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9

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11 UNITED STATES DISTRICT COURT
12 EASTERN DISTRICT OF CALIFORNIA
13 FRESNO DIVISION

14 American Civil Liberties Union of Southern
California, First Amendment Coalition,
15 Kilah Oats, Lotisha Davidson, Tanisha
Brown, Tameca Spriggs and Janie Randle

16 Plaintiffs,

17 v.

18 Tamarah Harber-Pickens, in her official
19 capacity as Court Executive Officer of the Kern
20 County Superior Court, Judith K. Dulcich, in
her official capacity as Presiding Judge of the
21 Kern County Superior Court, and Donny
Youngblood, Sheriff of Kern County, in His
22 Official Capacity,

23 Defendants.

Case No.

**COMPLAINT FOR INJUNCTIVE
AND DECLARATORY RELIEF**

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9 *Lotisha Davidson, Tanisha Brown, Tameca*
Spriggs and Janie Randle

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INTRODUCTION

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2 1. A cornerstone of our democracy is that we do not conduct secret prosecutions. Defendants
3 are currently doing just that. In addition to preliminary hearings, arraignments and bail hearings, Kern
4 County Superior Court (the “Court”) has now commenced jury trials, with no meaningful access for the
5 public or the press. Our state and federal constitutions also guarantee the public a right of access to most
6 civil proceedings, yet the Court is denying the public and the press meaningful access to those proceedings as
7 well.

8 2. First, on March 23, 2020, Defendant Judith K. Dulcich, in her official capacity as Presiding
9 Judge of the Court, issued a standing order (“Order”) denying the public and press access to court
10 proceedings due to the COVID-19 pandemic. It has not been rescinded, despite the recent resumption of jury
11 trials in Kern County. The Order restricts “access to any and all courthouses . . . to those persons required to
12 appear in person for a court hearing” and makes no provision for the press or the public to access those
13 proceedings in any alternative way. The Order is facially unconstitutional and substantially overbroad.

14 3. The Order claims that such a restriction is narrowly tailored to serve the state’s compelling
15 public health interest and there exist “no less restrictive means of achieving this overriding interest.”¹ But
16 there exist ample less restrictive means. Courts across the country, including other superior courts in
17 California, have balanced public safety while safeguarding the public’s constitutional right to access court
18 proceedings by simply providing publicly-available call-in numbers so that members of the press and public
19 can listen in as courts conduct business. Other superior courts, such as Contra Costa County, have provided
20 limited physical access to the public and/or remote access to jury trials and other criminal and civil
21 proceedings. Defendants could easily do the same. Because they have not, the Order violates the First
22 Amendment of the U.S. Constitution.

23 4. Despite multiple requests to revise the Order, Defendants Tamarah Harber-Pickens, in her
24 official capacity as Court Executive Officer of the Kern County Superior Court and Judith K. Dulcich, in her
25 official capacity as Presiding Judge of the Kern County Superior Court (the “Court Defendants”) have kept
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28 ¹ Superior Court of the State of California, in and for the County of Kern, Miscellaneous No. STO-20-005 (Mar. 23, 2020), https://www.kern.courts.ca.gov/documents/restrictions_on_courthouse_entry (citing *NBC Subsidiary (KNBC-TV), Inc. v. Super. Ct.* (1999) 20 Cal.4th 1178, 1181–82).

1 the Order in place. Defendant Donny Youngblood, in his official capacity as Sheriff of Kern County, has
2 continued to enforce this unconstitutional Order.

3 5. On May 22, 2020, the Court Defendants announced jurors would be summoned to court
4 beginning the week of May 26th but reiterated that the March 23 standing order restricting courthouse entry
5 would remain in effect.

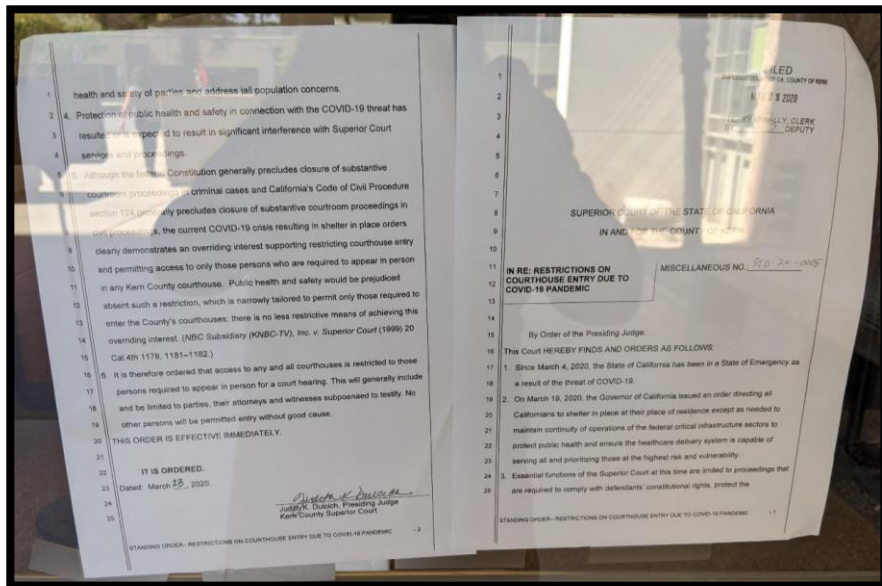
6 6. Since this unconstitutional Order went into effect, the Court Defendants have announced
7 changes in public access to the Court. For example, the Court Defendants claim on their website that despite
8 the March 23rd order, members of the public “will be authorized by the Presiding Judge or the assigned
9 judicial officer to attend all scheduled hearings in-person, provided they wear face coverings and maintain
10 the required physical distancing of at least six (6) feet.”² The Court Defendants now have a procedure
11 whereby “[r]equests from members of the public to attend criminal proceedings should be submitted by the
12 attorney of record in the case.” The procedure also provides that “[i]f members of the public do not have
13 access to the attorney of record, they may make a request at the courthouse security screening area. Security
14 personnel have been instructed to contact the judicial officer to obtain clearance for the individuals to attend
15 the desired proceeding.”

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28 ² Superior Court of California, County of Kern, COVID-19 More Information, “Public Access”,
<https://www.kern.courts.ca.gov/covid19> (last visited June 23, 2020).

7. In practice, however, Defendants have repeatedly denied members of the public and family members of those who are arrested access to the Court, even under this new regime. Instead, Defendants have denied Plaintiffs the opportunity to watch important criminal proceedings that stand to determine the course of their loved ones' lives. As recently as June 18, 2020, the courthouse at 1415 Truxtun Avenue still features the following signs and the March 23rd Order is posted prominently on the courthouse door:



1415 Truxtun Courthouse Notice, June 18, 2020



1415 Truxtun Courthouse Notice, June 18, 2020

1 8. Plaintiffs have tried to access court proceedings in-person on multiple different occasions, as
2 described in more detail below. Court security personnel turned away a mother whose son was being
3 arraigned in connection with a Black Lives Matter protest and denied her the ability to observe her son's
4 arraignment. This hearing was conducted in secret. In another example, court personnel turned away a
5 mother from her son's jury trial, and she had to leave his trial clothing with the deputy at the screening
6 entrance. A mother whose son is set to begin a jury trial was denied access to his court proceeding, with no
7 ability for remote access. This mother pointed out the unfairness of being able to go to malls and bars in
8 Kern County, but not her son's court date. Another mother could not watch her son's preliminary hearing, an
9 evidentiary hearing that the United States Supreme Court has described as in many cases providing "the sole
10 occasion for public observation of the criminal justice system." *Press-Enterprise Co. v. Super. Ct.*, 478 U.S.
11 1, 10–14 (1986). An organizer who heads the ACLU of Southern California's Kern County office's
12 Courtwatch program has been denied access to multiple court hearings, making it impossible for her to carry
13 out the mission of the Courtwatch program.

