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*Exempt from filing fees per  
Gov. Code § 6103*

9  
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 COUNTY OF SACRAMENTO  
12

13  
14 **ALLIANCE FOR CONSTITUTIONAL  
SEX OFFENSE LAWS, INC., a California  
15 non-profit corporation; and ANTOINE  
DENELL JORDAN, an individual,**

Case No. 34-2021-80003671-CU-WM-GDS

16  
17 Petitioners,

**NOTICE OF DEMURRER; DEMURRER**

18 v.

Date: December 17, 2021  
Time: 11:00 a.m.  
Dept: 21  
Judge: The Hon. Shelleyanne W.L.  
Chang

19 **KATHLEEN ALLISON, in her official  
capacity as Secretary of the California  
20 Department of Corrections and  
Rehabilitation,**

21  
22 Respondent.

23 **TO THE PARTIES AND THEIR ATTORNEY'S OF RECORD**

24 **PLEASE TAKE NOTICE** the respondent Secretary of the California Department of  
25 Corrections and Rehabilitation Kathleen Allison's demurrer to the petition for writ of mandate  
26 and complaint filed herein has been set for hearing on December 19, 2021, at 11 a.m., or as soon  
27 thereafter as the matter may be heard in Department 21 of the above-entitled court, located in  
28 Sacramento County at 720 9th Street, Sacramento, California 95814.

1 The demurrer will be based on the notice, motion, the memorandum of points and

2 authorities and all papers and pleadings on file herein and all other evidence as may be accepted

3 at the hearing on this matter.

4 Department 21 utilizes the tentative ruling system. Pursuant to Local Rule 1.06, the Court

5 may make a tentative ruling on the merits of this matter by 2:00 p.m., the court day before the

6 hearing. To receive the tentative ruling, you can access the Court's website at

7 [www.saccourt.ca.gov](http://www.saccourt.ca.gov) or arrange to obtain the tentative ruling from the clerk of Department 21. If

8 you do not call the Court and the opposing party by 4:00 p.m. the court day before the hearing, no

9 hearing will be held.

10 **DEMURRER**

11 Respondent demurs to the petition for writ of mandate and complaint for declaratory

12 relief pursuant to California Code of Civil Procedure sections 430.10 and 1069.1.

13 **Demurrer to First Cause of Action (Mandate)**

14 1. The first cause of action fails to state facts sufficient to constitute a cause of

15 action. (Code Civ. Proc., § 430.10, subd. (e).)

16 **Demurrer to Second Cause of Action (Declaratory Relief)**

17 2. The second cause of action fails to state facts sufficient to constitute a cause of

18 action. (Code Civ. Proc., § 430.10, subd. (e).)

19 Dated: September 10, 2021

20 Respectfully submitted,

21 ROB BONTA

22 Attorney General of California

23 JULIE A. MALONE

24 Supervising Deputy Attorney General

25 Yun Hwa

26 Digitally signed by Yun Hwa  
Harper  
Date: 2021.09.10 10:07:13  
-07'00

27 Harper

28 YUN HWA HARPER

29 Deputy Attorney General

30 *Attorneys for Respondent Kathleen Allison,*

31 *Secretary of CDCR*

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*Exempt from filing fees per Gov. Code § 6103*

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SACRAMENTO

Case No. 34-2021-80003671-CU-WM-GDS  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
RESPONDENTS' DEMURRER

Date: December 17, 2021  
Time: 11:00 a.m.  
Dept: 21  
Judge: Hon. Shelleyanne W.L. Chang

ALLIANCE FOR CONSTITUTIONAL  
SEX OFFENSE LAWS, INC., a California  
non-profit corporation; and ANTOINE  
DENELL JORDAN, an individual,  
Petitioners,  
v.  
KATHLEEN ALLISON, in her official  
capacity as Secretary of the California  
Department of Corrections and  
Rehabilitation,  
Respondent.

