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*Your Responsibility When Using the Information Provided Below:*

When putting this material together, we did our best to give you useful and accurate information because we know that prisoners and parolees often have trouble getting legal information and we cannot give specific advice to all who ask for it.

The laws change often and can be looked at in different ways. We do not always have the resources to make changes to this material every time the law changes. If you want legal advice backed by a guarantee, try to hire a lawyer to address your specific problem. If you use this pamphlet, it is your responsibility to make sure that the law has not changed and still applies to your situation. Most of the materials you need should be available in your institution's law library or at a local law library.

**MODEL HABEAS PETITION AND REQUEST FOR STAY  
CHALLENGING ENFORCEMENT  
OF SEX OFFENDER PAROLEE RESIDENCY RESTRICTIONS  
(February 8, 2010)**

**INTRODUCTION**

We are sending you this letter because you requested information or assistance in challenging California Department of Corrections and Rehabilitation (CDCR) parole conditions that restrict the locations in which parolees who are registered sex offenders may live. The Prison Law Office and the law firm of Rosen, Bien & Galvan have been challenging these restrictions in related cases involving four individual parolees. The Court has stayed enforcement of the residency provision as to the four named parolees/petitioners in those cases, so that those parolees do not have to comply with the restrictions while their cases are being heard. The Court denied a request to stay enforcement as to all parolees who are affected by the residency restrictions. However, the Court stated that other individual parolees can file actions for relief from the residency restrictions in the local superior courts. This letter describes the residency restrictions and the current state of the law. It also contains sample pleadings that parolees may use to challenge the residency restrictions and to ask for immediate stay of the restrictions while their individual cases are being heard by the courts.

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## SUMMARY OF PROPOSITION 83 RESIDENCY REQUIREMENTS

Proposition 83,<sup>1</sup> which became effective on November 8, 2006, changed many of the laws concerning punishment for sex offenses, the requirements for sex offenders after release from prison, and the rules for civil Sexually Violent Predator (SVP) commitments. One of the provisions of Proposition 83 enacted was Penal Code section 3003.5, subdivision (b), which bars anyone who is required to register as a sex offender from residing “within 2,000 feet of any public or private school, or park where children regularly gather.”<sup>2</sup> This requirement applies regardless of whether the underlying offense was a felony or misdemeanor and whether the offense involved children.

The CDCR has been enforcing Penal Code § 3003.5(b) by making compliance with the residency restriction a condition of parole for all parolees who are required to register as sex offenders.<sup>3</sup> The CDCR’s position is that the residency requirement applies to all registered sex offenders who have been released to parole on or after November 8, 2006. This includes those who were released to parole prior to November 8, 2006 but then were re-incarcerated on parole violations and re-released to parole after November 8, 2006. The CDCR also applies the residency restrictions even if the parolee is currently on parole for non-sex crimes only. According to the CDCR, compliance is determined by the straight-line distance between the primary entrance of the parolee’s residence and the exterior boundary of the nearest park or school, not the driving or walking distance between the two points.

Parole agents use a GPS (Global Positioning System) device to measure the distance from the parolee’s proposed residence to the nearest school or park. If the residence is not over 2,000 feet from the nearest park or school, the parolee will not be allowed to live there. The parolee will be faced with the options of finding a different place to live that complies with Penal Code § 3003.5(b), declaring status as a transient (homeless) person, or being returned to custody for a parole violation.

For parolees who are in compliant housing, the parole agent will prohibit the parolee from making any changes in residence until the parole agent can check the new residence to ensure that it is more than 2,000 feet from the nearest school or park. The CDCR gives parole agents six working days to verify the new residence, so parolees who need to move must give the parole agent six working days notice of their new address.

The CDCR’s current position is that spending even one night in a building establishes that place as a residence.<sup>4</sup> Thus a person who spends one night in a building that is not more than 2,000 feet from the closest school or park will be charged with violating parole for being out of compliance with § 3003.5(b) and for failing to get pre-approval of a change in residence.

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<sup>1</sup> Proposition 83 is also known as “Jessica’s Law,” the “Sexual Predator Punishment and Control Act,” or the “SPPCA.”

<sup>2</sup> Prior to Proposition 83, the law provided that certain offenders identified by the CDCR as “high risk” could not live within one half mile (or 2,640 feet) of a school. Penal Code § 3003(g).

<sup>3</sup> CDCR Policy No. 07-36.

<sup>4</sup> CDCR Department of Parole Operations Policy 08-35.

The CDCR has also interpreted the residency restriction to prohibit parolees from spending more than two hours in any building that is within 2000 feet of a school or park unless they are working or receiving medical services or conducting legitimate business in a licensed business, professional or government building. Parolees may work in businesses that are within 2000 feet of schools or parks if they have permission from their parole agent.<sup>5</sup>

Parolees who fail to comply with these rules are arrested by their parole agents and brought to revocations hearing before the BPH.<sup>6</sup> Under BPH policies, the violations are likely to result in re-incarceration for 10 to 12 months, eligible for half-time unless the parolee has a commitment offense or other charged conduct that prohibits credits.

Parole agents and the BPH have been instructed to make an exception for parolees who are mentally ill and housed in a licensed mental health facility or are in need of medical care in a licensed facility. In either case, if the facility has 24-hour supervision, the parole agent has been instructed to get a decision from the Director of the Division of Adult Parole Operations on whether the parolee may stay in that facility until the continued care there is no longer needed.

It is unclear whether Penal Code § 3003.5(b) applies even after a person is off parole. On one hand, the statute says that it is unlawful “any person” who is required to register as a sex offender to reside within 2,000 feet of a school or park, without mentioning parole status. On the other hand, the statute is included in the laws governing parole, is titled “sex offender registrant parolees; residing in single family dwellings with other registrants; vicinity to school or park; local ordinances,” and does not specify what criminal punishment may be imposed on a registered sex offender who moves within 2,000 feet of a park or school after discharging from parole.<sup>7</sup>

Parolees (and prisoners who are about to parole) may challenge the sex offender residency restrictions by filing a petition for writ of habeas corpus and a request for an immediate stay of the residency conditions. Attached to this letter is a sample petition and memorandum of points and authorities that may be use to bring such a challenge. The briefing includes space to add specific facts concerning the individual case and can be modified to address particular concerns.

### **THE STATUS OF LEGAL CHALLENGES TO THE PROPOSITION 83 RESIDENCY REQUIREMENTS**

On February 1, 2010, the California Supreme Court issued a decision in a group of four cases in which individual parolees challenged Penal Code § 3003.5(b). (*In re E.J.*, No. S156933; *In re S.P.*, No. S157631; *In re J.S.*, No. S157633 and *In re K.T.*, No S157634 [the official reporter citation for the decision is not yet available].) Each of the petitioners is a parolee who was convicted of a sex offense *before* the passage of Proposition 83 and was released on parole

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<sup>5</sup> CDCR Department of Parole Operations Policy 08-35.

<sup>6</sup> 15 CCR § 2616(a)(15).

<sup>7</sup> Penal Code § 3003.5; see also *In re E.J., et al.*, No. S156933, fn, 5 [official reporter citation not yet available].

after Proposition 83 took effect on November 8, 2006. The Court made the following rulings:

- C The Court found that applying the residency restriction to people who were convicted of sex crimes prior to November 8, 2006 does not violate the *ex post facto* clauses of the United States and California Constitutions or the Penal Code § 3 presumption that statutes are not to operate retroactively, so long as the person was released on parole anytime on or after November 8, 2006.
- C It does not matter whether the term for which the person is currently on parole is for a sex offense or for some other type of offense. It also does not matter if the person was initially paroled before November 8, 2006 and then re-incarcerated for a parole violation, so long as he or she has been re-released to parole anytime on or after November 8, 2006.
- C The Court *did not decide* whether Penal Code section 3003.5(b) is generally an unreasonable, vague and over-broad parole condition that infringes on fundamental constitutional rights. The Court decided that there will have to be evidentiary hearings before these issues can be resolved. The Court ordered that the four individual cases be sent back to the local superior courts for further hearings.
- C A federal court previously ruled that Penal Code section 3003.5(b) does not apply to people who were convicted *prior* to November 8, 2006 and were last paroled, placed on probation or released from custody *prior* to that date, even if they later move into residences located less than 2,000 feet from a school or park. (*Doe v. Schwarzenegger* (E.D.Cal. 2007) 476 F.Supp.2d 1178.) The California Supreme Court did not disturb that federal court ruling in its *In re E.J., et. al* decision.

As part of *In re E.J. et al.*, the California Supreme Court stayed enforcement of Penal Code section 3003.5(b) as to the four named petitioners in *In re E.J., et al.*, so that those four parolees did not have to comply with the residency restrictions while their cases were pending in the Supreme Court. The Court kept the stays in place when it ordered the cases remanded to the local superior courts for further proceedings. The Court denied a request to stay enforcement of Penal Code section 3003.5(b) as to all parolees who are affected by the residency restrictions. However, the Court the stated that individual parolees can file actions for relief from the residency restrictions in the local superior courts and can request that Penal Code section 3003.5(b) be stayed while their individual cases are pending. It appears that many superior courts have been willing to grant such stays.

### **LIST OF ATTACHED DOCUMENTS**

Attached to this packet are the following documents that parolees and prisoners who are about to be paroled can use to challenge the Proposition 83 residency requirements:

- (1) California Judicial Council Form MC-275, the “form” habeas petition
- (2) A Habeas Petition and Memorandum of Points and Authorities containing arguments about the Proposition 83 residency restrictions. This also includes an Application for Immediate Relief from the CDCR Policy enforcing the Proposition 83 residency restrictions.
- (3) A Declaration of Indigency and Request for Appointment of Counsel
- (4) A list of addresses of all California state courts.