14 9. Defendants fail to provide any reasonable alternatives to physical access for the public. On
15 April 28, 2020, the Court Defendants announced they had the capacity to conduct some video conference and
16 telephone appearances. At some point thereafter, the Court's website was updated to reflect that there are a
17 limited number of departments through which the public can remotely access proceedings by making a
18 request by 11:00 a.m. or noon the day prior. The Court has 7 courthouses, however, with the two Metro
19 Division courthouses alone containing 31 departments.³ For any proceeding not occurring in one of the few
20 departments with remote access, there remains no way for the public to request and gain remote access to the
21 proceedings.

22 10. In practice, this procedure to request remote access has resulted in the denial of the public's
23 First Amendment right to access even the proceedings in those departments where the Court claims video or
24 audio conference capacity exists. On June 19, an attorney for Plaintiffs attempted to access a remote
25 proceeding occurring on Monday, June 22, 2020 in Department 2, through the Court's GoToMeetings. In
26 reply, Kristin Davis, the Court's Public Affairs Officer, denied access by explaining that the requested

27 ³ See Superior Court of California, County of Kern, "Criminal Department",
28 <https://www.kern.courts.ca.gov/divisions/criminal> (last visited June 24, 2020); Superior Court of California, County of
Kern, "Courthouse Maps", <https://www.kern.courts.ca.gov/general/maps> (last visited June 24, 2020).

1 department “is in jury selection and private questioning and will not be available for live stream until later in
2 the trial.” *Cf. Press-Enterprise Co. v. Super. Ct.*, 464 U.S. 501 (1984) (holding that the guarantees of open
3 criminal proceedings applies to jury selection). As of June 24, 2020, however, information regarding how to
4 remotely access the limited courtrooms utilizing GoToMeetings was taken off the Court’s website.

5 11. Each day that passes, and each hearing that occurs without the opportunity for public access,
6 works an irreparable injury on family and community members and the many other Californians with an
7 interest in the administration of justice. Plaintiffs bring this action to remedy grave violations of their
8 constitutional rights that threaten the core of our democracy.

9 12. There can be no dispute that the public has been stopped from exercising its constitutional
10 right to observe judicial proceedings. Unless this Court immediately intervenes to ensure the constitutional
11 rights of Plaintiffs are protected, many civil and criminal proceedings in Kern County Superior Court will
12 continue to occur in secret.

13 JURISDICTION AND VENUE

14 13. This case presents a federal question within this Court’s jurisdiction under Article III, § 2 of
15 the United States Constitution, and 28 U.S.C. §§ 1331 (federal question), 1343 (civil rights) and §§ 2201(a),
16 2202 (declaratory relief). This action arises under 42 U.S.C. § 1983 and the United States Constitution.

17 14. Venue lies in this judicial district under 28 U.S.C. §§ 1391(b)(1) and (2), because it is the
18 District in which Defendants maintain offices, exercise their authority in their official capacities, and the
19 District in which substantially all of the events giving rise to Plaintiffs’ claims occurred.

20 INTRADISTRICT ASSIGNMENT

21 22 15. Pursuant to Civil L. R. 120(d), this case may properly be assigned to either the Fresno
23 Division or Bakersfield Division of this Court because the action arises in the County of Kern.

24 PARTIES

25 **Plaintiffs**

26 16. The American Civil Liberties Union is a nationwide nonprofit, nonpartisan organization with
27 more than 1.5 million members dedicated to the defense and promotion of the guarantees of individual rights
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1 and liberties embodied in the state and federal constitutions. **Plaintiff American Civil Liberties Union of**
2 **Southern California (“ACLU So Cal”)**, founded in 1923 and based in Los Angeles, California, is one of
3 the largest ACLU affiliates. As a part of ACLU So Cal’s commitment to racial justice and court
4 transparency, the ACLU So Cal launched the Courtwatch Kern program, which monitors courtroom
5 proceedings, spurred by concerns of community members about the judicial treatment of criminal
6 defendants. Through this program, ACLU So Cal employees and community volunteers observe criminal
7 court proceedings in the Kern County Superior Court. Since the coronavirus pandemic hit and the Court shut
8 its doors to the public, ACLU So Cal has been denied access to the proceedings occurring in the Court,
9 making it impossible to complete the mission of the Courtwatch program. ACLU So Cal has been forced to
10 instead divert time and resources to try to access these proceedings.

11 17. **Plaintiff First Amendment Coalition (“FAC”)** is a non-profit corporation dedicated to
12 advancing free speech rights, ensuring open and accountable government, and promoting public participation
13 in civic affairs. As part of its mission, FAC monitors court proceedings throughout California and provides
14 updates on access to these proceedings to its membership and the general public. Since the Court changed its
15 practices in response to the COVID-19 pandemic, FAC (on its own behalf and on behalf of the public) has
16 been denied access to proceedings occurring in the Court, making it more difficult for FAC to achieve its
17 mission and forcing FAC to expend time and resources attempting to gain access to proceedings and
18 advocating for more public access to the Court.

19 18. **Plaintiff Kilah Oats** has been denied access to attend her boyfriend Trevon Foreman’s court
20 proceedings. Trevon is currently incarcerated in the Lerdo Justice Facility in Bakersfield, California on
21 homicide charges. Prior to the coronavirus pandemic, Oats attended every single one of Trevon’s
22 approximately twenty court dates. Since the Court shut its doors to the public, however, Defendants have
23 prevented Oats from attending any of Trevon’s court proceedings. Oats sought and was denied physical
24 access to the Court on June 5, June 15 and June 22, and was told there was no alternative means to access
25 Trevon’s court hearings. According to the Kern County Superior Court website, Trevon’s case is on
26 calendar for a “jury trial”:
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Scheduled Hearings			
Notes: 1. For Metropolitan Division cases: If the Div/Dept is 1-17, A-K or T then the Div/Dept is your courtroom number. If the Div/Dept is other than those listed in the previous sentence see the information desk near the escalator for your courtroom number. 2. If a defendant has more than one hearing scheduled for the same date and time, he or she should appear on the felony case first. 3. Calendars for each court may periodically change as court schedules are modified by court personnel. Persons viewing the court calendar assume full responsibility for appearing at the proper date and time and at the proper court irrespective of the information contained herein.			
Hearing Date/Time	Hearing Location	Div/Dept	Hearing Type
06/05/2020, 08:30AM	Metro Division - 1415 Truxtun	RH	READINESS
06/15/2020, 08:31AM	Metro Division - 1415 Truxtun	01	JURY TRIAL
06/22/2020, 08:31AM	Metro Division - 1415 Truxtun	01	JURY TRIAL
07/07/2020, 08:31AM	Metro Division - 1415 Truxtun	01	JURY TRIAL

Aliases	
Defendant name	FOREMAN, TREVON LEE
Aliases	** None **

Trevon Foreman’s Scheduled Hearings as of June 23, 2020

19. Trevon’s next court date is July 7, 2020, and Oats wants to attend this proceeding in-person, consistent with social distancing. It is extremely important to her to be able to see the jury trial and provide support to her boyfriend.

