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9 **IN THE SUPERIOR COURT OF CALIFORNIA**

10 **COUNTY OF LOS ANGELES**

11 **JOHN DOE,**) Case Nos.
12)
13 **Petitioner,**) **PETITION FOR WRIT OF**
14 **v.**) **MANDATE; EXHIBIT VOLS. I**
15) **& II**
16 **LOS ANGELES COUNTY SUPERIOR**) **IMMEDIATE STAY**
17 **COURT,**) **REQUESTED**
18 **Respondent,**) Honorable _____, Judge
19 _____) Courthouse, Dept. _
20 **PEOPLE OF CALIFORNIA,**) Tel.: (_____
21 **Real Party in Interest.**)
22 _____)

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IN THE LOS ANGELES SUPERIOR COURT
COUNTY OF LOS ANGELES

JOHN DOE,)	
)	Case Nos.
Petitioner,)	
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v.)	
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LOS ANGELES COUNTY SUPERIOR COURT,)	
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Respondent,)	
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PEOPLE OF CALIFORNIA,)	
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Real Party in Interest.)	
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TO THE HONORABLE JUDGES OF THE APPELLATE DIVISION OF THE LOS ANGELES SUPERIOR COURT AND THE LOS ANGELES CITY ATTORNEY:

Petitioner, JOHN DOE, through counsel, petitions this Court to issue a writ of mandate to the Los Angeles Superior Court, San Fernando Courthouse, commanding that the trial court vacate and set aside its April 9, 2024 order terminating DOE'S grant of Mental Health Diversion (MHD) and reinstating criminal proceedings, and the trial court's May 6, 2024, Order denying DOE'S motion for reconsideration.¹ (Exs. G at 279, 309; Ex. H at

¹ For mental health diversion proceedings, the trial court simultaneously considered Case Nos. 1SV02258 AND 1SV02645. (Ex. C at 70)

1 348-349) (Case Nos. 1SV02645; 1SV02258)

2 The trial court improperly imposed unauthorized conditions of MHD,
3
4 failed to give JOHN DOE statutorily required notice and hearing of the
5 termination proceedings, improperly revoked DOE'S grant of MHD, and
6 improperly relied on the Code of Civil Procedure to deny DOE'S request for
7 reconsideration of the revocation.
8

9 By this verified petition the facts and causes support the issuance of the
10 stay and the writ:
11

12 I. The Los Angeles City Attorney (City Attorney) charged JOHN DOE with a
13
14 nine count misdemeanor complaint alleging that, on May 6, 2023, she
15 assaulted Allen W.² with a firearm (Ct. I; Cal. Penal Code § 245(a)(2)³);
16 inflicted corporal injury on a former spouse, Allen W. (Ct. II; § 273.5(a));
17 unlawfully used force and violence against Allen W. (Ct. III; § 242/243);
18 endangered a child (Cts. I, IV, V; § 273a); and resisted arrest (Cts. VI,
19 VII, VIII, IX; § 148(a)(1)). (Case No. 1SV02645) (Ex. A at 1-6)
20

21
22 II. The prosecution also filed a two count misdemeanor complaint alleging
23 that JOHN DOE resisted arrest (Cts. 1 & 2; § 148(a)(1)). (Case No.
24 1SV02258) (Ex. A at 7-9)
25

26
27 ² For clarity, this petition will refer to the defendant as “JOHN DOE” and
28 her ex-husband accuser as “Allen.”

³ Unless otherwise stated, all references are to the California Penal Code.

- 1 III. On December 20 and 28, 2023, JOHN DOE, via her attorney, filed motions
2 for MHD. (Ex. B at 10-57)
3
- 4 IV. On January 3, 2023, the trial court granted DOE'S request for MHD
5 on several terms and conditions including that she give up her right to
6 a speedy trial until January 3, 2024. (Ex. C at 60, 71)
7
- 8 V. Other MHD conditions required that she see a therapist once a week,
9 see a psychiatrist once a week for medication management, and waive
10 Confidentiality or Privilege so the Court and the Prosecutor could get
11 the therapy and psychiatrist reports. (Ex. C at 71-72)
12
- 13 VI. At the January 3, 2023 MHD hearing, the trial court also ordered
14 JOHN DOE to obey all laws between January 3, 2023 and January 3,
15 2024,
16 prohibited her from possessing dangerous or deadly weapons,
17 prohibited her from using or threatening to use force or violence against
18 anyone; prohibited her from annoying or harassing any victim or
19 witness including Allen, Noah W. and Daniel W; and required her to
20 obey the "Protective Order That Was Previously Issued in this Matter"
21
- 22 VII. On June 22, 2023, the parties appeared for a progress report. The trial
23 court found JOHN DOE compliant with MHD, she remained in individual
24 treatment, and she no longer needed medication. The trial court
25 continued the case for January 3, 2024 for "proof of compliance on
26 therapy and dismissal." (Ex. D at 83-84)
27
28

