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20
21 **SUPERIOR COURT OF CALIFORNIA**
22 **COUNTY OF SAN FRANCISCO**
23 **UNLIMITED JURISDICTION**
24

25 MANOHAR RAJU, an individual, in his official
26 capacity as the Public Defender of San Francisco;
27 ELISA BAIER, an individual; DONNA DOYLE,
28 an individual; JOHN DUNBAR, an individual;
ROSE MARIE SIMS, an individual,

Plaintiffs and Petitioners,

v.

SUPERIOR COURT OF CALIFORNIA, CITY
AND COUNTY OF SAN FRANCISCO, an
agency of the State of California; SAMUEL K.
FENG, an individual, in his official capacity as
Presiding Judge of San Francisco Superior Court;
T. MICHAEL YUEN, an individual, in his official
capacity as Chief Executive Officer of the San
Francisco Superior Court,

Defendants and Respondents.

Case No. CGC-21-594671

**MEMORANDUM OF POINTS
AND AUTHORITIES IN
SUPPORT OF PETITIONERS'
MOTION FOR PEREMPTORY
WRIT OF MANDATE**

Date: October 25, 2021
Time: 9:30 a.m.
Dept: 302

Hon. Ethan P. Schulman

ELECTRONICALLY
FILED

Superior Court of California,
County of San Francisco

09/28/2021
Clerk of the Court

BY: EDNALEEN ALEGRE
Deputy Clerk

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1 **INTRODUCTION**

2 Plaintiffs and Petitioners Manohar Raju, Elisa Baier, Donna Doyle, John Dunbar, and
3 Rose Marie Sims (“Petitioners”) seek a writ of mandate to remedy a humanitarian crisis in San
4 Francisco’s criminal legal system. As of September 10, 2021, more than 400 people are
5 awaiting speedy trials. Of those, more than 140 people are held in jail past their deadline for
6 trial, locked in bathroom-sized cells, most for at least 23 hours a day. With no hope of a timely
7 trial, individuals languish in confinement, at grave risk to their physical and mental health.

8 Defendants and Respondents San Francisco Superior Court, Presiding Judge Feng and
9 Court Executive Officer Michael Yuen (“Respondents”) created this crisis. With high
10 vaccination rates in San Francisco, city and public health officials have lifted social distancing
11 and other COVID-19 restrictions. But Respondents have failed to adapt. Despite having a
12 massive backlog, Respondents sent out *only three in-custody trials* in the twelve weeks
13 between June 28, 2021—the date the Court announced that it was “fully open” for jury trials
14 without social distancing—and September 24, 2021. Over the last month, from August 21 to
15 September 24, 2021, Respondents used fewer than 8% of their courtrooms for criminal trials.

16 Respondents are violating their ministerial duties under Penal Code sections 1049.5 and
17 1050(a)-(b) to give preference to criminal trials over civil proceedings and to set the trial of a
18 felony case within sixty days from arraignment unless case-specific evidence provides good
19 cause for a continuance. Respondents have refused to hold in-custody and felony trials at their
20 Civic Center Courthouse, citing unjustified “security concerns.” They have routinely continued
21 jury trials for months past their last day, relying on a generic “good cause” script. And they
22 have failed to fix their chronic staff shortage or seek alternate trial venues. Meanwhile,
23 Respondents announced to the civil bar that they were “open for business” and have held jury
24 trials in a variety of routine civil disputes.

25 Respondents also violate their fundamental duty to accord criminal defendants a speedy
26 trial by jury. As a result of their own deliberate management decisions, people accused of a
27 crime must wait almost eight months in custody past their statutory deadline for a jury trial and
28

1 in violation of the constitutional rights to a speedy trial. A criminal defendant’s right to a
2 speedy trial cannot be superseded by court-created congestion.

3 Acting in the public interest, Petitioners bring this action to enforce these public duties
4 and to end the crisis impacting the lives and well-being of hundreds of people. Petitioners seek
5 a peremptory writ of mandate directing Respondents to expedite criminal proceedings, stop
6 their unlawful practice of prioritizing civil cases, and free up non-specialized departments at
7 the Civic Center Courthouse for felony and in-custody jury trials.

8 **PARTIES**

9 Petitioner Manohar Raju is the Public Defender of San Francisco. Petitioner Elisa Baier
10 is a San Francisco resident and business owner. Petitioner Donna Doyle is a San Francisco
11 homeowner, retired San Francisco Municipal Transit Authority employee, and the mother of
12 Deshon Marman, who waited in custody for nearly 335 days after his arraignment on felony
13 charges before being sent out to trial. Petitioner John Dunbar is a San Francisco resident and
14 employee of the Public Defender’s Office. Petitioner Rose Marie Sims is a fourth-generation
15 San Franciscan and mother of Christopher Sims, who has waited over six months in custody
16 since asserting his right to speedy trial. Petitioners bring this writ petition in the public interest,
17 as citizens and San Francisco residents, in order to procure the enforcement of a public duty.

