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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

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BY 
KALISKA MONTICUE, DEPUTY

9 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 IN AND FOR THE COUNTY OF SAN BERNARDINO
11

12 SARA RODRIGUEZ, individually and on behalf
13 of all personal similarly situated;

14 Plaintiffs,

15 v.

16 STATE OF CALIFORNIA, and DOES 1 through
17 25, Inclusive,

18 Defendants.
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Case No.: CIV SB 22 13905

CLASS ACTION COMPLAINT FOR
DAMAGES FOR

1. FAILURE TO PROVIDE ADEQUATE FUNDING FOR EXPUNGEMENT OF CASES AS REQUIRED UNDER HEALTH AND SAFETY CODE SECTION 1161.9 (DIVISION 10, CHAPTER 6, OFFENSES AND PENALTIES)
2. VIOLATION OF CALIFORNIA STATE CONSTITUTION, ART I, §7 (a);
3. VIOLATION OF THE UNRUH CIVIL RIGHTS ACT, (Cal.Civ. § 51)
4. DECLARATORY RELIEF

IIJURY TRIAL DEMANDEDI

INTRODUCTION

1. The courts provide a process through which individuals can vindicate their legal rights.¹ The federal and state constitutions have long recognized the importance of equal access to the courts for the preservation of the rule of law.² Fundamental to that access is adequate funding.³ Whereas the judicial system exists to provide evenhanded, unbiased, and competent administration of justice, inadequate and disproportionate funding can sabotage the courts' ability to function and process cases evenly.⁴ Citizens have the right to expect neutrality and fairness in the adjudication of all cases.

2. In 2016, California voters legalized cannabis for recreational use.⁵ With this new law came a promise to create a legal pathway through the courts for clearing over 200,000 past marijuana-related convictions or reducing them to a lesser charge. To speed up and automate that clearance process, Assembly Bill No. 1793 (AB 1793) was passed in 2018. Through this new legislation, the State of California shouldered the financial responsibility "to automate the process of identifying eligible cases, updating records and dismissing and sealing many of them so they do not appear on background checks."⁶ The expectation was that the State's funding would allow all state courts to process cases in a timely manner, regardless of the county.

3. Despite its promise, the State's roll out of AB 1793 has a glaring problem—it fails to provide and account for equal access and opportunities to the residents of Riverside and San Bernardino

¹ All persons have a constitutional right of access to the courts. U.S. Const. amend. XIV.; Cal. Const. art. 1, § 7(a). *Payne v. Superior Ct.*, 17 Cal.3d 908, 914 (1976).

² *Id.*, at 914. ("While the constitutional right of access to the courts has for the most part been related to review of criminal convictions, particularly by writs of habeas corpus, the due process right is much broader; it includes access to all courts, both state and federal, without regard to the type of petitioner or relief sought.") citing U.S. Const. amend. XIV.; Cal. Const. art. 1, § 7(a); See also *Jameson v. Desta*, 5 Cal.5th 594, 607 (2018) ("...our legal system cannot provide 'equal justice under law' unless all persons have access to the courts without regard to their economic means. California law and court procedures should ensure that court fees are not a barrier to court access for those with insufficient economic means to pay those fees.")

³ Maria Dinzeo, *Newsom's Budget Proposal Gives Generously to California Courts*, Courthouse News Service (January 10, 2022), <https://www.courthousenews.com/newsoms-budget-proposal-gives-generously-to-california-courts/> (Per Chief Justice Tani Cantil-Sakauye, "It's a continuing dialogue for sustainable funding.")

⁴ *Allegheny Cnty. v. Com.*, 517 Pa. 65, 75 (1987), *enforcement denied sub nom. Cnty. of Allegheny v. Com.*, 534 Pa. 8, 626 (1993).

⁵ Adult Use of Marijuana Act [AUMA], Proposition 64, was approved by California voters in 2016. See Olson Hagel & Fishburn LLP, Initiative documents for the Control, Regulate and Tax Adult Use of Marijuana Act (amended) via California Office of the Attorney General (December 7, 2015), https://oag.ca.gov/system/files/initiatives/pdfs/15-0103%20%28Marijuana%29_1.pdf

⁶ Kiera Feldman, *New Bill Takes Aim at California's Slow Progress Clearing Pot Convictions*, L.A. Times (January 26, 2022), available at <https://www.latimes.com/california/story/2022-01-26/lawmaker-moves-to-fix-delays-in>

1 counties. Specifically, the State's policies and decisions have resulted in inadequate funding at these
2 already underfunded county courts, with citizens there having less opportunity to clear their records than
3 citizens in wealthier and better-funded counties. See Exhibit "1".

4 4. As of January 2022, trial courts in Riverside and San Bernardino County had not been
5 able to process a single case.⁷ In contrast, Santa Clara County finished its 11,500 in April 2020, and Los
6 Angeles finished processing its 66,000 cases in late 2021.⁸ Many county courts have been able to move
7 aggressively to clear records, but Riverside and San Bernardino have done so at a snail's pace.⁹ More
8 recently, San Bernardino Superior Court spokesperson Julie Van Hook stated that the court "had begun
9 working on these cases" and intended to complete them by July 2022, "resources permitting."¹⁰

10 5. Indeed, resources are low because the State failed to provide the adequate expenditures
11 needed to process cases in every county. The State took responsibility for funding the rollout of AB
12 1793 because it knew about the "significant new burdens AB 1793 would impose on courts" unless the
13 bill was appropriately funded.¹¹ It acknowledged that the "capabilities of each court's case management
14 systems, court staffing levels and potential objection from the prosecution" should influence the
15 workload estimates and funding formulas.¹² But while the Judicial Council had projected a one-time
16 State General Fund (SGF) cost to the courts between \$6.9 million and \$28.5 million, the courts received
17 an inadequate \$16 million from the state budget to pay for the costs of processing records across all 58
18 counties.¹³ Moreover, the State failed to provide the appropriate apportionment for courts that faced
19 greater challenges in clearing these records. Instead, the Trial Court Budget Advisory Committee
20 unanimously voted to adopt a "proportional allocation methodology based on the percentage of
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24 ⁷ Kiera Feldman, *California Was Supposed to Clear Cannabis Convictions. Tens of Thousands Are Still Languishing*, L.A.
25 Times (January 13, 2022), available at <https://www.latimes.com/california/story/2022-01-13/california-was-supposed-to-clear-weed-convictions-tens-of-thousands-are-still-languishing>

26 ⁸ *Id.*

27 ⁹ *Id.*

28 ¹⁰ Feldman, *supra* note 6.

¹¹ Sharon Reilly, Judicial Counsel of California (August 22, 2018), available at <https://www.courts.ca.gov/documents/ga-position-letter-assembly-ab1793-bonta.pdf>

¹² *Id.*

¹³ Sachi A. Hamai, County of Los Angeles Chief Executive Office (May 18, 2018), available at <http://file.lacountv.gov/SDSInter/bos/supdocs/123096.pdf>

1 potentially eligible cases by county.”¹⁴ In doing so, the State rejected alternative funding mechanisms
2 that would also consider the number of total cases a court handles, their complexity, available staff and
3 technology capabilities, and the fact that some county courts have historically had greater needs than
4 others.¹⁵ The State’s rejection of a workload-based model in favor of a purely proportional allocation
5 model based on eligible cases per county—one that resulted in a mere \$77.20 per eligible marijuana
6 conviction—effectively strained already burdened courts.¹⁶ See Exhibit 2.

7 6. The State opted for this, all while being aware of the negative impact it would have on
8 chronically underfunded courts. Indeed, the problem of disproportionate and inadequate funding across
9 county court systems is one that has plagued California’s judicial and legislative systems for decades.¹⁷
10 Though many funding gaps have been narrowed in the over two decades since trial court funding shifted
11 to the responsibility of the State, officials have acknowledged that challenges remain and “historical
12 underfunding may still exist for some courts.”¹⁸

13 7. Such is the case for Inland Empire courts. In 2005, San Bernardino County courts were
14 estimated to be about 20 to 30% underfunded, and Riverside up to 20%.¹⁹ The recent onset of the
15 COVID-19 (“COVID”) pandemic only laid bare these shortfalls: Riverside County Superior Court, for
16 example, was forced to close one day per month from October 2020 to June 2021 as a result of a \$12
17 million revenue shortfall. Closing the court for one day per month came in addition to other cost-cutting
18 measures, including freezing staff positions and reducing operating costs; even so, the court
19 acknowledged that it would “not be enough to cover the anticipated shortfall.”²⁰

21 ¹⁴ Trial Court Budget Advisory Committee, Minutes of Open Meeting (July 25, 2019), available at
22 <https://www.courts.ca.gov/documents/tcbac-20190725-minutes.pdf> ; See also Report to the Judicial Council, Trial Court
23 Budget: Allocation Methodology for Cannabis Convictions Resentencing Funding (August 30, 2019), available at
24 <https://jcc.legistar.com/View.ashx?M=F&ID=7675632&GUID=3F205C08-6CE9-41C5-9A1A-C8CFBCA1D330>
25 ¹⁵ *Id.*

26 ¹⁶ Dividing each county’s funding allocations by their total number of eligible convictions results in the same number:
27 \$77.20.

28 ¹⁷ Gabrielle Tracey Letteau, *Crisis in California: Constitutional Challenges to Inadequate Trial Court Funding*, 22 HASTINGS
CONST. L. Q. 557, 569 (1995).

¹⁸ Robert E. Fleshman, The Pie, CALIFORNIA COURTS REVIEW, The Road to Independence: A History of Trial Court Funding,
Winter 2009, at 27, available at https://www.courts.ca.gov/documents/CCR_09Winter.pdf.