- 1 VIII. On January 3, 2024, the prosecution submitted a 130 page document
2 (Ex. E at 88-217), urged the trial court to deny DOE'S request to
3
4 dismiss the criminal cases, find that she failed to successfully complete
5 diversion, and find she violated the original criminal protective order
6 (CPO). (Ex. E at 220, 222)
7
- 8 IX. On February 6, 2024, trial counsel submitted a 45 page opposition to
9 the prosecution's documents. (Ex. F at 224, 226-270)
10
- 11 X. On April 9, 2024, in DOE'S absence,⁴ the prosecutor urged the trial
12 court to terminate DOE'S MHD alleging that JOHN DOE violated the
13 CPO by indirectly, through third parties, disturbing Allen's peace. (Ex.
14 G at 284)
15
- 16 XI. DOE'S counsel argued that JOHN DOE complied with the terms and
17 conditions of her MHD, that the parties had a pending family law case
18 involving community property issues and a domestic violence
19 restraining order. (Ex. G at 286)
20
- 21 XII. Over trial counsel's objection, the trial court found:
22
- 23 A. JOHN DOE substantially complied with the MHD requirement
24 that she be treated on a weekly basis in individual therapy. (Ex. G
25 at
26 305-306)
- 27 B. JOHN DOE did not substantially comply with the mental health
28 management. She stopped the psychiatry and medication

Although JOHN DOE's counsel appeared 977, the record fails to show that the trial court notified, as required by 1001.36 (g).

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management by March 13, 2023. (Ex. G at 306)

C. Although JOHN DOE, who represented herself, needed to communicate with Allen’s attorney, the trial court found that JOHN DOE violated the terms of the criminal protective order by “communicating to third-parties . . . to have Mr. JOHN DOE told of the communications for the purpose of disturbing Mr. DOE'S peace.” (Ex. G at 306))

D. The trial court terminated diversion because JOHN DOE communicated with the “escrow company, the real estate company, and [Allen’s] counsel . . . for the purpose of disturbing the peace of Mr. JOHN DOE” and to “chang[e] Mr. DOE'S conduct and behavior with regards to the sale of the family home.” (Ex. G at 307)

XIII. The trial court terminated DOE'S MHD and resumed the criminal proceedings.

XIV. On April 22, 2024, DOE'S counsel filed a Motion for Reconsideration of the trial court’s revocation of DOE'S MHD. (Ex. H at 315-333)

XV. On May 6, 2024, relying on the Code of Civil Procedure section 1008, the trial court found trial counsel failed to present new facts or law and denied DOE'S motion for reconsideration. (Ex. I at 334, 348)

XVI. JOHN DOE seeks a writ of mandate to compel the trial court to reinstate her MHD and dismiss her criminal cases.

XVII. The trial court deprived JOHN DOE of her statutory right to MHD and state and constitutional rights. U.S. Const. amends. V, XIV.

XVIII. This Court has jurisdiction because “A writ of mandate may be issued by any court to any inferior tribunal, . . . or person, to

1 compel the performance of an act which the law specially enjoins,
2
3 as a duty resulting from an office, trust, or station, or to compel
4 the admission of a party to the use and enjoyment of a right or
5 office to which the party is entitled, and from which the party is
6 unlawfully precluded by that inferior tribunal, corporation, board,
7 or person.” Cal. Civ. Proc. Code § 1085 (a).
8

9 XIX. In misdemeanor and infraction cases the appellate division of the
10 superior court has jurisdiction to entertain petitions for writs of
11 mandate or prohibition. Cal. Const., art. VI, sec. 10; Civ. Proc. Code §§
12 1085, 1103 (b); see, e.g. *Brant v. Superior Court*, 108 Cal.App.4th 100
13 (2003) (Petition for writ of mandate entertained in appellate division of
14 superior court after trial court denied discovery motion in misdemeanor
15 case.)
16
17
18

19 XX. JOHN DOE has not filed any other petition for extraordinary relief.

20 XXI. JOHN DOE seeks an immediate stay based on the allegations
21 described in
22 paragraphs I through XX.

23 XXII. Unless immediately restrained by Order of this Court, the trial court
24 will subject JOHN DOE to criminal charges and deprive her of her
25 statutory right to MHD.
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WHEREFORE Petitioner respectfully prays that:

1. This Court issue its writ of mandate to the trial court to vacate and set aside its order of April 9, 2024 revoking DOE'S MHD and her May 6, 2024 order denying DOE'S request for reconsideration.

