 4 (see footnote 2) and September 3. The court has incomplete statistics for this time period, but of the cases still pending trial, there were 123 misdemeanor arraignments from August 4 through August 24, and 57 of these defendants are now out of custody. And as noted above, there were approximately 159 misdemeanor arraignments in the most recently preceding 30-day period for which statistics are available (July 25-August 24), and 80 of those defendants are now out of custody. Based on these known numbers, the court estimates that there will be approximately 80 misdemeanor out-of-custody cases with no prior extensions that are still pending trial that will have a last-day deadline during the request period.

In sum, the court estimates that approximately 190 cases with no prior extensions will have the trial deadline come due during the period of September 12 through October 18. The court recognizes a number of these cases, being new, may settle or defendant may enter a time waiver prior to the last-day deadline, but the court cannot predict what percentage of cases that may be. Even assuming a 50% settlement/waiver rate, which would be high, that still leaves approximately 80 cases with original last-day deadlines falling within the request period.

2. How many criminal cases are coming up to the limit already extended for 90 days by the statewide orders (please provide a daily breakdown)? Is the court requesting a further extension of time on any of these cases?

The response to this question includes those cases that were extended 90 days by the statewide orders and those cases that have received any or all of the previous three court-specific 30-day extensions granted to this court pursuant to the Chief's June 4, June 30, and August 7 Emergency Orders. Because these cases all have paper files, the court would have to manually pull all of the case files to determine the date set for trial, whether there is a time waiver, what type, and for how long. Given the reduced staffing resulting from COVID-19, along with the social distancing requirements, the court simply does not have the resources to provide specific numbers at this time. However, assuming the last set trial date was the last day for trial, the court can provide the following rough statistics for a general idea:

There are approximately 37 felony cases that, with all the previous extensions, now have trial deadlines between September 12 and September 17 (5 of which are in custody). There are also approximately 3 in-custody misdemeanor cases, and 166 out-of-custody misdemeanor cases, that with all the extensions have trial deadlines between September 12 and September 17.

In addition, there are approximately 500 felony cases (115 in custody), approximately 77 in-custody misdemeanor cases, and approximately 1482 out-of-custody misdemeanor cases that, with all prior extensions, now have trial deadlines between September 18 and October 18.

In sum, the court estimates that approximately 2265 previously extended cases will have the trial deadline come due during the period of September 12 through October 18.

Summary:

Based on the above, in both categories (questions 1 and 2), there are roughly 2,400 cases in which the last day for trial will occur between September 12 and October 18. Pursuant to information received by the District Attorney's Office, many of the felony in-custody trials involve serious charges, meaning the stakes are high and trials will be longer, further heightening the concerns of congregating large numbers of people and increasing the risk that the limited number of alternate jurors that could be allowed with the social distancing requirements will not be sufficient.

3. What logistical or other issues prevent the court from holding trials within the time provided in Penal Code section 1382? How is the court planning to address any of these issues?

The Jury Trial Working Group has been investigating and devising solutions to address the numerous and unprecedented logistical, safety, and legal issues that must be considered and resolved in order to safely conduct thousands of jury trials, many of which will be lengthy. The court's current plans to address these issues, and hold trials, are set forth in the answer to question 4 below. Following are some of the logistical, safety, constitutional, and legal issues that have been identified.

State and County Public Health Orders and Safety Issues:

- Social Distancing Requirements (6-foot distance between individuals) severely impact the number of persons that can be in the courthouse, the courtrooms, the jury lounges, the elevators, and the restrooms.
- Effective June 18, with limited exceptions, the state and county have ordered all persons to wear face coverings while in public places, even if they are able to maintain a 6-foot distance between each other.
- As required by county and state guidance, the court prohibits employees from entering the courthouse if they have a temperature of 100 degrees or more; consistently, the court also imposes this restriction on judicial officers and members of the public.
- The Sheriff's Department would have to transport in-custody defendants back and forth between the jails and the courthouses. As discussed above, jails and prisons are among the highest risk congregate settings.
- Notwithstanding these measures, the virus may be spread by asymptomatic persons.

Jury Issues:

- The court expects a very low yield of jurors summoned. The court normally experiences about a 10% report rate for newly summoned jurors if it issues the summonses at least 6-weeks prior to the report date. (Although the court is only required to provide 10-days' notice, under normal circumstances this only yields approximately 5% of newly summoned jurors appearing). The court has provided approximately 6-weeks' notice for the October 13 trial, which, given the pandemic, the court hopes will result in a 5% - 7% report rate.
- Concerns have been raised that the jurors appearing might not be a representative cross-section because, for example, we would expect significantly lower numbers of elderly persons, immune-compromised persons, and parents with children (the private defense bar has raised this concern).
- Attorneys have expressed concerns with jurors wearing face coverings during voir dire and during trial as it would eliminate or severely limit their ability to see the jurors' facial expressions.
- Currently, jurors will not be able to deliberate in the deliberation rooms due to the social distancing requirements. This will likely result in the jury using the courtrooms for deliberations, which will mean the courtroom will not be available for other hearings and trials.
- There is an increased likelihood of losing jurors mid-trial due to the court's temperature screening requirement and also because more jurors will likely be excused if they start to exhibit physical symptoms consistent with COVID-19. At the same time, due to space limitations in courtrooms, the court is unable to have more than 1 alternate juror except with respect to a small percentage of courtrooms countywide (assuming little to no public presence in the courtrooms).

Judicial Officer Issues:

- 73 of the court's 130 judges are 60 years old or older (39 are age 60-64; 34 are age 65 and above).

Court Staffing Issues:

- The court employs approximately 1,200 employees. However, as a result of COVID-19, the court is experiencing significant staffing and budgetary issues at a time when it needs significantly more, not less, resources/staffing to devise and implement all of the new processes and procedures, as well as manage the backlog, resulting from the pandemic.
- Approximately 20% of the court's workforce (242 employees) have requested FFCRA or another type of leave as a result of COVID-19. At any point in time, approximately 14% of the workforce is utilizing leave for childcare purposes. Childcare FFCRA leave is expected to be utilized by employees for several more months, as most school districts in San Diego County are currently distance learning. In addition, the court has offered intermittent unpaid furloughs in an effort to deal with the budget deficit. Thirty employees

have used this program to request a reduced schedule for FY 20-21 (such as two unpaid days off per week), and additional employees continue to use the program on a sporadic basis.

- As a result of the Governor's revised budget, the court needs to make approximately \$13 million in cuts to its fiscal year 2020-21 budget. Accordingly, the court implemented a Voluntary Separation Incentive Payment ("VSIP") program. As a result of the VSIP, 46 employees have retired or will soon retire and approximately 39 have elected to take an extended unpaid leave of absence. The court also instituted a hiring freeze for all but critical positions, reduced student workers and retire/rehires, significantly reduced its overtime budget, and scaled back non-essential contracts and purchases. These actions will save an estimated \$8 million. This leaves a remaining gap of approximately \$5 million, which is being addressed through a mandatory work furlough program. Each court employee will be required to take 10 days / 80 hours of mandatory unpaid furlough time during the 20-21 fiscal year. In addition, the impacts of the pandemic upon civil assessments have yet to be determined, and the court does not know if it will face additional revisions to the state budget during 20-21. It is clear that these budget cuts will have a significant impact on the court and its ability to provide services.
- As evidenced in the court's July 20 emergency request regarding its Juvenile Courthouse, the county's contact tracing and quarantining protocols can quickly and significantly impact the court's staffing levels, even when the potential exposure/transmission does not occur in the court's facilities.

Facilities/Logistical Issues:

- The court's main courthouse, the Central Courthouse, is a high-rise building with courtrooms on 22 separate floors. This necessitates heavy elevator use to operate at full capacity. However, given the current limitations of only allowing no more than 4 persons on an elevator at a time, the courthouse is not able to conduct multiple trials on multiple floors given the large numbers of jurors, attorneys, parties, families, and court staff who would be present (even if members of the public were not allowed to be present).
- Even assuming the defendants would be willing to consent to appear for trial remotely (which they likely will not be, given the court's experience with this issue thus far), there is a very limited capacity to have in-custody defendants appear remotely because, countywide, there are only 6 rooms at 1 facility and 4 rooms at each of the other 6 jail facilities that are equipped for this purpose. Currently the court is holding between 150 and 175 remote hearings at the detention facilities per day. On most days, the court's resources in the jail facilities are stretched to capacity with respect to conducting these non-trial hearings. Accordingly, it is logistically impossible for the court to simultaneously hold all of these hearings and also conduct numerous trials remotely.
- There are severe limitations on the court's ability to assemble jurors in a jury lounge in all of its locations while complying with social distancing requirements: (i) the Central Courthouse, which is the main courthouse, will only accommodate 71 jurors; (ii) the East County courthouse can only accommodate 64 jurors; (iii) the South Bay facility can only

accommodate 31 jurors; and (iv) the North County courthouse can only accommodate 56 jurors.

- Even without considering public access to the courtrooms, only 20 of the court's 150 courtrooms can accommodate more than 13 jurors with appropriate social distancing in place: (i) the Central Courthouse has 3 such courtrooms; (ii) the Hall of Justice has 16 such courtrooms (15 can accommodate 15 jurors and 1 can accommodate 25 jurors); and (iii) the East County courthouse has 1 such courtroom (and it can only accommodate 14 jurors). Neither the South County nor the North County courthouses can accommodate more than 13 jurors. Considering the number of serious and lengthy trials at issue, along with the higher than normal likelihood of needing alternate jurors, this facility issue poses a significant impediment to conducting a voluminous number of trials.
- Even without considering public access to the courtrooms, there are also a limited number of courtrooms that can accommodate 13 jurors with appropriate social distancing in place. Excluding the courtrooms mentioned above, the total number of such courtrooms is 44 (43 at the Central Courthouse and 1 in the East County courthouse). None of the other courthouses can accommodate these juries. Again, given the number of trials at issue, along with the increased likelihood of needing additional alternates, this creates a significant obstacle to conducting multiple trials at one time. Exacerbating the situation is the fact that courtrooms will also need to be used as deliberation rooms.
- Even in those courtrooms that can accommodate a full jury, the space in the courtrooms may not allow for ancillary trial participants, such as interpreters, victim support, or investigating officers.
- At best, the court anticipates only two or three juries could be selected per week using its three large courtrooms for voir dire.
- At best, the court anticipates only being able to utilize one courtroom per floor in its Central Courthouse due to social distancing requirements.
- Breaks during trial would be prolonged due to social distancing requirements in restrooms.
- Handling of evidence (touching issues) will need to be addressed.

Other Legal Issues, Including the Rights of Defendants, Victims, and the Public:

- Limitations on a defendant's access to counsel during trial preparation and trial (raised by private defense bar).
- Concerns have been raised that having defendants, witnesses, and jurors wear face coverings may constitute a violation of defendant's due process/confrontation rights.
- Defense counsel has raised concerns that jurors may feel bias/resentment towards the defendant for forcing a trial under the circumstances.
- Even in those courtrooms that can accommodate a full jury, the space in the courtrooms would not allow for any (or very limited) physical public access, including the defendant's family, the victim/victim's family, the general public, and the media.

- The court is exploring the possibility of streaming jury trials to an adjacent courtroom via closed circuit audio/visual, which would provide public access to jury selection but would further limit the number of courtrooms available for other matters.

4. How is the court planning to conduct criminal trials? Does the court intend to use technology to assist in holding criminal trials?

The court cannot require defendants to appear remotely and, based on its experience and the information it has received from the community, the court must plan trials on the assumption that the defendants, witnesses, attorneys, and jurors will be appearing in person. As detailed above, there are multiple unprecedented safety and constitutional issues that have been identified and are being addressed in order for the court to begin resuming jury trials. What makes this process particularly difficult is that the potential solutions for addressing health and safety concerns are frequently at odds with constitutional requirements.

The Jury Trial Working Group is working with the court's justice partners to identify a test case and a method to prioritize cases to bring to trial thereafter. The current plan is to have jurors summoned on a daily basis to the jury lounge, with a goal of having the maximum number of jurors the room will hold appear each day (this is approximately 70 jurors in the Central Courthouse under the current 6-foot distancing requirements). Summoned jurors will have the option of completing an online questionnaire in advance, which will expedite jury selection, as well as allow the court to excuse or reschedule some jurors prior to them coming to the courthouse. The court will use one of its three large courtrooms for jury selection, as, with some creativity, as many as 30 prospective jurors can be seated in these courtrooms. Once the jury is selected, they trial will move to a regular trial courtroom either outfitted with plexiglass barriers or where, again with some creativity, 14 or 15 jurors can be seated, while having some seats available for public access.

Some of the more specific issues and the current plans to address them are as follows:

a. Juror Summonses and Jury Selection

The court is still working on its online juror portal whereby the court would be able to excuse or reschedule jurors without them having to come to court. Via the portal, prospective jurors will be able to answer a standard courtroom questionnaire prior to service. The portal will also enable the court to communicate to jurors any changes or other information regarding their service. The court is working to have this functionality go live before jurors are to begin reporting on October 9.

The court has also created several inserts to go along with its standard juror summonses. These inserts will inform prospective jurors of the safety precautions being taken by the court for their safety and provide links to and information about the portal and online questionnaire. The court will also post information on its website, including a video of what prospective jurors can expect when they report.

Jury selection/voir dire will take place in one of the court's three large courtrooms at its Central Courthouse, with batches of 30 socially distanced jurors present at a time. Jurors not yet

called would remain in the jury lounge. The group is exploring various options of rotating jurors in and out of these courtrooms until 12 jurors and enough alternates are selected. If a jury is not selected from the available jurors, the court will contact jury services for available jurors either the same day or the next day, if necessary. Jurors selected for trial will either be told in person or notified by email/text when and where they need to report.

b. Conducting Trial

Jurors will be met in the hallway by staff/bailiff and directed to wait on the marked, socially distanced benches until they are called into the courtroom. Standard-sized courtrooms will have additional chairs placed, and the appropriate chairs marked, for the jurors. Unless the courtroom has plexiglass barriers, the jurors will be spread out, including in the gallery, but will essentially be on one side of the courtroom. The smaller gallery section will be available for the public and media.

Unless the public health guidelines change, all court staff, attorneys, defendant, and all others in the courtroom will wear face coverings, including while speaking. Regarding witnesses, the court is exploring: (i) installation of plexiglass around the witness box in at least some of its courtrooms, which would allow a witness to remove their face covering while testifying and (ii) the use of face shields in lieu of face coverings. However, given the Governor's June 18 order concerning face coverings in public areas, it is not clear whether the court will be able to utilize either of these options.

A sanitation protocol will be in place and explained to the jurors. Attorneys will examine witnesses from their chair position, preferably sitting. Each juror will receive his or her own copy of the jury instructions and may take them into the deliberation room.

c. Jury Deliberations

There are only a few options in the court's Central/HOJ Courthouse complex that would allow jurors to deliberate comfortably while socially distanced. The great likelihood is that many juries will have to deliberate in a courtroom, such as an adjacent unused courtroom. Measures will be taken to arrange the deliberation room, whatever it is, in such a way as to facilitate open deliberation.

5. What efforts has the court made to work with justice partners to encourage and facilitate expeditious settlement, where possible, of cases pending before the court?

Since the court closed on March 17, it has been working continuously and diligently in collaboration with the Public Defender, District Attorney, City Attorney, and Sheriff to secure the release of inmates who do not present a public safety risk, including, but not limited to: creating a procedure for and processing requests for lower bail or own-recognition release pursuant to Penal Code § 1269c; creating a procedure for and processing requests for release pursuant to stipulation of the parties; authorizing the Sheriff to accelerate the release of sentenced defendants up to 30 days pursuant to Penal Code § 4024.1; authorizing the Sheriff to accelerate the release of sentenced defendants up to 60 days pursuant to an Advisory from the Chief Justice of the Supreme Court of

California dated March 30, 2020; and, prior to adoption of the statewide emergency bail schedule, implementing a modification to the San Diego Countywide Bail Schedule temporarily reducing bail to zero for over 60 offenses. After the statewide emergency bail schedule was rescinded, the court resurrected an amended version of the temporary modifications to the Countywide Bail Schedule, which sets bail at zero for all misdemeanor and infraction offenses except for 26 specified offenses. It also sets bail at zero for over 62 felony offenses.

Based on information received from the District Attorney's Office, these efforts resulted in a reduction of approximately 1,200 inmates before the statewide emergency bail schedule took effect. According to the District Attorney's Office, as a result of these efforts the pre-disposition jail population consists of approximately 90 percent felony cases with 72 percent being serious/violent felonies. Only about 10 percent constitute misdemeanors, mostly comprised of domestic violence and repeat DUIs or defendants who are in violation of probation for a serious/violent felony offense.

Finally, the court has, together with the District Attorney's Office, the City Attorney's Office, the Office of the Public Defender, and the Sheriff's Department, set up various video and telephonic remote proceedings and calendars to move criminal cases along, including holding bail review hearings, readiness (settlement) conferences, arraignments, preliminary hearings, sentencing hearings, change of plea hearings, and handling probation violation and extradition matters. All in-custody defendants have been given at least one, and sometimes more, telephonic and/or video readiness (settlement) conference hearing to attempt to settle their case. The court is caught up on necessary felony arraignments and preliminary hearings.

###

TO: Hon. Tani G. Cantil-Sakauye, Chair of the Judicial Council
Judicial Council of California
c/o Legal Services Supervising Attorney Charles Perkins
415-865-4609
charles.perkins@jud.ca.gov
415-865-8767 (fax)

FROM: *Name* : Lorna A. Alksne
Title: Presiding Judge
Court: Superior Court of San Diego County
Telephone: [REDACTED]
Fax: 619-844-5550
E-mail Address: [REDACTED]

DATE: 11/2/2020

SUBJECT: Request for Judicial Emergency Order

I hereby request an order allowing the court to implement the following emergency procedures pursuant to the provisions of section 68115 of the Government Code¹:

- The court may extend the time period provided in section 1382 of the Penal Code within which a trial must be held by not more than 30 days. (Gov. Code, § 68115(a)(10).)
(Fill in number of days, not exceeding 30. Pursuant to Government Code section 68115(a)(10), “the trial of a defendant in custody whose time is so extended shall be given precedence over all other cases.”)
This request applies only to cases in which the statutory deadline otherwise would expire on _____ *or* from 11/11/2020, to 12/18/2020, inclusive*.
(Fill in date(s) above.)

***This request applies to cases in which the original or previously-extended statutory deadline otherwise would expire from November 11, 2020, to December 18, 2020, inclusive.**

Although the previous Emergency Order issued October 6, 2020, already provides relief for cases in which the trial deadline falls on November 11, 2020, through November 18, 2020, the court has determined that November 11, 2020, through November 18, 2020, also need to be

¹ Government Code section 68115, as amended, effective January 1, 2019, provides that, upon the request of a presiding judge, the Chairperson of the Judicial Council may authorize relief as set forth in the statute, “[w]hen war, an act of terrorism, public unrest or calamity, epidemic, natural disaster, or other substantial risk to the health and welfare of court personnel or the public, or the danger thereof, the destruction of or danger to the building appointed for holding the court, a large influx of criminal cases resulting from a large number of arrests within a short period of time, or a condition that leads to a state of emergency being proclaimed by the President of the United States or by the Governor pursuant to Section 8625, threatens the orderly operation of a superior court location or locations within a county or renders presence in, or access to, an affected court facility or facilities unsafe”

included in the current request. The April 29, 2020, statewide order granting up to a 90-day extension was effective for cases with a last day for trial of March 16 through June 15, 2020. With this statewide 90-day extension, as well as the five prior 30-day extensions authorized for this court, a case with a last day for trial of March 16-23, April 19-22, May 20-22, June 16-21, July 18-21, August 18-20, September 18-19, and October 19, 2020, would now have a last day for trial of November 11 through November 18, 2020. Accordingly, the court is including November 11 through November 18 in its request.

The circumstances necessitating an emergency order are described in the attached document.

The public defender, the district attorney, and other interested local entities have / have not (check one box) been notified of this request for emergency order.

The court has / has not (check one box) advised these entities to immediately notify the Judicial Council's Legal Services office of any opposition or questions regarding the request.

Please list the names and telephone numbers of the district attorney, the public defender, and other notified parties affected by the order:

District Attorney: Summer Stephan

Public Defender: Randy Mize

Other Parties Affected: City Attorney Mara Elliot; San Diego Sheriff Bill Gore

The court has / has not (check one box) been informed of any opposition to this request.

If the court has been informed of potential opposition to this request, please state below the party or parties who may oppose the request and any stated reasons for the opposition:

Regarding the court's October 2 request, the Public Defender, Randy Mize, informed the court that he "cannot support another 1382" extension on behalf of his clients, and he recently indicated he also does not support this current request.

Submitted by:  _____
(Presiding Judge or Presiding Judge's delegate)

Date: 11/2/2020

The San Diego Superior Court hereby requests an order allowing the court to extend the time period provided in Penal Code section 1382, within which a trial must be held, by not more than 30 days. This request applies to cases in which the original or previously extended statutory deadline otherwise would expire from November 11 to December 18, 2020,¹ inclusive.

I. BACKGROUND INFORMATION AND BASIS FOR REQUEST

Since the court's last request for Penal Code section 1382 relief, which was submitted on October 2, San Diego County's status within California's Blueprint for a Safer Economy has remained unchanged, and the court has generally progressed with its plan as outlined in the October 2 request, including gradually resuming criminal jury trials on October 13. However, as described below, the court still faces an enormous backlog of approximately 1,100 cases in which the last day for trial will occur between November 11 and December 18. Even in pre-pandemic conditions, it would be impossible to hold jury trials for this number of cases in such a short period of time, and this challenge is even more pronounced given the anticipated pace of proceeding with jury trials due to the many logistical, safety, and legal issues described in the court's previous requests.

Because the court is largely in the same position and facing the same issues as when it submitted its October 2 request, this memorandum will only briefly address relevant changes since the last request. In addition, the numerous federal, state, and local public health orders that have been issued in response to the COVID-19 pandemic are well known and have been detailed in prior Judicial Council orders and memoranda as well as this court's prior requests for relief from the Chief Justice. Accordingly, they will not be repeated here, except as necessary to provide relevant updates.

A. COVID-19 in San Diego County and Public Health Guidance

San Diego County remains in the red (substantial) tier 2 of the Blueprint for a Safer Economy, but, once again, its metrics approached the more restrictive purple (widespread) tier 1. The tier assignments are based on adjusted case rate and test positivity metrics, which the California Department of Public Health assesses weekly, every Tuesday. Counties are required to move to a more restrictive tier if they fail to meet either of their current tier's metrics for two consecutive weeks. Regarding adjusted case rate, the threshold for the more restrictive purple tier is more than 7.0 daily new cases per 100,000 residents. San Diego County's adjusted case rate was 6.5 on October 6, 6.8 on October 13, and 7.0 on October 20. Fortunately, the county's adjusted case rate dropped to 6.5 on October 27, and the county remains in the red tier.

The San Diego County Health Officer's most recent stay-at-home order, which became effective October 10, loosened the restrictions on private gatherings in accordance with new state guidance. Now, private gatherings may include up to three households if they are held outside and the attendees socially distance between households, wear face coverings, and do not attend if they are experiencing COVID-19 symptoms. Otherwise, the order still generally prohibits all other gatherings of more than one person with certain exceptions, including operations of essential

¹ All subsequent date references are to 2020 unless otherwise indicated.

sectors such as the court. All essential businesses, including the court, must comply with applicable state guidance, such as requiring employees to wear face coverings when there is a high risk of exposure; conducting temperature and/or symptom screenings of employees; implementing cleaning and disinfecting protocols; and implementing six-foot social distancing requirements.

In addition, the Centers for Disease Control and Prevention (“CDC”) recently modified its definition of “close contact” to include someone who was within 6 feet of an infected person for a cumulative total of 15 minutes or more over a 24-hour period (whereas the previous definition required at least 15 consecutive minutes). This change will affect the court’s contact tracing protocols and likely increase the number of employees that will be required to quarantine when an employee tests positive for COVID-19. Moreover, considering the fact that flu season is approaching, and that quarantining is required if individuals exhibit COVID-19 symptoms even if they test negative for the virus, the likelihood of an exposure requiring judicial officers, court staff, jurors, and trial participants to quarantine increases each day of trial.

B. Activity Since the Court’s October 2 Request

On October 5, the court completed the trial status conferences for all out-of-custody cases that were previously set for trial. At these remote conferences, approximately 10-15% of the cases settled, and most, if not all, of the remaining cases were set for future trial dates. Generally, felonies were set 120 days out (beginning in January), and misdemeanors were set 180 days out (beginning in March). However, although these trial dates are no longer included in the number of cases in which the last day for trial will occur between November 11 and December 18, they are still on calendar and will contribute to the backlog in 2021.

The court is continuing to hear status conferences on the next group of out-of-custody cases, which includes post-arraignment/pre-preliminary hearing, post-preliminary hearing/no trial date, and post-conviction cases. This group consists of approximately 13,000 cases. Although the court had originally hoped to work through all of these cases by the end of October, the process is taking longer than anticipated and is now expected to continue through the second week of November in the East County Regional Center and through the end of the year in the Central Courthouse (the North County and South County Regional Centers are complete).

Starting November 2, the court will begin hearing out-of-custody arraignments, which includes approximately 7,000 cases, and out-of-custody preliminary hearings, which includes approximately 1,800 cases. Since its October 2 request, the court has set up 13 courtrooms with plexiglass barriers to accommodate in-person hearings (not including juries), and parties will have the option of appearing remotely or in person for the out-of-custody arraignments and preliminary hearings.

As planned, the court gradually resumed jury trials in the Central Courthouse in October, holding its first trial on October 13.² As discussed in its October 2 request, the court planned to

² After the October 13 trial, the court asked the 12 jurors to complete an exit survey regarding the precautions the court has put in place and whether the jurors felt safe during their service. Overall, the feedback was positive. In response to a question asking whether they were concerned about serving on a jury before coming to the courthouse, 6 said yes,

hold one trial beginning October 13, a second trial beginning October 19, and two trials per week starting October 26. Going forward, the court plans to hold two trials the week of November 2, three trials per week starting November 9, and four trials per week starting December 7. In addition, the court plans to begin holding two jury trials per week at the North County Regional Center starting January 11, 2021. Jury trials will eventually expand to the East County and South County Regional Centers. However, the number of jury trials that can be held simultaneously will continue be limited by the size of the jury lounges, which will have decreased capacity to maintain social distancing, and the number of courtrooms that can provide adequate spacing or are equipped with protective barriers.

Juror turnout also remains a significant concern and impediment to conducting more jury trials. Although the court was anticipating an approximate yield of 7.5%, the actual yield over the first four weeks has been approximately 5%. The chart below illustrates the actual turnout from the first four weeks and previews the number of jurors that have already postponed or requested to be excused for future weeks.

| Week Beginning | Summonses Issued | Postponed or Excused | Potential Jurors | Jurors Called | Jurors Reported |
|-----------------------|-------------------------|-----------------------------|-------------------------|----------------------|------------------------|
| Oct. 13 | 800 | 308 | 492 | 492 | 41 |
| Oct. 19 | 928 | 460 | 468 | 468 | 44 |
| Oct. 26 | 1,852 | 940 | 912 | 455 | 42 |
| Nov. 2 | 1,943 | 971 | 972 | 559 | 47 |
| Nov. 9 | 2,418 | 962 | 1,456 | - | - |
| Nov. 16 | 2,514 | 845 | 1,669 | - | - |
| Nov. 23 | 2,521 | 701 | 1,820 | - | - |
| Nov. 30 | 2,600 | 355 | 2,245 | - | - |
| Dec. 7 | 4,348 | - | - | - | - |
| Dec. 14 | 4,300 | - | - | - | - |

In an effort to improve juror turnout, the court’s Presiding Judge, the Honorable Lorna A. Alksne, has continued reaching out to the community by way of multiple interviews with the media, including television, radio, and print, to highlight the court’s safety precautions and to stress the importance of jurors reporting and fulfilling this critical civic duty. The court has also continued to field calls from summoned jurors and explain the safety protocols that are in place, and the court has posted a video on its website explaining these protocols and the new jury service process.

Another issue that has arisen since resuming jury trials is scheduling and accounting for cases that settle shortly before trial. In preparing to resume criminal jury trials, the court worked with its justice partners to identify the first nine cases. Although only 41 jurors reported for the first week (Oct. 13), that was an adequate jury panel for that particular trial; a jury was selected,

and 6 said no. When asked if they felt safe throughout their service, 11 said yes, and the 1 that said no indicated only that regularly testing all employees would have made them feel more safe.

and the trial was completed. However, due to a scheduling change, one of the trials that was scheduled to take place during the fourth week (Nov. 2), when 1,943 jurors had been summoned, was moved to the second week (Oct. 19), when only 928 jurors had been summoned. Unfortunately, this was a life imprisonment case, with each side having twenty peremptory challenges, and a jury panel of at least 80 was necessary. Because only 44 jurors reported, the case had to be continued to November 16, and, because no other trial was ready to proceed, the jurors were excused. For the third week (Oct. 26), both cases that were on the schedule settled at the end of the previous week. The court and its justice partners were able to find one misdemeanor case that was ready for trial; half of the jury pool was called in, and a jury was selected. However, after the trial began, the judge had to recess the proceedings to order a Penal Code section 1368 hearing to determine the defendant's mental competence. For the fourth week (Nov. 2), again, both cases that were on the schedule settled. The court and its justice partners were able to find one felony case that was ready for trial, and approximately half of the jury pool was called in. To address these unexpected logistical issues going forward, the court plans to schedule more trials to allow for those that may settle, and the court will begin holding a trial call calendar on Fridays to determine which cases are ready for trial and going forward the following week.

C. The Court's Request for an Extension

In the court's May 29 request for an emergency order for additional time to conduct trials, the court submitted letters of support from the District Attorney's Office, the City Attorney's Office, the Office of the Public Defender, and the Sheriff's Department. Each of these justice partners supported the court's previous requests with the exception of the Public Defender, who, beginning with the court's last request on October 2, notified the court that, on behalf of his clients, "he cannot support another 1382" extension. With the exception of the Public Defender, each of these justice partners has confirmed that they also fully support this additional request; however, the Public Defender again indicated he would not support another request.

Regardless, as set forth in the court's response to questions 1 and 2 below, the court has approximately 1,100 cases in which the last day for trial will occur between November 11 and December 18, inclusive. Even if the court were operating at full pre-pandemic capacity of 70-90 jury trials per month (including criminal and civil), it would be impossible to hold 1,100 jury trials in this time frame. Given the many logistical, safety, and legal issues described in the court's previous requests and above, along with the fact that new procedures have been developed and will need to be tested and adjusted to resolve the many issues that will certainly arise, the court cannot at this time resume jury trials at full capacity. Instead, the court is entering this uncharted territory gradually while continuously assessing and considering the health and safety of everyone involved and the potential constitutional issues that have been raised in the court's previous requests. Therefore, due the enormous backlog and the anticipated pace of proceeding with jury trials, the court requests an order allowing the court to extend the time period provided in Penal Code section 1382, within which a trial must be held, by not more than 30 days.

II. ANSWERS TO SPECIFIC QUESTIONS SET FORTH IN THE MAY 14, 2020, JUDICIAL COUNCIL MEMORANDUM

1. How many criminal cases have last-day deadlines under Penal Code section 1382 during the period of time for which the court is requesting a first extension under Government Code section 68115 (please provide daily breakdown)?

Because this court deals with paper files, it would be burdensome to determine the exact numbers of cases because the court would have to pull all the files and check if the defendant entered a time waiver, what type, and for how long. Given the reduced staffing resulting from COVID-19, along with the social distancing requirements, the court simply does not have the resources to provide specific numbers at this time. However, the court can provide the following rough statistics for a general idea:

For felony cases with no prior extensions, to have a last-day deadline between November 11 and December 18, inclusive, the defendant would be arraigned on an Information between September 20³ and October 19, inclusive. Of the cases still pending trial, there were roughly 40 felony bindovers after preliminary hearing during this timeframe (September 20-October 19). Thus, assuming the defendants had immediate arraignments after the bindover, the court approximates there were approximately 40 felony arraignments during the period of September 20-October 19, meaning approximately 40 felony cases with no prior extensions that are still pending trial will have a last-day deadline for trial during the request period. Most of the defendants in this category are still in custody.

For misdemeanor in-custody cases with no prior extensions, to have a last-day deadline between November 11 and December 18, inclusive, defendants would have arraignment dates between October 20 (see footnote 3) and November 18, inclusive. The court does not have complete statistics for this time period. However, of the cases still pending trial, there were approximately 127 misdemeanor arraignments in the last 30 days for which statistics are available (September 26-October 26), and approximately 100 of those defendants are still in custody. In the 30 days before that (August 26-September 25), there were approximately 105 misdemeanor arraignments, and approximately 50 of those defendants remain in custody. Using these numbers as a guide, the court estimates that about 75 misdemeanor in-custody cases with no prior extensions that are still pending trial will have a last-day deadline during the request period.

For misdemeanor out-of-custody cases with no prior extensions, to have a last-day deadline between November 11 and December 18, inclusive, defendants would have arraignment dates between October 5 (see footnote 3) and November 3. The court has incomplete statistics for this time period, but of the cases still pending trial, there were 105 misdemeanor arraignments from October 5 through October 26, and 20 of these defendants are now out of custody. And as noted above, there were approximately 127 misdemeanor arraignments in the last 30 days for which statistics are available (September 26-October 26), and 27 of those defendants are now out of

³ Although the “request period” is November 11 through December 18, the first last-day deadline for a case in this category in this court (i.e. no prior extensions) would be November 19.

custody. In the 30 days before that (August 26-September 25), there were approximately 105 misdemeanor arraignments, and approximately 55 of those defendants are out of custody. Based on these known numbers, the court estimates that there will be roughly 35 misdemeanor out-of-custody cases with no prior extensions that are still pending trial that will have a last-day deadline during the request period.

In sum, the court estimates that approximately 150 cases with no prior extensions will have their trial deadline come due during the period of November 11 through December 18, inclusive. The court recognizes a number of these cases, being new, may settle or defendant may enter a time waiver prior to the last-day deadline, but the court cannot predict what percentage of cases that may be. Assuming a 50% settlement/waiver rate, that leaves about 75 cases with original last-day deadlines falling within the request period.

2. How many criminal cases are coming up to the limit already extended for 90 days by the statewide orders (please provide a daily breakdown)? Is the court requesting a further extension of time on any of these cases?

The response to this question includes those cases that were extended 90 days by the statewide orders and those cases that have received the benefit of any of the previous five court-specific 30-day extensions granted to this court pursuant to the Chief's June 4, June 30, August 7, September 4, and October 6 Emergency Orders. Because these cases all have paper files, the court would have to manually pull all of the case files to determine the original date set for trial, whether there is a time waiver, what type, and for how long. With trial dates now having been set and reset multiple times in some cases since the pandemic began, it is also difficult to tell which and how many of the prior extension orders the cases fall under. Given the reduced staffing resulting from COVID-19, along with the social distancing requirements, the court simply does not have the resources to provide specific numbers at this time. However, the court can provide the following rough statistics for a general idea:

There are approximately 18 felony cases that, with all the previous extensions, now have trial deadlines between November 11 and November 18 (4 of which remain in custody). There are also approximately 3 in-custody misdemeanor cases, and 53 out-of-custody misdemeanor cases, that with all the extensions have trial deadlines between November 11 and November 18.

In addition, there are approximately 305 felony cases (approximately 209 in custody), approximately 197 in-custody misdemeanor cases, and approximately 455 out-of-custody misdemeanor cases that, with all prior extensions, now have statutory trial deadlines between November 19 and December 18.

In sum, the court estimates that approximately 1,030 previously extended cases will have their trial deadline come due during the period of November 11 through December 18, inclusive.

Summary:

Based on the above, in both categories (questions 1 and 2), the court estimates there are over 1,100 cases in which the last day for trial will occur between November 11 and December

18, inclusive.⁴ Pursuant to information received by the District Attorney's Office, many of the felony in-custody trials involve serious charges, meaning the stakes are high, and trials will be longer, further heightening the concerns of congregating large numbers of people and increasing the risk that the limited number of alternate jurors that could be allowed with the social distancing requirements will not be sufficient. Moreover, particularly given the CDC's new definition of "close contact" and that quarantining is required if individuals exhibit any COVID-19 symptoms, each day of trial increases the chances that judicial officers, court staff, jurors, and trial participants will be required to quarantine. Accordingly, these types of cases face a higher risk of mistrial.

Except as noted above, the court's responses to questions 3-5 have not changed since its September 3 request, and those responses are incorporated herein by reference.

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⁴ Beginning November 2, the court will start conducting arraignments for out-of-custody defendants, so it expects the number of misdemeanor cases with upcoming trial deadlines will increase.

TO: Hon. Tani G. Cantil-Sakauye, Chair of the Judicial Council
Judicial Council of California
c/o Legal Services Supervising Attorney Charles Perkins
415-865-4609
charles.perkins@jud.ca.gov
415-865-8767 (fax)

FROM: *Name* : Lorna A. Alksne
Title: Presiding Judge
Court: Superior Court of San Diego County
Telephone: [REDACTED]
Fax: 619-844-5550
E-mail Address: [REDACTED]

DATE: 12/4/2020

SUBJECT: Request for Judicial Emergency Order

I hereby request an order allowing the court to implement the following emergency procedures pursuant to the provisions of section 68115 of the Government Code¹:

- The court may extend the time period provided in section 1382 of the Penal Code within which a trial must be held by not more than 30 days. (Gov. Code, § 68115(a)(10).)
(Fill in number of days, not exceeding 30. Pursuant to Government Code section 68115(a)(10), "the trial of a defendant in custody whose time is so extended shall be given precedence over all other cases.")
This request applies only to cases in which the statutory deadline otherwise would expire on _____ or from 12/11/2020, to 1/18/2021, inclusive*.
(Fill in date(s) above.)

***This request applies to cases in which the original or previously-extended statutory deadline otherwise would expire from December 11, 2020, to January 18, 2021, inclusive.**

Although the previous Emergency Order issued November 5, 2020, already provides relief for cases in which the trial deadline falls on December 11, 2020, through December 18, 2020, the court has determined that December 11, 2020, through December 18, 2020, also need to be

¹ Government Code section 68115, as amended, effective January 1, 2019, provides that, upon the request of a presiding judge, the Chairperson of the Judicial Council may authorize relief as set forth in the statute, "[w]hen war, an act of terrorism, public unrest or calamity, epidemic, natural disaster, or other substantial risk to the health and welfare of court personnel or the public, or the danger thereof, the destruction of or danger to the building appointed for holding the court, a large influx of criminal cases resulting from a large number of arrests within a short period of time, or a condition that leads to a state of emergency being proclaimed by the President of the United States or by the Governor pursuant to Section 8625, threatens the orderly operation of a superior court location or locations within a county or renders presence in, or access to, an affected court facility or facilities unsafe"

included in the current request. The April 29, 2020, statewide order granting up to a 90-day extension was effective for cases with a last day for trial of March 16 through June 15, 2020. With this statewide 90-day extension, as well as the six prior 30-day extensions authorized for this court, a case with a last day for trial of March 16-23, April 19-22, May 20-22, June 16-21, July 18-21, August 18-20, September 18-19, and October 19, 2020, would now have a last day for trial of December 11 through December 18, 2020. Accordingly, the court is including December 11 through December 18 in its request.

The circumstances necessitating an emergency order are described in the attached document.

The public defender, the district attorney, and other interested local entities have / have not (check one box) been notified of this request for emergency order.

The court has / has not (check one box) advised these entities to immediately notify the Judicial Council's Legal Services office of any opposition or questions regarding the request.

Please list the names and telephone numbers of the district attorney, the public defender, and other notified parties affected by the order:

District Attorney: Summer Stephan

Public Defender: Randy Mize

Other Parties Affected: City Attorney Mara Elliot; San Diego Sheriff Bill Gore

The court has / has not (check one box) been informed of any opposition to this request.

If the court has been informed of potential opposition to this request, please state below the party or parties who may oppose the request and any stated reasons for the opposition:

Regarding the court's October 2 request, the Public Defender, Randy Mize, informed the court that he "cannot support another 1382" extension on behalf of his clients, and he recently indicated he also does not support this current request.

Submitted by:  _____
(Presiding Judge or Presiding Judge's delegate)

Date: 12/4/2020

The San Diego Superior Court hereby requests an order allowing the court to extend the time period provided in Penal Code section 1382, within which a trial must be held, by not more than 30 days. This request applies to cases in which the original or previously extended statutory deadline otherwise would expire from December 11, 2020, to January 18, 2021, inclusive.

I. BACKGROUND INFORMATION AND BASIS FOR REQUEST

As detailed below, since the court's last request for Penal Code section 1382 relief, which was submitted on November 2, 2020,¹ the court has temporarily paused criminal jury trials at least through January 11, 2021. In addition, San Diego County's status within California's Blueprint for a Safer Economy has changed from the red tier to the more restrictive purple tier, and the State of California has recently indicated that an even more restrictive Regional Stay Home Order will likely go into effect in San Diego County within the next week. Other than temporarily pausing jury trials, the court has generally progressed with its plan as outlined in the November 2 request. However, as described below, the court still faces an enormous backlog of approximately 1,150 cases in which the last day for trial will occur between December 11, 2020, and January 18, 2021. Even in pre-pandemic conditions, it would be impossible to hold jury trials for this number of cases in such a short period of time, and this challenge is even more pronounced given the anticipated pace of proceeding with jury trials due to the many logistical, safety, and legal issues described in the court's previous requests.

This memorandum will address relevant changes since the November 2 request. In addition, the numerous federal, state, and local public health orders that have been issued in response to the COVID-19 pandemic are well known and have been detailed in prior Judicial Council orders and memoranda as well as this court's prior requests for relief from the Chief Justice. Accordingly, they will not be repeated here, except as necessary to provide relevant updates.

A. COVID-19 in San Diego County and Public Health Guidance

On November 10, San Diego County, which had been in the red (substantial) tier 2, moved into the more restrictive purple (widespread) tier 1 following adjusted case rates of 7.4 on November 4 and 8.9 on November 10. Under the state's Blueprint for a Safer Economy, counties are assigned to tiers based on adjusted case rate and test positivity metrics, which are assessed by the California Department of Public Health ("CDPH"). Counties are required to move to a more restrictive tier if they fail to meet either of their current tier's metrics for two consecutive weeks. Regarding adjusted case rate, the threshold for the most restrictive purple tier is more than 7.0 daily new cases per 100,000 residents. Since moving into the purple tier, San Diego County's adjusted case rate was 10.7 on November 16, 13.1 on November 24, 15.6 on November 28, and 15.3 on December 1.

The purple tier includes the following restrictions:

¹ All subsequent date references are to 2020 unless otherwise indicated.

| SECTOR | STATUS (Red Tier 2) |
|---|--|
| Critical Infrastructure | Open with modifications |
| Limited Services | Open with modifications |
| Outdoor Playgrounds & Outdoor Recreational Facilities | Open with modifications |
| Hair Salons & Barbershops | Open indoors with modifications |
| All Retail (except standalone grocers) | Open indoors with modifications – max 25% capacity |
| Shopping Centers | Open indoors with modifications – max 25% capacity, closed common areas, closed food courts |
| Personal Care Services | Open indoors with modifications |
| Museums, Zoos, and Aquariums | Outdoor only with modifications |
| Places of Worship | Outdoor only with modifications |
| Movie Theatres | Outdoor only with modifications |
| Hotels and Lodging | Open with modifications |
| Gyms and Fitness Centers | Outdoor only with modifications |
| Restaurants | Outdoor only with modifications |
| Wineries | Outdoor only with modifications |
| Bars, Breweries, and Distilleries with no meal provided | Closed |
| Family Entertainment Centers | Outdoor only with modifications |
| Cardrooms and Satellite Wagering | Outdoor only with modifications |
| Offices | Remote |
| Professional Sports | Open with modifications – no live audiences |
| Live Action Sports | Closed |
| Amusement Parks | Closed |
| Schools | Not permitted to reopen, with exceptions for waivers; not required to close if open before moving to purple tier |

On November 13, the CDPH issued a travel advisory indicating persons arriving in California from other states or countries for non-essential travel should practice self-quarantine for 14 days after arrival. While this advisory is permissive, the court expects it may have some impact on the turnout of potential jurors who may have traveled, especially during the holiday season.

On November 16, the CDPH issued updated guidance for the use of face coverings. Generally, all people in California must now wear face coverings when they are outside of the home subject to certain exemptions, including persons who are working in an office or room alone, persons who are actively eating or drinking if they are able to maintain social distancing, and persons with certain medical or mental conditions.

On November 19, the CDPH issued a limited stay at home order applicable to counties in the purple tier. Under this order, all gatherings with members of other households and all activities conducted outside the residence with members of other households are prohibited from 10:00 p.m.

to 5:00 a.m. Although the court does not anticipate this order will affect juror turnout, it further demonstrates the state's increasing concern with rising COVID-19 cases.

The San Diego County Health Officer's most recent stay-at-home order, which became effective November 21, incorporated the above-referenced CDPH guidance. Also, the county order requires all essential businesses, including the court, to comply with applicable state guidance, such as requiring face coverings; conducting temperature and/or symptom screenings of employees; implementing cleaning and disinfecting protocols; and implementing six-foot social distancing requirements.

On December 2, the Centers for Disease Control and Prevention ("CDC") modified its recommendations regarding the quarantine period for individuals who may have been exposed to COVID-19. Previously, the CDC recommended a 14-day quarantine period. Generally, under the new recommendations, quarantine can end after day 10 without testing if no symptoms have been reported during daily monitoring or after day 7 with a negative test if no symptoms have been reported. However, the new CDC recommendations are not applicable to the court unless and until they are implemented by the local public health authorities, which has not yet occurred. If implemented, the court anticipates this will alleviate some of the personnel issues that arise due to the court's contact tracing protocols.

On December 3, Governor Newsom announced a Regional Stay Home Order, which will go into effect within 48 hours after a region's ICU availability falls below 15%. If enacted, the order will be in effect for at least three weeks and, after that period, will be lifted when the region's ICU capacity meets or exceeds 15%. Once the order is triggered, the following sectors must close: indoor and outdoor playgrounds; indoor recreational facilities; hair salons and barbershops; personal care services; museums, zoos, and aquariums; movie theatres; wineries; bars, breweries, and distilleries; family entertainment centers; cardrooms and satellite wagering; limited services; live audience sports; and amusement parks. The following sectors may continue to operate with additional modifications and 100% masking: outdoor recreational facilities (no food, drink, or alcohol sales); retail and shopping centers (20% capacity); hotels and lodging (critical infrastructure support only); restaurants (take-out, pick-up, or delivery only); offices (remote, except critical infrastructure sector where remote working is not possible); places of worship (outdoor only); and entertainment production/professional sports (no audiences). In addition, the following sectors may remain open, if a remote option is not possible, with appropriate preventative measures, including 100% masking and physical distancing: critical infrastructure (which includes the court); schools that are already open for in-person learning; non-urgent medical and dental care; and child care and pre-K. These restrictions show the state's intent to limit activities involving indoor, static congregations of large groups of people from different households for extended durations of time.

For purposes of the Regional Stay Home Order, the state is divided into five regions, and San Diego County is in the Southern California region along with Imperial, Inyo, Los Angeles, Mono, Orange, Riverside, San Bernardino, San Luis Obispo, Santa Barbara, and Ventura counties. As of December 3, the ICU capacity in the Southern California region was 20.6%. Based on

current projections, the Southern California region is expected to fall below the 15% threshold within the next week.

B. Activity Since the Court’s November 2 Request

The court is continuing to hear status conferences on out-of-custody cases, including post-arraignment/pre-preliminary hearing, post-preliminary hearing/no trial date, and post-conviction cases. This group originally consisted of approximately 13,000 cases, and the court expects to complete these conferences by the end of the year in the Central Courthouse (the North County, South County, and East County Regional Centers are complete).

Starting November 2, the court began hearing out-of-custody arraignments, which included approximately 7,000 cases, and out-of-custody preliminary hearings, which included approximately 1,800 cases. The court expects to be current on the out-of-custody arraignments by mid-January, and, to date, the court has worked through approximately 270 of the out-of-custody preliminary hearings.

Since its November 2 request, the court has continued to install plexiglass barriers in courtrooms in all of its facilities to accommodate in-person proceedings. To date, the court has installed plexiglass barriers in 20 courtrooms to accommodate in-person hearings (not including juries) and 5 courtrooms to accommodate jury trials. By January 2021, the court anticipates it will complete another 4 courtrooms that can accommodate jury trials, which would give the court at least one jury-trial capable courtroom in each location that conducts jury trials. In addition, the court has installed plexiglass barriers between the bench and clerk in 24 courtrooms to accommodate remote hearings.

Since its November 2 request, the court attempted to continue its gradual resumption of criminal jury trials; however, on November 24, the court decided to temporarily pause jury trials until at least January 11, 2021. The decision to pause was not directly based on San Diego County moving to the purple tier; rather, it was based on several factors, including reduced juror turnout, a mistrial due to a juror and an attorney exhibiting symptoms of COVID-19, and the low number of trials that were ready to proceed through the end of the year.

Juror turnout remains a significant concern and impediment to conducting more jury trials. Although the court was anticipating an approximate yield of 7.5%, the actual yield over the first four weeks was approximately 5%, and has dropped even lower in subsequent weeks. The chart below illustrates the actual turnout from the first six weeks and previews the number of jurors that postponed or requested to be excused for future weeks.

| Week Beginning | Summonses Issued | Postponed or Excused | Potential Jurors | Jurors Called | Jurors Reported |
|-----------------------|-------------------------|-----------------------------|-------------------------|----------------------|------------------------|
| Oct. 13 | 800 | 308 | 492 | 492 | 41 |
| Oct. 19 | 928 | 460 | 468 | 468 | 44 |
| Oct. 26 | 1,852 | 940 | 912 | 455 | 42 |
| Nov. 2 | 1,943 | 971 | 972 | 559 | 52 |
| Nov. 9 | 2,418 | 962 | 1,456 | 1,456 | 99 |

| Week Beginning | Summonses Issued | Postponed or Excused | Potential Jurors | Jurors Called | Jurors Reported |
|-----------------------|----------------------------------|-----------------------------|-------------------------|----------------------|------------------------|
| Nov. 16 | 2,514 | 845 | 1,669 | 1,669 | 132 |
| Nov. 23 | 2,521 | 701 | 1,820 | 0 | 0 |
| Nov. 30 | 2,600 | 1,148 | 1,452 | 0 | 0 |
| Dec. 7 | 4,349 | 1,803 | 2,546 | 0 | 0 |
| Dec. 14 | 4,300 | 1,485 | 2,815 | 0 | 0 |
| Jan. 11 | 6,393 (Central) 3,500 (North) | - - | - - | - - | - - |

As discussed in the court's November 2 request, both cases that were scheduled to start November 2 settled. The court and its justice partners were able to find one felony case that was ready for trial, and approximately half of the jury pool was called in, a jury was selected, and the trial was completed. For the week of November 9, two cases were scheduled, but one settled. For the remaining case, of the 2,418 summonses issued, only 99 jurors reported, which, although only a 4.1% yield, was sufficient to select a jury and complete the trial.

For the week of November 16, the court planned to hold the trial for the life imprisonment case that had to be continued from October 19 due to an insufficient number of jurors (see November 2 request for further details). Of the 2,514 summonses issued, 132 jurors reported, which was sufficient. Jury selection began on Monday with the first panel of 40 prospective jurors; however, on Tuesday, one of the jurors in the first panel reported experiencing COVID-19 symptoms. The court excused the 40 jurors in the panel and dismissed the remaining 92 until Thursday, pending the results of the juror's COVID-19 test. However, while the results were pending (the juror eventually reported a negative test), one of the attorneys reported experiencing COVID-19 symptoms, and a mistrial was declared.

No trials were scheduled for the week of November 23 due to the Thanksgiving holiday. During a previous trial call calendar, the court's justice partners indicated that only six cases would be ready for trial through the end of the year, and these were scheduled two per week for the weeks of November 30, December 7, and December 14. However, given the declining juror turnout, the issues with the symptomatic juror and attorney, and the low number of cases that were ready to proceed, the court decided to pause and aim to resume criminal jury trials after the holidays on January 11, 2021.

As of now, the court hopes to resume jury criminal jury trials beginning January 11, 2021, with four trials per week in the Central Courthouse and two trials per week at the North County Regional Center. In addition, the court hopes to expand to other locations with one trial per week at the South County Regional Center beginning January 18, 2021, and one trial per week at the East County Regional Center beginning January 25, 2021. However, the number of jury trials that can be held simultaneously will continue to be limited by the size of the jury lounges, which will have decreased capacity to maintain social distancing, and the number of courtrooms that can provide adequate spacing or are equipped with protective barriers.

In addition, the court does not plan to hold jury trials if the Regional Stay Home Order is imposed on the Southern California region. Although the court would technically be permitted to continue operations, it anticipates juror turnout would be much lower than it already is for the duration of the order. Accordingly, the court plans to minimize the number of people entering its facilities consistent with the state's intent to limit activities involving indoor, static congregations of large groups of people from different households for extended durations of time. To this end, the court would continue to conduct remote hearings and relocate most public-facing services to the lobby area of each courthouse, and it would be inconsistent to require jurors to serve during this time.

C. The Court's Request for an Extension

In the court's May 29 request for an emergency order for additional time to conduct trials, the court submitted letters of support from the District Attorney's Office, the City Attorney's Office, the Office of the Public Defender, and the Sheriff's Department. Each of these justice partners supported the court's previous requests with the exception of the Public Defender, who, beginning with the court's October 2 request, notified the court that, on behalf of his clients, "he cannot support another 1382" extension. With the exception of the Public Defender, each of these justice partners has confirmed that they also fully support this additional request; however, the Public Defender again indicated he would not support another request.

Regardless, as set forth in the court's response to questions 1 and 2 below, the court has approximately 1,150 cases in which the last day for trial will occur between December 11, 2020, and January 18, 2021, inclusive. Given the temporary pause, and even if the court were operating at full pre-pandemic capacity of 70-90 jury trials per month (including criminal and civil), it would be impossible to hold 1,150 jury trials in this time frame. Given the many logistical, safety, and legal issues described in the court's previous requests and above, along with the fact that new procedures have been developed and will need to be tested and adjusted to resolve the many issues that will certainly arise, the court cannot at this time resume jury trials at full capacity. Instead, the court is entering this uncharted territory gradually while continuously assessing and considering the health and safety of everyone involved and the potential constitutional issues that have been raised in the court's previous requests. Therefore, due the enormous backlog and the anticipated pace of proceeding with jury trials, the court requests an order allowing the court to extend the time period provided in Penal Code section 1382, within which a trial must be held, by not more than 30 days.

II. ANSWERS TO SPECIFIC QUESTIONS SET FORTH IN THE MAY 14, 2020, JUDICIAL COUNCIL MEMORANDUM

1. How many criminal cases have last-day deadlines under Penal Code section 1382 during the period of time for which the court is requesting a first extension under Government Code section 68115 (please provide daily breakdown)?

Because this court deals with paper files, it would be burdensome to determine the exact numbers of cases because the court would have to pull all the files and check for the relevant

arraignment date. Given the reduced staffing resulting from COVID-19, along with the social distancing requirements, the court simply does not have the resources to provide specific numbers at this time. However, the court can provide the following rough statistics for a general idea:

For felony cases with no prior extensions, to have a last-day deadline between December 11, 2020, and January 18, 2021, inclusive, the defendant would be arraigned on an Information between October 20,² and November 19, inclusive. Of the cases with pending trial dates through January 31, 2021, there were roughly 70 felony bindovers after preliminary hearing during this arraignment timeframe (October 20-November 19). Assuming these defendants were arraigned on an Information immediately or soon thereafter, the court approximates there were 70 felony arraignments during this period (October 20-November 19), meaning approximately 70 felony cases with no prior extensions that are still pending trial will have a last-day deadline for trial during the request period (December 11, 2020-January 18, 2021). Most of the defendants in this category are still in custody.

For misdemeanor in-custody cases with no prior extensions, to have a last-day deadline between December 11, 2020, and January 18, 2021, inclusive, defendants would have arraignment dates between November 19 (see footnote 2) and December 19, inclusive. The court does not have complete statistics for this time period. However, of the cases with pending trial dates through January 31, 2021, there were approximately 130 misdemeanor arraignments in the last 30 days for which statistics are available (October 26-November 25), and approximately 85 of those defendants are still in custody. In the 30 days before that (September 25-October 25), there were approximately 70 misdemeanor arraignments, and approximately 50 of those defendants remain in custody. Using these numbers as a guide, the court estimates that about 65 misdemeanor in-custody cases with no prior extensions that are still pending trial will have a statutory last-day deadline during the request period (December 11, 2020-January 18, 2021).

For misdemeanor out-of-custody cases with no prior extensions, to have a statutory last-day deadline between December 11, 2020, and January 18, 2021, inclusive, defendants would have arraignment dates between November 4 (see footnote 2) and December 4. The court has incomplete statistics for this time period, but of the cases with pending trial dates through January 31, 2021, there were approximately 100 misdemeanor arraignments from November 4 through November 25, and approximately 35 of these defendants are now out of custody. And as noted above, there were approximately 130 misdemeanor arraignments in the last 30 days for which statistics are available (October 26-November 25), and approximately 45 of those defendants are now out of custody. In the 30 days before that (September 25-October 25), there were approximately 70 misdemeanor arraignments, and approximately 20 of those defendants are now out of custody. Based on these known numbers, the court estimates that there will be roughly 35 misdemeanor out-of-custody cases with no prior extensions that are still pending trial that will have a last-day deadline during the request period (December 11, 2020-January 18, 2021).

² Although the “request period” is December 11, 2020, through January 18, 2021, the first last-day deadline for a case in this category in this court (i.e. no prior extensions) would be December 19.

In sum, the court estimates that, of the cases with pending trial dates through January 31, 2021, approximately 170 cases with no prior extensions will have their statutory trial deadline come due during the period of December 11, 2020, through January 18, 2021, inclusive. The court recognizes a number of these cases, being new, may settle, but the court cannot predict what percentage of cases that may be. Assuming a 50% settlement rate, that still leaves about 85 cases with original last-day deadlines falling within the request period.

2. How many criminal cases are coming up to the limit already extended for 90 days by the statewide orders (please provide a daily breakdown)? Is the court requesting a further extension of time on any of these cases?

The response to this question includes those cases which were extended 90 days by the statewide orders, and those cases that have received the benefit of any of the previous six court-specific 30-day extensions granted to this court pursuant to the Chief's June 4, June 30, August 7, September 4, October 6, and November 5 Emergency Orders. Because these cases all have paper files, the court would have to manually pull all of the case files to determine the relevant arraignment date. With trial dates now having been set and reset multiple times in some cases since the pandemic began, it is also difficult to tell which and how many of the prior extension orders the cases fall under. Given the reduced staffing resulting from COVID-19, along with the social distancing requirements, the court simply does not have the resources to provide specific numbers at this time. However, the court can provide the following rough statistics for a general idea:

Of the cases with pending trial dates through January 31, 2021, there are approximately 15 felony cases that, with all the previous extensions, now have statutory trial deadlines between December 11 and December 18 (3 of which remain in custody). There are also approximately 1 in-custody misdemeanor case, and 49 out-of-custody misdemeanor cases, that with all the extensions have statutory trial deadlines between December 11 and December 18.

In addition, of the cases with pending trial dates through January 31, 2021, there are approximately 440 felony cases (approximately 215 in custody), approximately 200 in-custody misdemeanor cases, and approximately 400 out-of-custody misdemeanor cases that, with all prior extensions, now have statutory trial deadlines between December 19, 2020, and January 18, 2021.

In sum, the court estimates that, of the cases with pending trial dates through January 31, 2021, approximately 1,100 previously extended cases will have their statutory trial deadline come due during the period of December 11, 2020, through January 18, 2021, inclusive.

Summary:

Based on the above, in both categories (questions 1 and 2), the court estimates that, of the cases with pending trial dates through January 31, 2021, there are over 1,150 cases in which the statutory last day for trial will occur between December 11, 2020, and January 18, 2021, inclusive. Pursuant to information received by the District Attorney's Office, many of the felony in-custody trials involve serious charges, meaning the stakes are high, and trials will be longer, further heightening the concerns of congregating large numbers of people and increasing the risk that the

limited number of alternate jurors that could be allowed with the social distancing requirements will not be sufficient.

Except as noted above and in previous requests, the court's responses to questions 3-5 have not changed since its September 3 request, and those responses are incorporated herein by reference.

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TO: Hon. Tani G. Cantil-Sakauye, Chair of the Judicial Council
Judicial Council of California
c/o Legal Services Supervising Attorney Charles Perkins
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charles.perkins@jud.ca.gov
415-865-8767 (fax)

FROM: *Name* : Lorna A. Alksne
Title: Presiding Judge
Court: Superior Court of San Diego County
Telephone: [REDACTED]
Fax: 619-844-5550
E-mail Address: [REDACTED]

DATE: 1/6/2021

SUBJECT: Request for Judicial Emergency Order

I hereby request an order allowing the court to implement the following emergency procedures pursuant to the provisions of section 68115 of the Government Code¹:

- The court may extend the time period provided in section 1382 of the Penal Code within which a trial must be held by not more than 30 days. (Gov. Code, § 68115(a)(10).)
(Fill in number of days, not exceeding 30. Pursuant to Government Code section 68115(a)(10), “the trial of a defendant in custody whose time is so extended shall be given precedence over all other cases.”)
This request applies only to cases in which the statutory deadline otherwise would expire on _____ *or* from 1/10/2021, to 2/18/2021, inclusive*.
(Fill in date(s) above.)