20. **Plaintiff Lotisha Davidson** has been denied access to her son, Trevon Foreman’s criminal proceedings since the coronavirus pandemic and the Court’s closure to the public. Trevon is currently incarcerated in the Lerdo Justice Facility in Bakersfield, California on murder charges. Davidson sought and was denied physical access to the Court on June 5, June 15 and June 22. She was told there was no alternative means to access Trevon’s court hearings. Her son’s jury trial is next on calendar July 7, 2020, and Davidson wishes to attend this proceeding in-person, consistent with social distancing. Attending court is important to her.

21. **Plaintiff Tanisha Brown** has been denied access to her son, Avion Hunter’s court proceedings. Avion was arrested on June 1, 2020, by police officers while at a Black Lives Matter protest protesting police brutality against Black people in Bakersfield. When Brown tried to attend her son’s arraignment on June 10, 2020, she was told she could not enter the courthouse and there was no way to remotely observe the proceeding. Avion next has court on July 17, 2020, and Brown wishes to attend in person but is very concerned she will not be allowed to enter the courthouse. She wants to be present in court to ensure that her son, a young Black man with no prior criminal history, is treated fairly by the court system.

22. **Plaintiff Tameca Spriggs** has been denied access to her son Armani Bonner’s court proceedings and criminal trial since the Court shut its doors to the public. Armani is currently incarcerated in the Lerdo Justice Facility (“Jail”) in Bakersfield, California on murder charges. He has been in the Jail for more than a year now. Before the coronavirus pandemic, Spriggs attended all of his court dates. According to the Court’s website, Armani’s jury trial began on June 1, 2020, and is ongoing:

Scheduled Hearings			
Notes: 1. For Metropolitan Division cases: If the Div/Dept is 1-17, A-K or T then the Div/Dept is your courtroom number. If the Div/Dept is other than those listed in the previous sentence see the information desk near the escalator for your courtroom number.			
2. If a defendant has more than one hearing scheduled for the same date and time, he or she should appear on the felony case first.			
3. Calendars for each court may periodically change as court schedules are modified by court personnel. Persons viewing the court calendar assume full responsibility for appearing at the proper date and time and at the proper court irrespective of the information contained herein.			
Hearing Date/Time	Hearing Location	Div/Dept	Hearing Type
05/20/2020, 08:30AM	Metro Division - 1415 Truxtun	RH	READINESS
06/01/2020, 08:31AM	Metro Division - 1415 Truxtun	01	READINESS
06/01/2020, 08:31AM	Metro Division - 1415 Truxtun	01	JURY TRIAL
06/03/2020, 08:31AM	Metro Division - 1415 Truxtun	01	JURY TRIAL
06/10/2020, 08:31AM	Metro Division - 1415 Truxtun	01	JURY TRIAL
06/11/2020, 09:30AM	Metro Division - 1415 Truxtun	03	JURY TRIAL
06/15/2020, 10:00AM	Metro Division - 1415 Truxtun	03	JURY TRIAL
06/16/2020, 09:30AM	Metro Division - 1415 Truxtun	03	JURY TRIAL
06/17/2020, 09:00AM	Metro Division - 1415 Truxtun	03	JURY TRIAL
06/18/2020, 09:30AM	Metro Division - 1415 Truxtun	03	JURY TRIAL
06/22/2020, 09:30AM	Metro Division - 1415 Truxtun	03	JURY TRIAL
06/23/2020, 08:30AM	Metro Division - 1415 Truxtun	03	JURY TRIAL
06/23/2020, 09:30AM	Metro Division - 1415 Truxtun	03	FURTHER HEARING ON JURY TRIAL
Aliases			
Defendant name	BONNER, ARMANI MARTRELL		
Aliases	BONNER, ARMANI		
	BONNER, ARMANI M		

Armani Bonner’s Scheduled Hearings as of June 23, 2020

23. On June 1, 2020, Spriggs attempted to attend her son’s court hearing in person but was turned away by Kern County Sheriff’s deputies at the entrance to the courthouse. The deputy told Spriggs that unless she was a lawyer or defendant, she could not access the courthouse and did not provide any other way for her to access Armani’s proceedings. Spriggs is frustrated at the lack of access and wishes to attend her son’s trial to support him.

24. **Plaintiff Janie Randle** has been denied access to multiple of her son’s judicial hearings. He is facing attempted murder charges. Defendants denied Randle access to his preliminary hearing on June 18,

1 2020. She had to sit outside from 8:15 a.m. to 3:30 p.m. in the 98-degree heat waiting for his evidentiary
2 preliminary hearing to end. Her son's next court date is June 29, 2020, and she is very concerned about not
3 being allowed access to the courthouse on this date.

4 25. Plaintiffs want to observe court proceedings but are unable to do so as a result of the March
5 23 Order and Defendants' continued practice of denying members of the public physical access without
6 implementation of any less restrictive alternatives. Plaintiffs seek injunctive and declaratory relief ordering
7 Defendants to allow Plaintiffs limited physical access to the Court, consistent with public health
8 recommendations regarding social distancing, as well as alternative forms of access to court proceedings for
9 those unable to attend in person so the public and press can observe and participate in criminal and civil
10 proceedings and criminal trials. In the absence of such relief, Plaintiffs will continue to be deprived of their
11 constitutional rights and suffer imminent and irreparable harm in that they will forever miss the chance to
12 attend these important proceedings.

13 **Defendants**

14 26. All Defendants are liable for the violations of Plaintiffs' rights set forth above.

15 27. **Defendant Tamarah Harber-Pickens** is the Court Executive Officer of the Kern County
16 Superior Court. Defendant Harber-Pickens is sued in her official capacity. In her role as Court Executive
17 Officer, Defendant Harber-Pickens, acting under the direction of the Presiding Judge, is responsible for
18 "overseeing the management and administration of the nonjudicial operations of the court." Cal. Rules of
19 Ct., R. 10.610(b). All actions taken relevant to this Complaint occurred within this judicial district.
20 Defendant Harber-Pickens' actions, as alleged in this Complaint, are under the color of California law and
21 constitute state action within the meaning of the Fourteenth Amendment to the United States Constitution
22 and 42 U.S.C. § 1983.

23 28. **Defendant Judith K. Dulcich** is the Presiding Judge of the Kern County Superior Court.
24 Defendant Dulcich is sued in her official capacity. In her role as Presiding Judge, Defendant Dulcich sets the
25 policies of the court. Cal. Rules of Ct., R. 10.603. All actions taken relevant to this Complaint occurred
26 within this judicial district. Defendant Dulcich's actions, as alleged in this Complaint, are under the color of
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1 California law and constitute state action within the meaning of the Fourteenth Amendment to the United
2 States Constitution and 42 U.S.C. § 1983.

3 29. **Defendant Donny Youngblood** is the Sheriff of Kern County. Defendant Youngblood is
4 sued in his official capacity. As Sheriff, he is responsible for making the policies of his office. Defendant
5 Youngblood and his office provide security for the Kern County Superior Court. In this capacity he monitors
6 and controls access to court. In this capacity he, his employees and his agents, determine who is permitted to
7 physically enter the Court. Defendant Youngblood's actions, as alleged in this Complaint, are under the
8 color of California law and constitute state action within the meaning of the Fourteenth Amendment to the
9 United States Constitution and 42 U.S.C. § 1983.

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11 30. All actions described in this Complaint as having been taken by "the Kern County Superior
12 Court," or the "Court," security personnel, guards or Sheriffs' deputies who controlled access to the
13 courthouses and denied Plaintiffs entry, were, on information and belief, taken at the direction of the
14 Presiding Judge and/or under the supervision of the Court Executive Officer. All security personnel, guards
15 or Kern County Sheriffs' Deputies acting during actions relevant to this Complaint were acting on behalf of,
16 or as agents for, and under the control of the Presiding Judge and the Court Executive Officer.