2. This Court immediately stay all proceedings in Los Angeles Superior Court (Case Nos. 1SV02645; 1SV02258) until further order of this Court;

3. This Court find that JOHN DOE completed MHD and that the criminal charges be dismissed.

4. Grant any other relief as this Court may deem just and proper.

DATED: June 5, 2024

Respectfully Submitted,

/s/ F

F Attorney for Petitioner

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ARGUMENT

I. RELIEF SHOULD BE GRANTED BECAUSE THE PROSECUTION FAILED TO PRODUCE AUTHENTICATED EVIDENCE TO PROVE JOHN DOE VIOLATED THE UNAUTHORIZED TERMS OF HER MHD

A. Introduction

The City Attorney charged JOHN DOE with two misdemeanor complaints alleging that JOHN DOE committed several criminal offenses against her ex-husband Allen. (Case Nos. 1SV02645; 1SV02258) (Ex. A at 1-9)

After criminal proceedings began, on January 3, 2023, the trial court found JOHN DOE suitable for MHD because a qualified expert opined that DOE'S "symptoms of the mental disorder causing, contributing to, or motivating the criminal behavior would respond to mental health treatment," that JOHN DOE consented to diversion, that she agreed to comply with treatment as a condition of diversion, and that JOHN DOE did not pose an "an unreasonable risk of danger to public safety, as defined in Section 1170.18, if treated in the community." § 1001.36. (Ex. C at 59-67, 70-74)⁵

The trial court granted DOE'S request for MHD and imposed MHD treatment conditions that required her to "enroll and engage in weekly therapy with a licensed therapist or clinician; be seen, at least once a month,

⁵ This brief refers to the current verison of section 1001.36 [Repealed effective July 1, 2024]. The California Legislature enacted a nearly identical version of section 1001.36 that, effective July 1, 2024, includes a gun control provision. 2023 Cal ALS 236, 2023 Cal AB 455, 2023 Cal Stats. ch. 236.

1 for medication management by a licensed psychiatrist; and waive
2 confidentiality or privilege so the Court and the prosecutor could be provided
3 with reports from the psychiatrist and/or therapist.” (Ex. C at 70-74) The
4 trial court also required JOHN DOE to give up her right to as Speedy Trial until
5 January 3rd, 2024. (Ex. C at 71)
6

7
8 But the trial court also imposed unauthorized terms of diversion,
9 including terms generally associated with criminal probationary sentences.
10 (Ex. C at 60, 70-72) The trial court erred because section 1001.36 mandates
11 that criminal prosecution be postponed to allow the defendant to undergo
12 mental health treatment. § 1001.36 (f)(1), (g). The trial court’s unauthorized
13 diversionary terms caused the court to terminate her MHD.
14
15

16 **B. The Trial Court Imposed Unauthorized Terms and**
17 **Conditions on DOE'S MHD**

18 On January 3, 2023, the trial court granted DOE'S request for MHD
19 on conditions that she comply with MHD terms. (Ex. C at 60, 71) The trial
20 court also imposed several unauthorized diversion terms unrelated to MHD.
21 (Ex. C at 60, 70-72) The trial court ordered that during the twelve month
22 period between January 2, 2023 and January 3, 2024 JOHN DOE must:
23
24

- 25 1. Obey All Laws and Orders of the Court
- 26 2. Not Own, Use, or Possess Any Dangerous or Deadly
27 Weapons, Including Firearms, Knives, or Other
28 Concealable Weapons.
3. Not Use or Threaten to Use Force or Violence Against Any

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Person.

- 4. Not Annoy, Harass, Molest Any Victim or Witness in this Case, Especially Allen JOHN DOE, Noah JOHN DOE, and Daniel JOHN DOE.
- 5. Obey the Protective Order That Was Previously Issued in this Matter. (Ex. C 70-72)

Nothing in section 1001.36 permitted the trial court to impose conditions other than those listed in section 1001.36 (f)(1) which defines “Pretrial diversion” in relevant part as “the postponement of prosecution, either temporarily or permanently, at any point in the judicial process from the point at which the accused is charged until adjudication, to allow the defendant to undergo mental health treatment, subject to all of the following:

¶(A) (i) The court is satisfied that the recommended inpatient or outpatient program of mental health treatment will meet the specialized mental health treatment needs of the defendant . . .”

C. The Legislature Enacted MHD to Avoid Aggravating Preexisting Conditions Caused by Incarceration

In 2018, the Legislature enacted section 1001.36 to create a program of pretrial diversion for criminal defendants with diagnosed mental health disorders. Stats. 2018, ch. 34; Stats. 2018, ch. 1005. Diversion allows for the suspension of criminal proceedings and potential dismissal of charges upon successful completion of mental health treatment. See *People v. Frahs*, 9 Cal.5th 618, 631 (2020).

