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16 UNITED STATES DISTRICT COURT  
17 NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION  
18

19 COLIN SCHOLL and LISA STRAWN, on  
behalf of themselves and all others similarly  
20 situated,

21 Plaintiffs,

22 vs.

23 STEVEN MNUCHIN, in his official capacity  
as the Secretary of the U.S. Department of  
24 Treasury; CHARLES RETTIG, in his official  
capacity as U.S. Commissioner of Internal  
25 Revenue; U.S. DEPARTMENT OF THE  
TREASURY; the U.S. INTERNAL  
26 REVENUE SERVICE; and, the UNITED  
STATES OF AMERICA,  
27

28 Defendants.

Case No. 4:20-cv-05309-PJH

**ADMINISTRATIVE MOTION FOR  
LEAVE TO FILE BRIEF OF AMICI  
CURIAE IN SUPPORT OF PLAINTIFFS’  
MOTION FOR PRELIMINARY  
INJUNCTION**

The Hon. Phyllis J. Hamilton

1 Amici Curiae A New Way of Life Reentry Project, Collateral Consequences Resource  
2 Center, East Bay Community Law Center, Ella Baker Center for Human Rights, Equal Rights  
3 Advocates, Homeboy Industries, Impact Fund, Insight Center, Just Cities, Justice and  
4 Accountability Center of Louisiana, Justice2Jobs, Lawyers Committee for Civil Rights of the SF  
5 Bay Area, Legal Action Center, Legal Aid at Work, Legal Services for Prisoners with Children,  
6 Public Counsel, National Consumer Law Center, Northern California Innocence Project, Policy  
7 Advocacy Clinic, Public Counsel, San Francisco Public Defender, Voices of the Experienced,  
8 Western Center on Law and Poverty (collectively, “Amici”) respectfully move for leave to file an  
9 amici curiae brief in the above-captioned matter. Plaintiffs consent to and Defendants do not  
10 oppose Amici’s motion for leave to file. A copy of the proposed amici curiae brief and a proposed  
11 order are attached as Exhibits A and B, respectively.

12 Courts have “broad discretion to appoint amici curiae.” *Hoptowit v. Ray*, 682 F.2d 1237,  
13 1260 (9th Cir. 1982), *abrogated on other grounds by Sandin v. Conner*, 515 U.S. 472 (1995).  
14 There are no “strict prerequisites that must be established prior to qualifying for amicus status.” *In*  
15 *re Dynamic Random Access Memory Antitrust Litig.*, No. M-02-1486-PJH, 2007 WL 2022026, at  
16 \*1 (N.D. Cal. July 9, 2007). Rather, “an individual or entity seeking to appear as amicus must  
17 merely make a showing that his/its participation is useful to or otherwise desirable to the court.”  
18 *Id.*

19 Amici are a broad group of organizations that represent or provide services to incarcerated  
20 people, previously incarcerated people, and their families. Their interests are described further in  
21 the Statement of Interest in the proposed brief. Amici concur with the Plaintiffs’ arguments in  
22 support of their Motion for Preliminary Injunction, but do not repeat them here. Rather, Amici  
23 seek leave to submit the proposed brief in order to provide the Court with additional information  
24 relevant to the irreparable harm prong of the preliminary injunction analysis, including empirical  
25 data regarding the impact of Defendants’ conduct on the currently incarcerated, as well as those  
26 newly released who are grappling with re-entry amid a pandemic that has decimated California’s

27 ///

28 ///

1 economy. Accordingly, Amici request leave to file the proposed amici curiae brief attached as  
2 Exhibit A.

3  
4 Dated: August 21, 2020

FARELLA BRAUN + MARTEL LLP

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6 By: /s/ Cynthia A. Castillo  
Cynthia A. Castillo

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8 Attorneys for AMICI CURIAE A New Way of Life  
9 Reentry Project, Collateral Consequences Resource  
10 Center, East Bay Community Law Center, Ella Baker  
11 Center for Human Rights, Equal Rights Advocates,  
12 Homeboy Industries, Impact Fund, Insight Center, Just  
13 Cities, Justice and Accountability Center of Louisiana,  
14 Justice2Jobs, Lawyers Committee for Civil Rights of the  
15 SF Bay Area, Legal Action Center, Legal Aid at Work,  
16 Legal Services for Prisoners with Children, Public  
17 Counsel, National Consumer Law Center, Northern  
18 California Innocence Project, Policy Advocacy Clinic,  
19 Public Counsel, San Francisco Public Defender, Voices  
20 of the Experienced, Western Center on Law and  
21 Poverty  
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# **EXHIBIT A**

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25 Revenue; U.S. DEPARTMENT OF THE  
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Case No. 4:20-cv-05309-PJH

**BRIEF OF AMICI CURIAE IN SUPPORT  
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The Hon. Phyllis J. Hamilton

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**CORPORATE DISCLOSURE STATEMENT**

Amicus Curiae Policy Advocacy Clinic is wholly owned by the University of California Berkeley. The remaining Amici Curiae state that they do not have parent corporations. No publicly held corporation owns 10% or more of any stake or stock in Amici Curiae.

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1 **STATEMENTS OF INTEREST**<sup>1</sup>

2 **A New Way Of Life Reentry Project** (ANWOL) is a housing organization for women  
3 coming out of incarceration and their children, and an advocacy organization for people with past  
4 convictions. The Legal Department of ANWOL offers clean slate services, administrative  
5 representation, and civil rights representation to people impacted by the criminal system. A  
6 significant number of ANWOL’s clients struggle with mandatory court fees and other substantial  
7 economic impacts that incarceration and the criminal system have on their daily lives.

8 **The Collateral Consequences Resource Center** (CCRC) promotes public discussion  
9 regarding the collateral consequences of arrest and conviction. CCRC takes a national perspective  
10 on this dynamic area of law and social policy, offering advocacy resources, news, and  
11 commentary. CCRC’s *Restoration of Rights Project* collects and analyzes laws and policies  
12 providing for relief from collateral consequences in every state, including fair employment and  
13 occupational licensing, restoration of civil rights, pardon, expungement, and other record relief.

14 **The East Bay Community Law Center** (EBCLC) provides legal services and policy  
15 advocacy that are responsive to the needs of low-income communities. The Clean Slate Practice  
16 at the East Bay Community Law Center offers a wide range of integrated services to people whose  
17 driver’s licenses are suspended, including limited scope representation, full case representation,  
18 and appellate advocacy. EBCLC also provides services to legal services advocates, including  
19 training, technical assistance, advocacy, networking, collaboration, capacity building and  
20 coordination.

21 **The Ella Baker Center for Human Rights** (EBC) is a civil rights organization that  
22 organizes with Black, Brown, and low-income communities and works to shift resources away  
23 from prison and punishment and towards opportunities that make our communities safe, healthy,  
24 and strong.

25 **Equal Rights Advocates** (ERA) is a national civil rights organization based in San

26 <sup>1</sup> Plaintiffs consent to and Defendants do not oppose this filing. Counsel for amici curiae certify  
27 that no party’s counsel authored this brief in whole or in part, and no person other than amici  
28 curiae, their members, or their counsel made a monetary contributions to its preparation or  
submission.



1 Francisco, whose mission is to protect and expand economic and educational access and  
2 opportunities for women and girls. Since its founding in 1974, ERA has engaged in direct legal  
3 services, impact litigation, and other advocacy aimed at eradicating discrimination and other  
4 systemic barriers to justice for people of all genders in workplaces and schools. ERA provides  
5 free legal assistance to hundreds of individuals each year through our Advice & Counseling  
6 program and has led policy reform efforts to expand economic opportunity for workers with  
7 criminal records. ERA recognizes that the COVID-19 crisis is having a severe and  
8 disproportionate impact on Black, indigenous, and other people of color, who are also more likely  
9 to be incarcerated or have family members in prison. The denial of CARES Act relief to  
10 incarcerated individuals and their families will have especially devastating consequences for  
11 households headed by women of color, who already are more likely to be working for poverty  
12 and/or unequal wages, without workplace protections, job security, or access to paid leave.

13       Founded in 1988, **Homeboy Industries** provides hope, training, and support to formerly  
14 gang-involved and previously incarcerated men and women, allowing them to redirect their lives  
15 and become contributing members of our community. Everyone in the Homeboy Industries  
16 community is impacted by incarceration, and the pandemic is only exacerbating the physical,  
17 emotional and economic hardships imposed by incarceration. Withholding CARES relief from  
18 incarcerated individuals only serves to aggravate an already dire and dangerous situation for  
19 incarcerated individuals and their families.

20       The **Impact Fund** is a non-profit legal foundation that provides strategic leadership and  
21 support for impact litigation to achieve economic and social justice. The Impact Fund provides  
22 funding, offers innovative training and support, and serves as counsel for impact litigation across  
23 the country. The Impact Fund has served as counsel in a number of major civil rights cases,  
24 including cases challenging employment discrimination, wage-and-hour violations, lack of access  
25 for those with disabilities, and violations of fair housing laws. Through its work, the Impact Fund  
26 seeks to use and support impact litigation to achieve social justice for all communities.