TABLE OF CONTENTS

Page

INTRODUCTION.....	6
STATEMENT OF FACTS.....	6
STANDARD GOVERNING DEMURRERS.....	7
ARGUMENT.....	7
I. Petitioners' Claims Fail as Matter of Law.....	7
A. Recall and Recommendation Under Section 1170(d)(1).....	8
B. Petitioners Cannot Satisfy the Legal Standards for Mandamus and a Rulemaking Challenge.....	9
C. CDCR Acted Within Its Authority In Implementing Regulations Governing Recommendations to Recall and Resentence an Inmate.....	10
II. The Complaint for Declaratory Relief Fails to State a Cause of Action.....	14
CONCLUSION.....	15

TABLE OF AUTHORITIES

Page

CASES	
4	<i>Allen v. City of Sac.</i> (2015) 234 Cal.App.4th 41.....7
5	
6	<i>Assn. of Irrigated Residents v. San Joaquin Valley Unified Air Pollution Control Dist.</i> (2008) 168 Cal.App.4th 535.....10
7	
8	<i>Calif. Chamber of Comm. v. State Air Resources Board</i> (2017) 10 Cal.App.5th 602.....10
9	
10	<i>City of Atascadero v. Merrill Lynch, Pierce, Fenner &amp; Smith, Inc.</i> (1998) 68 Cal.App.4th 445.....7
11	
12	<i>Coachella Valley Unified Sch. Dist. v. State of Cal.</i> (2009) 176 Cal.App.4th 93.....10
13	
14	<i>Department of Corrections &amp; Rehabilitation v. State Personnel Bd.</i> (2014) 227 Cal.App.4th 1250.....13, 14
14	
15	<i>Hood v. Super. Ct.</i> (1995) 33 Cal.App.4th 319.....14
16	
17	<i>Hutchinson v. City of Sacramento</i> (1993) 17 Cal.App.4th 791.....10
18	
19	<i>In re Cabrera</i> (2012) 55 Cal.4th 683.....11
20	
21	<i>In re Gadin</i> (2020) 10 Cal.5th 915.....12
22	
23	<i>Larson v. Redondo Beach</i> (1972) 27 Cal.App.3d 332.....7
24	
25	<i>McKenney v. Purepac Pharmaceutical Co.</i> (2008) 167 Cal.App.4th 72.....7
26	
27	<i>People v. Alvarez</i> (2002) 27 Cal.4th 1161.....12
28	
29	<i>People v. Frazier</i> (2020) 55 Cal.App.5th 858 (Jan. 20, 2021).....12

**TABLE OF AUTHORITIES**

(continued)

Page

1	
2	
3	<i>People v. Johnson</i> (2013) 57 Cal.4th 250
4	
5	<i>People v. McCallum</i> (2020) 55 Cal.App.5th 202
6	
7	<i>People v. Trevino</i> (2001) 26 Cal.4th 237
8	<i>People v. Woodhead</i> (1987) 43 Cal.3d 1002
9	
10	<i>Siskiyou County Farm Bureau v. Department of Fish &amp; Wildlife</i> (2015) 237 Cal.App.4th 411 (June 26, 2015)
11	
12	<i>Stanford Vina Ranch Irrigation Company v. State</i> (2020) 50 Cal.App.5th 976 (July 6, 2020)
13	
14	<i>Timmons v. McMahon</i> (1991) 235 Cal.App.3d 512
15	<i>Yamaha Corp. of America v. State Bd. of Equalization</i> (1998) 19 Cal.4th 1
16	STATUTES
17	Cal. Code Regs., Title 15, § 3076.1
18	
19	Cal. Code Regs., Title 15, § 3076.1, subd. (a)(1)-(4)
20	
21	Cal. Code Regs., Title 15, § 3076.1, subd. (b)(1)-(2)
22	
23	Cal. Code Regs., Title 15, § 3076.1, subd. (b)(2)(A)-(F)
24	
25	Code Civ. Proc., § 430.10, subd. (e)
26	
27	Code Civ. Proc., §§ 430.10, subd. (e), 430.30, subd. (a), 430.70
28	
29	Code Civ. Proc., § 1085
30	
31	Code Civ. Proc., § 1089
32	
33	Gov. Code, §§ 11342.1 & 11342.2
34	
35	Pen. Code, § 1170, subd. (d)

