IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

COUNTY OF NEVADA, THE NEVADA COUNTY SHERIFF'S OFFICE, AND SHERIFF-CORONER-PUBLIC ADMINISTRATOR KEITH ROYAL, in his official capacity, Petitioners, v. SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF NEVADA, Respondent.	CASE NO.: C074504 Hon. Thomas M. Anderson Judge of the Nevada County Superior Court (530) 265-1311
JACOB MICHAEL SIEGFRIED, Real Party in Interest.	Case No: F11-00317 [*People of the State of California v. Jacob Siegfried*]
RAYMOND LEE DUZAN, Real Party in Interest.	Case No: F12-000450 [*People of the State of California v. Ray Lee Duzan*]
JONATHAN SCOTT FOOTE, Real Party in Interest.	Case No: F13-000059 [*People of the State of California v. Jonathan Scott Foote*]
JOSE EDUARDO HENRIQUEZ, Real Party in Interest.	Case No: F12-000376, M12-001672A, M12-001123, M13-0093, M12-001776, M12-1105, and M12-001618B [*People of the State of California v. Jose Henriquez*]
CESAR SANTIAGO, Real Party in Interest.	Case No: F13-000175 [*People of the State of California v.Cesar Santiago*]
BRENT RAYMOND WILKINS, Real Party in Interest.	Case No: F12-000504B [*People of the State of California v.Brent Raymond Dennis Wilkins*]

RESPONSE TO INFORMAL OPPOSITION TO PETITIONFOR WRIT OF MANDATE OR OTHER APPROPRIATE RELIEF

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TO THE HONORABLE JUSTICES OF THE THIRD DISTRICT COURT OF APPEAL OF CALIFORNIA:

Petitioner County of Nevada, Nevada County Sheriff's Office, and Sheriff-Coroner-Public Administrator Keith Royal, respectfully submit the following response to the Informal Opposition to Petition for Writ of Mandate or Other Appropriate Relief ("Opp." or "Opposition"), filed by Real Party in Interest Jacob Siegfried ("Siegfried"), on or about August 30, 2013:

RESPONSE TO INFORMAL OPPOSITION

I. INTRODUCTION.

Siegfried relies upon false facts, facts not in the record and legal standards that are not applicable in this matter, in order to assert that it was proper for the Superior Court to insert itself into the executive discretion of the Office of Sheriff in maintaining and operating the safety and security of the County jail. Irrespective of the claims made by Siegfried, there is simply no constitutional right of an inmate to meet with counsel at any time and in any manner that he or she desires. The Sheriff has always had a policy of prohibiting contact visits with attorneys. This policy is, and always has been, supported by valid penological interests – the safety of correctional officers,

inmates, and attorneys visiting the inmates, and preventing contraband from coming into the jail. Contrary to the assertions of Siegfried, the Superior Court is not permitted, by law, to substitute its discretion for the Sheriff's as to security measures in the jail. The Superior Court's order improperly does precisely this and must be overturned by this Court.

II. THERE IS NO CONSTITUTIONAL RIGHT TO CONTACT VISITS BETWEEN INMATES AND THEIR ATTORNEYS.

There is no right, constitutional or otherwise, to any particular type of meetings between attorneys and inmates. (Petition at 16-24.) Siegfried briefly cites to the opinion in Ching v. Lewis, 895 F.2d 608, 610 (9th Cir. 1990), for the claim that the right to counsel must purportedly be provided unless there is a "manifest need for more secure arrangements." (Opp. at 4.) This is not the legal standard, however. (See *infra* Part III.) Ching specifically did *not* utilize the required factors in Turner. Casey v. Lewis, 4 F.3d 1516, 1523 (9th Cir. 1993). (See also Petition at 49-50.) In addition, the policy analyzed in Ching was found to be wholly arbitrary, in contrast the Policy at issue here, which is supported by substantial evidence, as set

forth below. Moreover, this federal authority is not controlling on this Court and is directly contrary to state law on this issue.