### **INSTRUCTIONS FOR FILLING OUT AND FILING THE FORMS**

#### **California Judicial Council Form MC-275 (Petition for Writ of Habeas Corpus)**

Most courts require prisoners and parolees to fill out and file this form if they are bringing a habeas action and representing themselves. You should fill out and sign the Form MC-275 and then attach the detailed petition and memorandum of points and authorities that addresses the facts and arguments of the case.

The MC-275 form is designed for cases in which prisoners are challenging their criminal convictions, so it asks for information that is not really relevant to cases challenging parole conditions or revocations. Answer the questions as best you can. If you are in custody, give the name of the facility where you are incarcerated; if you are on parole, say that you are a parolee in the custody of the CDCR and say in what county. Write “see attached petition and memorandum of points and authorities” in the “grounds for relief,” “supporting facts” and “supporting cases” sections. It is particularly important to answer Question 12, which asks if the petitioner has filed any other petitions or motions with respect to the issue being raised in the current case.

After you fill out the MC-275 form, you should read and revise the attached model habeas petition and memorandum of points and authorities, as discussed in the next section of this letter.

**Habeas Petition and Memorandum of Points and Authorities containing arguments about the Proposition 83 residency restrictions.**

This briefing contains facts and arguments that will apply to many parolees (or prisoners who are about to be paroled) who are required to register as sex offenders pursuant to Penal Code section 290. You should read the briefing to make sure it is appropriate for your case. You should draw a line through any statement that does not apply to you. Because the large majority of paroled sex offenders are male, the third-person “he” and “his” is used throughout the petition; if you are female, change these words to “she” and “her.” There are also blank lines in which you can write in additional information about your own situation.

- page 1: Fill in your name and address at the top of the page and your name in the box that says “In re \_\_\_\_\_ on Habeas Corpus.” You don’t need to write anything on the line that says “case number;” the court clerk will assign a case number when the petition is filed.
- page 4, ¶ 8: If you are currently in prison and expect to parole soon, modify this section. If you have been arrested for a parole violation, state that fact. If you are incarcerated, state the name of the facility where you are housed.
- page 4, ¶ 11: Add information about the convictions for which you are required to register as a sex offender. Include the name or Penal Code number of the offense and date you were convicted. State whether you have already fully served your prison or parole term for your sex offense(s) or whether you are still in prison or on parole for sex offense(s). Tell the court whether you were discharged from custody and parole for your sex offense prior to November 8, 2006. If your sex crime was relatively non-serious, did not involve child victims, or occurred a long time ago, then provide that information.
- pp. 4-5, ¶ 12: Add information for your current parole or prison status. If you are currently in prison or on parole for a crime that is not a sex offenses, state that information. If you have been on parole from your current term, give the dates that you were first released on parole and any dates that you re-released to parole after a parole revocation. If the date of your original parole release or re-release is before November 8, 2006, that may make a difference to your case.
- page 5, ¶ 13: Give information on where you were residing (or where you planned to reside) prior to receiving notice of the new special residency condition of parole. If you were living in the home of other family member, state that. If you were living in a home that you own, give that information. State if there is a particular reason why you must live in that location (you are caring for a disabled family member, you are in a residential drug treatment program, you have no money to pay rent and must rely on free housing provided by friends, family or a shelter).

- page 5, ¶ 14 Add the date that you received notice of your conditions of parole. If possible, attach a copy of the notice as Appendix A.
- page 6, ¶ 16: Summarize any relevant events that occurred after you were given notice of the condition of parole. For example, did you make efforts to find compliant housing and were they successful or unsuccessful? Was cash assistance for your rent cut off? Did you become homeless? Did you ask your parole agent whether you could be transferred out of the county and if so, was this request was denied? Were you arrested for a parole violation for failure to comply with the residency requirement? Are you currently awaiting a hearing on the parole violation or has your parole actually been revoked? Are you living with family? If so, do they support you or do you support them? Describe any related problems caused by the residency requirement, such as inability to get to your job or problems getting necessary medical treatment.
- page 6, ¶ 18: Usually, prisoners and parolees must file a CDCR 602 appeal through the third level of review in order to “exhaust administrative” remedies to bring a habeas petition. However, courts are likely to excuse prisoners from pursuing a 602 regarding the Proposition 83 residency requirements because the CDCR has a firm policy of enforcing the requirements and because quick action is necessary and it would take months to complete the 602 appeal process. If you have filed a 602 appeal or taken other steps to get the CDCR to not enforce the residency requirements in your case, describe what actions you have taken and what responses you have received from the CDCR staff.
- page 6, ¶ 19: If you have filed another legal action on this issue, put a line through the first sentence, then state what type of action, the case number, the name of the court in which is was filed. State whether the action is still pending or whether it has been decided. If it was decided, state the date of the decision and the outcome.
- page 7: In the “Contentions” section, put a line through any of the contentions that do not apply to your case. If you have additional legal arguments you want to make, you can add them to the list of contentions.
- page 8: Sign and date the Petition
- page 9: Put your name on the “Verification” and date and sign it.

Memorandum of Points and Authorities

Argument I should apply in all cases. On page 12, use the blank lines to add information about the particular harm caused to you if the residency restrictions are enforced. For example, state if you cannot live in a house that you own, if you have become homeless or if you have been arrested for a parole violation.

Argument II applies to anyone who has not “exhausted administrative remedies by completing a 602 appeal through the third level of review. If you have exhausted administrative remedies, remove this argument.

Arguments III and IV should apply to all sex offender parolees and should be included in every case. In Argument III, page 20, add information if your sex offenses did not involve minor children, if your sex offenses occurred long ago, or if your sex crimes were very minor. In Argument IV, p. 27, add information if the CDCR has unreasonably decided that an area within 2,000 feet of your home is a “park where children regularly gather.”

Argument V should apply in any case in which the petitioner’s sex offenses were committed prior to November 8, 2006.

Don’t forget to sign and date the memorandum of points and authorities at page 33.

If you are serving a copy of the petition on the Attorney General’s Office (see section (4) below), you should fill out the proof of service and attach it to the petition.

### **Request for Appointment of Counsel**

Fill out this form if you would like the court to appoint an attorney to represent you for the rest of the habeas case. As discussed below, if the court issues an Order to Show Cause and if you do not have money to pay an attorney, then the court must appoint an attorney to represent you at no cost to you.

### **How to File the Forms**

After you fill out the forms, try to obtain one copy of the forms for your own records and one copy to serve on the state Attorney General. If you are indigent and incarcerated, the prison law library should let you make free copies of these legal documents. However, if you cannot obtain a copy to serve on the attorney general, then you should explain this to the court in a letter or in a note on the proof of service.

You should mail the original forms to the superior court in the county in which you are on parole; again, the prison or jail should provide free postage for legal documents. If you are in jail or prison in a different county, you could instead file the forms in that county. If you file in the wrong county, the court should transfer the case to the correct county. A list of court addresses, organized by county and stating which prisons are located in each county, is attached.

At the same time that you mail the documents to the superior court, you should mail one copy of each document to the state attorney general's office (provided that you can get a copy made). The address is:

Office of the Attorney General  
1300 I Street #1100  
P.O. Box 944255  
Sacramento, CA 94244

### **What Will Happen After the Petition is Filed**

Once the superior court files the habeas petition, it must act within 60 days.<sup>8</sup> If the court does not act on a petition within 60 days, you should send a "notice and request for ruling" to the court. The notice must include a declaration stating the date the petition was filed and the date the notice is being filed, and indicating that you have not received a ruling; a copy of the original petition must be attached. Once the court receives a complete "notice and request for ruling," the case should be assigned to a judge and calendared for a decision to be made within 30 days.<sup>9</sup>

When the court does act, it has several options for how to proceed. The court can:

- 1) Deny the petition. If the court denies a petition it must explain the reason for the denial. An order that merely states that the petition is denied is not sufficient.<sup>10</sup>  
OR
- (2) Request an informal response from the respondent. After an informal response is filed, you can then file an informal reply.<sup>11</sup> The reply can be in the form of a letter to the court. You should also send a copy of the reply letter to the Attorney General or District Attorney.  
OR
- (2) Issue an order to show cause.<sup>12</sup> This order will require the respondent to file a return showing any reasons why the relief you requested should not be granted. If an order to show cause is issued, and you have shown that you want a lawyer and do not have money to pay one, then the court must appoint an attorney to represent you for the rest of the case at no cost to you.<sup>13</sup>

If the court denies your habeas petition, you cannot appeal the decision. However, you

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<sup>8</sup> CRC, rule 4.551(a)(3)(A).

<sup>9</sup> CRC, rule 4.551(a)(3)(B).

<sup>10</sup> CRC, rule 4.551(a)(4)(B) and (g). See People v. Romero (1994) 8 Cal.4th 728, 737 [35 Cal.Rptr. 270] (discussing summary denials); In re Scott (1994) 27 Cal.App. 4th 946 [33 Cal.Rptr. 27].

<sup>11</sup> CRC, rule 4.551(a)(4)(C) and (b).

<sup>12</sup> CRC, rule 4.551(a)(4)(A).

<sup>13</sup> CRC, rule 4.551(c)(2).

can refile the petition in the Court of Appeal. You can use the same petition and other forms, modified to say “In the Court of Appeal of the State of California, \_\_\_\_\_ Appellate District” at the top of the first page of each form. You should also add an explanation in the petition saying that you brought the issue in the superior court and were denied relief. If possible, you should attach a copy of the superior court decision as an exhibit. Also, you should either send the court the petition and four copies or explain why you are unable to get copies. The addresses of the courts of appeal are included in the list of courts attached to this package. If possible, you should also serve a copy of the petition on the Attorney General at the address listed above. After the petition is filed, the Court of Appeal the case will proceed in the same general manner as described for superior court habeas proceedings.