27       The **Insight Center** is a national research and economic justice organization working to  
28 ensure that all people become and remain economically secure. Throughout the Bay Area, the

1 State of California, and nationwide, Insight’s policy and research advocates identify and  
2 implement solutions to address the intentional disinvestment, dehumanization, and exclusion of  
3 people of color from economic policy and opportunity.

4 **Just Cities** is a restorative justice urban planning organization. Just Cities believes that  
5 those directly impacted should have the power to define and create solutions to structural policy  
6 injustice. For example, Just Cities leads and staffs the Alameda County Fair Chance Housing  
7 Coalition which centers the leadership of directly impacted residents to ensure that formerly  
8 incarcerated people can have a fair chance to access all forms of housing.

9 **The Justice and Accountability Center of Louisiana (JAC)** addresses pervasive  
10 problems in the post-conviction phase of the criminal justice system by promoting access to  
11 justice through legal services to previously incarcerated individuals and related community  
12 education, and by promoting systemic change that will positively impact the lives of those  
13 previously incarcerated. The lack of access for incarcerated populations to appropriate services in  
14 the post-conviction phase of the criminal justice system and the lack of support for a positive  
15 reentry of people previously incarcerated are contrary to notions of fairness and justice. JAC  
16 envisions a just society where all individuals have affordable access to necessary legal and social  
17 services, and this includes equal access to disaster recovery dollars and programs. JAC believes  
18 we cannot have a full post-COVID recovery of the Louisiana economy by shutting out the 1 in 3  
19 people with criminal records.

20 **Justice2Jobs (J2J)** is a community project advancing local, criminal legal reform in the  
21 Sacramento region. J2J centers voices of those with lived experience impacted by the carceral  
22 system to look at justice systemically—excavate facts, interrogate processes, and create solutions  
23 for a just and inclusive society. Those who support and work on J2J’s initiatives ranging from  
24 automated marijuana expungement to fines and fees reform recognize the systemic wealth-  
25 stripping that occurs when Black, Brown, and low-income residents are disproportionately  
26 stopped, searched, arraigned, fined, incarcerated, placed under probation control, and placed in a  
27 worse off economic situation than when they first had contact with the criminal legal system. J2J  
28 believes Sacramento residents who are currently incarcerated, and at far greater risk of COVID-19

1 exposure than the general resident population, are rightfully due benefits from the Economic  
2 Impact Payments from the CARES Act.

3         **Lawyers Committee for Civil Rights of the San Francisco Bay Area** (LCCR) works to  
4 dismantle systems of oppression and racism, and to build an equitable and just society. Formed in  
5 1968 to bridge the legal community and the Civil Rights Movement, LCCRSF advances the rights  
6 of people of color, immigrants, refugees and low income individuals. LCCRSF provides free legal  
7 assistance and representation for clients facing a broad range of inter-related issues, including  
8 criminalization, policing, and fines and fees, education, and immigration. LCCRSF has done  
9 impact work for incarcerated people, including several conditions lawsuits and advocacy for  
10 phone justice.

11         **Legal Action Center** (LAC) is a national, non-profit law and policy organization, with  
12 offices in New York and Washington, D.C., that fights discrimination against and promotes the  
13 privacy rights of individuals with criminal records, substance use disorders, and/or HIV/AIDS.  
14 LAC’s work includes extensive policy advocacy to ensure that health care is accessible to all,  
15 including individuals who are incarcerated, and to eliminate the myriad unjust barriers to  
16 employment, housing, legal benefits, and other life essentials that individuals in reentry need to  
17 support themselves, their families, and their communities. For decades, LAC has also represented  
18 individuals facing discrimination and decreased opportunity because of their criminal record  
19 history. The question posed in this case is of vital concern to LAC’s constituency across the  
20 country.

21         **Legal Aid at Work** (formerly the Legal Aid Society—Employment Law Center) (LAAW)  
22 is a public interest legal organization founded in 1916 that advances justice and economic  
23 opportunity for low-income people and their families at work, in school, and in the community.  
24 Since 1970, LAAW has represented low-wage clients in both individual and class action cases  
25 involving a broad range of employment-related issues, including discrimination, wage theft, labor  
26 trafficking, and retaliation. LAAW frequently appears in federal and state courts in cases of  
27 special import to communities of color, formerly incarcerated persons, women, recent immigrants,  
28 individuals with disabilities, the LGBTQ community, veterans, and the working poor. In

1 particular, LAAW’s Racial Economic Justice program protects and expand the civil rights of  
2 people of color and provides legal assistance to individuals facing economic and racial injustice,  
3 including formerly incarcerated persons upon reentry.

4       **Legal Services for Prisoners with Children** (LSPC) organizes communities impacted by  
5 the criminal justice system to restore human and civil rights and reunify families and communities.  
6 To address the criminalization of California’s most vulnerable residents, LSPC is involved with  
7 policy, litigation, and public education work aimed at reducing the collateral consequences of  
8 fines and fees.

9       Since 1969, the nonprofit **National Consumer Law Center** (NCLC) has worked for  
10 consumer justice and economic security for low-income and other disadvantaged people. Through  
11 its Criminal Justice Debt Project, NCLC uses education, policy advocacy, and litigation to  
12 challenge the injustices at the intersection of criminal and consumer law. Its work addresses fines-  
13 and-fees policies that criminalize poverty and strip wealth from communities of color, as well as  
14 abuses by private actors in the criminal legal system, including prison telecommunications and  
15 bail bond companies.

16       The **Northern California Innocence Project** (NCIP) is a clinical program of Santa Clara  
17 University School of Law with a mission to promote a fair, effective, and compassionate criminal  
18 justice system and protect the rights of the innocent. Since its founding in 2001, the work of NCIP  
19 has led to the exoneration of 31 wrongfully convicted men and women. At the same time, NCIP  
20 also taught hundreds of future lawyers to recognize the leading causes of wrongful conviction and  
21 sought policy and legislative change to ensure that California’s criminal justice system does not  
22 repeat the mistakes of the past and our laws are applied in a fair and just manner. NCIP's  
23 exonerees, particularly those of color, struggled to support their families during their wrongful  
24 incarceration and are under constant threat of homelessness once released. CARES Act funds  
25 would reduce this threat by helping these men and women ensure that they, and their families, are  
26 food secure and have a roof over their heads.

27       The **Policy Advocacy Clinic** (PAC) is a law school teaching clinic where interdisciplinary  
28 teams of law and public policy students pursue non-litigation strategies addressing systemic racial,

1 economic, and social injustice. The clinic’s approach is ground-up (rooted in the lives of real  
2 people), problem-based (addressing pressing social issues), and client-driven (accountable to  
3 community organizations). Current projects include state and national efforts to abolish regressive  
4 and racially discriminatory fees and fines in the juvenile and criminal legal systems. PAC’s  
5 organizational clients serve people who face economic and emotional hardship in their daily lives  
6 as result of mass incarceration and mass criminalization, hardship that is exacerbated by the  
7 government withholding CARES Act relief from individuals, families, and communities.

8 **Public Counsel** is the nation’s largest public interest law firm specializing in delivering  
9 pro bono legal services to low-income communities. Its attorneys have successfully challenged  
10 the imposition of fines and fees on indigent criminal defendants, including incarcerated  
11 defendants. In the course of its work on fines and fees, bail bonds, and other criminalization of  
12 poverty issues, Public Counsel regularly communicates with incarcerated persons throughout  
13 California.

14 The **San Francisco Public Defender** has provided dedicated and passionate legal  
15 representation to people who are charged with a crime and unable to afford an attorney for over 90  
16 years. Its mission is to protect and defend the rights of our clients through effective, vigorous,  
17 compassionate, and creative legal advocacy. Its client base is deeply impacted by criminalization  
18 and incarceration and is primarily comprised of low-income people of color.

19 **Voices of the Experienced (VOTE)** is a grassroots organization founded and run by  
20 formerly incarcerated people, their families and their allies. VOTE is dedicated to restoring the  
21 full human and civil rights of those most impacted by the criminal system.

22 **Western Center on Law and Poverty** works on behalf of low-income Californians to  
23 advance access to housing, health, public benefits, jobs and justice. Critical to Western Center’s  
24 anti-poverty mission is reducing barriers and advocating for economic opportunities for  
25 individuals—and the families of individuals—who were involved in the criminal justice system.

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1 **INTRODUCTION**

2 *Amici Curiae* A New Way of Life Reentry Project, Collateral Consequences Resource  
3 Center, East Bay Community Law Center, Ella Baker Center for Human Rights, Equal Rights  
4 Advocates, Homeboy Industries, Impact Fund, Insight Center, Just Cities, Justice and  
5 Accountability Center of Louisiana, Justice2Jobs, Lawyers Committee for Civil Rights of the SF  
6 Bay Area, Legal Action Center, Legal Aid at Work, Legal Services for Prisoners with Children,  
7 Public Counsel, National Consumer Law Center, Northern California Innocence Project, Policy  
8 Advocacy Clinic, Public Counsel, San Francisco Public Defender, Voices of the Experienced, and  
9 Western Center on Law and Poverty (“Amici”) file this brief in support of Plaintiffs Colin Scholl  
10 and Lisa Strawn’s Motion for Preliminary Injunction, Dkt. No. 8. Amici concur with Plaintiffs’  
11 arguments in support of their Motion for Preliminary Injunction and do not repeat them here.  
12 Instead, Amici write separately to provide the Court with empirical data regarding the impact of  
13 Defendants’ conduct on the currently incarcerated, as well as those newly released who are  
14 grappling with re-entry amid a pandemic that has decimated California’s economy.