17 FACTS

18 **The COVID-19 Pandemic**

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20 31. COVID-19 is a virus that has reached pandemic status. The Centers for Disease Control and
21 Prevention ("CDC") and other public health experts advise that the only effective means of limiting
22 transmission of the virus are practicing "social distancing," with a recommended minimum of six feet
23 between people and reduced frequency of contact, and maintaining rigorous personal hygiene. People in
24 congregate environments face increased risk of contracting COVID-19.

25 32. The threat of the spread of COVID-19 has caused people to severely limit or eliminate non-
26 essential activities and to maintain social distancing of at least six feet from others to the maximum extent
27 possible.

1 33. As Chief Justice Tani G. Cantil-Sakauye explained in her March 23, 2020 order, however,
2 even during the pandemic, California courts are “essential services,” and will remain open.⁴

3 34. On March 19, 2020, Governor Gavin Newsom issued Executive Order N-33-20, ordering all
4 Californians to shelter at their place of residence to preserve public health and safety.⁵ Although counties
5 throughout the State thereafter implemented shelter-in-place orders, many have now been lifted or restricted.

6 35. On May 2, 2020, Kern County lifted its April 2, 2020 public health order that closed many
7 business establishments.⁶ Kern County is now in its phase 3 of reopening, meaning residents of Kern County
8 can go to restaurants, bars, gyms, casinos, museums, bowling alleys and arcades.⁷

9 **Other Courts Provide Alternatives to Physical Access**

10 36. In the midst of this rapidly evolving global pandemic, courts across the state and country have
11 restricted access to courthouses to accommodate public health recommendations regarding social distancing.
12 Most, however, have now implemented simple technological solutions to ensure that their proceedings
13 remain accessible to the public and press. For example, superior courts in Sacramento County, Orange
14 County and Humboldt County are all live streaming their court proceedings.⁸ Alameda County implemented
15 an emergency rule enabling remote access to court proceedings that are lawfully open to the public.⁹ Santa
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19 ⁴ Peter Allen, Newsroom.Courts.Ca.Gov, *Chief Justice Issues Statewide Order Suspending Jury Trials* (March 23,
20 2020), <https://newsroom.courts.ca.gov/news/chief-justice-issues-statewide-order-suspending-jury-trials>.

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

22 ⁶ Marie Edinger, KMPH.com, *Kern County lifts its stay-at-home order, and waits for Governor Newsom to do the same* (May 2, 2020), <https://kmp.com/news/local/kern-county-lifts-its-stay-at-home-order-and-waits-for-governor-newsom-to-do-the-same>.

23 ⁷ Karen Hua, KGET.com, *12 more sectors open in Kern County: gyms, bars, and more* (June 8, 2020),
<https://www.kget.com/health/coronavirus/12-more-sectors-reopen-in-kern-county-gyms-bars-and-more/>.

24 ⁸ Superior Court of California, County of Sacramento, “Access to Court Proceedings by
25 General Public Restricted”, available at <https://www.saccourt.ca.gov/criminal/hearing-livestreams.aspx> (last visited
26 June 23, 2020); The Superior Court of California, County of Orange, *Courtroom Live Streaming*, available at
[https://www.occourts.org/media-relations/LiveStream.html?fbclid=IwAR2TWXezu-tqKp0uE9S
27 xZPs9q_s8a5iX9_LvYxM0G76ZEslekrECCxly9A](https://www.occourts.org/media-relations/LiveStream.html?fbclid=IwAR2TWXezu-tqKp0uE9SxZPs9q_s8a5iX9_LvYxM0G76ZEslekrECCxly9A) (last visited June 23, 2020); Superior Court of California, County
of Humboldt, “Public Hearings”, available at <https://www.humboldt.courts.ca.gov/> (last visited June 23, 2020).

28 ⁹ Local Rules of the Superior Court of California, County of Alameda, Rule 1.7a, “Emergency Rule re public Access to
court proceedings during COVID-19 crisis” (April 23, 2020), available at
<http://www.alameda.courts.ca.gov/Resources/Documents/April%202020%20-%20Emergency%20Rule%201.7a.pdf>.

1 Clara and Contra Costa County Superior Courts have instituted audio livestreaming and/or audio dial-in lines
2 for the public and press to listen to court proceedings.¹⁰ Federal courts in California are also conducting
3 hearings via teleconference or video conference, ensuring public access.¹¹

4 37. And although not a court, the Judicial Council of California has convened several emergency
5 public meetings, and likewise provided a public dial-in line to ensure the public was able to monitor what it
6 discussed.¹²

8 **Defendants’ Court Closure and Denial of Public Access**

9 38. On March 23, 2020, the Court Defendants issued a standing order restricting courthouse entry
10 and limiting the persons required to appear in person “to parties, their attorneys and witnesses subpoenaed to
11 testify. No other persons will be permitted entry without good cause.” This Order has not been rescinded.

12 39. On April 28, 2020, the Court issued a press release indicating it now “has the ability to
13 conduct Felony Arraignments via video for in custody Defendants who are in the custody of the Kern County
14 Sheriff’s Department and the ability to do some felony preliminary hearings via remote video conferencing.”

15 40. On May 22, 2020, the Court announced it would summon jurors to the courthouse for the
16 week of May 26. The Court reiterated that the “Standing Order restricting courthouse entry is still in place.”

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20 ¹⁰ Superior Court of California, County of Santa Clara, *Temporary Courtroom Public Access Telephone Lines to Listen
to Court Proceedings*, http://www.scscourt.org/general_info/contact/pubaccess_phones.shtml
(last visited June 23, 2020); Superior Court of California, County of Contra Costa County, *Criminal Department – Live
Audio Streams*, <https://www.cc-courts.org/criminal/criminal-audioroom.aspx> (last visited June 23, 2020).

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22 ¹¹ See U.S. Dist. Ct., E.D. Cal., “Information Regarding COVID-19 and Court Operations, Restrictions, and Closures”,
<http://www.caed.uscourts.gov/caednew/index.cfm/news/covid-19-courthouse-closure-and-court-hearing-information/>
(last visited June 23, 2020); U.S. Dist. Ct., N.D. Cal., “Notice Regarding Press and Public Access to Court Hearings;
23 Information on Observing Court Proceedings Held by Videoconference” (updated May 21, 2020)
<https://www.cand.uscourts.gov/notices/notice-regarding-press-and-public-access-to-court-hearings-april-3-2020/>.

24
25 ¹² In fact, so many people tried to call into the first March 28, 2020 Judicial Council meeting that the phone line
crashed and needed to be changed. See California Courts, Meeting Information Center, Judicial Council Meeting
Video (Mar. 28, 2020) from 00:10 to 00:30, http://jcc.granicus.com/player/clip/1485?view_id=1; see also
26 Cheryln Miller, LAW.com, *Judiciary Endorses Emergency Court Procedures Amid Virus Pandemic*, (March 28, 2020)
<https://www.law.com/therecorder/2020/03/28/judiciary-endorses-emergency-court-procedures-amid-virus-pandemic/>;
27 see generally, California Courts, Newsroom, “Judicial Council Meeting” (Apr. 6, 2020),
<https://newsroom.courts.ca.gov/calendar/judicial-council-meeting-20200403>; California Courts, News Release,
28 “Judicial Council to Hold Special Meeting Amid COVID-19 Pandemic” (Mar.
26, 2020) <https://newsroom.courts.ca.gov/news/judicial-council-to-hold-special-meeting-amid-covid-19-pandemic>.