¹⁹ Merrill Balassone, The Trial Court Funding Formula Explained (June 27, 2017), available at
<https://newsroom.courts.ca.gov/news/trial-court-funding-formula-explained>

²⁰ Superior Court of California, County of Riverside, Public Notice: Riverside Superior Court to Close One Day Per Month
Beginning in October 2020, available at [https://www.riverside.courts.ca.gov/GeneralInfo/MediaInfo/Notices/Closure-
Notice_10-20.pdf](https://www.riverside.courts.ca.gov/GeneralInfo/MediaInfo/Notices/Closure-Notice_10-20.pdf)

1 8. These courts are forced to do more with less. Strapped with major staffing shortages,
2 outdated case management systems, old records that require manual review, technical issues, and
3 backlogs related to the COVID-19 pandemic, these chronically underfunded courts have also fallen
4 behind the technological curve.²¹ Now these Inland Empire courts are expected clear records at the same
5 pace as other county courts even as their workload is disproportionately larger. They can hardly be
6 blamed for the holdup in clearing convictions.²²

7 9. But while Inland Empire courts scramble to provide a service mandated and
8 disproportionately funded by the State, citizens in these counties who are eligible for record clearance
9 miss out on life-changing opportunities, whereas persons fortuitous to have their convictions in other
10 county courts can enjoy those benefits.²³

11 10. The State's deliberate policies created a process that is disproportionate and has resulted
12 in inequitable access to conviction clearance for residents of Riverside and San Bernardino counties.
13 These resulting barriers are especially detrimental for those residents, many of whom are low-income
14 and from underrepresented backgrounds, often without the means or knowledge to pursue record
15 clearance on their own. Low-income persons of historically underrepresented backgrounds are already
16 more likely to be affected by marijuana convictions, because for one, the fallout from the "War on
17 Drugs" which began in the 1970s disproportionately targeted poor communities and communities of
18 color.²⁴ Those long-standing consequences can still be felt today: in 2016, the marijuana arrest rates for
19 Black, Latinx, and white Californians were 111 per 100,000, 42 per 100,000, and 13 per 100,000,
20 respectively.²⁵ This means that Black Californians, for example, were 8.5 times more likely to be
21 arrested for marijuana possession than white Californians.

23 ²¹ Feldman, *supra* note 7.

24 ²² Legal Services Corporation, *The Justice Gap: Measuring the Unmet Civil Legal Needs of Low Income Americans* (2017),
available at <https://www.lsc.gov/sites/default/files/images/TheJusticeGap-FullReport.pdf>

25 ²³ Colleen F. Shanahan, Alyx Mark, Jessica K. Steinberg, Anna E. Carpenter, *Covid, Crisis, and Courts*, 99 TEX. L. REV.
26 ONLINE 10, 16 (2020) ("Despite valiant improvisation by state civil courts, the absence of a robust social safety net leaves
27 them in a place of tension in our governmental system. Before the pandemic, state civil courts were acting as the government
28 branch of last resort for poor Americans").

²⁴ Feldman, *supra* note 6.

²⁵ *It's Not Legal Yet: Nearly 500,000 Californians Arrested for Marijuana in Last Decade* (August 2016), available at
https://drugpolicy.org/sites/default/files/California_Marijuana_Arrest_Report_August_2016.pdf

1 11. Acknowledging that penalties for “cannabis-related offenses have disproportionately
2 affected people of color,” the authors of AB 1793 made the restorative intent of the law clear.²⁶ As
3 Assembly member Mia Bonta more recently noted: “[The bill] is in a sense a form of reparations. Black
4 people, people of color, especially were targeted by the War on Drugs.”²⁷

5 12. Yet the restorative intent of AB 1793 seems at odds with the realities faced by many
6 residents of Riverside and San Bernardino counties with eligible convictions as they continue to suffer
7 life-altering penalties for something that is now legal. Until their records are cleared, criminal
8 convictions will continue to create for them “unnecessary barriers to employment, housing, public
9 benefits and other social services.”²⁸ They will be prevented from seeking credit and loans, education,
10 professional licensing, custody of their children, and even gun ownership—all privileges that people
11 who have had their convictions cleared now enjoy.²⁹ While residents can attempt to pursue record
12 clearance on their own, barriers stemming from low resources nevertheless persist.

13 13. At bottom, the State’s design for clearing marijuana convictions is wholly inadequate. A
14 mere \$77.20 allotted to each conviction – the approximate cost of a full tank of gas as of April 2022 –
15 hardly demonstrates a commitment on the part of the state to right its wrongs. Moreover, a “one size fits
16 all” funding formula puts residents of Riverside and San Bernardino counties with convictions at a
17 significant disadvantage. Specifically, these county courts have significantly less money allotted to be
18 able to clear up these cases than every other county in California, and especially wealthier counties.
19 What emerges is a two-tiered system where people who get an automatic record clearance do so based
20 on what appears to be nothing more than their zip code. This chronic lack of resources in courts that
21 serve a large proportion of low income and otherwise underserved communities not only violates AB
22 1793, but it is also directly opposed to the fair and neutral process guaranteed in the state constitution.

24 ²⁶ Robert Bonta, Senate Committee On Public Safety, *Subject: Cannabis Convictions: Resentencing* (June 26, 2018),
25 available at https://archive.senate.ca.gov/sites/archive.senate.ca.gov/files/committees/2017-18/spsf.senate.ca.gov/sites/spsf.senate.ca.gov/files/ab_1793_analysis.pdf

26 ²⁷ Feldman, *supra* note 7.

27 ²⁸ Sachi A. Hamai, County of Los Angeles Chief Executive Office, *Motion to Support AB 1793 (Bonta) Regarding The Resentencing or Dismissal of Cannabis Convictions (Item No. 14, Agenda of May 22, 2018)* (May 18, 2018), available at <http://file.lacounty.gov/SDSInter/bos/supdocs/123096.pdf>

28 ²⁹ Ben Adlin, *California AG Pushes County Prosecutors to Stop Delaying Relief for Past Cannabis Convictions* (December 16, 2021), available at <https://www.marijuanamoment.net/california-ag-pushes-county-prosecutors-to-stop-delaying-relief-for-past-cannabis-convictions/>

[illegible]

15. Venue is proper in the County of San Bernardino because part of the wrongs alleged herein occurred within this County, and Defendants are located in and/or transact business within this County.

PARTIES

Plaintiffs

17. Plaintiff SARA RODRIGUEZ (“RODRIGUEZ”) is a Los Angeles County resident, that was convicted of a marijuana related offense in San Bernardino County, and whose conviction is eligible for dismissal per AB 1793 and under the jurisdiction of San Bernardino County. RODRIGUEZ, upon inquiry to Los Angeles County, was instructed that she must pursue relief in the county of her conviction, not her residence. As of the time of the filing of this complaint, her conviction had not been expunged and remains on her record. See Exhibit “1”.

Plaintiffs

17. Plaintiff SARA RODRIGUEZ (“RODRIGUEZ”) is a Los Angeles County resident, that was convicted of a marijuana related offense in San Bernardino County, and whose conviction is eligible for dismissal per AB 1793 and under the jurisdiction of San Bernardino County. RODRIGUEZ, upon inquiry to Los Angeles County, was instructed that she must pursue relief in the county of her conviction, not her residence. As of the time of the filing of this complaint, her conviction had not been expunged and remains on her record. See Exhibit “1”.

18. Defendant STATE OF CALIFORNIA ("STATE") is a Government entity entrusted with administration and funding of the State courts.

19. The causes of action set forth herein are appropriately suitable for class treatment because:

(a) The persons in the class are so numerous, being over one hundred (100) individuals, that the joinder of all such persons is impracticable, and that the disposition of their claims as a class will benefit all parties and the court.

(b) This action involves common questions of law and fact to the potential class because the action focuses on Defendant's illegal policy of disproportionate treatment against persons with eligible past marijuana convictions on the basis of the county court where their conviction is pending.

1 (c) The claims of Plaintiff herein alleged are typical of those claims which could be alleged
2 by any member of the class, and the relief sought is typical of the relief which would be sought by each
3 of the members of the class in separate actions.

4 (d) Plaintiff will fairly and adequately represent and protect the interest of all members of the
5 class.

6 20. The prosecution of separate actions by individual members of the Plaintiff class would
7 create the risk of inconsistent and/or varying adjudications with respect to the individual members of the
8 class, establishing incompatible standards of conduct for the Defendants and resulting in the impairment
9 of class members' rights and the disposition of their interests through actions to which they were not
10 parties.

11 21. Common issues predominate for the persons with eligible records for clearance and
12 related claims in that all class claims arise out of Defendants' failure to provide adequate funding to
13 county courts to clear their eligible marijuana convictions. Further, a single class action is superior to
14 numerous individual actions as a means of adjudicating those claims.

15 FACTUAL ALLEGATIONS

16 The Promise of Assembly Bill No. 1793

17 22. In 2016, voters approved Proposition 64, the Adult Use of Marijuana Act (AUMA),
18 which legalized the recreational use of marijuana for people 21 and over.³⁰ A long time coming, it was a
19 piece of a much broader, comprehensive statutory scheme created to govern the treatment of marijuana
20 offenses.³¹ The law also provided for resentencing, dismissal or redesignation of eligible prior marijuana
21 convictions.³² But because there was no mechanism for expunging records, it was up to Californians to
22 endure the arduous and expensive process of petitioning the courts for clearance. Assembly Bill 1793
23 promised to change that—and in doing so, automatically give a blank slate to those with eligible past
24 convictions by providing county courts with the resources needed to clear these records.

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26 ³⁰ Proposition 64: The Adult Use of Marijuana Act, available at <https://www.courts.ca.gov/prop64.htm>; See also Olson Hagel
27 & Fishburn LLP, Initiative documents for the Control, Regulate and Tax Adult Use of Marijuana Act (amended) via
28 California Office of the Attorney General (December 7, 2015), <https://oag.ca.gov/system/files/initiatives/pdfs/15->

³¹ *Governing Bd. v. Mann*, 18 Cal. 3d 819, 822 (1977); *Hooper v. Deukmejian*, 122 Cal.App. 3d 987, 989 (1981) ("a remedial
statute should be liberally construed as to extend the remedy")

³² Bonta, *supra* note 26.

1 23. Between 1915 and 2016, California law enforcement made 2,756,778 cannabis-related
2 arrests. Between 2006 and 2015 alone, an estimated “500,000 people were arrested for cannabis-related
3 felonies and misdemeanors.”³³ Yet as of September 2017, after the passage of Prop 64, “only 4,885
4 people [had] petitioned to the courts to have their records modified.”³⁴ Further, most counties had not
5 taken any steps to dismiss or redesignate cannabis-related convictions, including felonies. Los Angeles,
6 for instance, had not moved even “with more than 40,000 felony cases alone since 1993.”³⁵ San
7 Francisco and San Diego Counties were the rare exceptions where district attorneys had taken steps in
8 identifying thousands of convictions, dismissing misdemeanors, and reducing felony convictions to
9 misdemeanors.³⁶ Still, as of July 2020, “the majority of California’s 58 district attorneys” had made no
10 indication that they would review marijuana charges.³⁷

11 24. The stagnant response was in no small part because a petition-based process requires
12 time, money, expertise, and ability to navigate complex legal processes on the part of the applicant.
13 Many individuals may not even realize that they are eligible to have their records expunged in the first
14 place. Further, the process also takes considerable time and resources on the part of counties and courts.
15 And as it stood then, it gave district attorneys little incentive to push for record clearance.³⁸

16 25. In 2018, AB 1793 was introduced to remedy this delay. The bill aimed to “help
17 Californians take advantage of the opportunity to clear their records by removing barriers and
18 streamlining the process.”³⁹ Under the bill, the Department of Justice (DOJ) was ordered to turn its
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22 ³³ Robert Bonta, Senate Floor Analyses, Third Reading (August 18, 2018), available at
23 https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201720180AB1793 (citing a report by the Drug
24 Policy Alliance, available at <http://www.drugpolicy.org/news/2016/08/its-not-legal-yet-nearly-500000-marijuana-arrests-california-last-decade>);

25 ³⁴ *Id.*

26 ³⁵ Robert Bonta, Senate Committee on Public Safety, *Subject: Cannabis Convictions: Resentencing* (June 25, 2018), available
27 at https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201720180AB1793; See also Sarah Parvini, Rong-
28 gong Lin II, Cindy Chang, *San Francisco Will Wipe Out Thousands of Marijuana Convictions Dating to 1975* (Jan. 31,
2018), available at <http://www.latimes.com/local/lanow/la-me-san-francisco-marijuana-20180131-story.html>.