15 **ARGUMENT**

16 **I. Delay of CARES Act Funds to Incarcerated People Will Cause Irreparable Harm to**  
17 **Communities Most Impacted By The COVID-19 Crisis**

18 Because both the pandemic and incarceration are disproportionately impacting the same  
19 economically vulnerable Black and Brown communities that have faced historical barriers to  
20 employment, safe working conditions, and the ability to build emergency savings, withholding the  
21 much needed resources provided by the CARES Act will intensify preexisting inequities and cause  
22 irreparable harm to incarcerated individuals and to their communities.

23 **A. Incarceration Costs Make Families Economically Vulnerable and**  
24 **Disproportionately Impact Black and Brown Communities**

25 For centuries, the criminal legal system has targeted and disproportionately harmed Black  
26 and Brown people. Due to systemic over-policing, Black men are arrested at a greater proportion  
27  
28

1 compared to all other racial groups,<sup>2</sup> and women of color are the fastest growing segment of the  
 2 incarcerated population.<sup>3</sup> In communities of color, arrest rates are higher, and over-policing is  
 3 rampant.<sup>4</sup> Nationwide, more than 60 percent of incarcerated people are people of color.<sup>5</sup>  
 4 According to the Vera Institute, using statistics from 2015-2017 “[i]n California, Black people  
 5 constituted 6% of state residents, but 20% of people in jail and 28% of people in prison.”<sup>6</sup>

6 Incarceration imposes costs that contribute to the financial precarity of families of  
 7 incarcerated people and strips resources from communities of color. These costs include  
 8 exorbitant jail and prison phone call fees. The 2018 average cost of a 15-minute jail phone call  
 9 was \$5.70, and \$2.03 for a 15-minute prison phone call.<sup>7</sup> Phone calls are vitally important, as they  
 10 support family stability and can help mitigate the negative health impacts related to incarceration.<sup>8</sup>  
 11 Commissary items, such as food and soap, are also incredibly costly.<sup>9</sup>

12 \_\_\_\_\_  
 13 <sup>2</sup> By race and gender, Black men are arrested most often (48.9 percent arrest rate), followed by  
 14 Hispanic men (43.8 percent) and white men (37.9 percent).” Brennan Ctr. for Just., *Just Facts: As*  
 15 *Many Americans Have Criminal Records as College Diplomas* (last visited Aug. 20, 2020),  
[https://www.brennancenter.org/blog/just-facts-many-americans-have-criminal-records-college-](https://www.brennancenter.org/blog/just-facts-many-americans-have-criminal-records-college-diplomas)  
[diplomas](https://www.brennancenter.org/blog/just-facts-many-americans-have-criminal-records-college-diplomas)

16 <sup>3</sup> Exec.’s All. for Boys and Men of Color, *Fair-Chance Hiring in Philanthropy 2* (last visited Aug.  
 17 20, 2020), [http://www.bantheboxphilanthropy.org/wp-content/uploads/2016/02/Fair-Chance-](http://www.bantheboxphilanthropy.org/wp-content/uploads/2016/02/Fair-Chance-Hiring-Philanthropy-Guide.pdf)  
[Hiring-Philanthropy-Guide.pdf](http://www.bantheboxphilanthropy.org/wp-content/uploads/2016/02/Fair-Chance-Hiring-Philanthropy-Guide.pdf)

18 <sup>4</sup> Per a 2019 survey, over 80 percent of Black respondents reported unfair treatment by police,  
 19 compared to 61 percent of whites; Black adults are roughly 5 times more likely to be unfairly  
 20 stopped due to their race or ethnicity compared to white adults. Pew Research, *10 Things We*  
 21 *Know About Race and Policing in the U.S.*, (last visited Aug. 20, 2020),  
[https://www.pewresearch.org/fact-tank/2020/06/03/10-things-we-know-about-race-and-policing-](https://www.pewresearch.org/fact-tank/2020/06/03/10-things-we-know-about-race-and-policing-in-the-u-s)  
[in-the-u-s.](https://www.pewresearch.org/fact-tank/2020/06/03/10-things-we-know-about-race-and-policing-in-the-u-s)

22 <sup>5</sup> Roosevelt Inst., *Rewrite the Racial Rules* 44 (last visited Aug. 20, 2020),  
<https://rooseveltinstitute.org/wp-content/uploads/2016/06/RI-RRT-Race-201606.pdf>

23 <sup>6</sup> Vera Inst. of Just., *Incarceration Trends in California\_1* (last visited Aug. 20, 2020),  
 24 <https://www.vera.org/downloads/pdfdownloads/state-incarceration-trends-california.pdf>

25 <sup>7</sup> Peter Wagner & Alexi Jones, *State of Phone Justice*, Prison Policy Initiative (last visited Aug.  
 26 20, 2020), [https://www.prisonpolicy.org/phones/state\\_of\\_phone\\_justice.html](https://www.prisonpolicy.org/phones/state_of_phone_justice.html)

27 <sup>8</sup> Ella Baker Ctr., *Who Pays?* (last visited Aug. 20, 2020), [http://whopaysreport.org/who-pays-full-](http://whopaysreport.org/who-pays-full-report/)  
[report/](http://whopaysreport.org/who-pays-full-report/)

28 <sup>9</sup> Kevin Sawyer, *Report: Prison Commissaries Have Legal Monopoly*, San Quentin News (last  
 visited Aug. 20, 2020), [https://sanquentinnews.com/report-prison-commissaries-have-legal-](https://sanquentinnews.com/report-prison-commissaries-have-legal-monopoly/)  
[monopoly/](https://sanquentinnews.com/report-prison-commissaries-have-legal-monopoly/)



1 Incarcerated people are often unable to shoulder the costs borne by confinement on their  
 2 own, and they often rely on outside family members to provide them with financial support.<sup>10</sup> A  
 3 recent study found that women overwhelmingly bear the brunt of this responsibility.<sup>11</sup> Families  
 4 care for incarcerated loved ones at great personal cost:

5 Nearly 2 in 3 families (65%) with an incarcerated member were unable to meet  
 6 their family’s basic needs. Forty-nine percent struggled with meeting basic food  
 7 needs and 48% had trouble meeting basic housing needs because of the financial  
 8 costs of having an incarcerated loved one.<sup>12</sup>

9 This support does not end upon release, as family “[is] the primary resource for housing,  
 10 employment, and health needs of their formerly incarcerated loved ones.”<sup>13</sup>

11 The harm caused by delaying payment of CARES Act benefits to incarcerated people and  
 12 their families is immediate and irreparable. Every day, low-income Black, and Brown families of  
 13 incarcerated people make life and death decisions about where to send money and resources.<sup>14</sup>  
 14 Should these precious dollars be used to buy food, pay for gas money, or pay rent?<sup>15</sup> Or, should  
 15 they be sent to a loved one in jail or prison to fund necessities, like safer food and hygiene  
 16 products from commissary?<sup>16</sup> The COVID-19 crisis makes these difficult choices more dire.  
 17 Immediate action is needed to direct CARES Act funds to incarcerated people, to ensure that their  
 18 loved ones will not have to make life-altering choices.

18 **B. The COVID-19 Virus Is Disproportionately Affecting Black and Brown**  
 19 **Communities**

20 Black and Brown communities are not only heavily affected by the economic impacts of

21 \_\_\_\_\_  
 22 <sup>10</sup> Ella Baker Ctr., *supra*, at 14.

23 <sup>11</sup> Ella Baker Ctr., *supra*, at 8-9.

24 <sup>12</sup> *Id.* at 9.

25 <sup>13</sup> *Id.*

26 <sup>14</sup> *See Id.*

27 <sup>15</sup> *See Id.*

28 <sup>16</sup> Lauren Brooke et al., *No Soap. Broken Sinks. We Will All Pay For Coronavirus Ravaging Prisons*, Brennan Center (last visited Aug. 20, 2020), <https://www.brennancenter.org/our-work/analysis-opinion/no-soap-broken-sinks-we-will-all-pay-coronavirus-ravaging-prisons>; Conor Friedersdorf, *Can’t We At Least Give Prisoners Soap?*, *The Atlantic* (Apr. 1, 2020)



1 incarceration, but also simultaneously suffering from the highest rates of both COVID-19  
 2 exposure and mortality.<sup>17</sup> This confluence makes the withholding of CARES Act relief from  
 3 incarcerated people deeply harmful.