18 Respondent Superior Court of California, City and County of San Francisco, is an
19 agency of the State of California. Respondent Samuel K. Feng is the Presiding Judge of the
20 Superior Court and is responsible for assigning judges to departments and apportioning the
21 business of the court. (Cal. Rules of Court, rule 10.603(b)(1)(A)–(B), (D).) Respondent T.
22 Michael Yuen is the Chief Executive Officer of the Superior Court and is responsible for
23 assisting the presiding judge with “leading the court, establishing policies, and allocating
24 resources in a manner that promotes access to justice for all members of the public.” (Cal.
25 Rules of Court, rule 10.603(a).) Respondents Feng and Yuen are sued in their official
26 capacities.

1 **STATEMENT OF FACTS**

2 **I. Respondents Deny Statutory Calendar Preference for Criminal Trials.**

3 **A. Respondents Reopened in June 2020 with Restricted Service.**

4 After shutting down operations in response to the COVID-19 pandemic, Respondents
5 re-opened four courtrooms for felony criminal trials in June 2020. (Declaration of Aleem Raja
6 (“Raja Dec.”), ¶ 5.) Four other courtrooms were used as “satellites,” where live video of trials
7 in other courtrooms could be broadcast on a large screen. (*Ibid.*)

8 Respondents cited social distancing restrictions as one of the reasons for reducing their
9 service from ten to four trial courtrooms. (Declaration of Kathleen Guneratne, ¶ 6 (“Guneratne
10 Dec.”), Ex. 5 [good cause script], p. 4.) But their own calculations showed that at least eleven
11 courtrooms at the Hall of Justice could accommodate fourteen socially-distanced jurors and
12 spectators, making them suitable for a socially-distanced criminal jury trial with twelve jurors
13 and two alternates. (Guneratne Dec., ¶ 5, Ex. 4 [Hall of Justice courtroom capacities].) Six
14 courtrooms have room for at least eighteen socially-distanced jurors and spectators, allowing
15 for a long trial with four alternates. Respondents are also equipped to livestream proceedings in
16 order to provide public access, and have installed videoconferencing technology to enable
17 attorneys, defendants and others to participate remotely. (Raja Dec., ¶ 7.)

18 The record shows that Respondents massively reduced jury trials service not because of
19 COVID-19 safety concerns, but because of a staff shortage. When a public defender pointed
20 out that the satellite courtrooms sat “mostly empty” and suggested they be used for trials, the
21 judge presiding over the master calendar of the criminal division, Hon. Loretta M. Giorgi,
22 responded: “I have talked to your office about the possibility of maybe trying to use the
23 satellites, but there’s still a couple problems. *One, we still don’t have enough staff to staff all*
24 *our courtrooms.* Number two, if we do open up the satellites, you will have to waive a public
25 trial . . .” (Guneratne Dec., ¶ 13, Ex. 10, 3:1–3, 7:25–8:3 [reporter’s transcript] (emphasis
26 added).) In response to an email from public defender manager, Aleem Raja, asking about
27 whether more courtrooms could be opened up, Judge Giorgi also stated: “Before I get your
28

1 hopes up I need to see if we have enough clerks and court reporters to open more any
2 additional trial courtrooms. We are barely scraping by as it is.” (Raja Dec., Ex. 14 [email from
3 Hon. Loretta M. Giorgi].)

4 **B. Respondents Continue Trials en Masse Based on a Generic “Good Cause”
5 Script.**

6 Since the Chief Justice’s statewide emergency orders extending trial deadlines expired
7 on June 15, 2020, Respondents have failed to apply for emergency orders extending trial
8 deadlines 30 days at a time allowed under Government Code section 68115(a)(10). (*Id.*, ¶ 10.)
9 Instead of seeking further emergency authorizations to continue trial deadlines, Respondents
10 use a generic good cause script to continue trials. (*Ibid.*) Respondents typically call multiple
11 trial cases together at the end of the calendar and continues them all, relying on the same script.
12 (*Ibid.*) It is not known who prepared the script or its evidentiary basis. In response to a judicial
13 records request calling for all documents used in its preparation, Respondents produced an
14 updated version of the script without explanation. (Guneratne Dec., ¶¶ 6–7, Ex. 5 [good cause
15 script].)

16 **C. Respondents’ Conscious Disregard Created a Backlog of Trials.**

17 Because Respondents have not allowed cases to go to trial on time, a massive backlog
18 of criminal trials has accumulated. On July 9, 2020, there were 99 no-time-waiver felony cases
19 past their statutory deadline for jury trial, including 31 cases where the defendant was in
20 custody. (Raja Dec., ¶¶ 14–29, Ex. 2 [no-time-waiver trial list, July 9, 2020].) (The Court
21 refers to a criminal trial where the defendant has not waived his right to a trial within the
22 statutory deadlines of Penal Code section 1382 as a “no-time-waiver” or “NTW” case [*Id.*].)
23 By March 19, 2021, that number had grown to 207, including 72 in-custody cases. (Raja Dec.,
24 ¶ 29, Ex. 4 [no-time-waiver trial list, Mar. 19, 2021].) By June 18, 2021, it stood at 269,
25 including 98 in-custody cases. (Raja Dec., ¶ 29, Ex. 5 [no-time-waiver trial list, June 18,
26 2021].) As of September 10, 2021, more than 400 people were still awaiting a speedy trial,
27 including more than 140 people waiting while imprisoned. (*See* Raja Dec, ¶ 29.)
28

1 The time each accused person must wait for his or her jury trial has also steadily grown.
2 The in-custody felony trials sent out in December 2020 were all sent out at least 42 days past
3 their statutory deadline; in January 2021, the minimum was 63 days past the deadline; in
4 February 2021, the minimum was 72 days; in March 2021, 90 days; in April 2021, 133 days; in
5 May 2021, 141 days; in June 2021, 161 days; in August 2021, 209 days; and in the first half of
6 September 2021, 235 days. (Kroll Dec., ¶ 8, Ex. 1.) (No in-custody cases were sent out in July
7 2021 [Kroll Dec., ¶ 6, Ex. 1].) The out-of-custody felony trials sent out since June 28, 2021
8 were all at least 364 days past their statutory deadline. (Kroll Dec., ¶ 9, Ex. 1.)