28  
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Assembly Bill 2942 ..... 8

Assembly Bill 1812 ..... 8

2018 Cal Legis. Serv. Chapter 1001 ..... 8

2018 Cal Legis. Serv. Chapter 36 (A.B. 1812) ..... 8

**OTHER AUTHORITIES**

Petitioners Alliance for Constitutional Sex Offense Laws ..... 6

Cal. Const., Article 1, § 32, subd. (a)(1) ..... 12

**CONSTITUTIONAL PROVISIONS**

Pen. Code § 1170 subd. (d)(1) ..... 6, 8, 11, 12

Pen. Code § 1170(d) and (e) ..... 11

Pen. Code § 1170(d)(1) ..... 6, 7, 8, 9, 10, 11, 12, 13, 14

Pen. Code § 1170(d) ..... 11

Pen. Code § 290 ..... 6, 7, 9, 11

Pen. Code, § 5058.3 ..... 11

Pen. Code § 5058 ..... 11

Pen. Code, § 1170, subd. (e)(1)-(2), (e)(2)(A)-(C), (e)12 ..... 13

Pen. Code, § 1170, subd. (d)(2)(A)(i) ..... 8

Pen. Code, § 1170, subd. (d)(2) ..... 8

Page

**TABLE OF AUTHORITIES**  
(continued)

1  
2  
3  
4  
5  
6  
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**INTRODUCTION**

Penal Code section 1170 subdivision (d)(1)<sup>1</sup> authorizes a sentencing court to modify a

defendant's sentence at any time upon the recommendation of the Secretary of the California

Department of Corrections and Rehabilitation or the Board of Parole Hearings in case of state

prison inmates. The Secretary has broad discretion in submitting a recommendation to the

superior court to recall and sentence an inmate. To guide that purely discretionary process,

under her statutory authority to promulgate regulations to govern the prison, the Secretary

implemented emergency regulations.

Petitioners Alliance for Constitutional Sex Offense Laws, Inc. and Antoine Denell Jordan

filed this petition challenging a portion of the emergency regulations dealing with the Secretary's

recommendation based on exceptional conduct. Petitioners assert that exclusion of inmates

required to register as sex offenders under Penal Code section 290 conflicts with the legislative

mandate outlined in section 1170(d)(1) to consider all inmates for recall and resentencing.

Petitioners' assertion is legally incorrect and unsupported.

The regulations exclude inmates required to register as sex offenders under Penal Code

section 290 to ensure public safety. Section 1170(d)(1) does not establish eligibility for recall and

resentencing, nor does it limit the Secretary's ability to consider public safety in its

recommendation process. The claims raised in the petition fail as a matter of law. The

regulations are consistent with the legislative mandate. The demurrer should be sustained in its

entirety without leave to amend.

**STATEMENT OF FACTS**

Section 1170(d)(1) provides that a sentencing court may recall and sentence an inmate

committed to state prison on its own motion within 120 days of the date of commitment or at any

time on the recommendation of the Secretary or the Board of Parole Hearings for state prison

inmate. (Pen. Code, § 1170, subd. (d)(1).) CDCR's regulations set out the circumstances under

which the Secretary may exercise discretion to recommend that the court recall an inmate's

sentence. (Cal. Code Regs., tit. 15, § 3076.1.)

<sup>1</sup> Hereinafter section 1170(d)(1).

