

Office of the State Public Defender

1111 Broadway, 10th Floor
Oakland, California 94607-4139
Telephone: (510) 267-3300
Fax: (510) 452-8712



December 10, 2020

Governor Gavin Newsom
1303 10th Street, Suite 1173
Sacramento, CA 95814
Via email

Re: URGENT: The Involuntary Transfer of Men from Death Row to Other Prisons During the COVID-19 Pandemic

Dear Governor Newsom:

Collectively we represent or assist a large portion of the condemned inmates housed at San Quentin State Prison. We understand that Warden Ron Broomfield intends to transfer a number of our clients as part of a plan to involuntarily transfer nearly 300 men from San Quentin to other California prisons. We are writing to implore you to not allow transfer of any of our clients without their consent and without providing us an opportunity to discuss this move with our clients.

The purpose of the transfer plan is ostensibly to prevent vulnerable incarcerated persons from contracting COVID-19. According to the California Department of Corrections and Rehabilitation's (CDCR) Patient Testing Tracker, however, San Quentin currently has the second least amount of COVID-19 infections of all CDCR institutions. Moving these persons now, during the height of a statewide surge of COVID-19 infections—both in CDCR and the free world—from a place with a very low infection rate appears ill-advised. In fact, this decision is reminiscent of CDCR's prior decision to transfer medically vulnerable inmates from Chino to San Quentin resulting in an uncontrolled COVID-19 outbreak at San Quentin with 75% of the population infected, 28 dead from COVID-19, resulting in the court's holding in *In re Ivan Von Staich* (2020) 56 Cal.App.5th 53, 79-80, that CDCR was deliberately indifferent to the medical needs of the petitioner. This proposed transfer also runs counter to the current state stay-at-home orders and cautions against travel.

In addition to the risk of transferring our clients from a low-infection facility, and the disruption to medically and/or psychiatrically vulnerable persons, transferring our clients will negatively impact our ability to meet our constitutional duty of effective representation. Condemned persons are entitled to the effective representation of counsel from sentencing to clemency. To fulfill our duties to our clients, we must have access to

them. Legal visiting is currently impossible making consultation with our clients exceptionally difficult.

Dispersing our clients throughout the state will hamper our ability to work with our clients once pandemic-related restrictions on in-person legal visits are lifted. Further, the costs to court-appointed death row client attorneys adds additional taxpayer money for the time and travel, sometimes overnight travel, to visit death row inmates flung to distant and separate prisons around the State. Combining visits to multiple inmates in just San Quentin is a cost-saver, being closer to post-conviction counsel generally in the San Francisco metropolitan area, or within easy access to lawyers from other parts of the state flying into the Bay area to visit San Quentin clients.

We ask you to order CDCR Secretary Kathleen Allison and San Quentin Warden Ron Broomfield to immediately rescind any order to transfer any of our clients without their consent. We also ask you to order CDCR to provide the names of any of our clients intended to be transferred so that we can take any and all appropriate actions to address this situation.

Sincerely,

/s/

Joseph Schlesinger
Executive Director
California Appellate Project

/s/

Michael J. Hersek
Interim Executive Director
Habeas Corpus Resource Center

/s/

Mary K. McComb
State Public Defender
Office of the State Public Defender

/s/

Heather E. Williams
Federal Public Defender
Eastern District of California

/s/

Margo Roconni
Chief, Capital Habeas Unit
Office of the Federal Public Defender
Central District of California

cc: Catherine E. Lhamon, Legal Affairs Secretary
Kathleen Allison, CDCR Secretary
Warden Ron Broomfield, CSP- San Quentin
Kelli Evans, Chief Deputy Legal Affairs Secretary
Eliza Hersh, Deputy Legal Affairs Secretary