If the petition is denied in the Court of Appeal, there are two ways to present the case to the California Supreme Court:

- (1) The preferred method for presenting the case to the California Supreme Court is to file a petition for review.<sup>14</sup> If a petition for review is accepted, the entire record of the Court of Appeal will be sent to the Supreme Court. The petition for review should focus on why the legal issue is important enough for the Supreme Court to hear the case.<sup>15</sup> The petition must be filed within 10 days of a denial without opinion by the Court of Appeal and within 40 days of a denial with an opinion. If possible, you should file the original petition for review plus 13 copies, and should serve both the Attorney General and the Court of Appeal with a copy of the petition.<sup>16</sup> If sufficient copies cannot be obtained, you should explain why.
- (2) If you cannot meet the deadline for filing a petition for review or want to include new information or exhibits not filed below, you can file a new petition for writ of habeas corpus in the California Supreme Court. The format can be similar to the petitions filed in the lower courts. If possible, you should file the original plus 10 copies of the petition<sup>17</sup> and serve a copy to the Attorney General. Filing the petition will start the whole general habeas procedure once again.

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<sup>14</sup> A petition for review is preferred if the Court of Appeal has ordered that the opinion in the case be published in the case law books. In re Michael E. (1975) 15 Cal.3d 183, 193, fn. 15 [123 Cal.Rptr.103].

<sup>15</sup> CRC, rule 29.

<sup>16</sup> CRC, rules 28 and 44.

<sup>17</sup> CRC, rule 44(b).

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*Petitioner's name, address and  
phone number:*

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\_\_\_\_\_

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF \_\_\_\_\_

IN RE: \_\_\_\_\_,

Case No. \_\_\_\_\_

On Habeas Corpus

**PETITION FOR WRIT OF HABEAS CORPUS  
MEMORANDUM OF POINTS AND AUTHORITIES**

**AND**

**APPLICATION FOR IMMEDIATE STAY OF ENFORCEMENT OF  
CALIFORNIA DEPARTMENT OF CORRECTIONS AND  
REHABILITATION POLICY NO. 07-36.**

**IMMEDIATE ACTION REQUESTED**

## INTRODUCTION

1. Petitioner is a parolee who is subject to sex offender registration requirements under Penal Code Section 290 and to a provision of Proposition 83 (Sexual Predator Punishment and Control Act, hereafter “SPPCA”), codified in Penal Code section 3003.5 subdivision (b), that bars him from residing within 2,000 feet of a public or private school or park where children regularly gather. Petitioner seeks immediate relief from Respondent’s policy No. 07-06 enforcing this draconian provision of the SPPCA, which forces Petitioner to make an unlawful and unconscionable choice between leaving his home, becoming homeless or violating a newly added condition of parole that will result in imprisonment for a parole violation. Petitioner seeks an order temporarily and permanently enjoining Respondent from enforcing this unlawful and unconstitutional provision through parole conditions.

2. More than nine months after the SPPCA became effective, Respondent began to enforce Penal Code section 3003.5 through a special condition of parole. Under this new policy all parolees who are required to register pursuant to Penal Code section 290 will violate parole if they “reside within 2,000 feet of any public or private school, or park where children regularly gather.” The practical effect of this parole condition is to prevent Petitioner from living in any residence or home, since virtually all affordable residential areas of the county in which he is required to live are within the 2,000 foot limit. Petitioner has been notified by parole authorities that if he violates this condition of parole, he will be arrested and parole will be revoked.

3. On February 1, 2010, the California Supreme Court issued a decision in four habeas matters, *In re E.J., S.P., J.S. and K.T.*, \_\_\_ Cal.4th \_\_\_, Appeal Nos. S156933, S157631, S157633, S157634, <http://www.courtinfo.ca.gov/opinions/documents/S156933.DOC>. The Supreme Court kept in place a stay of enforcement that it issued in October 2007 as to all

four petitioners pending resolution of some of their constitutional claims, which is deferred until certain factual issues can be presented in evidentiary hearings. *In re E.J.*, Slip Opinion at 28.

4. Although the February 1, 2010 Opinion in *In re E.J.* opinion rejected the petitioners' contention that enforcement of the SPPCA against them violates the state law prohibition on retroactive application of new penal laws, and the constitutional prohibition on *ex post facto* punishment, the Court held that the petitioners' remaining constitutional claims could not be resolved without further factual development regarding the petitioners' parole status, location of residence with respect to schools and parks, a "factual assessment of the compliant housing available to petitioners and similarly situated sex offenders," an assessment of the way in which the mandatory parole residency restrictions are currently being enforced in the particular jurisdiction, and a "complete record of the protocol CDCR is currently following to enforce section 3003.5(b)" in the jurisdiction. *In re E.J.*, Slip Op. 28-29.

5. Like the petitioners in *In re E.J.*, the instant Petitioner's constitutional rights to privacy, property, intrastate travel, and the right to be free from parole conditions that are unreasonable, vague and overbroad, are violated by imposition of Section 3003.5(b). As with the petitioners in *In re E.J.*, the resolution of the instant Petitioner's claims requires the development of a factual record in an evidentiary hearing.

6. In addition, Respondent's application of the SPPCA violates the *ex post facto* clause of the United States Constitution by subjecting Petitioner to additional punishment for a past crime.

7. Petitioner requests that this Court immediately enjoin the enforcement of this parole condition, issue an order to show cause and decide the merits of his petition.

**PARTIES**

8. Petitioner \_\_\_\_\_ is a parolee of the California Department of Corrections and Rehabilitation (the CDCR), currently residing in \_\_\_\_\_ County.

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9. Respondent Matthew Cate is the Secretary of the Department of Corrections and Rehabilitation. As the Secretary, Mr. Cate is ultimately responsible for the operation of the Department, including the parole policies and practices at issue here.

**STATEMENT OF FACTS**

10. The SPPCA was passed by a voter-backed initiative as Proposition 83 on November 7, 2006. Among other things, the law amended Penal Code section 3003.5, subdivision (b) to prohibit persons required to register as sex offenders in California from residing within 2,000 feet of any public or private school, or park where children gather, and allows municipal jurisdictions to impose even harsher restrictions.

11. Petitioner is required to register as a sex offender pursuant to Penal Code section 290 due to a conviction for the offense(s) of \_\_\_\_\_. Petitioner was convicted of the sex offense(s) on the date of \_\_\_\_\_ and released on parole for the sex offense(s) on the date of \_\_\_\_\_.

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12. Petitioner is currently serving a prison term or is on parole for the crime of \_\_\_\_\_. The dates \_\_\_\_\_.

that he has been incarcerated and on parole from this term are as

follows: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

13. While on parole, petitioner resided, is residing or wishes to reside as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

14. On the date of \_\_\_\_\_, petitioner was served with a condition of parole and informed that the residence described in ¶ 9 was in violation of section 3003.5, subdivision (b). Petitioner was informed by Respondent that he had to comply with the conditions of parole by finding and moving to a new residence more than 2,000 straight-line feet from a school or park. Respondent informed petitioner that he has/had until the date of \_\_\_\_\_ to find compliant housing. Respondent informed petitioner that failure to comply would result in his imminent arrest. (Copy of notice attached as an exhibit if available.)

15. Petitioner was given the option of becoming homeless and registering as “transient,” but was also told that his Global Positioning System (GPS) track showed the he spent more than two hours inside a building other than a workplace, government building, or medical facility, the parole authority would deem his presence there as establishing a residence, and the location where he spent more than two hours indoors would have to be compliant with Proposition 83 or he would be arrested.

16. After petitioner was given notice of this parole condition, the following events occurred (attach any parole hold notices or violation reports as exhibits):

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17. It is petitioner's belief that almost every residential neighborhood in the area in which he lives is off limits. Respondent has provided little to no assistance to petitioner to find compliant housing. Petitioner has not been informed of areas in his county where affordable compliant housing may be found. It is also petitioner's understanding that respondent will not grant an out-of-county transfer to petitioner to enable him to come into compliance with the housing restrictions.

18. Petitioner has not exhausted administrative remedies because it would be futile to do so and because the administrative appeal process would not provide relief prior to his arrest. (See Cal. Code Regs., tit. 15, § 3084.7 subd. (g).) If Petitioner has made any attempts to pursue administrative remedies, those attempts were as follows:

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19. Petitioner has not filed any other petition, motion or action in any other court concerning this issue. \_\_\_\_\_

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## CONTENTIONS

- I. **EMERGENCY TEMPORARY RELIEF IS REQUIRED TO PREVENT IRREPARABLE INJURY**
- II. **PETITIONER SHOULD NOT BE REQUIRE TO EXHAUST ADMINISTRATIVE REMEDIES BECAUSE THOSE REMEDIES ARE INADEQUATE AND FUTILE**
- III. **THE RESIDENCY RESTRICTION IS INVALID AS IT IS AN UNREASONABLE PAROLE CONDITION**
- IV. **THE RESIDENCY RESTRICTIONS OF PROPOSITION 83 ARE IMPERMISSIBLY VAGUE AND VIOLATE PETITIONER'S FUNDAMENTAL RIGHT TO DUE PROCESS**
- V. **THE PROPOSITION 83 RESIDENCY RESTRICTION VIOLATES THE EX POST FACTO CLAUSE AS APPLIED TO PERSONS WHO COMMITTED SEX OFFENSES BEFORE THE NOVEMBER 8, 2006 EFFECTIVE DATE**

**PRAYER FOR RELIEF**

Petitioner is without remedy save by habeas corpus. Wherefore, Petitioner prays that this Court:

20. Issue an immediate stay of enforcement of California Department of Corrections and Rehabilitation Policy No. 07-36, and any equivalent policy adopted for the purpose of enforcing the residency restrictions of Penal Code section 3003.5, subdivision (b) as a parole condition against Petitioner,

21. Issue an Order to Show Cause why relief should not be granted,

22. Appoint Counsel to represent petitioner,

23. Issue an Order directing Respondent to provide discovery on the “as applied” issues set forth in *In re E.J.*, \_\_\_ Cal.4th \_\_\_, Slip. Opinion at 28.