1 STANDARD GOVERNING DEMURRERS

2 A demurrer must be sustained if the complaint does not allege facts sufficient to constitute a

3 cause of action, or if matters of which the court may take judicial notice establish such facts are

4 lacking. (Code Civ. Proc., §§ 430.10, subd. (e), 430.30, subd. (a), 430.70; *McKenney v. Purepac*

5 *Pharmaceutical Co.* (2008) 167 Cal.App.4th 72, 78.) Demurrer is also an appropriate response to

6 a mandate petition that fails to state a sufficient claim for mandamus relief. (Code Civ. Proc.,

7 §1089; *Larson v. Redondo Beach* (1972) 27 Cal.App.3d 332, 338 [affirming demurrer to mandate

8 petition that failed to show clear duty existed].)

9 A party may also demur to a complaint for declaratory relief where the claims underlying

10 the request for declaratory relief fail to set forth sufficient facts to constitute a cause of action.

11 (Code Civ. Proc., § 430.10, subd. (e); *Allen v. City of Sac.* (2015) 234 Cal.App.4th 41.) When it

12 is clear under substantive law that no liability exists, a court should sustain a demurrer without

13 leave to amend; petitioners must show that amendment would be fruitful. (*City of Alascadero v.*

14 *Merrill Lynch, Pierce, Fenner & Smith, Inc.* (1998) 68 Cal.App.4th 445, 459-460.)

15 ARGUMENT

16 I. PETITIONERS' CLAIMS FAIL AS MATTER OF LAW.

17 Petitioners seek mandate relief on the grounds that the Secretary acted in excess of her

18 authority by excluding inmates who are required to register under Penal Code section 290

19 contrary to the legislative mandate in Penal Code section 1170(d)(1). (Petn. at pp. 3, 12-16.)

20 Penal Code section 1170(d)(1), however, does not mandate that all inmates be referred to the

21 sentencing courts for recall and resentencing. Further, it does not require the Secretary to

22 exercise her discretion in a particular way, nor does section 1170(d)(1) prohibit the Secretary

23 from considering public safety in the exercise of discretion when making recommendations to the

24 sentencing court. Because the regulations at issue are consistent with the law, and the Secretary

25 acted within her lawful discretion, petitioners cannot state a basis for mandamus relief.

A. Recall and Recommendation Under Section 1170(d)(1).<sup>2</sup>

In 2018, Penal Code section 1170(d)(1) was amended twice. First, Assembly Bill 1812

amended section 1170 (d)(1) to allow the trial court to reduce or modify a sentence in the interest

of justice when acting upon a recommendation. When a trial court resentences an inmate under

this paragraph, the court may consider post conviction factors, including, but not limited to, the

inmate's disciplinary record and record of rehabilitation while incarcerated, evidence that reflects

whether age, time served, and diminished physical condition, if any, have reduced the inmate's

risk for future violence, and evidence that reflects that circumstances have changed since the

inmate's original sentencing so that the inmate's continued incarceration is no longer in the

interest of justice. (2018 Cal. Legis. Serv. Ch. 36 (A.B. 1812).)

Second, Assembly Bill 2942, amended section 1170(d)(1) to allow a trial court to recall and

resentence an inmate upon the recommendation of the district attorney of the county in which the

inmate was sentenced. (2018 Cal. Legis. Serv. Ch. 1001 (A.B. 2942).)

Penal Code section 1170(d)(1) provides in relevant part that when a defendant has been

sentenced to state prison, the court may at "any time upon the recommendation of the [S]ecretary

or the Board of Parole Hearings in the case of state prison inmates ... recall the sentence and

commitment previously ordered and resentence the defendant in the same matter as if they had

not previously been sentenced, provided the new sentence, if any, is no greater than the initial

sentence." (Pen. Code, § 1170, subd. (d)(1).)

CDCR's regulations, in turn, set out the circumstances under which the Secretary may

exercise discretion to recommend that the court recall an inmate's sentence. (Cal. Code Regs., tit.