4 According to data from the Centers of Disease Control and Prevention, “as of May 30,  
 5 Black people made up 22% and Hispanic people made up 33%,”<sup>18</sup> of confirmed COVID-19 cases  
 6 despite only “constitut[ing] 13% and 18% of the population, respectively.”<sup>19</sup> Similarly, analysis  
 7 by the Brookings Institute revealed that death rate disparities exist across all age groups.<sup>20</sup>  
 8 According to a recent NYU study, these disparities persist regardless of income.<sup>21</sup>

9 Racial segregation amplifies these disparate outcomes. “Counties where more than 86% of  
 10 residents are Black experienced up to 10 times higher death rates from COVID-19.”<sup>22</sup> COVID-  
 11 19’s impact relative to race is so pernicious that even health care workers of color are more likely  
 12 not only to care for patients with a positive COVID-19 result, but are also twice as likely to  
 13 acquire the virus themselves.<sup>23</sup>

14 For individuals who survive infection, the costs of long-term care potentially reach

15 \_\_\_\_\_  
 16 <sup>17</sup> Marin Wolf, *How Coronavirus and Race Collide in the U.S.*, Wash. Post (last visited Aug. 20,  
 2020),

17 [https://www.washingtonpost.com/business/how-coronavirus-and-race-collide-in-the-  
 18 us/2020/08/11/2b0e75d0-db95-11ea-b4f1-25b762cddb4\\_story.html](https://www.washingtonpost.com/business/how-coronavirus-and-race-collide-in-the-us/2020/08/11/2b0e75d0-db95-11ea-b4f1-25b762cddb4_story.html)

19 <sup>18</sup> *Id.*

20 <sup>19</sup> *Id.*

21 <sup>20</sup> Tiffany Ford et al., *Race Gaps in Covid-19 Deaths are Even Bigger than They Appear*, The  
 Brookings Inst. (last visited Aug. 20, 2020), [https://www.brookings.edu/blog/up-  
 22 front/2020/06/16/race-gaps-in-covid-19-deaths-are-even-bigger-than-they-appear/](https://www.brookings.edu/blog/up-front/2020/06/16/race-gaps-in-covid-19-deaths-are-even-bigger-than-they-appear/)

23 <sup>21</sup> Sasha Walek, *Racial Disparities in COVID-19–Related Deaths Exist Beyond Income  
 Differences in Large U.S. Cities*, N.Y.U Langone Health News (last visited Aug. 20, 2020),  
 24 [https://nyulangone.org/news/racial-disparities-covid-19-related-deaths-exist-beyond-income-  
 differences-large-us-cities](https://nyulangone.org/news/racial-disparities-covid-19-related-deaths-exist-beyond-income-differences-large-us-cities)

25 <sup>22</sup> Karthik Sivashanker et al, *A Data-Driven Approach to Addressing Racial Disparities in Health  
 Care Outcomes*, Harvard Bus. Rev. (last visited Aug. 20, 2020),  
 26 [https://hbr.org/2020/07/a-data-driven-approach-to-addressing-racial-disparities-in-health-care-  
 outcomes](https://hbr.org/2020/07/a-data-driven-approach-to-addressing-racial-disparities-in-health-care-outcomes)

27 <sup>23</sup> Christina Jewett, *Health Care Workers of Color Nearly Twice as Likely as Whites to Get  
 COVID-19*, Kaiser Health News (last visited Aug. 20, 2020), [https://khn.org/news/health-care-  
 28 workers-of-color-nearly-twice-as-likely-as-whites-to-get-covid-19/](https://khn.org/news/health-care-workers-of-color-nearly-twice-as-likely-as-whites-to-get-covid-19/)

1 \$20,000.<sup>24</sup> These costs make CARES Act benefits essential, particularly for members of  
 2 communities of color and Black communities who lack the same health insurance coverage of  
 3 their white counterparts.<sup>25</sup> In 2017, 55.5% of African Americans had private health insurance,  
 4 compared to 75.4% of white Americans, according to the U.S. Department of Health and Human  
 5 Services.<sup>26</sup> That same year, 43.9% of African Americans relied on Medicaid or public health  
 6 insurance and 9.9% were uninsured altogether.”<sup>27</sup>

7 Given these high rates of infection and mortality, coupled with additional economic and  
 8 cultural barriers,<sup>28</sup> denial of resources specifically designed to ameliorate the harmful impacts of  
 9 the COVID-19 pandemic can literally mean a death sentence for impacted communities. As such,  
 10 the Court should find that delay of such resources will result and likely has already resulted in  
 11 irreparable harm.

12 **C. The COVID-19 Crisis Is Causing Profound Economic Harms, Especially in**  
 13 **Black and Brown Communities**

14 The economic downturn resulting from COVID-19 has caused millions to lose their jobs or  
 15 face reductions in work and wages.<sup>29</sup> And nationwide, the COVID-19 pandemic crystalizes how  
 16 the structural infirmities of our economy have resulted in disproportionately harmful impacts on  
 17 Black and Brown people.<sup>30</sup>

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18  
 19 <sup>24</sup> Walecia Konrad, *After Battling COVID-19, Survivors May Have to Fight Big Medical Bills*,  
 20 CBS News (last visited Aug. 20, 2020), <https://www.cbsnews.com/news/covid-19-health-care-costs-medical-treatment/>

21 <sup>25</sup> Courtney Connley, *Racial Health Disparities Already Existed in America—The Coronavirus*  
 22 *Just Exacerbated Them*, CNBC (last visited Aug. 20, 2020),  
 23 <https://www.cnbc.com/2020/05/14/how-covid-19-exacerbated-americas-racial-health-disparities.html>

24 <sup>26</sup> *Id.*

25 <sup>27</sup> *Id.*

26 <sup>28</sup> Ctrs. for Disease Control and Prevention, *Health Equity Considerations and Racial and Ethnic*  
 27 *Minority Groups* (last visited Aug. 20, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/health-equity/race-ethnicity.html>

28 <sup>29</sup> *Id.*

29 <sup>30</sup> See, e.g., George Avalos, *California Jobless Claims Top 7 Million During Coronavirus*  
 30 *Shutdowns*, The Orange Cty Register (last visited Aug. 20, 2020),  
 31 <https://www.ocregister.com/2020/07/30/coronavirus-unemployment-claim-job-jobless-layoff->

1           Recent surveys from the Pew Research Center reveal the ways that the COVID-19  
 2 pandemic has impacted the long-term economic outlook of Black and Brown communities.<sup>31</sup> The  
 3 survey found that “61% of Hispanic Americans and 44% of [B]lack Americans said in April that  
 4 they or someone in their household had experienced a job or wage loss due to the coronavirus  
 5 outbreak, compared with 38% of white adults.<sup>32</sup>” Further, “nearly three-quarters of [B]lack (73%)  
 6 and Hispanic adults (70%) said they did not have emergency funds to cover three months of  
 7 expenses; around half of white adults (47%) said the same.”<sup>33</sup> Finally, the survey found that  
 8 “nearly three-quarters of [B]lack (73%) and Hispanic adults (70%) said they did not have  
 9 emergency funds to cover three months of expenses; around half of white adults (47%) said the  
 10 same.<sup>34</sup>” Most of the Black and Hispanic respondents who did not have emergency reserves “also  
 11 said they would not be able to cover their expenses for three months by borrowing money, using  
 12 savings or selling assets.”<sup>35</sup>

13           COVID-19 has further exacerbated already existing disparities in unemployment and  
 14 wealth acquisition, particularly for Black Americans.<sup>36</sup> The unemployment rate for Black  
 15 Americans has remained nearly double that of white Americans.<sup>37</sup> In May 2020, Black workers  
 16 experienced the highest unemployment of all racial groups (16.8 percent) and the slowest rate of  
 17 employment gains as COVID-19 restrictions were lifted.<sup>38</sup>

18  
 19 economy-tech-edd/

20 <sup>31</sup> Mark Hugo Lopez et al, *Financial and Health Impacts of COVID-19 Vary Widely by Race and*  
 21 *Ethnicity*, Pew Research Ctr. (last visited Aug. 20, 2020), [https://www.pewresearch.org/fact-](https://www.pewresearch.org/fact-tank/2020/05/05/financial-and-health-impacts-of-covid-19-vary-widely-by-race-and-ethnicity/)  
 22 [tank/2020/05/05/financial-and-health-impacts-of-covid-19-vary-widely-by-race-and-ethnicity/](https://www.pewresearch.org/fact-tank/2020/05/05/financial-and-health-impacts-of-covid-19-vary-widely-by-race-and-ethnicity/);  
 23 Spievack et al., *Latinx Unemployment is Highest of all Racial and Ethnic Groups for the First*  
 24 *Time on Record*. Urban Wire, (last visited Aug. 20, 2020), [https://www.urban.org/urban-](https://www.urban.org/urban-wire/latinx-unemployment-highest-all-racial-and-ethnic-groupsfirst-time-record)  
 25 [wire/latinx-unemployment-highest-all-racial-and-ethnic-groupsfirst-time-record](https://www.urban.org/urban-wire/latinx-unemployment-highest-all-racial-and-ethnic-groupsfirst-time-record)

26 <sup>32</sup> *Id.*

27 <sup>33</sup> *Id.*

28 <sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> Lauren Aratani et al., *African Americans Bear the Brunt of Covid-19’s Economic Impact*, The  
 Guardian (Aug. 20, 2020), [https://www.theguardian.com/us-news/2020/apr/28/african-americans-](https://www.theguardian.com/us-news/2020/apr/28/african-americans-unemployment-covid-19-economic-impact)  
 unemployment-covid-19-economic-impact

<sup>37</sup> *Id.*

<sup>38</sup> Dept. of Labor’s Bureau of Labor and Statistics, *The Unemployment Situation –July 2020*