9 **E. Respondents Fail to Allocate Resources and Use Available Courtrooms.**

10 **1. Civic Center Courthouse**

11 Most criminal proceedings in San Francisco take place in the Hall of Justice. But
12 Respondents also hold sessions, including criminal jury trials, at the Civic Center Courthouse.
13 That courthouse has thirty-seven departments, which are currently used almost exclusively for
14 general civil, family law, probate and appellate matters. (Guneratne Dec., ¶ 21, Ex. 15
15 [department list].) Despite the massive backlog of felony trials, between March 16, 2020, and
16 August 20, 2021, only ten criminal trials have been held in Civic Center, all of them out-of-
17 custody misdemeanor cases. (Kroll Dec., ¶ 11, Ex. 1.)

18 Respondents have claimed the Civic Center Courthouse is not secure enough to hold in-
19 custody, felony or “violent” misdemeanor trials. (Guneratne Dec., ¶ 6, Ex. 5, p. 4.) But, prior
20 to the pandemic, they safely tried serious felony cases at the Civic Center Courthouse,
21 including in-custody and co-defendant cases. (Kroll Dec., ¶¶ 12–19.) Since January 2006, they
22 sent out 56 felony cases for jury trial to Civic Center courtrooms. (Kroll Dec., ¶ 16, Ex. 2 [list
23 of felony trials at Civic Center Courthouse, Jan. 1, 2006–present].) In 24 of those cases, the
24 defendant was in custody. (*Ibid.*) Most of those cases were tried to verdict. (*Ibid.*) Many
25 involved serious charges, including charges punishable by life imprisonment. (Kroll Dec., ¶ 17,
26 Ex. 2.) There is no record of any of the trials involving a security incident. (Kroll Dec., ¶ 19.)

27 Adult felony cases have been tried in the Civic Center Courthouse as recently as 2017.

1 (Kroll Dec., ¶ 18, Ex. 1.) Departments 505, 602/604, 606, 622 and 624 have all tried both in-
2 custody and out-of-custody felony jury trials to verdict. (Kroll Dec., Ex. 2.) Departments 220,
3 303 and 608 have all tried out-of-custody felony jury trials to verdict. (*Ibid.*) In July 2012,
4 when Respondents temporarily closed two trial departments in the Hall of Justice, they
5 dedicated two replacement courtrooms in the Civic Center Courthouse for criminal trials and
6 staffed them with visiting judges. (Guneratne Dec., ¶ 22, Ex. 16 [department list, July 16,
7 2012].)

8 From November 2020 to January 2021, a juvenile in-custody murder trial was held in
9 Department 606 of the Civic Center Courthouse. Respondent Judge Feng described the case as
10 “highly volatile,” and the Juvenile Justice Center was deemed “too risky” to hear the trial.
11 (Guneratne Dec., ¶¶ 14–20, Ex. 12 [email exchange between Judge Feng and Sheriff’s
12 sergeant], p. 1, Ex. 13 [after-action report], p. 2.) The case was transferred to Civic Center for
13 security reasons. (*Ibid.*) The Sheriff’s Office provided security throughout the fifteen-day trial.
14 (*Ibid.*) The trial took place without incident. (Guneratne Dec., ¶ 19, Ex. 13, p. 1.)

15 The Civic Center Courthouse has also regularly held misdemeanor jury trials, including
16 for so-called “violent” cases. From January 2018 until March 2020, Respondents sent over 160
17 misdemeanor cases out to Civic Center for trial in eleven different departments. (Kroll Dec., ¶
18 24, Ex. 2 [list of misdemeanor trials at Civic Center Courthouse, Jan. 1, 2018–Mar. 17, 2020].)
19 Over 50 of those trials were for so-called “violent misdemeanor” offenses. (Kroll Dec., ¶ 25,
20 Ex. 2.) As well as being secure, the Civic Center Courthouse can handle a high volume of jury
21 trials. Between January 2018 and March 2020, more than four criminal jury trials were tried to
22 verdict there per month. (Kroll Dec., ¶ 24, Ex. 2.) Moreover, the Civic Center Courthouse has
23 courtrooms large enough to hold even socially-distanced jury trials. According to Respondents’
24 own calculations, six departments have at least twenty-two total seats available—enough to
25 accommodate the judge, twelve jurors, two alternates, the defendant, two lawyers, a bailiff, a
26 clerk, and a court reporter, with one seat to spare. (Guneratne Dec., ¶ 5, Ex. 4 [courtroom
27 capacities].)