Siegfried also cites to numerous cases in the Opposition in support of the assertion that the United States Supreme Court and other courts have found that the Constitution prohibits restraints from being imposed on inmates without a specific showing of manifest need. (Opp. at 2.) He argues that "[s]hackles can interfere with the accused's ability to communicate with his lawyer." (Opp. at 3 (internal quotations omitted).) Siegfried then extrapolates that separating an attorney and an inmate by glass and walls and requiring the use of telephones must also interfere with an accused's ability to communicate. (Opp. at 4.) However, the law relied upon by Siegfried is wholly inapplicable, and his conclusions are simply incorrect.

Siegfried relies primarily upon the opinion in Deck v. Missouri, 544 U.S. 622 (2005). In Deck, however, the Supreme Court was evaluating the effect of physical restraints visible to the jury on the jury's decision making process. Deck, at 629. Ancillary to that issue, the Court was generally concerned with the possibility that physical restraints could affect the ability of a defendant to communicate with counsel. This concern related to a defendant's right to due process

during trial, however. Further, there is a "long common law history holding that the prisoner should be unshackled in the courtroom so as to have use of his reason, and all advantages, to clear his innocence." People v. Miller, 175 Cal. App. 4th 1109 (2009) (internal citations omitted). In addition, the concern was a practical concern that the specific type of restraint might interfere with actual communication. Even as to a waist chain that purported affected a defendant's "mental capacity, and communication with counsel" at trial, the District Court in Hawkins v. Wong, 2010 U.S. Dist. LEXIS 92175, 2010 WL 3516399 (E.D. Cal. 2010), found that shackling of hands and feet that were still free to move were "not the type of inherently prejudicial practice, like visible binding and gagging, which requires a finding that the practice furthers an essential state policy."

Notably, the authority relied upon by Deck for its bare conclusion that physical restraints could interfere with communications with counsel during trial was Illinois v. Allen, 397 U.S. 337 (1970). In Allen, the practice being evaluated, however, was a court's order that a defendant be *bound and gagged* during trial. Obviously, gagging a criminal defendant during trial would impair his ability to communicate with his counsel during trial.

The practices at issue here do not rise to this level on interference with communication. Sigfried has asserted, at most, that the jail policy at issue makes communications between inmates and legal counsel less convenient or requiring more planning ahead on the part of defense counsel. More importantly, the policy at issue does not in any way implicate the rights analyzed in Deck and related authorities – namely the rights of a criminal defendant during the course of trial.

Specifically, later courts have been concerned with stun belts being placed on criminal defendants during trial. The District Court in Muhammad v. Runnels, 2011 U.S. Dist. LEXIS 10443, 2011 WL 284985 (E.D. Cal. 2011) (internal quotations and citations omitted), noted that such physical restraints "may directly derogate this primary advantage, impacting a defendant's right to be present at trial and to participate in his or her defense. . . . The fear or receiving a painful and humiliating shock for any gesture that could be perceived as threatening likely hinders a defendant's participation in defense of the case, chilling that defendant's inclination to make any movements during trial including those movements necessary for effective communication with counsel."

Moreover, even where physical restraints do impose some restrictions on a defendant's ability to communicate with counsel, court have upheld such restraints. The District Court in Moran-Deltoro v. Scribner, 2011 U.S. Dist. LEXIS 60922, 2011 WL 2183579 (C.D. Cal. 2011), found that a criminal defendant "assert[ed] that the restraints required counsel to assist Petitioner in writing notes by holding down the notepad," but that this was "not enough to establish a significant impact on Petitioner's ability to communicate with his counsel."

In contrast to a stun belt, the Court in People v. Letner and Tobin, 50 Cal. 4th 99 (2010), found that a leg brace was not violative of a criminal defendant's rights during trial. The Court held that the device did not actually affect the defendant's "ability to concentrate and participate in the trial proceedings." In addition, "the proceeding in question (a single day of jury voir dire) was not of the same critical importance to Letner's participation as was the defendant's testimony in his own defense in Mar." Letner, at 156 (citing People v. Mar, 28 Cal. 4th 1201 (2002)). In other words, the principles of Deck relating to rights defendants have during trial are inapplicable in other

contexts, such as in a closed environment like the jail system, where the Sheriff's discretion over security and safety is paramount.