***This request applies to cases in which the original or previously-extended statutory deadline otherwise would expire from January 10, 2021, to February 18, 2021, inclusive.**

Although the previous Emergency Order issued December 8, 2020, already provides relief for cases in which the trial deadline falls on January 10, 2021, through January 18, 2021, the court has determined that January 10, 2021, through January 18, 2021, also need to be included in the

¹ Government Code section 68115, as amended, effective January 1, 2019, provides that, upon the request of a presiding judge, the Chairperson of the Judicial Council may authorize relief as set forth in the statute, “[w]hen war, an act of terrorism, public unrest or calamity, epidemic, natural disaster, or other substantial risk to the health and welfare of court personnel or the public, or the danger thereof, the destruction of or danger to the building appointed for holding the court, a large influx of criminal cases resulting from a large number of arrests within a short period of time, or a condition that leads to a state of emergency being proclaimed by the President of the United States or by the Governor pursuant to Section 8625, threatens the orderly operation of a superior court location or locations within a county or renders presence in, or access to, an affected court facility or facilities unsafe”

The San Diego Superior Court hereby requests an order allowing the court to extend the time period provided in Penal Code section 1382, within which a trial must be held, by not more than 30 days. This request applies to cases in which the original or previously extended statutory deadline otherwise would expire from January 10, 2021, to February 18, 2021,¹ inclusive.

I. BACKGROUND INFORMATION AND BASIS FOR REQUEST

As detailed below, since the court's last request for Penal Code section 1382 relief, which was submitted on December 4, 2020, the court has extended its temporary pause on criminal jury trials while the State of California's Regional Stay Home Order remains in effect for the Southern California region, which includes San Diego County. Other than continuing its suspension of jury trials, the court has generally progressed with its plan as outlined in the court's last request. However, as described below, the court still faces an enormous backlog of approximately 1,250 cases in which the last day for trial will occur between January 10 and February 18. Even in pre-pandemic conditions, it would be impossible to hold jury trials for this number of cases in such a short period of time, and this challenge is even more pronounced given the pace of proceeding with jury trials due to the many logistical, safety, and legal issues described in the court's previous requests.

This memorandum will address relevant changes since the court's last request. In addition, the numerous federal, state, and local public health orders that have been issued in response to the COVID-19 pandemic are well known and have been detailed in prior Judicial Council orders and memoranda as well as this court's prior requests for relief from the Chief Justice. Accordingly, they will not be repeated here, except as necessary to provide relevant updates.

A. COVID-19 in San Diego County and Public Health Guidance

San Diego County, along with the much of the State of California, is in the midst of an unprecedented surge in COVID-19 cases and hospitalizations. In an effort to protect hospital and ICU capacity, the State of California announced a Regional Stay Home Order, which will go into effect when a region's ICU capacity falls below 15%. Once triggered, the order remains in effect for at least three weeks and, after that period, will be lifted when the region's four-week projected ICU capacity meets or exceeds 15%. As discussed in the court's last request, the restrictions imposed by the order show the state's goal is to reduce mixing between households and limit activities involving indoor, static congregations of large groups of people for extended durations of time.

On December 5, 2020, the ICU capacity for the Southern California region, which includes San Diego County, fell below 15%, and the State of California's Regional Stay Home Order went into effect in San Diego County on December 6, 2020. On or around December 17, 2020, the Southern California region's four-week projected ICU capacity fell to 0% and has remained at 0% since. Although the initial three-week period has passed, the Southern California region will

¹ All subsequent date references are to 2021 unless otherwise indicated.

remain under the order until its four-week projected ICU capacity meets or exceeds 15%, which, given the current trends and projections, seems unlikely to occur in the near future.

The San Diego County Health Officer’s most recent stay-at-home order, which became effective December 10, 2020, incorporated the restrictions imposed by the above-referenced Regional Stay Home Order. Also, the county order requires all essential businesses, including the court, to comply with applicable state guidance, such as requiring face coverings, conducting temperature and/or symptom screenings of employees, continuing cleaning and disinfecting protocols, and enforcing six-foot social distancing requirements.

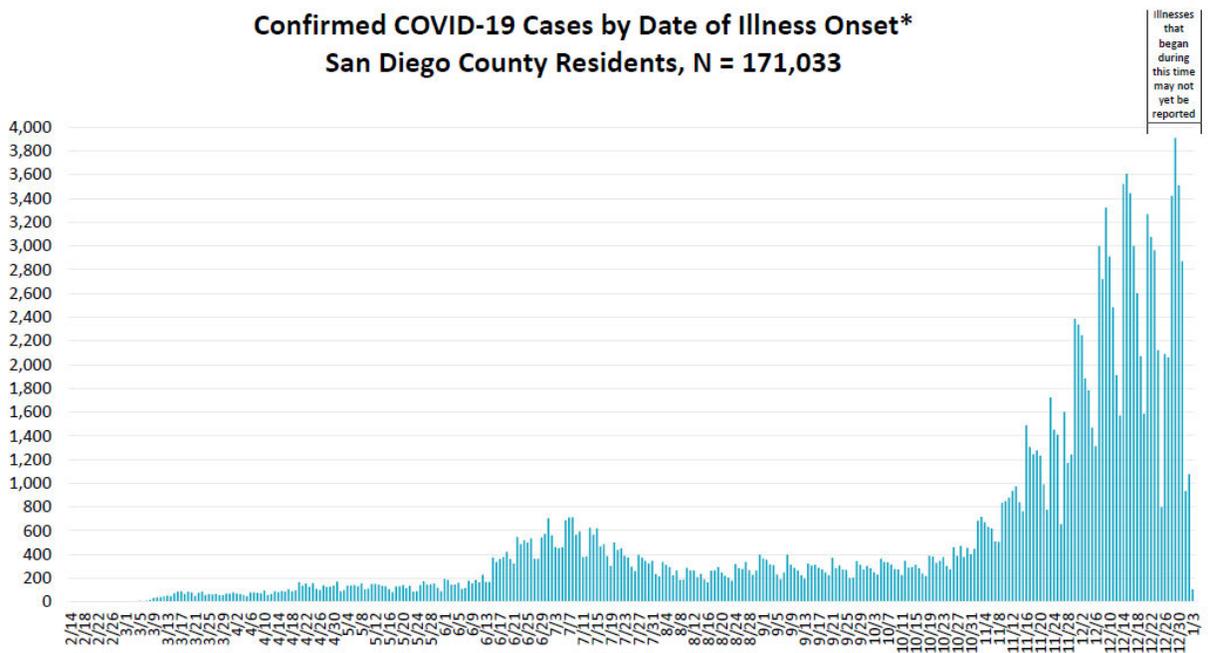
On December 24, 2020, the San Diego County Health Officer revised the local order requiring quarantine of persons exposed to COVID-19 to partially adopt the Centers for Disease Control and Prevention’s modified recommendations regarding the quarantine period. Generally, under the new order, an individual exposed to COVID-19 can now end quarantine after ten (rather than fourteen) days without testing if no symptoms have been reported during daily monitoring. The court anticipates this will alleviate some of the personnel issues that arise due to the court’s contact tracing and quarantine protocols.

To date in San Diego County, there have been 171,033 cases, 6,031 hospitalizations, and 1,598 deaths. The charts below illustrate the recent surge the county is experiencing.

COVID-19 Cases in San Diego County by Illness Onset Date



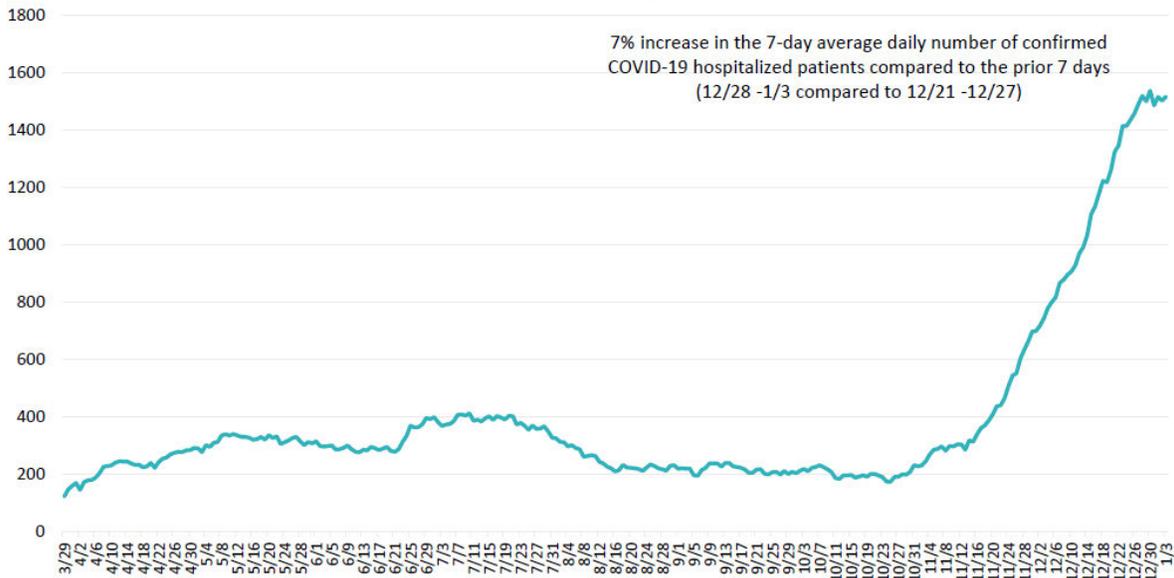

**Confirmed COVID-19 Cases by Date of Illness Onset*
San Diego County Residents, N = 171,033**



COVID-19 Confirmed Hospital Census



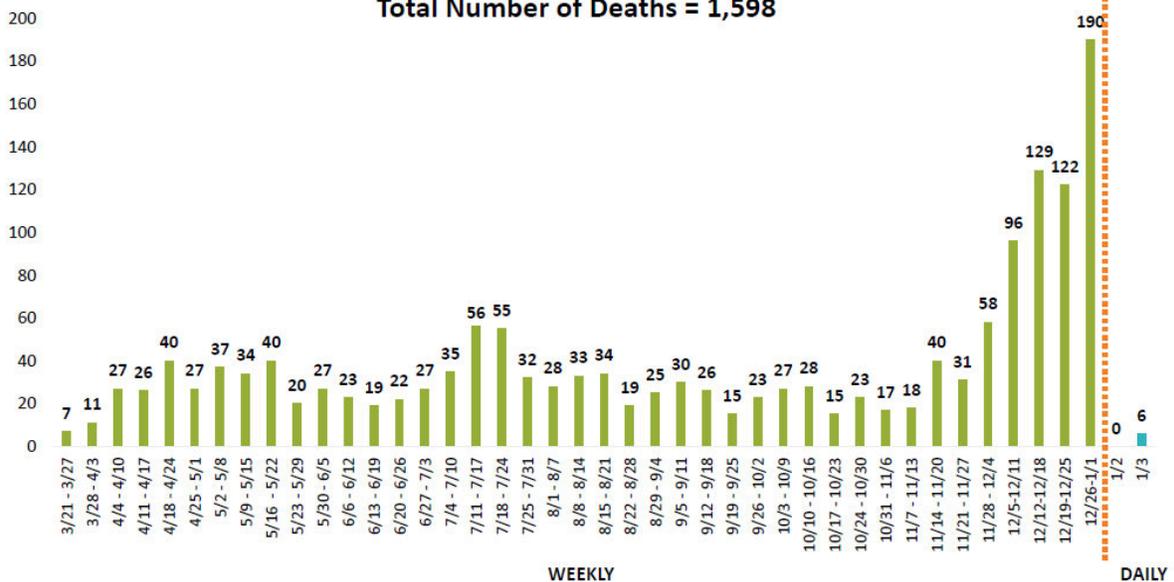
COVID-19 Confirmed Hospitalized Patients



COVID-19 Deaths by Report Date



COVID-19 Associated Deaths by Report Date Among San Diego County Residents Total Number of Deaths = 1,598



B. Activity Since the Court's Last Request

The court completed the remaining status conferences on out-of-custody cases, including post-arraignment/pre-preliminary hearing, post-preliminary hearing/no trial date, and post-conviction cases. This group originally consisted of approximately 13,000 cases.

The court has continued hearing out-of-custody arraignments, which originally included approximately 7,000 cases, and out-of-custody preliminary hearings, which originally included approximately 1,800 cases. The court expects to be current on the out-of-custody arraignments by January 14, and the court is scheduling between 75-150 out-of-custody preliminary hearings per week; however, many of them (approximately 90%) request to continue.

The court has also continued to work with the Sheriff to take steps to reduce the jail population to help combat the rising number of COVID-19 cases in the jails. For example, the court recently signed a stipulation allowing the Sheriff to release nearly 200 inmates that were in custody for certain probation violations. In addition, the court has implemented several general orders, including another extension signed on January 5, authorizing the Sheriff to accelerate the release of sentenced county jail inmates up to 60 days from when they would otherwise be released, subject to certain conditions.

Since its last request, the court has continued to install plexiglass barriers in courtrooms in all of its facilities to accommodate in-person proceedings. To date, the court has installed plexiglass barriers in 35 courtrooms to accommodate in-person hearings (not including juries) and 9 courtrooms to accommodate jury trials, with at least one jury-trial capable courtroom in each location that conducts jury trials, including one large courtroom for civil jury trials. In addition, the court has installed plexiglass barriers between the bench and clerk in 23 courtrooms to accommodate remote hearings.

As discussed in its last request, the court decided to pause jury trials until at least January 11 based on several factors; however, the court decided to continue its suspension of jury trials while the Regional Stay Home Order is in effect in the Southern California region. Although the court is considered critical infrastructure and is technically permitted to continue operations, it anticipates juror turnout would be much lower than it already was before the order, and the court believes attempting to hold jury trials would be inconsistent with the public health authorities' guidance to limit activities involving indoor, static congregations of large groups of people from different households for extended durations of time. Therefore, the court does not intend to resume jury trials until the Regional Stay Home Order is lifted for San Diego County.

Once jury trials resume, the court plans to hold four criminal jury trials per week at the Central Courthouse, one civil jury trial per week at the Hall of Justice, and two jury trials per week at the North County Regional Center (both criminal and civil). In addition, the court plans to expand to other locations with one criminal jury trial per week at the South County Regional Center and one criminal jury trial per week at the East County Regional Center. However, the number of jury trials that can be held simultaneously will continue to be limited by the size of the jury lounges, which will have decreased capacity to maintain social distancing, and the number of courtrooms that can provide adequate spacing or are equipped with protective barriers.

In order to be prepared to resume jury trials once the Regional Stay Home Order is lifted, the court has continued summoning jurors. The chart below shows the number of summonses issued for each location for future weeks.

| Week Beginning | Summonses Issued (Central) | Summonses Issued (North) | Summonses Issued (South) | Summonses Issued (East) |
|-----------------------|-----------------------------------|---------------------------------|---------------------------------|--------------------------------|
| Jan. 11 | 6,393 | 3,500 | - | - |
| Jan. 18 | 6,000 | 3,500 | 2,800 | - |
| Jan. 25 | 6,000 | 3,500 | 2,800 | 2,800 |
| Feb. 1 | 6,000 | 3,572 | 2,800 | 2,800 |
| Feb. 8 | 6,060 | 3,552 | 2,800 | 2,800 |
| Feb. 15 | 6,000 | 3,547 | 2,800 | 2,800 |

C. Description of the Court’s Readiness Conference Program

As required by the Chief Justice’s December 22, 2020, Memorandum regarding COVID-19 Pandemic Readiness Conferences, the court provides the following description of its readiness conference program.

In-custody readiness calendars began in May 2020, with two departments in the Central Courthouse and one department in each branch location. All defendants in custody with pending cases that were post-arraignment/pre-trial were scheduled for a readiness conference in an attempt to settle as many cases as possible. Once all of those readiness cases were completed, all cases with a negotiated plea were calendared for hearing in one of the triage departments to have the plea entered. All cases that did not reach agreement were set for future dates, often subsequent readiness hearings, and given the opportunity to continue negotiations. Many of the cases have had several readiness conferences to date. All cases that are arraigned are automatically set for a readiness conference date, which has always been the court’s practice, even before the pandemic, and continues now.

Additionally, all out-of-custody post-arraignment/pre-trial cases were calendared for either a trial status conference or regular status conference (depending on the stage of the case) beginning in September 2020. At those hearings, cases that had negotiated a resolution during the early months of the pandemic were scheduled for a hearing to enter their plea, and those that had not reached resolution were scheduled for a readiness conference with a back-up trial date. Those readiness hearings are being held daily and are often set for additional readiness hearings as negotiations continue.

Currently, there are several readiness departments now operating at each location, with most hearing both in-custody and out-of-custody cases as well as other types of hearings. Due to limitations in the court’s CMS, the court is unable to provide accurate numbers as to how many readiness conferences have been held; however, every post-arraignment/pre-trial case has had at least one (often more) readiness conference since the pandemic began.

D. The Court's Request for an Extension

In the court's May 29, 2020, request for an emergency order for additional time to conduct trials, the court submitted letters of support from the District Attorney's Office, the City Attorney's Office, the Office of the Public Defender, and the Sheriff's Department. Each of these justice partners supported the court's previous requests with the exception of the Public Defender, who, beginning with the court's October 2, 2020, request, notified the court that, on behalf of his clients, "he cannot support another 1382" extension. With the exception of the Public Defender, each of these justice partners has confirmed that they also fully support this additional request; however, the Public Defender again indicated he would not support another request.

Regardless, as set forth in the court's response to questions 1 and 2 below, the court has approximately 1,250 cases in which the last day for trial will occur between January 10 and February 18, inclusive. Even if the court were operating at its full pre-pandemic capacity of 70-90 jury trials per month (including criminal and civil), it would be impossible to hold 1,250 jury trials in this time frame. Given the many logistical, safety, and legal issues described in the court's previous requests and above, along with the fact that new procedures have been developed and will need to be tested and adjusted to resolve the many issues that will certainly arise, the court cannot at this time resume jury trials at full capacity. Instead, the court is entering this uncharted territory gradually while continuously assessing and considering the health and safety of everyone involved and the potential constitutional issues that have been raised in the court's previous requests. Therefore, due the enormous backlog and the anticipated pace of proceeding with jury trials, the court requests an order allowing the court to extend the time period provided in Penal Code section 1382, within which a trial must be held, by not more than 30 days.

II. ANSWERS TO SPECIFIC QUESTIONS SET FORTH IN THE MAY 14, 2020, JUDICIAL COUNCIL MEMORANDUM

1. How many criminal cases have last-day deadlines under Penal Code section 1382 during the period of time for which the court is requesting a first extension under Government Code section 68115 (please provide daily breakdown)?

Because this court deals with paper files, it would be burdensome to determine the exact numbers of cases because the court would have to pull all the files and check for the relevant arraignment date. Given the reduced staffing resulting from COVID-19, along with the social distancing requirements, the court simply does not have the resources to provide specific numbers at this time. However, the court can provide the following rough statistics for a general idea:

For felony cases with no prior extensions, to have a last-day deadline between January 10 and February 18, inclusive, the defendant would be arraigned on an Information between

November 20, 2020,² and December 20, 2020, inclusive. Of the cases with pending trial dates through February 28, there were roughly 50 felony bindovers after preliminary hearing during this timeframe (November 20-December 20, 2020). Assuming these defendants were arraigned on an Information immediately or soon thereafter, the court approximates there were 50 felony arraignments during this period (November 20-December 20, 2020), meaning approximately 50 felony cases with no prior extensions that are still pending trial will have a last-day deadline for trial during the request period (January 10-February 18). Most of the defendants in this category are still in custody.

For misdemeanor in-custody cases with no prior extensions, to have a last-day deadline between January 10 and February 18, inclusive, defendants would have arraignment dates between December 20, 2020, (see footnote 2) and January 19, inclusive. The court does not have complete statistics for this time period. However, of the cases with pending trial dates through February 28, there were approximately 145 misdemeanor arraignments in the last 30 days for which statistics are available (December 1-December 31, 2020), and approximately 85 of those defendants are still in custody. In the 30 days before that (October 31-November 30, 2020), there were approximately 60 misdemeanor arraignments, and approximately 24 of those defendants remain in custody. Using these numbers as a guide, the court estimates that about 55 misdemeanor in-custody cases with no prior extensions that are still pending trial will have a statutory last-day deadline during the request period (January 10-February 18).

For misdemeanor out-of-custody cases with no prior extensions, to have a statutory last-day deadline between January 10 and February 18, inclusive, defendants would have arraignment dates between December 5, 2020, (see footnote 2) and January 4, 2021, inclusive. The court has incomplete statistics for this time period, but of the cases with pending trial dates through February 28, there were approximately 120 misdemeanor arraignments from December 5, 2020, through December 31, 2020, inclusive, and approximately 45 of these defendants are now out of custody. And as noted above, there were approximately 145 misdemeanor arraignments in the last 30 days for which statistics are available (December 1-December 31, 2020), and approximately 60 of those defendants are now out of custody. And in the 30 days before that (October 31-November 30, 2020), there were approximately 60 misdemeanor arraignments, and approximately 36 of those defendants are now out of custody. Based on these known numbers, the court estimates that there will be roughly 45 misdemeanor out-of-custody cases with no prior extensions that are still pending trial that will have a last-day deadline during the request period (January 10-February 18).

In sum, the court estimates that, of the cases with pending trial dates through February 28, approximately 150 cases with no prior extensions will have their statutory trial deadline come due during the period of January 10 through February 18, inclusive. The court recognizes a number of these cases, being new, may settle, but the court cannot predict what percentage of cases that may be. Assuming a 50% settlement rate, that still leaves about 75 cases with original last-day deadlines falling within the request period.

² Although the “request period” is January 10 through February 18, the first last-day deadline for a case in this category in this court (i.e. no prior extensions) would be January 19.

2. How many criminal cases are coming up to the limit already extended for 90 days by the statewide orders (please provide a daily breakdown)? Is the court requesting a further extension of time on any of these cases?

The response to this question includes those cases that were extended 90 days by the statewide orders, and those cases that have received the benefit of any of the previous seven court-specific 30-day extensions granted to this court pursuant to the Chief's Emergency Orders dated June 4, June 30, August 7, September 4, October 6, November 5, and December 8, 2020. Because these cases all have paper files, the court would have to manually pull all of the case files to determine the relevant arraignment date. With trial dates now having been set and reset multiple times in some cases since the pandemic began, it is also difficult to tell which and how many of the prior extension orders the cases fall under. Given the reduced staffing resulting from COVID-19, along with the social distancing requirements, the court simply does not have the resources to provide specific numbers at this time. However, the court can provide the following rough statistics for a general idea:

Of the cases with pending trial dates through February 28, there are approximately 15 felony cases that, with all the previous extensions, now have statutory trial deadlines between January 10 and January 18 (5 of which remain in custody). There are also approximately 4 in-custody misdemeanor cases, and 49 out-of-custody misdemeanor cases, that with all the extensions have statutory trial deadlines between January 10 and January 18.

In addition, of the cases with pending trial dates through February 28, there are approximately 560 felony cases (approximately 270 in custody), approximately 125 in-custody misdemeanor cases, and approximately 450 out-of-custody misdemeanor cases that, with all prior extensions, now have statutory trial deadlines between January 19 and February 18, inclusive.

In sum, the court estimates that, of the cases with pending trial dates through February 28, approximately 1,200 previously extended cases will have the statutory trial deadline come due during the period of January 10 through February 18, inclusive.

Summary:

Based on the above, in both categories (questions 1 and 2), the court estimates that, of the cases with pending trial dates through February 28, there are over 1,250 cases in which their statutory last day for trial will occur between January 10 and February 18, inclusive. Pursuant to information received by the District Attorney's Office, many of the felony in-custody trials involve serious charges, meaning the stakes are high, and trials will be longer, further heightening the concerns of congregating large numbers of people and increasing the risk that the limited number of alternate jurors that could be allowed with the social distancing requirements will not be sufficient.

Except as noted above and in previous requests, the court's responses to questions 3-5 have not changed since its September 3, 2020, request, and those responses are incorporated herein by reference.

###

TO: Hon. Tani G. Cantil-Sakauye, Chair of the Judicial Council
Judicial Council of California
c/o Legal Services Supervising Attorney Charles Perkins
415-865-4609
charles.perkins@jud.ca.gov
415-865-8767 (fax)

FROM: *Name* : Lorna A. Alksne
Title: Presiding Judge
Court: Superior Court of San Diego County
Telephone: 619-844-2100
Fax: 619-844-5550
E-mail Address: [REDACTED]

DATE: 2/2/2021

SUBJECT: Request for Judicial Emergency Order

I hereby request an order allowing the court to implement the following emergency procedures pursuant to the provisions of section 68115 of the Government Code¹:

- The court may extend the time period provided in section 1382 of the Penal Code within which a trial must be held by not more than 30 days. (Gov. Code, § 68115(a)(10).)
(Fill in number of days, not exceeding 30. Pursuant to Government Code section 68115(a)(10), "the trial of a defendant in custody whose time is so extended shall be given precedence over all other cases.")
This request applies only to cases in which the statutory deadline otherwise would expire on _____ *or* from 2/9/2021, to 3/22/2021, inclusive*.
(Fill in date(s) above.)

***This request applies to cases in which the original or previously-extended statutory deadline otherwise would expire from February 9, 2021, to March 22, 2021, inclusive.**

Although the previous Emergency Order issued January 7, 2021, already provides relief for cases in which the trial deadline falls on February 9, 2021, through February 18, 2021, the court has determined that February 9, 2021, through February 18, 2021, also need to be included in the

¹ Government Code section 68115, as amended, effective January 1, 2019, provides that, upon the request of a presiding judge, the Chairperson of the Judicial Council may authorize relief as set forth in the statute, "[w]hen war, an act of terrorism, public unrest or calamity, epidemic, natural disaster, or other substantial risk to the health and welfare of court personnel or the public, or the danger thereof, the destruction of or danger to the building appointed for holding the court, a large influx of criminal cases resulting from a large number of arrests within a short period of time, or a condition that leads to a state of emergency being proclaimed by the President of the United States or by the Governor pursuant to Section 8625, threatens the orderly operation of a superior court location or locations within a county or renders presence in, or access to, an affected court facility or facilities unsafe"

current request. The April 29, 2020, statewide order granting up to a 90-day extension was effective for cases with a last day for trial of March 16 through June 15, 2020. With this statewide 90-day extension, as well as the eight prior 30-day extensions authorized for this court, a case with a last day for trial of March 16-25, April 19-24, May 20-24, June 16-23, July 18-23, August 18-22, September 18-21, October 19-21, November 19-20, and December 19-20, 2020, and January 19, 2021, would now have a last day for trial of February 9 through February 18, 2021. Accordingly, the court is including February 9 through February 18, 2021, in its request.

The circumstances necessitating an emergency order are described in the attached document.

The public defender, the district attorney, and other interested local entities have / have not (check one box) been notified of this request for emergency order.

The court has / has not (check one box) advised these entities to immediately notify the Judicial Council's Legal Services office of any opposition or questions regarding the request.

Please list the names and telephone numbers of the district attorney, the public defender, and other notified parties affected by the order:

District Attorney: Summer Stephan

Public Defender: Randy Mize

Other Parties Affected: City Attorney Mara Elliot; San Diego Sheriff Bill Gore

The court has / has not (check one box) been informed of any opposition to this request.

If the court has been informed of potential opposition to this request, please state below the party or parties who may oppose the request and any stated reasons for the opposition:

Regarding the court's October 2, 2020, request, the Public Defender, Randy Mize, informed the court that he "cannot support another 1382" extension on behalf of his clients, and he recently indicated he also does not support this current request.

Submitted by:  _____
(Presiding Judge or Presiding Judge's delegate)

Date: 2/2/2021

The San Diego Superior Court hereby requests an order allowing the court to extend the time period provided in Penal Code section 1382, within which a trial must be held, by not more than 30 days. This request applies to cases in which the original or previously extended statutory deadline otherwise would expire from February 9, 2021, to March 22, 2021, inclusive.

I. BACKGROUND INFORMATION AND BASIS FOR REQUEST

Since the court's last request for Penal Code section 1382 relief, which was submitted on January 6, 2021,¹ the Regional Stay Home Order was lifted for the Southern California region, and the court plans to gradually resume criminal and civil jury trials beginning on February 8. Otherwise, the court has generally progressed with its plan as outlined in its January 6 request. However, as described below, the court still faces an enormous backlog of approximately 1,700 cases in which the last day for trial will occur between February 9 and March 22. Even in pre-pandemic conditions, it would be impossible to hold jury trials for this number of cases in such a short period of time, and this challenge is even more pronounced given the pace of proceeding with jury trials due to the many logistical, safety, and legal issues described in the court's previous requests.

This memorandum will address relevant changes since the court's last request. In addition, the numerous federal, state, and local public health orders that have been issued in response to the COVID-19 pandemic are well known and have been detailed in prior Judicial Council orders and memoranda as well as this court's prior requests for relief from the Chief Justice. Accordingly, they will not be repeated here, except as necessary to provide relevant updates.

A. COVID-19 in San Diego County and Public Health Guidance

On January 25, the California Department of Public Health ("CDPH") lifted the Regional Stay Home Order for all regions statewide, which allowed individual counties, at their discretion, to return to the Blueprint for a Safer Economy's tiered structure. That same day, the San Diego County Health Officer announced the county would be returning to the purple tier, which it was in when the Regional Stay Home Order went into effect.

Under the state's Blueprint for a Safer Economy, counties are assigned to tiers based on adjusted case rate and test positivity metrics, which are assessed weekly by the CDPH. The thresholds for the most restrictive purple tier are an adjusted case rate of more than 7.0 daily new cases per 100,000 residents and a testing positivity percentage of more than 8%. The recent adjusted case rates and positivity percentages for San Diego County are as follows: January 5 – 53.4 and 13.3%; January 12 – 69.7 and 16.6%; January 19 – 60.6 and 14.8%; January 26 – 49.6 and 12.6%; and February 2 – 42.5 and 10.5%. While the county's numbers have been improving from a high point on January 12, they are still well above the thresholds for the purple tier, and it is likely San Diego County will remain in the purple tier for the near future.

The San Diego County Health Officer's most recent stay-at-home order, which became effective January 25, referenced and incorporated the restrictions imposed by the Blueprint for a

¹ All subsequent date references are to 2021 unless otherwise indicated.

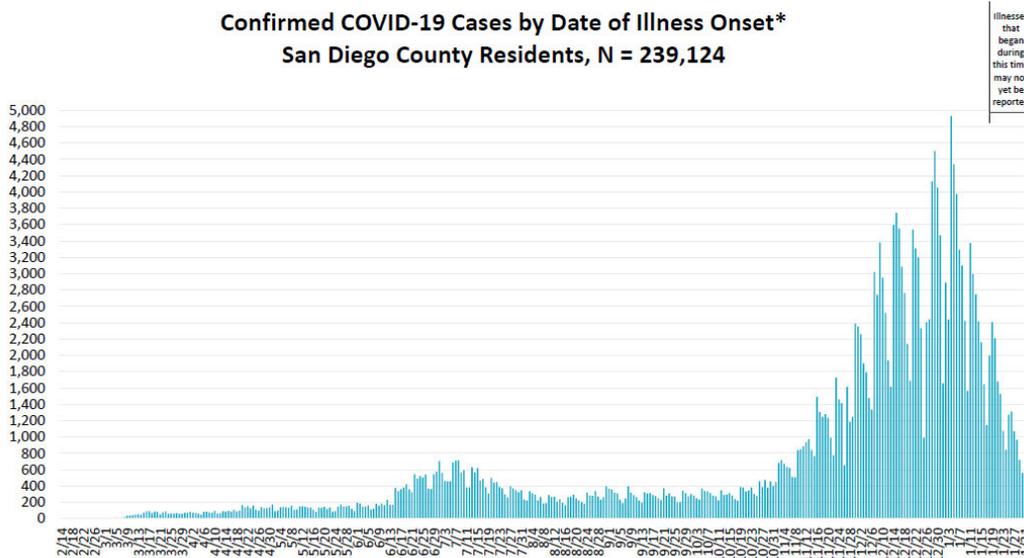
Safer Economy. Also, the county order requires all essential businesses, including the court, to comply with applicable state guidance, such as requiring face coverings, conducting temperature and/or symptom screenings of employees, continuing cleaning and disinfecting protocols, and enforcing six-foot social distancing requirements.

To date in San Diego County, there have been 239,124 cases, 10,217 hospitalizations, and 2,619 deaths. The charts below illustrate the current trends in cases and hospitalizations.

COVID-19 Cases in San Diego County by Illness Onset Date



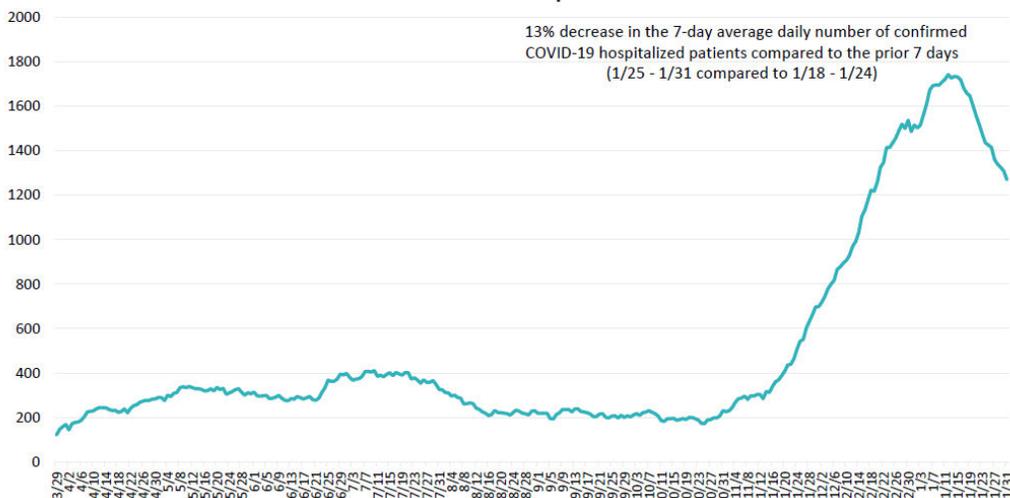

Confirmed COVID-19 Cases by Date of Illness Onset*
San Diego County Residents, N = 239,124



COVID-19 Confirmed Hospital Census




COVID-19 Confirmed Hospitalized Patients



B. Activity Since the Court's Last Request

The court has completed hearing its backlog of out-of-custody arraignments, which originally included approximately 7,000 cases, and is continuing to work through out-of-custody preliminary hearings, which originally included approximately 1,800 cases. The court is scheduling between 75-150 out-of-custody preliminary hearings per week; however, many of them (approximately 85%) request to continue.

The court has also continued to work with the Sheriff to take steps to reduce the inmate population to help combat the rising number of COVID-19 cases in the jails. For example, the court recently signed a stipulation allowing the Sheriff to release nearly 200 inmates that were in custody for certain probation violations. In addition, the court has implemented several general orders, including another extension signed on January 5, authorizing the Sheriff to accelerate the release of sentenced county jail inmates up to 60 days from when they would otherwise be released, subject to certain conditions.

In addition, the Presiding Judge, the District Attorney, and the Public Defender jointly submitted a letter to the San Diego County Public Health Officer requesting prioritization of COVID-19 vaccines for the employees of each agency and the court's judicial officers. The letter explained the critical role of the court in providing a forum for the resolution of legal matters and protection of families and communities in the county, the impediments created by the pandemic and the precautionary measures in response thereto, and how vaccinating these employees and judicial officers could help the court expand its services and reduce the backlog of cases.

Since its last request, the court has continued to install plexiglass barriers in courtrooms in all of its facilities to accommodate in-person proceedings. To date, the court has installed plexiglass barriers in 43 courtrooms to accommodate in-person hearings (not including juries) and 10 courtrooms to accommodate jury trials, with at least one jury-trial capable courtroom in each location that conducts jury trials, including one large courtroom for civil jury trials. In addition, the court has installed plexiglass barriers between the bench and clerk in 38 courtrooms to accommodate remote hearings.

As discussed in its January 6 request, the court suspended jury trials while the Regional Stay Home Order was in effect in the Southern California region. Now that the order has been lifted, the court plans to gradually resume jury trials beginning on February 8, with four criminal jury trials per week at the Central Courthouse and one civil jury trial per week at the Hall of Justice. Subsequently, the court plans on expanding to other locations with two jury trials per week at the North County Regional Center (both criminal and civil) beginning February 16, one criminal jury trial per week at the East County Regional Center beginning February 22, and one criminal jury trial per week at the South County Regional Center beginning March 1. However, the number of jury trials that can be held simultaneously will continue to be limited by the size of the jury lounges, which will have decreased capacity to maintain social distancing, and the number of courtrooms that can provide adequate spacing or are equipped with protective barriers.

Juror turnout also remains a significant concern. In October and November 2020, the yield was approximately 5%. To offset the low turnout, the court has summoned more jurors and will

continue to monitor the turnout and adjust accordingly. However, this is inherently a slow adjustment due to the six-week lead time between the summonses being issued and the reporting date. The chart below previews the number of jurors that have postponed or requested to be excused for future weeks.

| Week Beginning | Location | Summonses Issued | Postponed or Excused | Potential Jurors |
|-----------------------|-----------------|-------------------------|-----------------------------|-------------------------|
| Feb. 8 | Central | 6,060 | 2,449 | 3,611 |
| Feb. 16 | Central | 6,000 | 2,297 | 3,703 |
| | North | 3,547 | 1,203 | 2,344 |
| Feb. 22 | Central | 6,168 | 1,797 | 4,371 |
| | North | 3,707 | 986 | 2,721 |
| | East | 2,885 | 646 | 2,239 |
| Mar. 1 | Central | 6,153 | 1,164 | 4,989 |
| | North | 3,691 | 634 | 3,057 |
| | South | 2,830 | 311 | 2,519 |
| | East | 2,871 | 383 | 2,488 |
| Mar. 8 | Central | 6,196 | 39 | 6,157 |
| | North | 3,683 | 8 | 3,675 |
| | South | 2,829 | 8 | 2,821 |
| | East | 2,864 | 8 | 2,856 |
| Mar. 15 | Central | 6,144 | 0 | 6,144 |
| | North | 3,668 | 0 | 3,668 |
| | South | 2,828 | 0 | 2,828 |
| | East | 2,891 | 0 | 2,891 |

C. Description of the Court’s Readiness Conference Program

As required by the Chief Justice’s December 22, 2020, Memorandum regarding COVID-19 Pandemic Readiness Conferences, the court provides the following description of its readiness conference program.

In-custody readiness calendars began in May 2020, with two departments in the Central Courthouse and one department in each branch location. All defendants in custody with pending cases that were post-arraignment/pre-trial were scheduled for a readiness conference in an attempt to settle as many cases as possible. Once all of those readiness cases were completed, all cases with a negotiated plea were calendared for hearing in one of the triage departments to have the plea entered. All cases that did not reach agreement were set for future dates, often subsequent readiness hearings, and given the opportunity to continue negotiations. Many of the cases have

had several readiness conferences to date. All cases that are arraigned are automatically set a for readiness conference date, which has always been the court's practice, even before the pandemic, and continues now.

Additionally, all out-of-custody post-arraignment/pre-trial cases were calendared for either a trial status conference or regular status conference (depending on the stage of the case) beginning in September 2020. At those hearings, cases that had negotiated a resolution during the early months of the pandemic were scheduled for a hearing to enter their plea, and those that had not reached resolution were scheduled for a readiness conference with a back-up trial date. Those readiness hearings are being held daily and are often set for additional readiness hearings as negotiations continue.

Currently, there are several readiness departments now operating at each location, with most hearing both in-custody and out-of-custody cases as well as other types of hearings. Due to limitations in the court's CMS, the court is unable to provide accurate numbers as to how many readiness conferences have been held; however, every post-arraignment/pre-trial case has had at least one (often more) readiness conference since the pandemic began.

D. The Court's Request for an Extension

In the court's May 29, 2020, request for an emergency order for additional time to conduct trials, the court submitted letters of support from the District Attorney's Office, the City Attorney's Office, the Office of the Public Defender, and the Sheriff's Department. Each of these justice partners supported the court's previous requests with the exception of the Public Defender, who, beginning with the court's October 2, 2020, request, notified the court that, on behalf of his clients, "he cannot support another 1382" extension. With the exception of the Public Defender, each of these justice partners has confirmed that they also fully support this additional request; however, the Public Defender again indicated he would not support another request.

Regardless, as set forth in the court's response to questions 1 and 2 below, the court has approximately 1,700 cases in which the last day for trial will occur between February 9 and March 22, inclusive. Even if the court were operating at its full pre-pandemic capacity of 70-90 jury trials per month (including criminal and civil), it would be impossible to hold 1,700 jury trials in this time frame. Given the many logistical, safety, and legal issues described in the court's previous requests and above, along with the fact that new procedures have been developed and will need to be tested and adjusted to resolve the many issues that will certainly arise, the court cannot at this time resume jury trials at full capacity. Instead, the court is entering this uncharted territory gradually while continuously assessing and considering the health and safety of everyone involved and the potential constitutional issues that have been raised in the court's previous requests. Therefore, due the enormous backlog and the anticipated pace of proceeding with jury trials, the court requests an order allowing the court to extend the time period provided in Penal Code section 1382, within which a trial must be held, by not more than 30 days.

II. ANSWERS TO SPECIFIC QUESTIONS SET FORTH IN THE MAY 14, 2020, JUDICIAL COUNCIL MEMORANDUM

1. How many criminal cases have last-day deadlines under Penal Code section 1382 during the period of time for which the court is requesting a first extension under Government Code section 68115 (please provide daily breakdown)?

Because this court deals with paper files, it would be burdensome to determine the exact numbers of cases because the court would have to pull all the files and check for the relevant arraignment date. Given the reduced staffing resulting from COVID-19, along with the social distancing requirements, the court simply does not have the resources to provide specific numbers at this time. However, the court can provide the following rough statistics for a general idea:

For felony cases with no prior extensions, to have a last-day deadline between February 9 and March 22, inclusive, the defendant would be arraigned on an Information between December 21, 2020,² and January 21, 2021, inclusive. Of the cases with pending trial dates through March 31, there were roughly 50 felony bindovers after preliminary hearing during this timeframe (December 21, 2020 – January 21, 2021). Assuming these defendants were arraigned on an Information immediately or soon thereafter, the court approximates there were 50 felony arraignments during this period (December 21, 2020 – January 21, 2021), meaning approximately 50 felony cases with no prior extensions that are still pending trial will have a last-day deadline for trial during the request period (February 9 – March 22). Most of the defendants in this category are still in custody.

For misdemeanor in-custody cases with no prior extensions, to have a last-day deadline between February 9 and March 22, inclusive, defendants would have arraignment dates between January 20 (see footnote 2) and February 20, inclusive. The court does not have complete statistics for this time period. However, of the cases with pending trial dates through March 31, there were approximately 115 misdemeanor arraignments in the last 30 days for which statistics are available (December 29, 2020 – January 28, 2021), and approximately 85 of those defendants are still in custody. In the 30 days before that (November 28, 2020 – December 28, 2020), there were approximately 65 misdemeanor arraignments, and approximately 25 of those defendants remain in custody. Using these numbers as a guide, the court estimates that about 55 misdemeanor in-custody cases with no prior extensions that are still pending trial will have a statutory last-day deadline during the request period (February 9 – March 22).

For misdemeanor out-of-custody cases with no prior extensions, to have a statutory last-day deadline between February 9 and March 22, inclusive, defendants would have arraignment dates between January 5 (see footnote 2) and February 5, inclusive. The court has incomplete statistics for this time period, but of the cases with pending trial dates through March 31, there were approximately 95 misdemeanor arraignments from January 5 through January 28, inclusive, and approximately 20 of these defendants are now out of custody. And as noted above, there were

² Although the “request period” is February 9 through March 22, the first last-day deadline for a case in this category in this court (i.e. no prior extensions) would be February 19.

approximately 115 misdemeanor arraignments in the last 30 days for which statistics are available (December 29, 2020 – January 28, 2021), and approximately 30 of those defendants are now out of custody. And in the 30 days before that (November 28, 2020 – December 28, 2020), there were approximately 65 misdemeanor arraignments, and approximately 40 of those defendants are now out of custody. Based on these known numbers, the court estimates that there will be roughly 30 misdemeanor out-of-custody cases with no prior extensions that are still pending trial that will have a last-day deadline during the request period (February 9 – March 22).

In sum, the court estimates that, of the cases with pending trial dates through March 31, approximately 135 cases with no prior extensions will have their statutory trial deadline come due during the period of February 9 through March 22, inclusive. The court recognizes a number of these cases, being new, may settle, but the court cannot predict what percentage of cases that may be. Assuming a 50% settlement rate, that still leaves over 65 cases with original last-day deadlines falling within the request period.

2. How many criminal cases are coming up to the limit already extended for 90 days by the statewide orders (please provide a daily breakdown)? Is the court requesting a further extension of time on any of these cases?

The response to this question includes those cases which were extended 90 days by the statewide orders, and those cases that have received the benefit of any of the previous eight court-specific 30-day extensions granted to this court pursuant to the Chief's Emergency Orders dated June 4, 2020, June 30, 2020, August 7, 2020, September 4, 2020, October 6, 2020, November 5, 2020, December 8, 2020, and January 7, 2021. Because these cases all have paper files, the court would have to manually pull all of the case files to determine the relevant arraignment date. In addition, with trial dates now having been set and reset multiple times in some cases since the pandemic began, it is also difficult to tell which and how many of the prior extension orders the cases fall under. Given the reduced staffing resulting from COVID-19, along with the social distancing requirements, the court simply does not have the resources to provide specific numbers at this time. However, the court can provide the following rough statistics for a general idea:

Of the cases with pending trial dates through March 31, there are approximately 30 felony cases that, with all the previous extensions, now have statutory trial deadlines between February 9 through February 18 (10 of which remain in custody). There are also approximately 3 in-custody misdemeanor cases, and 55 out-of-custody misdemeanor cases, that with all the extensions have statutory trial deadlines between February 9 and February 18, inclusive.

In addition, of the cases with pending trial dates through March 31, there are approximately 450 felony cases (approximately 250 in custody), approximately 160 in-custody misdemeanor cases, and approximately 950 out-of-custody misdemeanor cases that, with all prior extensions, now have statutory trial deadlines between February 19 and March 22, inclusive.

In sum, the court estimates that, of the cases with pending trial dates through March 31, over 1,600³ previously extended cases will have their statutory trial deadline come due during the period of February 9 and March 22, inclusive.

Summary:

Based on the above, in both categories (questions 1 and 2), the court estimates that, of the cases with pending trial dates through March 31, there are over 1,700 cases in which the statutory last day for trial will occur between February 9 and March 22, inclusive. Pursuant to information received by the District Attorney's Office, many of the felony in-custody trials involve serious charges, meaning the stakes are high, and trials will be longer, further heightening the concerns of congregating large numbers of people and increasing the risk that the limited number of alternate jurors that could be allowed with the social distancing requirements will not be sufficient.

Except as noted above and in previous requests, the court's responses to questions 3-5 have generally not changed since its September 3, 2020, request, and those responses are incorporated herein by reference.

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³ As indicated in the court's October 2, 2020, request, the court heard trial status conferences in September and October 2020 for all out-of-custody cases that had previously been set for trial. Cases that did not settle were set for future trial dates with felonies generally being set 120 days out (beginning in January 2021) and misdemeanors being set 180 days out (beginning in March 2021). Accordingly, since the court's January 6 request, the increase in cases with pending trial dates is likely largely attributable to these re-set cases now being included in the applicable time frames.

TO: Hon. Tani G. Cantil-Sakauye, Chair of the Judicial Council
Judicial Council of California
c/o Legal Services Supervising Attorney Charles Perkins
415-865-4609
charles.perkins@jud.ca.gov
415-865-8767 (fax)

FROM: *Name* : Lorna A. Alksne
Title: Presiding Judge
Court: Superior Court of San Diego County
Telephone: 619-844-2100
Fax: 619-844-5550
E-mail Address: [REDACTED]

DATE: 3/8/2021

SUBJECT: Request for Judicial Emergency Order

I hereby request an order allowing the court to implement the following emergency procedures pursuant to the provisions of section 68115 of the Government Code¹:

- The court may extend the time period provided in section 1382 of the Penal Code within which a trial must be held by not more than 30 days. (Gov. Code, § 68115(a)(10).)
(Fill in number of days, not exceeding 30. Pursuant to Government Code section 68115(a)(10), “the trial of a defendant in custody whose time is so extended shall be given precedence over all other cases.”)
This request applies only to cases in which the statutory deadline otherwise would expire on _____ **or** from 3/11/2021, to 4/22/2021, inclusive*.
(Fill in date(s) above.)

***This request applies to cases in which the original or previously-extended statutory deadline otherwise would expire from March 11, 2021, to April 22, 2021, inclusive.**

Although the previous Emergency Order issued February 3, 2021, already provides relief for cases in which the trial deadline falls on March 11, 2021, through March 22, 2021, the court has determined that March 11, 2021, through March 22, 2021, also need to be included in the current

¹ Government Code section 68115, as amended, effective January 1, 2019, provides that, upon the request of a presiding judge, the Chairperson of the Judicial Council may authorize relief as set forth in the statute, “[w]hen war, an act of terrorism, public unrest or calamity, epidemic, natural disaster, or other substantial risk to the health and welfare of court personnel or the public, or the danger thereof, the destruction of or danger to the building appointed for holding the court, a large influx of criminal cases resulting from a large number of arrests within a short period of time, or a condition that leads to a state of emergency being proclaimed by the President of the United States or by the Governor pursuant to Section 8625, threatens the orderly operation of a superior court location or locations within a county or renders presence in, or access to, an affected court facility or facilities unsafe”

request. The April 29, 2020, statewide order granting up to a 90-day extension was effective for cases with a last day for trial of March 16 through June 15, 2020. With this statewide 90-day extension, as well as the nine prior 30-day extensions authorized for this court, a case with a last day for trial of March 16-27, April 19-26, May 20-26, June 16-25, July 18-25, August 18-24, September 18-23, October 19-23, November 19-22, and December 19-22, 2020, and January 19 and February 19, 2021, would now have a last day for trial of March 11 through March 22, 2021. Accordingly, the court is including March 11 through March 22, 2021, in its request.

The circumstances necessitating an emergency order are described in the attached document.

The public defender, the district attorney, and other interested local entities have / have not (check one box) been notified of this request for emergency order.

The court has / has not (check one box) advised these entities to immediately notify the Judicial Council's Legal Services office of any opposition or questions regarding the request.

Please list the names and telephone numbers of the district attorney, the public defender, and other notified parties affected by the order:

District Attorney: Summer Stephan

Public Defender: Randy Mize

Other Parties Affected: City Attorney Mara Elliot; San Diego Sheriff Bill Gore

The court has / has not (check one box) been informed of any opposition to this request.

If the court has been informed of potential opposition to this request, please state below the party or parties who may oppose the request and any stated reasons for the opposition:

Regarding the court's October 2, 2020, request, the Public Defender, Randy Mize, informed the court that he "cannot support another 1382" extension on behalf of his clients, and he recently indicated he also does not support this current request.

Submitted by:  _____

(Presiding Judge or Presiding Judge's delegate)

Date: 3/8/2021

The San Diego Superior Court hereby requests an order allowing the court to extend the time period provided in Penal Code section 1382, within which a trial must be held, by not more than 30 days. This request applies to cases in which the original or previously extended statutory deadline otherwise would expire from March 11, 2021, to April 22, 2021, inclusive.

I. BACKGROUND INFORMATION AND BASIS FOR REQUEST

Since the court's last request for Penal Code section 1382 relief, which was submitted on February 2, 2021,¹ San Diego County's status within California's Blueprint for a Safer Economy has remained unchanged, and the court has generally progressed with its plan as outlined in the February 2 request, including gradually resuming criminal jury trials beginning February 8. However, as described below, the court still faces an enormous backlog of approximately 1,925 cases in which the last day for trial will occur between March 11 and April 22. Even in pre-pandemic conditions, it would be impossible to hold jury trials for this number of cases in such a short period of time, and this challenge is even more pronounced given the pace of proceeding with jury trials due to the many logistical, safety, and legal issues described in the court's previous requests.

This memorandum will address relevant changes since the court's last request. In addition, the numerous federal, state, and local public health orders that have been issued in response to the COVID-19 pandemic are well known and have been detailed in prior Judicial Council orders and memoranda as well as this court's prior requests for relief from the Chief Justice. Accordingly, they will not be repeated here, except as necessary to provide relevant updates.

A. COVID-19 in San Diego County and Public Health Guidance

To date in San Diego County, there have been 262,968 cases, 13,240 hospitalizations, and 3,390 deaths. Although San Diego County's numbers have continued to improve since January, the county remains in the purple (widespread) tier 1 of the Blueprint for a Safer Economy. The tier assignments are based on adjusted case rate and test positivity metrics, which the California Department of Public Health assesses weekly. In order to move to a less restrictive tier, a county must have been in its current tier for at least three weeks and must meet the criteria for a less restrictive tier for two consecutive weeks. If a county's two metrics fall into two different tiers, the county will be assigned to the more restrictive tier. To advance to a less restrictive tier, a county must also meet a health equity metric (based on testing positivity among the lowest Healthy Places Index quartile) for the less restrictive tier or demonstrate targeted investments to eliminate disparities in levels of COVID-19 cases among communities that have been disproportionately impacted by the pandemic.

On March 4, the CDPH announced a vaccine equity metric, which will shift the adjusted case rate thresholds higher for certain tiers upon meeting statewide vaccination goals within Vaccine Equity Quartile communities (which include the lowest Healthy Places Index quartile). For example, when the first goal of 2 million doses administered in the Vaccine Equity Quartile is

¹ All subsequent date references are to 2021 unless otherwise indicated.

achieved, the adjusted case rate threshold for the purple tier will increase from greater than 7.0 to greater than 10.0. As of March 4, the state had delivered 1.6 million doses to this group and expects to reach the 2 million goal in the next two weeks.

Until the first Vaccine Equity Quartile goal is reached, the current thresholds for the most restrictive purple tier are an adjusted case rate of more than 7.0 daily new cases per 100,000 residents and a testing positivity percentage of more than 8%. The recent adjusted case rates and positivity percentages for San Diego County are as follows: February 9 – 34.2 and 9.1%; February 16 – 22.2 and 6.4%; February 23 – 15.0 and 5.0%; and March 2 – 10.8 and 4.2%. San Diego County’s testing positivity metric already qualifies for a less restrictive tier (and the health equity metric has qualified for the last two weeks), but, because the adjusted case rate remains above the threshold for the purple tier, the county remains in the more restrictive tier. However, if the current trends continue, San Diego County could move into the less restrictive red tier within the next few weeks.

The San Diego County Health Officer’s most recent stay-at-home order, which became effective February 6, referenced and incorporated the restrictions imposed by the Blueprint for a Safer Economy. Also, the county order requires all essential businesses, including the court, to comply with applicable state guidance, such as requiring face coverings, conducting temperature and/or symptom screenings of employees, continuing cleaning and disinfecting protocols, and enforcing six-foot social distancing requirements.

On February 12, San Diego County modified its quarantine order for persons exposed to COVID-19 to incorporate changes in federal and state guidance regarding individuals who gained immunity. According to the new order, individuals are not required to quarantine if they gained immunity, either by recovering after testing positive or by getting fully vaccinated, within three months of a potential exposure. The court anticipates this will alleviate some of the personnel issues that arise due to the court’s contact tracing and quarantining protocols.

On February 25, the San Diego County Public Health Officer confirmed that judges and court employees are included in Phase 1B (Emergency Services Sector) and were eligible to receive COVID-19 vaccinations beginning February 27. The court expects that vaccination of its employees and judicial officers will help the court expand its services and reduce the backlog of cases, especially given the new guidance that fully vaccinated employees are not required to quarantine after a potential exposure.

B. Activity Since the Court’s Last Request

The court is continuing to work through out-of-custody preliminary hearings, which originally included approximately 1,800 cases. The court is scheduling between 175-225 out-of-custody preliminary hearings per week; however, many of them (approximately 80%) request to continue or settle.

The court has also continued to work with the Sheriff to take steps to reduce the inmate population to help combat the number of COVID-19 cases in the jails. For example, the court signed a stipulation allowing the Sheriff to release nearly 200 inmates that were in custody for

certain probation violations. In addition, the court has implemented several general orders, including another extension signed on February 3, authorizing the Sheriff to accelerate the release of sentenced county jail inmates up to 60 days from when they would otherwise be released, subject to certain conditions.

Since its last request, the court has continued to install plexiglass barriers in courtrooms in all of its facilities to accommodate in-person proceedings. To date, the court has installed plexiglass barriers in 57 courtrooms to accommodate in-person hearings (not including juries) and 10 courtrooms to accommodate jury trials, with at least one jury-trial capable courtroom in each location that conducts jury trials, including one large courtroom for civil jury trials. In addition, the court has installed plexiglass barriers between the bench and clerk in 38 courtrooms to accommodate remote hearings.

As discussed in its February 2 request, the court planned to gradually resume jury trials beginning on February 8 at the Central Courthouse (criminal) and Hall of Justice (civil), February 16 at the North County Regional Center (criminal and civil), February 22 at the East County Regional Center (criminal), and March 1 at the South County Regional Center (criminal). The court generally met this goal except that the cases scheduled for the North County Regional Center were continued, and the first trial was not held there until the week of March 1. The court has also fallen short of its goal of four trials per week at the Central Courthouse/Hall of Justice, but this is directly due to cases either settling or being continued. To address these logistical issues going forward, the court is working with its justice partners to schedule more trials to allow for those that may settle, and the court will continue holding a weekly trial call calendar to determine which cases are ready for trial and going forward the following week.

Since February 8, the court has held eight jury trials, including one civil trial, in its various locations. One additional trial was set to go forward on February 22 at the East County Regional Center, but the in-custody defendant was exposed to COVID-19 at the jail and could not be produced; the trial was continued to March 18. On March 8, another trial was set to go forward at the East County Regional Center, but the in-custody defendant's housing unit was quarantined; the trial was continued to March 11. Also on March 8, a jury will be selected in a civil case that is neither a preference nor unlawful detainer case, as no other cases were ready.

Juror turnout has been much better than it was during the court's last attempt to resume jury trials in October and November 2020. So far, the average yield has been between 9 and 13% (compared to 5% last fall), which is nearly the same as the pre-pandemic yield for newly summoned jurors. Since resuming trials on February 8, the court has had enough jurors for the trials that were ready to proceed. However, the number of jury trials that can be held simultaneously will continue to be limited by the size of the jury lounges, which will have decreased capacity to maintain social distancing, and the number of courtrooms that can provide adequate spacing or are equipped with protective barriers.

The chart below illustrates the juror turnout since February 8 and previews the number of jurors that postponed or requested to be excused for upcoming weeks:

| Week Beginning | Location | Summonses Issued | Postponed or Excused | Potential Jurors | Jurors Called | Jurors Reported | Trials Held |
|----------------|-------------|------------------|----------------------|------------------|---------------|-----------------|-------------|
| Feb. 8 | Central/HOJ | 6,060 | 2,792 | 3,268 | 642 | 68 | 1 |
| Feb. 16 | Central/HOJ | 6,000 | 2,680 | 3,320 | 1,574 | 154 | 2 |
| Feb. 22 | Central/HOJ | 6,168 | 2,848 | 3,320 | 1,238 | 137 | 2 (1 civil) |
| | East | 2,885 | 1,018 | 1,867 | 546 | 95 | 0 |
| Mar. 1 | North | 3,691 | 1,635 | 2,056 | 673 | 130 | 1 |
| | South | 2,830 | 911 | 1,919 | 419 | 38 | 1 |
| | East | 2,871 | 1,131 | 1,740 | 364 | 51 | 1 |
| Mar. 8 | Central/HOJ | 6,196 | 2,873 | 3,323 | 541 | 75 | 1 (civil) |
| | North | 3,683 | 1,481 | 2,202 | | | |
| | South | 2,829 | 950 | 1,879 | | | |
| | East | 2,864 | 1,097 | 1,767 | 422 | 52 | 0 |
| Mar. 15 | Central/HOJ | 6,144 | 2,518 | 3,626 | | | |
| | North | 3,668 | 1,286 | 2,382 | | | |
| | South | 2,828 | 841 | 1,987 | | | |
| | East | 2,891 | 962 | 1,929 | | | |
| Mar. 22 | Central/HOJ | 6,141 | 1,572 | 4,569 | | | |
| | North | 3,685 | 1,089 | 2,596 | | | |
| | South | 2,833 | 661 | 2,172 | | | |
| | East | 2,890 | 789 | 2,101 | | | |
| Mar. 29 | Central/HOJ | 6,214 | 626 | 5,588 | | | |
| | North | 3,660 | 659 | 3,001 | | | |
| | South | 2,836 | 388 | 2,448 | | | |
| | East | 2,895 | 435 | 2,460 | | | |
| Apr. 5 | Central/HOJ | 6,369 | 36 | 6,333 | | | |
| | North | 3,716 | 256 | 3,460 | | | |
| | South | 2,847 | 0 | 2,847 | | | |
| | East | 2,949 | 162 | 2,787 | | | |
| Apr. 12 | Central/HOJ | 6,283 | 0 | 6,283 | | | |
| | North | 3,668 | 0 | 3,668 | | | |
| | South | 2,829 | 0 | 2,829 | | | |
| | East | 2,919 | 0 | 2,919 | | | |

C. Description of the Court's Readiness Conference Program

As required by the Chief Justice's December 22, 2020, Memorandum regarding COVID-19 Pandemic Readiness Conferences, the court provides the following description of its readiness conference program.

In-custody readiness calendars began in May 2020, with two departments in the Central Courthouse and one department in each branch location. All defendants in custody with pending cases that were post-arraignment/pre-trial were scheduled for a readiness conference in an attempt to settle as many cases as possible. Once all of those readiness cases were completed, all cases with a negotiated plea were calendared for hearing in one of the triage departments to have the plea entered. All cases that did not reach agreement were set for future dates, often subsequent

readiness hearings, and given the opportunity to continue negotiations. Many of the cases have had several readiness conferences to date. All cases that are arraigned are automatically set a for readiness conference date, which has always been the court's practice, even before the pandemic, and continues now.

Additionally, all out-of-custody post-arraignment/pre-trial cases were calendared for either a trial status conference or regular status conference (depending on the stage of the case) beginning in September 2020. At those hearings, cases that had negotiated a resolution during the early months of the pandemic were scheduled for a hearing to enter their plea, and those that had not reached resolution were scheduled for a readiness conference with a back-up trial date. Those readiness hearings are being held daily and are often set for additional readiness hearings as negotiations continue.

