



Making Individual Requests for Release from CDCR Due to COVID-19

Taeva Shefler, Esq. *Prisoner Advocacy Network*

- Pose questions or suggestions for future trainings to pan@nlgsf.org
- Materials regularly updated here:
<https://www.prisoneradvocacynetwork.org/covid-19.html>
- Please donate here <https://www.prisoneradvocacynetwork.org/donate.html>

Last updated: April 18, 2020

Routes for Requesting Release

One needs to immediately identify oneself as someone who wants to be released by one of the four mechanisms listed here:

- Governor via commutation
- District Attorney and CDCR for criminal case resentencing under 1170(d)(1)
 - These entities can make referrals to the court of conviction for resentencing
 - *CDCR indicated it is not making new referrals, but you can ask anyway
- County courts via
 - habeas/mandate petition
- Federal courts via
 - 42 USC 1983 (existing Plata class action, or your own case for injunction or damages)
 - Habeas petition

Creating A Paper Trail Is Crucial

- If one could qualify for release because of COVID-19, or if CDCR's response to COVID-19 caused a problem that needs to be addressed, one needs to immediately build a record to file their own case for release or for an injunction or money damages, including exhibits they can attach to prove their case.

Creating A Paper Trail Is Crucial

- PAN's website has guides for this.
<https://www.prisoneradvocacynetwork.org/covid-19.html>
 - Declaration and exhibit guide.
 - Administrative appeals guide.
- Soon PAN will have a self-help litigation guide too.
- Prison Law Office also has guides on exhausting remedies, Covid, and other topics

Incarcerated People Directly Asking Courts For Release Right Now May Be Your Best Bet

- Initially Plata attorneys asked for releases. On April 14th Plata attorneys indicated they are no longer seeking release.
- From March 11, 2020-April 17, 2020 CDCR released 3,973 people. CDCR indicated it is done with all the discretionary early releases it has planned, and will not be releasing more people, even as their 60 days from release date gets closer.
- On April 17th in the Plata case, Judge Tigar ruled against Palata class and indicated he found CDCR's initial response to COVID-19 to be constitutional, and does not require release.

Incarcerated People Directly Asking Courts For Release Right Now May Be Your Best Bet

- It is not looking like a mass COVID-19 release from CDCR will happen soon.
- If you want to ask a court for release you will need to start the emergency 602/602 HC exhaustion paperwork to build the paper trail to be eligible request your own release through the courts.
- If you file a commutation petition, having paperwork to support your release is important too.

Seeking Commutation of Sentence from Governor

INVESTIGATION & REVIEW

The Board of Parole Hearings, a division of the California Department of Corrections and Rehabilitation, investigates commutation applications.

HOW TO APPLY FOR A COMMUTATION OF SENTENCE

To apply for a commutation for the first time or for the first time in three years:

- Submit a completed [Commutation Application](#) (2 pages) to the Governor's Office. You may, but are not required to, submit additional information or copies of relevant documents in support of your application, such as letters of support or certificates of achievement. Please do not send original documents because application materials cannot be returned; and
- Submit a completed [Notice of Intent to Apply for Clemency](#) (1 page) to the district attorney in the county of the conviction for your commitment offense; and
- Submit an [authorization for release of medical information](#) ([Spanish Version](#)) if you are applying for a commutation because you are suffering from a terminal illness or have a severe and chronic disability that would be substantially mitigated by release from prison or reduction of sentence.

Seeking Commutation of Sentence from Governor

REAPPLICATIONS FOR CLEMENCY

If you submitted a commutation application to a prior governor and did not receive notice of a commutation grant, your application is deemed closed. If you submitted a commutation application in the last three years and would like Governor Newsom to re-open your prior application and consider it, you may submit a Reapplication for Clemency. To re-apply for a commutation:

- Submit a completed [Reapplication for Clemency Form](#) (1 page). Do not re-submit your original application or other documents unless requested to do so by the Governor's Office.
- Submit an [authorization for release of medical information](#) ([Spanish Version](#)) if you are applying for a commutation because you are suffering from a terminal illness or have a severe and chronic disability that would be substantially mitigated by release from prison or reduction of sentence.

Other Resources on Commutation

- California Coalition for Women Prisoners has an excellent guide: [CCWP's Commutation Guide](#)
- Advancing Justice and Asian Law Caucus also put together the following webinar on commutation:
 - [Webinar on commutation](#)

Who Can Do What to Support?