1 **Plaintiffs’ Attempts to Resolve the Issue Without Litigation**

2 41. On May 27, 2020, Plaintiff First Amendment Coalition (“FAC”) along with other groups
3 supporting court transparency, sent a letter to the Court Defendants explaining why the March 23 closure
4 order violated the First Amendment and requesting the Court modify its Order to ensure fundamental
5 constitutional rights are not infringed.

6 42. On June 1, 2020, the Court Defendants responded, indicating they were “working under a plan
7 for limited operations” and “will get back to [the parties] regarding any available technology that the Court
8 can put in place or that has already been implemented.” The Court Defendants noted that the Court “has
9 provided information to people who are interested in listening to matters heard in specific courtrooms via
10 GoToMeetings” and could make this information available on its website.

11 43. On June 5, 2020, FAC and the other groups responded, requesting the Court immediately
12 revise its March 23 standing order, ensure meaningful remote access to public civil and criminal proceedings,
13 and make information regarding public access readily available on the Court’s website. The letter
14 “emphasize[d] the need for the Court to take [a] few modest measures *now* to remedy the serious
15 unconstitutional barriers to public access to judicial proceedings established in the Court’s March 23
16 ‘Standing Order’ on ‘Restrictions on Courthouse Entry.’”

17 44. The Court Defendants responded on June 10, 2020, indicating they are allowing members of
18 the public “to attend all scheduled hearings in-person” as authorized by the Presiding Judge or the assigned
19 judicial officer by making a request through an attorney of record in a criminal proceeding. “If members of
20 the public do not have access to the attorney of record, they may make a request at the courthouse security
21 screening area. Security personnel have been instructed to contact the judicial officer to obtain clearance for
22 the individuals to attend the desired proceeding.” The response also provided a list of courtrooms using
23 GoToMeetings “to allow people who are interested to listen to the matters being heard.” This information
24 was thereafter posted to the Court’s website. As of June 24, 2020, however, information regarding access to
25 courtrooms using GoToMeetings no longer appeared on the Court’s website. In fact, Plaintiffs and other
26 members of the public have been denied both physical and remote access, as detailed herein.

1 45. After weeks of advocacy with no access for the public, and in view of the fact that jury trials
2 are currently happening in secret, the irreparable harm here leaves Plaintiffs no choice but to initiate
3 litigation.

4 **Plaintiffs' Attempts to Gain Access to Kern County Superior Court**

5 *First Amendment Coalition (FAC)*
6

7 46. On May 26, 2020, Virginia LaRoe, FAC's programs and outreach director, called three
8 different courthouses that had criminal proceedings listed on public calendars for the following day and
9 asked if she could attend those proceedings. These courthouses were: Bakersfield Felony Criminal Metro
10 Division, Lamont Felony and Misdemeanor Criminal, and Shafter Felony and Misdemeanor Criminal.

11 47. All three of the court staff members answering LaRoe's calls advised there was no remote
12 access and that the courthouses remained closed to the public.

13 48. On May 27, 2020, LaRoe called three additional courthouses that had criminal proceedings
14 listed on public calendars for that day and asked if the public could attend those proceedings. These
15 courthouses were: Ridgecrest Felony and Misdemeanor Criminal, Mojave Felony and Misdemeanor
16 Criminal, and Delano Felony and Misdemeanor Criminal.

17 49. All three of the court staff members answering LaRoe's calls advised there was no remote
18 access and that the courthouses remained closed to the public. On May 27, LaRoe emailed Kristin Davis, the
19 Court's Public Affairs Officer, to further inquire about the availability of remote access to public
20 proceedings. LaRoe advised that "I don't see anything on the website showing how the public can access
21 remote proceedings." Davis responded by saying only that "some telephonic hearings are taking place" and
22 that "[a]nyone can request access." However, LaRoe was unable, despite extensive efforts that day, to find
23 any way to access proceedings in person or remotely.

24 50. On June 2, LaRoe emailed Davis again, this time to request remote access to three specific
25 criminal proceedings — three jury trials scheduled to take place. Davis responded that one of the
26 proceedings for which LaRoe requested remote access had been continued, and that no remote access was
27 available for the other two. Davis shared with LaRoe a portion of an email from Judge Dulcich wherein the
28

1 judge found “good cause to grant [physical, in-person] access” to those two proceedings. But, as set forth
2 below, Defendants and their agents routinely deny physical access to criminal proceedings.

3
4 *American Civil Liberties Union of Southern California (ACLU So Cal)*

5 51. On June 2, 2020, Rosa Lopez, the Policy Advocate and Organizer for ACLU So Cal at the
6 Kern County office tried to get into the Kern County Superior Courthouse Justice Building on 1215 Truxtun
7 Avenue to watch misdemeanor arraignments as part of the ACLU So Cal’s Courtwatch program. She arrived
8 around 9:00 a.m. and waited to get through security.

9 52. When Lopez approached the metal detector at the entrance of the courthouse, a deputy
10 stopped and asked what she was there for and if she had a case. Lopez responded that she did not have a
11 case, but that she was just there to support and observe. The deputy told Lopez the court was only open for
12 people who have matters and it is otherwise closed to the public. Lopez was not told of any other form of
13 access including remote access. Because Lopez was unable to observe the proceedings, she left the
14 courthouse.

15 53. On June 10, 2020, Lopez went to the Kern County Superior Courthouse Justice Building on
16 1215 Truxtun Avenue to observe an arraignment of a person arrested in connection with a Black Lives
17 Matter protest. A sheriff’s deputy asked why she was there, and Lopez responded that she was there to
18 support the criminal defendant in the matter. The deputy indicated no one is allowed in except for the
19 defendant, their attorneys and witnesses. The deputy refused to allow Lopez into the courthouse. Lopez
20 asked if there was any other way to follow the case, and the deputy said the court’s website would update the
21 case information.

22 54. On June 18, 2020, after reading on the Court’s website that there was limited in-person access
23 to the courthouse, Lopez attempted to attend criminal proceedings at the 1215 Truxtun Avenue and 1415
24 Truxtun Avenue courthouses. Lopez first visited the 1215 Truxtun Avenue – Justice Building courthouse.
25 At the metal detector at the front of the courthouse, a security guard asked Lopez what she was there for.
26 Lopez told him she was there to observe misdemeanor arraignments. Lopez was then allowed to enter the
27 courthouse and watch some misdemeanor arraignments in the Division G courtroom. After observing some
28 arraignments, Lopez then attempted to attend criminal proceedings at the 1415 Truxtun Avenue – Metro

1 Division courthouse to the Kern County Superior Courthouse located at 1415 Truxtun Avenue to view felony
2 arraignments. Lopez arrived at approximately 10:00 a.m. Lopez saw notices outside of the courthouse
3 entrance explaining that the courthouse was closed to public access. As she approached the courthouse
4 entrance, Lopez saw a notice stating “[i]f you are not an attorney, party, defendant or subpoenaed witness
5 you should not enter the Courthouse and you should return home.” There were additional notices outside of
6 the courthouse that appeared to be copies of the Court’s March 23 standing order explaining the court was
7 closed to the public.

8 55. Upon making her way to the entrance of the courthouse, a deputy asked Lopez why she was
9 there. Lopez responded that she was there to observe court proceedings. The deputy asked Lopez what
10 organization she was a part of, and Lopez responded that she was there with a Courtwatch program and
11 explained that her program watches court proceedings. The deputy then told Lopez that she could not enter
12 the courthouse because the courthouse was closed to the public. Lopez asked the deputy if there was an
13 alternate way to observe court proceedings. He told Lopez that there was no alternative way, cameras were
14 not allowed in the courthouse either, and added that the only people who could enter the courthouse were
15 parties and attorneys.