Currently, there are several readiness departments now operating at each location, with most hearing both in-custody and out-of-custody cases as well as other types of hearings. Due to limitations in the court's CMS, the court is unable to provide accurate numbers as to how many readiness conferences have been held; however, every post-arraignment/pre-trial case has had at least one (often more) readiness conference since the pandemic began.

D. The Court's Request for an Extension

In the court's May 29, 2020, request for an emergency order for additional time to conduct trials, the court submitted letters of support from the District Attorney's Office, the City Attorney's Office, the Office of the Public Defender, and the Sheriff's Department. Each of these justice partners supported the court's previous requests with the exception of the Public Defender, who, beginning with the court's October 2, 2020, request, notified the court that, on behalf of his clients, "he cannot support another 1382" extension. With the exception of the Public Defender, each of these justice partners has confirmed that they also fully support this additional request; however, the Public Defender again indicated he would not support another request.

Regardless, as set forth in the court's response to questions 1 and 2 below, the court has approximately 1,925 cases in which the last day for trial will occur between March 11 and April 22, inclusive. Even if the court were operating at its full pre-pandemic capacity of 70-90 jury trials per month (including criminal and civil), it would be impossible to hold 1,925 jury trials in this time frame. Given the many logistical, safety, and legal issues described in the court's previous requests and above, along with the fact that new procedures have been developed and will need to be tested and adjusted to resolve the many issues that will certainly arise, the court cannot at this time resume jury trials at full capacity. Instead, the court is entering this uncharted territory gradually while continuously assessing and considering the health and safety of everyone involved and the potential constitutional issues that have been raised in the court's previous requests. Therefore, due the enormous backlog and the anticipated pace of proceeding with jury trials, the court requests an order allowing the court to extend the time period provided in Penal Code section 1382, within which a trial must be held, by not more than 30 days.

II. ANSWERS TO SPECIFIC QUESTIONS SET FORTH IN THE MAY 14, 2020, JUDICIAL COUNCIL MEMORANDUM

1. How many criminal cases have last-day deadlines under Penal Code section 1382 during the period of time for which the court is requesting a first extension under Government Code section 68115 (please provide daily breakdown)?

Because this court deals with paper files, it would be burdensome to determine the exact numbers of cases because the court would have to pull all the files and check for the relevant arraignment dates. Given the reduced staffing resulting from COVID-19, along with the social distancing requirements, the court simply does not have the resources to provide specific numbers at this time. However, the court can provide the following rough statistics for a general idea:

For felony cases with no prior extensions, to have a last-day deadline between March 11 and April 22, inclusive, the defendant would be arraigned on an Information between January 22² and February 21, inclusive. Of the cases with pending trial dates through April 30, there were approximately 30 felony bindovers after preliminary hearing during this timeframe (January 22 – February 21). Assuming these defendants were arraigned on an Information immediately or soon thereafter, the court approximates there were approximately 30 felony arraignments during this period (January 22 – February 21), meaning approximately 30 felony cases with no prior extensions that are still pending trial will have a last-day deadline for trial during the request period (March 11 – April 22). Most of the defendants in this category are still in custody.

For misdemeanor in-custody cases with no prior extensions, to have a last-day deadline between March 11 and April 22, inclusive, defendants would have arraignment dates between February 21 (see footnote 2) and March 23, inclusive. The court does not have complete statistics for this time period. However, of the cases with pending trial dates through April 30, there were approximately 130 misdemeanor arraignments in the last 30 days for which statistics are available (February 2 – March 4), and approximately 100 of those defendants remain in custody. In the 30 days before that (January 2 – February 1), there were approximately 55 misdemeanor arraignments, and approximately 35 of those defendants remain in custody. Using these numbers as a guide, the court estimates that about 75 misdemeanor in-custody cases with no prior extensions that are still pending trial will have a statutory last-day deadline during the request period (March 11 – April 22).

For misdemeanor out-of-custody cases with no prior extensions, to have a statutory last-day deadline between March 11 and April 22, inclusive, defendants would have arraignment dates between February 6 (see footnote 2) and March 8, inclusive. The court has incomplete statistics for this time period, but of the cases with pending trial dates through April 30, there were approximately 123 misdemeanor arraignments between February 6 and March 4, inclusive, and approximately 30 of these defendants are now out of custody. In the 30 days before that (January 6 – February 5), there were approximately 80 misdemeanor arraignments, and approximately 20

² Although the “request period” is March 11 through April 22, the first last-day deadline for a case in this category in this court (i.e. no prior extensions) would be March 23.

of these defendants are now out of custody. Based on these known numbers, the court estimates that there will be roughly 25 misdemeanor out-of-custody cases with no prior extensions that are still pending trial that will have a last-day deadline during the request period (March 11 – April 22).

In sum, the court estimates that, of the cases with pending trial dates through April 30, approximately 130 cases with no prior extensions will have their statutory trial deadline come due during the period of March 11 through April 22, inclusive. The court recognizes a number of these cases, being new, may settle, but the court cannot predict what percentage of cases that may be. Assuming a 50% settlement rate, that still leaves about 65 cases with original last-day deadlines falling within the request period.

2. How many criminal cases are coming up to the limit already extended for 90 days by the statewide orders (please provide a daily breakdown)? Is the court requesting a further extension of time on any of these cases?

The response to this question includes those cases which were extended 90 days by the statewide orders, and those cases that have received the benefit of any of the previous nine court-specific 30-day extensions granted to this court pursuant to the Chief's Emergency Orders dated June 4, 2020, June 30, 2020, August 7, 2020, September 4, 2020, October 6, 2020, November 5, 2020, December 8, 2020, January 7, 2021, and February 3, 2021. Because these cases all have paper files, the court would have to manually pull all of the case files to determine the relevant arraignment date. In addition, with trial dates now having been set and reset multiple times in some cases since the pandemic began, it is also difficult to tell which and how many of the prior extension orders the cases fall under. Given the reduced staffing resulting from COVID-19, along with the social distancing requirements, the court simply does not have the resources to provide specific numbers at this time. However, the court can provide the following rough statistics for a general idea:

Of the cases with pending trial dates through April 30, there are approximately 25 felony cases that, with all the previous extensions, now have statutory trial deadlines between March 11 through March 22 (approximately 6 of which remain in custody). There are also approximately 5 in-custody misdemeanor cases, and 60 out-of-custody misdemeanor cases, that with all the extensions have statutory trial deadlines between March 11 and March 22, inclusive.

In addition, of the cases with pending trial dates through April 30, there are approximately 450 felony cases (approximately 275 in custody), approximately 185 in-custody misdemeanor cases, and approximately 1,150 out-of-custody misdemeanor cases that, with all prior extensions, now have statutory trial deadlines between March 23 and April 22, inclusive.

In sum, the court estimates that, of the cases with pending trial dates through April 30, over 1,875³ previously extended cases will have their statutory trial deadline come due during the period of March 11 and April 22, inclusive.

³ As indicated in the court's October 2, 2020, request, the court heard trial status conferences in September and October 2020 for all out-of-custody cases that had previously been set for trial. Cases that did not settle were set for

Summary:

Based on the above, in both categories (questions 1 and 2), the court estimates that, of the cases with pending trial dates through April 30, there are over 1,925 cases in which the statutory last day for trial will occur between March 11 and April 22, inclusive. Pursuant to information received by the District Attorney's Office, many of the felony in-custody trials involve serious charges, meaning the stakes are high, and trials will be longer, further heightening the concerns of congregating large numbers of people and increasing the risk that the limited number of alternate jurors that could be allowed with the social distancing requirements will not be sufficient.

Except as noted above and in previous requests, the court's responses to questions 3-5 have generally not changed since its September 3, 2020, request, and those responses are incorporated herein by reference.

###

future trial dates with felonies generally being set 120 days out (beginning in January 2021) and misdemeanors being set 180 days out (beginning in March 2021). Accordingly, since the court's January 6 request, the increase in cases with pending trial dates is likely largely attributable to these re-set cases now being included in the applicable time frames.

TO: Hon. Tani G. Cantil-Sakauye, Chair of the Judicial Council
Judicial Council of California
c/o Legal Services Supervising Attorney Charles Perkins
415-865-4609
charles.perkins@jud.ca.gov
415-865-8767 (fax)

FROM: *Name* : Lorna A. Alksne
Title: Presiding Judge
Court: Superior Court of San Diego County
Telephone: 619-844-2100
Fax: 619-844-5550
E-mail Address: [REDACTED]

DATE: 4/5/2021

SUBJECT: Request for Judicial Emergency Order

I hereby request an order allowing the court to implement the following emergency procedures pursuant to the provisions of section 68115 of the Government Code¹:

- The court may extend the time period provided in section 1382 of the Penal Code within which a trial must be held by not more than 30 days. (Gov. Code, § 68115(a)(10).)
(Fill in number of days, not exceeding 30. Pursuant to Government Code section 68115(a)(10), “the trial of a defendant in custody whose time is so extended shall be given precedence over all other cases.”)
This request applies only to cases in which the statutory deadline otherwise would expire on _____ *or* from 4/10/2021, to 5/23/2021, inclusive*.
(Fill in date(s) above.)

***This request applies to cases in which the original or previously-extended statutory deadline otherwise would expire from April 10, 2021, to May 23, 2021, inclusive.**

Although the previous Emergency Order issued March 9, 2021, already provides relief for cases in which the trial deadline falls on April 10, 2021, through April 22, 2021, the court has determined that April 10, 2021, through April 22, 2021, also need to be included in the current

¹ Government Code section 68115, as amended, effective January 1, 2019, provides that, upon the request of a presiding judge, the Chairperson of the Judicial Council may authorize relief as set forth in the statute, “[w]hen war, an act of terrorism, public unrest or calamity, epidemic, natural disaster, or other substantial risk to the health and welfare of court personnel or the public, or the danger thereof, the destruction of or danger to the building appointed for holding the court, a large influx of criminal cases resulting from a large number of arrests within a short period of time, or a condition that leads to a state of emergency being proclaimed by the President of the United States or by the Governor pursuant to Section 8625, threatens the orderly operation of a superior court location or locations within a county or renders presence in, or access to, an affected court facility or facilities unsafe”

request. The April 29, 2020, statewide order granting up to a 90-day extension was effective for cases with a last day for trial of March 16 through June 15, 2020. With this statewide 90-day extension, as well as the ten prior 30-day extensions authorized for this court, a case with a last day for trial of March 16-28, April 19-27, May 20-27, June 16-26, July 18-26, August 18-25, September 18-24, October 19-24, November 19-23, and December 19-23, 2020, and January 19-22, February 19-21, and March 23, 2021, would now have a last day for trial of April 10 through April 22, 2021. Accordingly, the court is including April 10 through April 22, 2021, in its request.

The circumstances necessitating an emergency order are described in the attached document.

The public defender, the district attorney, and other interested local entities have / have not (check one box) been notified of this request for emergency order.

The court has / has not (check one box) advised these entities to immediately notify the Judicial Council’s Legal Services office of any opposition or questions regarding the request.

Please list the names and telephone numbers of the district attorney, the public defender, and other notified parties affected by the order:

District Attorney: Summer Stephan
Public Defender: Randy Mize
Other Parties Affected: City Attorney Mara Elliot; San Diego Sheriff Bill Gore

The court has / has not (check one box) been informed of any opposition to this request.

If the court has been informed of potential opposition to this request, please state below the party or parties who may oppose the request and any stated reasons for the opposition:

Regarding the court’s October 2, 2020, request, the Public Defender, Randy Mize, informed the court that he “cannot support another 1382” extension on behalf of his clients, and he recently indicated he also does not support this current request.

Submitted by:  _____
(Presiding Judge or Presiding Judge’s delegate)

Date: 4/5/2021

The San Diego Superior Court hereby requests an order allowing the court to extend the time period provided in Penal Code section 1382, within which a trial must be held, by not more than 30 days. This request applies to cases in which the original or previously extended statutory deadline otherwise would expire from April 10, 2021, to May 23, 2021, inclusive.

I. BACKGROUND INFORMATION AND BASIS FOR REQUEST

Since the court's last request for Penal Code section 1382 relief, which was submitted on March 8, 2021,¹ San Diego County has moved to a less restrictive tier within California's Blueprint for a Safer Economy, and the court has generally progressed with its plan as outlined in the March 8 request, including gradually resuming criminal and civil jury trials in several locations across the county. However, as described below, the court still faces an enormous backlog of approximately 2,360 cases in which the last day for trial will occur between April 10 and May 23. Even in pre-pandemic conditions, it would be impossible to hold jury trials for this number of cases in such a short period of time, and this challenge is even more pronounced given the pace of proceeding with jury trials due to the many logistical, safety, and legal issues described in the court's previous requests.

This memorandum will address relevant changes since the court's last request. In addition, the numerous federal, state, and local public health orders that have been issued in response to the COVID-19 pandemic are well known and have been detailed in prior Judicial Council orders and memoranda as well as this court's prior requests for relief from the Chief Justice. Accordingly, they will not be repeated here, except as necessary to provide relevant updates.

A. COVID-19 in San Diego County and Public Health Guidance

To date in San Diego County, there have been 271,527 cases, 14,888 hospitalizations, and 3,583 deaths. On March 16, San Diego County qualified to move from the purple (widespread) tier 1 of the Blueprint for a Safer Economy into the less restrictive red (substantial) tier 2. The tier assignments are based on adjusted case rate and test positivity metrics, which the California Department of Public Health ("CDPH") assesses weekly. In order to move to a less restrictive tier, a county must have been in its current tier for at least three weeks and must meet the criteria for a less restrictive tier for two consecutive weeks. If a county's two metrics fall into two different tiers, the county will be assigned to the more restrictive tier. To advance to a less restrictive tier, a county must also meet a health equity metric (based on testing positivity among the lowest Healthy Places Index quartile) for the less restrictive tier or demonstrate targeted investments to eliminate disparities in levels of COVID-19 cases among communities that have been disproportionately impacted by the pandemic.

On March 4, the CDPH announced a vaccine equity metric, which will shift the adjusted case rate thresholds higher for certain tiers upon meeting statewide vaccination goals within Vaccine Equity Quartile communities (which include the lowest Healthy Places Index quartile). For example, when the first goal of 2 million doses administered in the Vaccine Equity Quartile

¹ All subsequent date references are to 2021 unless otherwise indicated.

was achieved on March 12, the adjusted case rate threshold for the purple tier increased from greater than 7.0 to greater than 10.0, which helped San Diego County move more quickly to the red tier. Reaching the second goal of 4 million doses administered in the Vaccine Equity Quartile will move the adjusted case rate threshold up from 3.9 to 5.9 for the orange tier and from less than 1.0 to less than 2.0 for the yellow tier. As of April 4, the state had administered 3,962,505 doses to this group and will likely reach the goal of 4 million in the next couple days.

Until the second Vaccine Equity Quartile goal is reached, the current thresholds to move from the red tier to the less restrictive orange tier are an adjusted case rate of 3.9 or fewer daily new cases per 100,000 residents and a testing positivity percentage of 4.9% or lower. The recent adjusted case rates and positivity percentages for San Diego County are as follows: March 9 – 8.8 and 3.3%; March 16 – 6.8 and 2.8%; March 23 – 5.5 and 2.4%; and March 30 – 4.9 and 2.1%. San Diego County's testing positivity and health equity metrics already qualify for the less restrictive orange tier, but, because the adjusted case rate remains above the current threshold for the orange tier, the county remains in the more restrictive red tier. However, if the current trends continue, San Diego County could move into the less restrictive orange tier within the next few weeks, or much sooner if the second Vaccine Equity Quartile goal is reached.

The San Diego County Health Officer's most recent stay-at-home order, which became effective February 6, referenced and incorporated the restrictions imposed by the Blueprint for a Safer Economy. Also, the county order requires all essential businesses, including the court, to comply with applicable state guidance, such as requiring face coverings, conducting temperature and/or symptom screenings of employees, continuing cleaning and disinfecting protocols, and enforcing six-foot social distancing requirements.

On February 12, San Diego County modified its quarantine order for persons exposed to COVID-19 to incorporate changes in federal and state guidance regarding individuals who gained immunity. According to the new order, individuals are not required to quarantine if they gained immunity, either by recovering after testing positive or by getting fully vaccinated, within three months of a potential exposure. However, Cal/OSHA's Emergency Temporary Standards still require employers to quarantine employees with a close-contact exposure to a COVID-19-positive individual, regardless of immunity status. Unless and until Cal/OSHA revises its regulations, the court will continue to experience some of the personnel issues that arise due to the court's contact tracing and quarantining protocols.

B. Activity Since the Court's Last Request

The court is continuing to work through out-of-custody preliminary hearings, which originally included approximately 1,800 cases. The court is scheduling between 175-225 out-of-custody preliminary hearings per week; however, many of them (approximately 75-80%) request to continue or settle.

The court has also continued to work with the Sheriff to take steps to reduce the inmate population to help combat the number of COVID-19 cases in the jails. For example, the court has implemented several general orders, including another extension signed on April 2, authorizing

the Sheriff to accelerate the release of sentenced county jail inmates up to 60 days from when they would otherwise be released, subject to certain conditions.

Since its last request, the court has continued to install plexiglass barriers in courtrooms in all of its facilities to accommodate in-person proceedings. To date, the court has installed plexiglass barriers in 59 courtrooms to accommodate in-person hearings (not including juries) and 11 courtrooms to accommodate jury trials, with at least one jury-trial capable courtroom in each location that conducts jury trials, including one large courtroom for civil jury trials. In addition, the court has installed plexiglass barriers between the bench and clerk in 43 courtrooms to accommodate remote hearings.

The court has continued to gradually resume jury trials with increasing success. Since March 8, the court has held thirteen jury trials, including two civil trials, at its various locations. However, the court has continued to see several cases settle after being set for trial or be continued due to various issues such as witness availability. As a result, the court has yet to reach its current capacity of four or five trials per week at the Central Courthouse/Hall of Justice. To address these logistical issues going forward, the court is working with its justice partners to schedule more trials to allow for those that may settle, and the court will continue holding a weekly trial call calendar to determine which cases are ready for trial and going forward the following week and to attempt to increase the number of backup cases that can be ready for trial if others settle. While the court has not yet seen the fruits of these efforts, it is diligently working towards this goal.

Juror turnout has been much better than it was during the court's last attempt to resume jury trials in October and November 2020. The average yield has been approximately 13.7% (compared to 5% last fall), which is nearly the same as the pre-pandemic yield for newly summoned jurors. Since resuming jury trials on February 8, the court has had enough jurors for all of the trials that were ready to proceed. However, the number of jury trials that can be held simultaneously will continue to be limited by the size of the jury lounges, which will have decreased capacity to maintain social distancing, and the number of courtrooms that can provide adequate spacing or are equipped with protective barriers.

The chart below illustrates the juror turnout since March 8 and previews the number of jurors that postponed or requested to be excused for upcoming weeks:

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| Week Beginning | Location | Summonses Issued | Postponed or Excused | Potential Jurors | Jurors Called | Jurors Reported | Trials Held |
|-----------------------|-----------------|-------------------------|-----------------------------|-------------------------|----------------------|------------------------|--------------------|
| Mar. 8 | Central | 6,196 | 2,873 | 3,323 | 541 | 75 | 1 (civil) |
| | South | 2,829 | 950 | 1,879 | 509 | 36 | 1 |
| | East | 2,864 | 1,097 | 1,767 | 893 | 102 | 1 |
| Mar. 15 | North | 3,668 | 1,542 | 2,126 | 458 | 96 | 1 |
| | South | 2,828 | 955 | 1,873 | 570 | 64 | 1 |
| | East | 2,891 | 1,127 | 1,764 | 458 | 61 | 1 |
| Mar. 22 | Central | 6,141 | 2,860 | 3,281 | 601 | 95 | 1 (civil) |
| | North | 3,685 | 1,599 | 2,086 | 468 | 85 | 1 |
| | South | 2,833 | 955 | 1,878 | 648 | 86 | 1 |
| Mar. 29 | Central | 6,214 | 3,034 | 3,180 | 660 | 77 | 1 |
| | East | 2,895 | 1,153 | 1,742 | 469 | 59 | 1 |
| Apr. 5 | Central | 6,369 | 2,996 | 3,373 | 660 | 92 | 1 |
| | North | 3,716 | 1,638 | 2,078 | 433 | 79 | 1 |
| | South | 2,847 | 983 | 1,864 | | | |
| | East | 2,949 | 1,152 | 1,797 | | | |
| Apr. 12 | Central | 6,283 | 2,620 | 3,663 | | | |
| | North | 3,668 | 1,435 | 2,233 | | | |
| | South | 2,829 | 802 | 2,027 | | | |
| | East | 2,919 | 985 | 1,934 | | | |
| Apr. 19 | Central | 6,389 | 2,129 | 4,260 | | | |
| | North | 3,823 | 1,127 | 2,696 | | | |
| | South | 2,865 | 783 | 2,082 | | | |
| | East | 2,944 | 825 | 2,119 | | | |
| Apr. 26 | Central | 6,400 | 1,637 | 4,763 | | | |
| | North | 3,884 | 817 | 3,067 | | | |
| | South | 2,881 | 477 | 2,404 | | | |
| | East | 2,999 | 571 | 2,428 | | | |
| May. 3 | Central | 6,549 | 803 | 5,746 | | | |
| | North | 3,853 | 326 | 3,527 | | | |
| | South | 2,896 | 157 | 2,739 | | | |
| | East | 2,991 | 265 | 2,726 | | | |
| May. 10 | Central | 6,520 | 14 | 6,506 | | | |
| | North | 3,979 | 6 | 3,973 | | | |
| | South | 2,896 | 0 | 2,896 | | | |
| | East | 3,017 | 3 | 3,014 | | | |
| May. 17 | Central | 6,476 | 0 | 6,476 | | | |
| | North | 3,807 | 0 | 3,807 | | | |
| | South | 2,891 | 0 | 2,891 | | | |
| | East | 2,998 | 0 | 2,998 | | | |

C. Description of the Court's Readiness Conference Program

As required by the Chief Justice's December 22, 2020, Memorandum regarding COVID-19 Pandemic Readiness Conferences, the court provides the following description of its readiness conference program.

In-custody readiness calendars began in May 2020, with two departments in the Central Courthouse and one department in each branch location. All defendants in custody with pending cases that were post-arraignment/pre-trial were scheduled for a readiness conference in an attempt to settle as many cases as possible. Once all of those readiness cases were completed, all cases with a negotiated plea were calendared for hearing in one of the triage departments to have the plea entered. All cases that did not reach agreement were set for future dates, often subsequent readiness hearings, and given the opportunity to continue negotiations. Many of the cases have had several readiness conferences to date. All cases that are arraigned are automatically set a for readiness conference date, which has always been the court's practice, even before the pandemic, and continues now.

Additionally, all out-of-custody post-arraignment/pre-trial cases were calendared for either a trial status conference or regular status conference (depending on the stage of the case) beginning in September 2020. At those hearings, cases that had negotiated a resolution during the early months of the pandemic were scheduled for a hearing to enter their plea, and those that had not reached resolution were scheduled for a readiness conference with a back-up trial date. Those readiness hearings are being held daily and are often set for additional readiness hearings as negotiations continue.

Currently, there are several readiness departments now operating at each location, with most hearing both in-custody and out-of-custody cases as well as other types of hearings. Due to limitations in the court's CMS, the court is unable to provide accurate numbers as to how many readiness conferences have been held; however, every post-arraignment/pre-trial case has had at least one (often more) readiness conference since the pandemic began.

D. The Court's Request for an Extension

In the court's May 29, 2020, request for an emergency order for additional time to conduct trials, the court submitted letters of support from the District Attorney's Office, the City Attorney's Office, the Office of the Public Defender, and the Sheriff's Department. Each of these justice partners supported the court's previous requests with the exception of the Public Defender, who, beginning with the court's October 2, 2020, request, notified the court that, on behalf of his clients, "he cannot support another 1382" extension. With the exception of the Public Defender, each of these justice partners has confirmed that they also fully support this additional request; however, the Public Defender again indicated he would not support another request.

Regardless, as set forth in the court's response to questions 1 and 2 below, the court has approximately 2,360 cases in which the last day for trial will occur between April 10 and May 23, inclusive. Even if the court were operating at its full pre-pandemic capacity of 70-90 jury trials per month (including criminal and civil), it would be impossible to hold 2,360 jury trials in this

time frame. Given the many logistical, safety, and legal issues described in the court's previous requests and above, particularly the limitation on jury lounge capacity due to social distancing requirements, along with the fact that new procedures have been developed and will need to be tested and adjusted to resolve the many issues that will certainly arise, the court cannot at this time resume jury trials at full capacity. Instead, the court is entering this uncharted territory gradually while continuously assessing and considering the health and safety of everyone involved and the potential constitutional issues that have been raised in the court's previous requests. Therefore, due the enormous backlog and the anticipated pace of proceeding with jury trials, the court requests an order allowing the court to extend the time period provided in Penal Code section 1382, within which a trial must be held, by not more than 30 days.

II. ANSWERS TO SPECIFIC QUESTIONS SET FORTH IN THE MAY 14, 2020, JUDICIAL COUNCIL MEMORANDUM

1. How many criminal cases have last-day deadlines under Penal Code section 1382 during the period of time for which the court is requesting a first extension under Government Code section 68115 (please provide daily breakdown)?

Because this court deals with paper files, it would be burdensome to determine the exact numbers of cases because the court would have to pull all the files and check for the relevant arraignment dates. Given the reduced staffing resulting from COVID-19, along with the social distancing requirements, the court simply does not have the resources to provide specific numbers at this time. However, the court can provide the following rough statistics for a general idea:

For felony cases with no prior extensions, to have a last-day deadline between April 10 and May 23, inclusive, the defendant would be arraigned on an Information between February 22² and March 24, inclusive. Of the cases with pending trial dates through May 31, there were approximately 75 felony bindovers after preliminary hearing during this timeframe (February 22 – March 24). Assuming these defendants were arraigned on an Information immediately or soon thereafter, the court estimates there were approximately 75 felony arraignments during this period (February 22 – March 24), meaning approximately 75 felony cases with no prior extensions that are still pending trial will have a last-day deadline for trial during the request period (April 10 – May 23). Most of the defendants in this category are still in custody.

For misdemeanor in-custody cases with no prior extensions, to have a last-day deadline between April 10 and May 23, inclusive, defendants would have arraignment dates between March 24 (see footnote 2) and April 23, inclusive. The court does not have complete statistics for this time period. However, of the cases with scheduled trial dates through May 31, there were approximately 70 arraignments in cases in the last 30 days for which statistics are available (February 28 – March 30) and in which the defendants remain in custody. In the 30 days before that (January 28 – February 27), there were approximately 30 misdemeanor arraignments in cases in which the defendants remain in custody. Using these numbers as a guide, the court estimates

² Although the “request period” is April 10 through May 23, the first last-day deadline for a case in this category in this court (i.e. no prior extensions) would be April 23.

that about 50 misdemeanor in-custody cases with no prior extensions that are still pending trial will have a statutory last-day deadline during the request period (April 10 – May 23).

For misdemeanor out-of-custody cases with no prior extensions, to have a statutory last-day deadline between April 10 and May 23, inclusive, defendants would have arraignment dates between March 9 (see footnote 2) and April 8, inclusive. The court has incomplete statistics for this time period, but of the cases with pending trial dates through May 31, there were approximately 55 misdemeanor arraignments between March 9 and March 30, inclusive, in cases in which the defendants are now out of custody. In the 30 days before that (February 6 – March 8), there were approximately 25 misdemeanor arraignments in cases in which the defendants are now out of custody. Based on these known numbers, the court estimates that there will be roughly 40 misdemeanor out-of-custody cases with no prior extensions that are still pending trial that will have a last-day deadline during the request period (April 10 – May 23).

In sum, the court estimates that, of the cases with pending trial dates through May 31, approximately 165 cases with no prior extensions will have their statutory trial deadline come due during the period of April 10 through May 23, inclusive. The court recognizes a number of these cases, being new, may settle, but the court cannot predict what percentage of cases that may be. Assuming a 50% settlement rate, that still leaves about 80 cases with original last-day deadlines falling within the request period.

2. How many criminal cases are coming up to the limit already extended for 90 days by the statewide orders (please provide a daily breakdown)? Is the court requesting a further extension of time on any of these cases?

The response to this question includes those cases that were extended 90 days by the statewide orders and those cases that have received the benefit of any of the previous ten court-specific 30-day extensions granted to this court pursuant to the Chief's Emergency Orders dated June 4, 2020, June 30, 2020, August 7, 2020, September 4, 2020, October 6, 2020, November 5, 2020, December 8, 2020, January 7, 2021, February 3, 2021, and March 9, 2021. Because these cases all have paper files, the court would have to manually pull all of the case files to determine the relevant arraignment date. In addition, with trial dates now having been set and reset multiple times in some cases since the pandemic began, as well as express time waivers entered by the defendants in some cases, it is difficult to tell which and how many of the prior extension orders the cases fall under. Given the reduced staffing resulting from COVID-19, along with the social distancing requirements, the court simply does not have the resources to provide specific numbers at this time. However, the court can provide the following rough statistics for a general idea:

Of the cases with pending trial dates through May 31, there are approximately 40 felony cases that, with all the previous extensions, now have statutory trial deadlines between April 10 and April 22 (approximately 10 of which remain in custody). There are also approximately 8 in-custody misdemeanor cases, and 95 out-of-custody misdemeanor cases, that with all the extensions have statutory trial deadlines between April 10 and April 22, inclusive.

In addition, of the cases with pending trial dates through May 31, there are approximately 400 felony cases (approximately 230 in custody), approximately 190 in-custody misdemeanor

cases, and approximately 1550 out-of-custody misdemeanor cases that, with all prior extensions, now have statutory trial deadlines between April 23 and May 23, inclusive.

In sum, the court estimates that, of the cases with pending trial dates through May 31, over 2,280³ previously extended cases will have their statutory trial deadline come due during the period of April 10 through May 23, inclusive.

Summary:

Based on the above, in both categories (questions 1 and 2), the court estimates that, of the cases with pending trial dates through May 31, there are over 2,360 cases in which the statutory last day for trial will occur between April 10 and May 23, inclusive. Pursuant to information received by the District Attorney's Office, many of the felony in-custody trials involve serious charges, meaning the stakes are high, and trials will be longer, further heightening the concerns of congregating large numbers of people and increasing the risk that the limited number of alternate jurors that could be allowed with the social distancing requirements will not be sufficient.

Except as noted above and in previous requests, the court's responses to questions 3-5 have generally not changed since its September 3, 2020, request, and those responses are incorporated herein by reference.

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³ As indicated in the court's October 2, 2020, request, the court heard trial status conferences in September and October 2020 for all out-of-custody cases that had previously been set for trial. Cases that did not settle were set for future trial dates with felonies generally being set 120 days out (beginning in January 2021) and misdemeanors being set 180 days out (beginning in March 2021). Accordingly, since the court's January 6 request, the increase in cases with pending trial dates is likely largely attributable to these re-set cases now being included in the applicable time frames.

TO: Hon. Tani G. Cantil-Sakauye, Chair of the Judicial Council
Judicial Council of California
c/o Legal Services Supervising Attorney Charles Perkins
415-865-4609
charles.perkins@jud.ca.gov
415-865-8767 (fax)

FROM: *Name* : Lorna A. Alksne
Title: Presiding Judge
Court: Superior Court of San Diego County
Telephone: 619-844-2100
Fax: 619-844-5550
E-mail Address: [REDACTED]

DATE: 5/4/2021

SUBJECT: Request for Judicial Emergency Order

I hereby request an order allowing the court to implement the following emergency procedures pursuant to the provisions of section 68115 of the Government Code¹:

- The court may extend the time period provided in section 1382 of the Penal Code within which a trial must be held by not more than 30 days. (Gov. Code, § 68115(a)(10).)
(Fill in number of days, not exceeding 30. Pursuant to Government Code section 68115(a)(10), “the trial of a defendant in custody whose time is so extended shall be given precedence over all other cases.”)
This request applies only to cases in which the statutory deadline otherwise would expire on _____ **or** from 5/10/2021, to 6/23/2021, inclusive*.
(Fill in date(s) above.)

***This request applies to cases in which the original or previously-extended statutory deadline otherwise would expire from May 10, 2021, to June 23, 2021, inclusive.**

Although the previous Emergency Order issued April 8, 2021, already provides relief for cases in which the trial deadline falls on May 10, 2021, through May 23, 2021, the court has determined that May 10, 2021, through May 23, 2021, also need to be included in the current request. The

¹ Government Code section 68115, as amended, effective January 1, 2019, provides that, upon the request of a presiding judge, the Chairperson of the Judicial Council may authorize relief as set forth in the statute, “[w]hen war, an act of terrorism, public unrest or calamity, epidemic, natural disaster, or other substantial risk to the health and welfare of court personnel or the public, or the danger thereof, the destruction of or danger to the building appointed for holding the court, a large influx of criminal cases resulting from a large number of arrests within a short period of time, or a condition that leads to a state of emergency being proclaimed by the President of the United States or by the Governor pursuant to Section 8625, threatens the orderly operation of a superior court location or locations within a county or renders presence in, or access to, an affected court facility or facilities unsafe”

April 29, 2020, statewide order granting up to a 90-day extension was effective for cases with a last day for trial of March 16 through June 15, 2020. With this statewide 90-day extension, as well as the eleven prior 30-day extensions authorized for this court, a case with a last day for trial of March 16-29, April 19-28, May 20-28, June 16-27, July 18-27, August 18-26, September 18-25, October 19-25, November 19-24, and December 19-24, 2020, and January 19-23, February 19-22, March 23-24, and April 23, 2021, would now have a last day for trial of May 10 through May 23, 2021. Accordingly, the court is including May 10 through May 23, 2021, in its request.

The circumstances necessitating an emergency order are described in the attached document.

The public defender, the district attorney, and other interested local entities have / have not (check one box) been notified of this request for emergency order.

The court has / has not (check one box) advised these entities to immediately notify the Judicial Council's Legal Services office of any opposition or questions regarding the request.

Please list the names and telephone numbers of the district attorney, the public defender, and other notified parties affected by the order:

District Attorney: Summer Stephan

Public Defender: Randy Mize

Other Parties Affected: City Attorney Mara Elliot; San Diego Sheriff Bill Gore

The court has / has not (check one box) been informed of any opposition to this request.

If the court has been informed of potential opposition to this request, please state below the party or parties who may oppose the request and any stated reasons for the opposition:

Regarding the court's October 2, 2020, request, the Public Defender, Randy Mize, informed the court that he "cannot support another 1382" extension on behalf of his clients, and he recently indicated he also does not support this current request.

Submitted by:  _____

Date: 5/4/2021

(Presiding Judge or Presiding Judge's delegate)

The San Diego Superior Court hereby requests an order allowing the court to extend the time period provided in Penal Code section 1382, within which a trial must be held, by not more than 30 days. This request applies to cases in which the original or previously extended statutory deadline otherwise would expire from May 10, 2021, to June 23, 2021, inclusive.

I. BACKGROUND INFORMATION AND BASIS FOR REQUEST

Since the court's last request for Penal Code section 1382 relief, which was submitted on April 5, 2021,¹ San Diego County has moved to a less restrictive tier within California's Blueprint for a Safer Economy, and the court has generally progressed with its plan as outlined in the April 5 request, including continuing its gradual resumption of criminal and civil jury trials in several locations across the county. However, as described below, the court still faces an enormous backlog of approximately 1,365 criminal cases in which the last day for trial will occur between May 10 and June 23. Even in pre-pandemic conditions, it would be impossible to hold jury trials for this number of cases in such a short period of time, and this challenge is even more pronounced given the pace of proceeding with jury trials due to the many logistical, safety, and legal issues described in the court's previous requests.

This memorandum will address relevant changes since the court's last request. In addition, the numerous federal, state, and local public health orders that have been issued in response to the COVID-19 pandemic are well known and have been detailed in prior Judicial Council orders and memoranda as well as this court's prior requests for relief from the Chief Justice. Accordingly, they will not be repeated here, except as necessary to provide relevant updates.

A. COVID-19 in San Diego County and Public Health Guidance

To date in San Diego County, there have been 276,692 cases, 15,257 hospitalizations, and 3,712 deaths. On April 6, San Diego County qualified to move from the red (substantial) tier 2 of the Blueprint for a Safer Economy into the less restrictive orange (moderate) tier 3. The tier assignments are based on adjusted case rate and test positivity metrics, which the California Department of Public Health ("CDPH") assesses weekly.

On March 4, the CDPH announced a vaccine equity metric, which shifts the adjusted case rate thresholds higher for certain tiers upon meeting statewide vaccination goals within Vaccine Equity Quartile communities (which include the lowest Healthy Places Index quartile). For example, when the second goal of 4 million doses administered in the Vaccine Equity Quartile was achieved on April 6, the adjusted case rate threshold increased from 3.9 to 5.9 for the orange tier and from less than 1.0 to less than 2.0 for the yellow tier, which helped San Diego County move more quickly to the orange tier.

The recent adjusted case rates and positivity percentages for San Diego County are as follows: April 6 – 5.8 and 2.3%; April 13 – 6.0 and 2.5%; April 20 – 6.1 and 2.4%; April 27 – 6.2 and 2.3%, and May 4 – 5.0 and 2.2%. Although San Diego County's adjusted case rates were

¹ All subsequent date references are to 2021 unless otherwise indicated.

above 6.0 for more than two consecutive weeks, which would have put the county back into the red tier, the CDPH indicated that a county will generally not be required to move to a more restrictive tier unless hospitalizations are increasing significantly among vulnerable individuals and both adjusted case rates and testing positivity show a concerning increase in transmission. If the CDPH determines there are objective signs of stability or improvement in the most recent 10 days of data, a county may remain in the less restrictive tier. San Diego County met the criteria to remain in the less restrictive orange tier despite its metrics technically falling into the more restrictive red tier for three weeks.

On April 6, Governor Newsom announced that California will fully open its economy on June 15 if vaccine supply is sufficient for those who wish to be inoculated and if hospitalization rates are stable and low. Pursuant to the April 6 announcement, the Blueprint for a Safer Economy will end, but health measures such as masking will remain across the state. All sectors will be permitted to “return to usual operations in compliance with Cal/OSHA requirements and with common-sense public health policies in place.” However, the court is seeking further guidance from public health officials regarding the anticipated scope of “common-sense public health policies” and the interaction between the Cal/OSHA requirements, which, among other things, require physical distancing and face coverings for employees, and the anticipated “return to usual operations.” Among several other questions, it is unclear at this time whether jury lounges, courtrooms, and other areas will be permitted to return to full capacity or whether social distancing limitations will remain.

On April 5, San Diego County modified its quarantine order for persons exposed to COVID-19 to incorporate changes in federal and state guidance regarding individuals who gained immunity. According to the new order, individuals are not required to quarantine if they gained immunity, either by recovering after testing positive within three months of a potential exposure or by getting fully vaccinated. However, Cal/OSHA’s Emergency Temporary Standards still require employers to quarantine employees with a close-contact exposure to a COVID-19-positive individual, regardless of immunity status. Unless and until Cal/OSHA revises its regulations, the court will continue to experience some of the personnel issues that arise due to the court’s contact tracing and quarantining protocols.

The San Diego County Health Officer’s most recent stay-at-home order, which became effective April 7, referenced and incorporated the restrictions imposed by the Blueprint for a Safer Economy. Also, the county order requires all essential businesses, including the court, to comply with applicable state guidance, such as requiring face coverings, conducting temperature and/or symptom screenings of employees, continuing cleaning and disinfecting protocols, and enforcing six-foot social distancing requirements.

B. Activity Since the Court’s Last Request

The court has continued to work with the Sheriff to take steps to reduce the inmate population to help combat the number of COVID-19 cases in the jails. For example, the court has implemented several general orders, including an extension signed on April 2, authorizing the Sheriff to accelerate the release of sentenced county jail inmates up to 60 days from when they

would otherwise be released, subject to certain conditions. The court plans on authorizing another extension when the current one expires on May 10.

Since its last request, the court has continued to install plexiglass barriers in courtrooms in all of its facilities to accommodate in-person proceedings. To date, the court has installed plexiglass barriers in 65 courtrooms to accommodate in-person hearings (not including juries) and 13 courtrooms to accommodate jury trials, with at least one jury-trial capable courtroom in each location that conducts jury trials, including one large courtroom for civil jury trials. In addition, the court has installed plexiglass barriers between the bench and clerk in 42 courtrooms to accommodate remote hearings. Given the uncertainty surrounding what restrictions may be in place starting June 15, the court is currently working on ordering and installing plexiglass barriers to accommodate in-person hearings in every courtroom in the county (not including jury boxes).

Also, as detailed in its most recent request for an extension regarding the time period to hold felony arraignments, the court has equipped 58 criminal courtrooms with video systems to accommodate remote in-custody proceedings. The court is diligently working with its justice partners to develop a plan to process all felony arraignments within 48 hours by June 15.

The court has continued to gradually resume jury trials with increasing success. Since April 5, the court has held eighteen jury trials at its various locations, including four civil trials with one additional civil trial settling just before trial began. However, the court has continued to see several cases settle after being set for trial or waive time due to various issues such as witness availability. As a result, the court has yet to reach its current capacity of four or five trials per week at the Central Courthouse/Hall of Justice and two per week at the North County Regional Center. The court is working with its justice partners to schedule more trials to allow for those that may settle, and the court will continue holding a weekly trial call calendar to determine which cases are ready for trial and going forward the following week and to attempt to increase the number of backup cases that can be ready for trial if others settle. While the court has not yet seen the fruits of these efforts, it is diligently working towards this goal. However, the significant decrease in cases in which the last day for trial will occur during the relevant period from the court's April 5 request (2,360 cases) to its current request (1,365 cases) is largely attributable to a combination of settlements and waivers of time to trial dates beyond the current request period.

Juror turnout has been much better than it was during the court's last attempt to resume jury trials in October and November 2020. The average yield has been approximately 14.6% (compared to 5% last fall), which is nearly the same as the pre-pandemic yield for newly summoned jurors. Since resuming jury trials on February 8, the court has had enough jurors for all of the trials that were ready to proceed. However, the number of jury trials that can be held simultaneously will continue to be limited by the size of the jury lounges, which will have decreased capacity to maintain social distancing, and the number of courtrooms that can provide adequate spacing or are equipped with protective barriers, at least until public health authorities issue further guidance regarding the restrictions that may be in place on June 15.

The chart below illustrates the juror turnout since April 5 and previews the number of jurors that postponed or requested to be excused for upcoming weeks:

| Week Beginning | Location | Summonses Issued | Postponed or Excused | Potential Jurors | Jurors Called | Jurors Reported | Trials Held |
|-----------------------|-----------------|-------------------------|-----------------------------|-------------------------|----------------------|------------------------|--------------------|
| Apr. 5 | Central | 6,369 | 2,996 | 3,373 | 1,390 | 174 | 2 |
| | North | 3,716 | 1,638 | 2,078 | 433 | 79 | 1 |
| | East | 2,949 | 1,152 | 1,797 | 466 | 66 | 1 |
| Apr. 12 | Central | 6,283 | 2,620 | 3,663 | 653 | 66 | 1 |
| | North | 3,668 | 1,435 | 2,233 | 480 | 79 | 1 |
| | South | 2,829 | 802 | 2,027 | 548 | 64 | 1 |
| Apr. 19 | Central | 6,389 | 2,836 | 3,553 | 1,883 | 280 | 3 (2 civil) |
| | North | 3,823 | 1,568 | 2,255 | 444 | 76 | 1 |
| | South | 2,865 | 984 | 1,881 | 1,800 | 200 | 1 |
| | East | 2,944 | 1,033 | 1,911 | 478 | 70 | 1 |
| Apr. 26 | Central | 6,400 | 2,795 | 3,605 | 560 | 85 | Settled |
| | North | 3,884 | 1,401 | 2,483 | 512 | 129 | 1 |
| May 3rd | Central | 6,549 | 3,165 | 3,384 | 1,098 | 160 | 2 (civil) |
| | North | 3,853 | 1,644 | 2,209 | 349 | 82 | 1 |
| | East | 2,991 | 1,157 | 1,834 | 442 | 82 | 1 |
| May 10th | Central | 6,520 | 2,664 | 3,856 | | | |
| | North | 3,979 | 1,417 | 2,562 | | | |
| | South | 2,896 | 883 | 2,013 | | | |
| | East | 3,017 | 978 | 2,039 | | | |
| May 17th | Central | 6,476 | 2,359 | 4,117 | | | |
| | North | 3,807 | 1,221 | 2,586 | | | |
| | South | 2,891 | 757 | 2,134 | | | |
| | East | 2,998 | 835 | 2,163 | | | |
| May 24th | Central | 6,475 | 1,819 | 4,656 | | | |
| | North | 3,896 | 926 | 2,970 | | | |
| | South | 3,885 | 1,572 | 2,313 | | | |
| | East | 3,029 | 664 | 2,365 | | | |
| Jun. 1 | Central | 6,485 | 867 | 5,618 | | | |
| | North | 3,901 | 410 | 3,491 | | | |
| | South | 2,923 | 223 | 2,700 | | | |
| | East | 2,978 | 279 | 2,699 | | | |
| Jun. 7 | Central | 6,568 | 8 | 6,560 | | | |
| | North | 3,790 | 5 | 3,785 | | | |
| | South | 2,960 | 0 | 2,960 | | | |
| | East | 3,078 | 0 | 3,078 | | | |
| Jun. 14 | Central | 7,489 | 0 | 7,489 | | | |
| | North | 5,392 | 0 | 5,392 | | | |
| | South | 5,127 | 0 | 5,127 | | | |
| | East | 4,797 | 0 | 4,797 | | | |

For reference, since resuming jury trials on February 8, the court has held a total of 37 trials, including 7 civil trials.

C. Description of the Court's Readiness Conference Program

As required by the Chief Justice's December 22, 2020, Memorandum regarding COVID-19 Pandemic Readiness Conferences, the court provides the following description of its readiness conference program.

In-custody readiness calendars began in May 2020, with two departments in the Central Courthouse and one department in each branch location. All defendants in custody with pending cases that were post-arraignment/pre-trial were scheduled for a readiness conference in an attempt to settle as many cases as possible. Once all of those readiness cases were completed, all cases with a negotiated plea were calendared for hearing in one of the triage departments to have the plea entered. All cases that did not reach agreement were set for future dates, often subsequent readiness hearings, and given the opportunity to continue negotiations. Many of the cases have had several readiness conferences to date. All cases that are arraigned are automatically set a for readiness conference date, which has always been the court's practice, even before the pandemic, and continues now.

Additionally, all out-of-custody post-arraignment/pre-trial cases were calendared for either a trial status conference or regular status conference (depending on the stage of the case) beginning in September 2020. At those hearings, cases that had negotiated a resolution during the early months of the pandemic were scheduled for a hearing to enter their plea, and those that had not reached resolution were scheduled for a readiness conference with a back-up trial date. Those readiness hearings are being held daily and are often set for additional readiness hearings as negotiations continue.

Currently, there are several readiness departments now operating at each location, with most hearing both in-custody and out-of-custody cases as well as other types of hearings. Due to limitations in the court's CMS, the court is unable to provide accurate numbers as to how many readiness conferences have been held; however, every post-arraignment/pre-trial case has had at least one (often more) readiness conference since the pandemic began.

D. The Court's Request for an Extension

In the court's May 29, 2020, request for an emergency order for additional time to conduct trials, the court submitted letters of support from the District Attorney's Office, the City Attorney's Office, the Office of the Public Defender, and the Sheriff's Department. Each of these justice partners supported the court's previous requests with the exception of the Public Defender, who, beginning with the court's October 2, 2020, request, notified the court that, on behalf of his clients, "he cannot support another 1382" extension. With the exception of the Public Defender, each of these justice partners has confirmed that they also fully support this additional request; however, the Public Defender again indicated he would not support another request.

Regardless, as set forth in the court's response to questions 1 and 2 below, the court has approximately 1,365 cases in which the last day for trial will occur between May 10 and June 23,

inclusive. Even if the court were operating at its full pre-pandemic capacity of 70-90 jury trials per month (including criminal and civil), it would be impossible to hold 1,365 jury trials in this time frame. Given the many logistical, safety, and legal issues described in the court's previous requests and above, particularly the limitation on jury lounge capacity due to social distancing requirements, the court cannot at this time resume jury trials at full capacity. Instead, the court is proceeding gradually while continuously assessing and considering the health and safety of everyone involved and the potential constitutional issues that have been raised in the court's previous requests. Therefore, due the enormous backlog and the anticipated pace of proceeding with jury trials, the court requests an order allowing the court to extend the time period provided in Penal Code section 1382, within which a trial must be held, by not more than 30 days.

II. ANSWERS TO SPECIFIC QUESTIONS SET FORTH IN THE MAY 14, 2020, JUDICIAL COUNCIL MEMORANDUM

1. How many criminal cases have last-day deadlines under Penal Code section 1382 during the period of time for which the court is requesting a first extension under Government Code section 68115 (please provide daily breakdown)?

Because this court deals with paper files, it would be burdensome to determine the exact numbers of cases because the court would have to pull all the files and check for the relevant arraignment dates and whether the defendant waived the statutory time for trial. Given the reduced staffing resulting from COVID-19, along with the social distancing requirements, the court simply does not have the resources to provide specific numbers at this time. However, the court can provide the following rough statistics for a general idea:

For felony cases with no prior extensions, to have a last-day deadline between May 10 and June 23, inclusive, the defendant would be arraigned on an Information between March 25² and April 24, inclusive. Of the cases with pending trial dates through June 30, there were approximately 65 felony bindovers after preliminary hearing during this timeframe (March 25 – April 24). Assuming these defendants were arraigned on an Information immediately or soon thereafter, the court approximates there were approximately 65 felony arraignments during this period (March 25 – April 24), meaning approximately 65 felony cases with no prior extensions that are still pending trial will have a statutory last-day deadline for trial during the request period (May 10 – June 23). Approximately fifty of these defendants remain in custody.

For misdemeanor in-custody cases with no prior extensions, to have a last-day deadline between May 10 and June 23, inclusive, defendants would have arraignment dates between April 24 (see footnote 2) and May 24, inclusive. The court does not have complete statistics for this time period. However, of the cases with scheduled trial dates through June 30, there were approximately 75 arraignments in cases in the last 30 days for which statistics are available (March 30 – April 29) and in which the defendants remain in custody. In the 30 days before that (February 27 – March 29), there were approximately 20 misdemeanor arraignments in cases in which the

² Although the “request period” is May 10 through June 23, the first last-day deadline for a case in this category in this court (i.e. no prior extensions) would be May 24.

defendants remain in custody. Using these numbers as a guide, the court estimates that about 50 misdemeanor in-custody cases with trial dates through June 30 and with no prior extensions will have a statutory last-day deadline during the request period (May 10 – June 23).

For misdemeanor out-of-custody cases with no prior extensions, to have a statutory last-day deadline between May 10 and June 23, inclusive, defendants would have arraignment dates between April 9 (see footnote 2) and May 9, inclusive. The court has incomplete statistics for this time period, but of the cases with pending trial dates through June 30, there were approximately 80 misdemeanor arraignments between April 9 and April 29, inclusive, in cases in which the defendants are now out of custody. In the 30 days before that (March 9 – April 8), there were approximately 65 misdemeanor arraignments in cases in which the defendants are now out of custody. Based on these known numbers, the court estimates that there will be roughly 70 misdemeanor out-of-custody cases with trial dates through June 30 and with no prior extensions that will have a statutory last-day deadline during the request period (May 10 – June 23).

In sum, the court estimates that, of the cases with pending trial dates through June 30, approximately 185 cases with no prior extensions will have their statutory trial deadline come due during the period of May 10 through June 23, inclusive. The court recognizes a number of these cases, being new, may settle, but the court cannot predict what percentage of cases that may be. Assuming a 50% settlement rate, that still leaves about 90 cases with original last-day deadlines falling within the request period.

2. How many criminal cases are coming up to the limit already extended for 90 days by the statewide orders (please provide a daily breakdown)? Is the court requesting a further extension of time on any of these cases?

The response to this question includes those cases which were extended 90 days by the statewide orders, and those cases that have received the benefit of any of the previous eleven court-specific 30-day extensions granted to this court pursuant to the Chief's Emergency Orders dated June 4, 2020, June 30, 2020, August 7, 2020, September 4, 2020, October 6, 2020, November 5, 2020, December 8, 2020, January 7, 2021, February 3, 2021, March 9, 2021, and April 8, 2021. Because these cases all have paper files, the court would have to manually pull all of the case files to determine the relevant arraignment date. In addition, with trial dates now having been set and reset multiple times in some cases since the pandemic began, as well as express time waivers entered by the defendants in some cases, it is difficult to tell which and how many of the prior extension orders the cases fall under. Given the reduced staffing resulting from COVID-19, along with the social distancing requirements, the court simply does not have the resources to provide specific numbers at this time. However, the court can provide the following rough statistics for a general idea:

Of the cases with pending trial dates through June 30, there are approximately 25 felony cases (approximately 7 in custody) that, with all the previous extensions, now have statutory trial deadlines between May 10 and May 23. There are also approximately 10 in-custody misdemeanor cases and approximately 110 out-of-custody misdemeanor cases, that, with all the extensions, have statutory trial deadlines between May 10 and May 23, inclusive.

In addition, of the cases with pending trial dates through June 30, there are approximately 270 felony cases (approximately 140 in custody), approximately 110 in-custody misdemeanor cases, and approximately 750 out-of-custody misdemeanor cases that, with all prior extensions, now have statutory trial deadlines between May 24 and June 23, inclusive.

In sum, the court estimates that, of the cases with pending trial dates through June 30, approximately 1,275 previously extended cases will have their statutory trial deadline come due during the period of May 10 through June 23, inclusive.

Summary:

Based on the above, in both categories (questions 1 and 2), the court estimates that, of the cases with pending trial dates through June 30, there are approximately 1,365 cases in which the statutory last day for trial will occur between May 10 and June 23, inclusive. Pursuant to information received by the District Attorney's Office, many of the felony in-custody trials involve serious charges, meaning the stakes are high, and trials will be longer, further heightening the concerns of congregating large numbers of people and increasing the risk that the limited number of alternate jurors that could be allowed with the social distancing requirements will not be sufficient.

Except as noted above and in previous requests, the court's responses to questions 3-5 have generally not changed since its September 3, 2020, request, and those responses are incorporated herein by reference.

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TO: Hon. Tani G. Cantil-Sakauye, Chair of the Judicial Council
Judicial Council of California
c/o Legal Services Supervising Attorney Charles Perkins
415-865-4609
charles.perkins@jud.ca.gov
415-865-8767 (fax)

FROM: *Name* : Lorna A. Alksne
Title: Presiding Judge
Court: Superior Court of San Diego County
Telephone: 619-844-2100
Fax: 619-844-5550
E-mail Address: [REDACTED]

DATE: 6/1/2021

SUBJECT: Request for Judicial Emergency Order

I hereby request an order allowing the court to implement the following emergency procedures pursuant to the provisions of section 68115 of the Government Code¹:

The court may extend the time period provided in section 1382 of the Penal Code within which a trial must be held by not more than 30 days. (Gov. Code, § 68115(a)(10).)

(Fill in number of days, not exceeding 30. Pursuant to Government Code section 68115(a)(10), "the trial of a defendant in custody whose time is so extended shall be given precedence over all other cases.")

This request applies only to cases in which the statutory deadline otherwise would expire on _____ *or* from 6/9/2021, to 7/23/2021, inclusive*.

(Fill in date(s) above.)

***This request applies to cases in which the original or previously-extended statutory deadline otherwise would expire from June 9, 2021, to July 23, 2021, inclusive.**

Although the previous Emergency Order issued May 6, 2021, already provides relief for cases in which the trial deadline falls on June 9, 2021, through June 23, 2021, the court has determined that June 9, 2021, through June 23, 2021, also need to be included in the current request. The

¹ Government Code section 68115, as amended, effective January 1, 2019, provides that, upon the request of a presiding judge, the Chairperson of the Judicial Council may authorize relief as set forth in the statute, "[w]hen war, an act of terrorism, public unrest or calamity, epidemic, natural disaster, or other substantial risk to the health and welfare of court personnel or the public, or the danger thereof, the destruction of or danger to the building appointed for holding the court, a large influx of criminal cases resulting from a large number of arrests within a short period of time, or a condition that leads to a state of emergency being proclaimed by the President of the United States or by the Governor pursuant to Section 8625, threatens the orderly operation of a superior court location or locations within a county or renders presence in, or access to, an affected court facility or facilities unsafe"

The San Diego Superior Court hereby requests an order allowing the court to extend the time period provided in Penal Code section 1382, within which a trial must be held, by not more than 30 days. This request applies to cases in which the original or previously extended statutory deadline otherwise would expire from June 9, 2021, to July 23, 2021, inclusive.

I. BACKGROUND INFORMATION AND BASIS FOR REQUEST

Since the court's last request for Penal Code section 1382 relief, which was submitted on May 4, 2021,¹ San Diego County has remained in the orange tier within California's Blueprint for a Safer Economy, and the court has generally continued its gradual resumption of criminal and civil jury trials in several locations across the county. However, as described below, the court still faces an enormous backlog of approximately 1,430 criminal cases in which the last day for trial will occur between June 9 and July 23. Even in pre-pandemic conditions, it would be impossible to hold jury trials for this number of cases in such a short period of time, and this challenge is even more pronounced given the pace of proceeding with jury trials due to the many logistical, safety, and legal issues described in the court's previous requests.

This memorandum will address relevant changes since the court's last request. In addition, the numerous federal, state, and local public health orders that have been issued in response to the COVID-19 pandemic are well known and have been detailed in prior Judicial Council orders and memoranda as well as this court's prior requests for relief from the Chief Justice. Accordingly, they will not be repeated here, except as necessary to provide relevant updates.

A. COVID-19 in San Diego County and Public Health Guidance

To date in San Diego County, there have been 280,253 cases, 15,409 hospitalizations, and 3,756 deaths. Since the court's May 4 request, San Diego County has remained in the orange (moderate) tier 3 of the Blueprint for a Safer Economy. The tier assignments are based on adjusted case rate and test positivity metrics, which the California Department of Public Health ("CDPH") assesses weekly. The recent adjusted case rates and positivity percentages for San Diego County are as follows: May 11 – 3.7 and 1.7%; May 18 – 3.4 and 1.6%; May 25 – 2.4 and 1.5%; and June 1 – 1.7 and 1.3%. The June 1 metrics meet the criteria for the less restrictive yellow tier, and San Diego County could qualify to move to the yellow tier if the metrics continue to meet the criteria for a second consecutive week.

On May 5, Cal/OSHA revised its guidance regarding employees exposed to COVID-19 in the workplace to more closely align with federal, state, and local public health authorities. Under the new guidance, employees are not required to quarantine after an exposure if they are fully vaccinated and asymptomatic. The court expects this will alleviate some of the personnel issues that arise due to the court's contact tracing and quarantining protocols.

The San Diego County Health Officer's most recent order, which became effective May 6, referenced and incorporated the restrictions imposed by the Blueprint for a Safer Economy. Also,

¹ All subsequent date references are to 2021 unless otherwise indicated.

the county order requires all essential businesses, including the court, to comply with applicable state guidance, such as requiring face coverings, conducting temperature and/or symptom screenings of employees, continuing cleaning and disinfecting protocols, and enforcing six-foot social distancing requirements.

On May 21, the CDPH issued guidance indicating that, effective June 15, the state will move beyond the Blueprint for a Safer Economy and all sectors will be permitted to return to usual operations, subject to certain health recommendations. Applicable to the court, there will likely be no capacity restrictions, no physical-distancing requirements for attendees, customers, and guests, and face-covering requirements will be subject to the then-current CDPH guidance, which is expected to be revised on June 15 to allow fully vaccinated individuals to go without a mask in most indoor settings.

However, even after June 15, employers, including the court, will still be subject to the Cal/OSHA COVID-19 Prevention Emergency Temporary Standards, which, among other things, require physical distancing between employees and all other persons and require employees to wear face coverings indoors, subject to certain limited exceptions. The Cal/OSHA Standards Board is currently in the process of considering revisions to these regulations to be effective June 15; however, even the draft proposed revisions continue to require physical distancing through July 31 (unless employers determine employees' vaccination status and provide respirators for voluntary use to those not fully vaccinated) and require employees to wear face coverings indoors (subject to certain exceptions, including when all persons in a room are fully vaccinated). The Standards Board is scheduled to vote on the proposed revisions on June 3, but, even if the proposed revisions are adopted, the court anticipates the Cal/OSHA regulations will likely continue to prevent the court from resuming full pre-pandemic operations.

B. Activity Since the Court's Last Request

The court has continued to work with the Sheriff to take steps to reduce the inmate population to help combat the number of COVID-19 cases in the jails. For example, the court has implemented several general orders, including an extension signed on May 4, authorizing the Sheriff to accelerate the release of sentenced county jail inmates up to 60 days from when they would otherwise be released, subject to certain conditions.

Since its last request, the court has continued to install plexiglass barriers in courtrooms in all of its facilities to accommodate in-person proceedings. To date, the court has installed plexiglass barriers in 84 courtrooms to accommodate in-person hearings, and 22 of those 84 courtrooms are jury-trial capable (13 have plexiglass in the jury box and 9 are able to utilize physical distancing). In addition, the court has installed plexiglass barriers between the bench and clerk in 40 other courtrooms to accommodate remote hearings. Also, as detailed in its most recent request for an extension regarding the time period to hold felony arraignments, the court has equipped 58 criminal courtrooms with video systems to accommodate remote in-custody proceedings, and, in collaboration with its justice partners, the court expects to be in a position to process all felony arraignments within 48 hours by June 15.

The court has continued to gradually resume jury trials with increasing success regarding juror turnout but decreasing success regarding cases being ready to proceed to trial. Since the week of May 3, the court held twelve jury trials at its various locations, including two civil trials. In addition, one civil jury trial that began the week of May 3 resulted in a mistrial due to a juror reporting a positive test result after the first day of jury deliberations, which, after contact tracing and quarantining, only left nine jurors available. For reference, since resuming jury trials on February 8, the court has held a total of 45 trials, including 7 civil trials.