1 In an effort to resolve this matter without litigation, Petitioner Raju wrote to
2 Respondent Judge Feng in July 2021, laying out these facts and asking him to exercise his
3 authority as presiding judge to reallocate the civil trial courtrooms at Civic Center to hear
4 criminal trials. (Kroll Dec., Ex. 7 [letter from Manohar Raju to Judge Feng].) Judge Feng’s
5 response read, in full: “Our court continues to make criminal trials assigned to the Civic Center
6 Courthouse (CCC) a priority. As to your concerns at CCC, please address the same to Sheriff
7 Miyamoto.” (Kroll Dec., Ex. 8 [reply from Judge Feng to Manohar Raju].) Judge Feng did not
8 reassign additional criminal trials to the Civic Center Courthouse.

9 It appears, however, that Respondents and the Sheriff have not discussed providing
10 security for criminal trials at Civic Center. When the Public Defender requested “[a]ll
11 communications with the San Francisco Sheriff’s Department about providing security for
12 criminal jury trials at the Civic Center Courthouse” between March 2020 and July 2021, as part
13 of a judicial administrative records request, Respondents replied that they had “no responsive
14 documents.” (Kroll Dec., ¶¶ 26–28, Ex. 4 [judicial records request]; Ex. 5 [response].) As of
15 August 5, 2021, Respondents have not executed a memorandum of understanding with the
16 Sheriff regarding court security services and no such memorandum of understanding was in
17 force. (Kroll Dec., ¶ 31, Ex. 9 [email from Megan Filly].)

18 **2. Empty and Unused Courtrooms**

19 Respondents are also allowing courtrooms to sit empty and unused, while hundreds of
20 people await jury trial. On Friday, August 6, 2021, according to the large screens in the Civic
21 Center Courthouse lobby, seventeen courtrooms had no hearings scheduled. (Kroll Dec., ¶ 42.)
22 The doors of each of those departments were locked that morning, except those in department
23 218, which was open and not in session. (Kroll Dec., ¶ 43.) On Monday, August 9, 2021,
24 according to the screens in the lobby, fourteen Civic Center departments had no hearings
25 scheduled, and their doors were all locked. (Kroll Dec., ¶ 46–47.) And on September 20, 2021,
26 according to the screens in the lobby, nineteen departments had no hearings scheduled; all but
27 two of them were locked and not in session. (Declaration of Brooke Powell, ¶¶ 2–5.)

1 **F. Respondents Prioritize Civil Proceedings Over Criminal Trials.**

2 Respondents have announced to civil litigants that they are open for business. During a
3 January 2021 “State of the Court” webinar with members of the civil bar, Respondent Judge
4 Feng announced: “Everyone is ready to go . . . So that makes it easier, as opposed to telling
5 everyone we only have one courtroom. Are you kidding? No, we have all courtrooms.
6 Everyone is available for jury trials and/or bench trials; we’re all equipped for it. We’re ready
7 to go.” (Guneratne Dec., ¶ 23, Ex. 17 [webinar transcript], 70:12–22.)

8 Respondents have held proceedings in multiple civil jury trials at the Civic Center
9 Courthouse in 2021, in personal injury, quiet title, unlawful detainer, asbestos and medical
10 malpractice cases. (Kroll Dec., ¶¶ 32–40, Exs. 10, 11, 14, 15, 16 [minute orders and registers
11 of actions].) On August 9, 2021 alone, two jury trials and two court trials were taking place at
12 the Civic Center. (Kroll Dec., ¶¶ 32–36, Exs. 10, 11, 12, 13 [minute orders and registers of
13 actions].) According to Respondents’ judicial assignment chart, twelve Civic Center
14 courtrooms are dedicated to civil trials. (Guneratne Dec., ¶ 21, Ex. 15.)

15 **G. Respondents Fail to Provide Alternative Venues, Assign Visiting Judges,
16 and Sufficiently Staff the San Francisco Superior Court.**

17 San Francisco has many public buildings that could have been used as alternative
18 venues, including public facilities, such as the Moscone Convention Center, Bill Graham Civic
19 Auditorium, War Memorial Building, Cow Palace, high school and college auditoriums, all of
20 which sat empty during shelter in place orders. However, since March 19, 2020, Respondents
21 have not held any sessions in alternative venues. They claim to have “explored looking for
22 alternative and additional sites,” but that those explorations were not “fruitful.” (Guneratne
23 Dec., ¶ 6, Ex. 5, p. 5.) It appears, however, that Respondents have not conducted any real
24 search for alternative venues. In a request for judicial administrative records, the Public
25 Defender asked Respondents to produce all records from March 2020 to March 2021 relating
26 to a search for alternative venues in which to hold court during the COVID-19 pandemic,
27 including searches for venues other than the Hall of Justice or Civic Center Courthouses in
28

1 which to conduct jury selection and jury trials. (Guneratne Dec., ¶ 2, Ex. 1, request 8.)
2 Respondents replied that they had no responsive records. (Guneratne Dec., ¶ 3, Ex. 2, response
3 to request 8.)

4 Likewise, when asked for all records relating to Respondents’ efforts to increase the
5 number of judges available to try criminal cases during the COVID-19 pandemic by
6 reassigning judges or using visiting judges, Respondents replied that they had no responsive
7 records. (*Id.*, response to request 10.)