³⁶ *Id.*

³⁷ *Id.*

³⁸ Hamai, *supra* note 13; See also *supra* note 35 (“Advocates state that many people are unaware of the newly created
opportunity to change their records, are unsure of how to navigate the record change process on their own, or do not have
access to free legal resources to engage in the process...”).

³⁹ Hamai, *supra* note 13.

1 convictions records over to county district attorneys, who would then decide which records should be
2 expunged before turning them over to the courts for further determination.

3 26. Through AB 1793, the State legislature intended to create “a simpler and expedited
4 pathway for Californians to turn the page by having certain criminal convictions for cannabis-related
5 offenses automatically removed from their records.”⁴⁰ The goal was to create a path “less onerous on the
6 individual,” and “give people the fresh start to which they are legally entitled and allow them to move
7 on with their lives.”⁴¹ This restorative promise was part of a broader policy governing the treatment of
8 marijuana offenses years in the making. As the Supreme Court explained decades ago, the
9 comprehensive reform legislation with respect to marijuana had a broad purpose: to “minimize or
10 eliminate the lingering social stigma” of what has long been perceived to be a minor form of criminal
11 activity. AB 1793, too, was part of that “conscious and substantial modification” of California’s
12 policy.⁴²

13 27. The bill’s promise was also one of economic and social mobility; allowing those with
14 eligible past marijuana convictions to apply for living wage jobs and better housing options and pursue
15 educational opportunities.⁴³ Erasing these criminal convictions would remove unnecessary barriers to
16 employment, housing, public benefits, and other social services.

17 28. Thus, AB 1793 was seen as “a practical, common-sense bill.”⁴⁴ Rather than a system
18 where nine out of ten people are left behind because of the administrative burden of the petition-based
19 clearance process, automatic record clearance imagined a reparative service for people living with
20 eligible convictions. It aimed to close the gap between the number of people eligible for cannabis
21 conviction relief under Proposition 64 and those with the means to navigate a costly, thorny, and time-

24 ⁴⁰ Robert Bonta, Assembly Floor Analysis (May 29, 2018), available at
25 https://leginfo.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201720180AB1793#

26 ⁴¹ *Id*; See also California Norml, *Rep. Bonta Announces Marijuana Reform Measures for California in 2018* Attorney
27 General Rob Bonta, (January 10, 2018), available at [https://www.canorml.org/rep-bonta-announces-marijuana-reform-](https://www.canorml.org/rep-bonta-announces-marijuana-reform-measures-for-california-in-2018/)

28 ⁴² *Governing Bd.*, *supra* note 31

⁴³ Alia Toran-Burrell, *AB 1793 and Cannabis Conviction Relief via Automatic Record Clearance*, Daily Journal (Nov. 8,
2021), available at [https://www.dailyjournal.com/articles/364948-ab-1793-and-cannabis-conviction-relief-via-automatic-](https://www.dailyjournal.com/articles/364948-ab-1793-and-cannabis-conviction-relief-via-automatic-record-clearance)

⁴⁴ Bonta, *supra* note 40.

1 consuming petition-based process. Similar bills stemming from Prop 64 even promised that those who
2 lost the most in communities disproportionately criminalized by the “war on drugs” could now profit off
3 the legal cannabis industry as entrepreneurs.⁴⁵ California thus made history as one of the first states to
4 implement a law that would automatically clear cannabis convictions for hundreds of thousands of
5 people, and the bill was to be “implemented without unnecessary delay or burden.”⁴⁶

6 29. To drive the clearance process home, California lawmakers were willing to shoulder the
7 burden and cost of overhauling the impugntment system.⁴⁷ The State knew, given the fraught history of
8 trial court funding, the “significant new burdens AB 1793 would impose on courts” unless the bill was
9 appropriately funded.⁴⁸ Indeed, the problem of disproportionate and inadequate funding across county
10 court systems has been a tough one to untangle, and endures even today.

11 30. Once wholly reliant on funding from local governments, state courts depended in large
12 part on the counties’ ability to raise revenue—an ability limited by the discretionary power of county
13 supervisory boards, among various things.⁴⁹ As a result, some counties boasted well-funded courts that
14 could swiftly and efficaciously serve the public, while other counties suffered “truncated services,
15 insufficient staff, inadequate and even dangerous facilities, shortened hours of availability in clerks’
16 offices, and incompatible and outdated information-processing systems – or no systems at all.”⁵⁰ These
17 disparities across counties impeded the ability of the judicial branch to carry out its constitutional charge
18 as an arm of the California state government. As such, as early as 1969, judges and legislators alike
19 began pushing for a constitutional amendment that would require that the state, rather than county
20 governments, fund the trial courts.⁵¹

21
22 ⁴⁵ Marisa Gerber, *California Promised ‘Social Equity’ after pot legalization. Those Hit Hardest Feel Betrayed*, L.A. Times
23 (January 27, 2022), available at <https://www.latimes.com/california/story/2022-01-27/california-pot-industry-social-equity-broken-promises>.

24 ⁴⁶ Bonta, *supra* note 40.

25 ⁴⁷ See Payton Guion, *N.J.’s Governor Promised to Clear Weed Convictions. Here’s Just How Hard that Will Be*, NJ.com
(Feb.18, 2019), available at <https://www.nj.com/marijuana/2019/02/njs-governor-promised-to-clear-weed-convictions-heres-just-how-hard-that-will-be.html>;

26 ⁴⁸ Reilly, *supra* note 11.

27 ⁴⁹ Letteau, *supra* note 17.

28 ⁵⁰ *Id* at 569 (citing a 1971 report conducted by consulting firm Booz, Allen, & Hamilton recommending “total state funding of the trial courts” because the system as it existed then was merely a “patchwork” absent constitutionally-mandated funding.)

⁵¹ Claudia Ortega, *The Long Journey to State Funding*, CALIFORNIA COURTS REVIEW (Winter 2009) at 7, available at https://www.courts.ca.gov/documents/CCR_09Winter.pdf.

1 31. The measure ultimately failed, as did a series of measures that followed in the 1980s.
2 Incremental progress was made with the Trial Court Funding Act of 1985 and the Brown-Presley Trial
3 Court Funding Act of 1988, both of which helped to absorb trial court costs with block grants to the
4 counties.⁵² But it was not until the 1990s that the legislature, at the behest of the Judicial Council, began
5 to adopt a series of measures that would shift the entire responsibility of funding of trial courts from
6 local governments to the State. Finally, state funding of California trial courts was achieved with the
7 Lockyer-Isenberg Trial Court Funding Act of 1997.⁵³ Other initiatives followed, including a 2002
8 measure which “shift[ed] ownership and maintenance of court facilities from the counties to the state”⁵⁴
9 and the creation of the Trial Court Trust Fund (TCTF), the Trial Court Improvement Fund (TCIF), and
10 the Judicial Administration Efficiency and Modernization Fund.

11 32. But in many ways, the “patchwork” that constituted trial court funding in the past
12 remains today. Though many funding gaps have been narrowed in the over two decades since trial court
13 funding shifted, officials note that challenges remain and “historical underfunding may still exist for
14 some courts.”⁵⁵ Such is the case for Inland Empire courts, which have experienced historic inequities in
15 funding as well as significant changes in population, and remain severely underfunded today, with
16 millions in deficit.⁵⁶

17 33. Knowing the precarious financial position of the courts, the Judicial Council projected a
18 one-time State General Fund (SGF) cost to the courts between \$6.9 million and \$28.5 million to provide
19 notices and review cases. This was separate to the expected cost to the DOJ and the state-mandated local
20 costs to the district attorneys’ office.⁵⁷ Ultimately, the State allocated a mere \$16 million from the state
21 budget to pay for the costs of processing records across all 58 counties—without appropriate
22 apportionment for courts that faced greater challenges in clearing these records.

25 ⁵² *Id* at 9.

26 ⁵³ *Id* at 10.

27 ⁵⁴ Philip R. Carrizosa, *What Have All These Reforms Meant?* *California Courts Review* (Winter 2009) at 12, available at
https://www.courts.ca.gov/documents/CCR_09Winter.pdf.

28 ⁵⁵ *A Conversation with Bill Vickrey: A Personal Perspective*, *CALIFORNIA COURTS REVIEW* (Winter 2009) at 32, available at
https://www.courts.ca.gov/documents/CCR_09Winter.pdf.

⁵⁶ *Ibid*, 28-29, 35.

⁵⁷ Bonta, *supra* note 40.

1 34. In July 2019, the Trial Court Budget Advisory Committee adopted a “proportional
2 allocation methodology based on the percentage of potentially eligible cases by county.”⁵⁸ San
3 Bernardino County, which has 10,892 cases to review, received \$840,828; Riverside County, which has
4 8,270 cases to review, received \$638,418.⁵⁹ San Diego County, meanwhile, received \$2,195,942 to
5 process 28,446 records.⁶⁰ This State thus devoted a mere \$77.20 to each eligible conviction without
6 without consideration for a court system’s existing workload capabilities or the possibility of long-
7 standing and chronic underfunding. But even for those courts that were more financially well-off and
8 could better handle the burden, an appropriation of \$77.20 per conviction—to erase a mark that has
9 effectively tarnished people’s lives and cost them years in social mobility—is wholly inappropriate.