Juror turnout has continued to be better than it was during the court's last attempt to resume jury trials in October and November 2020. The average yield has been approximately 14.6% (compared to 5% last fall), which is nearly the same as the pre-pandemic yield for newly summoned jurors. Since resuming jury trials on February 8, the court has had enough jurors for all of the trials that were ready to proceed.

Despite the encouraging juror turnout, the court has continued to see an increasing number of cases settle after being set for trial or waive time due to various issues such as witness availability. As a result, the court has yet to reach its current capacity of four or five trials per week at the Central Courthouse/Hall of Justice and two per week at the North County Regional Center. The court is working with its justice partners to schedule more trials to allow for those that may settle, and the court will continue holding a weekly trial call calendar to determine which cases are ready for trial and going forward the following week and to attempt to increase the number of backup cases that can be ready for trial if others settle. While the court has not yet seen the fruits of these efforts, it is diligently working towards this goal.

Given the differences in the expected guidance from the CDPH and Cal/OSHA, it remains unclear whether and to what extent jury lounges and courtrooms will continue to have decreased capacity after June 15, but the court anticipates the number of jury trials that can be held simultaneously will likely continue to be at least somewhat limited. However, in preparation for the possibility that capacity limitations may be relaxed, the court has increased the number of jurors summoned to the Central Courthouse beginning the week of July 6, with jurors being summoned to report daily, Monday through Thursday, rather than weekly.

The chart below illustrates the juror turnout since the court's May 4 request and previews the number of jurors that have postponed or requested to be excused for upcoming weeks:

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| Week Beginning | Location | Summonses Issued | Postponed or Excused | Potential Jurors | Jurors Called | Jurors Reported | Trials Held |
|-----------------------|-----------------|-------------------------|-----------------------------|-------------------------|----------------------|------------------------|--------------------|
| May 3rd | Central | 6,549 | 3,165 | 3,384 | 1,699 | 255 | 2 (1 civil) |
| | North | 3,853 | 1,644 | 2,209 | 349 | 82 | 1 |
| | East | 2,991 | 1,157 | 1,834 | 442 | 82 | 1 |
| May 10th | Central | 6,520 | 3,057 | 3,463 | 1,125 | 176 | 2 (1 civil) |
| | South | 2,896 | 985 | 1,911 | 663 | 76 | 1 |
| | East | 3,017 | 1,128 | 1,889 | 426 | 61 | 1 |
| May 17th | Central | 6,476 | 2,741 | 3,735 | 597 | 106 | 1 |
| May 24th | Central | 6,475 | 2,597 | 3,878 | 1,223 | 182 | 2 |
| Jun. 1 | Central | 6,485 | 3,144 | 3,341 | 543 | 107 | 1 |
| | North | 3,901 | 1,669 | 2,232 | | | |
| | South | 2,923 | 997 | 1,926 | | | |
| | East | 2,978 | 1,151 | 1,827 | | | |
| Jun. 7 | Central | 6,568 | 2,698 | 3,870 | | | |
| | North | 3,790 | 1,382 | 2,408 | | | |
| | South | 2,960 | 895 | 2,065 | | | |
| | East | 3,078 | 1,005 | 2,073 | | | |
| Jun. 14 | Central | 7,489 | 2,698 | 4,791 | | | |
| | North | 5,392 | 1,723 | 3,669 | | | |
| | South | 5,127 | 1,398 | 3,729 | | | |
| | East | 4,797 | 1,400 | 3,397 | | | |
| Jun. 21 | Central | 7,592 | 2,205 | 5,387 | | | |
| | North | 5,289 | 1,411 | 3,878 | | | |
| | South | 5,124 | 1,013 | 4,111 | | | |
| | East | 4,838 | 1,144 | 3,694 | | | |
| Jun. 28 | Central | 7,556 | 8 | 7,548 | | | |
| | North | 5,256 | 5 | 5,251 | | | |
| | South | 5,150 | 1 | 5,149 | | | |
| | East | 4,785 | 4 | 4,781 | | | |
| Jul. 6 | Central | 6,700 | 0 | 6,700 | | | |
| | North | 5,300 | 0 | 5,300 | | | |
| | South | 5,184 | 0 | 5,184 | | | |
| | East | 4,843 | 0 | 4,843 | | | |
| Jul. 12 | Central | 9,159 | 0 | 9,159 | | | |
| | North | 5,317 | 0 | 5,317 | | | |
| | South | 5,155 | 0 | 5,155 | | | |
| | East | 4,769 | 0 | 4,769 | | | |

C. Description of the Court's Readiness Conference Program

As required by the Chief Justice's December 22, 2020, Memorandum regarding COVID-19 Pandemic Readiness Conferences, the court provides the following description of its readiness conference program.

In-custody readiness calendars began in May 2020, with two departments in the Central Courthouse and one department in each branch location. All defendants in custody with pending cases that were post-arraignment/pre-trial were scheduled for a readiness conference in an attempt to settle as many cases as possible. Once all of those readiness cases were completed, all cases with a negotiated plea were calendared for hearing in one of the triage departments to have the plea entered. All cases that did not reach agreement were set for future dates, often subsequent readiness hearings, and given the opportunity to continue negotiations. Many of the cases have had several readiness conferences to date. All cases that are arraigned are automatically set a for readiness conference date, which has always been the court's practice, even before the pandemic, and continues now.

Additionally, all out-of-custody post-arraignment/pre-trial cases were calendared for either a trial status conference or regular status conference (depending on the stage of the case) beginning in September 2020. At those hearings, cases that had negotiated a resolution during the early months of the pandemic were scheduled for a hearing to enter their plea, and those that had not reached resolution were scheduled for a readiness conference with a back-up trial date. Those readiness hearings are being held daily and are often set for additional readiness hearings as negotiations continue.

Currently, there are several readiness departments now operating at each location, with most hearing both in-custody and out-of-custody cases as well as other types of hearings. Due to limitations in the court's CMS, the court is unable to provide accurate numbers as to how many readiness conferences have been held; however, every post-arraignment/pre-trial case has had at least one (often more) readiness conference since the pandemic began.

D. The Court's Request for an Extension

In the court's May 29, 2020, request for an emergency order for additional time to conduct trials, the court submitted letters of support from the District Attorney's Office, the City Attorney's Office, the Office of the Public Defender, and the Sheriff's Department. Each of these justice partners supported the court's previous requests with the exception of the Public Defender, who, beginning with the court's October 2, 2020, request, notified the court that, on behalf of his clients, "he cannot support another 1382" extension. With the exception of the Public Defender, each of these justice partners has confirmed that they also fully support this additional request; however, the Public Defender again indicated he would not support another request.

Regardless, as set forth in the court's response to questions 1 and 2 below, the court has approximately 1,430 cases in which the last day for trial will occur between June 9 and July 23, inclusive. Even if the court were operating at its full pre-pandemic capacity of 70-90 jury trials per month (including criminal and civil), it would be impossible to hold 1,430 jury trials in this

time frame. Given the many logistical, safety, and legal issues described in the court's previous requests and above, particularly the limitation on jury lounge capacity due to social distancing requirements, the court cannot at this time resume jury trials at full capacity. Instead, the court is proceeding gradually while continuously assessing and considering the health and safety of everyone involved and the potential constitutional issues that have been raised in the court's previous requests. Therefore, due the enormous backlog and the anticipated pace of proceeding with jury trials, the court requests an order allowing the court to extend the time period provided in Penal Code section 1382, within which a trial must be held, by not more than 30 days.

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Because this court deals with paper files, it would be burdensome to determine the exact numbers of cases because the court would have to pull all the files and check for the relevant arraignment dates and whether the defendant waived the statutory time for trial. Given the reduced staffing resulting from COVID-19, along with the social distancing requirements, the court simply does not have the resources to provide specific numbers at this time. However, the court can provide the following rough statistics for a general idea:

For felony cases with no prior extensions, to have a last-day deadline between June 9 and July 23, inclusive, the defendant would be arraigned on an Information between April 25² and May 24, inclusive. Of the cases with pending trial dates through July 31, there were approximately 65 felony bindovers after preliminary hearing during this timeframe (April 25 – May 24). Assuming these defendants were arraigned on an Information immediately or soon thereafter, the court approximates there were approximately 65 felony arraignments during this period (April 25 – May 24), meaning approximately 65 felony cases with no prior extensions that are still pending trial will have a statutory last-day deadline for trial during the request period (June 9 – July 23). Most of these defendants remain in custody.

For misdemeanor in-custody cases with no prior extensions, to have a last-day deadline between June 9 and July 23, inclusive, defendants would have arraignment dates between May 25 (see footnote 2) and June 23, inclusive. The court does not have complete statistics for this time period. However, of the cases with scheduled trial dates through July 31, there were approximately 90 arraignments in cases in the last 30 days for which statistics are available (April 26 – May 26) and in which the defendants remain in custody. In the 30 days before that (March 26 – April 25), there were approximately 60 misdemeanor arraignments in cases in which the defendants remain in custody. Using these numbers as a guide, the court estimates that about 60 misdemeanor in-

² Although the "request period" is June 9 through July 24, the first last-day deadline for a case in this category in this court (i.e. no prior extensions) would be June 24.

custody cases with trial dates through July 31 and with no prior extensions will have a statutory last-day deadline during the request period (June 9 – July 23).

For misdemeanor out-of-custody cases with no prior extensions, to have a statutory last-day deadline between June 9 and July 23, inclusive, defendants would have arraignment dates between May 10 (see footnote 2) and June 8, inclusive. The court has incomplete statistics for this time period, but of the cases with pending trial dates through July 31, there were approximately 45 misdemeanor arraignments between May 10 and May 26, inclusive, in cases in which the defendants are now out of custody. In the 30 days before that (April 9 – May 9), there were approximately 55 misdemeanor arraignments in cases in which the defendants are now out of custody. Based on these known numbers, the court estimates that there will be roughly 70 misdemeanor out-of-custody cases with trial dates through July 31 and with no prior extensions that will have a statutory last-day deadline during the request period (June 9 – July 23).

In sum, the court estimates that, of the cases with pending trial dates through July 31, approximately 195 cases with no prior extensions will have their statutory trial deadline come due during the period of June 9 through July 23, inclusive. The court recognizes a number of these cases, being new, may settle, but the court cannot predict what percentage of cases that may be. Assuming a 50% settlement rate, that still leaves over 95 cases with original last-day deadlines falling within the request period.

2. How many criminal cases are coming up to the limit already extended for 90 days by the statewide orders (please provide a daily breakdown)? Is the court requesting a further extension of time on any of these cases?

The response to this question includes those cases which were extended 90 days by the statewide orders, and those cases that have received the benefit of any of the previous twelve court-specific 30-day extensions granted to this court pursuant to the Chief's Emergency Orders dated June 4, 2020, June 30, 2020, August 7, 2020, September 4, 2020, October 6, 2020, November 5, 2020, December 8, 2020, January 7, 2021, February 3, 2021, March 9, 2021, April 8, 2021, and May 6, 2021. Because these cases all have paper files, the court would have to manually pull all of the case files to determine the relevant arraignment date. In addition, with trial dates now having been set and reset multiple times in some cases since the pandemic began, as well as express time waivers entered by the defendants in some cases, it is difficult to tell which and how many of the prior extension orders the cases fall under. Given the reduced staffing resulting from COVID-19, along with the social distancing requirements, the court simply does not have the resources to provide specific numbers at this time. However, the court can provide the following rough statistics for a general idea:

Of the cases with pending trial dates through July 31, there are approximately 30 felony cases that, with all the previous extensions, now have statutory trial deadlines between June 9 and June 23 (approximately 10 remain in custody). There are also approximately 10 in-custody misdemeanor cases, and approximately 110 out-of-custody misdemeanor cases that, with all the extensions, have statutory trial deadlines between June 9 and June 23, inclusive.

In addition, of the cases with pending trial dates through July 31, there are approximately 280 felony cases (approximately 155 in custody), approximately 155 in-custody misdemeanor cases, and approximately 750 out-of-custody misdemeanor cases that, with all prior extensions, now have statutory trial deadlines between June 24 and July 23, inclusive.

In sum, the court estimates that, of the cases with pending trial dates through July 31, approximately 1,335 previously extended cases will have their statutory trial deadline come due during the period of June 9 through July 23, inclusive.

Summary:

Based on the above, in both categories (questions 1 and 2), the court estimates that, of the cases with pending trial dates through July 31, there are approximately 1,430 cases in which the statutory last day for trial will occur between June 9 and July 23, inclusive.

Except as noted above and in previous requests, the court's responses to questions 3-5 have generally not changed since its September 3, 2020, request, and those responses are incorporated herein by reference.

###

TO: Hon. Tani G. Cantil-Sakauye, Chair of the Judicial Council
Judicial Council of California
c/o Legal Services Supervising Attorney Charles Perkins
415-865-4609
charles.perkins@jud.ca.gov
415-865-8767 (fax)

FROM: *Name* : Lorna A. Alksne
Title: Presiding Judge
Court: Superior Court of San Diego County
Telephone: 619-844-2100
Fax: 619-844-5550
E-mail Address: [REDACTED]

DATE: 7/7/2021

SUBJECT: Request for Judicial Emergency Order

I hereby request an order allowing the court to implement the following emergency procedures pursuant to the provisions of section 68115 of the Government Code¹:

- The court may extend the time period provided in section 1382 of the Penal Code within which a trial must be held by not more than 30 days. (Gov. Code, § 68115(a)(10).)
(Fill in number of days, not exceeding 30. Pursuant to Government Code section 68115(a)(10), "the trial of a defendant in custody whose time is so extended shall be given precedence over all other cases.")

This request applies only to cases in which the statutory deadline otherwise would expire on _____ **or** from 7/9/2021, to 8/23/2021, inclusive*.

(Fill in date(s) above.)

***This request applies to cases in which the original or previously-extended statutory deadline otherwise would expire from July 9, 2021, to August 23, 2021, inclusive.**

Although the previous Emergency Order issued June 3, 2021, already provides relief for cases in which the trial deadline falls on July 9, 2021, through July 23, 2021, the court has determined that July 9, 2021, through July 23, 2021, also need to be included in the current request. The

¹ Government Code section 68115, as amended, effective January 1, 2019, provides that, upon the request of a presiding judge, the Chairperson of the Judicial Council may authorize relief as set forth in the statute, "[w]hen war, an act of terrorism, public unrest or calamity, epidemic, natural disaster, or other substantial risk to the health and welfare of court personnel or the public, or the danger thereof, the destruction of or danger to the building appointed for holding the court, a large influx of criminal cases resulting from a large number of arrests within a short period of time, or a condition that leads to a state of emergency being proclaimed by the President of the United States or by the Governor pursuant to Section 8625, threatens the orderly operation of a superior court location or locations within a county or renders presence in, or access to, an affected court facility or facilities unsafe"

April 29, 2020, statewide order granting up to a 90-day extension was effective for cases with a last day for trial of March 16 through June 15, 2020. With this statewide 90-day extension, as well as the thirteen prior 30-day extensions authorized for this court, a case with a last day for trial of March 16-30, April 19-29, May 20-29, June 16-28, July 18-28, August 18-27, September 18-26, October 19-26, November 19-25, and December 19-25, 2020, and January 19-24, February 19-23, March 23-25, April 23-25, and May 24, 2021, would now have a last day for trial of July 9 through July 23, 2021. Accordingly, the court is including July 9 through July 23, 2021, in its request.

The circumstances necessitating an emergency order are described in the attached document.

The public defender, the district attorney, and other interested local entities have / have not (check one box) been notified of this request for emergency order.

The court has / has not (check one box) advised these entities to immediately notify the Judicial Council's Legal Services office of any opposition or questions regarding the request.

Please list the names and telephone numbers of the district attorney, the public defender, and other notified parties affected by the order:

District Attorney: Summer Stephan

Public Defender: Randy Mize

Other Parties Affected: City Attorney Mara Elliot; San Diego Sheriff Bill Gore

The court has / has not (check one box) been informed of any opposition to this request.

If the court has been informed of potential opposition to this request, please state below the party or parties who may oppose the request and any stated reasons for the opposition:

Regarding the court's October 2, 2020, request, the Public Defender, Randy Mize, informed the court that he "cannot support another 1382" extension on behalf of his clients, and he recently indicated he also does not support this current request.

Submitted by:  _____
(Presiding Judge or Presiding Judge's delegate)

Date: 7/7/2021

The San Diego Superior Court hereby requests an order allowing the court to extend the time period provided in Penal Code section 1382, within which a trial must be held, by not more than 30 days. This request applies to cases in which the original or previously extended statutory deadline otherwise would expire from July 9, 2021, to August 23, 2021, inclusive.

I. BACKGROUND INFORMATION AND BASIS FOR REQUEST

Since the court's last request for Penal Code section 1382 relief, which was submitted on June 1, 2021,¹ San Diego County moved to a less restrictive tier within California's Blueprint for a Safer Economy and then, along with the rest of the state, saw many of the COVID-19 restrictions eased or lifted on June 15 for non-employees and June 17 for employees. The court has generally continued its gradual resumption of criminal and civil jury trials in several locations across the county; however, as described below, the court still faces an enormous backlog of approximately 1,095 criminal cases in which the last day for trial will occur between July 9 and August 23. Even in pre-pandemic conditions, it would be impossible to hold jury trials for this number of cases in such a short period of time.

This memorandum will address relevant changes since the court's last request. In addition, the numerous federal, state, and local public health orders that have been issued in response to the COVID-19 pandemic are well known and have been detailed in prior Judicial Council orders and memoranda as well as this court's prior requests for relief from the Chief Justice. Accordingly, they will not be repeated here, except as necessary to provide relevant updates.

A. COVID-19 in San Diego County and Public Health Guidance

To date in San Diego County, there have been 282,582 cases, 15,536 hospitalizations, and 3,780 deaths. On June 8, San Diego County qualified to move from the orange (moderate) tier 3 of the Blueprint for a Safer Economy into the less restrictive yellow (minimal) tier 4.

On June 15, the state ended the Blueprint for a Safer Economy framework, which generally allowed all sectors to return to usual operations subject to general public health recommendations. Specifically, restrictions regarding physical distancing and capacity limits ended, and face coverings became optional for fully vaccinated individuals and required for unvaccinated individuals in indoor public settings. However, employers were still subject to the Cal/OSHA Emergency Temporary Standards ("ETS"), which required measures such as physical distancing and face coverings for all employees.

The San Diego County Health Officer's most recent order, which became effective June 15, referenced and incorporated the state's June 15 general public health recommendations, including the revised face-covering guidelines, and essentially withdrew all county-specific restrictions except for certain isolation and quarantine orders for individuals diagnosed with or exposed to COVID-19.

¹ All subsequent date references are to 2021 unless otherwise indicated.

On June 17, the Cal/OSHA Standards Board voted to readopt the ETS, including revisions to more closely align with the state's reopening guidelines. Specifically, the revised ETS, which became effective immediately, removed the physical distancing requirements for employees and made face coverings optional for fully vaccinated individuals and required for those who are not fully vaccinated. In addition, employees are no longer required to quarantine after a workplace exposure if they are fully vaccinated and asymptomatic.

B. Activity Since the Court's Last Request

The court has continued to work with the Sheriff to take steps to reduce the inmate population to help combat the number of COVID-19 cases in the jails. For example, the court has implemented several general orders, including an extension signed on June 3, authorizing the Sheriff to accelerate the release of sentenced county jail inmates up to 60 days from when they would otherwise be released, subject to certain conditions. The court plans on authorizing another extension when the current one expires on July 9.

Effective June 16, the court implemented modifications to its services and operations, including generally restoring in-person access to pre-pandemic levels while continuing to maintain many of the online and remote options that were introduced during the pandemic. After the revisions to the Cal/OSHA ETS became effective on June 17, the following health and safety procedures and mitigation efforts are currently in place in all court facilities for court users and employees:

- Face coverings are optional for individuals who are fully vaccinated and required for those who are not fully vaccinated.
- N95 respirators will be available to employees for voluntary use upon request.
- Physical distancing and other controls such as plexiglass barriers are no longer required; however, many of the plexiglass barriers that the court previously installed will remain in place for the foreseeable future.
- Members of the public who are not feeling well, are exhibiting symptoms of COVID-19, or are subject to an isolation or quarantine order are asked to stay home and seek assistance online, by telephone, or via mail.
- The court continues to exclude all court employees, regardless of vaccination status, from the workplace if they test positive for COVID-19 or are experiencing symptoms of COVID-19, and the court continues to contact trace and exclude employees who are not fully vaccinated from the workplace if they have close contact with a positive or symptomatic individual.
- Higher-rated MERV-13 (Minimum Efficiency Reporting Value) filters have been installed at all facilities to reduce airborne particles, and fresh air circulation has been increased throughout the court facilities where possible.
- The court is continuing to maintain increased cleaning of all high-touch areas in court facilities, including door handles and elevator buttons.
- Hand sanitizer remains widely available in public spaces within court facilities.

Since the week of June 1, the court held fourteen jury trials at its various locations, including four civil trials. In addition, three cases (two civil and one criminal) that were set for trial continued just before jurors were assigned. For reference, since resuming jury trials on February 8, the court has held a total of 58 trials, including 11 civil trials.

Juror turnout has continued to be better than it was during the court’s last attempt to resume jury trials in October and November 2020. The average yield has been approximately 15% (compared to 5% last fall), which is nearly the same as the pre-pandemic yield for newly summoned jurors. Since resuming jury trials on February 8, the court has had enough jurors for all of the trials that were ready to proceed.

Despite the encouraging juror turnout, the court has continued to see several cases settle after being set for trial or waive time due to various issues such as witness availability. Specifically, in the last month, approximately 29% of cases in Central, 10% of cases in North, 12% of cases in South, and 9% of cases in East have settled at trial, and the remainder, except for those that went forward, requested to be continued (in-custody) or were continued for cause (out-of-custody). As an example, on July 6 in Central, the court had six in-custody cases on its trial call calendar; of those, four settled, one continued, and only one trial went forward. The court is continuing to work with its justice partners to schedule more trials to allow for those that may settle, and, in June, the court started holding daily trial call calendars in each branch to determine which cases are ready for trial and going forward.

In addition, the court has resumed using all of its courtrooms now that physical distancing requirements have been lifted, and jury summonses are gradually being brought back up to pre-pandemic levels. Beginning July 6 in the Central Courthouse, the court resumed daily in-person reporting, and jurors called to serve in the North, South, and East Courthouses will continue to be on weekly telephone standby. Also, as of July 6, the court is summoning approximately half of the average pre-pandemic number of jurors in the Central Courthouse, and the court plans to increase the number of summonses to pre-pandemic levels by July 19.

Regarding out-of-custody cases, the court has prioritized trials for in-custody defendants and has reserved jurors for in-custody trials, with those jurors being made available for civil trials if no in-custody trial were ready to go forward. The court recognizes that this focus on in-custody trials, to the exclusion of out-of-custody trials, has contributed to the backlog of cases, and the court is working with its justice partners with a goal of resuming out-of-custody trials in September.

The chart below illustrates the juror turnout since the court’s June 1 request and previews the number of jurors that have postponed or requested to be excused for upcoming weeks:

| Week Beginning | Location | Summonses Issued | Postponed or Excused | Potential Jurors | Jurors Called | Jurors Reported | Trials Held |
|-----------------------|-----------------|-------------------------|-----------------------------|-------------------------|----------------------|------------------------|--------------------|
| Jun. 1 | Central | 6,485 | 3,144 | 3,341 | 1,647 | 253 | 3 |
| Jun. 7 | Central | 6,568 | 2,698 | 3,870 | 563 | 98 | 0 (continued) |
| Jun. 14 | Central | 7,489 | 3,807 | 3,682 | 1,674 | 240 | 3 (2 civil) |

| Week Beginning | Location | Summonses Issued | Postponed or Excused | Potential Jurors | Jurors Called | Jurors Reported | Trials Held |
|-----------------------|-----------------|-------------------------|-----------------------------|-------------------------|----------------------|------------------------|--------------------|
| Jun. 21 | Central | 7,592 | Unavailable | Unavailable | 1,262 | 179 | 2 |
| | East | 4,838 | Unavailable | Unavailable | 423 | 86 | 1 |
| Jun. 28 | Central | 7,556 | Unavailable | Unavailable | 1,971 | 248 | 4 (2 civil) |
| | North | 5,256 | Unavailable | Unavailable | 374 | 94 | 0 (continued) |
| Jul. 6 | Central - Tu | 2,061 | 752 | 1,309 | 1,309 | 225 | 1 |
| | Central - We | 2,149 | 969 | 1,180 | | | |
| | Central - Th | 2,490 | 1,129 | 1,361 | | | |
| | North | 5,300 | 1,905 | 3,395 | 352 | 78 | 0 (continued) |
| | South | 5,184 | 1,666 | 3,518 | | | |
| | East | 4,843 | 1,776 | 3,067 | | | |
| Jul. 12 | Central - Mo | 1,788 | 615 | 1,173 | | | |
| | Central - Tu | 2,333 | 845 | 1,488 | | | |
| | Central - We | 2,323 | 798 | 1,525 | | | |
| | Central - Th | 2,715 | 979 | 1,736 | | | |
| | North | 5,317 | 1,802 | 3,515 | | | |
| | South | 5,155 | 1,239 | 3,916 | | | |
| | East | 4,769 | 1,582 | 3,187 | | | |
| Jul. 19 | Central - Mo | 2,805 | 472 | 2,333 | | | |
| | Central - Tu | 4,086 | 969 | 3,117 | | | |
| | Central - We | 3,596 | 859 | 2,737 | | | |
| | Central - Th | 3,392 | 749 | 2,643 | | | |
| | North | 5,490 | 1,589 | 3,901 | | | |
| | South | 5,223 | 1,198 | 4,025 | | | |
| | East | 4,789 | 1,194 | 3,595 | | | |
| Jul. 26 | Central - Mo | 3,209 | 207 | 3,002 | | | |
| | Central - Tu | 4,502 | 498 | 4,004 | | | |
| | Central - We | 3,800 | 421 | 3,379 | | | |
| | Central - Th | 3,572 | 394 | 3,178 | | | |
| | North | 5,553 | 1,097 | 4,456 | | | |
| | South | 5,170 | 842 | 4,328 | | | |
| | East | 4,873 | 815 | 4,058 | | | |
| Aug. 2 | Central - Mo | 3,075 | 52 | 3,023 | | | |
| | Central - Tu | 4,334 | 131 | 4,203 | | | |
| | Central - We | 3,676 | 148 | 3,528 | | | |
| | Central - Th | 3,394 | 127 | 3,267 | | | |
| | North | 5,598 | 14 | 5,584 | | | |
| | South | 5,220 | 4 | 5,216 | | | |
| | East | 4,865 | 14 | 4,851 | | | |

C. Description of the Court's Readiness Conference Program

As required by the Chief Justice's December 22, 2020, Memorandum regarding COVID-19 Pandemic Readiness Conferences, the court provides the following description of its readiness conference program.

In-custody readiness calendars began in May 2020, with two departments in the Central Courthouse and one department in each branch location. All defendants in custody with pending cases that were post-arraignment/pre-trial were scheduled for a readiness conference in an attempt to settle as many cases as possible. Once all of those readiness cases were completed, all cases with a negotiated plea were calendared for hearing in one of the triage departments to have the plea entered. All cases that did not reach agreement were set for future dates, often subsequent readiness hearings, and given the opportunity to continue negotiations. Many of the cases have had several readiness conferences to date. All cases that are arraigned are automatically set a for readiness conference date, which has always been the court's practice, even before the pandemic, and continues now.

Additionally, all out-of-custody post-arraignment/pre-trial cases were calendared for either a trial status conference or regular status conference (depending on the stage of the case) beginning in September 2020. At those hearings, cases that had negotiated a resolution during the early months of the pandemic were scheduled for a hearing to enter their plea, and those that had not reached resolution were scheduled for a readiness conference with a back-up trial date. Those readiness hearings are being held daily and are often set for additional readiness hearings as negotiations continue.

Currently, there are several readiness departments now operating at each location, with most hearing both in-custody and out-of-custody cases as well as other types of hearings. Due to limitations in the court's CMS, the court is unable to provide accurate numbers as to how many readiness conferences have been held; however, every post-arraignment/pre-trial case has had at least one (often more) readiness conference since the pandemic began.

The following represents the approximate number of cases that have settled at readiness conferences at each of the branches during the last month:

- Central Courthouse: 45% of misdemeanors and 9% of felonies
- North County: 23% of misdemeanors and 19% of felonies
- South County: 10% of misdemeanors and 10% of felonies
- East County: 16% of misdemeanors and 16% of felonies

D. The Court's Request for an Extension

In the court's May 29, 2020, request for an emergency order for additional time to conduct trials, the court submitted letters of support from the District Attorney's Office, the City Attorney's Office, the Office of the Public Defender, and the Sheriff's Department. Each of these justice partners supported the court's previous requests with the exception of the Public Defender, who, beginning with the court's October 2, 2020, request, notified the court that, on behalf of his clients,

“he cannot support another 1382” extension. With the exception of the Public Defender, each of these justice partners has confirmed that they also fully support this additional request; however, the Public Defender again indicated he would not support another request.

Regardless, as set forth in the court’s response to questions 1 and 2 below, the court has approximately 1,095 cases in which the last day for trial will occur between July 9 and August 23, inclusive. Given the recent easing of COVID-19-related restrictions, the court is gradually working towards resuming pre-pandemic levels of operations. However, even if the court were operating at its full pre-pandemic capacity of 70-90 jury trials per month (including criminal and civil), it would be impossible to hold 1,095 jury trials in this time frame. Therefore, due the enormous backlog and the anticipated pace of proceeding with jury trials, the court requests an order allowing the court to extend the time period provided in Penal Code section 1382, within which a trial must be held, by not more than 30 days.

II. ANSWERS TO SPECIFIC QUESTIONS SET FORTH IN THE MAY 14, 2020, JUDICIAL COUNCIL MEMORANDUM

1. How many criminal cases have last-day deadlines under Penal Code section 1382 during the period of time for which the court is requesting a first extension under Government Code section 68115 (please provide daily breakdown)?

Because this court deals with paper files, it would be burdensome to determine the exact numbers of cases because the court would have to pull all the files and check for the relevant arraignment dates and whether the defendant waived the statutory time for trial. However, the court can provide the following rough statistics for a general idea:

For felony cases with no prior extensions, to have a last-day deadline between July 9, and August 23, inclusive, the defendant would be arraigned on an Information between May 25² and June 24, inclusive. Of the cases with pending trial dates through August 31, there were approximately 70 felony bindovers after preliminary hearing during this timeframe (May 25 – June 24). Assuming these defendants were arraigned on an Information immediately or soon thereafter, the court approximates there were approximately 70 felony arraignments during this period (May 25 – June 24), meaning approximately 70 felony cases with no prior extensions that are still pending trial will have a statutory last-day deadline for trial during the request period (July 9 – August 23). Most of these defendants remain in custody.

For misdemeanor in-custody cases with no prior extensions, to have a last-day deadline between July 9 and August 23, inclusive, defendants would have arraignment dates between June 24 (see footnote 2) and July 24, inclusive. The court does not have complete statistics for this time period. However, of the cases with scheduled trial dates through July 31, there were approximately 80 arraignments in cases in the last 30 days for which statistics are available (May 30 – June 29) and in which the defendants remain in custody. In the 30 days before that (April 29 – May 29),

² Although the “request period” is July 9 through August 23, the first last-day deadline for a case in this category in this court (i.e. no prior extensions) would be July 24.

there were approximately 30 misdemeanor arraignments in cases in which the defendants remain in custody. Using these numbers as a guide, the court estimates that about 55 misdemeanor in-custody cases with trial dates through August 31 and with no prior extensions will have a statutory last-day deadline during the request period (July 9 – August 23).

For misdemeanor out-of-custody cases with no prior extensions, to have a statutory last-day deadline between July 9 and August 23, inclusive, defendants would have arraignment dates between June 9 (see footnote 2) and July 9, inclusive. The court has incomplete statistics for this time period, but of the cases with pending trial dates through August 31, there were approximately 110 misdemeanor arraignments between June 9 and June 30, inclusive, in cases in which the defendants are now out of custody. In the 30 days before that (May 9 – June 8), there were approximately 60 misdemeanor arraignments in cases in which the defendants are now out of custody. Based on these known numbers, the court estimates that there will be roughly 85 misdemeanor out-of-custody cases with trial dates through August 31 and with no prior extensions that will have a statutory last-day deadline during the request period (July 9 – August 23).

In sum, the court estimates that, of the cases with pending trial dates through August 31, approximately 210 cases with no prior extensions will have their statutory trial deadline come due during the period of July 9 through August 23, inclusive. The court recognizes a number of these cases, being new, may settle, but the court cannot predict what percentage of cases that may be. Assuming a 50% settlement rate, that still leaves over 100 cases with original last-day deadlines falling within the request period.

2. How many criminal cases are coming up to the limit already extended for 90 days by the statewide orders (please provide a daily breakdown)? Is the court requesting a further extension of time on any of these cases?

The response to this question includes those cases which were extended 90 days by the statewide orders, and those cases that have received the benefit of any of the previous thirteen court-specific 30-day extensions granted to this court pursuant to the Chief's Emergency Orders dated June 4, 2020, June 30, 2020, August 7, 2020, September 4, 2020, October 6, 2020, November 5, 2020, December 8, 2020, January 7, 2021, February 3, 2021, March 9, 2021, April 8, 2021, May 6, 2021, and June 3, 2021. Because these cases all have paper files, the court would have to manually pull all of the case files to determine the relevant arraignment date. In addition, with trial dates now having been set and reset multiple times in some cases since the pandemic began, as well as express time waivers entered by the defendants in some cases, it is difficult to tell which and how many of the prior extension orders the cases fall under. However, the court can provide the following rough statistics for a general idea:

Of the cases with pending trial dates through August 31, there are approximately 30 felony cases that, with all the previous extensions, now have statutory trial deadlines between July 9 and July 23 (approximately 6 remain in custody). There are also approximately 10 in-custody misdemeanor cases, and approximately 100 out-of-custody misdemeanor cases that, with all the extensions, have statutory trial deadlines between July 9 and July 23, inclusive.

In addition, of the cases with pending trial dates through August 31, there are approximately 145 felony cases (approximately 100 in custody), approximately 120 in-custody misdemeanor cases, and approximately 590 out-of-custody misdemeanor cases that, with all prior extensions, now have statutory trial deadlines between July 24 and August 23, inclusive.

In sum, the court estimates that, of the cases with pending trial dates through August 31, approximately 995 previously extended cases will have their statutory trial deadline come due during the period of July 9 through August 23, inclusive.

Summary:

Based on the above, in both categories (questions 1 and 2), the court estimates that, of the cases with pending trial dates through August 31, there are approximately 1,095 cases in which the statutory last day for trial will occur between July 9 and August 23, inclusive.

Except as noted above and in previous requests, the court's responses to questions 3-5 have generally not changed since its September 3, 2020, request, and those responses are incorporated herein by reference.

###

TO: Hon. Tani G. Cantil-Sakauye, Chair of the Judicial Council
Judicial Council of California
c/o Legal Services Supervising Attorney Charles Perkins
415-865-4609
charles.perkins@jud.ca.gov
415-865-8767 (fax)

FROM: *Name* : Lorna A. Alksne
Title: Presiding Judge
Court: Superior Court of San Diego County
Telephone: 619-844-2100
Fax: 619-844-5550
E-mail Address: [REDACTED]

DATE: 8/4/2021

SUBJECT: Request for Judicial Emergency Order

I hereby request an order allowing the court to implement the following emergency procedures pursuant to the provisions of section 68115 of the Government Code¹:

- The court may extend the time period provided in section 1382 of the Penal Code within which a trial must be held by not more than 30 days. (Gov. Code, § 68115(a)(10).)
(Fill in number of days, not exceeding 30. Pursuant to Government Code section 68115(a)(10), “the trial of a defendant in custody whose time is so extended shall be given precedence over all other cases.”)
This request applies only to cases in which the statutory deadline otherwise would expire on _____ *or* from 8/9/2021, to 9/23/2021, inclusive*.
(Fill in date(s) above.)

***This request applies to cases in which the original or previously-extended statutory deadline otherwise would expire from August 9, 2021, to September 23, 2021, inclusive.**

Although the previous Emergency Order issued July 8, 2021, already provides relief for cases in which the trial deadline falls on August 9, 2021, through August 23, 2021, the court has determined that August 9, 2021, through August 23, 2021, also need to be included in the current

¹ Government Code section 68115, as amended, effective January 1, 2019, provides that, upon the request of a presiding judge, the Chairperson of the Judicial Council may authorize relief as set forth in the statute, “[w]hen war, an act of terrorism, public unrest or calamity, epidemic, natural disaster, or other substantial risk to the health and welfare of court personnel or the public, or the danger thereof, the destruction of or danger to the building appointed for holding the court, a large influx of criminal cases resulting from a large number of arrests within a short period of time, or a condition that leads to a state of emergency being proclaimed by the President of the United States or by the Governor pursuant to Section 8625, threatens the orderly operation of a superior court location or locations within a county or renders presence in, or access to, an affected court facility or facilities unsafe”

request. The April 29, 2020, statewide order granting up to a 90-day extension was effective for cases with a last day for trial of March 16 through June 15, 2020. With this statewide 90-day extension, as well as the fourteen prior 30-day extensions authorized for this court, a case with a last day for trial of March 16-31, April 19-30, May 20-30, June 16-29, July 18-29, August 18-28, September 18-27, October 19-27, November 19-26, and December 19-26, 2020, and January 19-25, February 19-23, March 23-26, April 23-25, May 24-25, June 24, and July 24, 2021, would now have a last day for trial of August 9 through August 23, 2021. Accordingly, the court is including August 9 through August 23, 2021, in its request.

The circumstances necessitating an emergency order are described in the attached document.

The public defender, the district attorney, and other interested local entities have / have not (check one box) been notified of this request for emergency order.

The court has / has not (check one box) advised these entities to immediately notify the Judicial Council's Legal Services office of any opposition or questions regarding the request.

Please list the names and telephone numbers of the district attorney, the public defender, and other notified parties affected by the order:

District Attorney: Summer Stephan

Public Defender: Randy Mize

Other Parties Affected: City Attorney Mara Elliot; San Diego Sheriff Bill Gore

The court has / has not (check one box) been informed of any opposition to this request.

If the court has been informed of potential opposition to this request, please state below the party or parties who may oppose the request and any stated reasons for the opposition:

Regarding the court's October 2, 2020, request, the Public Defender, Randy Mize, informed the court that he "cannot support another 1382" extension on behalf of his clients, and he recently indicated he also does not support this current request.

Submitted by:  _____
(Presiding Judge or Presiding Judge's delegate)

Date: 8/4/2021

The San Diego Superior Court hereby requests an order allowing the court to extend the time period provided in Penal Code section 1382, within which a trial must be held, by not more than 30 days. This request applies to cases in which the original or previously extended statutory deadline otherwise would expire from August 9, 2021, to September 23, 2021, inclusive.

I. BACKGROUND INFORMATION AND BASIS FOR REQUEST

Since the court's last request for Penal Code section 1382 relief, which was submitted on July 7, 2021,¹ the court has generally continued its gradual resumption of criminal and civil jury trials in several locations across the county; however, as described below, the court still faces an enormous backlog of approximately 1,240 criminal cases in which the last day for trial will occur between August 9 and September 23. Even in pre-pandemic conditions, it would be impossible to hold jury trials for this number of cases in such a short period of time.

This memorandum will address relevant changes since the court's last request. In addition, the numerous federal, state, and local public health orders that have been issued in response to the COVID-19 pandemic are well known and have been detailed in prior Judicial Council orders and memoranda as well as this court's prior requests for relief from the Chief Justice. Accordingly, they will not be repeated here, except as necessary to provide relevant updates.

A. COVID-19 in San Diego County and Public Health Guidance

To date in San Diego County, there have been 300,189 cases, 15,908 hospitalizations, and 3,803 deaths. More than 70% of eligible San Diego County residents are now fully vaccinated; however, new COVID-19 infections are currently increasing, primarily among the unvaccinated.

On July 27, the Centers for Disease Control and Prevention changed its guidance and recommended that fully vaccinated individuals wear face coverings in indoor public settings in areas of substantial or high transmission. Shortly thereafter, San Diego County and the California Department of Public Health updated their guidance to reflect this change and now recommend face coverings for fully vaccinated individuals in indoor public settings and require them for those who are not fully vaccinated.

Other than the modification to the face-covering guidance, public health authorities have not re-implemented any of the other measures that previously limited the court's ability to conduct in-person jury trials, such as stay-at-home orders, capacity limits, and physical-distancing requirements.

B. Activity Since the Court's Last Request

The court has continued to work with the Sheriff to take steps to reduce the inmate population to help combat the number of COVID-19 cases in the jails. For example, the court has implemented several general orders, including an extension signed on July 8, authorizing the Sheriff to accelerate the release of sentenced county jail inmates up to 60 days from when they

¹ All subsequent date references are to 2021 unless otherwise indicated.

would otherwise be released, subject to certain conditions. The court plans on authorizing another extension when the current one expires on August 9. In addition, the court plans to resume offering remote in-custody arraignments starting on August 9 to ease some of the logistical burdens associated with the Sheriff’s COVID-19 protocols.

The number of jury trials that went forward increased during the month of July. Since the week of July 6, the court held twenty-six jury trials at its various locations, including seven civil trials. In addition, one criminal case that was set for trial continued just before jurors were assigned, and 682 jurors reported over two days for jury selection in a death penalty case that is scheduled to begin on August 9. For reference, since resuming jury trials on February 8, the court has held a total of 83 trials, including 18 civil trials.

Juror turnout has continued to be better than it was during the court’s last attempt to resume jury trials in October and November 2020. The average yield has been approximately 15% (compared to 5% last fall), which is nearly the same as the pre-pandemic yield for newly summoned jurors.

The court has continued to see several cases settle after being set for trial or waive time due to various issues such as witness availability. Specifically, in the last month, approximately 24% of cases in Central, 6% of cases in North, 12% of cases in South, and 8% of cases in East have settled at trial, and the remainder, except for those that went forward, requested to be continued (in-custody) or were continued for cause (out-of-custody). The court is continuing to work with its justice partners to schedule more trials to allow for those that may settle, and, in June, the court started holding daily trial call calendars in each branch to determine which cases are ready for trial and going forward.

Regarding out-of-custody cases, the court has prioritized trials for in-custody defendants and has reserved jurors for in-custody trials, with those jurors being made available for civil trials if no in-custody trial were ready to go forward. The court recognizes that this focus on in-custody trials, to the exclusion of out-of-custody trials, has contributed to the backlog of cases, and the court is working with its justice partners with a goal of resuming out-of-custody trials in September.

The chart below illustrates the juror turnout since the court’s June 1 request and previews the number of jurors that have postponed or requested to be excused for upcoming weeks:

| Week Beginning | Location | Summonses Issued | Postponed or Excused | Potential Jurors | Jurors Called | Jurors Reported | Trials Held |
|-----------------------|-----------------|-------------------------|-----------------------------|-------------------------|----------------------|------------------------|--------------------|
| Jul. 6 | Central - Tu | 2,061 | 752 | 1,309 | 1,309 | 225 | 1 |
| | North | 5,300 | 1,905 | 3,395 | 352 | 78 | 0 (continued) |
| | East | 4,843 | 1,776 | 3,067 | 409 | 65 | 1 |
| Jul. 12 | Central - Tu | 2,333 | 845 | 1,488 | 1,488 | 168 | 2 |
| | Central - We | 2,323 | 798 | 1,525 | 1,525 | 209 | 1 (civil) |
| | North | 5,317 | 1,802 | 3,515 | 1,722 | 328 | 3 (1 civil) |
| | East | 4,769 | 1,582 | 3,187 | 486 | 82 | 1 |

| Week Beginning | Location | Summonses Issued | Postponed or Excused | Potential Jurors | Jurors Called | Jurors Reported | Trials Held |
|-----------------------|-----------------|-------------------------|-----------------------------|-------------------------|----------------------|------------------------|--------------------|
| Jul. 19 | Central - Mo | 2,805 | 1,256 | 1,549 | 1,549 | 384 | 1 |
| | East | 4,789 | 1,830 | 2,959 | 479 | 103 | 1 |
| Jul. 26 | Central - We | 3,800 | 1,819 | 1,981 | 1,981 | 301 | 3 (1 civil) |
| | Central - Th | 3,572 | 1,800 | 1,772 | 1,772 | 280 | 1 (civil) |
| | North | 5,553 | 2,580 | 2,973 | 953 | 211 | 2 (1 civil) |
| | South | 5,170 | 1,886 | 3,284 | 700 | 81 | 1 |
| | East | 4,873 | 2,000 | 2,873 | 1,024 | 262 | 3 |
| Aug. 2 | Central - Tu | 4,334 | 2,199 | 2,135 | 2,135 | 363 | 2 (civil) |
| | Central - We | 3,676 | 1,817 | 1,859 | | | |
| | Central - Th | 3,394 | 1,671 | 1,723 | | | |
| | North | 5,598 | 2,431 | 3,167 | 1,332 | 287 | 2 |
| | South | 5,220 | 1,711 | 3,509 | | | |
| | East | 4,865 | 1,950 | 2,915 | 416 | 79 | 1 |
| Aug. 9 | Central - Mo | 3,559 | 1,465 | 2,094 | | | |
| | Central - Tu | 4,414 | 1,865 | 2,549 | | | |
| | Central - We | 3,644 | 1,534 | 2,110 | | | |
| | Central - Th | 3,394 | 1,389 | 2,005 | | | |
| | North | 5,496 | 2,077 | 3,419 | | | |
| | South | 5,128 | 1,511 | 3,617 | | | |
| | East | 4,794 | 1,605 | 3,189 | | | |
| Aug. 16 | Central - Mo | 3,662 | 1,456 | 2,206 | | | |
| | Central - Tu | 4,542 | 1,756 | 2,786 | | | |
| | Central - We | 3,780 | 1,445 | 2,335 | | | |
| | Central - Th | 3,629 | 1,427 | 2,202 | | | |
| | North | 5,321 | 1,826 | 3,495 | | | |
| | South | 5,103 | 1,384 | 3,719 | | | |
| | East | 4,703 | 1,388 | 3,315 | | | |
| Aug. 23 | Central - Mo | 2,849 | 500 | 2,349 | | | |
| | Central - Tu | 2,672 | 1 | 2,671 | | | |
| | Central - We | 2,839 | 1 | 2,838 | | | |
| | Central - Th | 2,615 | 0 | 2,615 | | | |
| | North | 4,230 | 0 | 4,230 | | | |
| | South | 4,432 | 1 | 4,431 | | | |
| | East | 3,952 | 1 | 3,951 | | | |
| Aug. 30 | Central - Mo | 2,929 | 0 | 2,929 | | | |
| | Central - Tu | 3,938 | 0 | 3,938 | | | |
| | Central - We | 3,190 | 0 | 3,190 | | | |
| | Central - Th | 3,092 | 0 | 3,092 | | | |
| | North | 4,986 | 0 | 4,986 | | | |
| | South | 4,986 | 0 | 4,986 | | | |
| | East | 4,496 | 3 | 4,493 | | | |

C. Description of the Court's Readiness Conference Program

As required by the Chief Justice's December 22, 2020, Memorandum regarding COVID-19 Pandemic Readiness Conferences, the court provides the following description of its readiness conference program.

In-custody readiness calendars began in May 2020, with two departments in the Central Courthouse and one department in each branch location. All defendants in custody with pending cases that were post-arraignment/pre-trial were scheduled for a readiness conference in an attempt to settle as many cases as possible. Once all of those readiness cases were completed, all cases with a negotiated plea were calendared for hearing in one of the triage departments to have the plea entered. All cases that did not reach agreement were set for future dates, often subsequent readiness hearings, and given the opportunity to continue negotiations. Many of the cases have had several readiness conferences to date. All cases that are arraigned are automatically set a for readiness conference date, which has always been the court's practice, even before the pandemic, and continues now.

Additionally, all out-of-custody post-arraignment/pre-trial cases were calendared for either a trial status conference or regular status conference (depending on the stage of the case) beginning in September 2020. At those hearings, cases that had negotiated a resolution during the early months of the pandemic were scheduled for a hearing to enter their plea, and those that had not reached resolution were scheduled for a readiness conference with a back-up trial date. Those readiness hearings are being held daily and are often set for additional readiness hearings as negotiations continue.

Currently, there are several readiness departments now operating at each location, with most hearing both in-custody and out-of-custody cases as well as other types of hearings. Due to limitations in the court's CMS, the court is unable to provide accurate numbers as to how many readiness conferences have been held; however, every post-arraignment/pre-trial case has had at least one (often more) readiness conference since the pandemic began.

The following represents the approximate percentage of cases that have settled at readiness conferences at each of the branches during the last month:

- Central Courthouse: 28% of misdemeanors and 21% of felonies
- North County: 23% of misdemeanors and 13% of felonies
- South County: 30% of misdemeanors and 18% of felonies
- East County: 23% of misdemeanors and 13% of felonies

D. The Court's Request for an Extension

In the court's May 29, 2020, request for an emergency order for additional time to conduct trials, the court submitted letters of support from the District Attorney's Office, the City Attorney's Office, the Office of the Public Defender, and the Sheriff's Department. Each of these justice partners supported the court's previous requests with the exception of the Public Defender, who, beginning with the court's October 2, 2020, request, notified the court that, on behalf of his clients,

“he cannot support another 1382” extension. With the exception of the Public Defender, each of these justice partners has confirmed that they also fully support this additional request; however, the Public Defender again indicated he would not support another request.

Regardless, as set forth in the court’s response to questions 1 and 2 below, the court has approximately 1,240 cases in which the last day for trial will occur between August 9 and September 23, inclusive. Given the recent easing of COVID-19-related restrictions, the court is gradually working towards resuming pre-pandemic levels of operations. However, even if the court were operating at its full pre-pandemic capacity of 70-90 jury trials per month (including criminal and civil), it would be impossible to hold 1,240 jury trials in this time frame. Therefore, due the enormous backlog and the anticipated pace of proceeding with jury trials, the court requests an order allowing the court to extend the time period provided in Penal Code section 1382, within which a trial must be held, by not more than 30 days.

II. ANSWERS TO SPECIFIC QUESTIONS SET FORTH IN THE MAY 14, 2020, JUDICIAL COUNCIL MEMORANDUM

1. How many criminal cases have last-day deadlines under Penal Code section 1382 during the period of time for which the court is requesting a first extension under Government Code section 68115 (please provide daily breakdown)?

Because this court deals with paper files, it would be burdensome to determine the exact numbers of cases because the court would have to pull all the files and check for the relevant arraignment dates and whether the defendant waived the statutory time for trial. However, the court can provide the following rough statistics for a general idea:

For felony cases with no prior extensions, to have a last-day deadline between August 9 and September 23, inclusive, the defendant would be arraigned on an Information between June 25² and July 25, inclusive. Of the cases with pending trial dates through September 30, there were approximately 95 felony bindovers after preliminary hearing during this timeframe (June 25 – July 25). Assuming these defendants were arraigned on an Information immediately or soon thereafter, the court approximates there were approximately 95 felony arraignments during this period (June 25 – July 25), meaning approximately 95 felony cases with no prior extensions that are still pending trial will have a statutory last-day deadline for trial during the request period (August 9 – September 23). Approximately 60% of these defendants remain in custody.

For misdemeanor in-custody cases with no prior extensions, to have a last-day deadline between August 9 and September 23, inclusive, defendants would have arraignment dates between July 10 (see footnote 2) and August 9, inclusive. The court does not have complete statistics for this time period. However, of the cases with scheduled trial dates through September 30, there were approximately 60 arraignments between July 1 and July 30, inclusive, in which the defendants remain in custody. In the 30 days before that (June 1 – June 30), there were

² Although the “request period” is August 9 through September 24, the first last-day deadline for a case in this category in this court (i.e. no prior extensions) would be August 24.

approximately 15 misdemeanor arraignments in cases in which the defendants remain in custody. Using these numbers as a guide, the court estimates that about 35 misdemeanor in-custody cases with trial dates through September 30 and with no prior extensions will have a statutory last-day deadline during the request period (August 9 – September 23).

For misdemeanor out-of-custody cases with no prior extensions, to have a statutory last-day deadline between August 9 and September 23, inclusive, defendants would have arraignment dates between July 25 (see footnote 2) and August 24, inclusive. The court has incomplete statistics for this time period, but of the cases with pending trial dates through September 30, there were approximately 170 misdemeanor arraignments between July 1 and July 30, inclusive, in cases in which the defendants are now out of custody. In the 30 days before that (June 1 – June 30), there were approximately 45 misdemeanor arraignments in cases in which the defendants are now out of custody. Based on these known numbers, the court estimates that there will be roughly 100 misdemeanor out-of-custody cases with trial dates through September 30 and with no prior extensions that will have a statutory last-day deadline during the request period (August 9 – September 23).

In sum, the court estimates that, of the cases with pending trial dates through September 30, approximately 220 cases with no prior extensions will have their statutory trial deadline come due during the period of August 9 through September 23, inclusive. The court recognizes a number of these cases, being new, may settle, but the court cannot predict what percentage of cases that may be. Assuming a 50% settlement rate, that still leaves over 100 cases with original last-day deadlines falling within the request period.

2. How many criminal cases are coming up to the limit already extended for 90 days by the statewide orders (please provide a daily breakdown)? Is the court requesting a further extension of time on any of these cases?

The response to this question includes those cases which were extended 90 days by the statewide orders, and those cases that have received the benefit of any of the previous fourteen court-specific 30-day extensions granted to this court pursuant to the Chief's Emergency Orders dated June 4, 2020, June 30, 2020, August 7, 2020, September 4, 2020, October 6, 2020, November 5, 2020, December 8, 2020, January 7, 2021, February 3, 2021, March 9, 2021, April 8, 2021, May 6, 2021, June 3, 2021, and July 8, 2021. Because these cases all have paper files, the court would have to manually pull all of the case files to determine the relevant arraignment date. In addition, with trial dates now having been set and reset multiple times in some cases since the pandemic began, as well as express time waivers entered by the defendants in some cases, it is difficult to tell which and how many of the prior extension orders the cases fall under. However, the court can provide the following rough statistics for a general idea:

Of the cases with pending trial dates through September 30, there are approximately 30 felony cases that, with all the previous extensions, now have statutory trial deadlines between August 9 and August 23 (approximately 8 remain in custody). There are also approximately 10 in-custody misdemeanor cases, and approximately 90 out-of-custody misdemeanor cases that, with all the extensions, have statutory trial deadlines between August 9 and August 23, inclusive.

In addition, of the cases with pending trial dates through September 30, there are approximately 170 felony cases (approximately 80 in custody), approximately 90 in-custody misdemeanor cases, and approximately 750 out-of-custody misdemeanor cases that, with all prior extensions, now have statutory trial deadlines between August 24 and September 23, inclusive.

In sum, the court estimates that, of the cases with pending trial dates through September 30, approximately 1,140 previously extended cases will have their statutory trial deadline come due during the request period of August 9 through September 23, inclusive.

Summary:

Based on the above, in both categories (questions 1 and 2), the court estimates that, of the cases with pending trial dates through September 30, there are approximately 1,240 cases in which the statutory last day for trial will occur between August 9 and September 23, inclusive.

Except as noted above and in previous requests, the court's responses to questions 3-5 have generally not changed since its September 3, 2020, request, and those responses are incorporated herein by reference.

###

TO: Hon. Tani G. Cantil-Sakauye, Chair of the Judicial Council
Judicial Council of California
c/o Legal Services Supervising Attorney Charles Perkins
415-865-4609
charles.perkins@jud.ca.gov
415-865-8767 (fax)

FROM: *Name* : Lorna A. Alksne
Title: Presiding Judge
Court: Superior Court of San Diego County
Telephone: 619-844-2100
Fax: 619-844-5550
E-mail Address: [REDACTED]

DATE: 9/1/2021

SUBJECT: Request for Judicial Emergency Order

I hereby request an order allowing the court to implement the following emergency procedures pursuant to the provisions of section 68115 of the Government Code¹:

- The court may extend the time period provided in section 1382 of the Penal Code within which a trial must be held by not more than 30 days. (Gov. Code, § 68115(a)(10).)
(Fill in number of days, not exceeding 30. Pursuant to Government Code section 68115(a)(10), “the trial of a defendant in custody whose time is so extended shall be given precedence over all other cases.”)
This request applies only to cases in which the statutory deadline otherwise would expire on _____ *or* from 9/7/2021, to 10/24/2021, inclusive*.
(Fill in date(s) above.)

***This request applies to cases in which the original or previously-extended statutory deadline otherwise would expire from September 7, 2021, to October 24, 2021, inclusive.**

Although the previous Emergency Order issued August 5, 2021, already provides relief for cases in which the trial deadline falls on September 7, 2021, through September 23, 2021, the court has determined that September 7, 2021, through September 23, 2021, also need to be included in the

¹ Government Code section 68115, as amended, effective January 1, 2019, provides that, upon the request of a presiding judge, the Chairperson of the Judicial Council may authorize relief as set forth in the statute, “[w]hen war, an act of terrorism, public unrest or calamity, epidemic, natural disaster, or other substantial risk to the health and welfare of court personnel or the public, or the danger thereof, the destruction of or danger to the building appointed for holding the court, a large influx of criminal cases resulting from a large number of arrests within a short period of time, or a condition that leads to a state of emergency being proclaimed by the President of the United States or by the Governor pursuant to Section 8625, threatens the orderly operation of a superior court location or locations within a county or renders presence in, or access to, an affected court facility or facilities unsafe”

current request. The April 29, 2020, statewide order granting up to a 90-day extension was effective for cases with a last day for trial of March 16 through June 15, 2020. With this statewide 90-day extension, as well as the fifteen prior 30-day extensions authorized for this court, a case with a last day for trial of March 16-April 1, April 19-May 1, May 20-31, June 16-30, July 18-30, August 18-29, September 18-28, October 19-28, November 19-27, and December 19-27, 2020, and January 19-26, February 19-25, March 23-27, April 23-26, May 24-26, June 24-25, July 24-25, and August 24, 2021, would now have a last day for trial of September 7 through September 23, 2021. Accordingly, the court is including September 7 through September 23, 2021, in its request.

The circumstances necessitating an emergency order are described in the attached document.

The public defender, the district attorney, and other interested local entities have / have not (check one box) been notified of this request for emergency order.

The court has / has not (check one box) advised these entities to immediately notify the Judicial Council's Legal Services office of any opposition or questions regarding the request.

Please list the names and telephone numbers of the district attorney, the public defender, and other notified parties affected by the order:

District Attorney: Summer Stephan

Public Defender: Randy Mize

Other Parties Affected: City Attorney Mara Elliot; San Diego Sheriff Bill Gore

The court has / has not (check one box) been informed of any opposition to this request.

If the court has been informed of potential opposition to this request, please state below the party or parties who may oppose the request and any stated reasons for the opposition:

Regarding the court's October 2, 2020, request, the Public Defender, Randy Mize, informed the court that he "cannot support another 1382" extension on behalf of his clients, and he recently indicated he also does not support this current request.

Submitted by: 
(Presiding Judge or Presiding Judge's delegate)

Date: 9/1/2021

The San Diego Superior Court hereby requests an order allowing the court to extend the time period provided in Penal Code section 1382, within which a trial must be held, by not more than 30 days. This request applies to cases in which the original or previously extended statutory deadline otherwise would expire from September 7, 2021, to October 24, 2021, inclusive.

I. BACKGROUND INFORMATION AND BASIS FOR REQUEST

Since the court's last request for Penal Code section 1382 relief, which was submitted on August 4, 2021,¹ the court has generally continued its gradual resumption of criminal and civil jury trials in several locations across the county; however, as described below, the court still faces an enormous backlog of approximately 1,375 criminal cases in which the last day for trial will occur between September 7 and October 24. Even in pre-pandemic conditions, it would be impossible to hold jury trials for this number of cases in such a short period of time.

This memorandum will address relevant changes since the court's last request. In addition, the numerous federal, state, and local public health orders that have been issued in response to the COVID-19 pandemic are well known and have been detailed in prior Judicial Council orders and memoranda as well as this court's prior requests for relief from the Chief Justice. Accordingly, they will not be repeated here, except as necessary to provide relevant updates.

A. COVID-19 in San Diego County and Public Health Guidance

To date in San Diego County, there have been 334,377 cases, 16,719 hospitalizations, and 3,888 deaths. More than 76% of eligible San Diego County residents are now fully vaccinated; however, while the recent increase in new COVID-19 infections appears to be slowing, the number of new cases remains high, primarily among the unvaccinated.

Other than recommending face coverings for fully vaccinated individuals in indoor public settings, public health authorities have not re-implemented any of the other measures that previously limited the court's ability to conduct in-person jury trials, such as stay-at-home orders, capacity limits, and physical-distancing requirements. Effective August 23, the court reinstated a universal face-covering requirement for all individuals entering any court facility, including court staff and judicial officers, regardless of vaccination status.

B. Activity Since the Court's Last Request

The court has continued to work with the Sheriff to take steps to reduce the inmate population to help combat the number of COVID-19 cases in the jails. For example, the court has implemented several general orders, including an extension signed on August 4, authorizing the Sheriff to accelerate the release of sentenced county jail inmates up to 60 days from when they would otherwise be released, subject to certain conditions. If requested, the court plans on authorizing another extension when the current one expires on September 8. In addition, the court

¹ All subsequent date references are to 2021 unless otherwise indicated.

resumed offering remote in-custody arraignments on August 9 to ease some of the logistical burdens associated with the Sheriff’s COVID-19 protocols.

The number of jury trials that went forward stayed relatively steady during the month of August. Since the week of August 2, the court held twenty jury trials at its various locations, including eight civil trials. In addition, one criminal case and four civil cases that were set for trial settled or continued just before jurors were assigned. For reference, since resuming jury trials on February 8, the court has held a total of 98 trials, including 24 civil trials.

Regarding juror turnout, the average yield for newly summoned jurors has remained approximately 15%, which is nearly the same as the pre-pandemic yield, and the total yield, including jurors that previously deferred, was approximately 17.6% in August.