1 The express purpose of this legislation was to “[i]ncrease[] diversion of
2 [such] individuals” (§ 1001.35(a)) based on concerns that “incarceration only
3 serves to aggravate [their] preexisting conditions and does little to deter
4 future lawlessness.” (Sen. Com. on Public Safety, Analysis of Sen. Bill No. 215
5 (2017–2018 Reg. Sess.) as amended Jan. 3, 2018, p. 4.)
6
7

8 Successful mental health treatment helps the person and makes the
9 community safer. Recent amendments have confirmed the Legislature’s
10 desire to expand mental health treatment through diversion. (See Stats.
11 2022, ch. 735; *People v. Whitmill*, 86 Cal.App.5th 1138, 1149 (2022) (“The
12 Legislature intended the mental health diversion program to apply as broadly
13 as possible.”)
14
15

16 “In June 2018, the Legislature enacted ... sections 1001.35 and 1001.36,
17 which created a pretrial diversion program for certain defendants with
18 mental health disorders. (Stats. 2018, ch. 34, § 24.)” *Frahs*, 9 Cal.5th at 618,
19 624. Section 1001.36, “which contains the diversion measure's substantive
20 provisions,” “by design and function provides a possible ameliorating benefit
21 ... by offering an opportunity for diversion and ultimately the dismissal of
22 charges.” *Frahs*, at 624.
23
24
25

26 “The stated purpose of the diversion statute ‘is to promote all of the
27 following: [¶] (a) Increased diversion of individuals with mental disorders to
28 mitigate the individuals’ entry and reentry into the criminal justice system

1 while protecting public [**5] safety. [¶] (b) Allowing local discretion and
2 flexibility for counties in the development and implementation of diversion for
3 individuals with mental disorders across a continuum of care settings. [¶] (c)
4 Providing diversion that meets the unique mental health treatment and
5 support needs of individuals with mental disorders.' § 1001.35 (a)–(c).”
6
7 *Frahs*, at 626; see also *People v. Whitmill*, 86 Cal.App.5th at 1149; *People v.*
8 *Berlin*, 101 Cal. App. 5th 757, 761-62 (2024)
9

10
11 **D. The Evidence Failed to Prove That JOHN DOE Violated the**
12 **Trial Court's Unauthorized Conditions of Diversion**

13 Based on the unauthorized terms, on April 9, 2024, the prosecutor
14 argued that the court should terminate DOE'S MHD because JOHN DOE
15 violated the CPO order by indirectly, through third parties, disturbing Allen’s
16 peace. The prosecutor also argued that “whatever treatment Ms. JOHN DOE
17 undertook to treat her underlying mental disorder, which is purported to be
18 the cause of her commission of the offense, does not seem to have taken, given
19 that she continues to labor under the exact same delusions, which gave rise to
20 the conduct. . . .” (Ex. G at 285)
21
22

23
24 The City Attorney argued that the “mental health diversion has not
25 been successful” and that because JOHN DOE has a graduate degree and works
26 as a psychologist, she would have know that “telling an attorney, your client
27 has violated 85 laws, that these messages would be immediately transferred
28 to Mr. JOHN DOE, which is in fact what happened.” (Ex. G at 287) Allen
believed

1 that JOHN DOE made false allegations and she “has not progressed at all. I
2 don't know what kind of therapist she's seen . . .” (Ex. G at 299)

3
4 The prosecutor also argued that “[JOHN DOE] told a title company, to
5 prevent the closing of a sale, that Mr. JOHN DOE engaged in a murder for hire
6 and other federal offenses” and she reported Mr. JOHN DOE to the psychologist
7 licensing board.” (Ex. G at 288)

8
9 JOHN DOE never committed any criminal acts against Allen nor anyone
10 else. She accused him of criminal acts against her. The emails showed that
11 JOHN DOE wanted Allen's attorney, the Realtors and the escrow company to
12 cancel what she considered to be the fraudulent sale of her property. JOHN
13 DOE
14 told Allen's attorney that JOHN DOE coerced and intimidated her as a witness
15 and whistleblower. (Ex. G at 295)

16
17
18 Trial counsel argued that during the three years DOE'S case was
19 pending in the family court, no incidents occurred between Allen and JOHN
20 DOE
21 over the three year period, and Allen came forward to block her diversion.
22 (Ex. G at 286) Trial counsel argued that Allen lost custody of his older son,
23 that there had been violent episodes between the son and Allen “which lead
24 [sic] to her parents gaining custody of Noah JOHN DOE.” (Ex. G at 301) Trial
25 counsel argued that JOHN DOE complied with the terms and conditions of her
26 MHD, that the parties had a pending family law case involving community
27 property issues and a domestic violence restraining order. (Ex. G at 286)
28