8 Despite their ostensible staffing shortage, Respondents appear to have made no efforts
9 to hire temporary employees (such as court reporters) or retrain existing employees (such as
10 clerks) to fill the shortage. Asked for all records between March 2020 to March 2021 relating
11 to Respondents’ efforts to remedy personnel shortages during the COVID-19 pandemic,
12 Respondents again replied that they had no records. (*Id.*, response to request 11.)

13 **H. People Are Suffering During Prolonged Custody at the County Jail.**

14 People incarcerated in the San Francisco County Jail over the last eighteen months face
15 exceptionally harsh conditions of confinement. They are confined to small cells for 23 hours a
16 day, are not permitted in-person visits with family members or friends, and are not permitted to
17 engage in groups, classes or other programming. (Guneratne Dec., ¶ 25; Declaration of Tyler
18 Ramirez, ¶¶ 7-8.) This is solitary-type confinement. The Sheriff’s Office has admitted that it
19 locks inmates in their cells for 23 hours a day as a precaution against a COVID-19 outbreak.
20 (Guneratne Dec., ¶ 26, Ex. 19 [declaration of Kevin McConnell].) In the case of people in
21 administrative segregation, this is even longer. (Declaration of Steven Kloster, ¶¶ 5-6 [decrying
22 fact that “I am locked up 24 hours a day. . . . Every few days I am let out of my cell so I can
23 shower.”]) These harsh conditions compromise the health of inmates who are already
24 vulnerable, such as those with asthma and chronic lung disease. (Declaration of William
25 Cogman, ¶ 4.) Another person experiencing panic attacks says the deprivation of sunlight has
26 “made [his] mental health worse.” (Declaration of Andre Cannon, ¶ 7.) This restrictive
27

1 confinement causes permanent mental and emotional damage, in addition to its physical harm.¹

2 In sum, the human cost of Respondents’ malfeasance is incalculable.

3 **ARGUMENT**

4 **I. This Court Should Issue a Writ of Mandate to Compel Respondents to Perform
5 Their Ministerial Duties.**

6 Respondents have failed to perform their ministerial duties in express violation of Penal
7 Code sections 1049.5 and 1050(a)-(b). A writ of mandate must issue.

8 Code of Civil Procedure section 1085 provides that a court may issue a writ of mandate
9 to compel a public entity or officer to perform a ministerial duty. (*Cty. of Los Angeles v. City of*
10 *Los Angeles* (2013) 214 Cal.App.4th 643, 653.) A ministerial duty may be created “either by
11 statute or by constitutional compulsion.” (*Common Cause v. Board of Supervisors* (1989) 49
12 Cal.3d 432, 446.) “A ministerial act is an act that a public officer is required to perform in a
13 prescribed manner in obedience to the mandate of legal authority and without regard to his
14 own judgment or opinion concerning such act’s propriety or impropriety, when a given state of
15 facts exists.” (*Rodriguez v. Solis* (1991) 1 Cal.App.4th 495, 501–02; see also, *Kavanaugh v.*
16 *West Sonoma Cty. Union High School. Dist.* (2003) 29 Cal.4th 911, 925 [finding that the
17 government had a ministerial duty to reelect the petitioner because it failed to perform the
18 correct statutory procedure].)

19 Trial courts have a ministerial duty to accord preference to criminal cases pursuant to
20 Penal Code section 1050(a). Because “the people, the defendant, and the victims and other
21 witnesses have the right to an expeditious disposition,” “it **shall** be the **duty** of all courts and
22 judicial officers . . . to expedite these proceedings to the greatest degree that is consistent with
23 the ends of justice.” (Pen. Code, § 1050(a) [emphasis added].) Here, the “act” Respondents are
24 “required to perform in a prescribed manner,” (*Rodriguez, supra*, 1 Cal.App.4th at pp. 501–

25 ¹ Atul Gawande, *Hell Hole*, New Yorker <<https://www.newyorker.com/magazine/2009/03/30/hellhole>> (as of July 26, 2021); Bruce A. Arriga & Jennifer Leslie Bullock, *The Psychological*
26 *Effects of Solitary Confinement on Prisoners in Supermax Units*, University of North Carolina
27 International Journal of Offender Therapy and Comparative Criminology <<https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.955.4755&rep=rep1&type=pdf>> (as of July 26, 2021).

1 02), is to give criminal cases “precedence over . . . any civil matters or proceedings,” and “set
2 for trial and hear[.]” criminal cases “without regard to the pendency of, any civil matters or
3 proceedings” (Pen. Code, § 1050(a).) Penal Code section 1050(a) affords no discretion
4 “concerning such act’s propriety or impropriety.” (*Rodriguez, supra*, at pp. 501–02.)