The court has continued to see several criminal cases settle after being set for trial or waive time due to various issues such as witness availability. Specifically, in the last month, approximately 9% of cases in Central, 5% of cases in North, 11% of cases in South, and 8% of cases in East have settled at trial, and the remainder, except for those that went forward, requested to be continued (in-custody) or were continued for cause (out-of-custody). The court is continuing to work with its justice partners to schedule more trials to allow for those that may settle, including daily trial call calendars in each branch.

The court has prioritized trials for in-custody defendants and has reserved jurors for in-custody trials, with those jurors being made available for civil trials if no in-custody trials were ready to go forward. In collaboration with its justice partners, the court will resume out-of-custody trials on September 1, with priority still given to in-custody trials.

The chart below illustrates the juror turnout since the court’s August 4 request and previews the number of jurors that have postponed or requested to be excused for upcoming weeks:

| Week Beginning | Location | Summonses Issued | Postponed or Excused | Potential Jurors | Jurors Called | Jurors Reported | Trials Held |
|-----------------------|-----------------|-------------------------|-----------------------------|-------------------------|----------------------|------------------------|--------------------|
| Aug. 2 | Central - Tu | 4,334 | 2,199 | 2,135 | 2,135 | 363 | 2 (civil) |
| | North | 5,598 | 2,431 | 3,167 | 1,332 | 287 | 2 |
| | East | 4,865 | 1,950 | 2,915 | 416 | 79 | 1 |
| Aug. 9 | Central - Mo | 3,559 | 1,893 | 1,666 | 1,666 | 325 | 1 (civil) |
| | Central - We | 3,644 | 2,048 | 1,596 | 1,596 | 304 | 1 |
| | North | 5,496 | 2,564 | 2,932 | 2,694 | 574 | 4 (1 civil) |
| Aug. 16 | Central - Mo | 3,662 | 1,960 | 1,702 | 1,702 | 298 | 1 (civil) |
| | East | 4,703 | 1,788 | 2,915 | 2,915 | 217 | 1 |
| Aug. 23 | Central - Tu | 2,672 | 799 | 1,873 | 1,873 | 375 | 1 (civil) |
| | Central - Th | 2,615 | 763 | 1,852 | 1,852 | 311 | 1 |
| | South | 4,432 | 952 | 3,480 | 1,268 | 157 | 1 |
| Aug. 30 | Central - Mo | 2,929 | 1,281 | 1,648 | 1,648 | 337 | 2 (1 civil) |
| | Central - Tu | 3,938 | 1,725 | 2,213 | 2,213 | 336 | 1 (civil) |
| | East | 4,496 | 1,569 | 2,927 | 760 | 124 | 1 |

| Week Beginning | Location | Summonses Issued | Postponed or Excused | Potential Jurors | Jurors Called | Jurors Reported | Trials Held |
|-----------------------|-----------------|-------------------------|-----------------------------|-------------------------|----------------------|------------------------|--------------------|
| Sep. 7 | Central - Tu | 3,118 | 1,130 | 1,988 | | | |
| | Central - We | 3,017 | 1,164 | 1,853 | | | |
| | Central - Th | 2,959 | 1,059 | 1,900 | | | |
| | North | 4,994 | 1,749 | 3,245 | | | |
| | South | 4,999 | 1,384 | 3,615 | | | |
| | East | 4,496 | 1,372 | 3,124 | | | |
| Sep. 13 | Central - Mo | 2,817 | 826 | 1,991 | | | |
| | Central - Tu | 3,734 | 1,178 | 2,556 | | | |
| | Central - We | 2,992 | 1,002 | 1,990 | | | |
| | Central - Th | 3,069 | 1,004 | 2,065 | | | |
| | North | 4,998 | 1,417 | 3,581 | | | |
| | South | 4,997 | 1,212 | 3,785 | | | |
| | East | 4,499 | 1,078 | 3,421 | | | |
| Sep. 20 | Central - Mo | 2,813 | 602 | 2,211 | | | |
| | Central - Tu | 3,296 | 753 | 2,543 | | | |
| | Central - We | 2,959 | 658 | 2,301 | | | |
| | Central - Th | 2,807 | 703 | 2,104 | | | |
| | North | 4,764 | 954 | 3,810 | | | |
| | South | 4,903 | 896 | 4,007 | | | |
| | East | 4,349 | 846 | 3,503 | | | |
| Sep. 27 | Central - Mo | 2,788 | 414 | 2,374 | | | |
| | Central - Tu | 3,925 | 630 | 3,295 | | | |
| | Central - We | 3,290 | 534 | 2,756 | | | |
| | Central - Th | 2,729 | 448 | 2,281 | | | |
| | North | 4,992 | 656 | 4,336 | | | |
| | South | 4,998 | 558 | 4,440 | | | |
| | East | 4,492 | 515 | 3,977 | | | |
| Oct. 4 | Central - Mo | 2,611 | 57 | 2,554 | | | |
| | Central - Tu | 3,182 | 54 | 3,128 | | | |
| | Central - We | 3,340 | 64 | 3,276 | | | |
| | Central - Th | 2,834 | 0 | 2,834 | | | |
| | North | 4,996 | 63 | 4,933 | | | |
| | South | 4,999 | 27 | 4,972 | | | |
| | East | 4,494 | 37 | 4,457 | | | |
| Oct. 12 | Central - Tu | 2,909 | 0 | 2,909 | | | |
| | Central - We | 2,719 | 0 | 2,719 | | | |
| | Central - Th | 1,944 | 0 | 1,944 | | | |
| | North | 4,999 | 0 | 4,999 | | | |
| | South | 4,998 | 0 | 4,998 | | | |
| | East | 4,496 | 0 | 4,496 | | | |

C. Description of the Court's Readiness Conference Program

As required by the Chief Justice's December 22, 2020, Memorandum regarding COVID-19 Pandemic Readiness Conferences, the court provides the following description of its readiness conference program.

In-custody readiness calendars began in May 2020, with two departments in the Central Courthouse and one department in each branch location. All defendants in custody with pending cases that were post-arraignment/pre-trial were scheduled for a readiness conference in an attempt to settle as many cases as possible. Once all of those readiness cases were completed, all cases with a negotiated plea were calendared for hearing in one of the triage departments to have the plea entered. All cases that did not reach agreement were set for future dates, often subsequent readiness hearings, and given the opportunity to continue negotiations. Many of the cases have had several readiness conferences to date. All cases that are arraigned are automatically set a for readiness conference date, which has always been the court's practice, even before the pandemic, and continues now.

Additionally, all out-of-custody post-arraignment/pre-trial cases were calendared for either a trial status conference or regular status conference (depending on the stage of the case) beginning in September 2020. At those hearings, cases that had negotiated a resolution during the early months of the pandemic were scheduled for a hearing to enter their plea, and those that had not reached resolution were scheduled for a readiness conference with a back-up trial date. Those readiness hearings are being held daily and are often set for additional readiness hearings as negotiations continue.

Currently, there are several readiness departments now operating at each location, with most hearing both in-custody and out-of-custody cases as well as other types of hearings. Due to limitations in the court's CMS, the court is unable to provide accurate numbers as to how many readiness conferences have been held; however, every post-arraignment/pre-trial case has had at least one (often more) readiness conference since the pandemic began.

The following represents the approximate percentage of cases that have settled at readiness conferences at each of the branches during the last month:

- Central Courthouse: 19% of misdemeanors and 21% of felonies
- North County: 25% of misdemeanors and 16% of felonies
- South County: 30% of misdemeanors and 25% of felonies
- East County: 21% of misdemeanors and 17% of felonies

D. The Court's Request for an Extension

In the court's May 29, 2020, request for an emergency order for additional time to conduct trials, the court submitted letters of support from the District Attorney's Office, the City Attorney's Office, the Office of the Public Defender, and the Sheriff's Department. Each of these justice partners supported the court's previous requests with the exception of the Public Defender, who, beginning with the court's October 2, 2020, request, notified the court that, on behalf of his clients,

“he cannot support another 1382” extension. With the exception of the Public Defender, each of these justice partners has confirmed that they also fully support this additional request; however, the Public Defender again indicated he would not support another request.

Regardless, as set forth in the court’s response to questions 1 and 2 below, the court has approximately 1,375 cases in which the last day for trial will occur between September 7 and October 24, inclusive. The court is continuing to work towards resuming pre-pandemic levels of operations; however, even if the court were operating at its full pre-pandemic capacity of 70-90 jury trials per month (including criminal and civil), it would be impossible to hold 1,375 jury trials in this time frame. Therefore, due the enormous backlog and the anticipated pace of proceeding with jury trials, the court requests an order allowing the court to extend the time period provided in Penal Code section 1382, within which a trial must be held, by not more than 30 days.

II. ANSWERS TO SPECIFIC QUESTIONS SET FORTH IN THE MAY 14, 2020, JUDICIAL COUNCIL MEMORANDUM

1. How many criminal cases have last-day deadlines under Penal Code section 1382 during the period of time for which the court is requesting a first extension under Government Code section 68115 (please provide daily breakdown)?

Because this court deals with paper files, it would be burdensome to determine the exact numbers of cases because the court would have to pull all the files and check for the relevant arraignment dates and whether the defendant waived the statutory time for trial. However, the court can provide the following rough statistics for a general idea:

For felony cases with no prior extensions, to have a last-day deadline between September 7 and October 24, inclusive, the defendant would be arraigned on an Information between July 26² and August 25, inclusive. Of the cases with pending trial dates through October 31, there were approximately 95 felony bindovers after preliminary hearing during this timeframe (July 26 – August 25). Assuming these defendants were arraigned on an Information immediately or soon thereafter, the court approximates there were 95 felony arraignments during this period (July 26 – August 25), meaning approximately 95 felony cases with no prior extensions that are still pending trial will have a statutory last-day deadline for trial during the request period (September 7 – October 24). Approximately 60% of these defendants remain in custody.

For misdemeanor in-custody cases with no prior extensions, to have a last-day deadline between September 7 and October 24, inclusive, defendants would have arraignment dates between August 25 (see footnote 2) and September 24, inclusive. The court does not have complete statistics for this time period. However, of the cases with scheduled trial dates through October 31, there were approximately 50 arraignments between July 28 and August 27, inclusive, in which the defendants remain in custody. In the 30 days before that (June 27 – July 27), there were approximately 15 misdemeanor arraignments in cases in which the defendants remain in

² Although the “request period” is September 7 through October 24, the first last-day deadline for a case in this category in this court (i.e. no prior extensions) would be September 24.

custody. Using these numbers as a guide, the court estimates that about 30 misdemeanor in-custody cases with trial dates through October 31 and with no prior extensions will have a statutory last-day deadline during the request period (September 7 – October 24).

For misdemeanor out-of-custody cases with no prior extensions, to have a statutory last-day deadline between September 7 and October 24, inclusive, defendants would have arraignment dates between August 10 (see footnote 2) and September 9, inclusive. The court has incomplete statistics for this time period, but of the cases with pending trial dates through October 31, there were approximately 150 misdemeanor arraignments between August 10 and August 27, inclusive, in cases in which the defendants are now out of custody. In the 30 days before that (July 10 – August 9), there were approximately 120 misdemeanor arraignments in cases in which the defendants are now out of custody. Based on these known numbers, the court estimates that there will be roughly 130 misdemeanor out-of-custody cases with trial dates through October 31 and with no prior extensions that will have a statutory last-day deadline during the request period (September 7 – October 24).

In sum, the court estimates that, of the cases with pending trial dates through October 31, approximately 250 cases with no prior extensions will have their statutory trial deadline come due during the period of September 7 through October 24, inclusive. The court recognizes a number of these cases, being new, may settle, but the court cannot predict what percentage of cases that may be. Assuming a 50% settlement rate, that still leaves over 125 cases with original last-day deadlines falling within the request period.

2. How many criminal cases are coming up to the limit already extended for 90 days by the statewide orders (please provide a daily breakdown)? Is the court requesting a further extension of time on any of these cases?

The response to this question includes those cases which were extended 90 days by the statewide orders, and those cases that have received the benefit of any of the previous fifteen court-specific 30-day extensions granted to this court pursuant to the Chief's Emergency Orders dated June 4, 2020, June 30, 2020, August 7, 2020, September 4, 2020, October 6, 2020, November 5, 2020, December 8, 2020, January 7, 2021, February 3, 2021, March 9, 2021, April 8, 2021, May 6, 2021, June 3, 2021, July 8, 2021, and August 5, 2021. Because these cases all have paper files, the court would have to manually pull all of the case files to determine the relevant arraignment date. In addition, with trial dates now having been set and reset multiple times in some cases since the pandemic began, as well as express time waivers entered by the defendants in some cases, it is difficult to tell which and how many of the prior extension orders the cases fall under. However, the court can provide the following rough statistics for a general idea:

Of the cases with pending trial dates through October 31, there are approximately 25 felony cases that, with all the previous extensions, now have statutory trial deadlines between September 7 and September 23 (approximately 7 remain in custody). There are also approximately 10 in-custody misdemeanor cases, and approximately 95 out-of-custody misdemeanor cases that, with all the extensions, have statutory trial deadlines between September 7 and September 23, inclusive.

In addition, of the cases with pending trial dates through October 31, there are approximately 275 felony cases (approximately 140 in custody), approximately 115 in-custody misdemeanor cases, and approximately 735 out-of-custody misdemeanor cases that, with all prior extensions, now have statutory trial deadlines between September 24 and October 24, inclusive.

In sum, the court estimates that, of the cases with pending trial dates through October 31, approximately 1,250 previously extended cases will have their statutory trial deadline come due during the request period of September 7 through October 24, inclusive.

Summary:

Based on the above, in both categories (questions 1 and 2), the court estimates that, of the cases with pending trial dates through October 31, there are approximately 1,375 cases in which the statutory last day for trial will occur between September 7 and October 24, inclusive.

Except as noted above and in previous requests, the court's responses to questions 3-5 have generally not changed since its September 3, 2020, request, and those responses are incorporated herein by reference.

###

TO: Hon. Tani G. Cantil-Sakauye, Chair of the Judicial Council
Judicial Council of California
c/o Legal Services Supervising Attorney Charles Perkins
415-865-4609
charles.perkins@jud.ca.gov
415-865-8767 (fax)

FROM: *Name* : Lorna A. Alksne
Title: Presiding Judge
Court: Superior Court of San Diego County
Telephone: 619-844-2100
Fax: 619-844-5550
E-mail Address: [REDACTED]

DATE: 10/4/2021

SUBJECT: Request for Judicial Emergency Order

I hereby request an order allowing the court to implement the following emergency procedures pursuant to the provisions of section 68115 of the Government Code¹:

- The court may extend the time period provided in section 1382 of the Penal Code within which a trial must be held by not more than 30 days. (Gov. Code, § 68115(a)(10).)
(Fill in number of days, not exceeding 30. Pursuant to Government Code section 68115(a)(10), “the trial of a defendant in custody whose time is so extended shall be given precedence over all other cases.”)
This request applies only to cases in which the statutory deadline otherwise would expire on _____ *or* from 10/7/2021, to 11/24/2021, inclusive*.
(Fill in date(s) above.)

***This request applies to cases in which the original or previously-extended statutory deadline otherwise would expire from October 7, 2021, to November 24, 2021, inclusive.**

Although the previous Emergency Order issued September 2, 2021, already provides relief for cases in which the trial deadline falls on October 7, 2021, through October 24, 2021, the court has determined that October 7, 2021, through October 24, 2021, also need to be included in the

¹ Government Code section 68115, as amended, effective January 1, 2019, provides that, upon the request of a presiding judge, the Chairperson of the Judicial Council may authorize relief as set forth in the statute, “[w]hen war, an act of terrorism, public unrest or calamity, epidemic, natural disaster, or other substantial risk to the health and welfare of court personnel or the public, or the danger thereof, the destruction of or danger to the building appointed for holding the court, a large influx of criminal cases resulting from a large number of arrests within a short period of time, or a condition that leads to a state of emergency being proclaimed by the President of the United States or by the Governor pursuant to Section 8625, threatens the orderly operation of a superior court location or locations within a county or renders presence in, or access to, an affected court facility or facilities unsafe”

current request. The April 29, 2020, statewide order granting up to a 90-day extension was effective for cases with a last day for trial of March 16 through June 15, 2020. With this statewide 90-day extension, as well as the sixteen prior 30-day extensions authorized for this court, a case with a last day for trial of March 16-April 2, April 19-May 2, May 20-June 1, June 16-July 1, July 18-31, August 18-30, September 18-29, October 19-29, November 19-28, and December 19-28, 2020, and January 19-27, February 19-26, March 23-28, April 23-27, May 24-27, June 24-26, July 24-26, August 24-25, and September 24, 2021, would now have a last day for trial of October 7 through October 24, 2021. Accordingly, the court is including October 7 through October 24, 2021, in its request.

The circumstances necessitating an emergency order are described in the attached document.

The public defender, the district attorney, and other interested local entities have / have not (check one box) been notified of this request for emergency order.

The court has / has not (check one box) advised these entities to immediately notify the Judicial Council's Legal Services office of any opposition or questions regarding the request.

Please list the names and telephone numbers of the district attorney, the public defender, and other notified parties affected by the order:

District Attorney: Summer Stephan

Public Defender: Randy Mize

Other Parties Affected: City Attorney Mara Elliot; San Diego Sheriff Bill Gore

The court has / has not (check one box) been informed of any opposition to this request.

If the court has been informed of potential opposition to this request, please state below the party or parties who may oppose the request and any stated reasons for the opposition:

Regarding the court's October 2, 2020, request, the Public Defender, Randy Mize, informed the court that he "cannot support another 1382" extension on behalf of his clients, and he recently indicated he also does not support this current request.

Submitted by:  _____

Date: 10/4/2021

(Presiding Judge or Presiding Judge's delegate)

The San Diego Superior Court hereby requests an order allowing the court to extend the time period provided in Penal Code section 1382, within which a trial must be held, by not more than 30 days. This request applies to cases in which the original or previously extended statutory deadline otherwise would expire from October 7, 2021, to November 24, 2021, inclusive.

I. BACKGROUND INFORMATION AND BASIS FOR REQUEST

Since the court's last request for Penal Code section 1382 relief, which was submitted on September 1, 2021,¹ the court has generally continued its resumption of criminal and civil jury trials in several locations across the county; however, as described below, the court still faces an enormous backlog of approximately 1,455 criminal cases in which the last day for trial will occur between October 7 and November 24. Even in pre-pandemic conditions, it would be impossible to hold jury trials for this number of cases in such a short period of time.

This memorandum will address relevant changes since the court's last request. In addition, the numerous federal, state, and local public health orders that have been issued in response to the COVID-19 pandemic are well known and have been detailed in prior Judicial Council orders and memoranda as well as this court's prior requests for relief from the Chief Justice. Accordingly, they will not be repeated here, except as necessary to provide relevant updates.

A. COVID-19 in San Diego County and Public Health Guidance

To date in San Diego County, there have been 358,126 COVID-19 cases, 17,693 hospitalizations, and 4,081 deaths. More than 78% of eligible San Diego County residents are now fully vaccinated. While the general trend in new COVID-19 cases appears to be improving since a mid-August peak, the number of new cases remains high.

Other than recommending face coverings for fully vaccinated individuals in indoor public settings, public health authorities have not re-implemented any of the other measures that previously limited the court's ability to conduct in-person jury trials, such as stay-at-home orders, capacity limits, and physical-distancing requirements. Effective August 23, the court reinstated a universal face-covering requirement for all individuals entering any court facility, including court staff and judicial officers, regardless of vaccination status, and this requirement is still in place.

B. Activity Since the Court's Last Request

The court has continued to work with the Sheriff to take steps to reduce the inmate population to help combat the number of COVID-19 cases in the jails. For example, the court has implemented several general orders, including an extension signed on September 8, authorizing the Sheriff to accelerate the release of sentenced county jail inmates up to 60 days from when they would otherwise be released, subject to certain conditions. If requested, the court plans on authorizing another extension when the current one expires on October 9. In addition, the court

¹ All subsequent date references are to 2021 unless otherwise indicated.

has continued offering remote in-custody arraignments to ease some of the logistical burdens associated with the Sheriff's COVID-19 protocols.

The court resumed out-of-custody trials on September 1, with priority still given to in-custody trials. As a result, the number of jury trials that went forward increased significantly during the month of September. Since the week of August 30, the court held 46 jury trials at its various locations, including 14 civil trials. In addition, three cases that were set for trial, including one civil case, settled or continued after or just before jurors were assigned. For reference, since resuming jury trials on February 8, the court has held a total of 140 trials, including 36 civil trials.

Regarding juror turnout, the average yield for newly summoned jurors has remained approximately 15%, which is nearly the same as the pre-pandemic yield, and the total yield, including jurors that previously deferred, remained approximately 17.6% in September.

The court has continued to see several criminal cases settle after being set for trial or waive time due to various issues such as witness availability. Specifically, in the last month, approximately 10% of cases in Central, 28% of cases in North, 11% of cases in South, and 13% of cases in East have settled at trial, and the remainder, except for those that went forward, requested to be continued (in-custody) or were continued for cause (out-of-custody). The court is continuing to work with its justice partners to schedule more trials to allow for those that may settle, including daily trial call calendars in each branch.

The chart below illustrates the juror turnout since the court's September 1 request and previews the number of jurors that have postponed or requested to be excused for upcoming weeks:

| Week Beginning | Location | Summonses Issued | Postponed or Excused | Potential Jurors | Jurors Called | Jurors Reported | Trials Held |
|-----------------------|-----------------|-------------------------|-----------------------------|-------------------------|----------------------|------------------------|--------------------|
| Aug. 30 | Central - Tu | 3,938 | 1,725 | 2,213 | 2,213 | 336 | 2 (1 civil) |
| | Central - We | 3,190 | 1,552 | 1,638 | 1,638 | 276 | 1 |
| | Central - Th | 3,092 | 1,372 | 1,720 | 1,720 | 286 | 2 (1 civil) |
| | East | 4,496 | 1,569 | 2,927 | 760 | 124 | 1 |
| Sep. 7 | Central - Tu | 3,118 | 1,521 | 1,597 | 1,597 | 346 | 1 |
| | Central - Th | 2,959 | 1,338 | 1,621 | 1,621 | 285 | 1 |
| | North | 4,994 | 2,097 | 2,897 | 1,546 | 364 | 5 (2 civil) |
| | East | 4,496 | 1,646 | 2,850 | 1,862 | 340 | 3 |
| Sep. 13 | Central - Mo | 2,817 | 1,058 | 1,759 | 1,759 | 410 | 3 (2 civil) |
| | Central - Tu | 3,734 | 1,428 | 2,306 | 2,306 | 343 | 1 |
| | Central - Th | 3,069 | 1,199 | 1,870 | 1,870 | 332 | 2 |
| | North | 4,998 | 1,798 | 3,200 | 755 | 180 | 3 (1 civil) |
| | South | 4,997 | 1,460 | 3,537 | 1,920 | 217 | 2 |
| | East | 4,499 | 1,395 | 3,104 | 742 | 147 | 1 |

| Week Beginning | Location | Summonses Issued | Postponed or Excused | Potential Jurors | Jurors Called | Jurors Reported | Trials Held |
|-----------------------|-----------------|-------------------------|-----------------------------|-------------------------|----------------------|------------------------|--------------------|
| Sep. 20 | Central - Mo | 2,813 | 1,169 | 1,644 | 1,644 | 384 | 2 (1 civil) |
| | Central - We | 2,959 | 1,182 | 1,777 | 1,777 | 268 | 1 |
| | Central - Th | 2,807 | 1,191 | 1,616 | 1,616 | 237 | 1 |
| | North | 4,764 | 1,841 | 2,923 | 2,174 | 542 | 3 (1 civil) |
| | South | 4,903 | 1,536 | 3,367 | 1,201 | 181 | (supp. panel) |
| Sep. 27 | Central - Mo | 2,788 | 1,025 | 1,763 | 1,763 | 397 | 4 civil |
| | Central - Tu | 3,925 | 1,602 | 2,323 | 2,323 | 317 | 1 |
| | Central - Th | 2,729 | 1,065 | 1,664 | 1,664 | 276 | 2 (1 civil) |
| | North | 4,992 | 1,754 | 3,238 | 1,924 | 480 | 3 |
| | East | 4,492 | 1,382 | 3,110 | 652 | 207 | 1 |
| Oct. 4 | Central - Mo | 2,611 | 1,127 | 1,484 | | | |
| | Central - Tu | 3,182 | 1,334 | 1,848 | | | |
| | Central - We | 3,340 | 1,414 | 1,926 | | | |
| | Central - Th | 2,834 | 1,199 | 1,635 | | | |
| | North | 4,996 | 1,983 | 3,013 | | | |
| | South | 4,999 | 1,496 | 3,503 | | | |
| | East | 4,494 | 1,542 | 2,952 | | | |
| Oct. 12 | Central - Tu | 2,909 | 966 | 1,943 | | | |
| | Central - We | 2,719 | 966 | 1,753 | | | |
| | Central - Th | 1,944 | 702 | 1,242 | | | |
| | North | 4,999 | 1,638 | 3,361 | | | |
| | South | 4,998 | 1,264 | 3,734 | | | |
| | East | 4,496 | 1,272 | 3,224 | | | |
| Oct. 18 | Central - Mo | 2,720 | 652 | 2,068 | | | |
| | Central - Tu | 2,828 | 657 | 2,171 | | | |
| | Central - We | 2,876 | 763 | 2,113 | | | |
| | Central - Th | 2,044 | 469 | 1,575 | | | |
| | North | 5,000 | 1,210 | 3,790 | | | |
| | South | 4,500 | 643 | 3,857 | | | |
| | East | 4,500 | 1,085 | 3,415 | | | |
| Oct. 25 | Central - Mo | 3,037 | 573 | 2,464 | | | |
| | Central - Tu | 3,839 | 779 | 3,060 | | | |
| | Central - We | 3,463 | 777 | 2,686 | | | |
| | Central - Th | 2,392 | 499 | 1,893 | | | |
| | North | 5,000 | 663 | 4,337 | | | |
| | South | 4,500 | 180 | 4,320 | | | |
| | East | 4,500 | 663 | 3,837 | | | |

C. Description of the Court's Readiness Conference Program

As required by the Chief Justice's December 22, 2020, Memorandum regarding COVID-19 Pandemic Readiness Conferences, the court provides the following description of its readiness conference program.

In-custody readiness calendars began in May 2020, with two departments in the Central Courthouse and one department in each branch location. All defendants in custody with pending cases that were post-arraignment/pre-trial were scheduled for a readiness conference in an attempt to settle as many cases as possible. Once all of those readiness cases were completed, all cases with a negotiated plea were calendared for hearing in one of the triage departments to have the plea entered. All cases that did not reach agreement were set for future dates, often subsequent readiness hearings, and given the opportunity to continue negotiations. Many of the cases have had several readiness conferences to date. All cases that are arraigned are automatically set a for readiness conference date, which has always been the court's practice, even before the pandemic, and continues now.

Additionally, all out-of-custody post-arraignment/pre-trial cases were calendared for either a trial status conference or regular status conference (depending on the stage of the case) beginning in September 2020. At those hearings, cases that had negotiated a resolution during the early months of the pandemic were scheduled for a hearing to enter their plea, and those that had not reached resolution were scheduled for a readiness conference with a back-up trial date. Those readiness hearings are being held daily and are often set for additional readiness hearings as negotiations continue.

Currently, there are several readiness departments now operating at each location, with most hearing both in-custody and out-of-custody cases as well as other types of hearings. Due to limitations in the court's CMS, the court is unable to provide accurate numbers as to how many readiness conferences have been held; however, every post-arraignment/pre-trial case has had at least one (often more) readiness conference since the pandemic began.

The following represents the approximate percentage of cases that have settled at readiness conferences at each of the branches during the last month:

- Central Courthouse: 21% of misdemeanors and 18% of felonies
- North County: 23% of misdemeanors and 20% of felonies
- South County: 20% of misdemeanors and 11% of felonies
- East County: 18% of misdemeanors and 17% of felonies

D. The Court's Request for an Extension

In the court's May 29, 2020, request for an emergency order for additional time to conduct trials, the court submitted letters of support from the District Attorney's Office, the City Attorney's Office, the Office of the Public Defender, and the Sheriff's Department. Each of these justice partners supported the court's previous requests with the exception of the Public Defender, who, beginning with the court's October 2, 2020, request, notified the court that, on behalf of his clients,

“he cannot support another 1382” extension. With the exception of the Public Defender, each of these justice partners has confirmed that they also fully support this additional request; however, the Public Defender again indicated he would not support another request.

Regardless, as set forth in the court’s response to questions 1 and 2 below, the court has approximately 1,455 cases in which the last day for trial will occur between October 7 and November 24, inclusive. The court is continuing to work towards resuming pre-pandemic levels of operations; however, even if the court were operating at its full pre-pandemic capacity of 70-90 jury trials per month (including criminal and civil), it would be impossible to hold 1,455 jury trials in this time frame. Therefore, due the enormous backlog and the anticipated pace of proceeding with jury trials, the court requests an order allowing the court to extend the time period provided in Penal Code section 1382, within which a trial must be held, by not more than 30 days.

II. ANSWERS TO SPECIFIC QUESTIONS SET FORTH IN THE MAY 14, 2020, JUDICIAL COUNCIL MEMORANDUM

1. How many criminal cases have last-day deadlines under Penal Code section 1382 during the period of time for which the court is requesting a first extension under Government Code section 68115 (please provide daily breakdown)?

Because this court deals with paper files, it would be burdensome to determine the exact numbers of cases because the court would have to pull all the files and check for the relevant arraignment dates and whether the defendant waived the statutory time for trial. However, the court can provide the following rough statistics for a general idea:

For felony cases with no prior extensions, to have a last-day deadline between October 7 and November 24, inclusive, the defendant would be arraigned on an Information between August 26² and September 25, inclusive. Of the cases with pending trial dates through November 30, there were approximately 85 felony bindovers after preliminary hearing during this timeframe (August 26 – September 25) in cases in which the defendants were arraigned on an Information immediately or soon thereafter. Thus, the court approximates there were 85 felony arraignments during this period (August 26 – September 25), meaning approximately 85 felony cases with no prior extensions that are still pending trial will have a statutory last-day deadline for trial during the request period (October 7 – November 24). Approximately 55% of these defendants remain in custody.

For misdemeanor in-custody cases with no prior extensions, to have a last-day deadline between October 7 and November 24, inclusive, defendants would have arraignment dates between September 25 (see footnote 2) and October 25, inclusive. The court does not have complete statistics for this time period. However, of the cases with scheduled trial dates through November 30, there were approximately 50 arraignments between August 30 and September 29, inclusive, in which the defendants remain in custody. In the 30 days before that (July 30 – August

² Although the “request period” is October 7 through November 24, the first last-day deadline for a case in this category in this court (i.e. no prior extensions) would be October 25.

29), there were approximately 15 misdemeanor arraignments in cases in which the defendants remain in custody. Using these numbers as a guide, the court estimates that about 30 misdemeanor in-custody cases with trial dates through November 30 and with no prior extensions will have a statutory last-day deadline during the request period (October 7 – November 24).

For misdemeanor out-of-custody cases with no prior extensions, to have a statutory last-day deadline between October 7 and November 24, inclusive, defendants would have arraignment dates between September 10 (see footnote 2) and October 10, inclusive. The court has incomplete statistics for this time period, but of the cases with pending trial dates through November 30, there were approximately 200 misdemeanor arraignments between September 10 and September 29, inclusive, in cases in which the defendants are now out of custody. In the 30 days before that (August 10 – September 9), there were approximately 100 misdemeanor arraignments in cases in which the defendants are now out of custody. Based on these known numbers, the court estimates that there will be roughly 150 misdemeanor out-of-custody cases with trial dates through November 30 and with no prior extensions that will have a statutory last-day deadline during the request period (October 7 – November 24).

In sum, the court estimates that, of the cases with pending trial dates through November 30, approximately 265 cases with no prior extensions will have their statutory trial deadline come due during the period of October 7 through November 24, inclusive. The court recognizes a number of these cases, being new, may settle, but the court cannot predict what percentage of cases that may be. Assuming a 50% settlement rate, that still leaves over 130 cases with original last-day deadlines falling within the request period.

2. How many criminal cases are coming up to the limit already extended for 90 days by the statewide orders (please provide a daily breakdown)? Is the court requesting a further extension of time on any of these cases?

The response to this question includes those cases which were extended 90 days by the statewide orders, and those cases that have received the benefit of any of the previous sixteen court-specific 30-day extensions granted to this court pursuant to the Chief's Emergency Orders dated June 4, 2020, June 30, 2020, August 7, 2020, September 4, 2020, October 6, 2020, November 5, 2020, December 8, 2020, January 7, 2021, February 3, 2021, March 9, 2021, April 8, 2021, May 6, 2021, June 3, 2021, July 8, 2021, August 5, 2021, and September 2, 2021. Because these cases all have paper files, the court would have to manually pull all of the case files to determine the relevant arraignment date. In addition, with trial dates now having been set and reset multiple times in some cases since the pandemic began, as well as express time waivers entered by the defendants in some cases, it is difficult to tell which and how many of the prior extension orders the cases fall under. However, the court can provide the following rough statistics for a general idea:

There are approximately 30 felony cases that, with all the previous extensions, now have statutory trial deadlines between October 7 and October 24 (approximately 8 remain in custody). There are also approximately 5 in-custody misdemeanor cases, and approximately 120 out-of-

custody misdemeanor cases that, with all the extensions, have statutory trial deadlines between October 7 and October 24, inclusive.

In addition, there are approximately 245 felony cases (approximately 135 in custody), approximately 125 in-custody misdemeanor cases, and approximately 800 out-of-custody misdemeanor cases that, with all prior extensions, now have statutory trial deadlines between October 25 and November 24, inclusive.

In sum, the court estimates that, of the cases with pending trial dates through November 30, approximately 1,325 previously extended cases will have their statutory trial deadline come due during the request period of October 7 through November 24, inclusive.

Summary:

Based on the above, in both categories (questions 1 and 2), the court estimates that, of the cases with pending trial dates through November 30, there are approximately 1,455 cases in which the statutory last day for trial will occur between October 7 and November 24, inclusive.

Except as noted above and in previous requests, the court's responses to questions 3-5 have generally not changed since its September 3, 2020, request, and those responses are incorporated herein by reference.

###

TO: Hon. Tani G. Cantil-Sakauye, Chair of the Judicial Council
Judicial Council of California
c/o Legal Services Supervising Attorney Charles Perkins
415-865-4609
charles.perkins@jud.ca.gov
415-865-8767 (fax)

FROM: *Name* : Lorna A. Alksne
Title: Presiding Judge
Court: Superior Court of San Diego County
Telephone: 619-844-2100
Fax: 619-844-5550
E-mail Address: [REDACTED]

DATE: 11/3/2021

SUBJECT: Request for Judicial Emergency Order

I hereby request an order allowing the court to implement the following emergency procedures pursuant to the provisions of section 68115 of the Government Code¹:

- The court may extend the time period provided in section 1382 of the Penal Code within which a trial must be held by not more than 30 days. (Gov. Code, § 68115(a)(10).)
(Fill in number of days, not exceeding 30. Pursuant to Government Code section 68115(a)(10), “the trial of a defendant in custody whose time is so extended shall be given precedence over all other cases.”)
This request applies only to cases in which the statutory deadline otherwise would expire on _____ *or* from 11/6/2021, to 12/25/2021, inclusive*.
(Fill in date(s) above.)

***This request applies to cases in which the original or previously-extended statutory deadline otherwise would expire from November 6, 2021, to December 25, 2021, inclusive.**

Although the previous Emergency Order issued October 6, 2021, already provides relief for cases in which the trial deadline falls on November 6, 2021, through November 24, 2021, the court has determined that November 6, 2021, through November 24, 2021, also need to be

¹ Government Code section 68115, as amended, effective January 1, 2019, provides that, upon the request of a presiding judge, the Chairperson of the Judicial Council may authorize relief as set forth in the statute, “[w]hen war, an act of terrorism, public unrest or calamity, epidemic, natural disaster, or other substantial risk to the health and welfare of court personnel or the public, or the danger thereof, the destruction of or danger to the building appointed for holding the court, a large influx of criminal cases resulting from a large number of arrests within a short period of time, or a condition that leads to a state of emergency being proclaimed by the President of the United States or by the Governor pursuant to Section 8625, threatens the orderly operation of a superior court location or locations within a county or renders presence in, or access to, an affected court facility or facilities unsafe”

included in the current request. The April 29, 2020, statewide order granting up to a 90-day extension was effective for cases with a last day for trial of March 16 through June 15, 2020. With this statewide 90-day extension, as well as the seventeen prior 30-day extensions authorized for this court, a case with a last day for trial of March 16-April 3, April 19-May 3, May 20-June 2, June 16-July 2, July 18-August 1, August 18-31, September 18-30, October 19-30, November 19-29, and December 19-29, 2020, and January 19-28, February 19-27, March 23-29, April 23-28, May 24-28, June 24-26, July 24-27, August 24-26, September 24-35, and October 25, 2021, would now have a last day for trial of November 6 through November 24, 2021. Accordingly, the court is including November 6 through November 24, 2021, in its request.

The circumstances necessitating an emergency order are described in the attached document.

The public defender, the district attorney, and other interested local entities have / have not (check one box) been notified of this request for emergency order.

The court has / has not (check one box) advised these entities to immediately notify the Judicial Council's Legal Services office of any opposition or questions regarding the request.

Please list the names and telephone numbers of the district attorney, the public defender, and other notified parties affected by the order:

District Attorney: Summer Stephan

Public Defender: Randy Mize

Other Parties Affected: City Attorney Mara Elliot; San Diego Sheriff Bill Gore

The court has / has not (check one box) been informed of any opposition to this request.

If the court has been informed of potential opposition to this request, please state below the party or parties who may oppose the request and any stated reasons for the opposition:

Regarding the court's October 2, 2020, request, the Public Defender, Randy Mize, informed the court that he "cannot support another 1382" extension on behalf of his clients, and he recently indicated he also does not support this current request.

Submitted by:



Date: 11/3/2021

Presiding Judge San Diego Superior Court

The San Diego Superior Court hereby requests an order allowing the court to extend the time period provided in Penal Code section 1382, within which a trial must be held, by not more than 30 days. This request applies to cases in which the original or previously extended statutory deadline otherwise would expire from November 6, 2021, to December 25, 2021, inclusive.

I. BACKGROUND INFORMATION AND BASIS FOR REQUEST

Since the court's last request for Penal Code section 1382 relief, which was submitted on October 4, 2021,¹ the court has generally continued its resumption of criminal and civil jury trials in several locations across the county; however, as described below, the court still faces an enormous backlog of approximately 1,470 criminal cases in which the last day for trial will occur between November 6 and December 25. Even in pre-pandemic conditions, it would be impossible to hold jury trials for this number of cases in such a short period of time.

This memorandum will address relevant changes since the court's last request. In addition, the numerous federal, state, and local public health orders that have been issued in response to the COVID-19 pandemic are well known and have been detailed in prior Judicial Council orders and memoranda as well as this court's prior requests for relief from the Chief Justice. Accordingly, they will not be repeated here, except as necessary to provide relevant updates.

A. COVID-19 in San Diego County and Public Health Guidance

To date in San Diego County, there have been 372,198 COVID-19 cases, 18,142 hospitalizations, and 4,232 deaths. More than 81% of eligible San Diego County residents are now fully vaccinated, more than 90% are partially vaccinated, and the general trend in new COVID-19 cases has been improving since a mid-August peak.

Since June 15, public health authorities have not re-implemented any of the other measures that previously limited the court's ability to conduct in-person jury trials, such as stay-at-home orders, capacity limits, and physical-distancing requirements.

B. Activity Since the Court's Last Request

The court has continued to work with the Sheriff to take steps to reduce the inmate population to help combat the number of COVID-19 cases in the jails. For example, the court has implemented several general orders, including an extension signed on October 7, authorizing the Sheriff to accelerate the release of sentenced county jail inmates up to 60 days from when they would otherwise be released, subject to certain conditions. If requested, the court plans on authorizing another extension when the current one expires on November 8. In addition, the court has continued offering remote in-custody arraignments to ease some of the logistical burdens associated with the Sheriff's COVID-19 protocols.

The court resumed out-of-custody trials on September 1, with priority still given to in-custody trials. Since the week of October 4, the court held 40 jury trials at its various locations,

¹ All subsequent date references are to 2021 unless otherwise indicated.

including 12 civil trials. In addition, there was one criminal grand jury in October in Central. For reference, since resuming jury trials on February 8, the court has held a total of 180 trials, including 48 civil trials.

Regarding juror turnout, the average yield for newly summoned jurors has remained approximately 15%, which is nearly the same as the pre-pandemic yield, and the total yield, including jurors that previously deferred, remained approximately 17.6% in October.

The court has continued to see several criminal cases settle after being set for trial or waive time due to various issues such as witness availability. Specifically, in the last month, approximately 11% of cases in Central, 19% of cases in North, 8% of cases in South, and 20% of cases in East have settled at trial, and the remainder, except for those that went forward, requested to be continued (in-custody) or were continued for cause (out-of-custody). The court is continuing to work with its justice partners to schedule more trials to allow for those that may settle, including daily trial call calendars in each branch.

The chart below illustrates the juror turnout since the court’s October 4 request and previews the number of jurors that have postponed or requested to be excused for upcoming weeks:

| Week Beginning | Location | Summonses Issued | Postponed or Excused | Potential Jurors | Jurors Called | Jurors Reported | Trials Held |
|-----------------------|-----------------|-------------------------|-----------------------------|-------------------------|----------------------|------------------------|--------------------|
| Oct. 4 | Central - Mo | 2,611 | 1,127 | 1,484 | 1,484 | 396 | 5 (2 civil) |
| | Central - Tu | 3,182 | 1,334 | 1,848 | 1,848 | 341 | 2 civil |
| | Central - We | 3,340 | 1,414 | 1,926 | 1,926 | 283 | (supp. panel) |
| | Central - Th | 2,834 | 1,199 | 1,635 | 1,635 | 248 | (supp. panel) |
| | North | 4,996 | 1,983 | 3,013 | 794 | 193 | 2 (1 civil) |
| | South | 4,999 | 1,496 | 3,503 | 526 | 92 | 1 |
| | East | 4,494 | 1,542 | 2,952 | 1,548 | 372 | 1 |
| Oct. 12 | Central - Tu | 2,909 | 1,540 | 1,369 | 1,369 | 383 | 2 |
| | Central - We | 2,719 | 1,360 | 1,359 | 1,359 | 271 | 1 civil |
| | Central - Th | 1,944 | 976 | 968 | 968 | 250 | (supp. panel) |
| | South | 4,998 | 1,714 | 3,284 | 608 | 92 | 1 |
| | East | 4,496 | 2,034 | 2,462 | 2,013 | 378 | 2 |
| Oct. 18 | Central - Mo | 2,720 | 1,339 | 1,381 | 1,381 | 351 | 3 (1 civil) |
| | Central - Tu | 2,828 | 1,378 | 1,450 | 1,450 | 334 | 3 (1 civil) |
| | Central - We | 2,876 | 1,397 | 1,479 | 1,479 | 292 | 1 civil |
| | Central - Th | 2,044 | 913 | 1,131 | 1,131 | 255 | 1 |
| | North | 5,000 | 1,832 | 3,168 | 1,924 | 671 | 4 (1 civil) |
| | South | 4,500 | 1,043 | 3,457 | 1,604 | 216 | 2 |
| | East | 4,500 | 2,159 | 2,341 | 2,219 | 472 | 2 |
| Oct. 25 | Central - Mo | 3,037 | 1,551 | 1,486 | 1,486 | 357 | 3 (2 civil) +GJ |
| | North | 5,000 | 1,729 | 3,271 | 1,035 | 469 | 2 |
| | East | 4,500 | 1,845 | 2,655 | 2,075 | 432 | 2 |

| Week Beginning | Location | Summonses Issued | Postponed or Excused | Potential Jurors | Jurors Called | Jurors Reported | Trials Held |
|-----------------------|-----------------|-------------------------|-----------------------------|-------------------------|----------------------|------------------------|--------------------|
| Nov. 1 | Central - Mo | 3,055 | 1,477 | 1,578 | | | |
| | Central - Tu | 3,043 | 1,389 | 1,654 | | | |
| | Central - We | 2,059 | 920 | 1,139 | | | |
| | Central - Th | 1,953 | 761 | 1,192 | | | |
| | North | 5,000 | 2,086 | 2,914 | | | |
| | South | 5,000 | 1,650 | 3,350 | | | |
| | East | 4,500 | 1,868 | 2,632 | | | |
| Nov. 8 | Central - Mo | 2,911 | 1,089 | 1,822 | | | |
| | Central - Tu | 3,189 | 1,132 | 2,057 | | | |
| | Central - We | 2,442 | 880 | 1,562 | | | |
| | Central - Th | 0 | 0 | 0 | | | |
| | North | 5,000 | 1,573 | 3,427 | | | |
| | South | 5,000 | 1,299 | 3,701 | | | |
| | East | 4,500 | 1,441 | 3,059 | | | |
| Nov. 15 | Central - Mo | 3,040 | 597 | 2,443 | | | |
| | Central - Tu | 2,889 | 588 | 2,301 | | | |
| | Central - We | 3,124 | 639 | 2,485 | | | |
| | Central - Th | 2,381 | 514 | 1,867 | | | |
| | North | 5,000 | 1,166 | 3,834 | | | |
| | South | 5,000 | 1,004 | 3,996 | | | |
| | East | 4,500 | 1,037 | 3,463 | | | |
| Nov. 22 | Central - Mo | 1,367 | 374 | 993 | | | |
| | Central - Tu | 2,363 | 538 | 1,825 | | | |
| | Central - We | 2,048 | 465 | 1,583 | | | |
| | North | 2,500 | 345 | 2,155 | | | |
| | South | 2,250 | 73 | 2,177 | | | |
| | East | 2,500 | 365 | 2,135 | | | |
| Nov. 29 | Central - Mo | 3,100 | 3 | 3,097 | | | |
| | Central - Tu | 3,876 | 3 | 3,873 | | | |
| | Central - We | 2,572 | 2 | 2,570 | | | |
| | Central - Th | 2,535 | 1 | 2,534 | | | |
| | North | 5,000 | 460 | 4,540 | | | |
| | South | 5,000 | 246 | 4,754 | | | |
| | East | 4,500 | 332 | 4,168 | | | |
| Dec. 6 | Central - Mo | 3,000 | 0 | 3,000 | | | |
| | Central - Tu | 2,854 | 0 | 2,854 | | | |
| | Central - We | 2,963 | 4 | 2,959 | | | |
| | Central - Th | 2,680 | 2 | 2,678 | | | |
| | North | 5,000 | 6 | 4,994 | | | |
| | South | 5,000 | 2 | 4,998 | | | |
| | East | 4,500 | 6 | 4,494 | | | |

C. Description of the Court's Readiness Conference Program

As required by the Chief Justice's December 22, 2020, Memorandum regarding COVID-19 Pandemic Readiness Conferences, the court provides the following description of its readiness conference program.

In-custody readiness calendars began in May 2020, with two departments in the Central Courthouse and one department in each branch location. All defendants in custody with pending cases that were post-arraignment/pre-trial were scheduled for a readiness conference in an attempt to settle as many cases as possible. Once all of those readiness cases were completed, all cases with a negotiated plea were calendared for hearing in one of the triage departments to have the plea entered. All cases that did not reach agreement were set for future dates, often subsequent readiness hearings, and given the opportunity to continue negotiations. Many of the cases have had several readiness conferences to date. All cases that are arraigned are automatically set a for readiness conference date, which has always been the court's practice, even before the pandemic, and continues now.

Additionally, all out-of-custody post-arraignment/pre-trial cases were calendared for either a trial status conference or regular status conference (depending on the stage of the case) beginning in September 2020. At those hearings, cases that had negotiated a resolution during the early months of the pandemic were scheduled for a hearing to enter their plea, and those that had not reached resolution were scheduled for a readiness conference with a back-up trial date. Those readiness hearings are being held daily and are often set for additional readiness hearings as negotiations continue.

Currently, there are several readiness departments now operating at each location, with most hearing both in-custody and out-of-custody cases as well as other types of hearings. Due to limitations in the court's CMS, the court is unable to provide accurate numbers as to how many readiness conferences have been held; however, every post-arraignment/pre-trial case has had at least one (often more) readiness conference since the pandemic began.

The following represents the approximate percentage of cases that have settled at readiness conferences at each of the branches during the last month:

- Central Courthouse: 21% of misdemeanors and 20% of felonies
- North County: 31% of misdemeanors and 32% of felonies
- South County: 33% of misdemeanors and 28% of felonies
- East County: 15% of misdemeanors and 20% of felonies

D. The Court's Request for an Extension

In the court's May 29, 2020, request for an emergency order for additional time to conduct trials, the court submitted letters of support from the District Attorney's Office, the City Attorney's Office, the Office of the Public Defender, and the Sheriff's Department. Each of these justice partners supported the court's previous requests with the exception of the Public Defender, who, beginning with the court's October 2, 2020, request, notified the court that, on behalf of his clients,

“he cannot support another 1382” extension. With the exception of the Public Defender, each of these justice partners has confirmed that they also fully support this additional request; however, the Public Defender again indicated he would not support another request.

Regardless, as set forth in the court’s response to questions 1 and 2 below, the court has approximately 1,470 cases in which the last day for trial will occur between November 6 and December 25, inclusive. The court is continuing to work towards resuming pre-pandemic levels of operations; however, even if the court were operating at its full pre-pandemic capacity of 70-90 jury trials per month (including criminal and civil), it would be impossible to hold 1,470 jury trials in this time frame. Therefore, due the enormous backlog and the anticipated pace of proceeding with jury trials, the court requests an order allowing the court to extend the time period provided in Penal Code section 1382, within which a trial must be held, by not more than 30 days.

II. ANSWERS TO SPECIFIC QUESTIONS SET FORTH IN THE MAY 14, 2020, JUDICIAL COUNCIL MEMORANDUM

1. How many criminal cases have last-day deadlines under Penal Code section 1382 during the period of time for which the court is requesting a first extension under Government Code section 68115 (please provide daily breakdown)?

Because this court deals with paper files, it would be burdensome to determine the exact numbers of cases because the court would have to pull all the files and check for the relevant arraignment dates and whether the defendant waived the statutory time for trial. However, the court can provide the following rough statistics for a general idea:

For felony cases with no prior extensions, to have a last-day deadline between November 6 and December 25, inclusive, the defendant would be arraigned on an Information between September 26² and October 26, inclusive. Of the cases with pending trial dates through December 31, there were approximately 125 felony bindovers after preliminary hearing during this timeframe (September 26 – October 26) in cases in which the defendants were arraigned on an Information immediately or soon thereafter. Thus, the court approximates there were 125 felony arraignments during this period (September 26 – October 26), meaning approximately 125 felony cases with pending trial dates through December 31 and with no prior extensions will have a statutory last-day deadline for trial during the request period (November 6 – December 25). Most of these defendants remain in custody.

For misdemeanor in-custody cases with no prior extensions, to have a last-day deadline between November 6 and December 25, inclusive, defendants would have arraignment dates between October 26 (see footnote 2) and November 25, inclusive. The court does not have complete statistics for this time period. However, of the cases with scheduled trial dates through December 31, there were approximately 75 arraignments between September 27 and October 27, inclusive, in which the defendants remain in custody. In the 30 days before that (August 27-

² Although the “request period” is November 6 through December 25, the first last-day deadline for a case in this category in this court (i.e. no prior extensions) would be November 25.

September 26), there were approximately 20 misdemeanor arraignments in cases in which the defendants remain in custody. Using these numbers as a guide, the court estimates that about 45 misdemeanor in-custody cases with trial dates through December 31 and with no prior extensions will have a statutory last-day deadline during the request period (November 6 – December 25).

For misdemeanor out-of-custody cases with no prior extensions, to have a statutory last-day deadline between November 6 and December 25, inclusive, defendants would have arraignment dates between October 11 (see footnote 2) and November 10, inclusive. The court has incomplete statistics for this time period, but of the cases with pending trial dates through December 31, there were approximately 150 misdemeanor arraignments between October 11 and October 28, inclusive, in cases in which the defendants are now out of custody. In the 30 days before that (September 10 – October 10), there were approximately 140 misdemeanor arraignments in cases in which the defendants are now out of custody. Based on these known numbers, the court estimates that there will be roughly 150 misdemeanor out-of-custody cases with trial dates through December 31 and with no prior extensions that will have a statutory last-day deadline during the request period (November 6 – December 25).

In sum, the court estimates that, of the cases with pending trial dates through December 31, approximately 320 cases with no prior extensions will have their statutory trial deadline come due during the period of November 6 and December 25, inclusive. The court recognizes a number of these cases, being new, may settle, but the court cannot predict what percentage of cases that may be. Assuming a 50% settlement rate, that still leaves approximately 160 cases with original last-day deadlines falling within the request period.

2. How many criminal cases are coming up to the limit already extended for 90 days by the statewide orders (please provide a daily breakdown)? Is the court requesting a further extension of time on any of these cases?

The response to this question includes those cases which were extended 90 days by the statewide orders, and those cases that have received the benefit of any of the previous seventeen court-specific 30-day extensions granted to this court pursuant to the Chief's Emergency Orders dated June 4, 2020, June 30, 2020, August 7, 2020, September 4, 2020, October 6, 2020, November 5, 2020, December 8, 2020, January 7, 2021, February 3, 2021, March 9, 2021, April 8, 2021, May 6, 2021, June 3, 2021, July 8, 2021, August 5, 2021, September 2, 2021, and October 6, 2021. Because these cases all have paper files, the court would have to manually pull all of the case files to determine the relevant arraignment date. In addition, with trial dates now having been set and reset multiple times in some cases since the pandemic began, as well as express time waivers entered by the defendants in some cases, it is difficult to tell which and how many of the prior extension orders the cases fall under. However, the court can provide the following rough statistics for a general idea:

There are approximately 30 felony cases that, with all the previous extensions, now have statutory trial deadlines between November 6 and November 24 (approximately 10 remain in custody). There are also approximately 7 in-custody misdemeanor cases, and approximately 135

out-of-custody misdemeanor cases that, with all the extensions, have statutory trial deadlines between November 6 and November 24, inclusive.

In addition, there are approximately 260 felony cases (approximately 115 in custody), approximately 130 in-custody misdemeanor cases, and approximately 750 out-of-custody misdemeanor cases that, with all prior extensions, now have statutory trial deadlines between November 25 and December 25, inclusive.

In sum, the court estimates that, of the cases with pending trial dates through December 31, approximately 1,310 previously extended cases will have their statutory trial deadline come due during the request period of November 6 through December 25, inclusive.

Summary:

Based on the above, in both categories (questions 1 and 2), the court estimates that, of the cases with pending trial dates through December 31, there are approximately 1,470 cases in which the statutory last day for trial will occur between November 6 and December 25, inclusive.

Except as noted above and in previous requests, the court's responses to questions 3-5 have generally not changed since its September 3, 2020, request, and those responses are incorporated herein by reference.

###

TO: Hon. Tani G. Cantil-Sakauye, Chair of the Judicial Council
Judicial Council of California
c/o Legal Services Supervising Attorney Charles Perkins
415-865-4609
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415-865-8767 (fax)

FROM: *Name* : Lorna A. Alksne
Title: Presiding Judge
Court: Superior Court of San Diego County
Telephone: 619-844-2100
Fax: 619-844-5550
E-mail Address: [REDACTED]

DATE: 12/2/2021

SUBJECT: Request for Judicial Emergency Order

I hereby request an order allowing the court to implement the following emergency procedures pursuant to the provisions of section 68115 of the Government Code¹:

- The court may extend the time period provided in section 1382 of the Penal Code within which a trial must be held by not more than 30 days. (Gov. Code, § 68115(a)(10).)
(Fill in number of days, not exceeding 30. Pursuant to Government Code section 68115(a)(10), “the trial of a defendant in custody whose time is so extended shall be given precedence over all other cases.”)
This request applies only to cases in which the statutory deadline otherwise would expire on _____ *or* from 12/6/2021, to 1/25/2022, inclusive*.
(Fill in date(s) above.)

***This request applies to cases in which the original or previously-extended statutory deadline otherwise would expire from December 6, 2021, to January 25, 2022, inclusive.**

Although the previous Emergency Order issued November 4, 2021, already provides relief for cases in which the trial deadline falls on December 6, 2021, through December 25, 2021, the court has determined that December 6, 2021, through December 25, 2021, also need to be

¹ Government Code section 68115, as amended, effective January 1, 2019, provides that, upon the request of a presiding judge, the Chairperson of the Judicial Council may authorize relief as set forth in the statute, “[w]hen war, an act of terrorism, public unrest or calamity, epidemic, natural disaster, or other substantial risk to the health and welfare of court personnel or the public, or the danger thereof, the destruction of or danger to the building appointed for holding the court, a large influx of criminal cases resulting from a large number of arrests within a short period of time, or a condition that leads to a state of emergency being proclaimed by the President of the United States or by the Governor pursuant to Section 8625, threatens the orderly operation of a superior court location or locations within a county or renders presence in, or access to, an affected court facility or facilities unsafe”

The San Diego Superior Court hereby requests an order allowing the court to extend the time period provided in Penal Code section 1382, within which a trial must be held, by not more than 30 days. This request applies to cases in which the original or previously extended statutory deadline otherwise would expire from December 6, 2021, to January 25, 2022, inclusive.

I. BACKGROUND INFORMATION AND BASIS FOR REQUEST

Since the court's last request for Penal Code section 1382 relief, which was submitted on November 3, 2021,¹ the court has generally continued its resumption of criminal and civil jury trials in several locations across the county; however, as described below, the court still faces an enormous number of criminal cases, approximately 1,550, in which the last day for trial will occur between December 6, 2021, and January 25, 2022. Even in pre-pandemic conditions, it would be impossible to hold jury trials for this number of cases in such a short period of time.

This memorandum will address relevant changes since the court's last request. In addition, the numerous federal, state, and local public health orders that have been issued in response to the COVID-19 pandemic are well known and have been detailed in prior Judicial Council orders and memoranda as well as this court's prior requests for relief from the Chief Justice. Accordingly, they will not be repeated here, except as necessary to provide relevant updates.

A. COVID-19 in San Diego County and Relevant Public Health Guidance

To date in San Diego County, there have been 385,396 COVID-19 cases, 18,599 hospitalizations, and 4,346 deaths. More than 75% of eligible San Diego County residents are now fully vaccinated, more than 84% are partially vaccinated,² and the general trend in new COVID-19 cases has been improving since a mid-August peak.

Since June 15, public health authorities have not re-implemented any of the other measures that previously limited the court's ability to conduct in-person jury trials, such as stay-at-home orders, capacity limits, and physical-distancing requirements.

B. Activity Since the Court's Last Request

The court has continued to work with the Sheriff to take steps to reduce the inmate population to help combat the number of COVID-19 cases in the jails. For example, the court has implemented several general orders, including an extension signed on November 9, authorizing the Sheriff to accelerate the release of sentenced county jail inmates up to 60 days from when they would otherwise be released, subject to certain conditions. If requested, the court plans on authorizing another extension when the current one expires on December 8. In addition, the court has continued offering remote in-custody arraignments to ease some of the logistical burdens associated with the Sheriff's COVID-19 protocols.

¹ All subsequent date references are to 2021 unless otherwise indicated.

² The vaccination percentages have decreased since the court's last request because the pool of eligible residents was expanded to include children ages five and older.

Despite these and the Sheriff’s other efforts, there has recently been an increase in the number of COVID-19 cases in the county detention facilities, which has resulted in an increased number of other, non-infected inmates being in medical isolation for precautionary reasons due to entire units being quarantined. In turn, this has resulted in some in-custody defendants being unable to be transported to the courthouse for some pre-trial proceedings, including readiness conferences, and trials, which has impacted the ability of the court to resolve cases.

The court resumed out-of-custody trials on September 1, with priority still given to in-custody trials. Since the week of November 1, the court held 40 jury trials at its various locations, including 8 civil trials. In addition, there was one supplemental panel for a criminal trial that was included in last month’s request. For reference, since resuming jury trials on February 8, the court has held a total of 220 trials, including 56 civil trials.

Regarding juror turnout, the average yield for newly summoned jurors has remained approximately 15%, which is nearly the same as the pre-pandemic yield, and the total yield, including jurors that previously deferred, remained approximately 17.6% in November.

The court has continued to see several criminal cases settle after being set for trial or waive time due to various issues such as witness availability. Specifically, in the last month, approximately 10% of cases in Central, 14% of cases in North, 3% of cases in South, and 6% of cases in East have settled at trial, and the remainder, except for those that went forward, requested to be continued (in-custody) or were continued for cause (out-of-custody). The court is continuing to work with its justice partners to schedule more trials to allow for those that may settle, including daily trial call calendars in each branch.