1 The trial court reviewed the prosecution’s unauthenticated and
2 unmarked documents submitted by the prosecution and focused on emails
3 JOHN DOE apparently emailed to Realtors, Allen’s family law attorney, and the
4 escrow company. The emails referenced what JOHN DOE considered the illegal
5 sale of DOE'S home and community property. (Ex. H at 340-341)
6
7

8 The trial court found that the emails JOHN DOE sent to Allen’s attorney.
9 included “threats of civil complaints and [“muddy”] criminal charges” and
10 accuses Allen of human trafficking and planning to kill, jail, or
11 institutionalize her “to save his own ass from a very serious jail sentence.”
12 (Ex. G at 295) The trial court found that JOHN DOE asserted in the emails to
13 third parties that people other than Allen “had her framed and implicated in
14 that she tried to harm him . . . that he ‘bribed a government official’ [and
15 JOHN DOE] details a list of assorted crimes committed against her and her
16 children that contain more than 65 crimes.” (Ex. G at 296)
17
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19

20 The evidence, consisting of Allen’s testimony and unauthenticated
21 emails the prosecution failed to properly introduce into evidence, failed to
22 prove that JOHN DOE violated the trial court’s unauthorized conditions of
23 diversion. The trial court erroneously found “substantial evidence that the
24 defendant has violated the criminal protective order through the
25 communications addressed to third parties for the purpose of disturbing Mr.
26 JOHN DOE's peace.” (Ex. G at 302)
27
28

1 The prosecution never introduced any CPO nor did the trial court take
2 judicial notice of any CPO issued to JOHN DOE. The trial court never identified
3 the CPO “previously issued in the case.” The case file that, on May 28, 2021
4 the LAPD served JOHN DOE with a Criminal Protective Order (CPO) (§ 136.2)
5 and, on November 21 2021, the CPO was filed with the court. (Ex. E at 195-
6 196)
7

8 Section 36.2 applies to criminal matters, not MHD, because section
9 (a)(1) states, “Upon a good cause belief that harm to, or intimidation or
10 dissuasion of, a victim or witness has occurred or is reasonably likely to occur,
11 a court with jurisdiction *over a criminal matter* may issue orders,. . . .” And,
12 section 136.2 (D) prohibited the person from communicating with a “specified
13 witness or a victim *except through an attorney* under reasonable restrictions
14 that the court may impose.” (Italics added.)
15

16 JOHN DOE did not violate the unidentified, unauthenticated CPO or the
17 trial court’s erroneous belief that JOHN DOE not communicate with any
18 attorney
19 except her own. The trial court erroneously found “the criminal protective
20 order issued stated JOHN DOE was “not to communicate with him directly or
21 indirectly or through third-parties, *with the only exception being her own*
22 *attorney.*” (Ex. G at 307) (Italics added.)
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1 The trial court erroneously believed that JOHN DOE could not
2 communicate with Allen “directly or indirectly or through third parties, with
3 the only exception *being her own attorney.*” (Ex. G at 307) (Italics added.) The
4 CPO stated only that JOHN DOE “must have no contact with the [illegible]
5 protected persons named above through a third party, except *an attorney of*
6 *record.* (Ex. F at 195 ¶13) JOHN DOE, who represented herself, had contact with
7 Allen's family law attorney about a family legal matter. (Ex. G at 307)

8 Relief should be granted.

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11 **II. RELIEF SHOULD BE GRANTED BECAUSE THE TRIAL
12 COURT PREJUDICIALLY FAILED TO COMPLY WITH
13 SECTION 1001.36'S PROCEDURE FOR TERMINATING
14 MHD**

15 **A. Introduction**

16 The law did not require the trial court to terminate DOE'S MHD.
17 Section 1001.36(g) allowed the trial court to determine if the criminal
18 proceedings should be reinstated or whether the treatment should be
19 modified. Section 1001.36 also set forth the circumstances under which the
20 trial court could terminate MHD.
21

22 For example, if, at the conclusion of the diversion period, the defendant
23 “has performed satisfactorily in diversion, ... the court shall dismiss the
24 defendant’s criminal charges that were the subject of the criminal
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1 proceedings at the time of the initial diversion.” § 1001.36 (h).