10 35. It was hardly surprising, then, that the promise to give all eligible individuals a “fresh
11 start” “without unnecessary delay or burden” did not deliver.⁶¹ Three to four years after AB 1793 was
12 passed, only a low and disproportionate number of records had been cleared. Few counties have pushed
13 through all their convictions, and still others have failed to clear any records. Instead, a pattern has
14 emerged wherein persons with convictions in better resourced counties have been able to have their
15 records processed quickly, whereas folks with convictions in less resourced counties have not. For
16 example, while courts like those in San Diego finished processing cases with money left to spare,
17 chronically underfunded courts in the Inland Empire are still struggling to clear cases. That courts in San
18 Diego only needed \$28,000 of the over \$2 million awarded to them evidences a broader disconnect
19 between the state and the court system statewide.⁶² This disconnect poses problems for *all* courts,
20 regardless of how well-resourced they may be, but works especially to the detriment of historically
21 underfunded courts such as those in the Inland Empire.

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27 ⁵⁸ Trial Court Budget Advisory Committee, *supra* note 14, at 2.

⁵⁹ Feldman, *supra* note 7.

⁶⁰ *Id.*

⁶¹ Bonta, *supra* note 40.

⁶² Feldman, *supra* note 7.

1 36. As monumental as the promise for automatic clearance set out to be, so too was the
2 failure to deliver equitably. Where the constitution has long promised equal access to the court system,
3 there is no reason why the processing of these record clearances should vary based on zip code.⁶³
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5 The Emergence of a Two-Tiered System for Drug Conviction Clearance: How Disproportionate Record
6 Clearance Across the State Furthers A Pattern of Poverty and Inequity in The Inland Empire

7 37. Nowhere is the States' failure to adhere to its restorative promises more evident than in
8 the history and treatment of Inland Empire residents. San Bernardino and Riverside Counties are home
9 to a significant population of low-income minority communities—many of whom have time and time
10 again disproportionately suffered the blows of the war on drugs, and do not get to reap the benefits of
11 record clearance laws despite needing the resources the most.

12 38. Poverty is higher in the Inland Empire than in California and the United States as a
13 whole.⁶⁴ Social mobility has long been consistently low. The annual payroll of Riverside County, for
14 instance, is a mere 26 million (compare to San Francisco's 85 million). Moreover, the Inland Empire is
15 one of the least educated areas of the state with the lowest average in annual wages in the country.⁶⁵
16 Between 2015 to 2019, the percentage of persons to have completed a bachelor's degree or higher in San
17 Bernardino and Riverside counties was 21% and 22.4%, respectively.⁶⁶ In comparison, in Los Angeles,
18 San Diego and San Francisco Counties, where all records have been expunged, post-secondary
19 educations rates were 32.5%, 38.8% and 58.1%, respectively.⁶⁷ Further, a 2006 study of salaries in 51
20 metropolitan areas in the nation "ranked the Inland Empire second to last, with an annual wage of
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23 ⁶³ *Griffin v. Illinois*, 351 U.S. 12, 19 (1956) ('[t]here can be no equal justice where the kind of trial a man gets depends on the
24 amount of money he has.')

25 ⁶⁴ Whereas 18.6% of California and 18.1% of the U.S. are considered poor, 22.4% of the Inland Empire is poor. David Brady,
26 Michaela Curran, and Justine Ross, *Poverty in the Inland Empire 2016-2018* (October 29, 2021), available at The difference
of roughly four percentage points is sizable. [https://blum.ucr.edu/sites/g/files/rcwecm1571/files/2021-
10/Blum%20Poverty%20Report%20FINAL3%20%28Pages%29.pdf](https://blum.ucr.edu/sites/g/files/rcwecm1571/files/2021-10/Blum%20Poverty%20Report%20FINAL3%20%28Pages%29.pdf)

27 ⁶⁵ David Kelly, *Inland Growth to Continue*, L.A. Times (April 10, 2008) available at [https://www.latimes.com/archives/la-
xpm-2008-apr-10-me-growth10-story.html](https://www.latimes.com/archives/la-xpm-2008-apr-10-me-growth10-story.html).

28 ⁶⁶ United States Census Bureau, available at [https://www.census.gov/quickfacts/fact/table/losangelescountycalifornia,sanbernardinocountycalifornia,sandiegocountycalifo
rnia,sanfranciscocountycalifornia,riversidecountycalifornia/PST045221](https://www.census.gov/quickfacts/fact/table/losangelescountycalifornia,sanbernardinocountycalifornia,sandiegocountycalifornia,sanfranciscocountycalifornia,riversidecountycalifornia/PST045221)

⁶⁷ *Id.*

1 \$36,924.”⁶⁸ Unemployment rates there have consistently been over the national average.⁶⁹ In the Inland
2 Empire, about 54% of those living in poverty are Latinx.⁷⁰

3 39. These characteristics bear a closer look at the Inland Empire’s history, where at the turn
4 of the nineteenth century, the Inland Empire became a major center for agriculture, primarily for citrus
5 orchards. As the demand for orchard working class laborers increased, the manual work force largely
6 constituted Chinese workers, later replaced by Korean, Japanese, and Mexican workers.⁷¹ In the
7 meantime, vehicles of economic growth like the military, manufacturing and housing industries attracted
8 more people to the region. Industrialization ramped up. The flourishing of other businesses soon
9 followed, and with that an expansive lower-class workforce comprised largely of foreign-born
10 immigrants fueling the packing plants, farms and shops.⁷²

11 40. In the 1940s, industrialization and automobility gave rise to pollution. The city of
12 Fontana, for example, saw all its citrus crops wither from disease from sulfur emissions just under a year
13 after the US government built a steel mill there in 1942.⁷³ In the 1950s, the air quality in the Inland
14 Empire suffered as the large industrial and low-wage economy ramped up. By 1971, Riverside Mayor
15 Randall Lewis sought an emergency declaration from the State requesting that the region be declared a
16 disaster area.⁷⁴ As the environmental crisis compounded, predominantly white and wealthier families
17 sought refuge away from the crisis, and more citizens from underserved communities, primarily African
18 American and Hispanic, relocated to those areas. The city of Riverside, for instance, underwent a
19 monumental demographic shift, even losing a great proportion of students at UC Riverside—a decline of
20 about 25% by 1979.⁷⁵

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22 ⁶⁸ Kelly, *supra* note 65.

23 ⁶⁹ *Id.*; *supra* note 66.

24 ⁷⁰ Brady, Curran and Ross, *supra* note 64.

25 ⁷¹ J.W. NELSON, AND UNITED STATES. BUREAU OF SOILS. SOIL SURVEY OF THE RIVERSIDE AREAS (1917), available at
26 https://www.nrcs.usda.gov/Internet/FSE_MANUSCRIPTS/california/riversideCA1917/riversideCA1917.pdf

27 ⁷² Jennifer E. Reyff, *Dismantling Structural Inequality in the Inland Empire: Rebuilding Community from the Ground up at*
28 *Huerta del Valle Garden*, Claremont Colleges (2016). Scripps Senior Theses. 937, available at
http://scholarship.claremont.edu/scripps_theses/937 (citing RUTH AUSTEN AND W. ROBERT FINEGAN, *ONTARIO: THE MODEL COLONY: AN ILLUSTRATED HISTORY* (1990))

⁷³ THOMAS C. PATTERSON, *FROM ACORNS TO WAREHOUSES* (2015).

⁷⁴ LAURA T. HAMILTON & KELLY NIELSEN, *BROKE: THE RACIAL CONSEQUENCES OF UNDERFUNDING PUBLIC UNIVERSITIES*
16 (1st ed. 2021).

⁷⁵ *Id.* at 31; See also *Transcription of an Oral History Interview with Ivan and Birk Hinderaker* (June 5, 1998) (“Next came the Washington Post: ‘Smog Peril Spreads to Riverside California.’ The headline was accompanied by a picture of a jogger

1 41. The Inland Empire has since remained a minority-majority area. Currently, San
2 Bernardino County is California's most populous majority-Hispanic County at 54.7%, and the second
3 largest majority-Hispanic county nationwide. It is also 9.4% Black, and 8% Asian. Likewise, Riverside
4 County consists of 50% Hispanic, 7.3 % Black, 7.3% Asian, and 34.1% white people. In contrast, the
5 percentage of Hispanic people in Los Angeles County is 48%, San Diego 43%, and San Francisco's only
6 15%. The percentage of African Americans in San Diego and San Francisco counties hovers just over
7 5%.⁷⁶

8 42. It was these and similarly underserved communities that most acutely suffered the effects
9 of the war on drugs. Indeed, despite marijuana usage being roughly the same among white, Black, and
10 Hispanic people, Black and Hispanic Californians have much higher arrest rates than their white
11 counterparts.⁷⁷ These numbers increased dramatically between 1990 and 2009, coinciding with the 1994
12 Violent Crime Control and Law Enforcement Act, and did not decline.⁷⁸ According to the State
13 Department of Justice, from 2006 to 2015, Black Californians were five times more likely to be arrested
14 for cannabis felonies than White Californians despite using and selling cannabis at similar rates.⁷⁹
15 Similarly, Hispanic Californians were 35% more likely to be arrested for cannabis crimes than white
16 folks.⁸⁰ Moreover, a 2020 report shows that though the national usage marijuana rates are roughly equal
17 for African and white Americans (and the lifetime usage rate for white Americans is actually *higher* by
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20 wearing a gas mask.") Environmental issues permeate the region even today. More recently, the city of Fontana faced a
21 backlash from its residents over the movement of mega-warehouses, which have choked the city traffic and air pollution,
22 largely affecting minority communities there. As one of the nation's most productive hubs of the logistics industry, the Inland
23 Empire has been subject to a cyclical history of environmental disasters, which have for decades disproportionately affected
underserved communities there. See Jackeline Luna, Maggie Beidelman, *How Online Shopping Is Polluting California's*
Inland Empire. L.A. Times (Nov. 18, 2021) available at <https://www.latimes.com/politics/oqmqvcp1634-123>

24 ⁷⁶ United States Census Bureau, available at
<https://www.census.gov/quickfacts/fact/table/losangelescountycalifornia,sanbernardinocountycalifornia,sandiegocountycalifornia,sanfranciscocountycalifornia,riversidecountycalifornia/PST045221>

25 ⁷⁷ Daniel Macallair, Mike Males, *Marijuana Arrests and California's Drug War: A Report to the California Legislature*,
available at http://www.cjcj.org/uploads/cjcj/documents/Marijuana_Arrests_and_Californias_Drug_War-2010_Update.pdf

26 ⁷⁸ *Id.*

27 ⁷⁹ *Id.*

28 ⁸⁰ Gerber, *supra* note 45; See also Drug Policy Alliance, *It's Not Legal Yet: Nearly 500,000 Californians Arrested for Marijuana in Last Decade*, August 2016, available at

https://drugpolicy.org/sites/default/files/California_Marijuana_Arrest_Report_August_2016.pdf