5 Although ministerial duties generally do not encompass discretionary acts, a writ of
6 mandate is still appropriate where defendants fail to exercise discretion after being given a
7 reasonable opportunity to do so. (See *Common Cause, supra*, 49 Cal.3d at p. 446; see also
8 *People v. Wilson* (1963) 60 Cal.2d 139, 149 [writ of mandate is the appropriate recourse where
9 court abuses discretion to enforce right to a speedy trial].) While Respondents may have
10 discretionary leeway to determine their case docket, the duty to accord precedence to criminal
11 cases is not discretionary because it infringes on the fundamental rights of the people. (See
12 *Wilson, supra*, 60 Cal.2d at p. 148.) Moreover, Respondents abused that discretion in, for
13 example, failing to send out more than three in-custody felony trials in the 12 weeks since June
14 28, 2021, despite more than 100 people waiting, and failed to remedy that decision after a
15 reasonable opportunity to do so. (*Ibid.*)

16 **A. Failing to Prioritize Criminal Trials Violates Section 1050(a).**

17 Respondents fail to meet their statutory duty under Penal Code section 1050(a) to
18 prioritize criminal trials. California superior courts must “grant precedence to the trials of
19 criminal cases over civil cases so long as such precedence is consistent with the ends of
20 justice.” (*People v. Engram* (2010) 50 Cal.4th 1131, 1161.) Although superior courts generally
21 have discretion over managing their docket, the California Supreme Court declared in *People*
22 *v. Engram* (*Engram*) that a court abuses that discretion under Penal Code section 1050(a) when
23 it fails to prioritize criminal trials. (*Id.*, at p. 1137.)

24 *Engram*, as well as two lower court cases, *People v. Flores* (*Flores*) and *People v. Cole*
25 (*Cole*), addressed a drastic backlog of criminal cases awaiting trial in the Superior Court of
26 Riverside County in 2007. In response to that backlog, the Riverside County Superior Court
27 “devoted virtually all of its resources—superior court judges and courtrooms—ordinarily

1 intended for the trial of civil cases instead to the trial of criminal cases, an effort that, at the
2 time, seriously compromised that court’s ability to conduct civil trials.” (*Engram, supra*, at p.
3 1137.) It utilized “virtually all of the court’s ordinary civil department judges and courtrooms
4 for the trial of criminal cases.” (*Id.*, at p. 1157.) It also temporarily employed a panel of 28
5 retired judges and active judges from outside the county to address the backlog of criminal
6 cases. (*Id.*, at 1158.) The *Flores* court found that Riverside County Superior Court had given
7 “extraordinary precedence to criminal trials over traditional civil matters.” (*People v. Flores*
8 (2009) 173 Cal.App.4th Supp. 9, 23.)

9 Despite these considerable efforts, the Riverside County District Attorney appealed in
10 *Flores, Cole*, and eventually *Engram* to argue that, under Penal Code section 1050(a), the
11 Riverside County Superior Court was required “to extend its efforts even further and make
12 every superior court judge and courtroom—including the specialized superior court
13 departments devoted to hearing and resolving family law, probate, and juvenile matters (as
14 well as the [visiting] judges from outside the county . . .)—potentially available for the trial of
15 any criminal case that was facing dismissal under the applicable California speedy-trial
16 statutes.” (*Engram, supra*, 50 Cal.4th at 1137.)

17 On that factual record, the *Engram* Court held that the Riverside County Superior Court
18 had “provided considerable preference to the trial of those matters consistent with the general
19 legislative policy embodied in section 1050.” (*Id.*, at p. 1138.) But this decision was based on
20 the fact that Riverside’s “traditional civil courtrooms were already *exclusively devoted to*
21 criminal trials.” (*People v. Cole* (2008) 165 Cal.App.4th Supp. 1, 16 [emphasis added].)

22 In reaching its holding, the *Engram* Court made clear that “a trial court’s authority to
23 designate and maintain separate civil and criminal departments is not without limits.” (*Engram,*
24 *supra*, at p. 1156.) To that end, it cited with approval three appellate opinions where courts
25 appropriately concluded there was an abuse of discretion under Penal Code section 1050(a):
26 *Stewart v. Superior Court* (1955) 132 Cal.App.2d 536, *People v. Echols* (1954) 125
27 Cal.App.2d 810, and *Dearth v. Superior Court in and for Los Angeles Cty.* (1940) 40

1 Cal.App.2d 56. (*Engram, supra*, 50 Cal.4th at p. 1157.) In analyzing those decisions, *Engram*
2 highlighted the ratio of available trial court departments to those made available for criminal
3 trials. (*Id.*, at pp. 1156–57.) It found the fact that only four (or 17%) of the 23 departments
4 available to the superior court in *People v. Echols* held criminal trials as compelling evidence
5 that the superior court had abused its discretion under Penal Code section 1050(a). (*Ibid*, citing
6 *Stewart v. Superior Court, supra*, 132 Cal.App.2d 536, 538.) Likewise, it cited the fact that
7 “only 8 [or 14%] of the 59 judges of the [Los Angeles] superior court presiding at the county
8 seat were assigned to departments for the trial of criminal cases and that on those dates 29 civil
9 cases were assigned for trial to the civil departments of the court” as the primary evidence that
10 the Los Angeles Superior Court had abused its discretion in *Stewart*. (*Id.*, at p. 1157.)

11 **B. Respondents Abuse Their Discretion by Failing to Prioritize Criminal**
12 **Trials as Required by Section 1050(a).**

13 Respondents’ behavior here is far more like that of the superior courts in *Echols* and
14 *Stewart* than that of the Riverside Superior Court, which gave “extraordinary precedence to
15 criminal trials over traditional civil matters.” (*People v. Flores, supra*, 173 Cal.App.4th Supp.
16 9, 23.) Respondents have abused their discretion under Penal Code section 1050(a) in
17 dedicating so few court departments to criminal trials.