1 Many of the jobs lost by the slowdown are low-wage jobs that do not have a work-from-  
 2 home option and that are dominated by people of color.<sup>39</sup> Many of the jobs most commonly held  
 3 by formerly-incarcerated people<sup>40</sup> have been the quickest to disappear amid the COVID-19  
 4 pandemic.<sup>41</sup>

5 In low-income job markets more insulated from pandemic induced layoffs, families are far  
 6 from safe from COVID-19's harms.<sup>42</sup> Lack of access to personal protective equipment (PPE) and  
 7 inadequate safety precautions to guard against the spread of the virus have left California's  
 8 agricultural workers,<sup>43</sup> food packers,<sup>44</sup> garment workers,<sup>45</sup> sanitation workers,<sup>46</sup> janitors,<sup>47</sup> school

9  
 10 (Aug. 20, 2020), <https://www.bls.gov/news.release/pdf/empsit.pdf>

11 <sup>39</sup> The majority of essential workers in the food and agriculture industry, as well as industrial,  
 12 commercial, and residential facilities and services, are people of color (50 and 53 percent,  
 13 respectively). Economic Policy Institute (EPI) analysis of Current Population Survey Outgoing  
 14 Rotation Group microdata, EPI Current Population Survey Extracts, Version 1.0.2 (last visited  
 15 Aug. 20, 2020), <https://microdata.epi.org>. See also The Insight Center, *Rules of Our Economy are Harming People of Color, Women and Immigrants During Covid-19* (last visited Aug. 20, 2020),  
 16 [https://insightccd.org/wp-content/uploads/2020/05/INSIGHT\\_one\\_pager\\_Covid19\\_01.pdf](https://insightccd.org/wp-content/uploads/2020/05/INSIGHT_one_pager_Covid19_01.pdf)

17 <sup>40</sup> American Community Survey, *5-Year Estimates* (2016) .

18 <sup>41</sup> Mark Buckshon, *Statewide California Construction Employment: How has it Fared with COVID-19*, CA Constr. News (last visited Aug. 20, 2020),  
 19 <https://www.californiaconstructionnews.com/2020/06/15/statewide-california-construction-employment-how-has-it-fared-with-covid-19/>; Thomas Frank, *Hardest-hit Industries*, CNBC News  
 20 (last visited Aug. 20, 2020), <https://www.cnbc.com/2020/05/08/these-industries-suffered-the-biggest-job-losses-in-april-2020.html>

21 <sup>42</sup> The Economist, *Hand to Mouth United States, workplace safety measures implemented during the COVID-19 pandemic* (last visited Aug. 20, 2020), <https://www.economist.com/graphic-detail/2020/05/13/americas-essential-workers-are-under-protected-in-the-face-of-covid-19>

22 <sup>43</sup> Rosa Tuiran et al., *Farmworkers Are Among Those at Highest Risk for COVID-19, Studies Show*, Frontline PBS (last visited Aug. 20, 2020),  
 23 <https://www.pbs.org/wgbh/frontline/article/covid-19-farmworkers-among-highest-risk-studies-show/>

24 <sup>44</sup> AP News, *Meatpacking Union: 44 COVID-19 Deaths Among Workers* (last visited Aug. 20, 2020), <https://apnews.com/f332a2d38e693b25a82a846bf7337a40>

25 <sup>45</sup> Leila Miller, *Corona Outbreak Hits Los Angeles Apparel with More than 300 Infections*, L.A. Times (last visited Aug. 20, 2020), <https://www.latimes.com/california/story/2020-07-12/coronavirus-outbreak-hits-los-apparel-with-more-than-300-infections-4-employee-deaths>

26 <sup>46</sup> E.A. Crunden et al., *New York Reports More than 350 COVID-19 Cases Among Sanitation, Waste Dive* (last visited Aug. 20, 2020), <https://www.wastedive.com/news/labor-covid-19-coronavirus-confirmed-waste-illnesses-new-york-sanitation/575635/>

1 food workers,<sup>48</sup> grocery workers,<sup>49</sup> nursing home professionals<sup>50</sup> and other essential workers with  
 2 high rates of COVID-19 infection that have resulted in lost wages, lost jobs and lost lives of  
 3 family breadwinners.<sup>51</sup>

4 CARES Act funds are critically needed to aid incarcerated people and returning residents  
 5 facing this economic context upon release, and to support families simultaneously dealing with the  
 6 economic fallout of COVID-19 and the high costs of supporting and maintaining communication  
 7 with incarcerated loved ones.

8 **II. Defendants' Withholding of Benefits From Incarcerated People Causes Irreparable**  
 9 **Harms Related to the COVID Crisis that the CARES Act Is Designed To Ameliorate**

10 Without CARES Act support, Plaintiffs are unlawfully daily denied access to funds that  
 11 may provide to them and their families relief from the pandemic's greatest harms. Denial of funds  
 12 places Plaintiffs and their families in increasingly dire straits, by forcing families to choose  
 13 between the health and safety of their incarcerated loved ones and their own safety and basic  
 14 needs, and by compromising the reentry prospects of returning citizens. None of these injuries can  
 15 be addressed, after the fact, by remedies available at law. Immediately restoring access to CARES  
 16

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17 <sup>47</sup> Jodi Kantor, *No Bleach and Dirty Rags: How Some Janitors are Asked to Keep You Virus-Free*,  
 18 N.Y. Times (last visited Aug. 20, 2020), <https://www.nytimes.com/2020/07/17/us/coronavirus-janitors.html>

19 <sup>48</sup> Anya Kamenetz, *Children May Miss Meals as School Food Services Workers Fall Ill*, NPR  
 20 News (last visited Aug. 20, 2020), <https://www.npr.org/sections/coronavirus-live-updates/2020/04/03/826882227/children-may-miss-meals-as-school-food-service-workers-fall-ill>

21 <sup>49</sup> Austin Horn, *Grocery Workers Union Estimates 3,257 Members Infected with Coronavirus*,  
 22 NPR News (last visited Aug. 20, 2020), <https://www.npr.org/2020/05/22/859624421/grocery-workers-union-estimates-3-257-members-infected-with-coronavirus> and Austin Williams, *I Face*  
 23 *Each Day with Anxiety*, FOX 11 News L.A. (last visited Aug. 20, 2020)  
 24 <https://www.foxla.com/news/i-face-each-day-with-anxiety-grocery-workers-union-estimates-10k-infected-or-exposed-to-covid-19>

25 <sup>50</sup> Olga Khazan, *The U.S. Is Preparing Its Deadliest Pandemic Mistake*, The Atlantic (last visited  
 26 Aug. 20, 2020), <https://www.theatlantic.com/health/archive/2020/07/us-repeating-deadliest-pandemic-mistake-nursing-home-deaths/613855/>

27 <sup>51</sup> United Nations, *The Impact of COVID-19 on Children*, United Nations Policy Brief (last visited  
 28 Aug. 20, 2020),  
[https://www.un.org/sites/un2.un.org/files/policy\\_brief\\_on\\_covid\\_impact\\_on\\_children\\_16\\_april\\_2020.pdf](https://www.un.org/sites/un2.un.org/files/policy_brief_on_covid_impact_on_children_16_april_2020.pdf)

1 Act funds is necessary to protect the health and safety of incarcerated people and the physical and  
2 financial wellbeing of their families.

3 **A. Food Insecurity**

4 As a result of the COVID crisis, families are facing severe hunger.<sup>52</sup> At the height of  
5 California's shutdown in April 2020, approximately a quarter of Californians were food  
6 insecure.<sup>53</sup> The rapid increase in food insecurity was caused by the loss of income and the  
7 unprecedented increase in food prices,<sup>54</sup> school closure,<sup>55</sup> and by the closure of soup kitchens and  
8 congregate meal programs.<sup>56</sup> Americans who received CARES Act benefits got a reprieve from  
9 hunger—16% of recipients in the first week reported that they were using the money to purchase  
10 food.<sup>57</sup> Denial of funds to incarcerated people and their families will cause irreparable harm.<sup>58</sup>

11 Food insecurity is particularly bad amongst families with children. This April, 40% of  
12  
13

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14 <sup>52</sup> Ctr. on Budget and Policy Priorities, *Tracking the COVID-19 Recession's Effects on Food,*  
15 *Housing, and Employment Hardships* (last visited Aug. 20, 2020),  
16 [https://www.cbpp.org/research/poverty-and-inequality/tracking-the-covid-19-recessions-effects-](https://www.cbpp.org/research/poverty-and-inequality/tracking-the-covid-19-recessions-effects-on-food-housing-and)  
17 [on-food-housing-and](https://www.cbpp.org/research/poverty-and-inequality/tracking-the-covid-19-recessions-effects-on-food-housing-and)

18 <sup>53</sup> Maya L. Kapoor et. al., *The Pandemic Hunger Crisis is Only Just Getting Started*, *The Atlantic*  
19 (last visited Aug. 20, 2020), [https://www.theatlantic.com/health/archive/2020/06/pandemic-food-](https://www.theatlantic.com/health/archive/2020/06/pandemic-food-banks-hunger/613036/)  
20 [banks-hunger/613036/](https://www.theatlantic.com/health/archive/2020/06/pandemic-food-banks-hunger/613036/)