(In 2015, the marijuana arrest rates for Hispanic Californians were 1.4 times higher than white people, and Black Californians were arrested at 3.5 times the rate of white people)

1 roughly 8%) the national arrest rates for African Americans are higher.⁸¹ In California, the average
2 marijuana arrest rate in 2020 was 9.14 arrests per 100,000 residents. But for Black Californians, this
3 number was 18.12 arrests per 100,000, compared to white Californians, whose arrest rates were 10 per
4 100,000. Overall, the empirical evidence demonstrates that “penalties for cannabis-related offenses have
5 disproportionately affected people of color.”⁸²

6 43. These numbers also coincide with the robust data showing that African American people
7 are more likely than any other race to be stopped by the police.⁸³ As the ACLU notes, “such police
8 harassment not only criminalizes people of color for engaging in an activity that white people participate
9 in which relative impunity, it is a means of surveillance and social control counterproductive to public
10 safety and community health. Indeed, repeated police encounters prove traumatic and dehumanizing for
11 those who endure them.”⁸⁴ This is true particularly for Black residents, who have faced disproportionate
12 police enforcement in the war on drugs.⁸⁵

13 44. It was precisely “to right many of the injustices inflicted by the nation’s war on drugs ...
14 disproportionately waged on poor people and communities of color” that laws like AUMA and AB 1793
15 were passed.⁸⁶ Indeed, the effects of these drug policies had long lasting consequences; affecting a
16 person’s ability to seek employment, housing, professional licensing and education, loans, gun
17 ownership, parenthood, public benefits, and any other situations where background checks are required.
18 In the Inland Empire, where social mobility is already low and poverty high, persons with cannabis
19 convictions especially felt the squeeze. Punctuated by the realities that these under-resourced
20 communities already face, the situation remains precarious for people with past marijuana convictions in
21 these counties. Unable to break from the stigma of something that is now legal, these individuals still
22 wear a scarlet letter.

24 ⁸¹ ACLU Research Report, *A Tale of Two Countries : Racially Targeted Arrests in the Era of Marijuana Reform*, available at
25 <https://www.aclu.org/report/tale-two-countries-racially-targeted-arrests-era-marijuana-reform>

26 ⁸² *Id.*

27 ⁸³ Public Policy Institute of California, *Racial Disparities in California Law Enforcement Stops*. Blog Post (Dec. 3, 2020),
available at <https://www.ppic.org/blog/racial-disparities-in-california-law-enforcement-stops/>

28 ⁸⁴ ACLU, *supra* note 81.

⁸⁵ Feldman, *supra* note 7; *NY & NJ Will Erase Nearly a Million Marijuana Convictions. For Some, Clearing Their Record Gets Tricky*. Gothamist (November 13, 2021), available at <https://gothamist.com/news/ny-nj-will-erase-nearly-million-marijuana-convictions-some-clearing-their-record-gets-tricky> (discussing the same pattern in other states)

⁸⁶ Feldman, *supra* note 7

1 Persons Who Need Help the Most Continue To be Without Remedies

2 45. There is no doubt that the war on drugs had a disproportionate impact on poor and largely
3 minority communities. But if the injustices inflicted on them gave rise to a “Tale of Two Countries,” the
4 failure to provide an equal remedy to these communities only magnifies this discrepancy. When it comes
5 to marijuana conviction clearance, minority-majority counties like Riverside and San Bernardino once
6 again find themselves at odds with the rest of the State and the country. As of January 2022, Riverside
7 County had 21,000 cases and had not processed a single one. While authorities had finished reviewing
8 about 3,600 misdemeanors and infractions, the court had yet to send the misdemeanors and infractions
9 to the DOJ. Worse—all 17,400 felonies, which present greater barriers to individuals—had not yet been
10 reviewed. Likewise, in San Bernardino County, about 5,400 cannabis cases were still “gathering dust.”
11 In contrast, San Diego County, which is mostly composed of Caucasian individuals, had 35,662
12 records—26,000 of which were felonies—and quickly processed all records.⁸⁷

13 46. Delays in clearing these court records are part “of a long pattern of failing to address the
14 disparate impact of drug policies on people of color, especially for Black Californians, who for decades
15 have had the highest arrest rates in the state.” As many advocates have pointed out, the “lag in clearing
16 records hits Black and Latino communities especially hard.” State actions that fail to address these
17 inequities effectively reify the status quo, creating a “permanent underclass.”⁸⁸

18 47. Indeed, in already low-resourced communities like those living in Riverside and San
19 Bernardino counties, the State’s failure to remedy these convictions in a timely manner fosters poverty
20 and inequity. Not only are people who still have marijuana convictions more likely to come from lesser
21 means, but they are further strapped of social mobility because of their records. For one, the kinds of
22 jobs that are “available to people with felony convictions are not as good as the types of jobs that are
23 available to people without them.”⁸⁹

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27 ⁸⁷ Feldman, *supra* note 7.

28 ⁸⁸ *Id.* (According to Attorney Vonya Quarles, executive director of Starting Over, “By not purging marijuana records, we’re helping to foster poverty” for Black and brown people).

⁸⁹ *Id.*

1 48. When passing AB 1793, the State knew there were many barriers to pursuing record
2 clearance; even so, the State pursued a “one size fits all” funding approach rather than one that
3 addressed the various challenges involved.

4 49. One of the many barriers the State was cognizant of was lack of information provided to
5 those with convictions. Persons with low resources often do not know that expungement laws exist—
6 and if they do know, they may lack the know-how to navigate the expungement process.⁹⁰ These
7 problems are exacerbated when people—and research suggests that it is a significant proportion of
8 people—have little understanding of their own criminal conditions.⁹¹

9 50. Moreover, time constraints and administrative hassles create additional barriers for
10 applicants in the form of drawn out and tedious processes. Whereas these steps would be an annoyance
11 to any well-resourced person, for a person of lesser means, “taking time away from work and childcare
12 responsibilities to go to a police station to be fingerprinted, to make several trips to a courthouse, to find
13 a notary, and to mail all these materials to the right addresses may be simple impossible.”⁹² Further, fees
14 and costs associated with the expungement of records (notary, fingerprinting) as well as every day costs
15 for transportation can be other deterrents.

16 51. Low-means persons are also less likely to have access to counsel. Whereas people with
17 more means can streamline the process with the help of an attorney, the cost is not feasible for everyone.
18 Legal aid and pro bono attorneys are also rare in cases like this.⁹³

19 52. Finally, underserved communities’ distrust in the criminal justice system can sometimes
20 pose yet another barrier.⁹⁴ Individuals with convictions may simply be averse to returning to a court or
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23 ⁹⁰ Many low-resource persons did not know that persons who proactively petition for recall or dismissal would be prioritized
24 for review per AB 1793; See Mark Lloyd, *The Digital Divide and Equal Access to Justice*, 24 HASTINGS COMM. & ENT L.J.
25 505, 508 (2002) (“people don’t know the rights they have; even if they know ...they don’t know how to enforce them.”); See
26 also Alexander Lekhtman, *Why Is California Failing Thousands of People with Cannabis Records?* Filtermag (Oct. 14,
2021) available at <https://filtermag.org/california-cannabis-records/> (“expungement is not really straightforward”)

27 ⁹¹ J.J. Prescott, Sonja V. Starr, *Expungement of Criminal Records: An Empirical Study*, HARV. L. REV. 133, no. 8 (2020),
28 available at <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=3167&context=articles>.

⁹² *Id.* at 2504

⁹³ *Id.* at 2506

⁹⁴ Lekhtman, *supra* note 90. (“It’s not an easy process if you’ve never filled out forms or if you’re operating from a space of
trauma. Many times people from historically-underserved communities get so underwhelmed when they’re put in these
situations.”)

1 police station “for any reason.” They are also more likely to be pessimistic about outcomes because of
2 their lived experiences.⁹⁵

3 53. All these barriers get at the heart of AB 1793. In passing the law, the State understood
4 that these barriers kept people from clearing their convictions and advancing their livelihoods. But
5 knowing this, the State still failed to provide the courts, particularly those in the Inland Empire which
6 already suffer from chronic underfunding, with the proper funding that would enable them to process
7 these convictions in a timely manner. The State knows that the primary beneficiaries from these
8 conviction clearances are people with lesser means, people who have little resources to advocate for
9 themselves, and people who are more likely to be vulnerable to the consequences of having a criminal
10 record. The State also knows that Inland Empire in particular is composed of a high percentage of
11 underserved communities—and that with little resources, these communities can only rely on the court
12 system as their last resort.⁹⁶

13 54. The practical effect is self-perpetuating. Wealthier and better funded counties who
14 needed the state sources the least come out ahead, while chronically underfunded ones that have
15 historically struggled continue to fall behind. While the State can take credit for passing a law that
16 purportedly supports these underserved communities, the residents of Riverside and San Bernardino
17 counties who need this relief the most get brushed aside as second-tier citizens.

18 The Financial Realities for Chronically Underfunded and Low Resourced Courts in Riverside and San
19 Bernardino Make it Near-Impossible to Move Ahead with Record Clearance

20 55. For chronically underfunded courts, the consequences of longer calendars and busier
21 criminal dockets add up over time. Further barriers like COVID, understaffing and disproportionate
22 funding only make it harder for these overwhelmed courts to serve the neediest and lowest-resourced
23 persons in their counties. This runs contrary to the judicial system’s promise to provide evenhanded and
24 competent administration of justice. But that is the reality for Riverside and San Bernardino County
25 courts.

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27 ⁹⁵ Prescott, *supra* note 91 at 2505.

28 ⁹⁶ Shanahan, *supra* note 23 (“Before the pandemic, state civil courts were acting as the government branch of last resort for poor Americans. The pandemic, and the legislative and executive branches’ limited responses to it, have exacerbated this tension.”)