18 Despite a backlog of nearly 400 San Franciscans who await their trials, over 140 of
19 whom are waiting in custody in near solitary conditions, Respondents have dedicated only 9 of
20 their 65 total courtrooms to criminal trials—less than 14% of their capacity. (Kroll Dec., ¶ 10.)
21 And over the five weeks from August 21 to September 24, 2021, Respondents only actually
22 used a maximum of five courtrooms for criminal trials—equating to less than 8% of their
23 capacity.

1 In *Engram*, the California Supreme Court declared that dedicating only 17%² or 14%³
2 of departments to criminal trials was a violation of the courts’ duty under Penal Code section
3 1050(a). (*Engram, supra*, 50 Cal.4th at pp. 1156–58.) Meanwhile, Respondents have reserved
4 eleven departments for traditional civil trials. (Guneratne Dec., ¶ 21, Ex. 15.) Those facts alone
5 demonstrate the violation. Penal Code section 1050(a) demands Respondents prioritize
6 criminal trials. The record demonstrates Respondents’ failure to do just that.

7 Here, Respondents have not given precedence to criminal trials—even over *traditional*
8 civil matters. Instead, Respondents have reserved *more* courtrooms for traditional civil trials
9 than for criminal trials, have not changed or supplemented the number of trial departments and
10 judges assigned to criminal trials from their numbers before the pandemic, and have not sought
11 alternative trial venues. Respondents’ conduct, therefore, is a far cry from a court that reserved
12 “virtually all of the court’s ordinary civil department judges and courtrooms for the trial of
13 criminal cases,” brought on a panel of 28 retired and active judges from outside the county to
14 address their backlog of criminal cases and held trials in a temporary courtroom at an
15 elementary school. (See *Engram, supra*, 50 Cal.4th at pp. 1144, 1157.)

16 Respondents are not without options. They could, and should, use courtrooms
17 traditionally hearing civil trials into criminal trial departments, consistent with the ends of
18 justice. (*Dearth v. Superior Court, supra*, 40 Cal.App.2d 56, 59 [“[T]he showing that a large
19 number of civil cases were pending does not excuse the failure to assign a sufficient number of
20 judges to handle criminal matters.”].) This would be consistent with the holdings of *Engram*
21 and *Cole*, where Riverside County Superior Court had *already* converted virtually *all* of its
22
23

24 ² *People v. Echols, supra*, 125 Cal.App.2d 810, 815–16 [finding the Superior Court abused its
25 discretion under Penal Code section 1050(a) when only 4 (or 17%) of its 23 departments were
26 assigned to hold criminal trials].

27 ³ *Stewart v. Superior Court, Los Angeles Cty., supra*, 132 Cal.App.2d 536, 538 [superseded by
28 statute on other grounds in *Smith v. Superior Court, supra*, 54 Cal.4th at p. 592] [finding the
Superior Court abused its discretion under section 1050(a) when “only eight [or 14%] of the 59
judges of superior court at county seat were assigned to departments for trial of criminal cases”].

1 traditional civil trial departments into criminal trial departments. (*Cole, supra*, 165 Cal.App.4th
2 Supp. at p. 16; *Engram, supra*, 50 Cal.4th at p. 1158.) Respondents must do the same.

3 Respondents’ traditional civil trial departments must be used as criminal trial
4 departments to avoid unjust results and to bring Respondents into compliance with section
5 1050(a).⁴ As of September 10, 2021, over 140 San Franciscans were still waiting *in custody*
6 past the statutory last days for their speedy trials. That number will continue to *increase* if
7 Respondents do not perform their ministerial duties. As noted, people waiting for trial in
8 custody suffer in restrictive conditions of confinement. It is intolerable that San Franciscans
9 enduring these conditions are being given less priority than civil plaintiffs seeking tort and
10 contract damages.

11 By all metrics—including the percentage of total departments currently reserved for
12 criminal trials—Respondents have failed to prioritize criminal trials. Respondents have, in fact,
13 reserved *more* departments for civil trials than for criminal trials. Respondents’ efforts to
14 remedy this situation remain nonexistent despite Petitioners bringing the backlog crisis to their
15 attention. Because Respondents have failed to prioritize criminal trials as is their obligation
16 under Penal Code section 1050(a), they have abused their discretion and failed to perform their
17 ministerial duties.

18 **C. Respondents Continue Trial Dates en Masse in Violation of Sections 1049.5**
19 **and 1050(b).**

20 Penal Code section 1049.5 instructs that trial courts “shall set a date for [a felony] trial
21 which is within 60 days of the defendant’s arraignment in superior court unless, upon a
22 showing of good cause as prescribed in Section 1050, the court lengthens the time.” (Pen.
23 Code, § 1049.5.) Good cause to lengthen that time limit must be proven at “a hearing as
24 prescribed in Section 1050.” (*Ibid.*) Penal Code section 1050(b) prescribes that “[t]o continue
25 any hearing in a criminal proceeding, including the trial, (1) a written notice shall be filed and
26 served on all parties to the proceeding at least two court days before the hearing sought to be

27 ⁴ See *supra* Part I.E.1-2 and Part I.G regarding available courtrooms.