24. Temporarily and permanently enjoin Respondent from applying Penal Code section 3003.5, subdivision (b), which imposes a condition of parole that prohibits Petitioner from residing within 2,000 feet of any public or private school, or park where children regularly gather,

25. Declare the rights of parties, and

26. Grant any and all other relief necessary to a just resolution of this case.

Dated: \_\_\_\_\_

Respectfully submitted,

\_\_\_\_\_  
Petitioner

**VERIFICATION**

I, \_\_\_\_\_, state:  
*(full name)*

I am the petitioner in this action. I have read the foregoing petition for writ of habeas corpus and the facts stated therein are true of my own knowledge, except as to matters that are therein stated on my own information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed at the location of \_\_\_\_\_ on the date of \_\_\_\_\_.

\_\_\_\_\_  
Petitioner's Signature

**MEMORANDUM OF POINTS AND AUTHORITIES**  
**IN SUPPORT OF PETITION AND APPLICATION FOR IMMEDIATE STAY**

**I. EMERGENCY TEMPORARY RELIEF IS REQUIRED TO MAINTAIN THE STATUS QUO AND PREVENT IRREPARABLE INJURY**

Petitioner requests that this Court immediately issue a stay of enforcement of the California Department of Corrections and Rehabilitation (CDCR), Policy No. 07-36, which purports to enforce the 2,000-foot residency restriction codified at Penal Code section 3003.5, subdivision (b) against Petitioner. The statute and the CDCR's interpretation of the statute as applied to petitioner are in violation of California law, the California Constitution and the Constitution of the United States. Because Petitioner faces immediate and irreparable injury – incarceration or homelessness – Petitioner hereby seeks a stay preventing the implementation of section 3003.5, subdivision (b).

The Court is authorized to issue a stay pursuant to a pending writ of habeas corpus. Indeed, the California Supreme Court has recently indicated that it is appropriate to stay enforcement of the residency provision of section 3003.5, subdivision (b) and CDCR Policy No. 07-36 during pending habeas proceedings. These same provisions are currently being challenged by parolees in the California Supreme Court in *In re E.J.*, No. S156933; *In re S.P.*, No. S157631; *In re J.S.*, No. S157633 and *In re K.T.*, No S157634. On October 10, 2007, the Court stayed enforcement of section 3003.5, subdivision (b) against the four named petitioners in those cases pending the final determination of their petitions for writ of habeas corpus. (See docket, *In re E.J.*, No. S156933 at [www.courtinfo.ca.gov](http://www.courtinfo.ca.gov).) On October 15, 2007, the Court denied a request to extend the stay to all parolees required to register under section 290; however, the Court did so without prejudice to the filing of actions for declaratory and injunctive relief in the superior courts by other individual parolees affected by section 3003.5,

subdivision (b). (*Ibid.*) On February 1, 2010, the California Supreme Court issued an order extending the October 2007 stay until factual issues regarding the constitutional defects alleged against the SPPCA can be developed in an evidentiary hearing and resolved by the Court. The California Supreme Court’s decision to stay enforcement of section 3003.5, subdivision (b) while habeas proceedings are pending was sound and should be followed by this Court in the current case.

Issuance of a stay is also well within this court’s authority, as “[i]nherent in the power to issue the writ of habeas corpus is the power to fashion a remedy for the deprivation of any fundamental right which is cognizable in habeas corpus.” (*In re Crow* (1971) 4 Cal.3d 613, 620 n.7 [citing Penal Code § 1484].) Such power is reflected in Penal Code section 1484’s directive that, in habeas proceedings, the Court “dispose of such party as the justice of the case may require, and have full power and authority . . . to do and perform all other acts and things necessary to a full and fair hearing and determination of the case.” (See also 6 B.E. Witkin, Cal. Crim. Law, Crim. Writs, §§ 78-79 (3d ed. 2000) [court authorized to fashion appropriate orders and remedies in habeas proceedings].) Thus, habeas corpus proceedings may afford broad relief and “may be utilized as an alternative to actions for declaratory or injunctive relief and/or mandamus.” (*In re Head* (1986) 42 Cal.3d 223, 228; *In re Henderson* (1964) 61 Cal.2d 541, 544.) Accordingly, courts have issued orders having the effect of stays pursuant to habeas corpus proceedings. (See e.g., *In re Alclala* (1990) 222 Cal.App.3d 345, 352 & n.4 [noting that temporary restraining order had been issued pursuant to habeas petition, enjoining enforcement of prison restrictions on clothing]; *Faucette v. Dunbar* (1967) 253 Cal.App.2d 338, 340, 346 [affirming preliminary injunction issued pursuant to habeas petition enjoining revocation of petitioner’s parole solely because of residence at particular narcotics rehabilitation center].)

**A. Petitioner Has Demonstrated a Strong Likelihood of Success on the Merits.**

As discussed in the arguments set forth in the following sections of this Memorandum of Points and Authorities, the 2,000-foot residence restriction and CDCR’s interpretation of that restriction as applied to petitioner, suffer from fatal constitutional, statutory, and common law flaws. Therefore, Petitioner has established a strong likelihood of success on the merits.

**B. Petitioners and Those Similarly Situated Are Certain to Suffer Irreparable Harm.**

Petitioner faces either homelessness or certain incarceration if he fails to comply with the residency restrictions. Because the 2,000-foot restriction is so expansive that it bars petitioner from residing in nearly all residential neighborhoods in his county of parole, it is virtually impossible for Petitioner to comply with section 3003.5, subdivision (b) as interpreted by CDCR. Under the CDCR’s “two-hour” rule, if Petitioner declares himself homeless, he cannot even take shelter from the elements indoors for more than two hours without being arrested for violating either Proposition 83 (if the location is within the 2,000 foot limit) or Penal Code Section 290 (because CDCR deems a two-hour stay as establishing a residence). If those provisions are enforced during the pending habeas proceedings, petitioner will be irreparably harmed. \_\_\_\_\_

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**C. The Balance of Harms Favors an Injunction Because a Stay will Not Endanger Public Safety.**

While the harm to Petitioner of enforcing section 3003.5, subdivision (b) is certain, the benefit to Respondent and the public is highly speculative at best. There is no evidence that this residency restriction will prevent any future crime. Indeed, the CDCR has not alleged that Petitioner has violated his parole in any way other than non-compliance with the residency requirements. The absence of a clear threat to public safety if Petitioner is allowed to stay in or return to his home is illustrated best by the fact that Respondent waited more than nine months after passage of Proposition 83 before making any efforts to enforce the residency restriction as a parole condition against any parolee. A delay of a few more months to resolve the serious legal issues presented by this case will do no harm.

**II. PETITIONER SHOULD NOT BE REQUIRED TO EXHAUST ADMINISTRATIVE REMEDIES BECAUSE THOSE REMEDIES ARE INADEQUATE AND FUTILE.**

Generally, prisoners must exhaust administrative remedies before filing a habeas corpus petition challenging prison conditions. (See *In re Muszalski* (1975) 52 Cal.App.3d 500, 503.) The exhaustion requirement does not apply where administrative remedies are futile or inadequate. (*In re Dexter* (1979) 25 Cal.3d 921, 925; *In re Reina* (1985) 171 Cal.App.3d 638, 642; *In re Serna* (1978) 76 Cal. App.3d 1010, 1014.)

Here, exhaustion is not required because the administrative remedies are futile and inadequate. The remedies are futile because Petitioner is challenging the legality of a statute that Respondent does not have the authority to alter or suspend. Moreover, Petitioner can be certain that any appeal would be denied based on the CDCR's established policy of enforcing Penal Code section 3003.5, subdivision (b). The remedies are inadequate because Petitioner is in danger of imminent arrest or homelessness. There is simply not enough time to process an administrative grievance before he is irremediably affected by the CDCR's policy. (See Cal. Code Regs., tit. 15, § 3084.7, subd. (g) [providing for review by CDCR final level].)

### III. THE RESIDENCY RESTRICTION IS INVALID AS IT IS AN UNREASONABLE PAROLE CONDITION.

Petitioner has been served with a modified condition of parole which directs him to comply with section 3003.5, subdivision (b)'s restriction on residing within 2,000 feet of a park or school where children regularly gather.<sup>1</sup> Such a condition is unreasonable and invalid. Parole conditions “must be reasonable, since parolees retain constitutional protection against arbitrary and oppressive official action.” (*In re E.J.*, \_\_ Cal. 4th \_\_\_, Feb. 1, 2010, Slip Op. at 27, n.10 [quoting *Terhune v. Superior Court* (1998) 65 Cal. App. 4th 864, 874], see also, *In re Stevens* (2004) 119 Cal.App.4th 1228, 1234 [“[p]arole conditions, like conditions of probation, must be reasonable since parolees retain constitutional protection against arbitrary and oppressive official action.”] [citation omitted]; Cal. Penal Code § 1203.1, subd. (j) [conditions of probation must be “reasonable”].)

A condition that “requires or forbids conduct which is not in itself criminal” is invalid when it: (1) has no relationship to the crime of which the offender was convicted, and (2) requires or forbids conduct which is not reasonably related to future criminality. (*People v. Dominguez*, (1967) 256 Cal.App.2d 623, 627-28; *People v. Bauer* (1989) 211 Cal.App.3d 937, 942 [citing *People v. Lent* (1975) 15 Cal.3d 481, 486]; *People v. Kiddoo* (1990) 225 Cal.App.3d 922, 926; *In re Bushman* (1970) 1 Cal.3d 767, 776-777.) The *Dominguez /Lent* analysis is used to evaluate the validity of conditions that have been imposed as a “matter of law.” (See e.g., *In*

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<sup>1</sup> Even if petitioner accepted the modified parole condition, he is not barred from subsequently contesting a condition that is unduly restrictive. See *People v. Bauer* (1989) 211 Cal.App.3d 937, 940; *People v. Dominguez* (1967) 256 Cal.App.2d 623, 629.