The chart below illustrates the juror turnout since the court’s November 3 request and previews the number of jurors that have postponed or requested to be excused for upcoming weeks:

| Week Beginning | Location | Summonses Issued | Postponed or Excused | Potential Jurors | Jurors Called | Jurors Reported | Trials Held |
|-----------------------|-----------------|-------------------------|-----------------------------|-------------------------|----------------------|------------------------|--------------------|
| Nov. 1 | Central - Mo | 3,055 | 1,477 | 1,578 | 1,578 | 312 | 2 civil |
| | Central - Tu | 3,043 | 1,389 | 1,654 | 1,654 | 321 | 1 |
| | Central - We | 2,059 | 920 | 1,139 | 1,139 | 252 | 2 |
| | Central - Th | 1,953 | 761 | 1,192 | 1,192 | 262 | 1 |
| | North | 5,000 | 2,086 | 2,914 | 897 | 353 | 3 (2 civil) |
| | East | 4,500 | 1,868 | 2,632 | 1,784 | 319 | 2 |
| Nov. 8 | Central - Mo | 2,911 | 1,089 | 1,822 | 1,822 | 368 | 2 |
| | Central - Tu | 3,189 | 1,132 | 2,057 | 2,057 | 344 | 1 civil |
| | Central - We | 2,442 | 880 | 1,562 | 1,562 | 308 | 2 (1 civil) |
| | North | 5,000 | 1,573 | 3,427 | 342 | 147 | 1 |
| | South | 5,000 | 1,299 | 3,701 | 201 | 81 | 1 |

| Week Beginning | Location | Summonses Issued | Postponed or Excused | Potential Jurors | Jurors Called | Jurors Reported | Trials Held |
|-----------------------|-----------------|-------------------------|-----------------------------|-------------------------|----------------------|------------------------|--------------------|
| Nov. 15 | Central - Mo | 3,040 | 1,217 | 1,823 | 1,823 | 348 | 6 (1 civil) |
| | Central - Tu | 2,889 | 1,141 | 1,748 | 1,748 | 369 | 1 civil |
| | Central - We | 3,124 | 1,243 | 1,881 | 1,881 | 281 | 1 |
| | Central - Th | 2,381 | 995 | 1,386 | 1,386 | 224 | 1 |
| | North | 5,000 | 1,858 | 3,142 | 243 | 76 | 1 |
| | South | 5,000 | 1,473 | 3,527 | 1,465 | 203 | 2 |
| | East | 4,500 | 1,519 | 2,981 | 1,019 | 192 | 3 |
| Nov. 22 | Central - Mo | 1,367 | 653 | 714 | 714 | 284 | 1 |
| | East | 2,500 | 895 | 1,605 | 598 | 134 | 1 |
| Nov. 29 | Central - Tu | 3,876 | 1,167 | 2,709 | 2,709 | 347 | 1 |
| | North | 5,000 | 1,901 | 3,099 | 224 | 54 | 1 |
| | South | 5,000 | 1,348 | 3,652 | 444 | 76 | 1 |
| | East | 4,500 | 1,501 | 2,999 | 1,318 | 183 | 2 |
| Dec. 6 | Central - Mo | 3,000 | 1,229 | 1,771 | | | |
| | Central - Tu | 2,854 | 1,072 | 1,782 | | | |
| | Central - We | 2,963 | 1,192 | 1,771 | | | |
| | Central - Th | 2,680 | 1,054 | 1,626 | | | |
| | North | 5,000 | 1,708 | 3,292 | | | |
| | South | 5,000 | 1,397 | 3,603 | | | |
| | East | 4,500 | 1,350 | 3,150 | | | |
| Dec. 13 | Central - Mo | 2,707 | 884 | 1,823 | | | |
| | Central - Tu | 3,255 | 1,111 | 2,144 | | | |
| | Central - We | 2,599 | 893 | 1,706 | | | |
| | Central - Th | 1,426 | 502 | 924 | | | |
| | North | 5,000 | 1,533 | 3,467 | | | |
| | South | 5,000 | 1,263 | 3,737 | | | |
| | East | 4,500 | 1,291 | 3,209 | | | |
| Dec. 20 | Central - Mo | 3,000 | 809 | 2,191 | | | |
| | North | 2,500 | 484 | 2,016 | | | |
| | South | 2,500 | 487 | 2,013 | | | |
| | East | 2,500 | 503 | 1,997 | | | |
| Dec. 27 | Central - Mo | 3,000 | 535 | 2,465 | | | |
| | North | 2,500 | 375 | 2,125 | | | |
| | South | 2,500 | 283 | 2,217 | | | |
| | East | 2,500 | 378 | 2,122 | | | |

C. Description of the Court's Readiness Conference Program

As required by the Chief Justice's December 22, 2020, Memorandum regarding COVID-19 Pandemic Readiness Conferences, the court provides the following description of its readiness conference program.

In-custody readiness calendars began in May 2020, with two departments in the Central Courthouse and one department in each branch location. All defendants in custody with pending cases that were post-arraignment/pre-trial were scheduled for a readiness conference in an attempt to settle as many cases as possible. Once all of those readiness cases were completed, all cases with a negotiated plea were calendared for hearing in one of the triage departments to have the plea entered. All cases that did not reach agreement were set for future dates, often subsequent readiness hearings, and given the opportunity to continue negotiations. Many of the cases have had several readiness conferences to date. All cases that are arraigned are automatically set a for readiness conference date, which has always been the court's practice, even before the pandemic, and continues now.

Additionally, all out-of-custody post-arraignment/pre-trial cases were calendared for either a trial status conference or regular status conference (depending on the stage of the case) beginning in September 2020. At those hearings, cases that had negotiated a resolution during the early months of the pandemic were scheduled for a hearing to enter their plea, and those that had not reached resolution were scheduled for a readiness conference with a back-up trial date. Those readiness hearings are being held daily and are often set for additional readiness hearings as negotiations continue.

Currently, there are several readiness departments now operating at each location, with most hearing both in-custody and out-of-custody cases as well as other types of hearings. Due to limitations in the court's CMS, the court is unable to provide accurate numbers as to how many readiness conferences have been held; however, every post-arraignment/pre-trial case has had at least one (often more) readiness conference since the pandemic began.

The following represents the approximate percentage of cases that have settled at readiness conferences at each of the branches during the last month:

- Central Courthouse: 24% of misdemeanors and 28% of felonies
- North County: 25% of misdemeanors and 20% of felonies
- South County: 18% of misdemeanors and 22% of felonies
- East County: 19% of misdemeanors and 6% of felonies

D. The Court's Request for an Extension

In the court's May 29, 2020, request for an emergency order for additional time to conduct trials, the court submitted letters of support from the District Attorney's Office, the City Attorney's Office, the Office of the Public Defender, and the Sheriff's Department. Each of these justice partners supported the court's previous requests with the exception of the Public Defender, who, beginning with the court's October 2, 2020, request, notified the court that, on behalf of his clients,

“he cannot support another 1382” extension. With the exception of the Public Defender, each of these justice partners has confirmed that they also fully support this additional request; however, the Public Defender again indicated he would not support another request.

Regardless, as set forth in the court’s response to questions 1 and 2 below, the court has approximately 1,550 cases in which the last day for trial will occur between December 6, 2021, and January 25, 2022, inclusive. The court is continuing to work towards resuming pre-pandemic levels of operations; however, even if the court were operating at its full pre-pandemic capacity of 70-90 jury trials per month (including criminal and civil), it would be impossible to hold 1,550 jury trials in this time frame. Therefore, due the enormous backlog and the anticipated pace of proceeding with jury trials, the court requests an order allowing the court to extend the time period provided in Penal Code section 1382, within which a trial must be held, by not more than 30 days.

II. ANSWERS TO SPECIFIC QUESTIONS SET FORTH IN THE MAY 14, 2020, JUDICIAL COUNCIL MEMORANDUM

1. How many criminal cases have last-day deadlines under Penal Code section 1382 during the period of time for which the court is requesting a first extension under Government Code section 68115 (please provide daily breakdown)?

Because this court deals with paper files, it would be burdensome to determine the exact numbers of cases because the court would have to pull all the files and check for the relevant arraignment dates and whether the defendant waived the statutory time for trial. However, the court can provide the following rough statistics for a general idea:

For felony cases with no prior extensions, to have a last-day deadline between December 6, 2021, and January 25, 2022, inclusive, the defendant would be arraigned on an Information between October 27³ and November 26, inclusive. Of the cases with pending trial dates through January 31, 2022, there were approximately 95 felony bindovers after preliminary hearing during this timeframe (October 27 – November 26) in cases in which the defendants were arraigned on an Information immediately or soon thereafter. Thus, the court approximates there were 95 felony arraignments during this period (October 27 – November 26), meaning approximately 95 felony cases with pending trial dates through January 31, 2022, and with no prior extensions will have a statutory last-day deadline for trial during the request period (December 6, 2021 – January 25, 2022). Most of these defendants remain in custody.

For misdemeanor in-custody cases with no prior extensions, to have a last-day deadline between December 6, 2021, and January 25, 2022, inclusive, defendants would have arraignment dates between November 26 (see footnote 3) and December 26, inclusive. The court does not have complete statistics for this time period. However, of the cases with scheduled trial dates through January 31, 2022, there were approximately 75 arraignments between October 25 and November 24, inclusive, in which the defendants remain in custody. In the 30 days before that (September 24

³ Although the “request period” is December 6, 2021, through January 25, 2022, the first last-day deadline for a case in this category in this court (i.e. no prior extensions) would be December 26.

– October 24), there were approximately 15 misdemeanor arraignments in cases in which the defendants remain in custody. Using these numbers as a guide, the court estimates that about 45 misdemeanor in-custody cases with trial dates through January 31, 2022, and with no prior extensions will have a statutory last-day deadline during the request period (December 6, 2021 – January 25, 2022).

For misdemeanor out-of-custody cases with no prior extensions, to have a statutory last-day deadline between December 6, 2021, and January 25, 2022, inclusive, defendants would have arraignment dates between November 11 (see footnote 3) and December 11, inclusive. The court has incomplete statistics for this time period, but of the cases with pending trial dates through January 31, 2022, there were approximately 115 misdemeanor arraignments between November 11 and November 24, inclusive, in cases in which the defendants are now out of custody. In the 30 days before that (October 11 – November 10), there were approximately 205 misdemeanor arraignments in cases in which the defendants are now out of custody. Based on these known numbers, the court estimates that there will be roughly 200 misdemeanor out-of-custody cases with trial dates through January 31, 2022, and with no prior extensions that will have a statutory last-day deadline during the request period (December 6, 2021 – January 25, 2022).

In sum, the court estimates that, of the cases with pending trial dates through January 31, 2022, approximately 340 cases with no prior extensions will have their statutory trial deadline come due during the period of December 6, 2021, and January 25, 2022, inclusive. The court recognizes a number of these cases, being new, may settle, but the court cannot predict what percentage of cases that may be. Assuming a 50% settlement rate, that still leaves approximately 170 cases with original last-day deadlines falling within the request period.

2. How many criminal cases are coming up to the limit already extended for 90 days by the statewide orders (please provide a daily breakdown)? Is the court requesting a further extension of time on any of these cases?

The response to this question includes those cases which were extended 90 days by the statewide orders, and those cases that have received the benefit of any of the previous eighteen court-specific 30-day extensions granted to this court pursuant to the Chief’s Emergency Orders dated June 4, 2020, June 30, 2020, August 7, 2020, September 4, 2020, October 6, 2020, November 5, 2020, December 8, 2020, January 7, 2021, February 3, 2021, March 9, 2021, April 8, 2021, May 6, 2021, June 3, 2021, July 8, 2021, August 5, 2021, September 2, 2021, October 6, 2021, and November 4, 2021. Because these cases all have paper files, the court would have to manually pull all of the case files to determine the relevant arraignment date. In addition, with trial dates now having been set and reset multiple times in some cases since the pandemic began, as well as express time waivers entered by the defendants in some cases, it is difficult to tell which and how many of the prior extension orders the cases fall under. However, the court can provide the following rough statistics for a general idea:

There are approximately 25 felony cases that, with all the previous extensions, now have statutory trial deadlines between December 6 and December 25 (approximately 7 remain in custody). There are also approximately 10 in-custody misdemeanor cases, and approximately 130

out-of-custody misdemeanor cases that, with all the extensions, have statutory trial deadlines between December 6 and December 25, inclusive.

In addition, there are approximately 265 felony cases (approximately 135 in custody), approximately 150 in-custody misdemeanor cases, and approximately 800 out-of-custody misdemeanor cases that, with all prior extensions, now have statutory trial deadlines between December 26, 2021, and January 25, 2022, inclusive.

In sum, the court estimates that, of the cases with pending trial dates through January 31, 2022, approximately 1,380 previously extended cases will have their statutory trial deadline come due during the request period of December 6, 2021, and January 25, 2022, inclusive.

Summary:

Based on the above, in both categories (questions 1 and 2), the court estimates that, of the cases with pending trial dates through January 31, 2022, there are approximately 1,550 cases in which the statutory last day for trial will occur between December 6, 2021, and January 25, 2022, inclusive.

Except as noted above and in previous requests, the court's responses to questions 3-5 have generally not changed since its September 3, 2020, request, and those responses are incorporated herein by reference.

###

TO: Hon. Tani G. Cantil-Sakauye, Chair of the Judicial Council
Judicial Council of California
c/o Legal Services Supervising Attorney Charles Perkins
415-865-4609
charles.perkins@jud.ca.gov
415-865-8767 (fax)

FROM: *Name* : Michael T. Smyth
Title: Acting Presiding Judge
Court: Superior Court of San Diego County
Telephone: 619-844-2100
Fax: 619-844-5550
E-mail Address: [REDACTED]

DATE: 12/29/2021

SUBJECT: Request for Judicial Emergency Order

I hereby request an order allowing the court to implement the following emergency procedures pursuant to the provisions of section 68115 of the Government Code¹:

- The court may extend the time period provided in section 1382 of the Penal Code within which a trial must be held by not more than 30 days. (Gov. Code, § 68115(a)(10).)
(Fill in number of days, not exceeding 30. Pursuant to Government Code section 68115(a)(10), “the trial of a defendant in custody whose time is so extended shall be given precedence over all other cases.”)
This request applies only to cases in which the statutory deadline otherwise would expire on _____ *or* from 1/5/2022, to 1/25/2022, inclusive*.
(Fill in date(s) above.)

***This request applies to cases in which the previously-extended statutory deadline otherwise would expire from January 5, 2022, to January 25, 2022, inclusive.**

Although the previous Emergency Order issued December 3, 2021, already provides relief for cases in which the original or previously extended trial deadline falls between December 6, 2021, and January 25, 2022, the court is submitting this request for those cases that were extended by

¹ Government Code section 68115, as amended, effective January 1, 2019, provides that, upon the request of a presiding judge, the Chairperson of the Judicial Council may authorize relief as set forth in the statute, “[w]hen war, an act of terrorism, public unrest or calamity, epidemic, natural disaster, or other substantial risk to the health and welfare of court personnel or the public, or the danger thereof, the destruction of or danger to the building appointed for holding the court, a large influx of criminal cases resulting from a large number of arrests within a short period of time, or a condition that leads to a state of emergency being proclaimed by the President of the United States or by the Governor pursuant to Section 8625, threatens the orderly operation of a superior court location or locations within a county or renders presence in, or access to, an affected court facility or facilities unsafe”

30 days early in that period and will come up a second time between January 5, 2022, and January 25, 2022. The April 29, 2020, statewide order granting up to a 90-day extension was effective for cases with a last day for trial of March 16 through June 15, 2020. With this statewide 90-day extension, as well as the nineteen prior 30-day extensions authorized for this court, a case with a last day for trial of March 16-April 5, April 19-May 5, May 20-June 4, June 16-July 4, July 18-August 3, August 18-September 2, September 18-October 2, October 19-November 1, November 19-December 1, and December 19-31, 2020, and January 19-30, February 19-March 1, March 23-31, April 23-30, May 24-30, June 24-29, July 24-29, August 24-28, September 24-26, October 25-27, November 25-26, and December 26, 2021, would now have a last day for trial of January 5 through January 25, 2022.

The circumstances necessitating an emergency order are described in the attached document.

The public defender, the district attorney, and other interested local entities have / have not (check one box) been notified of this request for emergency order.

The court has / has not (check one box) advised these entities to immediately notify the Judicial Council's Legal Services office of any opposition or questions regarding the request.

Please list the names and telephone numbers of the district attorney, the public defender, and other notified parties affected by the order:

District Attorney: Summer Stephan

Public Defender: Randy Mize

Other Parties Affected: City Attorney Mara Elliot; San Diego Sheriff Bill Gore

The court has / has not (check one box) been informed of any opposition to this request.

If the court has been informed of potential opposition to this request, please state below the party or parties who may oppose the request and any stated reasons for the opposition:

Regarding the court's October 2, 2020, request, the Public Defender, Randy Mize, informed the court that he "cannot support another 1382" extension on behalf of his clients, and he recently indicated he also does not support this current request.

Submitted by:  Date: 12/29/2021

Acting Presiding Judge San Diego Superior Court

The San Diego Superior Court hereby requests an order allowing the court to extend the time period provided in Penal Code section 1382, within which a trial must be held, by not more than 30 days. This request applies to cases in which the previously extended statutory deadline otherwise would expire from January 5, 2022, to January 25, 2022, inclusive. Although the previous Emergency Order issued December 3, 2021, already provides relief for cases in which the original or previously extended trial deadline falls between December 6, 2021, and January 25, 2022, the court is submitting this request for those cases that were extended by 30 days early in that period that will come up a second time between January 5, 2022, and January 25, 2022.

I. BACKGROUND INFORMATION AND BASIS FOR REQUEST

Since the court's last request for Penal Code section 1382 relief, which was submitted on December 2, 2021,¹ the court has generally continued its resumption of criminal and civil jury trials in several locations across the county; however, as described in the previous request, the court still faces an enormous number of criminal cases, approximately 1,550, in which the last day for trial will occur between December 6, 2021, and January 25, 2022. Even in pre-pandemic conditions, it would be impossible to hold jury trials for this number of cases in such a short period of time. Because the previously authorized 30-day extension only applies to each case one time within the authorization period, the court is submitting the current request for those cases that were extended early in the authorization period that will have a statutory deadline, after the approved extension, between January 5, 2022, and January 25, 2022. The court estimates this request applies to fewer than 150 cases.

This memorandum will address relevant changes since the court's last request. In addition, the numerous federal, state, and local public health orders that have been issued in response to the COVID-19 pandemic are well known and have been detailed in prior Judicial Council orders and memoranda as well as this court's prior requests for relief from the Chief Justice. Accordingly, they will not be repeated here, except as necessary to provide relevant updates.

A. COVID-19 in San Diego County and Relevant Public Health Guidance

To date in San Diego County, there have been 416,427 COVID-19 cases, 19,058 hospitalizations, and 4,450 deaths. More than 77% of eligible San Diego County residents are now fully vaccinated, and more than 87% are partially vaccinated. However, recent data shows an increasing trend in new COVID-19 cases in San Diego County, as in most of the state.

Effective December 15, the California Department of Public Health required face coverings to be worn in all indoor public settings, regardless of vaccination status, which the court implemented. Otherwise, public health authorities have not re-implemented any of the other measures that previously limited the court's ability to conduct in-person jury trials, such as stay-at-home orders, capacity limits, and physical-distancing requirements.

¹ All subsequent date references are to 2021 unless otherwise indicated.

B. Activity Since the Court's Last Request

The court has continued to work with the Sheriff to take steps to reduce the inmate population to help combat the number of COVID-19 cases in the jails. For example, the court has implemented several general orders, including an extension signed on December 7, authorizing the Sheriff to accelerate the release of sentenced county jail inmates up to 60 days from when they would otherwise be released, subject to certain conditions. If requested, the court plans on authorizing another extension when the current one expires on January 7, 2022. In addition, the court has continued offering remote in-custody arraignments to ease some of the logistical burdens associated with the Sheriff's COVID-19 protocols.

Despite these and the Sheriff's other efforts, the number of COVID-19 cases in the county detention facilities has continued to result in an increased number of other, non-infected inmates being in medical isolation for precautionary reasons due to entire units being quarantined. In turn, this has resulted in some in-custody defendants being unable to be transported to the courthouse for some pre-trial proceedings, including readiness conferences, and trials, which has impacted the ability of the court to resolve cases.

The court resumed out-of-custody trials on September 1, with priority still given to in-custody trials. Since the week of November 29, the court held 30 jury trials at its various locations, including 4 civil trials. For reference, since resuming jury trials on February 8, the court has held a total of 245 trials, including 60 civil trials.

Regarding juror turnout, the average yield for newly summoned jurors has remained approximately 15%, which is nearly the same as the pre-pandemic yield, and the total yield, including jurors that previously deferred, was approximately 17.8% in December.

The court has continued to see several criminal cases settle after being set for trial or waive time due to various issues such as witness availability. Specifically, in the last month, approximately 1% of cases in Central, 7% of cases in North, 10% of cases in South, and 25% of cases in East have settled at trial, and the remainder, except for those that went forward, requested to be continued (in-custody) or were continued for cause (out-of-custody). The court is continuing to work with its justice partners to schedule more trials to allow for those that may settle, including daily trial call calendars in each branch.

The chart below illustrates the juror turnout since the court's December 2 request and previews the number of jurors that have postponed or requested to be excused for upcoming weeks:

| Week Beginning | Location | Summonses Issued | Postponed or Excused | Potential Jurors | Jurors Called | Jurors Reported | Panels Sent |
|-----------------------|-----------------|-------------------------|-----------------------------|-------------------------|----------------------|------------------------|--------------------|
| Nov. 29 | Central - Tu | 3,876 | 1,167 | 2,709 | 2,709 | 347 | 1 |
| | Central - We | 2,572 | 736 | 1,836 | 1,836 | 273 | 1 |
| | North | 5,000 | 1,901 | 3,099 | 524 | 121 | 1 |
| | South | 5,000 | 1,348 | 3,652 | 444 | 76 | 1 |
| | East | 4,500 | 1,501 | 2,999 | 2,030 | 277 | 2 |

| Week Beginning | Location | Summonses Issued | Postponed or Excused | Potential Jurors | Jurors Called | Jurors Reported | Panels Sent |
|-----------------------|-----------------|-------------------------|-----------------------------|-------------------------|----------------------|------------------------|--------------------|
| Dec. 6 | Central - Mo | 3,000 | 1,229 | 1,771 | 1,771 | 311 | 4 (3 civil) |
| | Central - Tu | 2,854 | 1,072 | 1,782 | 1,782 | 323 | 4 (1 civil) |
| | Central - We | 2,963 | 1,192 | 1,771 | 1,771 | 281 | 1 |
| | Central - Th | 2,680 | 1,054 | 1,626 | 1,626 | 299 | 1 |
| | North | 5,000 | 1,708 | 3,292 | 691 | 223 | 2 |
| | East | 4,500 | 1,350 | 3,150 | 1,035 | 207 | 2 |
| Dec. 13 | Central - Tu | 3,255 | 1,111 | 2,144 | 2,144 | 312 | 3 |
| | Central - Th | 1,426 | 502 | 924 | 924 | 166 | 1 |
| | North | 5,000 | 1,533 | 3,467 | 233 | 81 | 1 |
| | South | 5,000 | 1,263 | 3,737 | 664 | 90 | 1 |
| | East | 4,500 | 1,291 | 3,209 | 1,209 | 246 | 2 |
| Dec. 20 | North | 2,500 | 484 | 2,016 | 248 | 108 | 1 |
| Dec. 27 | North | 2,500 | 375 | 2,125 | 480 | 93 | 1 |
| Jan. 3 | Central - Mo | 3,485 | 1,640 | 1,845 | | | |
| | Central - Tu | 3,284 | 1,336 | 1,948 | | | |
| | Central - We | 3,609 | 2,103 | 1,506 | | | |
| | Central - Th | 2,806 | 1,204 | 1,602 | | | |
| | North | 5,000 | 1,935 | 3,065 | | | |
| | South | 5,000 | 1,297 | 3,703 | | | |
| | East | 4,500 | 1,474 | 3,026 | | | |
| Jan. 10 | Central - Mo | 3,369 | 1,423 | 1,946 | | | |
| | Central - Tu | 3,362 | 1,125 | 2,237 | | | |
| | Central - We | 3,964 | 2,024 | 1,940 | | | |
| | Central - Th | 2,967 | 1,084 | 1,883 | | | |
| | North | 5,000 | 1,033 | 3,967 | | | |
| | South | 5,000 | 962 | 4,038 | | | |
| | East | 4,500 | 879 | 3,621 | | | |
| Jan. 18 | Central - Tu | 2,983 | 531 | 2,452 | | | |
| | Central - We | 3,154 | 1,152 | 2,002 | | | |
| | Central - Th | 2,983 | 1,204 | 1,779 | | | |
| | North | 3,750 | 0 | 4,306 | | | |
| | South | 5,000 | 661 | 4,339 | | | |
| | East | 4,500 | 669 | 3,831 | | | |
| Jan. 24 | Central - Mo | 3,509 | 0 | 3,509 | | | |
| | Central - Tu | 3,767 | 0 | 3,767 | | | |
| | Central - We | 4,193 | 0 | 4,193 | | | |
| | Central - Th | 3,229 | 0 | 3,229 | | | |
| | North | 3,750 | 56 | 3,694 | | | |
| | South | 5,000 | 46 | 4,954 | | | |
| | East | 4,500 | 58 | 4,442 | | | |

C. Description of the Court's Readiness Conference Program

As required by the Chief Justice's December 22, 2020, Memorandum regarding COVID-19 Pandemic Readiness Conferences, the court provides the following description of its readiness conference program.

In-custody readiness calendars began in May 2020, with two departments in the Central Courthouse and one department in each branch location. All defendants in custody with pending cases that were post-arraignment/pre-trial were scheduled for a readiness conference in an attempt to settle as many cases as possible. Once all of those readiness cases were completed, all cases with a negotiated plea were calendared for hearing in one of the triage departments to have the plea entered. All cases that did not reach agreement were set for future dates, often subsequent readiness hearings, and given the opportunity to continue negotiations. Many of the cases have had several readiness conferences to date. All cases that are arraigned are automatically set a for readiness conference date, which has always been the court's practice, even before the pandemic, and continues now.

Additionally, all out-of-custody post-arraignment/pre-trial cases were calendared for either a trial status conference or regular status conference (depending on the stage of the case) beginning in September 2020. At those hearings, cases that had negotiated a resolution during the early months of the pandemic were scheduled for a hearing to enter their plea, and those that had not reached resolution were scheduled for a readiness conference with a back-up trial date. Those readiness hearings are being held daily and are often set for additional readiness hearings as negotiations continue.

Currently, there are several readiness departments now operating at each location, with most hearing both in-custody and out-of-custody cases as well as other types of hearings. Due to limitations in the court's CMS, the court is unable to provide accurate numbers as to how many readiness conferences have been held; however, every post-arraignment/pre-trial case has had at least one (often more) readiness conference since the pandemic began.

The following represents the approximate percentage of cases that have settled at readiness conferences at each of the branches during the last month:

- Central Courthouse: 25% of misdemeanors and 20% of felonies
- North County: 18% of misdemeanors and 20% of felonies
- South County: 8% of misdemeanors and 18% of felonies
- East County: 18% of misdemeanors and 19% of felonies

D. The Court's Request for an Extension

In the court's May 29, 2020, request for an emergency order for additional time to conduct trials, the court submitted letters of support from the District Attorney's Office, the City Attorney's Office, the Office of the Public Defender, and the Sheriff's Department. Each of these justice partners supported the court's previous requests with the exception of the Public Defender, who, beginning with the court's October 2, 2020, request, notified the court that, on behalf of his clients,

“he cannot support another 1382” extension. With the exception of the Public Defender, each of these justice partners has confirmed that they also fully support this additional request; however, the Public Defender again indicated he would not support another request.

Regardless, as set forth in the court’s December 2 request, the court has approximately 1,550 cases in which the last day for trial will occur between December 6, 2021, and January 25, 2022, inclusive. However, as discussed above, this request only relates to the approximately 150 cases identified in response to question 2 below that were extended early in the period authorized in the December 3 Emergency Order (covering December 6, 2021 to January 25, 2022) that will have their statutory deadline come up a second time between January 5, 2022, and January 25, 2022.

II. ANSWERS TO SPECIFIC QUESTIONS SET FORTH IN THE MAY 14, 2020, JUDICIAL COUNCIL MEMORANDUM

1. How many criminal cases have last-day deadlines under Penal Code section 1382 during the period of time for which the court is requesting a first extension under Government Code section 68115 (please provide daily breakdown)?

The court is not asking for a first extension in any case in this request.

2. How many criminal cases are coming up to the limit already extended for 90 days by the statewide orders (please provide a daily breakdown)? Is the court requesting a further extension of time on any of these cases?

The response to this question includes those cases which were extended 90 days by the statewide orders, and those cases that have received the benefit of any of the previous nineteen court-specific 30-day extensions granted to this court pursuant to the Chief’s Emergency Orders dated June 4, 2020, June 30, 2020, August 7, 2020, September 4, 2020, October 6, 2020, November 5, 2020, December 8, 2020, January 7, 2021, February 3, 2021, March 9, 2021, April 8, 2021, May 6, 2021, June 3, 2021, July 8, 2021, August 5, 2021, September 2, 2021, October 6, 2021, November 4, 2021, and December 3, 2021. Because these cases all have paper files, the court would have to manually pull all of the case files to determine the relevant arraignment date. In addition, with trial dates now having been set and reset multiple times in some cases since the pandemic began, as well as express time waivers entered by the defendants in some cases, it is difficult to tell which and how many of the prior extension orders the cases fall under. However, the court can provide the following rough statistics for a general idea:

There are approximately 25 felony cases that, with all the previous extensions, now have statutory trial deadlines between January 5, 2022, and January 25, 2022 (approximately 7 remain in custody). There are also approximately 15 in-custody misdemeanor cases and approximately 110 out-of-custody misdemeanor cases that, with all the extensions, have statutory trial deadlines between January 5, 2022, and January 25, 2022, inclusive.

Summary:

Based on the above, the court estimates that there are approximately 150 cases in which the statutory last day for trial will occur between January 5, 2022, and January 25, 2022, inclusive.

Except as noted above and in previous requests, the court's responses to questions 3-5 have generally not changed since its September 3, 2020, request, and those responses are incorporated herein by reference.

###

TO: Hon. Tani G. Cantil-Sakauye, Chair of the Judicial Council
Judicial Council of California
c/o Legal Services Supervising Attorney Charles Perkins
415-865-4609
charles.perkins@jud.ca.gov
415-865-8767 (fax)

FROM: *Name* : Michael T. Smyth
Title: Presiding Judge
Court: Superior Court of San Diego County
Telephone: 619-844-2100
Fax: 619-844-5550
E-mail Address: [REDACTED]

DATE: 1/20/2022

SUBJECT: Request for Judicial Emergency Order

I hereby request an order allowing the court to implement the following emergency procedures pursuant to the provisions of section 68115 of the Government Code¹:

- The court may extend the time period provided in section 1382 of the Penal Code within which a trial must be held by not more than 30 days. (Gov. Code, § 68115(a)(10).)
(Fill in number of days, not exceeding 30. Pursuant to Government Code section 68115(a)(10), “the trial of a defendant in custody whose time is so extended shall be given precedence over all other cases.”)
This request applies only to cases in which the statutory deadline otherwise would expire on _____ **or** from 1/26/2022, to 2/25/2022, inclusive*.
(Fill in date(s) above.)

***This request applies to cases in which the original or previously-extended statutory deadline otherwise would expire from January 26, 2022, to February 25, 2022, inclusive.**

The circumstances necessitating an emergency order are described in the attached document.

¹ Government Code section 68115, as amended, effective January 1, 2019, provides that, upon the request of a presiding judge, the Chairperson of the Judicial Council may authorize relief as set forth in the statute, “[w]hen war, an act of terrorism, public unrest or calamity, epidemic, natural disaster, or other substantial risk to the health and welfare of court personnel or the public, or the danger thereof, the destruction of or danger to the building appointed for holding the court, a large influx of criminal cases resulting from a large number of arrests within a short period of time, or a condition that leads to a state of emergency being proclaimed by the President of the United States or by the Governor pursuant to Section 8625, threatens the orderly operation of a superior court location or locations within a county or renders presence in, or access to, an affected court facility or facilities unsafe”

The public defender, the district attorney, and other interested local entities have / have not (check one box) been notified of this request for emergency order.

The court has / has not (check one box) advised these entities to immediately notify the Judicial Council's Legal Services office of any opposition or questions regarding the request.

Please list the names and telephone numbers of the district attorney, the public defender, and other notified parties affected by the order:

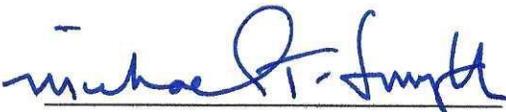
District Attorney: Summer Stephan

Public Defender: Randy Mize

Other Parties Affected: City Attorney Mara Elliot; San Diego Sheriff Bill Gore

The court has / has not (check one box) been informed of any opposition to this request.

If the court has been informed of potential opposition to this request, please state below the party or parties who may oppose the request and any stated reasons for the opposition:

Submitted by:  Date: 1/20/2022

Presiding Judge San Diego Superior Court

The San Diego Superior Court hereby requests an order allowing the court to extend the time period provided in Penal Code section 1382, within which a trial must be held, by not more than 30 days. This request applies to cases in which the original or previously extended statutory deadline otherwise would expire from January 26, 2022, to February 25, 2022, inclusive.

I. BACKGROUND INFORMATION AND BASIS FOR REQUEST

Since the court's last request for Penal Code section 1382 relief, which was submitted on December 29, 2021, the court has continued holding criminal and civil jury trials in several locations across the county; however, as described below, the court still faces an enormous number of criminal cases, approximately 1,070, in which the last day for trial will occur between January 26, 2022, and February 25, 2022.¹ Even in pre-pandemic conditions, it would be impossible to hold jury trials for this number of cases in such a short period of time.

This memorandum will address relevant changes since the court's last request. In addition, the numerous federal, state, and local public health orders that have been issued in response to the COVID-19 pandemic are well known and have been detailed in prior Judicial Council orders and memoranda as well as this court's prior requests for relief from the Chief Justice. Accordingly, they will not be repeated here, except as necessary to provide relevant updates.

A. COVID-19 in San Diego County and Relevant Public Health Guidance

To date in San Diego County, there have been 613,632 COVID-19 cases, 19,987 hospitalizations, and 4,553 deaths. More than 79% of eligible San Diego County residents are now fully vaccinated, and approximately 90% are partially vaccinated. As in most of the state and country, cases have been surging due to the Omicron variant; however, in San Diego County, hospitalizations and deaths are approximately the same as the summer 2021 (Delta variant) peak and are still much lower than the winter 2020-21 peak.

Effective December 15, 2021, the California Department of Public Health required face coverings to be worn in all indoor public settings, regardless of vaccination status, which the court implemented. Otherwise, public health authorities have not re-implemented any of the other measures that previously limited the court's ability to conduct in-person jury trials, such as stay-at-home orders, capacity limits, and physical-distancing requirements.

However, public health guidance regarding isolation and quarantine periods did change in early January, which, combined with surging case numbers, did impact staffing levels at the court and among the court's justice partners. Specifically, although public health authorities generally shortened the isolation and quarantine periods from 10 to 5 days if other conditions are satisfied, they required individuals who were fully vaccinated but not yet boosted (if eligible) to quarantine if they had a close contact exposure, whereas fully vaccinated individuals were not previously required to quarantine unless they developed symptoms. During the week of January 10, approximately 18% of the court's employees were out due to isolation or quarantine protocols.

¹ All subsequent date references are to 2022 unless otherwise indicated.

Subsequently, public health authorities further revised their guidance so that individuals who are fully vaccinated but not yet boosted (if eligible) do not have to quarantine due to a close contact exposure if other conditions are satisfied. This modification has helped staffing levels, but the court still has approximately 12.5% of its workforce out due to isolation or quarantine protocols. Despite these staffing challenges, and after considering input from the court's justice partners, the court decided not to suspend jury trials at this time.

B. Activity Since the Court's Last Request

The court has continued to work with the Sheriff to take steps to reduce the inmate population to help combat the number of COVID-19 cases in the jails. For example, the court has implemented several general orders, including an extension signed on January 5, authorizing the Sheriff to accelerate the release of sentenced county jail inmates up to 60 days from when they would otherwise be released, subject to certain conditions. If requested, the court plans on authorizing another extension when the current one expires on February 7. In addition, the court has continued offering remote in-custody arraignments to ease some of the logistical burdens associated with the Sheriff's COVID-19 protocols.

Despite these and the Sheriff's other efforts, the number of COVID-19 cases in the county detention facilities has remained high since the court's last request, which has resulted in an increased number of other, non-infected inmates being in medical isolation for precautionary reasons due to entire units being quarantined. In turn, this has resulted in some in-custody defendants being unable to be transported to the courthouse for some pre-trial proceedings, including readiness conferences, and trials, which has impacted the ability of the court to resolve cases.

The court resumed out-of-custody trials on September 1, with priority still given to in-custody trials. Since the week of December 27, 2021, the court held 27 jury trials² at its various locations, including 13 civil trials. In addition, there was one supplemental panel for a criminal trial that was included in the court's last request in North, one supplemental panel for East this period, and there was one criminal grand jury in Central. For reference, since resuming jury trials on February 8, 2021, the court has held a total of 246 trials, including 69 civil trials.

Although juror turnout briefly dipped for a few days in January, the average yield for newly summoned jurors has remained approximately 15%, which is nearly the same as the pre-pandemic yield, and the total yield, including jurors that previously deferred, was approximately 17.8%.

The court has continued to see several criminal cases settle after being set for trial or waive time due to various issues such as witness availability. Specifically, in the last month,

² The number of trials is lower than recent requests due to a number of factors, including (1) this lookback period is shorter than usual because the court submitted an interim request to clean up a group of cases that would come up a second time during the previously authorized extension period; (2) there are typically fewer trials during the holidays; and (3) the court and its justice partners were experiencing staffing challenges due to surging COVID-19 cases and changing isolation and quarantine protocols.

approximately 18% of cases in Central, 5% of cases in North, 2% of cases in South, and 6% of cases in East have settled at trial, and the remainder, except for those that went forward, requested to be continued (in-custody) or were continued for cause (out-of-custody). The court is continuing to work with its justice partners to schedule more trials to allow for those that may settle, including daily trial call calendars in each branch.

The chart below illustrates the juror turnout since the court's last request and previews the number of jurors that have postponed or requested to be excused for upcoming weeks:

| Week Beginning | Location | Summonses Issued | Postponed or Excused | Potential Jurors | Jurors Called | Jurors Reported | Panels Sent |
|-----------------------|-----------------|-------------------------|-----------------------------|-------------------------|----------------------|------------------------|--------------------|
| Dec. 27 | North | 2,500 | 375 | 2,125 | 640 | 129 | 1 (+1 supp.) |
| Jan. 3 | Central - Mo | 3,485 | 1,640 | 1,845 | 1,845 | 287 | 2 civil |
| | Central - Tu | 3,284 | 1,336 | 1,948 | 1,948 | 298 | GJ |
| | North | 5,000 | 1,935 | 3,065 | 793 | 132 | 3 (2 civil) |
| | East | 4,500 | 1,474 | 3,026 | 1,828 | 164 | 2 |
| Jan. 10 | Central - Mo | 3,369 | 1,423 | 1,946 | 1,946 | 289 | 1 civil |
| | Central - Tu | 3,362 | 1,125 | 2,237 | 2,237 | 320 | 2 (1 civil) |
| | Central - We | 3,964 | 2,024 | 1,940 | 1,940 | 271 | 1 |
| | Central - Th | 2,967 | 1,084 | 1,883 | 1,883 | 249 | 1 |
| | North | 5,000 | 1,033 | 3,967 | 245 | 92 | 1 |
| | East | 4,500 | 879 | 3,621 | 1,417 | 389 | (supp. panel) |
| Jan. 18 | Central - Tu | 2,983 | 1,338 | 1,645 | 1,645 | 272 | 4 civil |
| | Central - We | 3,154 | 1,889 | 1,265 | 1,265 | 252 | 4 (3 civil) |
| | Central - Th | 2,983 | 1,835 | 1,148 | 1,148 | 225 | 1 |
| | North | 3,750 | 903 | 2,847 | 466 | 138 | 2 |
| | South | 5,000 | 1,596 | 3,404 | 1,531 | 180 | 1 |
| | East | 4,500 | 1,654 | 2,846 | 1,236 | 107 | 1 |
| Jan. 24 | Central - Mo | 3,509 | 1,284 | 2,225 | | | |
| | Central - Tu | 3,767 | 1,421 | 2,346 | | | |
| | Central - We | 4,193 | 1,559 | 2,634 | | | |
| | Central - Th | 3,229 | 1,222 | 2,007 | | | |
| | North | 3,750 | 1,210 | 2,540 | | | |
| | South | 5,000 | 1,359 | 3,641 | | | |
| | East | 4,500 | 1,285 | 3,215 | | | |
| Jan. 31 | Central - Mo | 3,706 | 1,175 | 2,531 | | | |
| | Central - Tu | 3,790 | 1,152 | 2,638 | | | |
| | Central - We | 3,242 | 938 | 2,304 | | | |
| | Central - Th | 3,265 | 968 | 2,297 | | | |
| | North | 3,750 | 1,037 | 2,713 | | | |
| | South | 5,000 | 1,274 | 3,726 | | | |
| | East | 4,500 | 1,213 | 3,287 | | | |

| Week Beginning | Location | Summonses Issued | Postponed or Excused | Potential Jurors | Jurors Called | Jurors Reported | Panels Sent |
|----------------|--------------|------------------|----------------------|------------------|---------------|-----------------|-------------|
| Feb. 7 | Central - Mo | 3,645 | 270 | 3,375 | | | |
| | Central - Tu | 3,910 | 246 | 3,664 | | | |
| | Central - We | 3,958 | 215 | 3,743 | | | |
| | Central - Th | 3,388 | 212 | 3,176 | | | |
| | North | 3,750 | 280 | 3,470 | | | |
| | South | 5,000 | 170 | 4,830 | | | |
| | East | 4,500 | 454 | 4,046 | | | |
| Feb. 14 | Central - Mo | 4,254 | 10 | 4,244 | | | |
| | Central - Tu | 4,849 | 4 | 4,845 | | | |
| | Central - We | 4,245 | 9 | 4,236 | | | |
| | Central - Th | 3,422 | 8 | 3,414 | | | |
| | North | 3,750 | 135 | 3,615 | | | |
| | South | 5,000 | 93 | 4,907 | | | |
| | East | 4,500 | 84 | 4,416 | | | |
| Feb. 22 | Central - Tu | 4,651 | 1,559 | 3,092 | | | |
| | Central - We | 4,251 | 1,045 | 3,206 | | | |
| | Central - Th | 3,944 | 586 | 3,358 | | | |
| | North | 3,750 | 9 | 3,741 | | | |
| | South | 5,000 | 2 | 4,998 | | | |
| | East | 4,500 | 8 | 4,492 | | | |
| Feb. 28 | Central - Mo | 3,420 | 3 | 3,417 | | | |
| | Central - Tu | 3,200 | 108 | 3,092 | | | |
| | Central - We | 3,506 | 300 | 3,206 | | | |
| | Central - Th | 3,858 | 500 | 3,358 | | | |
| | North | 3,750 | 9 | 3,741 | | | |
| | South | 5,000 | 3 | 4,997 | | | |
| | East | 4,500 | 3 | 4,497 | | | |

C. Description of the Court's Readiness Conference Program

As required by the Chief Justice's December 22, 2020, Memorandum regarding COVID-19 Pandemic Readiness Conferences, the court provides the following description of its readiness conference program.

In-custody readiness calendars began in May 2020, with two departments in the Central Courthouse and one department in each branch location. All defendants in custody with pending cases that were post-arraignment/pre-trial were scheduled for a readiness conference in an attempt to settle as many cases as possible. Once all of those readiness cases were completed, all cases with a negotiated plea were calendared for hearing in one of the triage departments to have the plea entered. All cases that did not reach agreement were set for future dates, often subsequent

readiness hearings, and given the opportunity to continue negotiations. Many of the cases have had several readiness conferences to date. All cases that are arraigned are automatically set a for readiness conference date, which has always been the court's practice, even before the pandemic, and continues now.

Additionally, all out-of-custody post-arraignment/pre-trial cases were calendared for either a trial status conference or regular status conference (depending on the stage of the case) beginning in September 2020. At those hearings, cases that had negotiated a resolution during the early months of the pandemic were scheduled for a hearing to enter their plea, and those that had not reached resolution were scheduled for a readiness conference with a back-up trial date. Those readiness hearings are being held daily and are often set for additional readiness hearings as negotiations continue.

Currently, there are several readiness departments now operating at each location, with most hearing both in-custody and out-of-custody cases as well as other types of hearings. Due to limitations in the court's CMS, the court is unable to provide accurate numbers as to how many readiness conferences have been held; however, every post-arraignment/pre-trial case has had at least one (often more) readiness conference since the pandemic began.

The following represents the approximate percentage of cases that have settled at readiness conferences at each of the branches since the court's last request:

- Central Courthouse: 21% of misdemeanors and 20% of felonies
- North County: 17% of misdemeanors and 18% of felonies
- South County: 16% of misdemeanors and 23% of felonies
- East County: 10% of misdemeanors and 15% of felonies

D. The Court's Request for an Extension

In the court's May 29, 2020, request for an emergency order for additional time to conduct trials, the court submitted letters of support from the District Attorney's Office, the City Attorney's Office, the Office of the Public Defender, and the Sheriff's Department. Each of these justice partners continued to support the court's subsequent requests with the exception of the Public Defender, who did not support the court's requests from October 2, 2020, through December 29, 2021. However, each of these justice partners, including the Public Defender, has confirmed that they support this current request.

As set forth in the court's response to questions 1 and 2 below, the court has approximately 1,070 cases in which the last day for trial will occur between January 26 and February 25, inclusive. The court is continuing to work towards resuming pre-pandemic levels of operations; however, even if the court were operating at its full pre-pandemic capacity of 70-90 jury trials per month (including criminal and civil), it would be impossible to hold 1,070 jury trials in this time frame. Therefore, due the enormous backlog and the anticipated pace of proceeding with jury trials, the court requests an order allowing the court to extend the time period provided in Penal Code section 1382, within which a trial must be held, by not more than 30 days.

II. ANSWERS TO SPECIFIC QUESTIONS SET FORTH IN THE MAY 14, 2020, JUDICIAL COUNCIL MEMORANDUM

1. How many criminal cases have last-day deadlines under Penal Code section 1382 during the period of time for which the court is requesting a first extension under Government Code section 68115 (please provide daily breakdown)?

Because this court deals with paper files, it would be burdensome to determine the exact number of cases because the court would have to pull all the files and check for the relevant arraignment dates, whether the defendant waived the statutory time for trial or ever withdrew that waiver, whether the defendant ever failed to appear and a warrant was issued, whether the defendant is in diversion status or has been found not competent to stand trial, etc. However, the court can provide the following rough statistics for a general idea:

For felony cases with no prior extensions, to have a last-day deadline between January 26 and February 25, inclusive, the defendant would be arraigned on an Information between November 27, 2021, and December 27, 2021, inclusive. Of the cases with pending trial dates through February 25, there were approximately 65 felony bindovers after preliminary hearing during this timeframe (November 27, 2021 – December 27, 2021) in cases in which the defendants were arraigned on an Information immediately or soon thereafter. Thus, the court approximates there were 65 felony arraignments during this period (November 27, 2021 – December 27, 2021), meaning approximately 65 felony cases with pending trial dates through February 25 and with no prior extensions will have a statutory last-day deadline for trial during the request period (January 26 – February 25). Most of these defendants remain in custody.

For misdemeanor in-custody cases with no prior extensions, to have a last-day deadline between January 26 and February 25, inclusive, defendants would have arraignment dates between December 27, 2021, and January 26, 2022, inclusive. The court does not have complete statistics for this time period. However, of the cases with scheduled trial dates through February 25, there were approximately 55 misdemeanor arraignments of in-custody defendants between December 14, 2021, and January 13, 2022, inclusive. In the 30 days before that (November 13, 2021 – December 13, 2021), there were approximately 15 misdemeanor arraignments of in-custody defendants. Using these numbers as a guide, the court estimates that about 35 misdemeanor in-custody cases with trial dates through February 25, and with no prior extensions will have a statutory last-day deadline during the request period (January 26 – February 25).

For misdemeanor out-of-custody cases with no prior extensions, to have a statutory last-day deadline between January 26 and February 25, inclusive, defendants would have arraignment dates between December 12, 2021, and January 11, 2022, inclusive. Of the cases with pending trial dates through February 25, there were approximately 240 misdemeanor arraignments of out-of-custody defendants between December 12, 2021, and January 11, 2022. Thus, the court estimates there will be roughly 240 misdemeanor out-of-custody cases with no prior extensions that will have a statutory last-day deadline during the request period (January 26 – February 25).

In sum, the court estimates that, of the cases with pending trial dates through February 25, approximately 340 cases with no prior extensions will have their statutory trial deadline come due during the period of January 26 and February 25, inclusive. The court recognizes a number of these cases, being new, may settle, but the court cannot predict what percentage of cases that may be. Assuming a 50% settlement rate, that still leaves approximately 170 cases with original last-day deadlines falling within the request period.

2. How many criminal cases are coming up to the limit already extended for 90 days by the statewide orders (please provide a daily breakdown)? Is the court requesting a further extension of time on any of these cases?

The response to this question includes those cases which were extended 90 days by the statewide orders, and those cases that have received the benefit of any of the previous twenty court-specific 30-day extensions granted to this court pursuant to the Chief's Emergency Orders dated June 4, 2020, June 30, 2020, August 7, 2020, September 4, 2020, October 6, 2020, November 5, 2020, December 8, 2020, January 7, 2021, February 3, 2021, March 9, 2021, April 8, 2021, May 6, 2021, June 3, 2021, July 8, 2021, August 5, 2021, September 2, 2021, October 6, 2021, November 4, 2021, December 3, 2021, and January 3, 2022. It would be burdensome to determine the exact number of cases that fall in this category because the court would have to pull all the files and check for the relevant arraignment dates, whether the defendant waived the statutory time for trial or ever withdrew that waiver, whether the defendant ever failed to appear and a warrant was issued, whether the defendant is in diversion status or has been found not competent to stand trial, etc. In addition, with trial dates now having been set and reset multiple times in some cases since the pandemic began it is difficult to tell which and how many of the prior extension orders the cases fall under. However, the court can provide the following rough statistics for a general idea:

There are approximately 200 felony cases (approximately half in custody), approximately 70 in-custody misdemeanor cases, and approximately 630 out-of-custody misdemeanor cases that, with all prior extensions, now have statutory trial deadlines between January 26 and February 25, inclusive.

In sum, the court estimates that approximately 900 previously extended cases will have their statutory trial deadline come due during the request period of January 26 – February 25, inclusive.

Summary:

Based on the above, in both categories (questions 1 and 2), the court estimates that, of the cases with pending trial dates through February 25, there are approximately 1,070 cases in which the statutory last day for trial will occur between January 26 and February 25, inclusive.

Except as noted above and in previous requests, the court's responses to questions 3-5 have generally not changed since its September 3, 2020, request, and those responses are incorporated herein by reference.

###

TO: Hon. Tani G. Cantil-Sakauye, Chair of the Judicial Council
Judicial Council of California
c/o Legal Services Supervising Attorney Charles Perkins
415-865-4609
charles.perkins@jud.ca.gov
415-865-8767 (fax)

FROM: *Name* : Michael T. Smyth
Title: Presiding Judge
Court: Superior Court of San Diego County
Telephone: 619-844-2100
Fax: 619-844-5550
E-mail Address: [REDACTED]

DATE: 2/17/2022

SUBJECT: Request for Judicial Emergency Order

I hereby request an order allowing the court to implement the following emergency procedures pursuant to the provisions of section 68115 of the Government Code¹:

- The court may extend the time period provided in section 1382 of the Penal Code within which a trial must be held by not more than 30 days. (Gov. Code, § 68115(a)(10).)
(Fill in number of days, not exceeding 30. Pursuant to Government Code section 68115(a)(10), “the trial of a defendant in custody whose time is so extended shall be given precedence over all other cases.”)
This request applies only to cases in which the statutory deadline otherwise would expire on _____ *or* from 2/25/2022, to 3/27/2022, inclusive*.
(Fill in date(s) above.)

***This request applies to cases in which the original or previously-extended statutory deadline otherwise would expire from February 25, 2022, to March 27, 2022, inclusive.**

The circumstances necessitating an emergency order are described in the attached document.

¹ Government Code section 68115, as amended, effective January 1, 2019, provides that, upon the request of a presiding judge, the Chairperson of the Judicial Council may authorize relief as set forth in the statute, “[w]hen war, an act of terrorism, public unrest or calamity, epidemic, natural disaster, or other substantial risk to the health and welfare of court personnel or the public, or the danger thereof, the destruction of or danger to the building appointed for holding the court, a large influx of criminal cases resulting from a large number of arrests within a short period of time, or a condition that leads to a state of emergency being proclaimed by the President of the United States or by the Governor pursuant to Section 8625, threatens the orderly operation of a superior court location or locations within a county or renders presence in, or access to, an affected court facility or facilities unsafe”

The public defender, the district attorney, and other interested local entities have / have not (check one box) been notified of this request for emergency order.

The court has / has not (check one box) advised these entities to immediately notify the Judicial Council's Legal Services office of any opposition or questions regarding the request.

Please list the names and telephone numbers of the district attorney, the public defender, and other notified parties affected by the order:

District Attorney: Summer Stephan
Public Defender: Randy Mize
Other Parties Affected: City Attorney Mara Elliot; San Diego Sheriff Bill Gore

The court has / has not (check one box) been informed of any opposition to this request.

If the court has been informed of potential opposition to this request, please state below the party or parties who may oppose the request and any stated reasons for the opposition:

Regarding the court's October 2, 2020, request, the Public Defender, Randy Mize, informed the court that he "cannot support another 1382" extension on behalf of his clients. Although he supported the court's January 20, 2022, request, he indicated his office objects to this current request.

Submitted by:  Date: 2/17/2022
Presiding Judge San Diego Superior Court

The San Diego Superior Court hereby requests an order allowing the court to extend the time period provided in Penal Code section 1382, within which a trial must be held, by not more than 30 days. This request applies to cases in which the original or previously extended statutory deadline otherwise would expire from February 25, 2022, to March 27, 2022, inclusive.

I. BACKGROUND INFORMATION AND BASIS FOR REQUEST

Since the court's last request for Penal Code section 1382 relief, which was submitted on January 20, 2022,¹ the court has continued holding criminal and civil jury trials in several locations across the county; however, as described below, the court still faces an enormous number of criminal cases, approximately 725, in which the last day for trial will occur between February 25 and March 27. Even in pre-pandemic conditions, it would be impossible to hold jury trials for this number of cases in such a short period of time.

This memorandum will address relevant changes since the court's last request. In addition, the numerous federal, state, and local public health orders that have been issued in response to the COVID-19 pandemic are well known and have been detailed in prior Judicial Council orders and memoranda as well as this court's prior requests for relief from the Chief Justice. Accordingly, they will not be repeated here, except as necessary to provide relevant updates.

A. COVID-19 in San Diego County and Relevant Public Health Guidance

To date in San Diego County, there have been 728,287 COVID-19 cases, 21,494 hospitalizations, and 4,947 deaths. More than 81% of eligible San Diego County residents are now fully vaccinated, and more than 92% are at least partially vaccinated. As in most of the state and country, cases and hospitalizations are declining following the peak of the Omicron surge.

Effective February 16, the California Department of Public Health (CDPH) lifted its statewide requirement that face coverings be worn in all indoor public settings, regardless of vaccination status. Now, under applicable state and local public health guidance, face coverings are optional, but recommended, for fully vaccinated individuals and required for unvaccinated individuals, and the court has implemented this policy. Otherwise, public health authorities have not re-implemented any of the other measures that previously limited the court's ability to conduct in-person jury trials, such as stay-at-home orders, capacity limits, and physical-distancing requirements.

The number of cases and exposures among the court's employees has also declined. After having approximately 18% of its staff out due to isolation or quarantine protocols in the week before the court's previous request, that number has been closer to 2.5% in recent weeks.

B. Activity Since the Court's Last Request

The court has continued to work with the Sheriff to take steps to reduce the inmate population to help combat the number of COVID-19 cases in the jails. For example, the court has

¹ All subsequent date references are to 2022 unless otherwise indicated.

implemented several general orders, including an extension signed on February 2, authorizing the Sheriff to accelerate the release of sentenced county jail inmates up to 60 days from when they would otherwise be released, subject to certain conditions. If requested, the court plans on authorizing another extension when the current one expires on March 9. In addition, the court has continued offering remote in-custody arraignments to ease some of the logistical burdens associated with the Sheriff's COVID-19 protocols.

The number of COVID-19 cases in the county detention facilities has declined substantially since the court's last request; however, some non-infected inmates continue to be in medical isolation due to entire units being quarantined. This has resulted in some in-custody defendants being unable to be transported to the courthouse for some pre-trial proceedings, including readiness conferences, and trials, which has impacted the ability of the court to resolve cases.

The court resumed out-of-custody trials on September 1, 2021, with priority still given to in-custody trials. Since the week of January 24, the court held 42 jury trials at its various locations, including 6 civil trials. In addition, there was one supplemental panel in South for a criminal trial that was included in the court's previous request. For reference, since resuming jury trials on February 8, 2021, the court has held a total of 288 trials, including 75 civil trials.

The average yield for newly summoned jurors has remained approximately 15%, which is nearly the same as the pre-pandemic yield, and the total yield, including jurors that previously deferred, was approximately 17.7% since the court's previous request.

The court has continued to see several criminal cases settle after being set for trial or waive time due to various issues such as witness availability. Specifically, in the last month, approximately 10% of cases in Central, 2% of cases in North, 15% of cases in South, and 10% of cases in East have settled at trial, and the remainder, except for those that went forward, requested to be continued (in-custody) or were continued for cause (out-of-custody). The court is continuing to work with its justice partners to schedule more trials to allow for those that may settle, including daily trial call calendars in each branch.

The chart below illustrates the juror turnout since the court's last request and previews the number of jurors that have postponed or requested to be excused for upcoming weeks:

| Week Beginning | Location | Summonses Issued | Postponed or Excused | Potential Jurors | Jurors Called | Jurors Reported | Panels Sent |
|-----------------------|-----------------|-------------------------|-----------------------------|-------------------------|----------------------|------------------------|--------------------|
| Jan. 24 | Central - Mo | 3,509 | 1,863 | 1,646 | 1,646 | 390 | 1 civil |
| | Central - Tu | 3,767 | 2,074 | 1,693 | 1,693 | 317 | 1 |
| | Central - We | 4,193 | 2,231 | 1,962 | 1,962 | 308 | 1 |
| | Central - Th | 3,229 | 1,773 | 1,456 | 1,456 | 294 | 1 |
| | North | 3,750 | 1,371 | 2,379 | 510 | 182 | 2 |
| | East | 4,500 | 1,285 | 3,215 | 2,276 | 521 | 4 |

| Week Beginning | Location | Summonses Issued | Postponed or Excused | Potential Jurors | Jurors Called | Jurors Reported | Panels Sent |
|-----------------------|-----------------|-------------------------|-----------------------------|-------------------------|----------------------|------------------------|--------------------|
| Jan. 31 | Central - Mo | 3,706 | 2,036 | 1,670 | 1,670 | 302 | 2 (1 civil) |
| | Central - Tu | 3,790 | 2,032 | 1,758 | 1,758 | 339 | 3 (1 civil) |
| | Central - We | 3,242 | 1,724 | 1,518 | 1,518 | 346 | 2 |
| | Central - Th | 3,265 | 1,707 | 1,558 | 1,558 | 315 | 1 |
| | South | 5,000 | 2,695 | 2,305 | 715 | 94 | 1 |
| | East | 4,500 | 1,213 | 3,287 | 597 | 121 | 1 |
| Feb. 7 | Central - Mo | 3,645 | 1,930 | 1,715 | 1,715 | 362 | 1 |
| | Central - Tu | 3,910 | 1,958 | 1,952 | 1,952 | 378 | 3 (1 civil) |
| | Central - We | 3,958 | 1,973 | 1,985 | 1,985 | 363 | 3 |
| | North | 3,750 | 1,046 | 2,704 | 503 | 160 | 3 (2 civil) |
| | South | 5,000 | 1,744 | 3,256 | 1,229 | 158 | 2 |
| Feb. 14 | Central - Mo | 4,254 | 2,033 | 2,221 | 2,221 | 319 | 3 |
| | Central - Tu | 4,849 | 2,182 | 2,667 | 2,667 | 395 | 3 |
| | Central - We | 4,245 | 1,577 | 2,668 | 2,668 | 330 | 1 |
| | Central - Th | 3,422 | 1,495 | 1,927 | 1,927 | 326 | |
| | North | 3,750 | 1,097 | 2,653 | 762 | 182 | 2 |
| | South | 5,000 | 1,615 | 3,385 | 750 | 63 | 1 |
| Feb. 22 | Central - Tu | 4,651 | 1,548 | 3,103 | | | |
| | Central - We | 4,251 | 1,403 | 2,848 | | | |
| | Central - Th | 3,944 | 1,302 | 2,642 | | | |
| | North | 3,750 | 1,206 | 2,544 | | | |
| | South | 5,000 | 1,124 | 3,876 | | | |
| | East | 4,500 | 1,250 | 3,250 | | | |
| Feb. 28 | Central - Mo | 3,420 | 395 | 3,025 | | | |
| | Central - Tu | 3,200 | 463 | 2,737 | | | |
| | Central - We | 3,506 | 608 | 2,898 | | | |
| | Central - Th | 3,858 | 822 | 3,036 | | | |
| | North | 3,750 | 423 | 3,327 | | | |
| | South | 5,000 | 453 | 4,547 | | | |
| | East | 4,500 | 468 | 4,032 | | | |
| Mar. 7 | Central - Mo | 3,463 | 32 | 3,431 | | | |
| | Central - Tu | 3,725 | 4 | 3,721 | | | |
| | Central - We | 3,193 | 84 | 3,109 | | | |
| | Central - Th | 3,246 | 54 | 3,192 | | | |
| | North | 3,750 | 93 | 3,657 | | | |
| | South | 5,000 | 448 | 4,552 | | | |
| | East | 4,500 | 84 | 4,416 | | | |

C. Description of the Court's Readiness Conference Program

As required by the Chief Justice's December 22, 2020, Memorandum regarding COVID-19 Pandemic Readiness Conferences, the court provides the following description of its readiness conference program.

In-custody readiness calendars began in May 2020, with two departments in the Central Courthouse and one department in each branch location. All defendants in custody with pending cases that were post-arraignment/pre-trial were scheduled for a readiness conference in an attempt to settle as many cases as possible. Once all of those readiness cases were completed, all cases with a negotiated plea were calendared for hearing in one of the triage departments to have the plea entered. All cases that did not reach agreement were set for future dates, often subsequent readiness hearings, and given the opportunity to continue negotiations. Many of the cases have had several readiness conferences to date. All cases that are arraigned are automatically set a for readiness conference date, which has always been the court's practice, even before the pandemic, and continues now.

