

SAN FRANCISCO PUBLIC DEFENDER

MANOHAR RAJU – PUBLIC DEFENDER
MATT GONZALEZ – CHIEF ATTORNEY



Sheriff Paul Miyamoto
San Francisco Sheriff Department
1 Dr. Carlton B. Goodlett Pl
San Francisco, CA 94102

Re: Ongoing Public health crisis measures in SF county jails

April 29, 2020

Dear Sheriff Miyamoto,

As we near two months into this pandemic and resulting shelter-in-place orders, I want to thank you for your continued efforts to keep people safe inside of the jails. We appreciate the measures you have adopted to move toward the recommended social distancing guidelines. We also appreciate your role in implementing the court's orders to release over 400 people since this pandemic began to spread in San Francisco.

Despite our collective success in getting this many people out of custody, there remain over 700 people in jail who are still subject to bunk bed living which we know does not fully satisfy social distancing. There is more we can all do to create enough space inside the jail to achieve the recommended social distancing, primarily, by releasing more people who are in the San Francisco jail system.

On March 19, we wrote to you urging you to use your broad emergency authority under Government Code section 8658 to reduce the jail population in order to protect those trapped inside, as well as your staff that move in and out of the jail each day. You responded on March 25 to say that you did not believe the situation at that time warranted your exercising this authority. At that time there were no diagnosed cases of the virus inside the jail; now, there have been two, therefore we again urge you to reconsider using this emergency authority before it is too late.

On April 16, we learned of the first confirmed case of COVID-19 in the San Francisco County jail. While this person was only in custody 28-plus hours, he is expected to have exposed numerous staff members and incarcerated individuals. The second positive test quickly followed.

We can appreciate the temptation to believe that the current measures are sufficient, with just two positive tests thus far. We believe this to be dangerous thinking for several reasons. First, because DPH is only testing people newly booked into the jail, or people who exhibit certain symptoms, it is highly likely that the number of positive cases in the jail is substantially higher.

Adult Division - HOJ
555 Seventh Street
San Francisco, CA 94103
P: 415.553.1671
F: 415.553.9810
www.sfpUBLICDEFENDER.ORG

Juvenile Division - YGC
375 Woodside Avenue, Rm. 118
San Francisco, CA 94127
P: 415.753.7601
F: 415.566.3030

Juvenile Division - JJC
258A Laguna Honda Blvd.
San Francisco, CA 94116
P: 415.753.8174
F: 415.753.8175

Clean Slate
P: 415.553.9337
www.sfpUBLICDEFENDER.ORG/services

Community Justice Center
P: 415.202.2832
F: 415.563.8506

Bayview Magic
P: 415.558.2428
www.bayviewmagic.org

MoMagic
P: 415.567.0400
www.momagic.org

Second, waiting for a widespread outbreak to occur before taking emergency measures will necessarily mean we have waited too long. Third, the positive tests thus far prove what we knew would be true: we cannot keep the Coronavirus out of the SF jail system.

We believe that it is appropriate for you to use your emergency authority to release additional individuals from the jails so that we can achieve increased social distancing now, and in preparation for the closure of County Jail 4 later this year. If now is not the time to use this authority, when the country remains almost completely shuttered due to a public health catastrophe, and when we have evidence that the virus has made its way into the jails, then when?

To be sure, we are far from a lone voice urging Sheriffs to look to Government Code section 8658. Attached is the California Attorney General's April 14 bulletin reminding Sheriffs of your authority under 8658 in light of the "pandemic [that] continues to threaten the lives and livelihoods of those in California and the United States."

Finally, Government Code section 8658 is not the only measure left for you to take. There are at least three additional things you can do today without resorting to extraordinary powers:

1. **Release those within 6 months of serving their sentences to alternative programs.**
You need not wait for the court to mandate early releases, as has been the case so far. You can and should use your ordinary powers far more expansively to safely release this relatively small population.
2. **Cease arrests on technical violations of electronic monitoring.** If a person on EM experiences equipment difficulties but is still acting in a manner that is consistent with the court's intention, if they violate a court order on a technicality, the interest of justice weighs heavily against arrest.
3. **Apply the emergency bail schedule (EBS) to all pre-pandemic warrants, in and out-of-county.** If bail was set on an arrest warrant that was issued before the shelter-in-place order on March 16, that warrant bail amount is changed to zero in many cases according to the "mandatory" April 13 Emergency Bail Schedule which applies to "every accused person arrested" across California. So far, your office is not applying the EBS to warrant arrests despite the EBS being a mandatory order from the Judicial Council. This violates the EBS and undermines its intent: to cull jail populations of all people arrested on lower-level offenses for the protection of everyone in and around the facilities. Some recent examples include:
 - a) CLIENT (SFNO XXX182) was arrested last week on two bench warrants from 2017 (XXXXXX909 & XXXX641). All charges are zero-bail-eligible. He was held over 48 hours for court, in violation of the Emergency Bail Schedule.
 - b) CLIENT (SFNO XXX559) was also held for several extra days in our jail due to a \$25,000 out-of-county warrant on a now-zero-bail eligible charge.
 - c) CLIENT (SFNO XXX065) remains in custody now, in isolation, though his charges all qualify for zero bail release.

I am encouraging my staff to continue their efforts to secure safe release plans for every single client and person released from the jails. This strategy protects our clients, other incarcerated

persons, court personnel, your staff and mine. As this crisis continues to unfold and when we reflect back on these days with knowledge of their consequences, I want my staff to know we did absolutely everything we could. I urge you and your staff to do the same.

I look forward to your response and to our continuing to work together.

Sincerely,

A handwritten signature in black ink, reading "Manohar Raju". The signature is written in a cursive, flowing style with a long horizontal stroke at the end.

Manohar Raju
San Francisco Public Defender

CC: Mayor London Breed, Dr. Grant Colfax, Dr. Tomas Aragon, District Attorney Chesa Boudin, Probation Chief Karen Fletcher, President of the San Francisco Board of Supervisors Norman Yee, Supervisor Sandra Fewer, Supervisor Catherine Stefani, Supervisor Aaron Peskin, Supervisor Gordon Mar, Supervisor Dean Preston, Supervisor Matt Haney, Supervisor Rafael Mandelman, Supervisor Hillary Ronen, Supervisor Shamann Walton, Supervisor Ahsha Safai.

A handwritten signature in black ink, reading "Manohar Raju". The signature is written in a cursive, flowing style with a long horizontal stroke at the end.