1 56. Even before COVID, and prior to the addition of marijuana conviction record-clearing to
2 their dockets, San Bernardino and Riverside County courts were overburdened and understaffed
3 compared to other county courts. For one, nearby counties – such as Los Angeles, San Diego, and
4 Orange – have more judicial positions or judicial position equivalents than Riverside or San Bernardino,
5 even while having less filings in some areas. While Los Angeles has 578 judicial position equivalents,
6 San Diego 152, and Orange County 154, San Bernardino has only 92 and Riverside barely 90. And
7 while it may some sense for counties with higher populations to have more judicial position equivalents,
8 that is only so if the average number of court filings per judicial position remains relatively even across
9 all counties. But data from the State of California deflates these assumptions. Instead, when it comes to
10 the number of court filings per judicial position across the five aforementioned counties, Los Angeles,
11 San Diego, and Orange counties appear much better equipped to handle their workloads than Riverside
12 or San Bernardino. In San Diego County, for example, each judicial position handles 2,574 court filings
13 on average. But in Riverside County that number jumps to 3,228 court filings per judicial position – an
14 increased burden of nearly 700 more cases that each judicial position must handle.⁹⁷ For comparison, in
15 1993, before funding of the courts had been completely turned over to the state, total filings per judicial
16 position in California (across all counties) averaged around 1,100 per position. Perhaps funding in
17 California needs reassessment across the board, but some court systems – namely those in the Inland
18 Empire – are faring worse than others.⁹⁸

19 57. Moreover, Riverside and San Bernardino counties have less staff across the board to
20 handle overwhelming numbers of more complex forms of litigation. In 2019-2020, Riverside County
21 handled 24,206 court trials with 1,086 full time employees (FTE).⁹⁹ Los Angeles County, on the other
22 hand, may have had 121,537 court trials in the same year, but was also equipped with 17,515 full time
23 employees to handle them. Riverside County had then, on average, 22.29 court trials per full time
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26 ⁹⁷ CSR Dashboards, *Filings and Dispositions*, 2010 -2011 Through 2019-2020, available at
27 <https://www.courts.ca.gov/dashboard.htm>; See also 2021 Court Statistics Report, *Statewide Caseload Trends*, 2010-22
28 through 2019-20, Judicial Council of California, available at <https://www.courts.ca.gov/documents/2021-Court-Statistics-Report.pdf>

⁹⁸ Letteau, *supra* note 17 at 562.

⁹⁹ 2021 Court Statistics Report, *supra* note 97.

1 employee, whereas Los Angeles County averaged 6.94 court trials per full time employee. In short,
2 Riverside County handled over three times as many court trials per person as Los Angeles County.
3 Other counties fared even better: San Diego County, with 4,896 court trials, was staffed by 1,234 full-
4 time employees and thus averaged 3.97 court trials per full-time employee.

5 58. Data also suggests that Riverside and San Bernardino counties have higher numbers of
6 criminal filings per full time employee (FTE) than do their neighboring counties. Riverside County has
7 181.25 criminal filings per FTE and San Bernardino 194.51 criminal filings per FTE. By contrast,
8 Orange County had 8.11 criminal filings per FTE and Los Angeles 63.11 criminal filings per FTE.
9 Thus, employees in Riverside County handle, on average, over 23 times as many criminal filings as do
10 their counterparts in neighboring Orange County.

11 59. It hardly comes as a surprise, given the disproportionate workload and understaffing of
12 the San Bernardino and Riverside County courts, that on January 13, 2022, the *Los Angeles Times*
13 reported that the Riverside and San Bernardino County courts were the only ones in the State yet to fully
14 process “a single case” for marijuana conviction expungement.¹⁰⁰ In the meantime, other counties have
15 either finished clearing marijuana convictions records or have made progress in completing the process.
16 Los Angeles County finished processing 66,000 cases in late 2021. Santa Clara County finished its
17 11,500 cases in April 2020. At the end of September 2021, San Diego County Superior Court finished
18 reviewing 35,662 records. Other courts are at various stages: Alameda County has processed 58% of
19 cases, Santa Cruz County 39%, and Kern County 18%.¹⁰¹

20 60. The financial straits for Inland Empire County courts are profound. In response to
21 questions about the delay, Riverside and San Bernardino court officials cited staffing shortages, outdated
22 technology and case management systems, old records that require manual review and technical
23 issues.¹⁰² A San Bernardino Superior court spokesperson also reported that the court was “severely
24 impacted by COVID-19.”¹⁰³ “Partially closed for 75 days,” there were “staffing shortages, illnesses and
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27 ¹⁰⁰ Feldman, *supra* note 7.

28 ¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

1 quarantining, along with severe budget reductions.”¹⁰⁴ The impact of outdated systems and the pandemic
2 on already backed up calendars had a detrimental effect on the courts’ ability to clear up convictions.

3 61. The resulting inequity from the State’s funding decisions and the chronic underfunding of
4 these court systems that serve primarily communities of color in these conviction cases is reminiscent of
5 redlining. While wealthier counties like Los Angeles, San Diego, and San Francisco have finished
6 clearing records, San Bernardino and Riverside sink further away from meeting the State’s goal.

7 62. In some cases, it is a question of what funding can do for courts’ resources. For instance,
8 San Diego only used \$28,000 of the \$2.196 million it received from the State of California to clear up
9 records.¹⁰⁵ A spokesperson in part credited the success to “computer programs that nearly eliminated the
10 need for clerks.”¹⁰⁶ Attorney General Bonta himself acknowledged that the State was “learning from this
11 how better systems can lead ... to real on-the-ground impacts for people.”¹⁰⁷ “It’s an important lesson
12 and we need to do better,” he claimed.¹⁰⁸ But what’s clear is that while Riverside and San Bernardino
13 received \$638,000 and \$840,000 from the State to clear up records, respectively, this amount is not
14 nearly enough to overcome their stated challenges.

15 63. As it stands, Riverside and San Bernardino received proportionately less funding from
16 the State for record clearance. Funding is ostensibly based on a court’s workload.¹⁰⁹ But the State’s one
17 size fits all funding formula for clearing marijuana convictions fails to consider, among the many factors
18 listed above, that these county courts are not only historically behind in funding, but also serve a
19 community that is generally poorer and in more need of resources, financial and otherwise, than many
20 other county courts. The existing support for communities of color that were targeted by the war on
21 drugs statewide is already inadequate. But in counties with such high percentage of underserved
22 communities like the Inland Empire counties, overcoming these financial challenges takes a Herculean
23 effort. Unlike persons who may have gotten a marijuana conviction but have the means outside of the
24

25
26 ¹⁰⁴ *Id.*

27 ¹⁰⁵ *Id.*

28 ¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ Merrill Balassone, *The Trial Court Funding Formula Explained*, California Courts Newsroom (Jul 27, 2017), available at <https://newsroom.courts.ca.gov/news/trial-court-funding-formula-explained>

1 courts to seek counsel or navigate the process, most convictions at these courts are likely to come from
2 people with modest means and little resources. While these Inland Empire courts try to clear more than
3 26,000 records by hand, it is no wonder these counties keep falling behind.

4 64. The State knows all this, yet has failed to provide these courts with adequate funding.
5 When AB 1793 was passed, public defenders and district attorneys alike shared “similar concerns that
6 the state’s effort lacked the necessary resources.”¹¹⁰ More recently, the State imposed a deadline on
7 these courts to process these cases by July 2022, but it notably failed to provide additional resources—
8 knowing full well that the funding, staffing, technology, and Covid-related backlogs remained. Inland
9 Empire courts are thus expected to perform like all other courts, while shouldering significantly more of
10 the burden.

11 65. At bottom, courts in the Inland Empire simply do not have the resources and services that
12 other courts across the state do. The State may purport to have given all courts funding, but it is not
13 equitable. The inevitable irony is that the States’ promise in passing AB 1793 fails where it is needed the
14 most. The purpose of the law was to help poor and mostly minority communities that were affected by
15 the war on drugs. And in largely minority counties like Riverside and San Bernardino, not a single
16 record has been cleared.

17 18 **FIRST CAUSE OF ACTION**

19 **(Against Defendant State of California and Does 1-25)**
20 **(Failure to Provide Adequate Funding for Expungement of Cases as Required Under**
21 **California Health and Safety Code Section 1161.9)**

22 66. Plaintiff, individually and on behalf of all others similarly situated, incorporates, and re-
23 alleges each allegation set forth above as if fully set forth herein.

24 67. Under California Health and Safety Code Section 11361.9, there was a process instituted by
25 which expungements of certain marijuana convictions were to occur. Specifically:

26
27
28 ¹¹⁰ Feldman, *supra* note 7.

1 - The California Department of Justice was to review the records in the state summary criminal
2 history information database and shall identify past convictions that are potentially eligible for recall or
3 dismissal of sentence, dismissal and sealing, or redesignation pursuant to Section 11361.8.

4 - The California Department of Justice was to notify the prosecution of all cases in their
5 jurisdiction that are eligible for recall or dismissal of sentence, dismissal and sealing, or redesignation.

6 -Prosecution would have until July 1, 2020, to review all cases and determine whether to
7 challenge the recall or dismissal of sentence, dismissal and sealing, or redesignation.

8 68. Underlying the foregoing is the expectation that eligible convictions would be expunged,
9 without action by individuals including PLAINTIFFS, expeditiously.

10 69. County and San Bernardino County courts serve primarily people of color, who are
11 primed to benefit from the passage of the legislation since they are statistically more likely to have said
12 marijuana convictions on their records.

13 70. PLAINTIFFS are informed and believe and thereon allege that, among other things,
14 Riverside and San Bernardino County courts could not expeditiously comply because their court
15 systems lack the resources, including but not limited to staffing, to carry out the mandates of the law. In
16 light of its heavy case load, myriad of complex and criminal law cases, as of early 2022, no eligible
17 convictions had been expunged in Riverside of San Bernardino Counties. In any event, as of the filing of
18 this complaint, individuals including PLAINTIFFS have not had their marijuana convictions expunged.

19 71. PLAINTIFFS are disproportionately damaged by the funding inequities from the State of
20 California that keep San Bernardino and Riverside County courts in the state of chronic underfunding.

21 72. The aforementioned funding inequities will continue to damage people of color, including
22 PLAINTIFFS, unless and until they are enjoined.

23 **SECOND CAUSE OF ACTION**

24 **(Against Defendant State of California and Does 1-25)**

25 **(Violation of California Equal Protection Laws-California Constitution, Article 1, Section 7(a))**

26 73. Plaintiff, individually and on behalf of all others similarly situated, incorporates, and re-
27 alleges each allegation set forth above as if fully set forth herein.

28 74. Under Article I, Section 7(a) and Article IV, Section 16(a) of the California

1 Constitution, Plaintiffs are entitled to the equal protection of the laws.

2 75. Defendants have knowingly violated, and continue to violate, the equal protection
3 rights of Plaintiffs by having a funding system that discriminates against people of color, who are more
4 likely to use the Courts in Riverside and San Bernardino County, and who are more likely to have
5 marijuana convictions that SB 1793 was supposed to automatically expunge and delete from their
6 records. For the reasons explained above, Defendant State of California's funding policy illegally
7 discriminates against individuals on the basis of race and ethnicity. Thereby said policies deny said
8 PLAINTIFFS equal protection under the California Constitution.