*re Naito* (1986) 186 Cal.App.3d 1656, 1661 [applying *Lent* test to assess validity of an administrative regulation applied as a condition of probation].)

Where, as here, parole conditions impinge on a constitutionally protected right, an even stricter scrutiny applies. In such instances, the condition must be so carefully tailored that it is “reasonably related to the compelling state interest in reformation and rehabilitation.” (*In re White*, 97 Cal.App.3d 141, 146 (1979); see also *People v. Pointer* (1984) 151 Cal.App.3d 1128, 1139 [“where a condition of probation impinges upon the exercise of a fundamental right and is challenged on constitutional grounds we must additionally determine whether the condition is impermissibly overbroad”].) Indeed, when viewed under the strict scrutiny lens, a parole condition only passes muster if it is “narrowly drawn and *specifically tailored to the individual probationer*.” (*In re Babak* (1993) 18 Cal.App.4th 1077, 1084 [emphasis added]; see also *Stevens*, 119 Cal.App.4th at 1237 [striking total internet ban as a condition on sex offender’s parole because “it is not enough to show that the Government’s ends are compelling; the means must be carefully tailored to achieve those ends”].)

**A. The Residency Restriction Impermissibly Impinges On Constitutionally Protected Rights.**

**1. The Residency Restriction Impinges On Petitioner’s Fundamental Interests In Residing In His Homes And/Or Living With His Family.**

Petitioner has a substantial liberty interest in residing in his home and/or with his family. The Supreme Court has repeatedly held that “Fourteenth Amendment liberty includes ‘the right . . . to live and work where [one] will.’” (*Washington v. Glucksberg* (1997) 521 U.S. 702, 760 [Kennedy, J., concurring]; *Moore v. East Cleveland* (1977) 431 U.S. 494.) In *Cleveland Board of Education v. LaFleur* (1974) 414 U.S. 632, 639-640, the Court held that “freedom of personal choice in matters of . . . family life is one of the liberties protected by the Due Process Clause of

the Fourteenth Amendment.” Indeed, these interests are “fundamental.” (*Griswold v. Connecticut* (1965) 381 U.S. 479 495 [Goldberg, J., concurring]; *Moore v. City of East Cleveland* (1977) 431 U.S. 494, 499.) In *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923), the Court held it is “[w]ithout doubt” that among the liberty interests protected by the Fourteenth Amendment is the right “to . . . establish a home.”

The California Constitution’s guarantee of the inalienable right to privacy likewise protects an individual’s right to live in one’s home, and with whom one chooses to live, including one’s family. (See Cal. Const. Art. I, § 1; *White v. Davis* (1975) 13 Cal.3d 757, 774 [“The right of privacy . . . protects our homes, our families”]; *Robbins v. Superior Court* (1985) 38 Cal.3d 199, 213 [in-kind benefit program infringed on right to privacy because it “compels the individual to give up his home.... [and] force[s him] to live in a particular location without the freedom to choose his own living companions.”]; *City of Santa Barbara v. Adamson* (1980) 27 Cal.3d 123, 130 [Constitution protects “right of privacy not only in one’s family but also in one’s home”]; *Tom v. City and County of San Francisco* (2004) 120 Cal.App.4th 674, 680, 686 [recognizing “‘autonomy privacy’ interest in choosing the persons with whom a person will reside” and that home is “a place that is traditionally protected most strongly by the constitutional right of privacy.”]; *Park Redlands Covenant Control Committee v. Simon* (1986) 181 Cal.App.3d 87, 97 [recognizing privacy rights to choose with whom one lives and to live as a family]; cf. *Schmidt v. Superior Court* (1989) 48 Cal.3d 370, 389-90 [rejecting privacy challenge on grounds that policy, *inter alia*, does not “purport to compel the separation of parent and child or to preclude the family from living together in an entire city or neighborhood[.]”] [internal citations omitted].)

Both the U.S. Supreme Court and California courts recognize an individual's "substantial right" to retain property. (*Mathews v. Eldridge* (1976) 424 U.S. 319, 322; see also *Greene v.*

*Lindsey* (1982) 456 U.S. 444, 450-51 [“the right to continued residence in [one’s] home” is a “significant interest in property” protected by the Fourteenth Amendment]; *People v. Beach* (1983) 147 Cal.App.3d 612, 620 [“The right to acquire, own, enjoy and dispose of property is also a basic fundamental right guaranteed by the Fourteenth Amendment to the United States Constitution.”].)

This right applies to renters as well as to home-owners. In *Greene v. Lindsey* (1982) 456 U.S. 444, the Supreme Court held that renters had a due process right to adequate notice and a hearing before they could be evicted from their homes. The Court held that “the right to continued residence in [one’s] home” is a “significant interest in property” protected by the Fourteenth Amendment. (*Id.* at 450-451; cf. *Mathews v. Eldridge* (1976) 424 U.S. 319, 322 [recognizing property interest in Social Security disability payments].) California similarly recognizes an individual’s interest in their rented property as a “substantial” – even a “sacred” – right. (*Mendoza v. Small Claims Court of Los Angeles* (1958) 49 Cal.2d 668, 672 [“Nor can there be any doubt that possession of a tenant is a substantial right. The right to retain property already in possession is as sacred as the right to recover it, when dispossessed.”]; see also *Arrieta v. Mahon* (1982) 31 Cal.3d 381, 389; Cal. Const. Art. 1, §§ 1 and § 7.)

The Court of Appeals has specifically rejected conditions placed on a probationer’s residence that impinge on constitutional entitlements to travel and freedom of association because rather than being “narrowly tailored to interfere as little as possible with these important rights, the restriction was extremely broad.” (*Bauer*, 211 Cal.App.3d at 944.) Similarly, in *People v. Beach* (1983) 147 Cal.App.3d 612, 620, the Court of Appeals struck a condition of probation that it held amounted to banishment– that the probationer “relocate herself from the community where she has lived in her own home for 24 years.” The court found that the condition impinged on the probationer’s right to intrastate travel, which, in turn, touched on

other rights, holding:

The right to acquire, own, enjoy and dispose of property is also a basic fundamental right guaranteed by the Fourteenth Amendment to the United States Constitution. Intrinsic and integral to this right is the basic ability to possess one's own property. Could it be rationally argued that the enjoyment of the fruits of property ownership does not directly depend upon the owner's free and unimpaired access to, and possession of, said property.

(*Id.* at 622 [italics omitted]; cf. *In ex parte Scarborough* (1946) 76 Cal.App.2d 648, 650 [striking a condition of probation that required the probationer to leave counties where he had been convicted and served his sentence since the “same principle which prohibits the banishment of a criminal from a state or from the United States applies with equal force to a county or city”]; *People v. Blakeman* (1959) 170 Cal.App.2d 596, 597 [condition of probation that provided for suspended sentence if probationer absented himself from county was struck down because it “was beyond the power of the court to impose banishment as a condition of probation”].)

Here, Petitioner possesses “significant” and “fundamental” constitutionally protected liberty and property interests in continuing to reside in his home. Since the residency restriction requiring him to abandon his home impinges on his constitutionally protected rights, it must meet the heightened requirement that it is not overbroad and is reasonably related to the state interest in reformation and rehabilitation. (*Meyer v. Nebraska* (1923) 262 U.S. 390, 399; *In re White* (1979) 97 Cal.App.3d 141, 146.)

## **2. The Residency Restriction Is Overbroad.**

The residency restriction is manifestly overbroad. “Particularized conditions of probation should be directed toward rehabilitation rather than reliance upon some general condition which utilizes a mechanized mass treatment approach.” (*In re White* , 97 Cal.App.3d at 151.)

In this case, Petitioner is being required to leave his home for the simple reason that he lives within 2,000 feet of a school or a park where children regularly gather.

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\_\_\_\_\_ . In contrast, other states that have enacted sex offender residency restrictions have adopted narrow provisions that restrict application of the residency restriction to a narrowly tailored population of potential recidivists considered “high risk.” (See e.g., Ark. Code Ann. § 5-14-128(a) [applying residency restrictions only to “level 3” and “level 4” offenders].)

Secondly, the 2,000-foot restriction is so unreasonably broad that it makes virtually every residential neighborhood in the county in which Petitioner lives off limits. Indeed, the SPPCA is significantly broader and more punitive than any other sex offender residency in the country:<sup>2</sup>

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<sup>2</sup> See Schwartzberg & Lo, “The Law and Policy of Sex Offender Residency Restrictions: An Analysis of Proposition 83” (Public Law Research Institute, Fall 2006) at 1-2, available at [www.uchastings.edu/?pid=4490](http://www.uchastings.edu/?pid=4490) (“Compared to residency restrictions adopted in other states, California’s proposed residency restriction is notable particularly for its breadth...The Propositions’ 2,000 foot ban is significantly more restrictive than many other states’ bans...the ban could effectively exclude offenders from entire cities and counties in California.”).)

1. The SPPCA’s 2,000-foot residency restrictions zones are amongst the largest in the country. (Cf. Ga. Code Ann. § 42-1-15 [creating 1,000-foot residency restriction zones]; 720 Ill. Comp. Stat. § 5/11-9.3 (b-5) [500-foot residency zones].)

2. The SPPCA applies to every person required to register as a sex offender in California, regardless of the type of previous conviction, assessment of dangerousness, or risk of re-offending. (Cf. Ark. Code Ann. § 5-14-128(a) [applying residency restrictions only to level 3 and 4 sex offenders]; Fla. Stat. Ann. § 947.1405(7)(a)(2) [restricting residency around schools and parks only if victim was a minor]; Ind. Code § 35-38-2-2.2 [providing judges discretion to lift residency restrictions]; Iowa Code § 692A.2A(1) [restricting residence only where victim was a minor]; Ky. Rev. Stat. § 17.545(5) [limiting residency restrictions only to adult offenders].)