Siegfried makes much of the fact that the purportedly "dehumanizing atmosphere" created by attorneys having to speak through windows or telephones has a "readily apparent" impact on the attorney-client communication. This, alone, even assuming it is true, does not raise all penological interests or restrictions imposed on inmates to a constitutional level.

In fact, as set forth in the Petition, there is no constitutional right of inmates to contact visits with their counsel. (Petition at 17-18.) An inmate has, of course, a constitutional right to a legal representative. Further, he has a right to confidential communication with his legal counsel. The California Code of Regulations supports these constitutional principles, and specifically acknowledges the right of the Sheriff, as the administrator of the jail, to have "written policies and procedures" which allow for visits only "as facility schedules, space, and number of personnel will allow." (Petition at 18-19 (citing 15 Cal. Code Regs. §§ 1006, 1068).) None of these rights are as broad as Siegfried would urge this Court to find. Notably, he cites to no authority whatsoever for the purported proposition that there is any

constitutional right to contact visits with attorneys. There simply isn't one.

Similarly, there is no right to a "meaningful relationship" between a criminal defendant and his legal counsel. (Petition at 19-20.) Siegfried claims that separation without physical contact between inmates and their legal counsel "insults their dignity," "reduces trust and confidence" between the two, and "the ability of counsel to perform as an effective advocate." (Opp. at 3.) As set forth in the Petition, "effectiveness [of an attorney] is measured by the quality of the representation *presented* in court." (Petition at 17 (quoting Mann v. Reynolds, 46 F. 3d 1055, 1060 (10th Cir. 1995).) "Emotional bonding" is simply not a part of the rights afforded by the Sixth Amendment. Id. The same was recognized by the United States Supreme Court in Morris v. Slappy, 461 U.S. 1, 13-14 (1983):

> The Court of Appeals' conclusion that the Sixth Amendment right to counsel "would be without substance if it did not include the right to a *meaningful attorney-client relationship*," 649 F.2d, at 720 (emphasis added), is without basis in the law. No authority was cited for this novel ingredient of the Sixth Amendment guarantee of counsel, and of course none could be. No court could possibly guarantee that a defendant will develop the kind of rapport with his attorney -- privately retained or provided by the public -- that the Court of Appeals thought part of the Sixth Amendment guarantee of counsel. Accordingly, we reject the claim that the

Sixth Amendment guarantees a "meaningful relationship" between an accused and his counsel.

Since there is no constitutional right to counsel, the Court need not even evaluate the restrictions imposed by the Policy. The claims of Sigfried to unfettered meetings between attorneys and inmates simply do not rise to constitutional levels.

III. THE PROPER STANDARD OF REVIEW FOR ANY JAIL REGULATION THAT IMPACTS CONSTITUTIONAL RIGHTS IS DEFERENCE TO REASONABLE RESTRICTIONS UNDER *TURNER v. SAFLEY.*

As set forth above, and in the Petition, no constitutional right is implicated, since there is no right to contact visits between an inmate and his counsel. Indeed, as set forth in the Petition, the attorney meeting rooms provided at the jail actually do constitute contact visits, since attorneys and inmates are able to pass documents between them through a slot. (Petition at 22-24.) But even if this Court were to construe some right to unrestricted meetings between attorneys and inmates, the jail policy at issue satisfies the requirements of Turner v. Safley, 482 U.S. 78 (1987).

To reiterate, the factors to be considered under Turner v. Safley are as follows:

1. "[T]here must be a valid, ***rational*** connection between the prison regulation and the legitimate governmental interest put forward to justify it."

2. "[T]he court should consider whether there are alternative means of exercising the right that remain open to prison inmates . . . be[ing] particularly conscious of the measure of judicial ***deference owed to corrections officials*** in gauging the validity of the regulation."

3. "[T]he ***impact*** that accommodation of the asserted constitutional right will have on guards and other inmates, and on the allocation of prison resources generally. When such accommodation will have a significant ripple effect on fellow inmates or on prison staff, courts should be particularly deferential to the informed discretion of corrections officials."

4. "[T]he absence of ready alternatives is evidence of the reasonableness of a prison regulation, while the existence of obvious, easy alternatives may be evidence that the regulation is not reasonable."

Thompson v. Department of Corrections, 25 Cal. 4th 117, 131 (2001) (internal citations, quotations and changes omitted) (emphasis added).