21 <sup>54</sup> Susan Selasky, *Food Prices Soar to Highest Month Increase Since 1974*, *USA Today* (last  
22 visited Aug. 20, 2020), [https://www.usatoday.com/story/money/2020/05/20/food-prices-soar-](https://www.usatoday.com/story/money/2020/05/20/food-prices-soar-coronavirus-covid-19/5226969002/)  
23 [coronavirus-covid-19/5226969002/](https://www.usatoday.com/story/money/2020/05/20/food-prices-soar-coronavirus-covid-19/5226969002/)

24 <sup>55</sup> Agence France-Presse, *Coronavirus: 300 Million Children to Miss School Meals Amid*  
25 *Shutdowns*, *The Guardian* (last visited Aug. 20, 2020),  
26 [https://www.theguardian.com/world/2020/mar/21/coronavirus-300-million-children-to-miss-](https://www.theguardian.com/world/2020/mar/21/coronavirus-300-million-children-to-miss-school-meals-amid-shutdowns)  
27 [school-meals-amid-shutdowns](https://www.theguardian.com/world/2020/mar/21/coronavirus-300-million-children-to-miss-school-meals-amid-shutdowns)

28 <sup>56</sup> Douglas Belkin et al., *Coronavirus Threatens to Overwhelm Cities' Social Safety Net*, *Wall*  
Street J. (last visited Aug. 20, 2020), [https://www.wsj.com/articles/coronavirus-threatens-to-](https://www.wsj.com/articles/coronavirus-threatens-to-overwhelm-cities-social-safety-net-11585474200)  
overwhelm-cities-social-safety-net-11585474200

<sup>57</sup> Sarah Hansen, *How are Americans Spending those \$1,200 Stimulus Checks?*, *Forbes* (last  
visited Aug. 20, 2020), [https://www.forbes.com/sites/sarahhansen/2020/04/15/how-are-americans-](https://www.forbes.com/sites/sarahhansen/2020/04/15/how-are-americans-spending-those-1200-stimulus-checks-food-gas-and-bills/#2d5595f02e5a)  
spending-those-1200-stimulus-checks-food-gas-and-bills/#2d5595f02e5a

<sup>58</sup> Numerous courts have held that deprivation of food causes irreparable harm. See, e.g., *Garnett*  
*v. Zeilinger*, 313 F. Supp. 3d 147, 157 (D.D.C. 2018); *Booth v. McManaman*, 830 F. Supp. 2d  
1037, 1043 (D. Haw. 2011).



1 families with children 12 and under across the U.S. were food-insecure.<sup>59</sup> According to Census  
 2 Bureau data, from May 28 to June 2, 2020, Black and Hispanic or Latinx households were twice  
 3 as likely as white households to report that they sometimes or often do not have enough to eat.  
 4 Among households with children, 21 percent of Hispanic or Latinx respondents and 27 percent of  
 5 Black respondents reported that they are currently experiencing food insecurity and hunger.<sup>60</sup>

6 The harm is likely more severe for the 1 in 28 American children with incarcerated parents  
 7 and whose families are already struggling to meet their basic needs. According to a report by the  
 8 Ella Baker Center for Human Rights, nearly 65% of polled families became unable to pay for their  
 9 basic needs when a member of their household goes to prison; 70% of those families were raising  
 10 children.<sup>61</sup>

11 Food insecurity increases risk of developmental delays in younger children, undermines  
 12 academic achievement for children of all ages, and cause long-term health issues.<sup>62</sup> Hungry  
 13 children also get sick more often and are more likely to be hospitalized. The physical harm to  
 14 children whose parents are further impoverished by a denial of CARES Act payment cannot be  
 15 undone and can cause severe and irreparable harm.

16 People who are incarcerated without families back home to care for and who are denied a  
 17 CARES Act payment prior to their release will lose resources they could use to stave off hunger  
 18 upon reentry. Food insecurity has deleterious impacts on health through increases in the  
 19 prevalence and severity of diet-related disease, such as type 2 diabetes, heart disease, stroke, and  
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21 <sup>59</sup> Lauren Bauer, *The COVID-19 Crisis has Already Left too Many Children Hungry in America*,  
 22 Brookings Institution (last visited Aug. 20, 2020), [https://www.brookings.edu/blog/up-](https://www.brookings.edu/blog/up-front/2020/05/06/the-covid-19-crisis-has-already-left-too-many-children-hungry-in-america/)  
 23 [front/2020/05/06/the-covid-19-crisis-has-already-left-too-many-children-hungry-in-america/](https://www.brookings.edu/blog/up-front/2020/05/06/the-covid-19-crisis-has-already-left-too-many-children-hungry-in-america/)

24 <sup>60</sup> U.S. Census Bureau, *Measuring Household Experiences During the Coronavirus Pandemic*  
 (last visited Aug. 20, 2020), <https://www.census.gov/householdpulsedata>

25 <sup>61</sup> Ella Baker Center, *Who Pays?* (last visited Aug. 20, 2020), [http://whopaysreport.org/key-](http://whopaysreport.org/key-findings/)  
[findings/](http://whopaysreport.org/key-findings/)

26 <sup>62</sup> Harvard Univ. Ctr. on the Developing Child, *Toxic Stress Derails Healthy Development* (last  
 27 visited Aug. 20, 2020), [https://developingchild.harvard.edu/resources/toxic-stress-derails-healthy-](https://developingchild.harvard.edu/resources/toxic-stress-derails-healthy-development/)  
[development/](https://developingchild.harvard.edu/resources/toxic-stress-derails-healthy-development/); Cuddy et al., *In a Land of Dollars: Deep Poverty and its Consequences*, Brookings  
 28 Inst. (last visited Aug. 20, 2020), [https://www.brookings.edu/research/in-a-land-of-dollars-deep-](https://www.brookings.edu/research/in-a-land-of-dollars-deep-poverty-and-its-consequences/)  
[poverty-and-its-consequences/](https://www.brookings.edu/research/in-a-land-of-dollars-deep-poverty-and-its-consequences/)

1 some cancers.<sup>63</sup> In addition, because of limited financial resources, those who are food insecure  
 2 may use coping strategies to stretch budgets that are harmful for health, such as engaging in cost-  
 3 related medication underuse or non-adherence postponing or forgoing preventives or needed  
 4 medical care and forgoing the foods needed for special medical diets (e.g., diabetic diets).<sup>64</sup>

5 Hunger is also harmful to reentry outcomes. Studies have proven that lacking access to  
 6 basic needs support can increase recidivism rates.<sup>65</sup> To the extent that the denial of CARES Act  
 7 payments increases the likelihood that they will experience hunger, it could result in a recidivism  
 8 rate that is 58% higher than they would be if hunger during re-entry were averted.<sup>66</sup> Such a denial  
 9 would thus deny returning citizens irreplaceable days, months or years of their life and  
 10 productivity thereby causing irreparable harm to them and to broader society.

#### 11 **B. Homelessness & Housing Insecurity**

12 The COVID-19 crisis has left millions of renters without employment and facing eviction.  
 13 In California, for example, despite federal and state action taken to prevent evictions, more than  
 14 1,600 people have been evicted since the beginning of the pandemic.<sup>67</sup> As pandemic-related food  
 15 assistance and unemployment benefits end, experts expect to see a wave of evictions that will  
 16 leave millions without housing.<sup>68</sup> CARES Act payment has been reported to play an important  
 17 role in paying back-rent and prevent eviction as pandemic-related eviction moratoriums are  
 18  
 19

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20 <sup>63</sup> Dena Herman et al., *Food Insecurity and Cost-Related Medication Underuse Among*  
 21 *Nonelderly Adults in a Nationally Representative Sample*, Am. J. of Pub. Health, 105(10), 48-59  
 (2015).

22 <sup>64</sup> *Id.*

23 <sup>65</sup> Cody Tuttle, *Snapping Back: Food Stamp Bans and Criminal Recidivism*, College Park Univ.  
 24 of Maryland (2018).

25 <sup>66</sup> *Id.*

26 <sup>67</sup> Matt Levin et al., *More than 1,600 Californians have been Evicted During Pandemic*, Cal  
 27 Matters (last visited Aug. 20, 2020), [https://calmatters.org/housing/2020/08/californians-evicted-](https://calmatters.org/housing/2020/08/californians-evicted-coronavirus-pandemic/)  
 coronavirus-pandemic/

28 <sup>68</sup> Chris Arnold, *'Tsunami' of Evictions Fears as Extra \$600 Unemployment Payments End*, NPR  
 News (last visited Aug. 20, 2020), [https://www.npr.org/2020/07/24/894996949/concern-over-](https://www.npr.org/2020/07/24/894996949/concern-over-evictions-rise-as-covid-19-unemployment-benefits-expire)  
 evictions-rise-as-covid-19-unemployment-benefits-expire



1 lifted.<sup>69</sup> Denial of this benefit to families of incarcerated people and people who will be leaving  
 2 incarceration during the pendency of this litigation threatens them with homelessness and related  
 3 irreparable harms.