9 76. The equal protection clause of the California Constitution also requires that Defendants
10 do not diminish Plaintiffs' fundamental right to due process under the law, which includes the right to
11 benefit from any and all laws passed for the benefit of all citizens.

12 77. Defendants' discriminatory funding policy denies Plaintiffs equal access to Due process
13 within California—and all its attendant benefits and opportunities—by adversely impacting the court
14 experience of people of color from underrepresented minority groups, who are more likely to have
15 marijuana convictions in Riverside and San Bernardino County. In said counties, even with funding
16 purportedly provided to carry out AB 1793, missing is the underlying funding that allows for the court
17 staffing and adequate systems that would allow these counties to carry out the mandate of the law for the
18 benefit of its citizens.

19 78. Plaintiffs are harmed by Defendants' failure to comply with all applicable provisions of
20 law and their legal duties, as set forth herein.

21 79. Plaintiffs have no plain, speedy, and adequate remedy for Defendants' constitutional
22 violations in the ordinary course of law.

23 80. Unless enjoined, Defendants will continue to violate the right to receive equal
24 protection of the laws under the California Constitution, and Plaintiffs will suffer irreparable harm.

25 81. Unless enjoined, Defendants will continue to deny Plaintiffs full and equal advantages,
26 privileges, and/or services, and Plaintiffs will suffer irreparable harm.

27 82. Wherefore, Plaintiffs pray for relief, as set forth below.

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1 **THIRD CAUSE OF ACTION**

2 **(Against Defendant State of California and Does 1-25)**

3 **(Violation of Unruh Civil Rights Act, Cal.Civ. § 51)**

4 83. Plaintiff, individually and on behalf of all others similarly situated, incorporates, and re-
5 alleges each allegation set forth above as if fully set forth herein.

6 84. The Unruh Act provides that:

7 [a]ll persons within the jurisdiction of this state are free and equal, and no
8 matter what their . . . race, color, . . . ancestry, national origin, disability,
9 medical condition, . . . [or] primary language . . . are entitled to the full and
10 equal accommodations, advantages, facilities, privileges, or services in all
11 business establishments of every kind whatsoever.

12 85. The Unruh Act makes liable any person who "denies, aids or incites a denial, or makes
13 any discrimination or distinction contrary to Section 51. " Ca Civil Code, Section 52.

14 86. Defendants' funding formula(s) for the Courts ensures that people of color that must avail
15 themselves of Riverside County and San Bernardino County courts would have less resources per case
16 than other state courts. This denies Plaintiffs full and equal accommodations, advantages, privileges,
17 and/or services on the basis of race, and ethnicity.

18 87. Nevertheless, Defendants intentionally continue to make no corrections in light of its
19 formula which ensures less resources per case to Riverside County and San Bernardino County courts,
20 and makes compliance with state mandates, including California Health and Safety Code Section
21 11361.9, nearly impossible to fulfill on a timely basis, if at all, despite public data underscoring this
22 problem. This skews resources in favor of citizens at other California state courts that have more
23 favorable ratios of employees per case, among other things.

24 88. By allowing barriers to accessing needed resources, particularly as it pertains to things
25 that are supposed to help remedy disproportionate criminal convictions for underrepresented minority
26 populations and that would allow state mandates which would improve the lives of said citizens,
27 Defendants denied, aided, or incited a denial, or made a discrimination or distinction contrary to Section
28 51.

89. Plaintiffs are harmed by Defendants' failure to comply with all applicable provisions of
law and their legal duties, as set forth herein.

1 90. Plaintiffs have no plain, speedy, and adequate remedy for Defendants' legal violations in
2 the ordinary course of law.

3 91. Unless enjoined, Defendants will continue to deny Plaintiffs full and
4 equal accommodations, advantages, privileges, and/or services, and Plaintiffs will suffer irreparable
5 harm.

6 92. Wherefore, Plaintiffs pray for relief, as set forth below.

7 **FOURTH CAUSE OF ACTION**

8 **(Against Defendant State of California and Does 1-25)**

9 **(Declaratory Relief)**

10 93. Plaintiff, individually and on behalf of all others similarly situated, incorporates, and
11 realleges each allegation set forth above as if fully set forth herein.

12 94. An actual controversy has arisen and presently exists between Plaintiffs and Defendants,
13 because Plaintiffs contend, and Defendants dispute, that Defendants' actions and inactions as described
14 above have violated California Health and Safety Code Section 1161.9, Article I, section 7(a) of the
15 California Constitution, and the Unruh Civil Rights Act, California Civil Code section 51.

16 95. Plaintiffs therefore seek a judicial declaration of each of the following:

17 a. That Defendant State of California's inequitable funding unfairly discriminates against
18 people of color due to the absence of resources (including staffing) do not allow for the Courts to
19 carry out state mandates, including but not limited to those connected to California Health and
20 Safety Code Section 1161.9;

21 b. That Defendant State of California's inequitable funding violates PLAINTIFFS' rights to
22 equal protection under the California Constitution, art. I, § 7(a); and

23 c. That Defendant State of California's inequitable funding violates the Unruh Civil Rights
24 Act, California Civil Code section 51. by discriminating on the bases of race and ethnicity; and
25
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1 d. That Defendants' discriminatory funding policies constitute intentional discrimination
2 against people of color, including those that would otherwise stand to benefit from the equitable
3 execution of California Health and Safety Code Section 1161.9 .
4

5 PRAYER

6 WHEREFORE, SARA RODRIGUEZ, individually, and on behalf of all other persons similarly
7 situated, by his and their attorneys, respectfully prays for relief against DEFENDANTS., THE STATE
8 OF CALIFORNIA, and DOES 1 through 25 inclusive, and each of them on each and every one of the
9 First through Fourth Causes of Action as appropriate under the facts and laws of the case, as follows:

10 1. That this Court declare Defendants to be in violation of Article 1, Section 7 of the
11 California Constitution;

12 2. That this Court issue a preliminary and permanent injunction ordering Defendant to
13 comply with the statutes set forth in this Complaint, including but not limited to ordering Defendants to:

14 -In consultation with Plaintiffs, develop a plan that includes any policy changes necessary
15 for a durable remedy. The plan shall ensure that the per person investment at Inland
16 Empire Courts is equal to that of other State courts.

17 -Require any other steps necessary to provide meaningful access for Plaintiffs to clear
18 their records at Inland Empire Courts

19 3. For a preliminary injunction, permanent injunction, and/or other equitable relief to the
20 extent allowed by law;

21 4. That this Court award Plaintiffs actual and/or compensatory damages for the
22 aforementioned violations, according to proof at trial;

23 5. For costs and disbursements to the fullest extent allowable or required by law;

24 6. For reasonable attorneys' fees to the fullest extent allowable or required by law; and

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1 7. For such other, further, or different relief as the Court may appear proper.
2

3 Dated: July 7, 2022

MCCUNE WRIGHT AREVALO, LLP

4
5 By: 

6 Richard D. McCune
7 Joseph L. Richardson
8 Sandy. G. Gonzalez
9 Attorneys for Plaintiffs
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EXHIBIT 1

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CALIFORNIA

California was supposed to clear cannabis convictions. Tens of thousands are still languishing



Sara Rodriguez, 39, has a marijuana conviction that's nearly two decades old. Under state law, her felony should've been cleared from her record automatically. But Rodriguez is one of tens of thousands of Californians whose convictions are languishing. (Jason Armond / Los Angeles Times)

BY KIERA FELDMAN | STAFF WRITER

JAN. 13, 2022 5 AM PT



Nearly two decades ago, on a high desert road in San Bernardino County, Sara Rodriguez was pulled over and arrested with 10 small packets of cannabis in her car. She was convicted of a felony, possession of the drug for sale, and eventually spent more than two years in prison.

In the years since, Rodriguez, 39, became the first in her family to go to college, and in June graduated from UCLA with a master's degree in social welfare.

But Rodriguez still has a felony on her record — a potential black mark for employers and the state social work licensing board.

When California voters legalized cannabis for recreational use in 2016, one promise was the creation of a legal pathway through the courts for clearing many past marijuana-related convictions or reducing them to a lesser charge.

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It was a step championed by reform advocates, meant to right many of the injustices inflicted by the nation's war on drugs that was disproportionately waged on poor people and communities of color.



PODCASTS

Podcast: California's marijuana revolution at 25 years

Nov. 10, 2021

But despite a 2018 law intended to speed up and automate the process, tens of thousands of Californians like Rodriguez are still stuck with felonies, misdemeanors and other convictions on their records, a Los Angeles Times investigation found.

I just feel very overwhelmed and stuck. I was under the impression that this would happen automatically, but it's not.

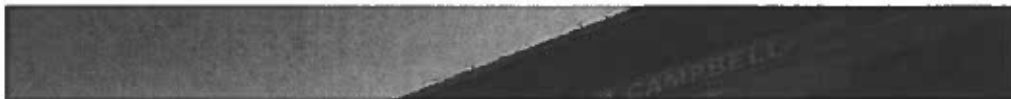
SARA RODRIGUEZ

At least 34,000 marijuana records still have not been fully processed by the courts, according to an analysis of data provided by court officials throughout the state. The number was more than twice that in August, before The Times began questioning the slow processing times.

The delays in clearing drug charges can have dire consequences for those seeking employment, professional licensing, housing, loans and in other instances in which background checks are required.

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The courts have emerged as the primary bottleneck in a process that has entangled the state Department of Justice and prosecutors' offices in 58 counties. Although a number of counties have moved aggressively to clear records, many others have moved at a snail's pace. Some courts — including in Riverside and San Bernardino, where Rodriguez was convicted — haven't fully processed a single case.



Los Angeles Times

LOG IN Q



Rodriguez's felony conviction was one of about 5,400 cannabis cases that were essentially gathering dust in San Bernardino. (Irfan Khan / Los Angeles Times)

Court officials blamed a combination of factors for delays, including COVID-19, staffing shortages, outdated case management systems, old records that require manual review and technical issues.