Siegfried has misconstrued the application of these factors in an attempt to bolster his argument that the Superior Court's order below is permissible. He is simply incorrect, however.

A. The First *Turner* Factor is Met, in that there is a Rational Basis for the Policy and that is the Only Showing that is Required.

As set forth in the Petition, the first prong Turner analysis framework is undoubtedly met here by the policy at issue. Security concerns in the jail are sufficient to justify restrictions on attorney visits. (Petition at 29-34.) The opinions in Small v. Superior Court of Imperial County, 79 Cal. App. 4th 1000 (2000), In re Gallego, 133 Cal. App. 3d 75 (1982), and Block v. Rutherford, 468 U.S. 576 (1984), all support restrictions on attorney visits under the circumstances presented. In particular, the interview rooms that Siegfried has sought to continue using for attorney meetings are located in the booking area, which jail administrators have found present too many risks for such visits. Specifically, the rooms do not lock, are not monitored and can be viewed from the waiting area in booking area, thus allowing for the coordination of attacks and/or escape attempts with new, unclassified persons coming into the facility. (Petition at 34.) Although Siegfried argues that "relatively minor changes to the facility would permit a return to routine visits for attorneys" and he proposes changing certain locks, installing video

cameras, training attorneys and providing them with written guidelines regarding visits, these are, again, matters entrusted to the sound discretion of the Sheriff. Moreover, Siegfried cites to no evidence whatsoever that was presented to the Superior Court on these issues; his assertions are mere speculation.

Siegfried analyzes the first factor by referring to the purported "reality" of the jail facility. Besides stating facts for which he does not cite to any evidence in the record, the supposed "reality" referred to by Siegfried does not undermine the valid interests of the jail administrators here. As has been stated in the Petition, no evidence is required of officials under the first Turner factor; the question for a court analyzing a jail regulation is simply whether there is some plausible, legitimate penological objective for the regulation. (Petition at 28.) It is not the court's prerogative to delve into the wisdom of the policy at issue. In making their determination, courts are required to give deference to a rational regulation that jail administrators may have thought would achieve their objectives. This makes sense from a practical, policy perspective as well. Courts are simply not equipped to engage in micromanagement of jail facilities. The role of the courts in evaluating visitation policies is simply to

determine if it is permissible pursuant to Turner, not to substitute its vision for management of the jail for that of the Sheriff's, as the Superior Court has attempted to do here.

The detailed discussed by Siegfried regarding the particular actual risks purportedly facing the jail, as well as the supposedly potential alternatives available to the jail for providing contact visits with attorneys only serves to highlight the inherent problem with the Superior Court interjecting itself into the exercise of discretion by jail administrators. A court is in an incredibly inferior position, both in terms of expertise, experience and knowledge of all of the factors which are part of the security and staffing concerns taken into account in by jail administrators in formulating jail policies and procedures. This is why courts must not "second-guess the . . . Sheriff's Department and interfere with its operation of the jail facilities." In re Gallego, 133 Cal. App. 3d 75, 85 (1982).

Most importantly, jail administrators are not required by the law, as Siegfried argues, to show that there has been some actual security problem. (Petition at 28.) Jail administrators need not await disaster in order to prepare for or attempt to avoid such disaster is the maintenance of security and safety at the jail facilities. (Petition at 35-36.) Thompson v. Department of Corrections, 25 Cal. 4th 117, 133 (2001); Casey v. Lewis, 4 F.3d 1516, 1520-1522 (9th Cir. 1993); Jones v. North Carolina Prisoner's Labor Union, 433 U.S. 119, 126, 128 (1977).

Siegfried's discussion of evidence of past or present security problems or jail population concerns at the jail is irrelevant, then. (Opp., at 4-5.) Contrary to Siegfried's assertion that Petitioners had an "obligation to present facts" to demonstrate actual or past risks, jail administrators are afforded discretion to anticipate problems and to impose reasonable restrictions that rationally could avoid unreasonable risks to the safety and security if the jail, its visitors, its staff and its inmates. (Petition at 35-37.) Thompson v. Department of Corrections, 25 Cal. 4th 117, 133 (2001); Casey v. Lewis, 4 F.3d 1516, 1520-1522 (9th Cir. 1993); Jones v. North Carolina Prisoner's Labor Union, 433 U.S. 119, 126, 128 (1977). The fact that incidents have not occurred in the past does not necessarily mean that risks have been properly managed or that a practice is wise, but just as well could "indicate that you are just lucky." (Exh. 1, 167:27-28.)