4 For example, in California, half of all incarcerated residents have children who could also  
 5 experience an increased likelihood of homelessness due to the denial of a CARES Act payment.  
 6 California's January 2019 homeless point-in-time count estimated that nearly 54,000 families with  
 7 children were homeless.<sup>70</sup> As Americans fall into the deepest recession of their lifetimes, the loss  
 8 of income, wealth, and health that is disproportionately experienced by the poorest Americans of  
 9 color will increase child homelessness. This harm is even more likely for Black children of  
 10 incarcerated parents who have a 144% increase in rates of homelessness.<sup>71</sup>

11 Becoming homeless in the COVID-19 pandemic as a result of the withholding of CARES  
 12 Act payment will cause irreparable health consequences. The life span for a person who has been  
 13 homeless is between 42 and 52 years on average.<sup>72</sup> On average, adults who are unable to escape  
 14 homelessness have 8 to 9 concurrent medical illnesses.<sup>73</sup> Chronic diseases, such as hypertension,  
 15 diabetes, and asthma, are prevalent among people without homes and are more difficult to  
 16 manage.<sup>74</sup> Homelessness may even make one more vulnerable to the COVID-19 virus.<sup>75</sup>

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18 <sup>69</sup> Fernando Del Valle, *Paying the Rent: Stimulus Checks are Helping Tenants*, Valley Morning  
 19 Star (last visited Aug. 20, 2020), <https://www.valleymorningstar.com/2020/05/05/paying-rent-stimulus-checks-helping-tenants/>

20 <sup>70</sup> Dept. of Housing and Urban Dev. (HUD), 2019 Annual Data Report (last visited Aug. 20,  
 21 2020), [https://www.hud.gov/press/press\\_releases\\_media\\_advisories/HUD\\_No\\_19\\_177](https://www.hud.gov/press/press_releases_media_advisories/HUD_No_19_177)

22 <sup>71</sup> Fragile Families Research Brief, *Paternal Incarceration and Child Homelessness*, Princeton  
 23 Univ. (last visited Aug. 20, 2020), <https://fragilefamilies.princeton.edu/sites/fragilefamilies/files/researchbrief48.pdf>

24 <sup>72</sup> J.J. O'Connell, *Premature Mortality in Homeless Populations: A Review of the Literature*,  
 25 Nashville Nat'l Health Care for the Homeless Council, Inc. (last visited Aug. 20, 2020),  
<http://sbdww.org/wp-content/uploads/2011/04/PrematureMortalityFinal.pdf>

26 <sup>73</sup> Mary Otto, *Teeth: The Story of Beauty, Inequality, and the Struggle for Oral Health in America*, The New Press (2017).

27 <sup>74</sup> *Id.*

28 <sup>75</sup> Nat'l All. to End Homelessness, *Population At-Risk: Homelessness and the COVID-19 Crisis*  
 (last visited Aug. 20, 2020), <https://endhomelessness.org/wp-content/uploads/2020/03/Covid-Fact-BRIEF-OF-AMICI-CURIAE-IN-SUPPORT-OF-PLAINTIFFS'-MOTION-FOR-PRELIMINARY-INJUNCTION-Case-No.-4:20-cv-5309-JPH>

1 The impact of homelessness on children is especially devastating.<sup>76</sup> Homeless children are  
 2 sick four times as often as middle class children and have high rates of acute and chronic illness.<sup>77</sup>  
 3 In addition they suffer from emotional or behavioral problems that interfere with learning at  
 4 almost three times the rate of other children.<sup>78</sup> Withholding of CARES Act payments prevents  
 5 incarcerated parents from sending money through direct payments or diverted child support,  
 6 increasing the likelihood that their children will become homeless, causing irreparable harm.<sup>79</sup>

7 With homelessness among the prison and jail reentry population already at approximately  
 8 10%, there is little doubt that the continued withholding of a CARES Act payment that could  
 9 prevent homelessness will cause returning citizens irreparable harm.

### 10 C. Recidivism and Obstacles to Reentry

11 The denial of CARES Act funding not only impacts people who are imprisoned and their  
 12 families, but also harms those soon to be released. The unlawful withholding of CARES Act  
 13 payments from incarcerated people approaching release will make transitioning during a pandemic  
 14 and economic crisis even more difficult. Social science research suggests that having cash  
 15 assistance after incarceration reduces recidivism and contributes to safer communities.<sup>80</sup> Because  
 16 Plaintiffs approaching release are at a vulnerable, transitional juncture, setbacks now may “haunt

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17 Sheet-3.25.2020-2.pdf

18 <sup>76</sup> Ctrs. for Disease Control, *National Survey of Children’s Health* (last visited Aug. 20, 2020),  
 19 <https://www.cdc.gov/nchs/slait/nsch.htm>

20 <sup>77</sup> Bassuk et al., *Facts on Trauma and Homeless Children*, Nat’l Traumatic Stress Network (last  
 21 visited Aug. 20, 2020),  
 22 [http://www.nctsn.org/nctsn\\_assets/pdfs/promising\\_practices/Facts\\_on\\_Trauma\\_and\\_Homeless\\_Children.pdf](http://www.nctsn.org/nctsn_assets/pdfs/promising_practices/Facts_on_Trauma_and_Homeless_Children.pdf)

23 <sup>78</sup> B.T. Zima et al., *Emotional and Behavioral Problems and Severe Academic Delays*, *Am. J. of*  
 24 *Pub. Health* 84(2), 260-64 (last visited (Aug. 20, 2020),  
 25 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1614997/>

26 <sup>79</sup> Alexis Stephens, *The Payback Problem: How Taking Parents’ Child Support Payments to Pay*  
 27 *Back the Cost of Public Assistance Harms California Low-Income Children & Families*, Insight  
 28 Ctr. for Cmty. Econ. Dev. (last updated Aug. 20, 2020), [https://insightccd.org/wp-content/uploads/2019/04/The\\_Payback\\_Problem\\_Final.pdf](https://insightccd.org/wp-content/uploads/2019/04/The_Payback_Problem_Final.pdf)

<sup>80</sup> See, e.g., Nora Wikoff, Donald M. Lindhorst, & Nicole Morani, *Recidivism Among*  
 27 *Participants of a Reentry Program for Prisoners Released Without Supervision*, *National*  
 28 *Association for Social Workers*, 2012, available at,  
<https://pdfs.semanticscholar.org/bf43/b782798c12d18952c3d39c4540f87d749ad1.pdf>.

1 [them] for the rest of their lives[,]” causing irreparable harm. *See Arizona Dream Act Coal. v.*  
 2 *Brewer*, 757 F.3d 1053, 1068 (9th Cir. 2014) (loss of professional and employment opportunities  
 3 constituted irreparable harm, heightened by plaintiffs’ fragile socioeconomic position).

4 People in reentry are burdened with enormous financial costs attached to criminal system  
 5 involvement. These costs include fines, restitution, debt from cash bail to obtain pretrial release,  
 6 probation fees and numerous others.<sup>81</sup> For example, the average Californian exiting probation  
 7 carries over \$5000 of fine and fee debt, and costs of Clean Slate and expungement programs can  
 8 additionally cost more than \$5,000.<sup>82</sup> According to a 2018 Californians for Safety and Justice  
 9 Survey of over 2,000 Californians with a criminal conviction, more than half of survey  
 10 respondents struggle to find a job and pay off fines and fees.<sup>83</sup> The current crisis exacerbates this  
 11 likelihood as many wage paying jobs for individuals currently incarcerated are frozen.<sup>84</sup> Indeed,  
 12 wildfires are currently raging in California, partially because incarcerated firefighters are unable to  
 13 help in their mitigation.<sup>85</sup>

14 People returning from incarceration also face substantial obstacles to employment and  
 15 housing. Under federal law, individuals with certain convictions are automatically banned from  
 16 participating in the country’s two biggest housing assistance programs (Public Housing and  
 17 Section 8).<sup>86</sup> Those with arrest or convictions records who apply for housing experience

18  
 19 \_\_\_\_\_  
 20 <sup>81</sup> S.F. Fin. Justice Project, *Criminal Justice Administrative Fees*, S.F. Off. of the Treasurer (last  
 21 visited Aug. 20, 2020), [https://sfgov.org/financialjustice/sites/default/files/2020-](https://sfgov.org/financialjustice/sites/default/files/2020-04/Hig%20Pain%20Low%20Gain%20FINAL_04-24-2019_1.pdf)  
 22 [04/Hig%20Pain%20Low%20Gain%20FINAL\\_04-24-2019\\_1.pdf](https://sfgov.org/financialjustice/sites/default/files/2020-04/Hig%20Pain%20Low%20Gain%20FINAL_04-24-2019_1.pdf)

23 <sup>82</sup> *Id.*

24 <sup>83</sup> Californians for Safety and Justice, *Repairing the Road to Redemption in California* (Sept.  
 25 2018).