3. The SPPCA residency restriction applies for life. (Cf. Tex. Crim. Proc. Code Ann. § 42:12, Sec. 13B(a) [imposing residency restriction only during probation and supervised release]; Ga. Code Ann. §§ 42-1-15, 42-1-12 (g)(2)(B) [relieving certain residency restrictions after 10 years].)

4. The SPPCA does not contain a grandfather clause to protect the rights of those registrants who already own or rent their homes in restricted areas. (Cf. Iowa Code § 692A.2A(4)(d) [providing that new sex offender residency restrictions shall not apply to residences established when the statute went into effect].)

5. Since it is so overtly overly broad and not conducive to assisting the government in rehabilitating and preventing recidivism, it is an understatement to say that this residency restriction is a far cry from the requirement that it be a “focused restriction.” (*In re Stevens*, 119 Cal.App.4th at 1239.)

**B. The Residency Restriction is Not Reasonably Related to, and Actually Undermines, Any Compelling State Interest in Reformation and Rehabilitation.**

The residency restriction does nothing to assist the government in its effort to prevent recidivism and to rehabilitate offenders. The restriction does not prevent offenders from going into the restricted areas, merely from residing in them. On the other hand, forcing sex offenders to leave their homes actually undermines public safety by driving sex offender registrants underground and separating others from existing family, employment, support, and rehabilitation networks. Studies of sex offender residency restrictions enacted in other states demonstrate that residency laws which effectively ban ex-felons from living in (but not frequenting) certain areas where children congregate have no correlation to reduced incidents of sexual assault and actually increase the likelihood of recidivism among those offenders banished from their communities. (See , e.g., *No Easy Answers, Sex offenders in the U.S.* Human Rights Watch (Sept. 2007) available at [www.hrw.org/reports/2007/us0907/9.htm](http://www.hrw.org/reports/2007/us0907/9.htm).)

Efforts to rehabilitate offenders and to minimize the rate of re-offending are much more successful when offenders are employed, have family and community connections, and have a stable residence. Furthermore, homelessness only worsens recidivism and rehabilitation efforts. Where offenders are forced to become homeless, they face additional hurdles in avoiding recidivism. Sleeping in public places, for instance, may result in a misdemeanor offense. (See Cal. Penal Code § 647 subd. (j) [“Every person who commits any of the following acts is guilty of disorderly conduct, a misdemeanor: . . . Who lodges in any building, structure, vehicle, or place, whether public or private, without the permission of the owner or person entitled to the possession or in control of it.”].) In sum, the goals of rehabilitation and preventing re-offense are severely impaired by the residency restriction, which compromises the safety of children by flying in the face of well-established tenets of corrections policies.

**C. Even If The Restriction Were Not Subject To Strict Scrutiny Review, It Is Invalid because It Is Not reasonably Related To The Offense and There is No Reasonable Connection Between the Condition and Prevention of Future Criminal Acts.**

Even if the restriction did not impinge upon a constitutional right, which it clearly does, the residency restriction is invalid as an unreasonable condition under the *Dominguez/Lent* test. (*Dominguez*, 256 Cal.App.2d at 627; *Lent*, 15 Cal.3d at 486; *Bauer*, 211 Cal.App.3d at 942; *In re Stevens*, 119 Cal.App.4th at 1234 [probation law interpreted the same as parole law].) As set forth above, there is a marked absence of any connection between the condition of Petitioner's parole and their underlying offense. The requisite connection between the residency restriction and the prevention of future criminal acts is also absent. (*Dominguez*, 256 Cal.App.2d at 628; *Lent*, 15 Cal.3d at 486.)

California courts have repeatedly struck down probation conditions that were not related to the underlying crimes. In *People v. Kiddoo* (1990) 225 Cal.App.3d 922, defendant was convicted of possession of methamphetamine but was not allowed possess or consume alcohol or to frequent places in which alcohol was sold as a condition of his probation. Such a condition was invalid because of the lack of connection between alcohol consumption and methamphetamine possession. *Id.* at 928. Similarly, in *People v. Burden*, 205 Cal.App.3d 1277 (1988) a condition of probation that prohibited defendant from being employed as a salesperson was not valid where the condition had no relationship to his crime (drawing checks on insufficient funds). (*Id.* at 1279-1280.) Likewise, the sex offender residency requirements cannot lawfully apply to parolees whose sex offenses did not involve minors.

Even if there is a connection between the parole condition and the underlying crime, there is no reasonable connection between the condition and the prevention of future criminal acts. Here, as discussed above, the restriction not only does not *prevent* future criminality, it

arguably *causes* future criminality.

Where, as here, a condition contributes nothing to public safety, and in fact the condition exacerbates circumstances that may result in future crimes, California courts have found conditions invalid. (See e.g., *Beach*, 147 Cal.App.3d at 620-623; *Burden*, 205 Cal.App.3d at 1280-1281; *People v. Fritchey* (1992) 2 Cal.App.4th 829, 837-838.) Thus in *People v. Beach*, a probation condition that required a woman to relocate to a different community was unreasonably broad because keeping appellant out of her home and neighborhood would not necessarily prevent future criminal conduct. (*Beach*, 147 Cal.App.3d at 620-623.) The court emphasized that the condition might have the opposite effect in that “taking appellant away from her established home, the companionship of her neighbors, and the familiarity of her surroundings would not contribute to inner feelings of physical security... and may very well heighten her feelings of insecurity.” (*Id.* at 621; see also *Burden*, 205 Cal.App.3d at 1280-1281 [condition that defendant not work as a salesperson was invalid where it was not reasonably related to future criminality since he “could have worked at any job and perpetrated the same kind of fraud” that he was convicted of].)

The probation condition at issue in *People v. Fritchey* (1992) 2 Cal.App.4th 829, 837-838 – that defendant forfeit his truck because it had contained burglary tools and was used in the defendant’s crime – also failed the test of reasonableness under *Lent* because the defendant’s lawful ownership of a truck was conduct which is not itself criminal and was not reasonably related to future criminality. (*Id.* at 837-838.) In so holding, the *Fritchey* court stated that a “reasonable condition of probation is not only fit and appropriate to the end in view but it must be a reasonable means to that end. Reasonable means are moderate, not excessive, not extreme, not demanding too much, well-balanced.” (*Id.* at 837-838.)

Requiring Petitioner to leave his home (and forcing homelessness or re-incarceration

upon him) does not prevent future criminality. Rather, the residency restriction *undermines* public safety. The severity of the restriction is also entirely out-of-proportion to any possible speculative benefits. As such, the condition is unreasonable and must be stricken.

**IV. THE RESIDENCY RESTRICTIONS OF PROPOSITION 83 ARE IMPERMISSIBLY VAGUE AND VIOLATE PETITIONER’S FUNDAMENTAL RIGHT TO DUE PROCESS**

Section 3003.5, subdivision (b) is unconstitutionally vague because it does not define the terms in the statute that would tell Petitioner where he is permitted to live. When a penal statute does not provide an individual with sufficient notice of permissible conduct, it will be found void for vagueness. (See *Kolender v. Lawson* (1983) 461 U.S. 352, 357; see also *Lanzetta v. State of New Jersey* (1939) 306 U.S. 451, 453 [“No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the State commands or forbids”].) The statute must also be definite so as to provide explicit standards for those who apply it in a manner that does not encourage arbitrary and discriminatory enforcement. (See *Kolender*, 461 U.S. at 357. )

Under section 3003.5, subdivision (b) “it is unlawful for any person for whom registration is required pursuant to Section 290 to reside within 2,000 feet of any public or private school, or park where children regularly gather.” This is the extent of the housing restrictions contained in the statute. The statute contains no definition of what constitutes “reside” for the purposes of the statute, how the 2,000 feet between a parolee’s residence and an offending school and/or park is to be measured, or, most problematic, what constitutes “a park where children regularly gather.” Such vagueness and lack of definition violates a parolee’s right to due process, as they have no fair warning as to where they may legally reside. (See *Grayned v. City of Rockford* (1972) 408 U.S. 104, 108 [“Vague laws may trap the innocent by not providing fair warning”].)

The vagueness of the statute with respect to what constitutes a “park where children gather,” is encouraging arbitrary enforcement by law enforcement personnel throughout the State. (See *Kolender*, 461 U.S. at 358.) Each individual CDCR parole unit has almost complete discretion to determine whether or not a parolee is in compliance with the housing restrictions, based on an independent assessment of what constitutes “a park where children regularly gather.” For example, parole agents might determine that beaches and commercial ballparks are “parks where children regularly gather,” while in other counties parole agents might declare all open space with dirt and shrubs or a nature reserve with bobcats and coyotes parks off limits, regardless of whether children are known to regularly gather at such locations.

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In addition, Respondent has chosen to define the 2,000 foot distance term of the statute to mean 2,000 feet “as the crow flies.” Some individuals are thus being forced from their homes even though the school or park at issue is located on the other side of a freeway, with no means of access along a path anyway near as short as 2,000 feet.

The impermissibly vague nature of the statute allows this sort of arbitrary and capricious enforcement with no consideration for the interests intended to be served. Parolees themselves are unable to come into compliance with the housing restrictions because of the vagueness of the statutory language coupled with the arbitrary enforcement of its restrictions. Parolees attempting to find housing on their own cannot rely on maps to locate compliant housing if there are no consistent or explicit instructions as to what constitutes a “park where children gather.” This is especially problematic given the short time that parolees have been given to find compliant housing or face arrest and incarceration. This housing restriction should be declared

unconstitutionally vague, as it does not describe, with sufficient clarity, what a parolee must do in order to be in compliance with the statute. (See *Kolender*, 461 U.S. at 361.)