Incarcerated Person Can

- Compile a packet of records (exhibits) showing deadly prison conditions, medical need for release, and low risk if released.
- Sign and submit forms.

Outside Person Can

- Help with obtaining records to attach.
- Compile a packet of records (exhibits) showing deadly prison conditions, medical need for release, and low risk if released.
- Help with mailing and sending certified mail.
- Help with making photocopies.

Recall and Resentencing: 1170(d)(1)

- PC 1170(d)(1) criminal resentencing in county of conviction
 - Within the first 120 days following the sentencing order initiated by convicted person or attorney
 - After 120 days, must be referred by:
 - by the DA (under AB 2942)
 - by CDCR (AB 1812). Though CDCR indicated it isn't initiating new referrals right now.
 - There are restrictions on who is eligible

Who Can Do What to Support?

Incarcerated Person Can

- Compile a packet of records (exhibits) showing medical need and “exceptional conduct”
- Contact The Public Defender’s office and/or the private attorney that handled your criminal case to request assistance asking for resentencing under PC 1170(d).

Outside Person Can

- Compile a packet of records (exhibits) showing medical need and “exceptional conduct”
- Contact The Public Defender’s office and/or the private attorney that handled your criminal case to request assistance asking for resentencing under PC 1170(d).

Guides

- [CDCR Recommendations for Resentencing \(PC 1170\(d\)\(1\)\)](#),
October 2019 new Information on CDCR recommendations for resentencing, including a manual prepared by the Ella Baker Center for Human Rights — *Back to Court: a Resentencing Guide for the Fair and Just Sentencing Reform Act (SB 1393) and PC 1170(d)(1)*

Differences Between State and Federal Court

State Court

- Trial court is county level superior court
- Appellate courts
- You can file a habeas/mandate petition in state court in the county where the prison is (PAN website has addresses)
- County of conviction hears criminal case resentencing under 1170(d)(1)

Federal Court

- Trial court is district court
- You can file a habeas/1983 in in the district where the prison is (PAN website has addresses)
- Federal habeas is typically considered a place to turn only *after* you have gone through state court

Links to Court Contact Information and Court Forms

PAN's website has a [list](#) of what prisons correspond to what courts and contact information and forms for that court.

Avenal State Prison (ASP)	Kings County Superior Court	5th District Court of Appeal	Eastern District of California
California City Correctional Facility (CAC)	Kern County Superior Court	5th District Court of Appeal	Eastern District of California
California Correctional Center (CCC)	Lassen County Superior Court	3rd District Court of Appeal	Eastern District of California
California Correctional Institution (CCI)	Kern County Superior Court	5th District Court of Appeal	Eastern District of California
California Health Care Facility, Stockton (CHCF)	San Joaquin County Superior Court	3rd District Court of Appeal	Eastern District of California
California Institution for Men (CIM)	San Bernardino County Superior Court	4th District Court of Appeal	Central District of California
California Institution for Women (CIW)	Riverside or San Bernadino	4th District Court of Appeal	Central District of California
California Men's Colony (CMC)	San Luis Obispo County Superior Court	2nd District Court of Appeal	Central District of California
California Medical Facility (CMF)	Solano County Superior Court	5th District Court of Appeal	Eastern District of California
California Rehabilitation Center (CRC)	Riverside County Superior Court	4th District Court of Appeal	Central District of California
California State Prison, Corcoran (CSP-COR)	Kings or Tulare	5th District Court of Appeal	Eastern District of California
California State Prison, Los Angeles County (LAC)	Los Angeles County Superior Court	2nd District Court of Appeal	Central District of California
California State Prison, Sacramento (SAC)	Sacramento County Superior Court	3rd District Court of Appeal	Eastern District of California
California State Prison Solano (SOL)	Solano County Superior Court	5th District Court of Appeal	Eastern District of California
Calipatria State Prison (CAL)	Imperial County Superior Court	4th District Court of Appeal	Central District of California
Centinela State Prison (CEN)	Imperial County Superior Court	4th District Court of Appeal	Central District of California
Central California Women's Facility (CCWF)	Madera or Merced	5th District Court of Appeal	Eastern District of California
Chuckawalla Valley State Prison (CVSP)	Riverside County Superior Court	4th District Court of Appeal	Central District of California
Correctional Training Facility (CTF)	Monterey County Superior Court	6th District Court of Appeal	Northern District of California
Deuel Vocational Institution (DVI)	San Jauqin or Stanislaus	3rd District Court of Appeal	Eastern District of California
Folsom State Prison (FSP)	Sacramento County Superior Court	3rd District Court of Appeal	Eastern District of California
High Desert State Prison (HDSP)	Lassen County Superior Court	3rd District Court of Appeal	Eastern District of California
Ironwood State Prison (ISP)	Riverside County Superior Court	4th District Court of Appeal	Central District of California
Kern Valley State Prison (KVSP)	Kern County Superior Court	5th District Court of Appeal	Eastern District of California