As an aside, Siegfried has asserted that the policy at issue here is a "change" in policy. In fact, this is not the case at all. Instead, it appears that the jail's policy was always to have attorney meetings in the attorney rooms about which Real Parties in Interest complain, but this policy has apparently not been adhered to for some time. The

"change" that was noticed in on January 17, 2013 was not a change in policy, but an "'adherence to existing policy.'" (Petition at 8 & n.2.)

Moreover, there was ample evidence of changed circumstances at the jail to warrant a "change" in policy, or a renewed need to adhere to pre-existing policy. The jail population has increased in the last few years, at the same time as "staffing levels have decreased due to budgetary constraints." (Petition at 9.) Further, there were previously "fewer prisoners in the booking area and it was easier to maintain control with less risk to prisoners staff and visiting attorneys," but "[t]hat is no longer the case." (Petition at 10 (citing Exh. 8, p. 249, ¶ 15:24-27).)

In addition, due to the implementation of California's Corrections Realignment Plan, it is no longer simply a matter of population numbers in local jails, but the actual makeup of the jail population that is of concern. Specifically, local jails now must accommodate more serious violators who would have previously been sent to State facilities. See People v. Clytus, 209 Cal. App. 4th 1001, 1009 (2012) ("[O]n and after October 1, 2011, for a felony that is not prison eligible under the Realignment Act, the sentencing court must order that the defendant be committed to county jail."). As the Court

recognized in Clytus, "[t]he Realignment Act launched a dramatic and unexpected sea change in felony sentencing for which many criminal justice partners were not fully prepared when the new law became operative in October 2011." Id. at 1007. Given the significant and unprecedented changes in the criminal justice system, and the financial crises currently faced by public entities throughout the entire State, it is especially imperative for this Court to defer to the judgment and expertise of the jail administrators, both as to safety and security, as well as budgetary, management and overall operations.

B. The Second Factor of *Turner* is Satisfied, in that Inmates Have Sufficient Alternate Means to Meet with their Attorneys.

Two rooms are provided within the jail for attorney meetings, which provide the ability for papers and other necessary items to be passed between inmates and attorneys during meetings. These rooms provide sufficient "contact" to facilitate meaningful meetings between inmates and attorneys, even if defense attorneys might prefer more convenient or open meetings on a routine basis. (Petition at 11-12.) These rooms provide the confidentiality constitutionally required for meetings with legal counsel. (Petition at 12-13.) In addition, full

contact visits between attorneys and inmates are permitted on a case-by-case basis, when security and staffing concerns can be satisfied. (Petition at 13.) In particular, these types of visits accommodates situations where the pass through slot in the attorney meetings rooms would not suffice, such as when voluminous records must be reviewed or when multi-media needs to be used such as video viewing. (Id.) Finally, full contact meeting rooms are accommodated in the courthouse holding cell. (Petition at 14-15.) Although Siegfried claims that this facility is "not adequate," this is mere conclusion and unsupported opinion. There is no evidence to support such assertion, other than the claim that such room is only available during court hours. This, alone, does not render such rooms inadequate, as there is no evidence supporting any need for more.

Notably, the second factor in Turner does not require that the restrictions imposed by a jail be the least restrictive alternatives. Nor are ample alternatives required. Instead, the Court is required to consider only whether alternate means of exercising the asserted right are provided. This factor is satisfied. As set forth above, there are ample alternatives for inmates to have contact and semi-contact meetings with their counsel, even if such meetings must be pre-

arranged or are otherwise merely less convenient than was previously the case. As set forth in the Petition, the Policy provides the very same meetings upheld in the Small opinion. (Petition at 38.)

C. The Third *Turner* Factor is Met, in that, Without the Policy, there Would Be a Significant Impact on Guards, Inmates and Jail Resources.