16 56. The deputy told Lopez that she could ask an attorney for permission to enter the courthouse.
17 Lopez responded that she had seen a recent posting indicating limited in-person access would be provided.
18 The deputy responded that, in order to access the courtroom, she had to ask a judge to let her in. He did not
19 offer to ask a judicial officer himself nor direct Lopez to a process by which she could ask an attorney or
20 judicial officer to let her into the courtroom. Lopez asked the deputy whether there was any way she could
21 enter the courthouse that day. The deputy told Lopez there was not, so she left.

22 57. On June 22, 2020, Lopez again tried to watch court proceedings at the 1215 Truxtun Avenue
23 and 1415 Truxtun Avenue courthouses in Kern County but was denied access. At approximately 9:00 a.m.,
24 Lopez entered the metal detector line at the entrance to the 1215 Truxton Avenue Metro Division
25 Courthouse. A security guard asked Lopez what case she was there for. Lopez told the security guard that
26 she was there to sit in the misdemeanor courtroom. The security guard asked Lopez if she was the defendant
27 in a case. Lopez responded that she was not the defendant or personally involved in any case. This time, the
28 security guard said the courthouse was only open to people with cases and attorneys and told Lopez she

1 would have to wait outside. Lopez asked the security guard if there was any alternative way to watch the
2 misdemeanor courtroom. The guard indicated there was not. Lopez left the courthouse.

3 58. Lopez then attempted to access the courthouse at 1415 Truxtun Avenue but was similarly
4 turned away. As Lopez entered the courthouse, a Kern County Sheriff's Deputy asked what she was there
5 for. Lopez indicated she was there to observe the felony arraignments. The deputy replied that the
6 courthouse was closed to the public and only plaintiffs and attorneys were allowed into the courthouse.
7 Lopez asked if she knew when the courthouse would reopen to the public. The deputy responded that she
8 did not know. Because Lopez was unable to gain access to the courthouse, she left.

9 59. The Courtwatch program is an important way for Lopez and others to build trust in the
10 community. Lopez is very concerned about trials now happening without any members of the public there to
11 watch. Lopez wishes to resume her Courtwatch work as soon as she is able to continue this important work.

12 *Kilah Oats*

13
14 60. On June 3, 2020, Oats called the courthouse to ask whether she would be able to attend her
15 boyfriend Trevon Foreman's court hearings due to the coronavirus. A woman who identified herself as a
16 staffer at the Kern County Superior Court said it depends on the judge and could not tell Oats whether or not
17 she could attend Trevon's court hearing. The staffer told Oats to just go to the courthouse and try to get in on
18 the day of Trevon's court hearing. The staffer also indicated that there was no audio or video remote access
19 to court proceedings.

20 61. On June 5, 2020, Oats drove to the courthouse with her father to watch Trevon's hearing and
21 give him support. A security guard asked Oats whether they had court. Oats told him that they were there
22 for Trevon Foreman. The guard asked whether they were witnesses. Oats told him that they were not and
23 that they were there to watch in the audience. The guard told Oats that the courthouse was closed to the
24 public and that they could only enter if they were attorneys, judges, witnesses, or parties.

25 62. Oats asked whether there was an alternative way they could attend Trevon's court hearing.
26 The guard responded that there was no alternative way to attend his hearing. He also did not know when the
27 courthouse would reopen. Oats and her father left the courthouse, unable to attend Trevon's hearing.

28

1 63. On June 15, 2020, Oats and her father again tried to attend Trevon’s hearing. As they
2 approached the courthouse, Oats saw a sign outside the courthouse that said members of the public could not
3 enter the courthouse. Oats and her father then asked a sheriff’s deputy when the courthouse would reopen.
4 The deputy did not know when the courthouse would reopen to the public and told Oats and her father that
5 they could not enter the courthouse. Oats asked the deputy whether there was an alternative method, such as
6 an audio or video feed, to attend Trevon’s court hearings. The deputy said there was not.

7 64. Oats next attempted to attend Trevon’s criminal proceeding on June 22. She arrived at the
8 courthouse shortly before 8:30 a.m. and saw the same signs prohibiting public access to the courthouse.
9 While in line at the metal detector, a sheriff’s deputy asked Oats why she was at the courthouse. Oats
10 responded that she was trying to attend her boyfriend’s trial. The deputy replied that the public was not
11 allowed into the courthouse. Oats told the deputy that she spoke to a court clerk on June 3, 2020, who said
12 she could ask a Sheriff’s deputy at the courthouse entrance to talk to the judge and request that she be
13 allowed access to the courthouse. The Sheriff’s deputy responded that this was incorrect and that the judges
14 could not grant Oats any access to the courthouse. Oats then turned around and left.

15 65. Oats wants to attend Trevon’s court dates to provide him with moral support and to make him
16 feel more comfortable. If she’s not there, she’s worried he’ll feel alone. Oats also wants to know what is
17 happening in his case and make sure that he is not given a very long sentence without anyone there to hold
18 the court accountable for its decisions. Oats has seen people she knows be given very long sentences on little
19 evidence by prosecutors and judges in Kern County. Most of the police officers in Trevon’s case appear
20 dishonest to Oats. She believes they just want to convict Trevon and be done with it, and don’t want anyone
21 there to watch them.

22 66. Trevon’s next court date is on July 7, 2020. On this day, Oats wishes to attend in person, as
23 listening to an audio feed is not sufficient for a trial, which is complicated with people talking, gesturing,
24 showing exhibits and speaking to the jury. Oats worries that it will be very difficult to follow along with just
25 an audio feed.

26 *Lotisha Davidson*
27
28

1 67. On June 5, 2020, Davidson drove to the courthouse to attend her son Trevon Foreman's
2 criminal hearing. At the door to the courthouse by the metal detector, a sheriff's deputy asked Davidson
3 whether she was facing criminal charges herself. Davidson told him that she was trying to attend her son's
4 criminal hearing. The deputy told Davidson that only judges, attorneys, defendants, and bailiffs were
5 allowed to attend the hearing, and that she could not enter the courthouse. Davidson then left the courthouse,
6 unable to attend her son's court hearing that day.

7 68. Davidson next attempted to access her son's criminal hearing on June 15, 2020, when she
8 again drove to the courthouse. The deputy again told Davidson that she could not enter the courthouse if she
9 was not a defendant in a criminal case, an attorney, a bailiff, or a judge. The deputy did not provide
10 Davidson with any way she could gain entrance to the courthouse or explain any way she could follow along
11 with her son's case. Again, Davidson left and was unable to attend her son's hearing.

12 69. Davidson again tried to attend her son's June 22 criminal hearing. A deputy asked if she was
13 there for her own case. Davidson responded that she was there to support her son. Davidson was thereafter
14 denied access, unable to attend Trevon's hearing.

15 70. Davidson does not know if there is any way to attend her son's hearings remotely, such as
16 through a video or audio link. The Court has been very uncommunicative during the coronavirus, and it is
17 difficult for Davidson to even find information about when her son's court dates are, let alone if she can
18 attend or not.