1 continued, together with affidavits or declarations detailing specific facts showing that a
2 continuance is necessary.” (Pen. Code, § 1050(b).)

3 Respondents have failed to comply with the explicit statutory requirements of section
4 1049.5 and 1050(b) in nearly every felony case now pending before the San Francisco Superior
5 Court. Since August 2020, not a single felony trial has occurred within 60 days of arraignment.
6 (Kroll Dec., Ex. 1.) Further, Respondents do not give the parties reasonable notice of their
7 intent not to honor Penal Code section 1049.5. Instead, Respondents set every felony case for
8 trial 60 days or less from arraignment. Then, when the trial date arrives, Respondents read a
9 generic script—alleging the circumstances of the pandemic constitute good cause to deny
10 felony defendants their speedy trials under Penal Code section 1382—and continue the trial an
11 arbitrary number of days into the future. (Raja Dec., ¶ 10.) Respondents do not give notice to
12 the parties nor offer affirmative, case-specific proof justifying the delay. (*Ibid.*)

13 Respondents’ practice in *every* felony case is therefore in express violation of Penal
14 Code sections 1049.5 and 1050(b). If Respondents continue to delay trial dates in felony cases,
15 they must offer affirmative proof of good cause for a continuance in open court and reasonable
16 notice to the parties of that continuance. The writ must issue to ensure such compliance.

17 **D. Respondents Continue Trial Dates in Violation of the Right to a Speedy
18 Trial.**

19 Respondents have a duty to provide a speedy trial to all persons accused of a crime. (Pen.
20 Code § 686; Cal. Const. art. I, § 15; U.S. Const. amends. VI, XIV.) By failing to afford people
21 charged with crimes in San Francisco a speedy trial by jury, Respondents violate their duties
22 under Penal Code section 686(1) and systematically deny individuals their constitutional rights
23 under article I, section 15 of the California Constitution, and the Sixth and Fourteenth
24 Amendments to the U.S. Constitution. By abdicating their duties, Respondents cause irreparable
25 harm.

26 Overcrowded dockets cannot justify a delay as a constitutional matter. As the United
27 States Supreme Court held long ago, docket congestion must be charged against the state. (See
28

1 *Barker v. Wingo* (1972) 407 U.S. 514, 531.) Here, Respondents routinely delay trials for months
2 past the constitutional limit, without good cause. Unlike other superior courts that met the
3 challenges posed by COVID-19, Respondents failed to provide enough staff and courtrooms to
4 support its docket.

5 “[E]ven in a pandemic, the Constitution cannot be put away and forgotten.” (*Roman*
6 *Catholic Diocese of Brooklyn v. Cuomo* (2021) 141 S.Ct. 63, 68.) The United States Supreme
7 Court has twice enjoined enforcement of COVID-19 restrictions that burden the exercise
8 fundamental rights more heavily than ordinary economic activity. In *Diocese of Brooklyn*, the
9 Court enjoined an executive order which capped attendance at religious services but placed no
10 cap on businesses such as garages, campgrounds, and acupuncture facilities, holding that there
11 was a strong likelihood the order violated the Free Exercise clause. (*Roman Catholic Diocese of*
12 *Brooklyn v. Cuomo* (2021) 141 S.Ct. 63, 66.) And in *South Bay United Pentecostal Church v.*
13 *Newsom* (2021) 141 S.Ct. 716, the Court enjoined enforcement of our governor’s order banning
14 indoor worship services. Concurring in the decision, Chief Justice Roberts wrote that
15 California’s COVID-19 rules appeared “to reflect not expertise or discretion, but instead
16 insufficient appreciation or consideration of the interests at stake.” (*Id.*, at p. 717 [conc. opn. of
17 Roberts, C.J.])

18 The right to a speedy trial is no less fundamental than religious liberty. It protects the
19 accused not only from impairment in his ability to defend himself, but also from oppressive
20 pretrial incarceration and anxiety and concern as he waits for his day in court. (*Barker v. Wingo*,
21 *supra*, 407 U.S. at p. 532.; see also *People v. Lewis* (2001) 25 Cal.4th 610, 628.)

22 And, as with other fundamental rights, “[t]here is no pandemic exception to the
23 Constitution...The federal Constitution, while flexible, does not allow a blanket refusal to afford
24 defendants their rights to a speedy trial.” (*Kurtenbach v. Howell*, (D.S.D. 2020) 509 F.Supp.3d
25 1145, 1152, citing *Carson v. Simon* (8th Cir. 2020) 978 F.3d 1051, 1060.) Respondents’
26 systematic failure to allow accused persons their timely day in court violates the speedy trial
27 guarantee under California and federal law. (Accord *Doggett v. United States* (1992) 505 U.S.

1 647, 651 [listing four factors determine whether the federal constitutional right to a speedy trial
2 has been violated: “whether delay before trial was uncommonly long, whether the government or
3 the criminal defendant is more to blame for that delay, whether, in due course, the defendant
4 asserted his right to a speedy trial, and whether he suffered prejudice as the delay’s result.”].) All
5 factors are met here. The writ should therefore issue.

6 **CONCLUSION**

7 For the foregoing reasons the Court should issue a peremptory writ of mandate in
8 accordance with Petitioners’ Motion.

9
10
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