2 Relief should be granted.

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4 **B. Section 1101.36 (g) Gives the Trial Court Options Before**
5 **Terminating MHD**

6 Section 1001.36 (g) states, “If any of the following circumstances exists,
7 the court shall, after notice to the defendant, defense counsel, and the
8 prosecution, hold a hearing *to determine whether the criminal proceedings*
9 *should be reinstated, whether the treatment should be modified, or whether the*
10 *defendant should be conserved . . .*” (Italics added.)
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13 Section 1001.36 also provides that the trial court can dismiss a
14 defendant’s criminal charges if the court “conclude[s] that the defendant has
15 performed satisfactorily if the defendant has substantially complied with the
16 requirements of diversion, *has avoided significant new violations of law*
17 *unrelated to the defendant’s mental health condition, and has a plan in place*
18 *for long-term mental health care.*” § 1001.36 (h).
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21 **C. The Trial Court Must Follow the Procedures Set Forth in**
22 **Section 1101.36 (g) Before Terminating MHD and**
23 **Reinstating Criminal Proceedings**

24 Section 1001.36 (g) states that the following circumstances must exist
25 before the trial court terminates MHD: “¶(1) The defendant is charged with
26 an additional misdemeanor allegedly committed during the pretrial diversion
27

1 and that reflects the defendant’s propensity for violence.¶ (2) The defendant
2 is charged with an additional felony allegedly committed during the pretrial
3 diversion.¶ (3) The defendant is engaged in criminal conduct rendering the
4 defendant unsuitable for diversion.¶ (4) Based on the opinion of a qualified
5 mental health expert whom the court may deem appropriate, either of the
6 following circumstances exists: ¶(A) The defendant is performing
7 unsatisfactorily in the assigned program. ¶(B) The defendant is gravely
8 disabled, . . .” §1001.36 (g)(1)–(4).

12 **D. The Trial Court’s Committed Prejudicial Error by Failing**
13 **to Provide Notice of the Hearing to Terminate Diversion**

14 The trial court erred by terminating DOE'S MHD without following
15 the procedures in section 1001.36 (g). The court did not provide “*notice to the*
16 *defendant*, defense counsel, and the prosecution.” *Id.* As a result, the trial
17 court did not give JOHN DOE the opportunity to personally challenge the
18 evidence against her or make a statement why criminal proceedings should
19 not be reinstated in the case. *Id.* Instead, the trial court, in DOE'S absence,
20 permitted Allen to make an unsworn “statement” before the court.
21

22 “[D]ue process is flexible and calls for such procedural protections as
23 the particular situation demands.” *Morrissey v. Brewer*, 408 U.S. 471, 481
24 (1972) “[I]dentification of the specific dictates of due process generally
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1 requires consideration of three distinct factors: First, the private interest that
2 will be affected by the official action; second, the risk of an erroneous
3 deprivation of such interest through the procedures used, and the probable
4 value, if any, of additional or substitute procedural safeguards; and finally,
5 the Government's interest, including the function involved and the fiscal and
6 administrative burdens that the additional or substitute procedural
7 requirement would entail.” *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

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11 **E. The Trial Court Prejudicially Erred by Terminating**
12 **DOE'S Mental Health Diversion Because No Substantial**
13 **Evidence Supported Terminating DOE'S MHD**

14 The trial court prejudicially erred by reinstating criminal charges
15 because none of the five statutory criteria for initiating a hearing to
16 terminate diversion outlined in section 1001.36 (g)(1) through (4) applied.
17 DOE'S conduct did not lead to new felony charges, nor to any filed
18 misdemeanor charges reflecting a propensity for violence (see § 1001.36
19 (g)(1)–(2)), and no evidence found her “gravely disabled” (*id.*, (g)(4)(B)).

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22 Under the fourth criterion, a court may terminate diversion and
23 reinstate criminal charges if “[b]ased on the opinion of a qualified mental
24 health expert” (*id.*, (g)(4)) “[t]he defendant is performing unsatisfactorily in
25 the assigned program” (*id.*, (g)(4)(A)). The trial court had no evidence of an
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1 opinion of a “qualified mental health expert” proving JOHN DOE performed
2 unsatisfactorily. *Id.*, (f)(2).
3

4 The prosecution presented no legally admissible evidence at the
5 termination hearing. The prosecution’s packet of documents consisted of a
6 chain email that contained duplicate copies of an email emailed by JOHN DOE
7 to
8 Allen’s attorney, Allen’s realtor and title company. The prosecution presented
9 no authenticated exhibits, never marked nor introduced any exhibits, never
10 presented any witnesses to testify or authenticate the documents the
11 prosecution’s “evidence.” Other than Allen, who made a statement under oath
12 that consisted of denigrating JOHN DOE, the prosecution presented no
13 witnesses
14 to prove JOHN DOE violated her grant of MHD.
15