15, § 3076.1.) The Secretary *may* recommend to a sentencing court that the sentence and

commitment previously imposed on an inmate be recalled and that the court resentence the

inmate in the following four circumstances: (1) when an inmate demonstrates exceptional

conduct; (2) when there is a substantial likelihood of a sentencing error; (3) when there has been a

<sup>2</sup> Section 1170(d)(2) details the process for individuals who were under the age of 18 at

the time of the commission of their offense to submit a petition to the sentencing court for recall

and resentencing. (Pen. Code, § 1170, subd. (d)(2).) A separate mechanism exists for the

sentencing court to obtain jurisdiction to resentence an inmate after 120 days have passed.

(Compare Pen. Code, § 1170, subd. (d)(2)(A)(i) to Pen. Code, § 1170, subd. (d)(1).)

1 change in sentencing law, or (4) when a referral is received from head of a law enforcement  
2 agency, the head of a prosecutorial agency, or a judicial officer. (Cal. Code Regs., tit. 15, §  
3 3076.1, subd. (a)(1)-(4);

4 Exceptional conduct is when an inmate's behavior while incarcerated demonstrates  
5 sustained compliance with departmental regulations, rules, and requirements, as well as

6 prolonged participation in rehabilitative programming. (Cal. Code Regs., tit. 15, § 3076.1, subd.  
7 (b)(1).) Inmates who meet certain criteria are excluded from consideration under exceptional

8 conduct, specifically, if they are required to register pursuant to Section 290 of the Penal Code,  
9 have not served 10 continuous years or 50% of their commitment, have been found guilty of a

10 serious/violent rule violation with the last five years, or are eligible for release within the next 18  
11 months based on their sentence or other parole consideration processes. (Cal. Code Regs., tit. 15,

12 § 3076.1, subd. (b)(2)(A)-(F).)

13 Subsection 3076.1(b)(2)(A), which excludes inmates required to register under Penal Code  
14 section 290 was adopted to ensure public safety. (RJN Exh. 1, Initial Statement of Reasons at p.

15 4.) The Department reasoned that 290 registrants should be excluded from consideration because  
16 these crimes "reflect the determination of the people of the State of California (through initiatives

17 and the legislature) that, '[s]ex offenders pose a potentially high risk of committing further sex  
18 offenses after release from incarceration or commitment, and the protection of the public from

19 reoffending by these offenders is a paramount public interest.' (PC Section 290.03.)" (*Id. at p. 4*)  
20 This is aligned with the declaration by the people of the State of California in enacting

21 Proposition 35 that "[p]rotecting every person in our state, particularly our children, from all  
22 forms of sexual exploitation is of paramount importance." (RJN Exh. 1 at p. 4.)

23 **B. Petitioners Cannot Satisfy the Legal Standards for Mandamus and a**  
24 **Rulemaking Challenge.**

25 The purpose of mandamus is to enforce a clear, ministerial duty. (Code Civ. Proc., § 1085;  
26 *Timmons v. McMahon* (1991) 235 Cal.App.3d 512, 517.) A ministerial duty is a function that

27 must be performed in a "prescribed manner in obedience to the mandate of legal authority. . . .  
28 without regard to his or her own judgment or opinion concerning the propriety of such act."

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(*Coachella Valley Unified Sch. Dist. v. State of Cal.* (2009) 176 Cal.App.4th 93, 113.) Thus, mandate will not issue to compel an action unless the duty to act is "plain and unimixed with discretionary power or the exercise of judgment." (*Hutchinson v. City of Sacramento* (1993) 17 Cal.App.4th 791, 796.) Thus, the court's role is limited to "determin[ing] whether the agency's action was arbitrary, capricious, or without evidentiary support, and/or whether it failed to conform to the law. The . . . court may not substitute its judgment for that of the agency or force the agency to exercise its discretion in a certain way." (*Assn. of Irrigated Residents v. San Joaquin Valley Unified Air Pollution Control Dist.* (2008) 168 Cal.App.4th 535, 542.)