**V. THE PROPOSITION 83 RESIDENCY RESTRICTION VIOLATES THE EX POST FACTO CLAUSE AS APPLIED TO PERSONS WHO COMMITTED SEX OFFENSES BEFORE THE NOVEMBER 8, 2006 EFFECTIVE DATE.**

Although the California Supreme Court in *In re E.J.*, \_\_\_ Cal.4th \_\_\_ (Feb. 1, 2010), Slip Op. at 22-24, rejected an ex post facto challenge on the grounds that application of the statute to persons released on parole after the effective date is not retroactive, Petitioner develops this claim briefly here in order to preserve and exhaust it for federal review.

The 2,000-foot restriction violates the Ex Post Facto Clause of the United States Constitution as applied to persons, like Petitioner, whose sex offenses were committed before the passage of the law on November 7, 2006. The United States Supreme Court has defined three distinct types of ex post facto violations: (1) “any statute which punishes as a crime an act previously committed, which was innocent when done;” (2) any statute “which makes more burdensome the punishment for a crime, after its commission;” and (3) any statute “which deprives one charged with crime of any defense available according to law at the time when the act was committed.” (*Collins v. Youngblood* (1990) 497 U.S. 37, 42 [quoting *Beazell v. Ohio* (1925) 269 U.S. 167, 169-170].)

The 2,000-foot restriction, as applied to persons who committed sex offenses before November 8, 2006, falls into the second category of ex post facto violations, in that it “makes more burdensome the punishment for a crime, after its commission.” A law violates this aspect of the Ex Post Facto Clause if it operates retroactively by punishing conduct completed before its enactment and adds to the penalty already imposed. (See *Weaver v. Graham* (1981) 450 U.S. 24, 29-30; see also *Johnson v. United States* (2000) 529 U.S. 694, 699.)

The SPPCA’s 2,000-foot restriction is sufficiently punitive to trigger the Ex Post Facto Clause. In assessing whether a statute is punitive, the court must determine whether the purpose

of the statute was to establish a non-punitive, regulatory scheme or to impose punishment. (See *Smith v. Doe* (2002) 538 U.S. 84, 92.) If the statute was enacted to impose punishment, then it is a facial violation of the Ex Post Facto Clause. (*Ibid.*) If, however, the statute was intended to be regulatory, an individual must demonstrate that the scheme is “so punitive either in purpose or effect as to negate [the State’s] intention to deem it civil” to establish a Constitutional violation. (*Ibid.*) Here, both tests are met, in that the SPPCA’s intent and effect are punitive.

**A. The Purpose of the 2,000-foot Restriction Is Punishment.**

In determining whether a statute is punitive in nature, the court must assess the legislature’s intent by considering the statutory language and structure. (See *Smith v. Doe*, 538 U.S. at 92.) Under California law, the intent of the voters in a voter-passed initiative is paramount, and can be determined from the ordinary language of the statute. (See *Davis v. City of Berkeley* (1990) 51 Cal.3d 227, 234.)

The SPPCA’s short title is the “The Sexual Predator *Punishment* and Control Act: Jessica’s Law.” (Prop. 83, section I [*emphasis added*], available at [www.sos.ca.gov/elections/vig\\_06/general\\_06/pdf/proposition\\_83/entire\\_prop83.pdf](http://www.sos.ca.gov/elections/vig_06/general_06/pdf/proposition_83/entire_prop83.pdf).) The initial findings and declarations state that California places a “high priority on maintaining public safety through laws that deter and punish criminal behavior.” (*Id.* at section 2(a).) In order to meet such public safety goals, the statute provides that “adequate penalties must be enacted to ensure predators cannot escape prosecution.” (*Id.* at section 2(d).)

**B. The Effect of the 2,000-foot Restriction Is Punitive.**

The Supreme Court in *Kennedy v. Mendoza-Martinez* (1963) 372 U.S. 144 articulated non-dispositive factors to be considered when determining whether the law’s effects are

punitive. The factors include, but are not limited to: whether the law has traditionally been regarded as a punishment, whether the law has a rational connection to a non-punitive purpose, and whether the law is excessive in relation to that other assigned purpose. (*Ibid.*)

In many counties, there is nowhere for section 290 registrants to live that meets the 2,000-foot limit. These restrictions can also be limitlessly expanded under the statute, as section 3003.5, subdivision (c) allows for municipal jurisdictions to enact local ordinances imposing further residency restrictions on section 290 registrants.

The 2,000-foot restriction is excessive in relation to its stated purpose, and has no rational connection to that purpose. (See *Kennedy v. Mendoza*, 372 U.S. at 168-169.) The stated purpose of 2,000-foot restriction is to increase child safety. (See Prop. 83, section 29(c).) The imposition of the 2,000-foot restriction against all section 290 registrants, including those whose offense did involve children, is excessive and has no rational connection to the purpose of increasing child safety. Indeed, such restrictions degrade public safety as section 290 registrants who cannot find housing are either driven underground, are forced to become transient (increasing the difficulty of adequate supervision by parole and law enforcement), and/or separated from friends, family, employment and other support networks.

**C. Enforcement Through A Parole Condition Does Not Cure The Ex Post Facto Violation.**

New laws that make the punishment for a prior crime more burdensome violate the Ex Post Facto Clause regardless of whether the punishment is enforced in connection with parole conditions. (See *United States v. Jackson* (9th Cir. 1999) 189 F.3d 820, 824 [parole condition arising from change in law after commission of underlying offense violates Ex Post Facto Clause if the condition is punitive].)

In *People v. Callejas* (2000) 85 Cal.App.4th 667, the court determined that the Ex Post Facto Clause barred the imposition of a parole revocation fine where the underlying offense was committed prior to the enactment of the statute. In *Callejas*, the petitioner committed a drunk driving offense in 1993, and was sentenced to probation. (*Id.* at 669.) In 1995, the legislature added a “parole revocation fine” to the Penal Code. (*Ibid.*) In 1999, Callejas was re-sentenced for the 1993 drunk driving offense and the superior court imposed the new parole revocation fine as part of the sentence. (*Ibid.*) The Court of Appeals held that new parole revocation fine increased penalties in a manner that differed from the conditions in place at the time of Callejas’s underlying offense, not future violations of parole. (*Id.* at 677-678.)

*Callejas* followed the rule of *Johnson v. United States* (2000) 529 U.S. 695, in holding that for ex post facto purposes, a parole revocation penalty relates back to the original offense, and not to a future parole violation. *Johnson* concerned the imposition of an additional supervised release term after violation of parole. (See *id.* at 700-701.) Holding that post-revocation penalties must be attributed to the original conviction, the Court determined that the imposition of an additional supervised release term would alter the conditions upon which the Petitioner was originally sentenced and be a retrospective application of the statute barred by the Ex Post Facto Clause. (*Id.* at 701.)

Both *Johnson* and *Callejas* establish that the application of the SPPCA to parolees who committed section 290 offenses prior to the statute’s passage on November 7, 2006 would be retrospective, regardless of whether such parolees were released from custody after the statute’s effective date, as the new housing restrictions fundamentally alter the parole scheme under which they were sentenced. Because the SPPCA’s 2,000-foot restriction is punitive in intent and effect, such retrospective application violates the Ex Post Facto Clause.

## CONCLUSION

For the foregoing reasons, the Court should:

1. Issue an immediate stay of enforcement of California Department of Corrections and Rehabilitation Policy No. 07-36, and any equivalent policy adopted for the purpose of enforcing the residency restrictions of Penal Code section 3003.5, subdivision (b) as a parole condition against Petitioner,
2. Issue an Order to Show Cause why relief should not be granted,
3. Appoint Counsel to represent petitioner,
4. Issue an Order directing Respondent to provide discovery on the “as applied” issues set forth in *In re E.J.*, \_\_\_ Cal.4th \_\_\_, Slip. Opinion at 28.
5. Temporarily and permanently enjoin Respondent from applying Penal Code section 3003.5, subdivision (b), which imposes a condition of parole that prohibits Petitioner from residing within 2,000 feet of any public or private school, or park where children regularly gather,
6. Declare the rights of parties, and
7. Grant any and all other relief necessary to a just resolution of this case.

Respectfully submitted,

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[Signature of Petitioner]

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**Proof of Service by Mail**

Case No. \_\_\_\_\_

I am a resident of the city or town of \_\_\_\_\_ in the county of \_\_\_\_\_, California. I am over the age of 18 years. My residence address is: \_\_\_\_\_

On the date of \_\_\_\_\_, I served the attached \_\_\_\_\_ on the Respondent in this case by placing a true copy thereof in a sealed envelope with postage fully paid in the United States mail in the town or city of \_\_\_\_\_,

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on \_\_\_\_\_ [date], at \_\_\_\_\_, California.

\_\_\_\_\_  
[Type or Print Name]

\_\_\_\_\_  
[Signature]

Petitioner's name, address and phone number:

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\_\_\_\_\_

**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**IN AND FOR THE COUNTY OF \_\_\_\_\_**

In re  
\_\_\_\_\_  
On habeas corpus.

Case No. \_\_\_\_\_

**REQUEST FOR APPOINTMENT  
OF COUNSEL AND  
DECLARATION  
OF INDIGENCY**

I, \_\_\_\_\_, declare that I am the petitioner in the above-referenced matter, and that I am indigent and unable to afford counsel. My total assets are \$ \_\_\_\_\_ and my income is \$ \_\_\_\_\_ per month.

I hereby request that counsel be appointed in this matter so that my interests may be protected by the professional assistance required. Pursuant to the California Rules of Court, rule 4.551 (c)(2), when a court issues an order to show cause, counsel must be appointed for an indigent petitioner who requests counsel.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on this date: \_\_\_\_\_.