19 71. Davidson's son is currently facing serious charges without any support from his family. It is
20 very important to Davidson that she be able to attend her son's court hearings and provide him with support.
21 Davidson also wants to know what is happening in his case so that she can make sure that what the District
22 Attorney claims he has done is not false. Davidson is concerned because, in her view, a lot of police officers
23 are dishonest and have a tendency to mistreat and discriminate against Black men. Davidson does not want
24 the police, the judge, and the prosecutor to think that they can easily portray her son as a monster because no
25 one is there to watch them. Davidson feels that a lot of police officers in Kern County abuse their authority
26 and act against Black people rather than helping people. If she is not there to watch her son's trial, Davidson
27 is afraid that he'll be victimized by the system.
28

1 *Tanisha Brown*

2 72. Tanisha Brown's son, Avion Hunter, was arrested on June 1, 2020 by police officers while
3 protesting police brutality against Black people in Bakersfield, California. When the police arrested Avion,
4 they beat him so badly that he was hospitalized. He was incarcerated in the Bakersfield Main Jail for ten
5 days. Brown was not allowed to visit him once during the whole time he was in the Jail.

6 73. On June 10, 2020, Brown tried to attend her son's arraignment to support him and stand
7 witness against police brutality against Black people. As Brown approached the courthouse that afternoon, a
8 deputy asked Brown why she was there. Brown told him she wanted to go to the courtroom to support her
9 son at his first court appearance after his arrest at a Black Lives Matter protest. The deputy told Brown that
10 she couldn't go in due to the coronavirus. The deputy did not tell Brown whether there was any remote way
11 to attend her son's court date, such as through a Zoom feed, or help her attend his arraignment in any way.
12 Brown was not allowed into the courthouse. The deputy also told Brown that this was only her son's first
13 court date and that her son would have other court dates after this.

14 74. After Brown was turned away, she noticed that there were approximately eight other people
15 near the entrance to support her son. It is Brown's understanding that they also were turned away from the
16 courthouse entrance.

17 75. Brown wants to be present for court proceedings so she can ensure police officers and
18 prosecutors can be held accountable for misconduct they commit. In Brown's opinion, her son has been
19 charged with an excessive number of charges to justify and cover up for the police's excessive force.

20 76. Brown's son next has court on July 17, 2020. She is worried that Defendants will bar her
21 from attending. Brown hopes to attend his court date with other supporters and stand up to police brutality.
22 During this period of intense police violence and misconduct, Brown wants to be in courtroom to make sure
23 prosecutors do not pressure her son, a young Black man who has never been in trouble, to accept a plea deal
24 that he should not take. She wants to ensure that that the court does not take the opportunity of an empty
25 courtroom to throw excessive charges at him.

26 *Tameca Spriggs*

1 77. Spriggs tried to attend her son's (Armani Bonner) court hearing on June 1, 2020, but was
2 turned away by Kern County Sheriff's deputies at the entrance to the courthouse. Upon walking up to the
3 courthouse entrance with the mother of her son's children, a friend of her son, and the friend's mother, a
4 Kern County Sheriff's deputy told them they could not enter the courthouse if they were not a defendant in a
5 case. The deputy told them that only lawyers and defendants could enter the courthouse and did not tell them
6 there was another way to access the courthouse. Spriggs told the deputy that she had clothing for her son to
7 wear at court, to which the deputy responded that he would give this clothing to her son's attorney. Spriggs
8 then left the courthouse.

9 78. Later that evening, her son called and told her that the deputy had given him the wrong set of
10 clothes and that the clothes did not fit him. Spriggs had to then go out and purchase a new set of clothes for
11 her son to wear to court, which the mother of her son's children then brought to Bonner.

12 79. As far as Spriggs is aware, there is no way for her to attend her son's court dates remotely.
13 Her son has told her multiple times that the court is still closed to the public and that she cannot attend his
14 court hearings. Spriggs is appalled and frustrated that her son is being prosecuted in a courtroom that is
15 closed to the public and her son's support network.

16 80. It is very important for Spriggs to attend her son's court dates. She previously lived in Las
17 Vegas but bought an apartment in Kern County in March 2019 for the sole purpose of supporting her son
18 through his trial, which she has been prohibited from doing. Spriggs wants to attend her son's trial to help
19 understand what the prosecutor is saying and to make sure her son doesn't take a deal that he should not take.

20 81. Spriggs is concerned about her son's health while being incarcerated. Bonner's older brother
21 died due to medical negligence in the Twin Towers Jail in Los Angeles County, and Spriggs does not want
22 her son to experience the same fate.

23 *Janie Randle*

24
25 82. Janie Randle is a mother whose son, James Randle, is currently facing attempted murder
26 charges in Kern County, California. Before the coronavirus epidemic, she attended every single court date
27 for her son. Since the Kern County Superior Court closed to the public due to the coronavirus pandemic,
28 Defendants have shut her out of her son's court hearings on May 18, 2020, June 3, 2020, and June 18, 2020.

1 83. After previously been denied entry twice, on June 18, 2020, at approximately 8:15 AM,
2 Randle and her son arrived at the Kern County Superior Court at 1215 Truxton Avenue for his preliminary
3 hearing. She was determined to support her son this time. She went to the front of the courthouse with her
4 son. The Kern County Sheriff's Deputy allowed her son to enter the courthouse but refused to grant her
5 entry. She had to wait outside the courthouse until approximately 3:00 PM when her son's preliminary
6 hearing was over, in the ninety-eight-degree heat.

7 84. While she waited outside the courthouse, she saw Kern County Sheriff's deputies also deny
8 multiple other people access to the courthouse. Some of these people had small children who were
9 accompanying them to court. She watched as the deputies turned them away. She knows of no way to
10 remotely watch her son's court proceedings, such as through a Zoom feed or audio line.

11 85. She is concerned that without any public accountability for the judge and the prosecutor,
12 among others, in the courtroom that her son, a Black man, will be wrongfully convicted like so many other
13 Black men. She feels strongly that it is wrong that as the whole country is rallying against police brutality of
14 Black people that Kern County courts are prosecuting Black men in closed hearings with no accountability to
15 the public.

16 86. As of the date of filing this Complaint, Plaintiffs have been unable to attend court proceedings
17 in person and have not been told of any way to remotely access such proceedings.

18 **FIRST CLAIM FOR RELIEF**

19 **Violation of the First Amendment, as applied to the states under the Fourteenth Amendment, under**
20 **42 U.S.C. § 1983**

21 **(All Plaintiffs Against the Court Defendants: Defendants Harber-Pickens and Dulcich)**

22 87. Plaintiffs re-allege and incorporate by reference all the allegations set forth in the paragraphs
23 above.

24 88. The U.S. Constitution guarantees to the public a right of access to court proceedings. U.S.
25 Const. Amend. I; *Press-Enterprise Co. v. Super. Ct.*, 464 U.S. 501, 508–09 (1984) (“*Press Enterprise I*”);
26 *Press-Enterprise Co. v. Super. Ct.*, 478 U.S. 1, 9 (1986) (“*Press-Enterprise II*”).

27 89. These constitutional access rights apply to all stages of criminal proceedings including
28 preliminary hearings, *see* Penal Code § 868 (preliminary hearings are open and public); *see also* *Press-*

1 *Enterprise II*, 478 U.S. at 13 (“We therefore conclude that the qualified First Amendment right of access to
2 criminal proceedings applies to preliminary hearings as they are conducted in California.”), as well as
3 criminal trials, beginning with the examination of jurors, *see Press-Enterprise I*, 464 U.S. at 505. The right
4 to attend criminal trials is “implicit in the guarantees of the First Amendment.” *Richmond Newspapers Inc.*,
5 *v. Virginia*, 448 U.S. 555, 556–57 (1980).