Where, as here, a petition for writ of mandate seeks to invalidate a regulation, additional limitations apply to the court's review. Specifically, "[i]n reviewing the legality of a regulation adopted pursuant to a delegation of legislative power, the judicial function is limited to determining whether the regulation (1) is 'within the scope of the authority conferred' and (2) is 'reasonably necessary to effectuate the purpose of the statute.'" (*Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 11 (citations omitted); see also Gov. Code, §§ 11342.1 & 11342.2.) The burden is on petitioners to show that the regulations are invalid. (*Calif. Chamber of Comm. v. State Air Resources Board* (2017) 10 Cal.App.5th 602, 620.)

Further, mandamus may only issue to correct quasi-legislative actions of agencies in the circumstance where "the action amounts to an abuse of discretion as a matter of law because it is so palpably unreasonable and arbitrary." (*Coachella Valley, supra*, 176 Cal.App.4th at p. 113, citing *Carrañcho v. California Air Resources Board* (2009) 111 Cal.App.4th 1255.) Based on the governing legal standards, the petition fails to state a claim for relief.

**C. CDCR Acted Within Its Authority In Implementing Regulations Governing Recommendations to Recall and Resentence an Inmate.**

The regulations at issue are consistent with CDCR's legislative mandate. Petitioners assert that the Secretary has failed to comply with her duties as outlined in Penal Code section 1170(d)(1) and has improperly excluded inmates who are required to register under Penal Code

1 section 290 from eligibility under the regulatory criteria for exceptional conduct. (Petn. at pp. 11  
2 fn. 2, 12-15.) Not so. A plain reading of Penal Code section 1170(d) refutes petitioners'  
3 contentions at every turn.

4 As an initial matter, contrary to petitioners' assertions, Penal Code section 1170(d) does not  
5 authorize—or require—the Secretary to adopt regulations. (See Pen. Code, § 1170, subd. (d).)

6 Rather, CDCR's rulemaking authority is rooted in the substantive provisions of law governing the  
7 agency. (*Stanford Vina Ranch Irrigation Company v. State* (2020) 50 Cal.App.5th 976, 999,  
8 reh'g denied (July 6, 2020), as modified (July 8, 2020).) And here, the Legislature has given

9 CDCR the broad authority to promulgate regulations governing the administration of the prison,  
10 classification, and discipline of inmates. (Pen. Code § 5058; *In re Cabrera* (2012) 55 Cal.4th  
11 683, 688.) And within that broad grant of authority, CDCR adopted emergency regulations to

12 establish eligibility criteria and procedures for the recall of inmate commitments and resentencing  
13 those inmates under Penal Code section 1170(d) and (e). (Pen. Code, § 5058.3; see Petn. at p. 2  
14 [noting emergency regulations].) This is consistent within the scope of authority conferred under

15 Penal Code section 5058 and necessary to govern the administration of the prisons. (*Yamaha*,  
16 *supra*, 19 Cal.4th at p. 11.)

17 Further, a plain reading of the statute establishes that the regulations do not amend, impair,  
18 or limit the scope of section 1170(d)(1) as nothing in Penal Code section 1170(d)(1) prohibits nor  
19 mandates that the Secretary exercise her discretion in any particular manner. In interpreting Penal

20 Code section 1170(d) to ascertain the intent the Legislature, the court looks first to the words  
21 themselves. (*People v. Johnson* (2013) 57 Cal.4th 250, 260.) And where, as here, the language is  
22 clear and unambiguous, there is no need for construction. (*People v. Woodhead* (1987) 43

23 Cal.3d 1002, 1007-1008.) Penal Code section 1170(d) represents a limited statutory exception to  
24 the general rule that a trial court loses jurisdiction to reconsider a denial of probation or vacate or  
25 modify the sentence when a defendant is committed and execution of sentence begins. (*People v.*

26 *McCallum* (2020) 55 Cal.App.5th 202, 210.) The statute provides in relevant part that the court  
27 may at "any time upon the recommendation of the [S]ecretary or the Board of Parole Hearings in  
28 the case of state prison inmates" recall the sentence and commitment previously ordered. (Pen.