Additionally, all out-of-custody post-arraignment/pre-trial cases were calendared for either a trial status conference or regular status conference (depending on the stage of the case) beginning in September 2020. At those hearings, cases that had negotiated a resolution during the early months of the pandemic were scheduled for a hearing to enter their plea, and those that had not reached resolution were scheduled for a readiness conference with a back-up trial date. Those readiness hearings are being held daily and are often set for additional readiness hearings as negotiations continue.

Currently, there are several readiness departments now operating at each location, with most hearing both in-custody and out-of-custody cases as well as other types of hearings. Due to limitations in the court's CMS, the court is unable to provide accurate numbers as to how many readiness conferences have been held; however, every post-arraignment/pre-trial case has had at least one (often more) readiness conference since the pandemic began.

The following represents the approximate percentage of cases that have settled at readiness conferences at each of the branches since the court's last request:

- Central Courthouse: 22% of misdemeanors and 18% of felonies
- North County: 20% of misdemeanors and 13% of felonies
- South County: 17% of misdemeanors and 17% of felonies
- East County: 22% of misdemeanors and 15% of felonies

D. The Court's Request for an Extension

In the court's May 29, 2020, request for an emergency order for additional time to conduct trials, the court submitted letters of support from the District Attorney's Office, the City Attorney's Office, the Office of the Public Defender, and the Sheriff's Department. Each of these justice partners have continued to support the court's subsequent requests, including the current request, with the exception of the Public Defender, who did not support the court's requests from October

2, 2020, through December 29, 2021, and, although he supported the court's January 20 request, indicated his office objects to the current request.

As set forth in the court's response to questions 1 and 2 below, the court has approximately 725 cases in which the last day for trial will occur between February 25 and March 27, inclusive. The court is continuing to work towards resuming pre-pandemic levels of operations; however, even if the court were operating at its full pre-pandemic capacity of 70-90 jury trials per month (including criminal and civil), it would be impossible to hold 725 jury trials in this time frame. Therefore, due the enormous backlog and the anticipated pace of proceeding with jury trials, the court requests an order allowing the court to extend the time period provided in Penal Code section 1382, within which a trial must be held, by not more than 30 days.

II. ANSWERS TO SPECIFIC QUESTIONS SET FORTH IN THE MAY 14, 2020, JUDICIAL COUNCIL MEMORANDUM

1. How many criminal cases have last-day deadlines under Penal Code section 1382 during the period of time for which the court is requesting a first extension under Government Code section 68115 (please provide daily breakdown)?

Because this court deals with paper files, it would be burdensome to determine the exact numbers of cases because the court would have to pull all the files and check for the relevant arraignment dates, whether the defendant waived the statutory time for trial or ever withdrew that waiver, whether the defendant ever failed to appear and a warrant was issued, whether the defendant is in diversion status or has been found not competent to stand trial, etc. However, the court can provide the following rough statistics for a general idea:

For felony cases with no prior extensions, to have a last-day deadline between February 25 and March 27, inclusive, the defendant would be arraigned on an Information between December 27, 2021, and January 26, 2022, inclusive. Of the cases with pending trial dates through March 31, there were approximately 60 felony bindovers after preliminary hearing during this timeframe (December 27, 2021 – January 26, 2022) in cases in which the defendants were arraigned on an Information immediately or soon thereafter. Thus, the court approximates there were 60 felony arraignments during this period (December 27, 2021 – January 26, 2022), meaning approximately 60 felony cases with pending trial dates through March 31 and with no prior extensions will have a statutory last-day deadline for trial during the request period (February 25 – March 27). Most of these defendants remain in custody.

For misdemeanor in-custody cases with no prior extensions, to have a last-day deadline between February 25 and March 27, inclusive, defendants would have arraignment dates between January 26 and February 25, inclusive. The court does not have complete statistics for this time period. However, of the cases with scheduled trial dates through March 31, there were approximately 20 misdemeanor arraignments of defendants who are still in custody between January 11 and February 10, inclusive. In the 30 days before that (December 11, 2021 – January 10, 2022), there were approximately 2 misdemeanor arraignments of defendants still in-custody. Using these numbers as a guide, the court estimates that about 20 misdemeanor in-custody cases

with trial dates through March 31, and with no prior extensions, will have a statutory last-day deadline during the request period (February 25 – March 27).

For misdemeanor out-of-custody cases with no prior extensions, to have a statutory last-day deadline between February 25 and March 27, inclusive, defendants would have arraignment dates between January 11 and February 10, inclusive. Of the cases with pending trial dates through March 31, there were approximately 55 misdemeanor arraignments of out-of-custody defendants between January 11 and February 10. Thus, the court estimates that there will be roughly 55 misdemeanor out-of-custody cases with no prior extensions that will have a statutory last-day deadline during the request period (February 25 – March 27).

In sum, the court estimates that, of the cases with pending trial dates through March 31, approximately 135 cases with no prior extensions will have their statutory trial deadline come due during the period of February 25 and March 27, inclusive. The court recognizes a number of these cases, being new, may settle, but the court cannot predict what percentage of cases that may be. Assuming a 50% settlement rate, that still leaves approximately 65 cases with original last-day deadlines falling within the request period.

2. How many criminal cases are coming up to the limit already extended for 90 days by the statewide orders (please provide a daily breakdown)? Is the court requesting a further extension of time on any of these cases?

The response to this question includes those cases which were extended 90 days by the statewide orders, and those cases that have received the benefit of any of the previous twenty-one court-specific 30-day extensions granted to this court pursuant to the Chief's Emergency Orders dated June 4, 2020, June 30, 2020, August 7, 2020, September 4, 2020, October 6, 2020, November 5, 2020, December 8, 2020, January 7, 2021, February 3, 2021, March 9, 2021, April 8, 2021, May 6, 2021, June 3, 2021, July 8, 2021, August 5, 2021, September 2, 2021, October 6, 2021, November 4, 2021, December 3, 2021, January 3, 2022, and January 24, 2022. It would be burdensome to determine the exact number of cases that fall in this category because the court would have to pull all the files and check for the relevant arraignment dates, whether the defendant waived the statutory time for trial or ever withdrew that waiver, whether the defendant ever failed to appear and a warrant was issued, whether the defendant is in diversion status or has been found not competent to stand trial, etc. In addition, with trial dates now having been set and reset multiple times in some cases since the pandemic began it is difficult to tell which and how many of the prior extension orders the cases fall under. However, the court can provide the following rough statistics for a general idea.

There are approximately 220 felony cases (approximately half in custody), approximately 25 in-custody misdemeanor cases, and approximately 375 out-of-custody misdemeanor cases that, with all prior extensions, now have statutory trial deadlines between February 25 and March 27, inclusive.

In sum, the court estimates that approximately 660 previously extended cases will have their statutory trial deadline come due during the request period of February 25 to March 27, inclusive.

Summary:

Based on the above, in both categories (questions 1 and 2), the court estimates that, of the cases with pending trial dates through March 31, there are approximately 725 cases in which the statutory last day for trial will occur between February 25 and March 27, inclusive.

Except as noted above and in previous requests, the court's responses to questions 3-5 have generally not changed since its September 3, 2020, request, and those responses are incorporated herein by reference.

###

TO: Hon. Tani G. Cantil-Sakauye, Chair of the Judicial Council
Judicial Council of California
c/o Legal Services Supervising Attorney Charles Perkins
415-865-4609
charles.perkins@jud.ca.gov
415-865-8767 (fax)

FROM: *Name* : Michael T. Smyth
Title: Presiding Judge
Court: Superior Court of San Diego County
Telephone: 619-844-2100
Fax: 619-844-5550
E-mail Address: [REDACTED]

DATE: 3/21/2022

SUBJECT: Request for Judicial Emergency Order

I hereby request an order allowing the court to implement the following emergency procedures pursuant to the provisions of section 68115 of the Government Code¹:

- The court may extend the time period provided in section 1382 of the Penal Code within which a trial must be held by not more than 30 days. (Gov. Code, § 68115(a)(10).)
(Fill in number of days, not exceeding 30. Pursuant to Government Code section 68115(a)(10), “the trial of a defendant in custody whose time is so extended shall be given precedence over all other cases.”)
This request applies only to cases in which the statutory deadline otherwise would expire on _____ *or* from 3/27/2022, to 4/26/2022, inclusive*.
(Fill in date(s) above.)

***This request applies to cases in which the original or previously-extended statutory deadline otherwise would expire from March 27, 2022, to April 26, 2022, inclusive.**

The circumstances necessitating an emergency order are described in the attached document.

¹ Government Code section 68115, as amended, effective January 1, 2019, provides that, upon the request of a presiding judge, the Chairperson of the Judicial Council may authorize relief as set forth in the statute, “[w]hen war, an act of terrorism, public unrest or calamity, epidemic, natural disaster, or other substantial risk to the health and welfare of court personnel or the public, or the danger thereof, the destruction of or danger to the building appointed for holding the court, a large influx of criminal cases resulting from a large number of arrests within a short period of time, or a condition that leads to a state of emergency being proclaimed by the President of the United States or by the Governor pursuant to Section 8625, threatens the orderly operation of a superior court location or locations within a county or renders presence in, or access to, an affected court facility or facilities unsafe”

The public defender, the district attorney, and other interested local entities have / have not (check one box) been notified of this request for emergency order.

The court has / has not (check one box) advised these entities to immediately notify the Judicial Council's Legal Services office of any opposition or questions regarding the request.

Please list the names and telephone numbers of the district attorney, the public defender, and other notified parties affected by the order:

District Attorney: Summer Stephan

Public Defender: Randy Mize

Other Parties Affected: City Attorney Mara Elliot; San Diego Sheriff Bill Gore

The court has / has not (check one box) been informed of any opposition to this request.

If the court has been informed of potential opposition to this request, please state below the party or parties who may oppose the request and any stated reasons for the opposition:

Regarding the court's October 2, 2020, request, the Public Defender, Randy Mize, informed the court that he "cannot support another 1382" extension on behalf of his clients. He has objected to all of the court's subsequent requests, including this one, with the exception of the court's request dated January 20, 2022.

Submitted by:



Date: 3/21/2022

Presiding Judge San Diego Superior Court

The San Diego Superior Court hereby requests an order allowing the court to extend the time period provided in Penal Code section 1382, within which a trial must be held, by not more than 30 days. This request applies to cases in which the original or previously extended statutory deadline otherwise would expire from March 27, 2022, to April 26, 2022, inclusive.

I. BACKGROUND INFORMATION AND BASIS FOR REQUEST

Since the court's last request for Penal Code section 1382 relief, which was submitted on February 17, 2022,¹ the court has continued holding criminal and civil jury trials in several locations across the county; however, as described below, the court still faces an enormous number of criminal cases, approximately 975, in which the last day for trial will occur between March 27 and April 26. Even in pre-pandemic conditions, it would be impossible to hold jury trials for this number of cases in such a short period of time.

This memorandum will address relevant changes since the court's last request. In addition, the numerous federal, state, and local public health orders that have been issued in response to the COVID-19 pandemic are well known and have been detailed in prior Judicial Council orders and memoranda as well as this court's prior requests for relief from the Chief Justice. Accordingly, they will not be repeated here, except as necessary to provide relevant updates.

A. COVID-19 in San Diego County and Relevant Public Health Guidance

To date in San Diego County, there have been 747,174 COVID-19 cases, 29,485 hospitalizations, and 5,138 deaths. More than 82% of eligible San Diego County residents are now fully vaccinated, and more than 93% are at least partially vaccinated. As in most of the state and country, cases, hospitalizations, and deaths are continuing to decline following the peak of the Omicron surge.

Effective March 1, the California Department of Public Health ("CDPH") updated its guidance so that, in most indoor public settings, face coverings are optional, but recommended, for all persons, including individuals who are not fully vaccinated. Also, the Governor of California issued Executive Order N-5-22, which suspended the provision of the Cal/OSHA Emergency Temporary Standards requiring employers to ensure face coverings are worn by employees who are not fully vaccinated when indoors. Now, under applicable state and local public health guidance, face coverings are optional, but recommended, for all individuals, and the court has implemented this policy. Otherwise, public health authorities have not re-implemented any of the other measures that previously limited the court's ability to conduct in-person jury trials, such as stay-at-home orders, capacity limits, and physical-distancing requirements.

B. Activity Since the Court's Last Request

The court has continued to work with the Sheriff to take steps to reduce the inmate population to help combat the number of COVID-19 cases in the jails. For example, the court has implemented several general orders, including an extension signed on March 7, authorizing the

¹ All subsequent date references are to 2022 unless otherwise indicated.

Sheriff to accelerate the release of sentenced county jail inmates up to 60 days from when they would otherwise be released, subject to certain conditions. If requested, the court plans on authorizing another extension when the current one expires on April 8. In addition, the court has continued offering remote in-custody arraignments to ease some of the logistical burdens associated with the Sheriff’s COVID-19 protocols.

The number of COVID-19 cases in the county detention facilities has continued to decline since the court’s last request; however, some inmates continue to be in medical isolation. Although it is occurring less frequently than in recent months, this has resulted in some in-custody defendants being unable to be transported to the courthouse for pre-trial proceedings, including readiness conferences, and trials, which has impacted the court’s ability to resolve cases.

The court continues to prioritize in-custody trials but has resumed out-of-custody trials. Since the week of February 22, the court held 54 jury trials at its various locations, including 10 civil trials. In addition, there was one criminal grand jury in Central. For reference, since resuming jury trials on February 8, 2021, the court has held a total of 342 trials, including 85 civil trials.

Since the court’s previous request, the total juror yield, including newly summoned and previously deferred jurors, dropped slightly to approximately 16%.

The court has continued to see several criminal cases settle after being set for trial or waive time due to various issues such as witness availability. Specifically, in the last month, approximately 15% of cases in Central, 5% of cases in North, 16% of cases in South, and 8% of cases in East have settled at trial, and the remainder, except for those that went forward, requested to be continued (in-custody) or were continued for cause (out-of-custody). The court is continuing to work with its justice partners to schedule more trials to allow for those that may settle, including daily trial call calendars in each branch.

The chart below illustrates the juror turnout since the court’s last request and previews the number of jurors that have postponed or requested to be excused for upcoming weeks:

| Week Beginning | Location | Summonses Issued | Postponed or Excused | Potential Jurors | Jurors Called | Jurors Reported | Panels Sent |
|----------------|--------------|------------------|----------------------|------------------|---------------|-----------------|-------------|
| Feb. 22 | Central - Tu | 4,651 | 2,548 | 2,103 | 2,103 | 401 | 2 |
| | Central - We | 4,251 | 1,403 | 2,848 | 2,848 | 319 | 2 |
| | Central - Th | 3,944 | 1,302 | 2,642 | 2,642 | 325 | 2 |
| | North | 3,750 | 1,206 | 2,544 | 763 | 178 | 3 (2 civil) |
| | East | 4,500 | 1,250 | 3,250 | 672 | 91 | 1 |
| Feb. 28 | Central - Mo | 3,420 | 1,495 | 1,925 | 1,925 | 320 | 5 (1 civil) |
| | Central - We | 3,506 | 1,408 | 2,098 | 2,098 | 317 | 1 |
| | Central - Th | 3,858 | 1,595 | 2,263 | 2,263 | 358 | 1 |
| | North | 3,750 | 423 | 3,327 | 1,085 | 370 | 3 |
| | South | 5,000 | 453 | 4,547 | 1,394 | 149 | 2 |
| | East | 4,500 | 468 | 4,032 | 569 | 124 | 1 |

| Week Beginning | Location | Summonses Issued | Postponed or Excused | Potential Jurors | Jurors Called | Jurors Reported | Panels Sent |
|-----------------------|-----------------|-------------------------|-----------------------------|-------------------------|----------------------|------------------------|---------------------|
| Mar. 7 | Central - Mo | 3,463 | 1,342 | 2,121 | 2,121 | 402 | 2 (1 civil) + GJ |
| | Central - Tu | 3,725 | 1,312 | 2,413 | 2,413 | 396 | 2 (1 civil) |
| | Central - We | 3,193 | 1,088 | 2,105 | 2,105 | 364 | 2 |
| | North | 3,750 | 1,203 | 2,547 | 520 | 165 | 1 |
| | South | 5,000 | 1,485 | 3,515 | 969 | 123 | 2 |
| | East | 4,500 | 1,310 | 3,190 | 2,323 | 422 | 2 |
| Mar. 14 | Central - Mo | 3,587 | 930 | 2,657 | 2,657 | 419 | 5 (2 civil) |
| | Central - Tu | 3,794 | 1,016 | 2,778 | 2,778 | 322 | 4 (1 civil) |
| | Central - We | 3,545 | 1,004 | 2,541 | 2,541 | 316 | 1 |
| | Central - Th | 3,363 | 970 | 2,393 | 2,393 | 316 | 2 (1 civil) |
| | North | 3,750 | 844 | 2,906 | 1,118 | 337 | 4 (1 civil) |
| | South | 5,000 | 869 | 4,131 | 1,522 | 134 | 1 |
| | East | 4,500 | 1,077 | 3,423 | 1,514 | 215 | 2 |
| Mar. 21 | Central - Mo | 3,397 | 694 | 2,703 | 2,703 | 413 | |
| | Central - Tu | 3,845 | 743 | 3,102 | | | |
| | Central - We | 4,303 | 941 | 3,362 | | | |
| | Central - Th | 3,646 | 719 | 2,927 | | | |
| | North | 3,750 | 795 | 2,955 | 233 | 73 | 1 |
| | South | 5,000 | 661 | 4,339 | 1,517 | 163 | |
| | East | 4,500 | 753 | 3,747 | | | |
| Mar. 28 | Central - Mo | 3,658 | 393 | 3,265 | | | |
| | Central - Tu | 4,147 | 552 | 3,595 | | | |
| | Central - We | 3,584 | 351 | 3,233 | | | |
| | North | 3,750 | 377 | 3,373 | | | |
| | South | 5,000 | 261 | 4,739 | | | |
| | East | 4,500 | 351 | 4,149 | | | |
| Apr. 4 | Central - Mo | 3,548 | 0 | 3,548 | | | |
| | Central - Tu | 3,510 | 0 | 3,510 | | | |
| | Central - We | 3,436 | 0 | 3,436 | | | |
| | Central - Th | 3,293 | 0 | 3,293 | | | |
| | North | 3,750 | 145 | 3,605 | | | |
| | South | 5,000 | 253 | 4,747 | | | |
| | East | 4,500 | 121 | 4,379 | | | |
| Apr. 11 | Central - Mo | 3,173 | 0 | 3,173 | | | |
| | Central - Tu | 4,876 | 0 | 4,876 | | | |
| | Central - We | 4,192 | 0 | 4,192 | | | |
| | Central - Th | 3,307 | 0 | 3,307 | | | |
| | North | 3,750 | 10 | 3,740 | | | |
| | South | 5,000 | 1 | 4,999 | | | |
| | East | 4,500 | 2 | 4,498 | | | |

C. Description of the Court's Readiness Conference Program

As required by the Chief Justice's December 22, 2020, Memorandum regarding COVID-19 Pandemic Readiness Conferences, the court provides the following description of its readiness conference program.

In-custody readiness calendars began in May 2020, with two departments in the Central Courthouse and one department in each branch location. All defendants in custody with pending cases that were post-arraignment/pre-trial were scheduled for a readiness conference in an attempt to settle as many cases as possible. Once all of those readiness cases were completed, all cases with a negotiated plea were calendared for hearing in one of the triage departments to have the plea entered. All cases that did not reach agreement were set for future dates, often subsequent readiness hearings, and given the opportunity to continue negotiations. Many of the cases have had several readiness conferences to date. All cases that are arraigned are automatically set a for readiness conference date, which has always been the court's practice, even before the pandemic.

Additionally, all out-of-custody post-arraignment/pre-trial cases were calendared for either a trial status conference or regular status conference (depending on the stage of the case) beginning in September 2020. At those hearings, cases that had negotiated a resolution during the early months of the pandemic were scheduled for a hearing to enter their plea, and those that had not reached resolution were scheduled for a readiness conference with a back-up trial date. Those readiness hearings are being held daily and are often set for additional readiness hearings as negotiations continue.

Currently, there are several readiness departments now operating at each location, with most hearing both in-custody and out-of-custody cases as well as other types of hearings. Due to limitations in the court's CMS, the court is unable to provide accurate numbers as to how many readiness conferences have been held; however, every post-arraignment/pre-trial case has had at least one (often more) readiness conference since the pandemic began.

The following represents the approximate percentage of cases that have settled at readiness conferences at each of the branches since the court's last request:

- Central Courthouse: 23% of misdemeanors and 21% of felonies
- North County: 28% of misdemeanors and 11% of felonies
- South County: 16% of misdemeanors and 21% of felonies
- East County: 23% of misdemeanors and 19% of felonies

D. The Court's Request for an Extension

In the court's May 29, 2020, request for an emergency order for additional time to conduct trials, the court submitted letters of support from the District Attorney's Office, the City Attorney's Office, the Office of the Public Defender, and the Sheriff's Department. Each of these justice partners have continued to support the court's subsequent requests, including the current request, with the exception of the Public Defender, who, except for the request dated January 20, 2022, has objected to all of the court's requests since October 2, 2020.

As set forth in the court's response to questions 1 and 2 below, the court has approximately 975 cases in which the last day for trial will occur between March 27 and April 26, inclusive. The court is continuing to work towards resuming pre-pandemic levels of operations; however, even if the court were operating at its full pre-pandemic capacity of 70-90 jury trials per month (including criminal and civil), it would be impossible to hold 975 jury trials in this time frame. Therefore, due the enormous backlog and the anticipated pace of proceeding with jury trials, the court requests an order allowing the court to extend the time period provided in Penal Code section 1382, within which a trial must be held, by not more than 30 days.

II. ANSWERS TO SPECIFIC QUESTIONS SET FORTH IN THE MAY 14, 2020, JUDICIAL COUNCIL MEMORANDUM

1. How many criminal cases have last-day deadlines under Penal Code section 1382 during the period of time for which the court is requesting a first extension under Government Code section 68115 (please provide daily breakdown)?

Because this court deals with paper files, it would be burdensome to determine the exact numbers of cases, as the court would have to pull all the files and check for the relevant arraignment dates, whether the defendant waived the statutory time for trial or ever withdrew that waiver, whether the defendant ever failed to appear and a warrant was issued, whether the defendant is in diversion status or has been found not competent to stand trial, etc. However, the court can provide the following rough statistics for a general idea:

For felony cases with no prior extensions, to have a last-day deadline between March 27 and April 26, inclusive, the defendant would be arraigned on an Information between January 26 and February 25, inclusive. Of the cases with pending trial dates through April 30, there were approximately 80 felony bindovers after preliminary hearing during this timeframe (January 26 – February 25) in cases in which the defendants were arraigned on an Information immediately or soon thereafter. Thus, the court approximates there were 80 felony arraignments during this period (January 26 – February 25), meaning approximately 80 felony cases with pending trial dates through April 30 and with no prior extensions will have a statutory last-day deadline for trial during the request period (March 27 – April 26). Most of these defendants remain in custody.

For misdemeanor in-custody cases with no prior extensions, to have a last-day deadline between March 27 and April 26, inclusive, defendants would have arraignment dates between February 25 and March 27, inclusive. The court does not have complete statistics for this time period. However, of the cases with scheduled trial dates through April 30, there were approximately 60 misdemeanor arraignments of defendants who are still in custody between February 15 and March 17, inclusive. In the 30 days before that (January 15 – February 14), there were approximately 14 misdemeanor arraignments of defendants still in custody. Using these numbers as a guide, the court estimates that about 35 misdemeanor in-custody cases with trial dates through April 30, and with no prior extensions, will have a statutory last-day deadline during the request period (March 27 – April 26).

For misdemeanor out-of-custody cases with no prior extensions, to have a statutory last-day deadline between March 27 and April 26, inclusive, defendants would have arraignment dates between February 10 and March 12, inclusive. Of the cases with pending trial dates through April 30, there were approximately 290 misdemeanor arraignments of out-of-custody defendants between February 10 and March 12. Thus, the court estimates that there will be roughly 290 misdemeanor out-of-custody cases with no prior extensions that will have a statutory last-day deadline during the request period (March 27 – April 26).

In sum, the court estimates that, of the cases with pending trial dates through April 30, approximately 400 cases with no prior extensions will have their statutory trial deadline come due during the period of March 27 to April 26, inclusive. The court recognizes a number of these cases, being new, may settle, but the court cannot predict what percentage of cases that may be. Assuming a 50% settlement rate, that still leaves approximately 200 cases with original last-day deadlines falling within the request period.

2. How many criminal cases are coming up to the limit already extended for 90 days by the statewide orders (please provide a daily breakdown)? Is the court requesting a further extension of time on any of these cases?

The response to this question includes those cases which were extended 90 days by the statewide orders, and those cases that have received the benefit of any of the previous twenty-two court-specific 30-day extensions granted to this court pursuant to the Chief Justice’s Emergency Orders dated June 4, 2020, June 30, 2020, August 7, 2020, September 4, 2020, October 6, 2020, November 5, 2020, December 8, 2020, January 7, 2021, February 3, 2021, March 9, 2021, April 8, 2021, May 6, 2021, June 3, 2021, July 8, 2021, August 5, 2021, September 2, 2021, October 6, 2021, November 4, 2021, December 3, 2021, January 3, 2022, January 24, 2022, and February 18, 2022. It would be burdensome to determine the exact number of cases that fall in this category because the court would have to pull all the files and check for the relevant arraignment dates, whether the defendant waived the statutory time for trial or ever withdrew that waiver, whether the defendant ever failed to appear and a warrant was issued, whether the defendant is in diversion status or has been found not competent to stand trial, etc. In addition, with trial dates now having been set and reset multiple times in some cases since the pandemic began it is difficult to tell which and how many of the prior extension orders the cases fall under. However, the court can provide the following rough statistics for a general idea.

There are approximately 150 felony cases (approximately half in custody), approximately 55 in-custody misdemeanor cases, and approximately 570 out-of-custody misdemeanor cases that, with all prior extensions, now have statutory trial deadlines between March 27 and April 26, inclusive.

In sum, the court estimates that approximately 775 previously extended cases will have their statutory trial deadline come due during the request period of March 27 to April 26, inclusive.

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Summary:

Based on the above, in both categories (questions 1 and 2), the court estimates that, of the cases with pending trial dates through April 30, there are approximately 975 cases in which the statutory last day for trial will occur between March 27 and April 26, inclusive.

Except as noted above and in previous requests, the court's responses to questions 3-5 have generally not changed since its September 3, 2020, request, and those responses are incorporated herein by reference.

###

TO: Hon. Tani G. Cantil-Sakauye, Chair of the Judicial Council
Judicial Council of California
c/o Legal Services Supervising Attorney Charles Perkins
415-865-4609
charles.perkins@jud.ca.gov
415-865-8767 (fax)

FROM: *Name* : Michael T. Smyth; Maureen F. Hallahan
Title: Presiding Judge; Assistant Presiding Judge
Court: Superior Court of San Diego County
Telephone: 619-844-2100
Fax: 619-844-5550
E-mail Address: [REDACTED]

DATE: 4/21/2022

SUBJECT: Request for Judicial Emergency Order

I hereby request an order allowing the court to implement the following emergency procedures pursuant to the provisions of section 68115 of the Government Code¹:

- The court may extend the time period provided in section 1382 of the Penal Code within which a trial must be held by not more than 30 days. (Gov. Code, § 68115(a)(10).)
(Fill in number of days, not exceeding 30. Pursuant to Government Code section 68115(a)(10), “the trial of a defendant in custody whose time is so extended shall be given precedence over all other cases.”)
This request applies only to cases in which the statutory deadline otherwise would expire on _____ *or* from 4/26/2022, to 5/26/2022, inclusive*.
(Fill in date(s) above.)

***This request applies to cases in which the original or previously-extended statutory deadline otherwise would expire from April 26, 2022, to May 26, 2022, inclusive.**

The circumstances necessitating an emergency order are described in the attached document.

¹ Government Code section 68115, as amended, effective January 1, 2019, provides that, upon the request of a presiding judge, the Chairperson of the Judicial Council may authorize relief as set forth in the statute, “[w]hen war, an act of terrorism, public unrest or calamity, epidemic, natural disaster, or other substantial risk to the health and welfare of court personnel or the public, or the danger thereof, the destruction of or danger to the building appointed for holding the court, a large influx of criminal cases resulting from a large number of arrests within a short period of time, or a condition that leads to a state of emergency being proclaimed by the President of the United States or by the Governor pursuant to Section 8625, threatens the orderly operation of a superior court location or locations within a county or renders presence in, or access to, an affected court facility or facilities unsafe”

The public defender, the district attorney, and other interested local entities have / have not (check one box) been notified of this request for emergency order.

The court has / has not (check one box) advised these entities to immediately notify the Judicial Council's Legal Services office of any opposition or questions regarding the request.

Please list the names and telephone numbers of the district attorney, the public defender, and other notified parties affected by the order:

District Attorney: Summer Stephan

Public Defender: Randy Mize

Other Parties Affected: City Attorney Mara Elliot; San Diego Sheriff Bill Gore

The court has / has not (check one box) been informed of any opposition to this request.

If the court has been informed of potential opposition to this request, please state below the party or parties who may oppose the request and any stated reasons for the opposition:

Regarding the court's October 2, 2020, request, the Public Defender, Randy Mize, informed the court that he "cannot support another 1382" extension on behalf of his clients. He has objected to all of the court's subsequent requests, including this one, with the exception of the court's request dated January 20, 2022.

Submitted by:

 Date: 4/21/2022

Assistant Presiding Judge San Diego Superior Court

The San Diego Superior Court hereby requests an order allowing the court to extend the time period provided in Penal Code section 1382, within which a trial must be held, by not more than 30 days. This request applies to cases in which the original or previously extended statutory deadline otherwise would expire from April 26, 2022, to May 26, 2022, inclusive.

I. BACKGROUND INFORMATION AND BASIS FOR REQUEST

Since the court's last request for Penal Code section 1382 relief, which was submitted on March 22, 2022,¹ the court has continued holding criminal and civil jury trials in several locations across the county; however, as described below, the court still faces an enormous number of criminal cases, approximately 1,220, in which the last day for trial will occur between April 26 and May 26. Even in pre-pandemic conditions, it would be impossible to hold jury trials for this number of cases in such a short period of time.

This memorandum will address relevant changes since the court's last request. In addition, the numerous federal, state, and local public health orders that have been issued in response to the COVID-19 pandemic are well known and have been detailed in prior Judicial Council orders and memoranda as well as this court's prior requests for relief from the Chief Justice. Accordingly, they will not be repeated here, except as necessary to provide relevant updates.

A. COVID-19 in San Diego County and Relevant Public Health Guidance

To date in San Diego County, there have been 755,863 COVID-19 cases, 30,002 hospitalizations, and 5,233 deaths. The testing positivity rate for the week ending April 16 was 3.01%, and the current hospital census of positive patients is 90. Nearly 83% of eligible San Diego County residents are now fully vaccinated, and more than 94% are at least partially vaccinated. As in most of the state and country, cases, hospitalizations, and deaths are continuing to decline following the peak of the Omicron surge.

Public health authorities have not re-implemented any of the measures that previously limited the court's ability to conduct in-person jury trials, such as stay-at-home orders, capacity limits, and physical-distancing requirements. However, the state of emergency proclamations by the President of the United States and the Governor of California remain in place.

B. Activity Since the Court's Last Request

The number of COVID-19 cases in the county detention facilities has continued to decline since the court's last request; however, some inmates continue to be in medical isolation. Although it is occurring less frequently than in previous months, this has resulted in some in-custody defendants being unable to be transported to the courthouse for pre-trial proceedings, including readiness conferences, and trials, which has impacted the court's ability to resolve cases. The court has continued offering remote in-custody arraignments to ease some of the logistical burdens associated with the Sheriff's COVID-19 protocols.

¹ All subsequent date references are to 2022 unless otherwise indicated.

Since the week of March 21, the court held 63 jury trials at its various locations, including 14 civil trials. In addition, there were six supplemental criminal panels in North. For reference, since resuming jury trials on February 8, 2021, the court has held a total of 404 trials, including 99 civil trials.

The court has continued to see several criminal cases settle after being set for trial or waive time due to various issues such as witness availability. Specifically, in the last month, approximately 20% of cases in Central, 6% of cases in North, 8% of cases in South, and 21% of cases in East have settled at trial, and the remainder, except for those that went forward, requested to be continued (in-custody) or were continued for cause (out-of-custody). The court is continuing to work with its justice partners to schedule more trials to allow for those that may settle, including daily trial call calendars in each branch.

Since the court's previous request, the total juror appearance rate, including newly summoned and previously deferred jurors, dropped to approximately 14%. The chart below illustrates the juror turnout since the court's last request and previews the number of jurors that have postponed or requested to be excused for upcoming weeks:

| Week Beginning | Location | Summonses Issued | Postponed or Excused | Potential Jurors | Jurors Called | Jurors Reported | Panels Sent |
|-----------------------|-----------------|-------------------------|-----------------------------|-------------------------|----------------------|------------------------|--------------------|
| Mar. 21 | Central - Mo | 3,397 | 694 | 2,703 | 2,703 | 413 | 4 (2 civil) |
| | Central - Tu | 3,845 | 743 | 3,102 | 3,102 | 372 | 2 (1 civil) |
| | Central - Th | 3,646 | 719 | 2,927 | 2,927 | 364 | 3 |
| | North | 3,750 | 795 | 2,955 | 567 | 161 | 2 |
| | South | 5,000 | 661 | 4,339 | 1,517 | 163 | 2 |
| | East | 4,500 | 753 | 3,747 | 795 | 127 | 2 |
| Mar. 28 | Central - Mo | 3,658 | 945 | 2,713 | 2,713 | 403 | 2 |
| | Central - Tu | 4,147 | 1,481 | 2,666 | 2,666 | 389 | 1 civil |
| | Central - We | 3,584 | 1,276 | 2,308 | 2,308 | 340 | 1 |
| | North | 3,750 | 1,280 | 2,470 | 659 | 166 | 1 |
| | East | 4,500 | 1,294 | 3,206 | 493 | 134 | 1 |
| Apr. 4 | Central - Mo | 3,548 | 996 | 2,552 | 2,552 | 395 | 3 (2 civil) |
| | Central - Tu | 3,510 | 944 | 2,566 | 2,566 | 339 | 3 |
| | Central - We | 3,436 | 942 | 2,494 | 2,494 | 352 | 3 |
| | Central - Th | 3,293 | 830 | 2,463 | 2,463 | 325 | 1 |
| | North | 3,750 | 963 | 2,787 | 950 | 290 | 3 |
| | South | 5,000 | 1,104 | 3,896 | 642 | 83 | 1 |
| | East | 4,500 | 1,024 | 3,476 | 927 | 216 | 2 |

| Week Beginning | Location | Summonses Issued | Postponed or Excused | Potential Jurors | Jurors Called | Jurors Reported | Panels Sent |
|-----------------------|-----------------|-------------------------|-----------------------------|-------------------------|----------------------|------------------------|--------------------------|
| Apr. 11 | Central - Mo | 3,173 | 561 | 2,612 | 2,612 | 351 | 4 (3 civil) |
| | Central - Tu | 4,876 | 954 | 3,922 | 3,922 | 355 | 4 (2 civil) |
| | Central - We | 4,192 | 739 | 3,453 | 3,453 | 356 | 1 |
| | North | 3,750 | 713 | 3,037 | 1,635 | 501 | 3 (1 civil) + 3 supp. |
| | South | 5,000 | 1,014 | 3,986 | 2,106 | 260 | 1 |
| | East | 4,500 | 1,052 | 3,448 | 1,144 | 156 | 2 |
| Apr. 18 | Central - Mo | 3,693 | 1,609 | 2,084 | 2,084 | 367 | 2 (1 civil) |
| | Central - Tu | 3,978 | 1,712 | 2,266 | 2,266 | 427 | 3 (1 civil) |
| | Central - We | 3,267 | 1,368 | 1,899 | 1,899 | 334 | 1 |
| | Central - Th | 3,238 | 1,374 | 1,864 | | | |
| | North | 3,750 | 982 | 2,768 | 1,108 | 316 | 1 + 3 supp. |
| | South | 5,000 | 1,537 | 3,463 | 664 | 66 | 1 |
| | East | 4,500 | 972 | 3,528 | 1,430 | 237 | 3 |
| Apr. 25 | Central - Mo | 3,641 | 1,328 | 2,313 | | | |
| | Central - Tu | 3,847 | 1,333 | 2,514 | | | |
| | Central - We | 3,448 | 1,191 | 2,257 | | | |
| | Central - Th | 3,211 | 1,074 | 2,137 | | | |
| | North | 3,750 | 1,178 | 2,572 | | | |
| | South | 5,000 | 1,307 | 3,693 | | | |
| | East | 4,500 | 1,233 | 3,267 | | | |
| May. 2 | Central - Mo | 3,724 | 1,002 | 2,722 | | | |
| | Central - Tu | 3,856 | 976 | 2,880 | | | |
| | Central - We | 3,028 | 761 | 2,267 | | | |
| | Central - Th | 3,406 | 882 | 2,524 | | | |
| | North | 3,750 | 888 | 2,862 | | | |
| | South | 5,000 | 964 | 4,036 | | | |
| | East | 4,500 | 940 | 3,560 | | | |
| May. 9 | Central - Mo | 3,679 | 712 | 2,967 | | | |
| | Central - Tu | 3,683 | 475 | 3,208 | | | |
| | Central - We | 3,388 | 800 | 2,588 | | | |
| | Central - Th | 3,211 | 604 | 2,607 | | | |
| | North | 3,750 | 529 | 3,221 | | | |
| | South | 5,000 | 833 | 4,167 | | | |
| | East | 4,500 | 760 | 3,740 | | | |

C. Description of the Court's Readiness Conference Program

As required by the Chief Justice's December 22, 2020, Memorandum regarding COVID-19 Pandemic Readiness Conferences, the court provides the following description of its readiness conference program.

In-custody readiness calendars began in May 2020, with two departments in the Central Courthouse and one department in each branch location. All defendants in custody with pending cases that were post-arraignment/pre-trial were scheduled for a readiness conference in an attempt to settle as many cases as possible. Once all of those readiness cases were completed, all cases with a negotiated plea were calendared for hearing in one of the triage departments to have the plea entered. All cases that did not reach agreement were set for future dates, often subsequent readiness hearings, and given the opportunity to continue negotiations. Many of the cases have had several readiness conferences to date. All cases that are arraigned are automatically set a for readiness conference date, which has always been the court's practice, even before the pandemic.

Additionally, all out-of-custody post-arraignment/pre-trial cases were calendared for either a trial status conference or regular status conference (depending on the stage of the case) beginning in September 2020. At those hearings, cases that had negotiated a resolution during the early months of the pandemic were scheduled for a hearing to enter their plea, and those that had not reached resolution were scheduled for a readiness conference with a back-up trial date. Those readiness hearings are being held daily and are often set for additional readiness hearings as negotiations continue.

Currently, there are several readiness departments now operating at each location, with most hearing both in-custody and out-of-custody cases as well as other types of hearings. Due to limitations in the court's CMS, the court is unable to provide accurate numbers as to how many readiness conferences have been held; however, every post-arraignment/pre-trial case has had at least one (often more) readiness conference since the pandemic began.

The following represents the approximate percentage of cases that have settled at readiness conferences at each of the branches since the court's last request:

- Central Courthouse: 25% of misdemeanors and 23% of felonies
- North County: 23% of misdemeanors and 16% of felonies
- South County: 6% of misdemeanors and 23% of felonies
- East County: 20% of misdemeanors and 19% of felonies

D. Steps the Court is Taking to Reduce the Number of Pending Criminal Cases and Overview of Associated Challenges

Although COVID-19 cases, hospitalizations, and deaths are continuing to decrease, and public health authorities are relaxing or lifting mitigation measures, the large number of pending criminal cases is directly attributable to the pandemic-related disruptions of the previous two years. This volume of cases continues to present an extraordinary challenge for the court and is the basis of the court's need for emergency relief.

The court is diligently working with its justice partners to reduce the number of pending criminal cases and transition away from the need for emergency relief in the future. In doing so, the court is balancing the interests of justice and of the various parties while attempting to avoid dismissals. Assuming current conditions and trends continue, and barring another COVID-19 surge affecting the court's ability to hold jury trials, the court's goal is to be in a position to end the need for emergency Penal Code section 1382 relief by the end of this summer. To this end, the court has recently taken the following steps:

- Applied for funding from Phase II of the Early Disposition Program to support staffing one additional readiness department with a Temporary Assigned Judge;
- Holding weekly meetings with court and justice-partner leadership to specifically address reducing the number of pending cases;
- Identifying cases set for trial with no intervening readiness conferences (because they already had readiness conferences and did not settle) and encouraging and facilitating further settlement discussions with justice partners;
- Conducting “deep-dive” reviews of serious/violent cases (starting with homicides) – Temporary Assigned Judges review and analyze the preliminary hearing transcripts and pertinent material from attorneys and then meet with Chief Deputy District Attorney, Public Defender Supervisor, and assigned attorneys to discuss settlement; and
- Exploring general or limited time waivers or good-cause findings as cases cycle through rather than relying on 1382 extensions.

Since the court resumed jury trials in February 2021, and until very recently, a main issue had been that, for various reasons described in the court's previous requests, fewer cases were ready for trial than the court had capacity to handle. This significantly impeded the court's ability to reduce or eliminate its number of pending criminal cases. In the past couple months, although the number of cases ready for trial has increased, staffing shortages, particularly among court reporters, courtroom clerks, and deputy sheriffs, have occasionally affected the court's ability to hold jury trials by limiting the number of departments that may be available on a given day. Although this has been an infrequent issue to date, the court anticipates it may become more of an issue as the number of cases ready for trial continues to increase. The court is actively seeking to recruit, hire, and train more employees; however, this has proven to be more challenging in the current labor market. In response, the court has refined its hiring process to better adapt to these conditions by being able to offer positions to qualified applicants in a matter of days after their interview rather than weeks. Despite the court's emphasis on hiring new staff, the court has found that its efforts have only been sufficient to replace the vacancies created by retirements, terminations, transfers, and promotions rather than being able to increase total staffing levels. For example, since July 1, 2021, the court has hired 112 employees but lost 118. The court had a higher-than-average number of employees retire in the first quarter of 2022, including 10 courtroom clerks and 9 court reporters, which is likely due, at least in part, to the high cost-of-living adjustment rate this year. The court currently has 29 vacancies for court reporters, but this has been a particularly challenging position to fill. For example, since October 2021, the court has only received two applications for court reporters despite continuously recruiting for that position.

The court currently has 64 courtrooms dedicated to criminal matters, including 42 for criminal jury trials. Another challenge the court is facing stems from a ceiling collapse in its North County Regional Center in November 2021 and the associated, ongoing building repairs, which are expected to continue through August or September 2022. This has resulted in the closure of several courtrooms and limited access to files in the criminal business office. Specifically, the North County location had 11 criminal departments, including 8 for criminal jury trials, before the ceiling issue, and that location is down to 8 criminal departments, including 4 for criminal jury trials, while the repairs are ongoing. In addition, the court's access to files is still limited, but the court is now able to pull files every two weeks. To help alleviate this reduction in courtrooms, the court has temporarily relocated two North County criminal trial departments to its Central Courthouse. This unanticipated loss of courtrooms, loss of full access to criminal and other files, and all of the moves, logistical changes, and adaptations the court was required to implement, without notice, has further contributed to the court's inability to significantly reduce or eliminate its trial backlog.

The court has utilized and continues to utilize temporary judges from the Temporary Assigned Judges Program to generally hear criminal matters. Specific to reducing the number of pending cases, the court is using temporary judges to conduct the deep-dive reviews of serious/violent cases described above, and the court plans to use a temporary judge in the readiness department that it plans to add if its Early Disposition Program funding request is approved.

The court also continues to use technology implemented in the past two years. As discussed above, the court is offering remote in-custody arraignments to ease some of the logistical burdens associated with the Sheriff's COVID-19 protocols. In addition, the court continues to allow out-of-custody defendants the option of appearing remotely for pre-trial hearings.

E. The Court's Request for an Extension

In the court's May 29, 2020, request for an emergency order for additional time to conduct trials, the court submitted letters of support from the District Attorney's Office, the City Attorney's Office, the Office of the Public Defender, and the Sheriff's Department. Each of these justice partners have continued to support the court's subsequent requests, including the current request, with the exception of the Public Defender, who, except for the request dated January 20, 2022, has objected to all of the court's requests since October 2, 2020.

As set forth in the court's response to questions 1 and 2 below, the court has approximately 1,220 cases in which the last day for trial will occur between April 26 and May 26, inclusive. The court is continuing to work towards resuming pre-pandemic levels of operations; however, even if the court were operating at its full pre-pandemic capacity of 70-90 jury trials per month (including criminal and civil), it would be impossible to hold 1,220 jury trials in this time frame. In addition, without the requested emergency relief, it would be extremely challenging, if not impossible, to calendar each of these matters before their current last day for trial to seek time waivers or make good-cause findings in an effort to avoid dismissals. Therefore, due the enormous backlog and the anticipated pace of proceeding with jury trials, the court requests an order allowing the court

to extend the time period provided in Penal Code section 1382, within which a trial must be held, by not more than 30 days.

II. ANSWERS TO SPECIFIC QUESTIONS SET FORTH IN THE MAY 14, 2020, JUDICIAL COUNCIL MEMORANDUM

1. How many criminal cases have last-day deadlines under Penal Code section 1382 during the period of time for which the court is requesting a first extension under Government Code section 68115 (please provide daily breakdown)?

Because this court deals with paper files, it would be burdensome to determine the exact numbers of cases, as the court would have to pull all the files and check for the relevant arraignment dates, whether the defendant ever waived the statutory time for trial or withdrew that waiver, whether the defendant ever failed to appear and a warrant was issued, whether the defendant is in diversion status or has been found not competent to stand trial, etc. However, the court can provide the following rough statistics for a general idea:

For felony cases with no prior extensions, to have a last-day deadline between April 26 and May 26, inclusive, the defendant would be arraigned on an Information between February 25 and March 27, inclusive. Of the cases with pending trial dates through May 31, there were approximately 105 felony bindovers after preliminary hearing during this timeframe (February 25 – March 27) in cases in which the defendants were arraigned on an Information immediately or soon thereafter. Thus, the court approximates there were 105 felony arraignments during this period (February 25 – March 27), meaning approximately 105 felony cases with pending trial dates through May 31 and with no prior extensions will have a statutory last-day deadline for trial during the request period (April 26 – May 26). Most of these defendants remain in custody.

For misdemeanor in-custody cases with no prior extensions, to have a last-day deadline between April 26 and May 26, inclusive, defendants would have arraignment dates between March 27 and April 26, inclusive. The court does not have complete statistics for this time period. However, of the cases with scheduled trial dates through May 31, there were approximately 85 misdemeanor arraignments of defendants who are still in custody between March 9 and April 8, inclusive. In the 30 days before that (February 6 – March 8), there were approximately 15 misdemeanor arraignments of defendants still in custody. Using these numbers as a guide, the court estimates that about 50 misdemeanor in-custody cases with trial dates through May 31, and with no prior extensions, will have a statutory last-day deadline during the request period (April 26 – May 26).

For misdemeanor out-of-custody cases with no prior extensions, to have a statutory last-day deadline between April 26 and May 26, inclusive, defendants would have arraignment dates between March 12 and April 11, inclusive. Of the cases with pending trial dates through May 31, there were approximately 375 misdemeanor arraignments of out-of-custody defendants between March 12 and April 11. Thus, the court estimates that there will be roughly 375 misdemeanor out-of-custody cases with no prior extensions that will have a statutory last-day deadline during the request period (April 26 – May 26).

In sum, the court estimates that, of the cases with pending trial dates through May 31, approximately 530 cases with no prior extensions will have their statutory trial deadline come due during the period of April 26 to May 26, inclusive. The court recognizes a number of these cases, being new, may settle, but the court cannot predict what percentage of cases that may be. Assuming a 50% settlement rate, that still leaves approximately 265 cases with original last-day deadlines falling within the request period.

2. How many criminal cases are coming up to the limit already extended for 90 days by the statewide orders (please provide a daily breakdown)? Is the court requesting a further extension of time on any of these cases?

Regarding the statewide orders, the court has been able to identify and review 56 felony and 147 misdemeanor cases that had trial dates set between March 16 and June 15, 2020, that are still pending. Of those, it appears that 14 felony and 62 misdemeanor cases are currently in warrant status for a failure to appear; 3 felony and 23 misdemeanor cases are in diversion status (e.g. per PC §§ 1000 et seq., 1001.36, 1001.80, or 1001.95); 1 felony and 4 misdemeanor cases are conducting competency (PC 1368) proceedings or have found the defendant not competent to stand trial; and the remaining cases have had one or more time waivers entered by defendant or were continued after the Chief Justice's 90-day extension ran its course. In sum, of the cases the court has been able to identify and review, the court believes that there are none that still rely on the statewide 90-day extensions.

The response to this question includes those cases that have received the benefit of any of the previous court-specific 30-day extensions granted to this court pursuant to the Chief Justice's Emergency Orders. It would be burdensome to determine the exact number of cases that fall in this category because the court would have to pull all the files and check for the relevant arraignment dates, whether the defendant ever waived the statutory time for trial or withdrew that waiver, whether the defendant ever failed to appear and a warrant was issued, whether the defendant is in diversion status or has been found not competent to stand trial, etc. In addition, with trial dates now having been set and reset multiple times in some cases since the pandemic began it is difficult to tell which and how many of the prior extension orders the cases fall under. However, the court can provide the following rough statistics for a general idea.

There are approximately 235 felony cases (approximately half in custody), approximately 60 in-custody misdemeanor cases, and approximately 660 out-of-custody misdemeanor cases that, with all prior extensions, now have statutory trial deadlines between April 26 and May 26, inclusive. In sum, the court estimates that approximately 955 previously extended cases will have their statutory trial deadline come due during the request period of April 26 and May 26, inclusive.

Summary:

Based on the above, in both categories (questions 1 and 2), the court estimates that, of the cases with pending trial dates through May 31, there are approximately 1,220 cases in which the statutory last day for trial will occur between April 26 and May 26, inclusive.

Except as noted above and in previous requests, the court's responses to questions 3-5 have generally not changed since its September 3, 2020, request, and those responses are incorporated herein by reference.

#

TO: Hon. Tani G. Cantil-Sakauye, Chair of the Judicial Council
Judicial Council of California
c/o Legal Services Supervising Attorney Charles Perkins
415-865-4609
charles.perkins@jud.ca.gov
415-865-8767 (fax)

FROM: *Name* : Michael T. Smyth
Title: Presiding Judge
Court: Superior Court of San Diego County
Telephone: 619-844-2100
Fax: 619-844-5550
E-mail Address: [REDACTED]

DATE: 5/19/2022

SUBJECT: Request for Judicial Emergency Order

I hereby request an order allowing the court to implement the following emergency procedures pursuant to the provisions of section 68115 of the Government Code¹:

The court may extend the time period provided in section 1382 of the Penal Code within which a trial must be held by not more than 30 days. (Gov. Code, § 68115(a)(10).)

(Fill in number of days, not exceeding 30. Pursuant to Government Code section 68115(a)(10), “the trial of a defendant in custody whose time is so extended shall be given precedence over all other cases.”)

This request applies only to cases in which the statutory deadline otherwise would expire on _____ *or* from 5/26/2022, to 6/25/2022, inclusive*.

(Fill in date(s) above.)

***This request applies to cases in which the original or previously-extended statutory deadline otherwise would expire from May 26, 2022, to June 25, 2022, inclusive.**

The circumstances necessitating an emergency order are described in the attached document.

¹ Government Code section 68115, as amended, effective January 1, 2019, provides that, upon the request of a presiding judge, the Chairperson of the Judicial Council may authorize relief as set forth in the statute, “[w]hen war, an act of terrorism, public unrest or calamity, epidemic, natural disaster, or other substantial risk to the health and welfare of court personnel or the public, or the danger thereof, the destruction of or danger to the building appointed for holding the court, a large influx of criminal cases resulting from a large number of arrests within a short period of time, or a condition that leads to a state of emergency being proclaimed by the President of the United States or by the Governor pursuant to Section 8625, threatens the orderly operation of a superior court location or locations within a county or renders presence in, or access to, an affected court facility or facilities unsafe”

The public defender, the district attorney, and other interested local entities have / have not (check one box) been notified of this request for emergency order.

The court has / has not (check one box) advised these entities to immediately notify the Judicial Council's Legal Services office of any opposition or questions regarding the request.

Please list the names and telephone numbers of the district attorney, the public defender, and other notified parties affected by the order:

District Attorney: Summer Stephan

Public Defender: Randy Mize

Other Parties Affected: City Attorney Mara Elliot; San Diego Sheriff Anthony Ray

The court has / has not (check one box) been informed of any opposition to this request.

If the court has been informed of potential opposition to this request, please state below the party or parties who may oppose the request and any stated reasons for the opposition:

Regarding the court's October 2, 2020, request, the Public Defender, Randy Mize, informed the court that he "cannot support another 1382" extension on behalf of his clients. He has objected to all of the court's subsequent requests, including this one, with the exception of the court's request dated January 20, 2022.

Submitted by:



Date: 5/19/2022

Presiding Judge, San Diego Superior Court

The San Diego Superior Court hereby requests an order allowing the court to extend the time period provided in Penal Code section 1382, within which a trial must be held, by not more than 30 days. This request applies to cases in which the original or previously extended statutory deadline otherwise would expire from May 26, 2022, to June 25, 2022, inclusive.

I. BACKGROUND INFORMATION AND BASIS FOR REQUEST

Since the court's last request for Penal Code section 1382 relief, which was submitted on April 21, 2022,¹ the court has continued holding criminal and civil jury trials in several locations across the county; however, as described below, the court still faces an enormous number of criminal cases, approximately 1,030, in which the last day for trial will occur between May 26 and June 25. Even in pre-pandemic conditions, it would be impossible to hold jury trials for this number of cases in such a short period of time.

This memorandum will address relevant changes since the court's last request. In addition, the numerous federal, state, and local public health orders that have been issued in response to the COVID-19 pandemic are well known and have been detailed in prior Judicial Council orders and memoranda as well as this court's prior requests for relief from the Chief Justice. Accordingly, they will not be repeated here, except as necessary to provide relevant updates.

A. COVID-19 in San Diego County and Relevant Public Health Guidance

To date in San Diego County, there have been 771,980 COVID-19 cases, 30,052 hospitalizations, and 5,277 deaths. The most recent testing positivity rate was 7.68%, and the current hospital census of positive patients is 134. More than 83% of eligible San Diego County residents are now fully vaccinated, and approximately 94% are at least partially vaccinated. Although cases are beginning to increase slightly, hospitalizations and deaths remain low.

The California Department of Public Health ("CDPH") and the California Division of Occupational Safety and Health ("Cal/OSHA") recently revised their guidance so that employees who are not fully vaccinated no longer have to quarantine after a close contact as long as they remain asymptomatic, which will alleviate some of the court's staffing issues. Otherwise, public health authorities have not re-implemented any of the measures that previously limited the court's ability to conduct in-person jury trials, such as stay-at-home orders, capacity limits, and physical-distancing requirements. However, the state of emergency proclamations by the President of the United States and the Governor of California remain in place.

B. Activity Since the Court's Last Request

Since the week of April 18, the court held 65 jury trials at its various locations, including 12 civil trials. In addition, there were seven supplemental criminal panels in North and one criminal grand jury in Central. For reference, since resuming jury trials on February 8, 2021, the court has held a total of 458 trials, including 109 civil trials.

¹ All subsequent date references are to 2022 unless otherwise indicated.

The court has continued to see several criminal cases settle after being set for trial or waive time due to various issues such as witness availability. Specifically, in the last month, approximately 24% of cases in Central, 24% of cases in North, 7% of cases in South, and 27% of cases in East have settled at trial, and the remainder, except for those that went forward, generally requested to be continued (in-custody) or were continued for cause (out-of-custody). The court is continuing to work with its justice partners to schedule more trials to allow for those that may settle, including daily trial call calendars in each branch. The chart below illustrates the approximate number of cases at trial call in the various branches since the court's last request:

| | Cases Calendared | Settled (Change of Plea) | Continued | Ready for Trial | Other |
|----------------|------------------|--------------------------|-----------|-----------------|-------|
| Central | 152 | 36 | 88 | 14 | 14 |
| North | 131 | 32 | 53 | 10 | 36 |
| South | 69 | 5 | 42 | 22 | 0 |
| East | 159 | 43 | 101 | 15 | 0 |
| TOTAL | 511 | 116 | 284 | 61 | 50 |

Since the court's previous request, the total juror appearance rate, including newly summoned and previously deferred jurors, was approximately 17%. The chart below illustrates the juror turnout since the court's last request and previews the number of jurors that have postponed or requested to be excused for upcoming weeks:

| Week Beginning | Location | Summonses Issued | Postponed or Excused | Potential Jurors | Jurors Called | Jurors Reported | Panels Sent |
|----------------|--------------|------------------|----------------------|------------------|---------------|-----------------|-----------------------|
| Apr. 18 | Central - Mo | 3,693 | 1,609 | 2,084 | 2,084 | 367 | 2 (1 civil) |
| | Central - Tu | 3,978 | 1,712 | 2,266 | 2,266 | 427 | 3 (1 civil) |
| | Central - We | 3,267 | 1,368 | 1,899 | 1,899 | 334 | 1 |
| | North | 3,750 | 982 | 2,768 | 1,500 | 431 | 2 + 4 supp. |
| | South | 5,000 | 1,537 | 3,463 | 664 | 66 | 1 |
| | East | 4,500 | 972 | 3,528 | 1,968 | 366 | 4 |
| Apr. 25 | Central - Mo | 3,641 | 1,328 | 2,313 | 2,313 | 368 | 4 (2 civil) |
| | Central - Tu | 3,847 | 1,333 | 2,514 | 2,514 | 437 | 1 |
| | Central - We | 3,448 | 1,191 | 2,257 | 2,257 | 321 | 1 civil |
| | Central - Th | 3,211 | 1,074 | 2,137 | 2,137 | 309 | 2 (1 civil) |
| | North | 3,750 | 1,178 | 2,572 | 1,098 | 290 | 3 + 2 supp. |
| | South | 5,000 | 1,307 | 3,693 | 1,425 | 169 | 2 |
| May. 2 | Central - Mo | 3,724 | 1,736 | 1,988 | 1,988 | 337 | 4 (1 civil) + 1 GJ |
| | Central - Tu | 3,856 | 1,621 | 2,235 | 2,235 | 378 | 2 |
| | Central - Th | 3,406 | 1,428 | 1,978 | 1,978 | 324 | 1 |
| | North | 3,750 | 1,511 | 2,239 | 399 | 137 | 2 (1 civil) |
| | East | 4,500 | 1,554 | 2,946 | 998 | 227 | 2 |

| Week Beginning | Location | Summonses Issued | Postponed or Excused | Potential Jurors | Jurors Called | Jurors Reported | Panels Sent |
|-----------------------|-----------------|-------------------------|-----------------------------|-------------------------|----------------------|------------------------|--------------------------|
| May. 9 | Central - Mo | 3,679 | 1,388 | 2,291 | 2,291 | 403 | 4 (1 civil) |
| | Central - Tu | 3,683 | 1,165 | 2,518 | 2,518 | 369 | 1 civil |
| | Central - We | 3,388 | 1,320 | 2,068 | 2,068 | 353 | 1 |
| | Central - Th | 3,211 | 1,224 | 1,987 | 1,987 | 272 | 3 |
| | North | 3,750 | 1,197 | 2,553 | 1,131 | 368 | 4 (1 civil) + 1 supp. |
| | South | 5,000 | 1,394 | 3,606 | 745 | 83 | 1 |
| | East | 4,500 | 1,305 | 3,195 | 2,005 | 330 | 3 |
| May. 16 | Central - Mo | 3,692 | 1,148 | 2,544 | 2,544 | 418 | 3 (1 civil) |
| | Central - Tu | 3,789 | 1,141 | 2,648 | 2,648 | 397 | 1 |
| | Central - We | 3,412 | 1,373 | 2,039 | 2,039 | 315 | 3 |
| | Central - Th | 3,296 | 1,295 | 2,001 | | | |
| | North | 3,750 | 976 | 2,774 | 711 | 202 | 3 |
| | South | 5,000 | 1,530 | 3,470 | 700 | 69 | 1 |
| | East | 4,500 | 1,674 | 2,826 | | | |
| May. 23 | Central - Mo | 3,687 | 1,271 | 2,416 | | | |
| | Central - Tu | 3,657 | 1,261 | 2,396 | | | |
| | Central - We | 3,876 | 1,362 | 2,514 | | | |
| | Central - Th | 3,390 | 1,204 | 2,186 | | | |
| | North | 3,750 | 1,160 | 2,590 | | | |
| | South | 5,000 | 1,275 | 3,725 | | | |
| | East | 4,500 | 1,269 | 3,231 | | | |
| May. 31 | Central - Tu | 3,829 | 1,111 | 2,718 | | | |
| | Central - We | 3,308 | 937 | 2,371 | | | |
| | Central - Th | 3,312 | 934 | 2,378 | | | |
| | North | 3,750 | 947 | 2,803 | | | |
| | South | 5,000 | 971 | 4,029 | | | |
| | East | 4,500 | 1,005 | 3,495 | | | |
| Jun. 6 | Central - Mo | 3,717 | 726 | 2,991 | | | |
| | Central - Tu | 3,487 | 602 | 2,885 | | | |
| | Central - We | 3,401 | 655 | 2,746 | | | |
| | Central - Th | 2,961 | 529 | 2,432 | | | |
| | North | 3,737 | 598 | 3,139 | | | |
| | South | 5,000 | 653 | 4,347 | | | |
| | East | 4,500 | 661 | 3,839 | | | |
| Jun. 13 | Central - Mo | 3,711 | 12 | 3,699 | | | |
| | Central - Tu | 3,687 | 5 | 3,682 | | | |
| | Central - We | 3,403 | 10 | 3,393 | | | |
| | Central - Th | 3,392 | 3 | 3,389 | | | |
| | North | 3,741 | 10 | 3,731 | | | |
| | South | 5,000 | 11 | 4,989 | | | |
| | East | 4,500 | 10 | 4,490 | | | |

C. Description of the Court’s Readiness Conference Program

As required by the Chief Justice’s December 22, 2020, Memorandum regarding COVID-19 Pandemic Readiness Conferences, the court provides the following description of its readiness conference program.