\_\_\_\_\_  
[Type or Print Name]

\_\_\_\_\_  
[Signature]

**CALIFORNIA STATE COURTS**  
(and state prisons in those court districts)

**California State Superior Courts**

**Alameda County Superior Court**

1225 Fallon Street, #209  
Oakland, CA 94612-4293

**Alpine County Superior Court**

14777 State Route 89  
PO Box 518  
Markleeville, CA 96120

**Amador County Superior Court**

500 Argonaut Lane  
Jackson, CA 95642  
Mule Creek State Prison

**Butte County Superior Court**

One Court Street  
Oroville, CA 95965

**Calaveras County Superior Court**

891 Mountain Ranch Road  
San Andreas, CA 95249-9709

**Colusa County Superior Court**

532 Oak St.  
Colusa, CA 95932-2495

**Contra Costa County Superior Court**

725 Court Street  
Martinez, CA 94553-1233

**Del Norte County Superior Court**

450 H Street, Room 209  
Crescent City, CA 95531  
Pelican Bay State Prison

**El Dorado County Superior Court**

495 Main Street  
Placerville, CA 95667-5699

**Fresno County Superior Court**

1100 Van Ness  
Fresno, CA 93724-0002  
Pleasant Valley State Prison

**Glenn County Superior Court**

526 West Sycamore Street  
Willows, CA 95988

**Humboldt County Superior Court**

825 Fifth Street  
Eureka, CA 95501-1153

**Imperial County Superior Courts**

939 West Main Street  
El Centro, CA 92243-2842  
Calipatria State Prison, Centinela State Prison

**Inyo County Superior Court**

168 Edwards Street  
Independence, CA 93526-0618

**Kern County Superior Court**

1415 Truxtun Avenue  
Bakersfield, CA 93301-4172  
Cal. Correctional Institution, Kern Valley State Prison, North Kern State Prison, Wasco State Prison

**Kings County Superior Court**

1426 South Drive  
Hanford, CA 93230-5997  
Avenal State Prison, CSP-Corcoran, Substance Abuse Treatment Facility

**Lake County Superior Court**

255 North Forbes Street  
Lakeport, CA 95453-4759

**Lassen County Superior Court**

220 South Lassen Street, Suite 6  
Susanville, CA 96130-4390  
California Correctional Center, High Desert State Prison

**Los Angeles County Superior Court (north) or Los Angeles County Superior Court (main)**

42011 4th Street West  
Lancaster, CA 93534  
CSP-Los Angeles County

111 North Hill Street  
Los Angeles, CA 90012-3014

**Madera County Superior Court**

209 West Yosemite Avenue  
Madera, CA 93637-3596  
Central California Women's Facility, Valley State Prison for Women

**Marin County Superior Court**

PO Box 4988  
San Rafael, CA 94913-4988  
CSP-San Quentin

**Mariposa County Superior Court**

5088 Bullion Street, PO Box 28  
Mariposa, CA 95338-0028

**Mendocino County Superior Court**

100 North State Street, Rm 108  
Ukiah, CA 95482-0996

**Merced County Superior Court**

2260 N Street  
Merced, CA 95340-3744

**Modoc County Superior Court**

205 South East Street  
Alturas, CA 96101

**Mono County Superior Court** (south county) or  
PO Box 1037  
Mammoth Lakes, CA 93546

**Mono County Superior Court** (north county)  
PO Box 537  
Bridgeport, CA 93517

**Monterey County Superior Court** (Monterey) or  
1200 Aguajito Road  
Monterey, CA 93940  
Correctional Training Facility, Salinas Valley State Prison

**Monterey County Superior Court** (Salinas)  
240 Church St  
Salinas, CA 93901

**Napa County Superior Court**

825 Brown Street  
Napa, CA 94559

**Nevada County Superior Court**

201 Church Street, Suite 5  
Nevada City, CA 95959

**Orange County Superior Court** (criminal) or **Orange County Superior Court** (civil)  
P.O. Box 22024  
Santa Ana, CA 92702-2024

PO Box 22014  
Santa Ana, CA 92702-2014

**Placer County Superior Court**

101 Maple Street  
Auburn, CA 95603

**Plumas County Superior Court**

520 Main Street, Room 104  
Quincy, CA 95971

**Riverside County Superior Court** or **Riverside County Superior Court** (Blythe)

4050 Main Street  
Riverside, CA 92501-3626  
California Rehabilitation Center

265 North Broadway  
Blythe, CA 92225  
Chuckawalla Valley State Prison, Ironwood State Prison

**Sacramento County Superior Court**

720 9th Street  
Sacramento, CA 95814-1398  
CSP-Sacramento, Folsom State Prison

**San Benito County Superior Court**

440 5th Street, Room 205  
Hollister, CA 95023-3892

**San Bernadino County Superior Court, Chino or**

13260 Central Avenue  
Chino, CA 91710

California Institution for Men,  
California Institution for Women

**San Bernadino County Superior Court, Main**

303 W Third Street  
San Bernardino, CA 92415-0240

**San Diego County Superior Court**

PO Box 122724  
San Diego, CA 92112-2724  
Richard J. Donovan Correctional Facility

**San Francisco County Superior Court (civil) or**

400 McAllister Street  
San Francisco, CA 94102

**San Francisco County Superior Ct (criminal)**

850 Bryant Street  
San Francisco, CA 94103

**San Joaquin County Superior Court**

222 East Weber Avenue #303  
Stockton, CA 95202-2777  
Deuel Vocational Institution

**San Luis Obispo County Superior Court**

1035 Palm Street, Room 385  
San Luis Obispo, CA 93408  
California Men's Colony

**San Mateo County Superior Court**

400 County Center  
Redwood City, CA 94063-1655

**Santa Barbara County Superior Court**

PO Box 21107  
Santa Barbara, CA 93121-1107

**Santa Clara County Superior Court**

191 North First Street  
San Jose, CA 95113-1090

**Santa Cruz County Superior Court**

701 Ocean Street  
Santa Cruz, CA 95060-4086

**Shasta County Superior Court**

1500 Court Street  
Redding, CA 96001-1686

**Sierra County Superior Court**

100 Courthouse Square  
PO Box 476  
Downieville, CA 95936

**Siskiyou County Superior Court**

311 4th St.  
P.O. Box 1026  
Yreka, CA 96097-2998

**Solano County Superior Court**

600 Union Avenue  
Fairfield, CA 94533  
California Medical Facility, CSP-Solano

**Sonoma County Superior Court**

600 Administration Drive, #107J  
Santa Rosa, CA 95403-2818

**Stanislaus County Superior Court**

PO Box 3488  
Modesto, CA 95353

**Sutter County Superior Court**

446 2nd Street  
Yuba City, CA 95991-5525

**Tehama County Superior Court**

PO Box 278  
Red Bluff, CA 96080

**Trinity County Superior Court**

PO Box 1258  
Weaverville, CA 96093-1258

**Tulare County Superior Court**

County Civic Center, Room 201  
Visalia, CA 93291-4580

**Toulumne County Superior Court**

41 West Yaney Avenue  
Sonora, CA 95370-4611  
Sierra Conservation Center

**Ventura County Superior Court**

PO Box 6489  
Ventura, CA 93006-6489

**Yolo County Superior Court**

725 Court Street  
Woodland, CA 95695

**Yuba County Superior Court**

215 Fifth Street, Suite 200  
Marysville, CA 95901-5794

**California State Courts of Appeal**

**First District Court of Appeal**

350 McAllister Street  
San Francisco, CA 94102  
Pelican Bay State Prison, San Quentin State Prison, California Medical Facility, CSP-Solano  
Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Napa, San Francisco,  
San Mateo, Solano, and Sonoma counties

**Second District Court of Appeal**

300 Spring Street, Floor 2, North Tower  
Los Angeles, CA 90013  
CSP-Los Angeles County  
Los Angeles, San Luis Obispo, Santa Barbara, and Ventura counties

**Third District Court of Appeal**

621 Capitol Mall, 10th Floor  
Sacramento, CA 95814-4719  
Mule Creek State Prison, California Correctional Center, High Desert State Prison, Folsom State Prison,  
Deuel Vocational Institution; CSP-Sacramento  
Alpine, Amador, Butte, Calaveras, Colusa, El Dorado, Glenn, Lassen, Modoc, Mono, Nevada, Placer,  
Plumas, Sacramento, San Joaquin, Shasta, Sierra, Siskiyou, Sutter, Tehama, Trinity, Yolo, and Yuba  
counties

**Fourth District Court of Appeal, Division 1**

750 B Street, Suite 300  
San Diego, CA 92101  
Richard J. Donovan Corr. Fac., Centinela State Prison, Cal. Rehabilitation Center, Calipatria State Prison  
Imperial and San Diego counties

**Fourth District Court of Appeal, Division 2**

3389 12th Street  
Riverside, CA 92501  
California Institute for Women, California Institute for Men, Chuckawalla Valley State Prison, Ironwood  
State Prison, California Men's Colony  
Inyo, Riverside, and San Bernadino counties

**Fourth District Court of Appeal, Division 3**

P.O. Box 22055  
Santa Ana, CA 92702  
Orange County

**Fifth District Court of Appeal**

2424 Ventura Street

Fresno, CA 93721

CSP-Corcoran, Substance Abuse Treatment Facility, Sierra Conservation Center, Pleasant Valley State Prison, California Correctional Institution, Kern Valley State Prison, North Kern State Prison, Wasco State Prison, Central California Women's Facility, Valley State Prison for Women, Avenal State Prison  
Fresno, Kern, Kings, Madera, Mariposa, Merced, Stanislaus, Tulare, and Tuolumne counties

**Sixth District Court of Appeal**

333 West Santa Clara Street, Suite 1060

San Jose, CA 95113-1717

Correctional Training Facility, Salinas Valley State Prison  
Santa Clara, Santa Cruz, Monterey and San Benito counties

**California State Supreme Court**

**California Supreme Court**

350 McAllister Street

San Francisco, CA 94102 -7303