Code, § 1170, subd. (d)(1).) Notably, section 1170(d)(1) does not define or nor set limits for the manner in which recommendations are made by the Secretary. (Pen. Code, § 1170, subd. (d)(1).) The statute is silent and offers no prohibition on the Secretary's ability to consider public safety in the exercise of discretion. (*Ibid.*) The section relates to the ability of the sentencing court to exercise its discretion to recall and sentence an individual, either on its own motion within 120 days or through an invitation from the Secretary or other named statutory parties. (Pen. Code, § 1170, subd. (d)(1); *People v. Frazier* (2020) 55 Cal.App.5th 858, 866, review denied (Jan. 20, 2021) ["the Secretary's recommendation letter is but an invitation to the court to exercise its equitable jurisdiction.].) Further, contrary to petitioner's assertions, there was no directive issued from the Legislature to the Secretary that every inmate in California must be considered for recall and resentencing and given individualized consideration.<sup>3</sup> (See Pen. Code, § 1170, subd. (d)(1); see also *Id* at subd. (a)(1)-(2).) Petitioners asserts that result is compelled by the statutory language focusing on post-conviction factors. (Pen. at p. 13-14.) But, language in section 1170(d)(1) that post convictions factors may be considered applies in the circumstance where a court is considering resentencing an inmate. (Pen. Code, § 1170, subd. (d)(1).) It does not direct, limit, or control the Secretary's recommendation to the trial court in any manner. (*Ibid.*) If the Legislature had intended to the guide the Secretary's discretion it would and could have done so. (*People v. Trevino* (2001) 26 Cal.4th 237, 242 [where there is materially different language in statutory provisions addressing the same subject or related subjects, the normal inference is that the Legislature intended a difference in result].) It did not. Indeed, the only statutory guidelines or criteria set by the Legislature in the context of recall and sentence is

<sup>3</sup> In *Gadlin*, the California Supreme Court considered the propriety of departmental regulations excluding 290 registrants from Proposition 57's nonviolent parole process. (*In re Gadlin* (2020) 10 Cal.5th 915.) The Court concluded that the categorical exclusion conflicted with the constitutional directive that inmates convicted of a nonviolent felony offense and sentenced to state prison "shall be eligible for parole consideration." (*Id.* at p. 920, Cal. Const., art 1, § 32, subd. (a)(1).) *Gadlin* is inapposite here for two reasons. First, unlike the constitutional amendment at issue in *Gadlin*, Penal Code section 1170(d)(1) does not create eligibility for recall and resentencing. Second, *Gadlin* did not consider the issue of recall and resentencing under Penal Code section 1170(d)(1). (See *People v. Alvarez* (2002) 27 Cal.4th 1161, 1176 ["it is axiomatic that cases are not authority for propositions not considered"].)

1 limited to when the Secretary exercises discretion as it relates to recommendations for terminally

2 ill or permanently medically incapacitated inmates. (Pen. Code, § 1170, subd. (e)(1)-(2),

3 (e)(2)(A)-(C), (e)(12).) The Legislature defined "terminally ill" and "permanently medically

4 incapacitated" and required that the release or treatment of those inmates must not pose a threat to

5 public safety. (*Id.* at § 1170, subd. (e)(2), (e)(2)(A)-(C).) In contrast, section 1170(d)(1) does not

6 limit or define the Secretary's discretion as to any other inmates. Thus, based on the plain

7 reading of the statute there is no basis to conclude that Legislature intended to curb the

8 Secretary's discretion in recommending inmates for recall and resentencing based on exceptional

9 conduct, which is a regulatory construct and defined by the regulation. (Pen. Code, § 1170(d)(1);