In-custody readiness calendars began in May 2020, with two departments in the Central Courthouse and one department in each branch location. All defendants in custody with pending cases that were post-arraignment/pre-trial were scheduled for a readiness conference in an attempt to settle as many cases as possible. Once all of those readiness cases were completed, all cases with a negotiated plea were calendared for hearing in one of the triage departments to have the plea entered. All cases that did not reach agreement were set for future dates, often subsequent readiness hearings, and given the opportunity to continue negotiations. Many of the cases have had several readiness conferences to date. All cases that are arraigned are automatically set a for readiness conference date, which has always been the court’s practice, even before the pandemic.

Additionally, all out-of-custody post-arraignment/pre-trial cases were calendared for either a trial status conference or regular status conference (depending on the stage of the case) beginning in September 2020. At those hearings, cases that had negotiated a resolution during the early months of the pandemic were scheduled for a hearing to enter their plea, and those that had not reached resolution were scheduled for a readiness conference with a back-up trial date. Those readiness hearings are being held daily and are often set for additional readiness hearings as negotiations continue.

Currently, there are several readiness departments now operating at each location, with most hearing both in-custody and out-of-custody cases as well as other types of hearings. Due to limitations in the court’s CMS, the court is unable to provide accurate numbers as to how many readiness conferences have been held; however, every post-arraignment/pre-trial case has had at least one (often more) readiness conference since the pandemic began.

The chart below illustrates the approximate number and percentage of cases that have settled at readiness conferences at each of the branches since the court’s last request:

| | Cases Calendared | Settled (Change of Plea) | % Settled | Continued to Another Readiness | Confirmed for Trial | Other |
|-----------------------------|---------------------|-----------------------------|-----------|--------------------------------------|------------------------|-------|
| Central Misdemeanors | 1,291 | 317 | 25% | 832 | 32 | 110 |
| Central Felonies | 1,263 | 339 | 27% | 649 | 190 | 85 |
| North Misdemeanors | 1,674 | 304 | 18% | 955 | 31 | 384 |
| North Felonies | 1,027 | 202 | 20% | 457 | 148 | 220 |
| South Misdemeanors | 42 | 23 | 55% | 10 | 9 | 0 |
| South Felonies | 507 | 188 | 37% | 201 | 118 | 0 |
| East Misdemeanors | 674 | 207 | 31% | 452 | 15 | 0 |
| East Felonies | 773 | 226 | 29% | 423 | 124 | 0 |
| TOTAL | 7,251 | 1,806 | 25% | 3,979 | 667 | 799 |

D. Steps the Court is Taking to Reduce the Number of Pending Criminal Cases and Overview of Associated Challenges

Although COVID-19 cases, hospitalizations, and deaths are currently low in San Diego County, and public health authorities have relaxed or lifted several mitigation measures, the large number of pending criminal cases is directly attributable to the pandemic-related disruptions of the previous two years. This volume of cases continues to present an extraordinary challenge for the court and is the basis of the court's need for emergency relief.

The court is diligently working with its justice partners to reduce the number of pending criminal cases and transition away from the need for emergency relief in the future. In doing so, the court is balancing the interests of justice and of the various parties while attempting to avoid dismissals. Assuming current conditions and trends continue, and barring another COVID-19 surge affecting the court's ability to hold jury trials, the court's goal is to be in a position to end the need for emergency Penal Code section 1382 relief by the end of this summer. To this end, the court has recently taken the following steps:

- Applied for and was awarded funding from Phase II of the Early Disposition Program to support staffing one additional readiness department;
- Holding regular meetings with court and justice-partner leadership to specifically address reducing the number of pending cases;
- Identifying cases set for trial with no intervening readiness conferences (because they already had readiness conferences and did not settle) and encouraging and facilitating further settlement discussions with justice partners;
- Conducting "deep-dive" reviews of serious/violent cases (started with homicides, now looking to expand to additional case types) – Temporary Assigned Judges review and analyze the preliminary hearing transcripts and pertinent material from attorneys and then meet with Chief Deputy District Attorney, Public Defender Supervisor, and assigned attorneys to discuss settlement; and
- Exploring general or limited time waivers or good-cause findings as cases cycle through rather than relying on 1382 extensions.

The court currently has 64 courtrooms dedicated to criminal matters, including 42 for criminal jury trials. The court is prepared to assign additional judges from other case types to hear criminal matters, if necessary; however, since the court resumed jury trials in February 2021, the main issue has been that, for various reasons described in the court's previous requests, fewer cases were ready for trial than the court had capacity to handle. Except for a few rare occasions where staffing issues limited the number of departments available, the court has had more departments and jurors available than cases ready to go forward. This significantly impeded the court's ability to reduce or eliminate its number of pending criminal cases.

Although this has not happened since the court's last request, staffing shortages, particularly among court reporters, courtroom clerks, and deputy sheriffs, have occasionally affected the court's ability to hold jury trials in previous months by limiting the number of departments that may be available on a given day. This has been an infrequent issue to date, but

the court anticipates it may become more of an issue as the number of cases ready for trial continues to increase. In addition, the number of court reporters available will limit the number of additional judges that can be assigned from other case types if that need arises.

The court is actively seeking to recruit, hire, and train more employees; however, this has proven to be more challenging in the current labor market. In response, the court has refined its hiring process to better adapt to these conditions by being able to offer positions to qualified applicants in a matter of days after their interview rather than weeks. Despite the court's emphasis on hiring new staff, the court has found that its efforts have only been sufficient to replace the vacancies created by retirements, terminations, transfers, and promotions rather than being able to increase total staffing levels. For example, since July 1, 2021, the court has hired 128 employees but lost 128. The court had a higher-than-average number of employees retire in the first quarter of 2022, including 10 courtroom clerks and 9 court reporters, which is likely due, at least in part, to the high cost-of-living adjustment rate this year. The court currently has 29 vacancies for court reporters, but this has been a particularly challenging position to fill. For example, since October 2021, the court has only received two applications for court reporters despite continuously recruiting for that position.

Another challenge the court is facing stems from a ceiling collapse in its North County Regional Center in November 2021 and the associated, ongoing building repairs, which are expected to continue through August or September 2022. This has resulted in the closure of several courtrooms and limited access to files in the criminal business office. Specifically, the North County location had 11 criminal departments, including 8 for criminal jury trials, before the ceiling issue, and that location is down to 8 criminal departments, including 4 for criminal jury trials, while the repairs are ongoing. In addition, the court's access to files is still limited, but the court is now able to pull files every two weeks. The court hopes to be able to reoccupy the criminal business office on June 1. To help alleviate this reduction in courtrooms, the court has temporarily relocated two North County criminal trial departments to its Central Courthouse. This unanticipated loss of courtrooms, loss of full access to criminal and other files, and all of the moves, logistical changes, and adaptations the court was required to implement, without notice, has further contributed to the court's inability to significantly reduce or eliminate its trial backlog.

The number of COVID-19 cases in the county detention facilities has remained low since the court's last request; however, some inmates continue to be in medical isolation. Although it is occurring less frequently than in previous months, this has resulted in some in-custody defendants being unable to be transported to the courthouse for pre-trial proceedings, including readiness conferences, and trials, which has impacted the court's ability to resolve cases.

The court also continues to use technology implemented in the past two years. The court has continued offering remote in-custody arraignments to ease some of the logistical burdens associated with the Sheriff's COVID-19 protocols. In addition, the court continues to allow out-of-custody defendants the option of appearing remotely for pre-trial hearings.

The court has utilized and continues to utilize temporary judges from the Temporary Assigned Judges Program to generally hear criminal matters. Specific to reducing the reducing

the number of pending cases, the court is using temporary judges to conduct the deep-dive reviews of serious/violent cases described above, and the court plans to use a temporary judge in the readiness department that it plans to add with the Early Disposition Program funds that were recently approved.

E. The Court's Request for an Extension

In the court's May 29, 2020, request for an emergency order for additional time to conduct trials, the court submitted letters of support from the District Attorney's Office, the City Attorney's Office, the Office of the Public Defender, and the Sheriff's Department. Each of these justice partners have continued to support the court's subsequent requests, including the current request, with the exception of the Public Defender, who, except for the request dated January 20, 2022, has objected to all of the court's requests since October 2, 2020.

As set forth in the court's response to questions 1 and 2 below, the court has approximately 1,030 cases in which the last day for trial will occur between May 26 and June 25, inclusive. The court is continuing to work towards resuming pre-pandemic levels of operations; however, even if the court were operating at its full pre-pandemic capacity of 70-90 jury trials per month (including criminal and civil), it would be impossible to hold 1,030 jury trials in this time frame. In addition, without the requested emergency relief, it would be extremely challenging, if not impossible, to calendar each of these matters before their current last day for trial to seek time waivers or make good-cause findings in an effort to avoid dismissals. Therefore, due the enormous backlog and the anticipated pace of proceeding with jury trials, the court requests an order allowing the court to extend the time period provided in Penal Code section 1382, within which a trial must be held, by not more than 30 days.

II. ANSWERS TO SPECIFIC QUESTIONS SET FORTH IN THE MAY 14, 2020, JUDICIAL COUNCIL MEMORANDUM

1. How many criminal cases have last-day deadlines under Penal Code section 1382 during the period of time for which the court is requesting a first extension under Government Code section 68115 (please provide daily breakdown)?

Because this court deals with paper files, it would be burdensome to determine the exact numbers of cases, as the court would have to pull all the files and check for the relevant arraignment dates, whether the defendant ever waived the statutory time for trial or withdrew that waiver, whether the defendant ever failed to appear and a warrant was issued, whether the defendant is in diversion status or has been found not competent to stand trial, etc. However, the court can provide the following rough statistics for a general idea:

For felony cases with no prior extensions, to have a last-day deadline between May 26 and June 25, inclusive, the defendant would be arraigned on an Information between March 27 and April 26, inclusive. Of the cases with pending trial dates through June 30, there were approximately 95 felony bindovers after preliminary hearing during this timeframe (March 27 and April 26) in cases in which the defendants were arraigned on an Information immediately or soon

thereafter. Thus, the court approximates there were 95 felony arraignments during this period (March 27 and April 26), meaning approximately 95 felony cases with pending trial dates through June 30 and with no prior extensions will have a statutory last-day deadline for trial during the request period (May 26 – June 25). Most of these defendants remain in custody.

For misdemeanor in-custody cases with no prior extensions, to have a last-day deadline between May 26 and June 25, inclusive, defendants would have arraignment dates between April 26 and May 26, inclusive. The court does not have complete statistics for this time period. However, of the cases with scheduled trial dates through June 30, there were approximately 25 misdemeanor arraignments of defendants who are still in custody between April 17 and May 16, inclusive. In the 30 days before that (March 17 – April 16), there were approximately 15 misdemeanor arraignments of defendants still in custody. Using these numbers as a guide, the court estimates that about 20 misdemeanor in-custody cases with trial dates through June 30, and with no prior extensions, will have a statutory last-day deadline during the request period (May 26 – June 25).

For misdemeanor out-of-custody cases with no prior extensions, to have a statutory last-day deadline between May 26 and June 25, inclusive, defendants would have arraignment dates between April 11 and May 11, inclusive. Of the cases with pending trial dates through June 30, 2022, there were approximately 215 misdemeanor arraignments of out-of-custody defendants between April 11 and May 11. Thus, the court estimates that there will be roughly 215 misdemeanor out-of-custody cases with no prior extensions that will have a statutory last-day deadline during the request period (May 26-June 25).

In sum, the court estimates that, of the cases with pending trial dates through June 30, approximately 330 cases with no prior extensions will have their statutory trial deadline come due during the period of May 26 to June 25, inclusive. The court recognizes a number of these cases, being new, may settle, but the court cannot predict what percentage of cases that may be. Assuming a 50% settlement rate, that still leaves approximately 165 cases with original last-day deadlines falling within the request period.

2. How many criminal cases are coming up to the limit already extended for 90 days by the statewide orders (please provide a daily breakdown)? Is the court requesting a further extension of time on any of these cases?

The response to this question includes those cases that have received the benefit of any of the previous court-specific 30-day extensions granted to this court pursuant to the Chief Justice's Emergency Orders. It would be burdensome to determine the exact number of cases that fall in this category because the court would have to pull all the files and check for the relevant arraignment dates, whether the defendant ever waived the statutory time for trial or withdrew that waiver, whether the defendant ever failed to appear and a warrant was issued, whether the defendant is in diversion status or has been found not competent to stand trial, etc. In addition, with trial dates now having been set and reset multiple times in some cases since the pandemic began it is difficult to tell which and how many of the prior extension orders the cases fall under. However, the court can provide the following rough statistics for a general idea.

There are approximately 190 felony cases (approximately half in custody), approximately 50 in-custody misdemeanor cases, and approximately 575 out-of-custody misdemeanor cases that, with all prior extensions, now have statutory trial deadlines between May 26 and June 25, inclusive. In sum, the court estimates that approximately 815 previously extended cases will have their statutory trial deadline come due during the request period of May 26 and June 25, inclusive.

Summary:

Based on the above, in both categories (questions 1 and 2), the court estimates that, of the cases with pending trial dates through June 30, there are approximately 1,030 cases in which the statutory last day for trial will occur between May 26 and June 25, inclusive.

Except as noted above and in previous requests, the court's responses to questions 3-5 have generally not changed since its September 3, 2020, request, and those responses are incorporated herein by reference.

###

TO: Hon. Tani G. Cantil-Sakauye, Chair of the Judicial Council
Judicial Council of California
c/o Legal Services Supervising Attorney Charles Perkins
415-865-4609
charles.perkins@jud.ca.gov
415-865-8767 (fax)

FROM: *Name* : Michael T. Smyth
Title: Presiding Judge
Court: Superior Court of San Diego County
Telephone: 619-844-2100
Fax: 619-844-5550
E-mail Address: [REDACTED]

DATE: 6/17/2022

SUBJECT: Request for Judicial Emergency Order

I hereby request an order allowing the court to implement the following emergency procedures pursuant to the provisions of section 68115 of the Government Code¹:

The court may extend the time period provided in section 1382 of the Penal Code within which a trial must be held by not more than 30 days. (Gov. Code, § 68115(a)(10).)

(Fill in number of days, not exceeding 30. Pursuant to Government Code section 68115(a)(10), "the trial of a defendant in custody whose time is so extended shall be given precedence over all other cases.")

This request applies only to cases in which the statutory deadline otherwise would expire on _____ *or* from 6/25/2022, to 7/25/2022, inclusive*.

(Fill in date(s) above.)

***This request applies to cases in which the original or previously-extended statutory deadline otherwise would expire from June 25, 2022, to July 25, 2022, inclusive.**

The circumstances necessitating an emergency order are described in the attached document.

¹ Government Code section 68115, as amended, effective January 1, 2019, provides that, upon the request of a presiding judge, the Chairperson of the Judicial Council may authorize relief as set forth in the statute, "[w]hen war, an act of terrorism, public unrest or calamity, epidemic, natural disaster, or other substantial risk to the health and welfare of court personnel or the public, or the danger thereof, the destruction of or danger to the building appointed for holding the court, a large influx of criminal cases resulting from a large number of arrests within a short period of time, or a condition that leads to a state of emergency being proclaimed by the President of the United States or by the Governor pursuant to Section 8625, threatens the orderly operation of a superior court location or locations within a county or renders presence in, or access to, an affected court facility or facilities unsafe"

The public defender, the district attorney, and other interested local entities have / have not (check one box) been notified of this request for emergency order.

The court has / has not (check one box) advised these entities to immediately notify the Judicial Council's Legal Services office of any opposition or questions regarding the request.

Please list the names and telephone numbers of the district attorney, the public defender, and other notified parties affected by the order:

District Attorney: Summer Stephan

Public Defender: Randy Mize

Other Parties Affected: City Attorney Mara Elliot; San Diego Sheriff Anthony Ray

The court has / has not (check one box) been informed of any opposition to this request.

If the court has been informed of potential opposition to this request, please state below the party or parties who may oppose the request and any stated reasons for the opposition:

Regarding the court's October 2, 2020, request, the Public Defender, Randy Mize, informed the court that he "cannot support another 1382" extension on behalf of his clients. He has objected to all of the court's subsequent requests, including this one, with the exception of the court's request dated January 20, 2022.

Submitted by:



Date: 6/17/2022

Presiding Judge, San Diego Superior Court

The San Diego Superior Court hereby requests an order allowing the court to extend the time period provided in Penal Code section 1382, within which a trial must be held, by not more than 30 days. This request applies to cases in which the original or previously extended statutory deadline otherwise would expire from June 25, 2022, to July 25, 2022, inclusive.

I. BACKGROUND INFORMATION AND BASIS FOR REQUEST

Since the court's last request for Penal Code section 1382 relief, which was submitted on May 19, 2022,¹ the court has continued holding criminal and civil jury trials in several locations across the county; however, as described below, the court still faces an enormous number of criminal cases, approximately 880, in which the last day for trial will occur between June 25 and July 25. Even in pre-pandemic conditions, it would be impossible to hold jury trials for this number of cases in such a short period of time.

This memorandum will address relevant changes since the court's last request. In addition, the numerous federal, state, and local public health orders that have been issued in response to the COVID-19 pandemic are well known and have been detailed in prior Judicial Council orders and memoranda as well as this court's prior requests for relief from the Chief Justice. Accordingly, they will not be repeated here, except as necessary to provide relevant updates.

A. COVID-19 in San Diego County and Relevant Public Health Guidance

To date in San Diego County, there have been 813,035 COVID-19 cases, 30,655 hospitalizations, and 5,318 deaths. The most recent testing positivity rate was 12.93%, and the current hospital census of positive patients is 226. More than 83% of eligible San Diego County residents are now fully vaccinated, and more than 94% are at least partially vaccinated. Although cases and hospitalizations have increased recently, deaths remain low.

Public health authorities have not re-implemented any of the measures that previously limited the court's ability to conduct in-person jury trials, such as stay-at-home orders, capacity limits, and physical-distancing requirements. However, the state of emergency proclamations by the President of the United States and the Governor of California remain in place.

B. Activity Since the Court's Last Request

Since the week of May 16, the court held 56 jury trials at its various locations, including 13 civil trials.² In addition, there was one supplemental criminal panel in North. For reference, since resuming jury trials on February 8, 2021, the court has held a total of 503 trials, including 121 civil trials.

The court has continued to see several criminal cases settle after being set for trial or waive time due to various issues such as witness availability. Specifically, in the last month, approximately 11% of cases in Central, 16% of cases in North, 15% of cases in South, and 15%

¹ All subsequent date references are to 2022 unless otherwise indicated.

² Numbers are incomplete for the week of June 13. In addition, two multi-week trials experienced disruptions due to jurors testing positive during trial or deliberations.

of cases in East have settled at trial, and the remainder, except for those that went forward, generally requested to be continued (in-custody) or were continued for cause (out-of-custody). The court is continuing to work with its justice partners to schedule more trials to allow for those that may settle, including daily trial call calendars in each branch. The chart below illustrates the approximate number of cases at trial call in the various branches since the court's last request:

| | Cases Calendared | Settled (Change of Plea) | Continued | Ready for Trial | Other |
|----------------|---------------------|-----------------------------|-----------|--------------------|-------|
| Central | 157 | 18 | 90 | 27 | 22 |
| North | 113 | 18 | 73 | 14 | 8 |
| South | 132 | 20 | 104 | 8 | 0 |
| East | 47 | 7 | 34 | 6 | 0 |
| TOTAL | 449 | 63 | 301 | 55 | 30 |

Since the court's previous request, the total juror appearance rate, including newly summoned and previously deferred jurors, was approximately 16%. The chart below illustrates the juror turnout since the court's last request and previews the number of jurors that have postponed or requested to be excused for upcoming weeks:

| Week Beginning | Location | Summonses Issued | Postponed or Excused | Potential Jurors | Jurors Called | Jurors Reported | Panels Sent |
|-------------------|--------------|---------------------|-------------------------|---------------------|------------------|--------------------|----------------|
| May. 16 | Central - Mo | 3,692 | 1,148 | 2,544 | 2,544 | 418 | 3 (1 civil) |
| | Central - Tu | 3,789 | 1,141 | 2,648 | 2,648 | 397 | 1 |
| | Central - We | 3,412 | 1,373 | 2,039 | 2,039 | 315 | 3 |
| | Central - Th | 3,296 | 1,295 | 2,001 | 2,001 | 359 | 3 |
| | North | 3,750 | 976 | 2,774 | 711 | 202 | 3 |
| | South | 5,000 | 1,530 | 3,470 | 1,432 | 146 | 2 |
| | East | 4,500 | 1,674 | 2,826 | 480 | 122 | 1 |
| May. 23 | Central - Mo | 3,687 | 1,271 | 2,416 | 2,416 | 391 | 2 (1 civil) |
| | Central - Tu | 3,657 | 1,261 | 2,396 | 2,396 | 417 | 1 |
| | Central - We | 3,876 | 1,362 | 2,514 | 2,514 | 323 | 2 |
| | Central - Th | 3,390 | 1,204 | 2,186 | 2,186 | 374 | 1 |
| | North | 3,750 | 1,160 | 2,590 | 629 | 185 | 3 |
| | East | 4,500 | 1,269 | 3,231 | 1,112 | 179 | 2 |
| May. 31 | Central - Tu | 3,829 | 1,111 | 2,718 | 2,718 | 398 | 3 civil |
| | Central - We | 3,308 | 937 | 2,371 | 2,371 | 317 | 2 (1 civil) |
| | North | 3,750 | 947 | 2,803 | 732 | 208 | 3 |
| | South | 5,000 | 971 | 4,029 | 2,593 | 294 | 2 |
| | East | 4,500 | 1,005 | 3,495 | 930 | 155 | 2 |

| Week Beginning | Location | Summonses Issued | Postponed or Excused | Potential Jurors | Jurors Called | Jurors Reported | Panels Sent |
|-----------------------|-----------------|-------------------------|-----------------------------|-------------------------|----------------------|------------------------|--------------------|
| Jun. 6 | Central - Mo | 3,717 | 1,026 | 2,691 | 2,691 | 358 | 2 (1 civil) |
| | Central - Tu | 3,487 | 902 | 2,585 | 2,585 | 414 | 2 (1 civil) |
| | Central - We | 3,401 | 958 | 2,443 | 2,443 | 283 | 1 |
| | Central - Th | 2,961 | 729 | 2,232 | 2,232 | 395 | 2 |
| | North | 3,737 | 598 | 3,139 | 974 | 298 | 1 |
| | East | 4,500 | 661 | 3,839 | 1,973 | 298 | 3 |
| Jun. 13 | Central - Mo | 3,711 | 1,473 | 2,238 | 2,238 | 391 | 4 (3 civil) |
| | Central - Tu | 3,687 | 1,421 | 2,266 | 2,266 | 395 | 1 civil |
| | Central - We | 3,403 | 1,387 | 2,016 | | | |
| | Central - Th | 3,392 | 1,246 | 2,146 | | | |
| | North | 3,741 | 1,015 | 2,726 | 810 | 226 | 1 civil + 1 supp. |
| | South | 5,000 | 1,428 | 3,572 | | | |
| | East | 4,500 | 1,415 | 3,085 | | | |
| Jun. 20 | Central - Mo | 3,687 | 1,250 | 2,437 | | | |
| | Central - Tu | 3,472 | 1,076 | 2,396 | | | |
| | Central - We | 3,377 | 1,029 | 2,348 | | | |
| | Central - Th | 3,369 | 1,103 | 2,266 | | | |
| | North | 3,740 | 1,027 | 2,713 | | | |
| | South | 5,000 | 1,128 | 3,872 | | | |
| | East | 4,500 | 1,156 | 3,344 | | | |
| Jun. 27 | Central - Mo | 3,653 | 990 | 2,663 | | | |
| | Central - Tu | 3,785 | 1,050 | 2,735 | | | |
| | Central - We | 3,559 | 1,001 | 2,558 | | | |
| | Central - Th | 3,424 | 1,035 | 2,389 | | | |
| | North | 3,745 | 946 | 2,799 | | | |
| | South | 5,000 | 1,019 | 3,981 | | | |
| | East | 4,500 | 867 | 3,633 | | | |
| Jul. 5 | Central - Tu | 3,650 | 0 | 3,650 | | | |
| | Central - We | 3,333 | 0 | 3,333 | | | |
| | Central - Th | 3,322 | 0 | 3,322 | | | |
| | North | 3,750 | 403 | 3,347 | | | |
| | South | 5,000 | 463 | 4,537 | | | |
| | East | 4,500 | 457 | 4,043 | | | |
| Jul. 11 | Central - Mo | 3,682 | 0 | 3,682 | | | |
| | Central - Tu | 3,562 | 0 | 3,562 | | | |
| | Central - We | 3,202 | 0 | 3,202 | | | |
| | Central - Th | 3,367 | 0 | 3,367 | | | |
| | North | 3,750 | 89 | 3,661 | | | |
| | South | 5,000 | 19 | 4,981 | | | |
| | East | 4,500 | 68 | 4,432 | | | |

C. Description of the Court’s Readiness Conference Program

As required by the Chief Justice’s December 22, 2020, Memorandum regarding COVID-19 Pandemic Readiness Conferences, the court provides the following description of its readiness conference program.

In-custody readiness calendars resumed in May 2020, with two departments in the Central Courthouse and one department in each branch location. All defendants in custody with pending cases that were post-arraignment/pre-trial were scheduled for a readiness conference in an attempt to settle as many cases as possible. Once all of those readiness cases were completed, all cases with a negotiated plea were calendared for hearing in one of the triage departments to have the plea entered. All cases that did not reach agreement were set for future dates, often subsequent readiness hearings, and given the opportunity to continue negotiations. Many of the cases have had several readiness conferences to date. All cases that are arraigned are automatically set a for readiness conference date, which has always been the court’s practice, even before the pandemic.

Additionally, all out-of-custody post-arraignment/pre-trial cases were calendared for either a trial status conference or regular status conference (depending on the stage of the case) beginning in September 2020. At those hearings, cases that had negotiated a resolution during the early months of the pandemic were scheduled for a hearing to enter their plea, and those that had not reached resolution were scheduled for a readiness conference with a back-up trial date. Those readiness hearings are being held daily and are often set for additional readiness hearings as negotiations continue.

Currently, there are several readiness departments now operating at each location, with most hearing both in-custody and out-of-custody cases as well as other types of hearings. Every post-arraignment/pre-trial case has had at least one (often more) readiness conference since the pandemic began.

The chart below illustrates the approximate number and percentage of cases that have settled at readiness conferences at each of the branches since the court’s last request:

| | Cases Calendared | Settled (Change of Plea) | % Settled | Continued to Another Readiness | Confirmed for Trial | Other |
|-----------------------------|-----------------------------|-------------------------------------|------------------|---|--------------------------------|--------------|
| Central Misdemeanors | 1,181 | 272 | 23% | 773 | 28 | 108 |
| Central Felonies | 1,167 | 287 | 25% | 639 | 169 | 72 |
| North Misdemeanors | 1,033 | 225 | 22% | 543 | 36 | 229 |
| North Felonies | 1,091 | 261 | 24% | 496 | 133 | 201 |
| South Misdemeanors | 39 | 14 | 36% | 15 | 10 | 0 |
| South Felonies | 463 | 171 | 37% | 194 | 98 | 0 |
| East Misdemeanors | 666 | 147 | 22% | 446 | 36 | 37 |
| East Felonies | 721 | 144 | 20% | 421 | 121 | 35 |
| TOTAL | 6,361 | 1,521 | 24% | 3,527 | 631 | 682 |

D. Steps the Court is Taking to Reduce the Number of Pending Criminal Cases and Overview of Associated Challenges

The large number of pending criminal cases is directly attributable to the pandemic-related disruptions of the previous two years. This volume of cases continues to present an extraordinary challenge for the court and is the basis of the court's need for emergency relief.

The court is diligently working with its justice partners to reduce the number of pending criminal cases and transition away from the need for emergency relief in the future. In doing so, the court is balancing the interests of justice and of the various parties while attempting to avoid dismissals. Assuming current conditions and trends continue, and barring another COVID-19 surge affecting the court's ability to hold jury trials, the court's goal is to be in a position to end the need for emergency Penal Code section 1382 relief by the end of this summer. To this end, the court has recently taken the following steps:

- Received funding from Phase II of the Early Disposition Program;
- Holding regular meetings with court and justice-partner leadership to specifically address reducing the number of pending cases;
- Identifying cases set for trial with no intervening readiness conferences (because they already had readiness conferences and did not settle) and encouraging and facilitating further settlement discussions with justice partners;
- Considering expanding "deep-dive" reviews of serious/violent cases to include the private bar – Temporary Assigned Judges review and analyze the preliminary hearing transcripts and pertinent material from attorneys and then meet to discuss settlement;
- Beginning July 1, summoning jurors to be on telephonic standby for Fridays in Central; and
- Exploring general or limited time waivers or good-cause findings as cases cycle through rather than relying on 1382 extensions.

The court currently has 64 courtrooms dedicated to criminal matters, including 42 for criminal jury trials. The court is prepared to assign additional judges from other case types to hear criminal matters, if necessary; however, since the court resumed jury trials in February 2021, the main issue has been that, for various reasons described in the court's previous requests, fewer cases were ready for trial than the court had capacity to handle. Except for a few rare occasions where staffing issues limited the number of departments available, the court has had more departments and jurors available than cases ready to go forward. This significantly impeded the court's ability to reduce or eliminate its number of pending criminal cases.

Although this has not happened since the court's April 21 request, staffing shortages, particularly among court reporters, courtroom clerks, and deputy sheriffs, have occasionally affected the court's ability to hold jury trials by limiting the number of departments that may be available on a given day. This has been an infrequent issue to date, but the court anticipates it may become more of an issue as the number of cases ready for trial continues to increase. In addition, the number of court reporters available will limit the number of additional judges that can be assigned from other case types if that need arises.

The court is actively seeking to recruit, hire, and train more employees; however, this has proven to be more challenging in the current labor market. In response, the court has refined its hiring process to better adapt to these conditions by being able to offer positions to qualified applicants in a matter of days after their interview rather than weeks. Despite the court's emphasis on hiring new staff, the court has found that its efforts have only been sufficient to replace the vacancies created by retirements, terminations, transfers, and promotions rather than being able to increase total staffing levels. For example, since July 1, 2021, the court has hired 158 employees but lost 136. The court had a higher-than-average number of employees retire in the first quarter of 2022, including 10 courtroom clerks and 9 court reporters, which is likely due, at least in part, to the high cost-of-living adjustment rate this year. The court currently has 29 vacancies for court reporters, but this has been a particularly challenging position to fill. For example, since October 2021, the court has only received five applications for court reporters despite continuously recruiting for that position.

Another challenge the court is facing stems from a ceiling collapse in its North County Regional Center in November 2021 and the associated, ongoing building repairs, which are expected to continue through August or September 2022. This has resulted in the closure of several courtrooms and, until recently, limited access to files in the criminal business office. Specifically, the North County location had 11 criminal departments, including 8 for criminal jury trials, before the ceiling issue, and that location is down to 8 criminal departments, including 4 for criminal jury trials, while the repairs are ongoing. To help alleviate this reduction in courtrooms, the court has temporarily relocated two North County criminal trial departments to its Central Courthouse. Fortunately, the court was able to reoccupy the criminal business office on June 1, so regular access to files has been restored. This unanticipated loss of courtrooms, loss of full access to criminal and other files until June 1, and all of the moves, logistical changes, and adaptations the court was required to implement, without notice, has further contributed to the court's inability to significantly reduce or eliminate its trial backlog.

The number of COVID-19 cases in the county detention facilities has increased since the court's last request, and other inmates continue to be in medical isolation. As a result, an increasing number of in-custody defendants were unable to be transported to the courthouse for pre-trial proceedings, including readiness conferences, and trials, which has impacted the court's ability to resolve cases.

The court also continues to use technology implemented in the past two years. The court has continued offering remote in-custody arraignments to ease some of the logistical burdens associated with the Sheriff's COVID-19 protocols. In addition, the court continues to allow out-of-custody defendants the option of appearing remotely for pre-trial hearings.

The court has utilized and continues to utilize temporary judges from the Temporary Assigned Judges Program to generally hear criminal matters. Specific to reducing the number of pending cases, the court is using temporary judges to conduct the deep-dive reviews of serious/violent cases described above, and the court plans to use a temporary judge in the readiness department that it plans to add with the Early Disposition Program funds that were recently received.

E. The Court's Request for an Extension

In the court's May 29, 2020, request for an emergency order for additional time to conduct trials, the court submitted letters of support from the District Attorney's Office, the City Attorney's Office, the Office of the Public Defender, and the Sheriff's Department. Each of these justice partners have continued to support the court's subsequent requests, including the current request, with the exception of the Public Defender, who, except for the request dated January 20, 2022, has objected to all of the court's requests since October 2, 2020.

As set forth in the court's response to questions 1 and 2 below, the court has approximately 880 cases in which the last day for trial will occur between June 25 and July 25, inclusive. The court is continuing to work towards resuming pre-pandemic levels of operations; however, even if the court were operating at its full pre-pandemic capacity of 70-90 jury trials per month (including criminal and civil), it would be impossible to hold 880 jury trials in this time frame. In addition, without the requested emergency relief, it would be extremely challenging, if not impossible, to calendar each of these matters before their current last day for trial to seek time waivers or make good-cause findings in an effort to avoid dismissals. Therefore, due the enormous backlog and the anticipated pace of proceeding with jury trials, the court requests an order allowing the court to extend the time period provided in Penal Code section 1382, within which a trial must be held, by not more than 30 days.

II. ANSWERS TO SPECIFIC QUESTIONS SET FORTH IN THE MAY 14, 2020, JUDICIAL COUNCIL MEMORANDUM

1. How many criminal cases have last-day deadlines under Penal Code section 1382 during the period of time for which the court is requesting a first extension under Government Code section 68115 (please provide daily breakdown)?

Because this court deals with paper files, it would be burdensome to determine the exact numbers of cases, as the court would have to pull all the files and check for the relevant arraignment dates, whether the defendant ever waived the statutory time for trial or withdrew that waiver, whether the defendant ever failed to appear and a warrant was issued, whether the defendant is in diversion status or has been found not competent to stand trial, etc. However, the court can provide the following rough statistics for a general idea:

For felony cases with no prior extensions, to have a last-day deadline between June 25 and July 25, inclusive, the defendant would be arraigned on an Information between April 26 and May 26, inclusive. Of the cases with pending trial dates through July 31, there were approximately 80 felony bindovers after preliminary hearing during this timeframe (April 26 and May 26) in cases in which the defendants were arraigned on an Information immediately or soon thereafter. Thus, the court approximates there were 80 felony arraignments during this period (April 26 – May 26), meaning approximately 80 felony cases with pending trial dates through July 31 and with no prior extensions will have a statutory last-day deadline for trial during the request period (June 25 – July 25). Most of these defendants remain in custody.

For misdemeanor in-custody cases with no prior extensions, to have a last-day deadline between June 25 and July 25, inclusive, defendants would have arraignment dates between May 26 and June 25, inclusive. The court does not have complete statistics for this time period. However, of the cases with scheduled trial dates through July 31, there were approximately 55 misdemeanor arraignments between May 16 and June 15, inclusive, of defendants who are still in custody. In the 30 days before that (April 15 – May 15), there were approximately 5 misdemeanor arraignments of defendants still in custody. Using these numbers as a guide, the court estimates that about 30 misdemeanor in-custody cases with trial dates through July 31, and with no prior extensions, will have a statutory last-day deadline during the request period (June 25 – July 25).

For misdemeanor out-of-custody cases with no prior extensions, to have a statutory last-day deadline between June 25 and July 25, inclusive, defendants would have arraignment dates between May 11 to June 10, inclusive. Of the cases with pending trial dates through July 31, there were approximately 150 misdemeanor arraignments between May 11 and June 10, inclusive, of defendants who are now out-of-custody. Thus, the court estimates that there will be roughly 150 misdemeanor out-of-custody cases with no prior extensions that will have a statutory last-day deadline during the request period (June 25 – July 25).

In sum, the court estimates that, of the cases with pending trial dates through July 31, approximately 260 cases with no prior extensions will have their statutory trial deadline come due during the period of June 25 to July 25, inclusive. The court recognizes a number of these cases, being new, may settle, but the court cannot predict what percentage of cases that may be. Assuming a 50% settlement rate, that still leaves approximately 130 cases with original last-day deadlines falling within the request period.

2. How many criminal cases are coming up to the limit already extended for 90 days by the statewide orders (please provide a daily breakdown)? Is the court requesting a further extension of time on any of these cases?

The response to this question includes those cases that have received the benefit of any of the previous court-specific 30-day extensions granted to this court pursuant to the Chief Justice's Emergency Orders. It would be burdensome to determine the exact number of cases that fall in this category because the court would have to pull all the files and check for the relevant arraignment dates, whether the defendant ever waived the statutory time for trial or withdrew that waiver, whether the defendant ever failed to appear and a warrant was issued, whether the defendant is in diversion status or has been found not competent to stand trial, etc. In addition, with trial dates now having been set and reset multiple times in some cases since the pandemic began it is difficult to tell which and how many of the prior extension orders the cases fall under. However, the court can provide the following rough statistics for a general idea.

There are approximately 150 felony cases (approximately half in custody), approximately 40 in-custody misdemeanor cases, and approximately 560 out-of-custody misdemeanor cases that, with all prior extensions, now have statutory trial deadlines between June 25 and July 25, inclusive. In sum, the court estimates that approximately 750 previously extended cases will have their statutory trial deadline come due during the request period of June 25 and July 25, inclusive.

Summary:

Based on the above, in both categories (questions 1 and 2), the court estimates that, of the cases with pending trial dates through July 31, there are approximately 880 cases in which the statutory last day for trial will occur between June 25 and July 25, inclusive.

Except as noted above and in previous requests, the court's responses to questions 3-5 have generally not changed since its September 3, 2020, request, and those responses are incorporated herein by reference.

#

TO: Hon. Tani G. Cantil-Sakauye, Chair of the Judicial Council
Judicial Council of California
c/o Legal Services Supervising Attorney Charles Perkins
415-865-4609
charles.perkins@jud.ca.gov
415-865-8767 (fax)

FROM: *Name* : Michael T. Smyth
Title: Presiding Judge
Court: Superior Court of San Diego County
Telephone: 619-844-2100
Fax: 619-844-5550
E-mail Address: [REDACTED]

DATE: 7/18/2022

SUBJECT: Request for Judicial Emergency Order

I hereby request an order allowing the court to implement the following emergency procedures pursuant to the provisions of section 68115 of the Government Code¹:

- The court may extend the time period provided in section 1382 of the Penal Code within which a trial must be held by not more than 30 days. (Gov. Code, § 68115(a)(10).)
(Fill in number of days, not exceeding 30. Pursuant to Government Code section 68115(a)(10), “the trial of a defendant in custody whose time is so extended shall be given precedence over all other cases.”)
This request applies only to cases in which the statutory deadline otherwise would expire on _____ **or** from 7/25/2022, to 8/24/2022, inclusive*.
(Fill in date(s) above.)

***This request applies to cases in which the original or previously-extended statutory deadline otherwise would expire from July 25, 2022, to August 24, 2022, inclusive.**

The circumstances necessitating an emergency order are described in the attached document.

¹ Government Code section 68115, as amended, effective January 1, 2019, provides that, upon the request of a presiding judge, the Chairperson of the Judicial Council may authorize relief as set forth in the statute, “[w]hen war, an act of terrorism, public unrest or calamity, epidemic, natural disaster, or other substantial risk to the health and welfare of court personnel or the public, or the danger thereof, the destruction of or danger to the building appointed for holding the court, a large influx of criminal cases resulting from a large number of arrests within a short period of time, or a condition that leads to a state of emergency being proclaimed by the President of the United States or by the Governor pursuant to Section 8625, threatens the orderly operation of a superior court location or locations within a county or renders presence in, or access to, an affected court facility or facilities unsafe”

The public defender, the district attorney, and other interested local entities have / have not (check one box) been notified of this request for emergency order.

The court has / has not (check one box) advised these entities to immediately notify the Judicial Council’s Legal Services office of any opposition or questions regarding the request.

Please list the names and telephone numbers of the district attorney, the public defender, and other notified parties affected by the order:

District Attorney: Summer Stephan
Public Defender: Randy Mize
Other Parties Affected: City Attorney Mara Elliot; San Diego Sheriff Anthony Ray

The court has / has not (check one box) been informed of any opposition to this request.

If the court has been informed of potential opposition to this request, please state below the party or parties who may oppose the request and any stated reasons for the opposition:

Regarding the court’s October 2, 2020, request, the Public Defender, Randy Mize, informed the court that he “cannot support another 1382” extension on behalf of his clients. He has objected to all of the court’s subsequent requests, including this one, with the exception of the court’s request dated January 20, 2022.

Submitted by:  Date: 7/18/2022
Presiding Judge, San Diego Superior Court

The San Diego Superior Court hereby requests an order allowing the court to extend the time period provided in Penal Code section 1382, within which a trial must be held, by not more than 30 days. This request applies to cases in which the original or previously extended statutory deadline otherwise would expire from July 25, 2022, to August 24, 2022, inclusive.

I. BACKGROUND INFORMATION AND BASIS FOR REQUEST

Since the court's last request for Penal Code section 1382 relief, which was submitted on June 17, 2022,¹ the court has continued holding criminal and civil jury trials in several locations across the county; however, as described below, the court still faces an enormous number of criminal cases, approximately 915, in which the last day for trial will occur between July 25 and August 24. Even in pre-pandemic conditions, it would be impossible to hold jury trials for this number of cases in such a short period of time.

This memorandum will address relevant changes since the court's last request. In addition, the numerous federal, state, and local public health orders that have been issued in response to the COVID-19 pandemic are well known and have been detailed in prior Judicial Council orders and memoranda as well as this court's prior requests for relief from the Chief Justice. Accordingly, they will not be repeated here, except as necessary to provide relevant updates.

A. COVID-19 in San Diego County and Relevant Public Health Guidance

To date in San Diego County, there have been 857,182 COVID-19 cases, 31,477 hospitalizations, and 5,370 deaths. The most recent testing positivity rate was 18.27%, and the current hospital census of positive patients is 422. More than 79% of eligible San Diego County residents are now fully vaccinated, and nearly 90% are at least partially vaccinated.² Although cases and hospitalizations have increased recently, deaths remain low.

Public health authorities have not re-implemented any of the measures that previously limited the court's ability to conduct in-person jury trials, such as stay-at-home orders, capacity limits, and physical-distancing requirements. However, the state of emergency proclamations by the President of the United States and the Governor of California remain in place.

B. Activity Since the Court's Last Request

Since the week of June 13, the court held 47 jury trials at its various locations, including 14 civil trials. In addition, there were four supplemental criminal panels in North and one supplemental criminal panel in East. For reference, since resuming jury trials on February 8, 2021, the court has held a total of 544 trials, including 130 civil trials.

The court has continued to see several criminal cases settle after being set for trial or waive time due to various issues such as witness availability. Specifically, in the last month,

¹ All subsequent date references are to 2022 unless otherwise indicated.

² The vaccination percentages have decreased since the court's last request because the pool of eligible residents was expanded to include children ages six months to five years.

approximately 18% of cases in Central, 24% of cases in North, 25% of cases in South, and 13% of cases in East have settled at trial, and the remainder, except for those that went forward, generally requested to be continued (in-custody) or were continued for cause (out-of-custody). The court is continuing to work with its justice partners to schedule more trials to allow for those that may settle, including daily trial call calendars in each branch. The chart below illustrates the approximate number of cases at trial call in the various branches since the court's last request:

| | Cases Calendared | Settled (Change of Plea) | Continued | Ready for Trial |
|----------------|------------------|--------------------------|-----------|-----------------|
| Central | 120 | 22 | 72 | 26 |
| North | 102 | 24 | 71 | 7 |
| South | 59 | 15 | 38 | 6 |
| East | 178 | 24 | 145 | 9 |
| TOTAL | 459 | 85 | 326 | 48 |

Since the court's previous request, the total juror appearance rate, including newly summoned and previously deferred jurors, was approximately 17%. The chart below illustrates the juror turnout since the court's last request and previews the number of jurors that have postponed or requested to be excused for upcoming weeks:

| Week Beginning | Location | Summonses Issued | Postponed or Excused | Potential Jurors | Jurors Called | Jurors Reported | Panels Sent |
|----------------|--------------|------------------|----------------------|------------------|---------------|-----------------|-------------------|
| Jun. 13 | Central - Mo | 3,711 | 1,473 | 2,238 | 2,238 | 391 | 4 (3 civil) |
| | Central - Tu | 3,687 | 1,421 | 2,266 | 2,266 | 395 | 1 civil |
| | Central - Th | 3,392 | 1,246 | 2,146 | 2,146 | 348 | 1 |
| | North | 3,741 | 1,015 | 2,726 | 1,860 | 560 | 1 civil + 4 supp. |
| | South | 5,000 | 1,428 | 3,572 | 711 | 64 | 1 |
| | East | 4,500 | 1,415 | 3,085 | 536 | 90 | 1 |
| Jun. 20 | Central - Mo | 3,687 | 1,250 | 2,437 | 2,437 | 351 | 1 civil |
| | Central - Tu | 3,472 | 1,076 | 2,396 | 2,396 | 435 | 2 civil |
| | Central - We | 3,377 | 1,029 | 2,348 | 2,348 | 364 | 1 |
| | Central - Th | 3,369 | 1,103 | 2,266 | 2,266 | 321 | 2 |
| | North | 3,740 | 1,027 | 2,713 | 307 | 89 | 1 |
| | South | 5,000 | 1,128 | 3,872 | 651 | 68 | 1 |
| | East | 4,500 | 1,156 | 3,344 | 1,041 | 151 | 1 + 1 supp. |
| Jun. 27 | Central - Mo | 3,653 | 1,440 | 2,213 | 2,213 | 373 | 3 (1 civil) |
| | Central - Tu | 3,785 | 1,474 | 2,311 | 2,311 | 369 | 1 |
| | Central - We | 3,559 | 1,379 | 2,180 | 2,180 | 313 | 3 (1 civil) |
| | Central - Th | 3,424 | 1,426 | 1,998 | 1,998 | 305 | 2 |
| | North | 3,745 | 1,441 | 2,304 | 342 | 107 | 1 |
| | South | 5,000 | 1,433 | 3,567 | 1,062 | 127 | 2 |

| Week Beginning | Location | Summonses Issued | Postponed or Excused | Potential Jurors | Jurors Called | Jurors Reported | Panels Sent |
|-----------------------|-----------------|-------------------------|-----------------------------|-------------------------|----------------------|------------------------|--------------------|
| Jul. 5 | Central - Tu | 3,650 | 1,213 | 2,437 | 2,437 | 364 | 1 civil |
| | Central - We | 3,333 | 1,143 | 2,190 | 2,190 | 320 | 1 |
| | North | 3,750 | 1,152 | 2,598 | 313 | 82 | 1 |
| | South | 5,000 | 1,212 | 3,788 | 703 | 82 | 1 |
| Jul. 11 | Central - Mo | 3,682 | 1,163 | 2,519 | 2,519 | 378 | 3 (2 civil) |
| | Central - Tu | 3,562 | 1,111 | 2,451 | 2,451 | 369 | 2 |
| | Central - Th | 3,367 | 1,090 | 2,277 | 2,277 | 296 | 1 civil |
| | Central - Fr | 2,200 | 798 | 1,402 | 386 | 130 | 1 |
| | North | 3,750 | 1,185 | 2,565 | 891 | 206 | 2 |
| | South | 5,000 | 1,215 | 3,785 | 778 | 98 | 1 |
| | East | 4,500 | 1,165 | 3,335 | 1,337 | 226 | 3 |
| Jul. 18 | Central - Mo | 3,290 | 1,386 | 1,904 | | | |
| | Central - Tu | 4,197 | 1,614 | 2,583 | | | |
| | Central - We | 3,676 | 1,266 | 2,410 | | | |
| | Central - Th | 3,732 | 1,294 | 2,438 | | | |
| | Central - Fr | 2,200 | 724 | 1,476 | | | |
| | North | 3,750 | 1,494 | 2,256 | | | |
| | South | 5,000 | 1,405 | 3,595 | | | |
| | East | 4,500 | 1,394 | 3,106 | | | |
| Jul. 25 | Central - Mo | 4,132 | 1,164 | 2,968 | | | |
| | Central - Tu | 4,859 | 1,381 | 3,478 | | | |
| | Central - We | 3,982 | 1,123 | 2,859 | | | |
| | Central - Th | 3,407 | 942 | 2,465 | | | |
| | Central - Fr | 2,200 | 504 | 1,696 | | | |
| | North | 3,750 | 1,142 | 2,608 | | | |
| | South | 5,000 | 1,042 | 3,958 | | | |
| | East | 4,500 | 1,107 | 3,393 | | | |
| Aug. 1 | Central - Mo | 3,667 | 865 | 2,802 | | | |
| | Central - Tu | 3,808 | 737 | 3,071 | | | |
| | Central - We | 3,079 | 611 | 2,468 | | | |
| | Central - Th | 3,061 | 626 | 2,435 | | | |
| | Central - Fr | 2,200 | 428 | 1,772 | | | |
| | North | 3,750 | 620 | 3,130 | | | |
| | South | 5,000 | 677 | 4,323 | | | |
| | East | 4,500 | 682 | 3,818 | | | |

C. Description of the Court’s Readiness Conference Program

As required by the Chief Justice’s December 22, 2020, Memorandum regarding COVID-19 Pandemic Readiness Conferences, the court provides the following description of its readiness conference program.

In-custody readiness calendars resumed in May 2020, with two departments in the Central Courthouse and one department in each branch location. All defendants in custody with pending cases that were post-arraignment/pre-trial were scheduled for a readiness conference in an attempt to settle as many cases as possible. Once all of those readiness cases were completed, all cases with a negotiated plea were calendared for hearing in one of the triage departments to have the plea entered. All cases that did not reach agreement were set for future dates, often subsequent readiness hearings, and given the opportunity to continue negotiations. Many of the cases have had several readiness conferences to date. All cases that are arraigned are automatically set a for readiness conference date, which has always been the court’s practice, even before the pandemic.

Additionally, all out-of-custody post-arraignment/pre-trial cases were calendared for either a trial status conference or regular status conference (depending on the stage of the case) beginning in September 2020. At those hearings, cases that had negotiated a resolution during the early months of the pandemic were scheduled for a hearing to enter their plea, and those that had not reached resolution were scheduled for a readiness conference with a back-up trial date. Those readiness hearings are being held daily and are often set for additional readiness hearings as negotiations continue.

Currently, there are several readiness departments now operating at each location, with most hearing both in-custody and out-of-custody cases as well as other types of hearings. Every post-arraignment/pre-trial case has had at least one (often more) readiness conference since the pandemic began.

The chart below illustrates the approximate number and percentage of cases that have settled at readiness conferences at each of the branches since the court’s last request:

| | Cases Calendared | Settled (Change of Plea) | % Settled | Continued to Another Readiness | Confirmed for Trial |
|-----------------------------|-----------------------------|-------------------------------------|------------------|---|--------------------------------|
| Central Misdemeanors | 1,338 | 282 | 21% | 1,037 | 19 |
| Central Felonies | 1,420 | 300 | 21% | 873 | 247 |
| North Misdemeanors | 1,142 | 377 | 33% | 692 | 73 |
| North Felonies | 999 | 317 | 32% | 499 | 183 |
| South Misdemeanors | 58 | 31 | 53% | 18 | 9 |
| South Felonies | 365 | 122 | 33% | 143 | 100 |
| East Misdemeanors | 678 | 187 | 28% | 433 | 58 |
| East Felonies | 608 | 150 | 25% | 363 | 95 |
| TOTAL | 6,608 | 1,766 | 27% | 4,058 | 784 |

D. Steps the Court is Taking to Reduce the Number of Pending Criminal Cases and Overview of Associated Challenges

Assuming current conditions and trends continue, and barring another COVID-19 surge and/or reinstatement of mitigation measures that affect the court's ability to hold jury trials, the court intends for this to be its last request for emergency Penal Code section 1382 relief related to the pandemic.

The large number of pending criminal cases is directly attributable to the pandemic-related disruptions of the previous two years. This volume of cases continues to present an extraordinary challenge for the court and is the basis of the court's need for emergency relief. The court is diligently working with its justice partners to reduce the number of pending criminal cases and transition away from the need for emergency relief. In doing so, the court is balancing the interests of justice and of the various parties while attempting to avoid dismissals. To this end, the court has recently taken the following steps:

- Planning to implement Phase II of the Early Disposition Program once funds are received;
- Holding regular meetings with court and justice-partner leadership to specifically address reducing the number of pending cases;
- Identifying cases set for trial with no intervening readiness conferences (because they already had readiness conferences and did not settle) and encouraging and facilitating further settlement discussions with justice partners;
- Revisiting "deep-dive" reviews of serious/violent cases and considering expanding to include the private bar;
- Beginning July 1, summoning jurors to be on telephonic standby for Fridays and for the following week, as needed, in Central; and
- Exploring general or limited time waivers or good-cause findings as cases cycle through rather than relying on 1382 extensions.

The court currently has 64 courtrooms dedicated to criminal matters, including 42 for criminal jury trials. The court is prepared to assign additional judges from other case types to hear criminal matters, if necessary; however, since the court resumed jury trials in February 2021, the main issue has been that, for various reasons described in the court's previous requests, fewer cases were ready for trial than the court had capacity to handle. Except for a few rare occasions where staffing issues limited the number of departments available, the court has had more departments and jurors available than cases ready to go forward. This significantly impeded the court's ability to reduce or eliminate its number of pending criminal cases.

Although this has not happened since the court's April 21 request, staffing shortages, particularly among court reporters, courtroom clerks, and deputy sheriffs, have occasionally affected the court's ability to hold jury trials by limiting the number of departments that may be available on a given day. This has been an infrequent issue to date, but the court anticipates it may become more of an issue as the number of cases ready for trial continues to increase. In addition,

the number of court reporters available will limit the number of additional judges that can be assigned from other case types if that need arises.

The court is actively seeking to recruit, hire, and train more employees; however, this has proven to be more challenging in the current labor market. In response, the court has refined its hiring process to better adapt to these conditions by being able to offer positions to qualified applicants in a matter of days after their interview rather than weeks. Despite the court's emphasis on hiring new staff, the court has found that its efforts have only been sufficient to replace the vacancies created by retirements, terminations, transfers, and promotions rather than being able to increase total staffing levels. For example, since its last request, the court hired one court reporter but lost two. The court currently has 30 vacancies for court reporters, but this has been a particularly challenging position to fill; since October 2021, the court has only received five applications for court reporters despite continuously recruiting for that position.

Another challenge the court is facing stems from a ceiling collapse in its North County Regional Center in November 2021 and the associated, ongoing building repairs, which are expected to continue until at least September 2022. This has resulted in the closure of several courtrooms and, until recently, limited access to files in the criminal business office. Specifically, the North County location had 11 criminal departments, including 8 for criminal jury trials, before the ceiling issue, and that location is down to 8 criminal departments, including 4 for criminal jury trials, while the repairs are ongoing. To help alleviate this reduction in courtrooms, the court has temporarily relocated two North County criminal trial departments to its Central Courthouse. Fortunately, the court was able to reoccupy the criminal business office on June 1, so regular access to files has been restored. This unanticipated loss of courtrooms, loss of full access to criminal and other files until June 1, and all of the moves, logistical changes, and adaptations the court was required to implement, without notice, has further contributed to the court's inability to significantly reduce or eliminate its trial backlog.

The court also continues to use technology implemented in the past two years. The court has continued offering remote in-custody arraignments to ease some of the logistical burdens associated with the Sheriff's COVID-19 protocols. In addition, the court continues to allow out-of-custody defendants the option of appearing remotely for pre-trial hearings.

The court has utilized and continues to utilize temporary judges from the Temporary Assigned Judges Program to generally hear criminal matters. Specific to reducing the reducing the number of pending cases, the court has used temporary judges to conduct the deep-dive reviews of serious/violent cases described above, and the court plans to use a temporary judge in the readiness department that it plans to add with the Early Disposition Program funds that were recently awarded.

E. The Court's Request for an Extension

In the court's May 29, 2020, request for an emergency order for additional time to conduct trials, the court submitted letters of support from the District Attorney's Office, the City Attorney's Office, the Office of the Public Defender, and the Sheriff's Department. Each of these justice partners have continued to support the court's subsequent requests, including the current request,

with the exception of the Public Defender, who, except for the request dated January 20, 2022, has objected to all of the court's requests since October 2, 2020.

As set forth in the court's response to questions 1 and 2 below, the court has approximately 915 cases in which the last day for trial will occur between July 25 and August 24, inclusive. The court is continuing to work towards resuming pre-pandemic levels of operations; however, even if the court were operating at its full pre-pandemic capacity of 70-90 jury trials per month (including criminal and civil), it would be impossible to hold 915 jury trials in this time frame. In addition, without the requested emergency relief, it would be extremely challenging, if not impossible, to calendar each of these matters before their current last day for trial to seek time waivers or make good-cause findings in an effort to avoid dismissals. Therefore, due the enormous backlog and the anticipated pace of proceeding with jury trials, the court requests an order allowing the court to extend the time period provided in Penal Code section 1382, within which a trial must be held, by not more than 30 days.

II. ANSWERS TO SPECIFIC QUESTIONS SET FORTH IN THE MAY 14, 2020, JUDICIAL COUNCIL MEMORANDUM

1. How many criminal cases have last-day deadlines under Penal Code section 1382 during the period of time for which the court is requesting a first extension under Government Code section 68115 (please provide daily breakdown)?

Because this court deals with paper files, it would be burdensome to determine the exact numbers of cases, as the court would have to pull all the files and check for the relevant arraignment dates, whether the defendant ever waived the statutory time for trial or withdrew that waiver, whether the defendant ever failed to appear and a warrant was issued, whether the defendant is in diversion status or has been found not competent to stand trial, etc. However, the court can provide the following rough statistics for a general idea:

For felony cases with no prior extensions, to have a last-day deadline between July 25 and August 24, inclusive, the defendant would be arraigned on an Information between May 26 and June 25, inclusive. Of the cases with pending trial dates through August 31, there were approximately 70 felony bindovers after preliminary hearing during this timeframe (May 26 – June 25) in cases in which the defendants were arraigned on an Information immediately or soon thereafter. Thus, the court approximates there were 70 felony arraignments during this period (May 26 – June 25), meaning approximately 70 felony cases with pending trial dates through August 31 and with no prior extensions will have a statutory last-day deadline for trial during the request period (July 25 – August 24). The majority of these defendants remain in custody.

For misdemeanor in-custody cases with no prior extensions, to have a last-day deadline between July 25 and August 24, inclusive, defendants would have arraignment dates between June 25 and July 25, inclusive. The court does not have complete statistics for this time period. However, of the cases with scheduled trial dates through August 31, there were approximately 60 misdemeanor arraignments between June 14 and July 14, inclusive, of defendants who are still in custody. In the 30 days before that (May 14 – June 13), there were approximately 10 misdemeanor

arraignments of defendants still in custody. Using these numbers as a guide, the court estimates that about 35 misdemeanor in-custody cases with trial dates through August 31, and with no prior extensions, will have a statutory last-day deadline during the request period (July 25 – August 24).

For misdemeanor out-of-custody cases with no prior extensions, to have a statutory last-day deadline between July 25 and August 24, inclusive, defendants would have arraignment dates between June 10 to July 10, inclusive. Of the cases with pending trial dates through August 31, there were approximately 140 misdemeanor arraignments between June 10 and July 10, inclusive, of defendants who are now out-of-custody. Thus, the court estimates that there will be about 140 misdemeanor out-of-custody cases with no prior extensions that will have a statutory last-day deadline during the request period (July 25 – August 24).

In sum, the court estimates that, of the cases with pending trial dates through August 31, approximately 245 cases with no prior extensions will have their statutory trial deadline come due during the period of July 25 to August 24, inclusive. The court recognizes a number of these cases, being new, may settle, but the court cannot predict what percentage of cases that may be. Assuming a 50% settlement rate, that still leaves approximately 125 cases with original last-day deadlines falling within the request period.

2. How many criminal cases are coming up to the limit already extended for 90 days by the statewide orders (please provide a daily breakdown)? Is the court requesting a further extension of time on any of these cases?

The response to this question includes those cases that have received the benefit of any of the previous court-specific 30-day extensions granted to this court pursuant to the Chief Justice's Emergency Orders. It would be burdensome to determine the exact number of cases that fall in this category because the court would have to pull all the files and check for the relevant arraignment dates, whether the defendant ever waived the statutory time for trial or withdrew that waiver, whether the defendant ever failed to appear and a warrant was issued, whether the defendant is in diversion status or has been found not competent to stand trial, etc. In addition, with trial dates now having been set and reset multiple times in some cases since the pandemic began, it is difficult to tell which and how many of the prior extension orders the cases fall under. However, the court can provide the following rough statistics for a general idea.

There are approximately 170 felony cases (a little less than half in custody), approximately 60 in-custody misdemeanor cases, and approximately 560 out-of-custody misdemeanor cases that, with all prior extensions, now have statutory trial deadlines between July 25 and August 24, inclusive. In sum, the court estimates that approximately 790 previously extended cases will have their statutory trial deadline come due during the request period of July 25 and August 24, inclusive.

Summary:

Based on the above, in both categories (questions 1 and 2), the court estimates that, of the cases with pending trial dates through August 31, there are approximately 915 cases in which the statutory last day for trial will occur between July 25 and August 24, inclusive.

Except as noted above and in previous requests, the court's responses to questions 3-5 have generally not changed since its September 3, 2020, request, and those responses are incorporated herein by reference.

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