6 90. These access rights extend to civil proceedings as well. *NBC Subsidiary (KNBC-TV), Inc. v.*
7 *Super. Court*, 20 Cal. 4th 1178, 1208–09 (1999) (“No case...of which we are aware suggests, much less
8 holds, that the First Amendment right of access as articulated by the high court does not apply, as a general
9 matter, to ordinary civil proceedings.”).

10 91. Openness in judicial proceedings “enhances both the basic fairness of the [proceeding] and the
11 appearance of fairness so essential to public confidence in the system,” *Press-Enterprise I*, 464 U.S. at 508,
12 and forms “an indispensable predicate to free expression about the workings of government,” *Courthouse*
13 *News Serv. v. Planet*, 750 F.3d 776, 785 (9th Cir. 2014).

14 92. Although courts may close a proceeding if the court makes specific findings on the record that
15 “closure is essential to preserve higher values[,]” the court must also find that such an action “is narrowly
16 tailored to serve that interest” and “there is no less restrictive means of achieving the overriding interest.”
17 *NBC Subsidiary*, 20 Cal.4th at 1204, 1217–18; *Press-Enterprise II*, 478 U.S. at 9 (internal citations omitted);
18 *see also In re Copley Press Inc.*, 518 F.3d 1022, 1028 (2008) (requiring that there be “no alternatives to
19 closure that would adequately protect the compelling interest” (internal citations omitted)).

20 93. As the U.S. Supreme Court has recognized, “[t]he loss of First Amendment freedoms, for
21 even minimal periods of time, unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347,
22 373 (1976).

23 94. Defendants Harber-Pickens and Dulcich are prohibiting Plaintiffs from accessing public
24 judicial proceedings in violation of the First Amendment. The March 23 standing order prohibits the public
25 from entering the courthouse. The Court Defendants have indicated the public and press may request access
26 to attend court proceedings. However, it is not the burden of the public or the press to show “good cause” for
27 exercising their constitutional rights. In any event, the purported process for requesting access does not
28

1 operate as the Court Defendants claim: Plaintiffs have been told by sheriff's deputies, security guards and
2 court personnel there is no way to physically attend criminal and civil proceedings and criminal trials and/or
3 remotely observe court proceedings.

4 95. By refusing access to the Plaintiffs and the public and failing to provide for any limited
5 attendance or mechanism for remote observation of Kern County Superior Court proceedings that would
6 otherwise occur in open court, the Court Defendants' March 23 standing order on its face and as applied
7 violates the Plaintiffs' and the public's right to access, as guaranteed by the First Amendment and the
8 Fourteenth Amendment to the U.S. Constitution.
9

10 96. The Court Defendants have also enacted policies and practices that are denying Plaintiffs
11 access in violation of the First Amendment.

12 97. There exist less restrictive, reasonable alternatives to the Court Defendants' March 23
13 standing order and policies and practices resulting in lack of access to judicial proceedings. As many courts
14 in other California counties have done, it is reasonable and feasible to provide alternative forms of public
15 access to court proceedings. It is also feasible to provide limited public access while maintaining social
16 distancing and public health requirements while ensuring remote access for those who are medically
17 vulnerable or otherwise unable to attend.
18

19 98. In depriving Plaintiffs of these rights, the Court Defendants acted under color of state law.
20 This deprivation under color of state law is actionable under and may be redressed by 42 U.S.C. § 1983.
21 This deprivation caused harm to Plaintiffs.
22

23 99. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm to their
24 constitutional rights, including the inability to attend judicial proceedings, unless the Court Defendants are
25 enjoined from enforcing the March 23 standing order and enjoined from continuing to unreasonably deny
26 access to judicial proceedings occurring in Kern County Superior Court.

27 100. An actual controversy exists between Plaintiffs and the Court Defendants as to whether the
28 March 23rd Order is constitutional.

SECOND CLAIM FOR RELIEF

**Violation of the First Amendment, as applied to the states under the Fourteenth Amendment, under
42 U.S.C. § 1983**

(All Plaintiffs Against Defendant Youngblood)

101. Plaintiffs re-allege and incorporate by reference all the allegations set forth in the paragraphs above.

102. Defendant Youngblood, his employees and agents, are violating the First Amendment by continuing to enforce the Court’s unconstitutional March 23 standing order and by enforcing policies and practices that deny access to the Plaintiffs and the public to presumptively open judicial proceedings.

103. In depriving Plaintiffs of these rights, Defendant Youngblood acted under color of state law. This deprivation under color of state law is actionable under and may be redressed by 42 U.S.C. § 1983. This deprivation caused harm to Plaintiffs, including the inability to watch judicial proceedings.

104. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm to their constitutional rights unless Defendant Youngblood is enjoined from enforcing his policies and practices that result in the denial of public access to judicial proceedings occurring in Kern County Superior Court.

105. An actual controversy exists between Plaintiffs and Defendant Youngblood as to whether his policies and practices resulting in a denial of Plaintiffs’ right to access court proceedings rights is constitutional.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs respectfully ask this Court to grant the following relief:

1. For a declaratory judgment pursuant to 28 U.S.C. § 2201 declaring the Court Defendants’ March 23 standing order resulting in the lack of public access to criminal and civil proceedings and criminal trials as unconstitutional under the First Amendment to the United States Constitution for the reason that it constitutes an effective denial of access to court proceedings.

- 1 2. For a declaratory judgment pursuant to 28 U.S.C. § 2201 declaring the Defendants’ practices
2 and policies that preclude the public from accessing criminal and civil proceedings and
3 criminal trials as unconstitutional under the First Amendment to the United States
4 Constitution for the reason that they constitute an effective denial of access to court
5 proceedings.
- 6 3. For preliminary and permanent injunctions against Defendants, including their agents,
7 assistants, successors, employees, and all persons acting in concert or cooperation with them,
8 or at their direction or under their control, prohibiting them preliminarily, during the pendency
9 of this action, and permanently thereafter, from continuing to enforce the March 23 standing
10 order resulting in a lack of public access to court proceedings, including trials, without
11 providing in-person access consistent with social distancing and public health requirements
12 and a viable alternative mechanism for the public to remotely access proceedings that would
13 otherwise be public under the law.
- 14 4. For preliminary and permanent injunctions against Defendants, including their agents,
15 assistants, successors, employees, and all persons acting in concert or cooperation with them,
16 or at their direction or under their control, prohibiting them preliminarily, during the pendency
17 of this action, and permanently thereafter, from prohibiting the public and the press from
18 physically entering the courthouse, without providing limited public access consistent with
19 social distancing and public health requirements and a viable alternative mechanism for the
20 public to remotely access proceedings that would otherwise be public under the law.
- 21 5. For an award of costs and reasonable attorneys’ fees pursuant to 42 U.S.C. § 1988; and
22 6. Grant any and all other such relief that this Court deems just and equitable.
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1 Dated: June 26, 2020

Respectfully submitted,

2 s/ Kathleen Guneratne

3 Kathleen Guneratne

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5 ACLU FOUNDATION OF NORTHERN
CALIFORNIA

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7 ACLU FOUNDATION OF SOUTHERN
CALIFORNIA

8 *Attorneys for Plaintiffs American Civil Liberties*
9 *Union of Southern California, Kilah Oats, Lotisha*
10 *Davidson, Tanisha Brown, Tameca Spriggs and*
11 *Janie Randle*

12 s/ David Snyder (as authorized on June 26, 2020)

13 David Snyder

14 FIRST AMENDMENT COALITION

15 *Attorneys for Plaintiff First Amendment Coalition*