10 Cal. Code Regs., tit. 15, § 3076.1, subd. (b)(1)-(2).)

11 Petitioners attempt to create ambiguity where none exists by referencing an unpassed

12 version of AB 2492 to establish that Legislature considered and rejected excluding 290 registrants

13 from the recall and resentencing process. (Petn. at p. 13.) However, where, as here, the statutory

14 language is clear, consideration of extrinsic evidence is prohibited. (*Woodhead, supra*, 43 Cal.3d

15 at pp. 1007-1008; *Siskiyou County Farm Bureau v. Department of Fish & Wildlife* (2015) 237

16 Cal.App.4th 411, 420, *as modified on denial of reh'g* (June 26, 2015) [ambiguity must reside in

17 the statutory language itself.] Further, "[u]npassed bills, as evidences of legislative intent, have

18 little value." (*Department of Corrections & Rehabilitation v. State Personnel Bd.* (2014) 227

19 Cal.App.4th 1250, 1261 citing *Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43

20 Cal.3d 1379, 1396.) Even if this Court were to consider the prior unpassed version of AB 2492,

21 the language does not assist this court with the legislative intent as it relates to the Secretary's

22 ability to recommend the recall and resentencing of an inmate. In the unpassed version, the

23 legislature considered adding a third section to 1170(d). (See Exh. B at pp. 1, 4 [proposed section

24 1170(d)(3)(A)-(C)].) This section would have allowed individuals who were sentenced to a term

25 of 15 years or more, a term of life, or life without the possibility for parole to submit a request to

26 the district attorney of the county in which the defendant was sentenced to seek resentencing.

27 (*Id.*) That section excluded 290 registrants. (*Id.*) Notably, this section did not deal with the

28 Secretary's discretion in providing a recommendation to the trial court. Instead it related to the

1 district attorney's exercise of discretion as it relates to recommendations. (See Exh. B at p. 1, 4

2 [proposed section 1170(d)(3)(A)-(C)]. Thus, it has no import as it relates to Secretary's

3 discretion in considering or referring an inmate for recall and resentencing. (See e.g., *State*

4 *Personnel Bd.*, supra, 27 Cal.App.4th at p. 1261 [noting that a former version of a bill which

5 differs significantly from the version has little value on the issue of legislative intent].)

6 In short, section 1170(d)(1) authorizes the court to exercise its discretion on its own motion

7 within 120 days or any time on the recommendation of the Secretary. Section 1170(d)(1) does set

8 out specific criteria or limit the Secretary's discretion as it relates to recall and resentencing.

9 Here, the Secretary enacted regulations setting out the circumstances for which a secretary may

10 exercise discretion to recommend recall of an inmate's sentence. (Cal. Code Regs., tit. 15, §

11 3076.1.) The regulations do not conflict with or impair 1170(d)(1). The demurrer should be

12 sustained.

13 **II. THE COMPLAINT FOR DECLARATORY RELIEF FAILS TO STATE A CAUSE OF**

14 **ACTION.**

15 As discussed above, petitioners failed to state a substantive basis for mandamus relief.

16 Petitioners' claim for declaratory relief is wholly and entirely dependent on their claim for

17 mandamus relief. Because the mandamus claim fails, so do the claims for declaratory relief.

18 Declaratory relief "should not be used for the purpose of" determining issues on its own, apart

19 from the main claim. "The object of the statute is to afford a new form of relief where needed

20 and not to furnish a litigant with a second cause of action for the determination of identical

21 issues." (*Hood v. Super. Ct.* (1995) 33 Cal.App.4th 319, 324 (emphasis added).) Because

22 petitioners here failed to state a substantive claim for declaratory relief, the Court should sustain

23 the demurrer.

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Based on the foregoing, respondents request that this Court sustain the demurrer without

leave to amend.

Dated: September 10, 2021

Respectfully submitted,

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CONCLUSION