Siegfried asserts that there will be only a "negligible impact" caused by contact visits. He relies upon the testimony of Retired Captain Lee Osborne that "barrier-free visits had been routinely provided" without "any problems with staffing and security." (Opp. at 6.) This does not satisfy Turner for several important reasons. First, this is past practice, which does not take into account at all the changed circumstances of the jail population and current funding concerns, discussed herein. Second, Siegfried once again asks the Court to improperly interfere with the Sheriff's discretion by requesting that the Court substitute a prior administrator's opinions for the current jail administrator's opinions; this is precisely the type of weighing and second-guessing in which courts are prohibited by case law from engaging.

The evidence has established that continued use of the unsecured booking area meeting rooms currently presents an unwarranted security risk to jail staff, inmates and visitors. (Petition at 39-40.) Under the particular circumstances presented, the third Turner factor is met. Siegfried's only assertion is that there has been no evidence of prior adverse impacts from contact visits between attorneys and inmates. As discussed in detail above, Petitioners are not required to show such evidence. Thompson v. Department of Corrections, 25 Cal. 4th 117, 133 (2001); Casey v. Lewis, 4 F.3d 1516, 1520-1522 (9th Cir. 1993); Jones v. North Carolina Prisoner's Labor Union, 433 U.S. 119, 126, 128 (1977). In addition, jail administrators are not required by law to wait for security breaches to occur in order to manage potential risks.

D. The Fourth *Turner* Factor is Met, in that there is an Absence of Ready Alternatives, which is Evidence of the Reasonableness of the Policy.

As discussed above, although Siegfried has asserted various supposed changes to the facility which could accommodate the contact attorney visits sought by him, there is no evidence such measures could be implemented, would rectify the security or safety

concerns of jail administrators, or are otherwise feasible. Siegfried's speculation about purportedly "minor" alterations to the jail facilities to accommodate Petitioners' safety and security concerns is lacking in substance and support.

In addition, this factor is subject to significant deference to the discretion of Petitioners as the administrators and operators of the jail. (Petition at 28-29, 46-51.) This Court, as set forth herein, simply cannot substitute its own discretion for that of jail administrators.

IV. CONCLUSION.

The Nevada County jail has had in place the long-existing Policy requiring attorney visits in meeting rooms for that purpose. These rooms provide sufficient contact between attorneys and inmates. In addition, the Policy permits full contact visits on a case-by-case basis and in the court holding cells available for that purpose. The Policy provides sufficient confidential attorney meetings, and ample alternatives. Further, the Policy is supported by rational security interests and there is no evidence of other alternatives which would tend to undermine the reasonableness of the Policy. Therefore, this Court must overturn the Superior Court's order requiring

overbroad and unfettered attorney visits, which interfere with the Sheriff's discretion in managing the safety and security of the jails.

Dated: September 8, 2013 JONES & MAYER

By: _____
Martin J. Mayer
James R. Touchstone
Krista MacNevin Jee

CERTIFICATE OF COMPLIANCE

I, KRISTA MACNEVIN JEE, certify, pursuant to Rule 8.204 (c) of the California Rules of Court, that this Respondent's and Real Parties' in Interest Brief contains 4,022 words, including footnotes. I have relied on the word count of the computer program use to prepare the brief.

Dated: September 8, 2013 JONES & MAYER

By: _____
Martin J. Mayer
James R. Touchstone
Krista MacNevin Jee

PROOF OF SERVICE
COURT OF APPEAL CASE NO. C074504

I am employed in the aforesaid county; I am over the age of eighteen years and not a party to the within entitled action; my business address is: 3777 N. Harbor Boulevard, Fullerton, California 92835.

On September 8, 2013, I served the within **RESPONSE TO INFORMAL OPPOSITION TO PETITION FOR WRIT OF MANDATE OR OTHER APPROPRIATE RELIEF**, on the interested parties in said action by placing a true and correct copy thereof in a sealed envelope with postage fully prepaid, via OVERNITE EXPRESS, and I deposited such envelope in the depository at Fullerton, California to ensure next day delivery, addressed as follows:

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I declare under penalty of perjury under the laws of the State of California that he above is true and correct. Executed on September 8, 2013, at Fullerton, California.

WENDY A. GARDEA