26 <sup>84</sup> Emma Grey Ellis, *Covid-19’s Toll on Prison Labor Doesn’t Just Hurt Inmates*, *Wired* (last  
 27 visited Aug. 21, 2020), <https://www.wired.com/story/covid-19-prison-labor/>

28 <sup>85</sup> Maanvi Singh, *Pandemic Sidelines More Than 1000 Incarcerated Wildfire Fighters in California*, *The Guardian* (last visited Aug. 21, 2020), [https://www.theguardian.com/us-](https://www.theguardian.com/us-news/2020/jul/10/california-wildfire-coronavirus-prison-incarcerated-firefighters)  
 news/2020/jul/10/california-wildfire-coronavirus-prison-incarcerated-firefighters

<sup>86</sup> Marah Curtis, et al, *Alcohol, Drug, and Criminal History Restrictions in Public Housing*, U.S.  
 Dept. of Housing and Urban Dev (last visited Aug. 20, 2020);  
<https://www.huduser.gov/portal/periodicals/cityscpe/vol15num3/ch2.pdf>

1 widespread discrimination from landlords and housing authorities.<sup>87</sup> The COVID-19 pandemic  
 2 exacerbates the difficulty—creating an increased strain on halfway houses, homeless shelters, and  
 3 other housing providers, and making moving in with loved ones a terrifying prospect.<sup>88</sup>

4 Even though research demonstrates that system-impacted working people perform just as  
 5 well as or better than their peers, applicants and employees with an incarceration record face  
 6 substantial hiring and workplace discrimination.<sup>89</sup> Employers in most states are allowed to deny  
 7 jobs to people who were arrested and many allow occupational licensing agencies to deny licenses  
 8 to people with any conviction.<sup>90</sup>

9 With fewer options, and little protection against employer discrimination based on prior  
 10 conviction, formerly incarcerated workers experience much higher unemployment rates and longer  
 11 periods of unemployment than people without a prior criminal conviction. Research shows that  
 12 unemployment among formerly incarcerated people hovers around 27 percent, peaking at  
 13 approximately 60 percent within the first year of release—a rate significantly higher than national  
 14 unemployment rates during the Great Depression.<sup>91</sup>

15 \_\_\_\_\_  
 16 <sup>87</sup> Nat'l Low Income Housing Coal. Advocates Guide, *A Primer on Federal Affordable Housing*  
 17 *and Community Development Programs* (last visited Aug. 20,  
 2020), [http://nlihc.org/sites/default/files/2017\\_Advocates-Guide.pdf](http://nlihc.org/sites/default/files/2017_Advocates-Guide.pdf)

18 <sup>88</sup> Alexander Mallin et al., *Locked up to Locked Out: Recently Released Prisoners Face*  
 19 *Unprecedented Challenges Amid Coronavirus Crisis*, ABC News (last visited Aug. 20, 2020),  
 20 [https://abcnews.go.com/US/locked-locked-recently-released-prisoners-face-unprecedented-](https://abcnews.go.com/US/locked-locked-recently-released-prisoners-face-unprecedented-challenges/story?id=70068219)  
 21 [challenges/story?id=70068219](https://abcnews.go.com/US/locked-locked-recently-released-prisoners-face-unprecedented-challenges/story?id=70068219)

22 <sup>89</sup> ACLU and Trone Private Sector and Educ. Advisory Council, *Back to Business: How Hiring*  
 23 *Formerly Incarcerated Job Seekers Benefits Your Company* (2017).

24 <sup>90</sup> Restoration of Rights Project, *50-State Comparison: Criminal Record in Employment &*  
 25 *Licensing* (last visited Aug. 20, 2020), [https://ccresourcecenter.org/state-restoration-profiles/50-](https://ccresourcecenter.org/state-restoration-profiles/50-state-comparison-comparison-of-criminal-records-in-licensing-and-employment/)  
 26 [state-comparison-comparison-of-criminal-records-in-licensing-and-employment/](https://ccresourcecenter.org/state-restoration-profiles/50-state-comparison-comparison-of-criminal-records-in-licensing-and-employment/)

27 <sup>91</sup> Prison Policy Initiative, *Out of Prison & Out of Work: Unemployment Among Formerly*  
 28 *Incarcerated People*, (2018); Christopher Zoukis, *Nearly Half of Prisoners Lack Access to*  
*Vocational Training*, Huffington Post (last visited Aug. 20, 2020),  
[https://www.huffingtonpost.com/entry/nearly-half-of-prisoners-lack-access-to-](https://www.huffingtonpost.com/entry/nearly-half-of-prisoners-lack-access-to-vocational_us_58c32447e4b0c3276fb784d0)  
[vocational\\_us\\_58c32447e4b0c3276fb784d0](https://www.huffingtonpost.com/entry/nearly-half-of-prisoners-lack-access-to-vocational_us_58c32447e4b0c3276fb784d0); Shelah Moody, *California Reentry Program Gives*  
*Ex-Cons a Second Chance*, SF Gate (last visited Aug. 20, 2020),  
[https://www.sfgate.com/style/article/California-Reentry-Program-gives-ex-cons-a-second-](https://www.sfgate.com/style/article/California-Reentry-Program-gives-ex-cons-a-second-3300222.php)  
[3300222.php](https://www.sfgate.com/style/article/California-Reentry-Program-gives-ex-cons-a-second-3300222.php); U.S. Bureau of Labor Statistics, *Labor Force, Employment, and Unemployment,*  
*1929-39: Estimating Methods* (last visited Aug. 20, 2020),

1 Formerly incarcerated job applicants will especially struggle with finding work during the  
 2 COVID-19 pandemic. Applicants with records face greater barriers in finding employment during  
 3 economic downturns than those without one.<sup>92</sup> In the last Recession, the nationwide  
 4 unemployment rate for returning residents was seven times higher than the general population,  
 5 with Black and Brown workers most impacted.<sup>93</sup>

6 Given the present economic crisis and existing employment discrimination, CARES Act  
 7 funds are crucial to help incarcerated people weather this job market upon release. Depriving  
 8 incarcerated people of CARES funds that they could use to meet basic needs like food, hygiene  
 9 and PPE products, and housing while seeking employment after release will irreparably interfere  
 10 with their ability to establish healthy, stable lives and support themselves and loved ones in these  
 11 extraordinarily difficult times.

### 12 CONCLUSION

13 For these reasons, the Court should grant Plaintiffs' Motion for Preliminary Injunction.  
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22 <https://www.bls.gov/opub/mlr/1948/article/pdf/labor-force-employment-and-unemployment-1929-39-estimating-methods.pdf>  
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24 <sup>92</sup> In comparison, returning residents' unemployment rate post-recession is around five times  
 25 higher than that of the United States' general population. During the recession, this rate increased  
 26 by about 40 percent. John Nally and Susan Lockwood et al., *Post-Release Recidivism and*  
 27 *Employment Among Different Types of Released Offenders: A 5-Year Follow-up Study in the*  
 28 *United States*, 9 Int'l J. Crim. Just. Sciences 16 (2014)

<sup>93</sup> Though all demographic groups were negatively impacted during the recession, Black and  
 Latinx workers experienced the worst hikes in unemployment (9.8 and 9.2 percentage points,  
 respectively. By contrast, Asians and Whites experienced the smallest unemployment rate  
 increases (6.0 and 7.3 percentage points, respectively). CWDB Strategic Plan, 22.

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Dated: August 21, 2020

FARELLA BRAUN + MARTEL LLP

By: /s/ Cynthia A. Castillo  
Cynthia A. Castillo

Attorneys for AMICI CURIAE A New Way of Life Reentry Project, Collateral Consequences Resource Center, East Bay Community Law Center, Ella Baker Center for Human Rights, Equal Rights Advocates, Homeboy Industries, Impact Fund, Insight Center, Just Cities, Justice and Accountability Center of Louisiana, Justice2Jobs, Lawyers Committee for Civil Rights of the SF Bay Area, Legal Action Center, Legal Aid at Work, Legal Services for Prisoners with Children, Public Counsel, National Consumer Law Center, Northern California Innocence Project, Policy Advocacy Clinic, Public Counsel, San Francisco Public Defender, Voices of the Experienced, Western Center on Law and Poverty

# **EXHIBIT B**

# **EXHIBIT B**

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA, OAKLAND DIVISION

COLIN SCHOLL and LISA STRAWN, on behalf of themselves and all others similarly situated,

Plaintiffs,

vs.

STEVEN MNUCHIN, in his official capacity as the Secretary of the U.S. Department of Treasury; CHARLES RETTIG, in his official capacity as U.S. Commissioner of Internal Revenue; U.S. DEPARTMENT OF THE TREASURY; the U.S. INTERNAL REVENUE SERVICE; and, the UNITED STATES OF AMERICA,

Defendants.

Case No. 4:20-cv-05309-PJH

**[PROPOSED] ORDER**

The Hon. Phyllis J. Hamilton

Amici Curiae A New Way of Life Reentry Project, Collateral Consequences Resource Center, East Bay Community Law Center, Ella Baker Center for Human Rights, Equal Rights Advocates, Homeboy Industries, Impact Fund, Insight Center, Just Cities, Justice and Accountability Center of Louisiana, Justice2Jobs, Lawyers Committee for Civil Rights of the SF Bay Area, Legal Action Center, Legal Aid at Work, Legal Services for Prisoners with Children, Public Counsel, National Consumer Law Center, Northern California Innocence Project, Policy Advocacy Clinic, Public Counsel, San Francisco Public Defender, Voices of the Experienced, Western Center on Law and Poverty filed a motion for leave to file an amici curiae brief in support of Plaintiffs’ Motion for Preliminary Injunction.



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Having considered the papers and pleadings on file, the Court GRANTS the motion and ORDERS that the brief attached to the motion be filed on the docket in this matter.

Dated: August \_\_\_\_, 2020

\_\_\_\_\_  
The Hon. Phyllis J. Hamilton