16 In fact, when Allen contacted the LAPD about the emails, an officer
17 notified Allen that he never properly served a Domestic Violence Order
18 against JOHN DOE; however, the police considered the undetermined CPO
19 served and in good standing. (Ex. E at 166) The deputy city attorney also told
20 JOHN DOE that, “[s]ince *she is technically able to communicate through an*
21 *attorney of record*, I am not sure if they can consider this a violation of the
22 Protective Order, . . . “ (Ex. E at 171) The Domestic Restraining Order
23 hearing stated, “[p]eaceful written contact through a lawyer or process server
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1 or another person for service of legal papers related to a court case is allowed
2 and does not violate this order.” (Ex. E at 198 ¶ 6(b),)
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4 The prosecution and even Allen agreed that DOE'S MHD violations
5 stemmed from her mental state. Any new violations new violations of law
6 related to DOE'S mental health condition. Because JOHN DOE performed
7 satisfactorily in diversion, the court should have concluded that JOHN DOE
8 performed MHD substantially and any new legal violations stemmed from
9 her mental health condition. § 1001.36 (h)
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12 **F. Section 1101.36 (h) Permits a Court to Dismiss the**
13 **Criminal Charges**

14 At the April 9, 2024 hearing, the Prosecutor argued that “whatever
15 treatment Ms. JOHN DOE undertook to treat her underlying mental disorder,
16 which is purported to be the cause of her commission of the offense, does not
17 seem to have taken, given that she continues to labor under the exact same
18 delusions, which gave rise to the conduct. . . .” (Ex. G at 285)
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21 The Prosecutor argued that the “mental health diversion has not been
22 successful” and that because JOHN DOE has a graduate degree and works as a
23 psychologist, she would have known that “telling an attorney, your client has
24 violated 85 laws, that these messages would be immediately transferred to
25 Mr. JOHN DOE, which is in fact what happened.” (Ex. G at 287) Allen testified
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1 that JOHN DOE made false allegations and she “has not progressed at all. I
2 don’t know what kind of therapist she’s seen . . .” (Ex. G at 299)

3
4 The prosecutor also argued that “[JOHN DOE] told a title company, to
5 prevent the closing of a sale, that Mr. JOHN DOE engaged in a murder for hire
6 and other federal offenses” and she reported Mr. JOHN DOE to the psychologist
7 licensing board.” (Ex. G at 288)

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9 Section 1001.36 (h) states that, “If the defendant has performed
10 satisfactorily in diversion, at the end of the period of diversion, the court shall
11 dismiss the defendant’s criminal charges that were the subject of the criminal
12 proceedings at the time of the initial diversion. A court may conclude that the
13 defendant has performed satisfactorily if the defendant has substantially
14 complied with the requirements of diversion, *has avoided significant new*
15 *violations of law unrelated to the defendant’s mental health condition, and*
16 *has a plan in place for long-term mental health care.”⁶*

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19
20 The prosecution’s “evidence” and arguments prove that DOE'S
21 alleged conduct related to her mental health condition. This court should
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24 ⁶ The trial court found that JOHN DOE did not substantially comply with
25 the mental health term that she been seen on a monthly basis for medication
26 management. The trial court found she stopped the psychiatry and
27 medication management by March 13, 2023. (Ex. G at 306)

28 But the transcripts show that, on June 22, 2023, the court found that
JOHN DOE no longer needed medication. (Ex. D at 83)

1 dismiss the criminal charges. § 1001.36 (h).

2 **III. THE TRIAL COURT ABUSED ITS DISCRETION BY**
3 **RELYING ON AN INAPPLICABLE CIVIL CODE SECTION**
4 **TO DENY RECONSIDERATION OF ITS DECISION TO**
5 **TERMINATE DOE'S MHD**

6 **A. Introduction**

7 After the trial court terminated MHD and reinstated criminal
8 proceedings, on April 22, 2024, trial counsel filed a motion requesting the
9 trial court to reconsider its ruling. (Ex. H at 315-333) The trial court, relying
10 on the Code of Civil Procedure section 1008, found that JOHN DOE failed to
11 present new facts or law not reasonably available at the time the trial court
12 made the decision. (Ex. H at 338-341, 344-349) The trial court erred because
13 that the Code of Civil Procedure section 1008 does not apply to criminal
14 proceedings.
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18 **B. The Code of Civil Procedure Section 1008 Does Not Apply**
19 **to Criminal Proceedings**

20 In criminal cases a court's power to reconsider interim rulings has few
21 limits. *People v. Rose*, 46 Cal. App. 4th 257, 262 (1996). Generally, to decide
22 the proper rule of criminal procedure by reliance upon rules of civil procedure
23 "would be to ignore the underlying rights of the presumption of innocence and
24 proof beyond a reasonable doubt." *People v. Belton*, 23 Cal. 3d 516, 522 (1979);
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1 *People v. Castello*, 65 Cal.App.4th 1242, 1246-47 (1998).

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3 In criminal cases, the California Supreme Court has acknowledged “the
4 inherent power of every court to develop rules of procedure aimed at
5 facilitating the administration of criminal justice and promoting the orderly
6 ascertainment of the truth.” *Joe Z. v. Superior Court*, 3 Cal. 3d 797, 801-802
7 (1970); *Powell v. Superior Court*, 48 Cal. 2d 704, 708 (1957).