State Superior Court of County of Prison: Habeas and Writs of Mandate

- Habeas/Mandate is brought in the county of the prison, not county of conviction
- A person presents evidence that the conditions are unconstitutional and challenge the constitutionality of conditions of confinement
- A person can ask for a change to conditions and release

Writs of Mandate

- Can obtain an order from a judge to get any government, subordinate court, corporation, or public authority, to do some specific act which that body is obliged under law to do, and which is in the nature of public duty, and in certain cases one of a statutory duty.
- May cost (See filing fees)
- May need civil cover sheet

Some People Are Filing Joint Habeas/Writ of Mandate Asking For Release

Habeas

- No cost
- About unlawful imprisonment and authorizes release
- Less forms to file

State Court Habeas Form

- [HC-001](#) Jan 1, 2019 Petition for Writ
- Optional declaration form [MC-030](#)
- Fee waiver form to request appointment of counsel if indigent.

Guides

- [California State Habeas Corpus Manual](#)
- PAN is also working on a guide and another webinar on this

What Other Papers Should you File?

- Emergency Motion for Temporary Restraining Order
- Motion for Preliminary Injunction
- Motion for Order to Show Cause
- Request to waive court fees: (need to attach trust account balance): FW-001* to Waive Court Fees FW-001 S (Spanish)

Who Can Do What to Support?

Incarcerated Person Can

- Compile a packet of records (exhibits) showing deadly prison conditions, medical need for release, and low risk if released.
- Sign and submit forms.

Outside Person Can

- Help with obtaining records to attach.
- Compile a packet of records (exhibits) showing deadly prison conditions, medical need for release, and low risk if released.
- Help with mailing and sending certified mail.
- Help with service of process.
- Help with making photocopies.

Federal Court of County of Prison: Habeas / 42 U.S.C. 1983

Habeas [28 USC 2241](#)

- Free
- About unlawful imprisonment
- Less forms to file
- Indigent form

42 USC 1983

- Costs to file
- About unlawful prison conditions
- More forms to file
- Indigent forms
- Prison Litigation Reform Act “Three Strikes” Rule

Forms

- Federal Northern District of California Court
 - a. [Petition Under 28 USC § 2254 for a Writ of Habeas Corpus by a Person in State Custody](#); [Notice of Appeal](#); [Instructions for 9th Circuit Form 6](#) ; [Application to Proceed in District Court Without Prepaying Fees or Costs \(In Forma Pauperis\)—Prisoner Case](#); [Complaint under Civil Rights Act—Prisoner Case](#); [Pro se handbook](#)
- Federal Central District of California Court:
 - a. [PSP-04A](#) ; [PSP-04B](#)
- Federal Eastern District of California Court:
 - a. [EDCA Forms](#)
- Federal Southern District of California Court:
 - a. [SDCA Forms](#); [Special rules](#); [Complaint Civil Rights Act 42USC1983](#); [Information re Prisoner Pro Se Documents](#); [Motion to Proceed In Forma Pauperis](#); [Petition for Writ of Habeas Corpus 28USC2241](#) (state prison conditions form);

Guides

- PAN will soon have guides on website
- [Prison Law Office, 42 U.S.C. 1983 Lawsuits for Money Damages Against Prison Officials Manual](#)
- Prison Law Office [Federal Habeas Corpus Manual](#)

Who Can Do What to Support?

Incarcerated Person Can

- Compile a packet of records (exhibits) showing deadly prison conditions, medical need for release, and low risk if released.
- Sign and submit forms.

Outside Person Can

- Help with obtaining records to attach.
- Compile a packet of records (exhibits) showing deadly prison conditions, medical need for release, and low risk if released.
- Help with mailing and sending certified mail.
- Help with service of process.
- Help with making photocopies.

Questions

- We will try to offer a future webinar based on the questions people have
- You can also email pan@nlgsf.org
- PAN COVID-19 [Resources](https://www.prisoneradvocacynetwork.org/covid-19.html)
<https://www.prisoneradvocacynetwork.org/covid-19.html>