8
9 Some of the court’s inherent powers are set out by statute, but the
10 inherent powers of the courts are derived from the Constitution and are not
11 confined by or dependent on statute. Cal. Const., art. III, § 3; *id.*, art. VI, § 1;
12 *Walker v. Superior Court*, 53 Cal. 3d 257, 266-267 (1991); *Peat, Marwick,*
13 *Mitchell & Co. v. Superior Court*, 200 Cal. App. 3d 272, 287-288 (1988).

14
15 A court could not operate successfully under the requirement of
16 infallibility in its interim rulings. Miscarriage of justice results where a court
17 is unable to correct its own perceived legal errors, particularly in criminal
18 cases where life, liberty, and public protection are at stake. Such a rule would
19 be “. . . a serious impediment to a fair and speedy disposition of causes’
20 [Citations.]” *De la Beckwith v. Superior Court*, 146 Cal. 496, 500 (1905),
21 quoting *Richman v. Board of Supervisors of Muscatine County*, 77 Iowa 513,
22 524 (1889). Indeed, *People v. Jackson*, 13 Cal. 4th 1164, 1205 (1996)

1 demonstrates even the prosecution needs to avail themselves of this inherent
2 power under appropriate circumstances.
3

4 **C. The Trial Court Abused its Discretion by Relying on the**
5 **Code of Civil Procedure Section 1108 to Deny DOE'S**
6 **Motion for Reconsideration**

7 The trial court failed to act with due consideration in revisiting the
8 question of law before it in order to perform its function of safeguarding the
9 rights of the parties. The trial court, erroneously relying on the Code of Civil
10 Procedure section 1108, erroneously believed that, in order to reconsider its
11 ruling terminating diversion and reinstating MHD, “there must be new facts
12 or new law not reasonably available at the time” she made her decision:
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15 THE COURT: And maybe I didn't state the question clearly
16 enough. Under CCP 1008, in order for the court to grant a motion
17 to reconsider, there must be new facts or new law that was not
18 reasonably available at the time the decision was made. So in
19 other words, when this court undertook the issue of the requested
20 diversion of mental health, and that was, I believe, on April 9th.
21 I'm trying to understand in concert with 1008, what is the new
22 facts and new law that has occurred after that time that supports
23 the court's authority to grant a motion for reconsideration? (Ex. H
24 at 341)

25 * * *

26 THE COURT: No. Not what the new facts were that the
27 people -- let me put it this way, it's May 6th. What is different on
28 May 6th than what is a fact in reality on April 9th that supports
the court's authority to essentially reconsider its order? (Ex. H at
341)

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THE COURT: That's why, Ms. Budris, I started with those questions. Because I think before the court can actually reconsider, there does have to be a finding that there was new facts or new law that was not available at the time of the decision that gives rise for a court to reconsider its own decision. And understandably, the reason for that is that there needs to be some finality to decisions that are made. Obviously, we have reviewing courts. Thank goodness, we have the court of appeals. They are welcome to review each and every one of my decisions and tell me that I've made an incorrect decision. But in order for me to review my own decisions, unless the court on its own comes to a belief that it has made an incorrect decision. (Ex. H at 345)

THE COURT: CCP 1008 says that there must be new facts or new law not reasonably available at the time of the decision that has to be found before the court can actually reconsider its decision. (Ex. H at 345)

THE COURT: [T]he law of CCP 1008 requires this court, where there is new facts, new circumstances, different law, that was unavailable at the time of the hearing to then and only then, reconsider its decision. And those are not present. Because those are not present, this court is mandated to deny the motion for reconsideration.

So the court is denying the application to reconsider . . . (Ex. H at 349)

The trial court, relying on the Code of Civil Procedure section 1008, prejudicially erred by requiring JOHN DOE present new facts or law not reasonably available when the trial court made the decision. (Ex. H at 338-

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341, 344-349)

The trial court erred because the courts have held that the Code of Civil Procedure section 1008 does not apply to criminal proceedings. The court’s error prejudiced JOHN DOE because her Motion for Reconsideration presented signification information proving that JOHN DOE suffered from PTSD, stress, and trauma due to emotional abuse and had been possessing her anger when she reached out to third parties . . . [and did not intend] to harass or disturbed [sic] the peace of her ex-husband.” (Ex. H at 324) JOHN DOE also enrolled in an online 15 week anger management program. (Ex. H at 326-327) JOHN DOE also submitted four character reference letters attesting to her good character. (Ex. H at 329-333)

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CONCLUSION

Petitioner JOHN DOE respectfully requests that relief be granted. Dated: June 5, 2024

/s/ F

Attorney