Legal Weed, Broken Promises

California's legalization of recreational cannabis in 2016 ushered in a multibillion-dollar industry estimated to be the largest legal weed market in the world. But many of the promises of legalization have proved elusive. In an

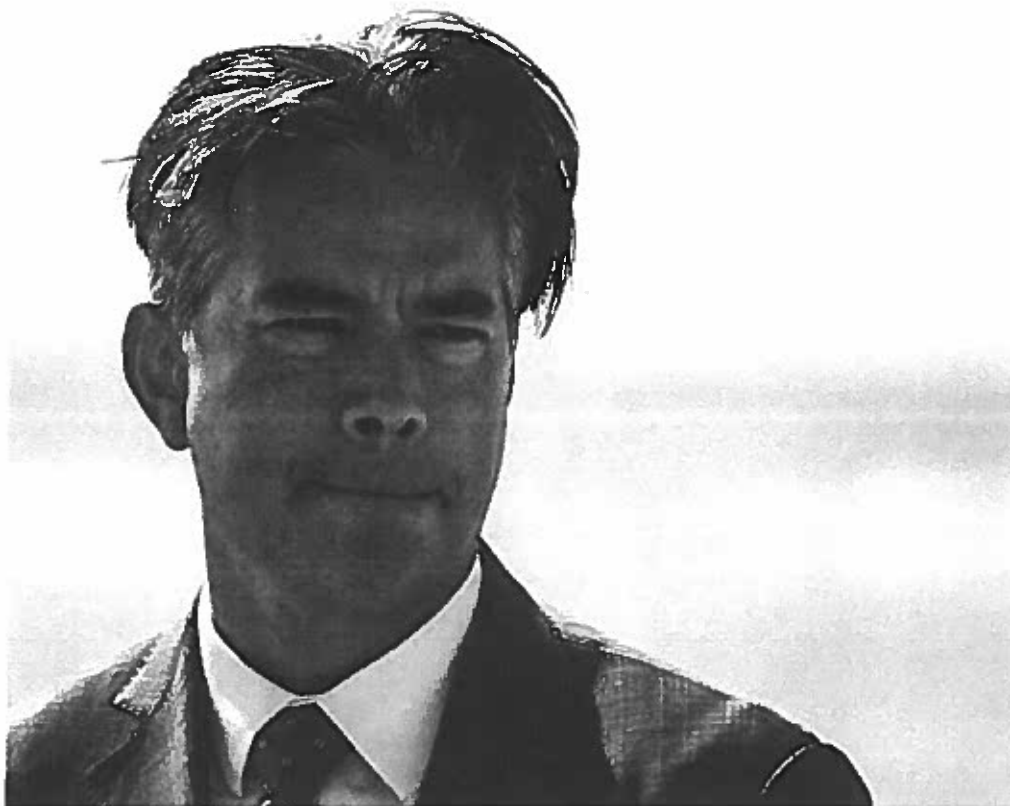
occasional series of stories we'll explore the fallout of legal pot in California.

San Bernardino County Superior Court "was severely impacted by COVID-19 with being partially closed for 75 days, and experienced staffing shortages, illnesses and quarantining, along with severe budget reductions," spokeswoman Julie Van Hook wrote in an email.

But many advocates see the delays as a continuation of a long pattern of failing to address the disparate impact of drug policies on people of color, especially for Black Californians, who for decades have had the highest arrest rates in the state.

"When it's an issue that is largely impacting Black people, we move slowly on getting things done," said Eliana Green, an attorney at the Hood Incubator, which advocates for racial and economic equity in the cannabis industry.

California Atty. Gen. Rob Bonta, who wrote the law to clear criminal records while he served in the state Legislature, acknowledged problems with its implementation.



California Atty. Gen. Rob Bonta, when he was a state legislator, wrote a 2018 law to clear thousands of cannabis-related convictions. (Allen J. Schaben / Los Angeles Times)

"It's not acceptable. It's taking too long," Bonta told The Times in an interview.

About 117,000 Californians have gotten legal relief for their marijuana convictions, Bonta said, but the state has faced significant challenges, particularly given the lack of a centralized statewide records system.

"What a shame!" said Felicia Carbajal, executive director of the Social Impact Center in Los Angeles. "The community deserves better than the half-measures we're seeing on this."

Many public defenders and district attorneys shared similar concerns that the state's effort lacked the necessary resources and technology to succeed.

It's not acceptable. It's taking too long.

CALIFORNIA ATTY. GEN. ROB BONTA

Yolo County Dist. Atty. Jeff Reisig described the court record systems in California as "totally screwed up."

"There's no coordination. Counties don't communicate with one another. They barely communicate with DOJ," Reisig said. "You have 58 counties in California and each one is like its own state."

The 2018 law — Assembly Bill 1793 — was supposed to clear past cannabis convictions en masse, doing away with the need to file individual court petitions — an onerous process that few Californians undertook, whether for lack of resources or awareness it was an option. The burden was placed on the state to automate the process of identifying eligible cases, updating records, and dismissing and sealing many of them so they do not appear on background checks.

The law was the first in the nation to offer automatic record clearance for marijuana convictions. At least six other states looked to California and modeled similar legislation.

"The vision," said Bonta, was "that the government should have a primary and central role in delivering the existing rights to people, instead of making them go fight for it

and find it and take 10 different steps.”

The Justice Department sent district attorneys 191,055 potentially eligible marijuana cases for review. Their deadline was July 1, 2020, to send cases to the courts, and most counties complied.

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But the law didn't give California's 58 superior courts a deadline to complete their end: updating case records and transmitting them back to the Justice Department, which maintains the statewide criminal history database and responds to background checks.

The Times collected data from more than three dozen superior courts around the state and found many counties are moving slowly. Riverside County Superior Court has not fully processed any of its 21,000 cases.

Many courts were at varying stages: For example, Alameda County has processed 58% of cases, and Santa Cruz County 39%. Kern County is at 18%.

Kern County officials cited technical glitches for the delay in getting cases to the Department of Justice. Santa Cruz officials said their progress had stalled because the court was awaiting a software fix from its record management system vendor.

Some counties have fared better. Pandemic notwithstanding, Santa Clara finished its 11,500 cases in April 2020. Los Angeles finished processing 66,000 cases in late 2021.

The delays are not for lack of funding. The courts got \$16.83 million from the state budget to pay for the costs of processing records, such as staffing and development of information technology. The Judicial Council of California, which oversees the superior courts, distributed the money among the counties, but a representative said the agency does not track how the funds are used or how much progress the courts have made.

Rodriguez graduated from UCLA in June with a master's degree in social welfare. She traveled to the San Bernardino Sheriff's Department office to get paperwork for her application to the state social work licensing board. (Irfan Khan / Los Angeles Times)

⋮

The Inland Empire has among the lowest clearance rates in the state.

In San Bernardino County, Rodriguez's felony conviction was one of about 5,400 cannabis cases that were essentially gathering dust. After questions from The Times, the court began reviewing records at the end of 2021, but none of the cases have been completed, a representative confirmed.

Riverside County Superior Court Chief Deputy of Operations Carrie Snuggs pointed to "overall backlogs related to the pandemic," technical issues and inadequate staffing.

POLITICS

California changed the country with marijuana legalization. Is it high time for the feds to catch up?

Nov. 3, 2021

Authorities there had finished reviewing about 3,600 misdemeanors and infractions, but all 17,400 felonies remained. And the court hadn't sent even the misdemeanors and infractions to the Department of Justice because of an apparent misunderstanding of directions, The Times found. (After questions from The Times, the Justice Department said it was assisting the court in its first transmission of cases.)

"It's not a priority. This is something that has been mandated by law and they're still not doing it," said Shaun LeFlore, an organizer in Riverside with the group All of Us or None, which advocates for formerly incarcerated people. "For those 21,000 people in Riverside or 5,400 people in San Bernardino, they deserve to have their life back."

When Rodriguez got out of prison, "a felony really felt like dream-crushing," she said. She was turned down for jobs and, if she hadn't lived with her mom, probably would have been turned down for housing. Many communities in California have "crime-free housing" policies, which often pressure landlords to exclude tenants with criminal backgrounds. And people can be denied public housing or Section 8 vouchers for drug convictions.

But Rodriguez found a place in higher education and attended Cal Poly Pomona, where she joined a program called Project Rebound, a support network for formerly incarcerated students at Cal State schools. She and her friends in the group helped one another navigate housing and jobs, leading her to pursue a graduate degree at UCLA.

Rodriguez speaks at a mixer for Cal Poly Pomona's Project Rebound, which supports formerly incarcerated students on Cal State campuses. (Jason Armond / Los Angeles Times)

Yet she worried that her career could hit roadblocks until her felony conviction was downgraded to a misdemeanor.

"I just feel very overwhelmed and stuck," Rodriguez said. "I was under the impression that this would happen automatically, but it's not."

Under another recent state law, the social work licensing board at least in theory can't deny her application based on her conviction alone. But reality could be a different matter, she said, and a misdemeanor looks a lot better than a felony.

It creates a permanent underclass. By not purging marijuana records, we're helping to foster poverty [for Black and brown people].

VONYA QUARLES, EXECUTIVE DIRECTOR OF STARTING OVER

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Many advocates said the lag in clearing records hits Black and Latino communities especially hard. While national studies show marijuana usage is roughly the same among white, Black and Latino people, in 2015 in California, the marijuana arrest rates for Latinos were 1.4 times higher than white people, and Black Californians were arrested at 3 ½ times the rate of white people, according to a 2016 report by Drug Policy Alliance. That year, Black people were nearly five times more likely than white people to be arrested for a marijuana felony, the report found.

"It creates a permanent underclass. By not purging marijuana records, we're helping to foster poverty" for Black and brown people, said attorney Vonya Quarles, executive director of Starting Over, which provides services for formerly incarcerated people in the Inland Empire and Los Angeles. "The types of jobs that are available to people with felony convictions are not as good as the types of jobs that are available to people without them."

Under AB 1793, which applied retroactively for marijuana convictions based on possession, sale, cultivation and transportation, prosecutors had a great deal of discretion: They could challenge cases identified by the Justice Department and were free to add more names to the list of those who qualified for relief. Many prosecutors downgraded felonies to misdemeanors, and the misdemeanors and infractions — which were no longer illegal under Proposition 64 — they dismissed and sealed.

HOUSING & HOMELESSNESS

Black and Latino renters face eviction, exclusion amid police crackdowns in California

Nov. 19, 2020

Sealing a case means that the conviction is wiped from the public record. In that sense, it's "cleared."

In Los Angeles, then-Dist. Atty. Jackie Lacey, facing a reform-minded challenger in the November 2020 election, announced she would petition the court to seal all 66,000 marijuana cases.

L.A. County Superior Court completed updating its records and sent the bulk of its cases to the Department of Justice in April, a representative said.

Statewide, the Justice Department has yet to seal about 10,000 cases, and 4,000 of those convictions are from L.A.

But the department has developed ways to circumvent some potential problems, officials said. For example, some background checks that go through the department — such as those for public housing and employment — are flagged to expedite sealing marijuana convictions if they appear.

Los Angeles County Deputy Public Defender Nick Stewart-Oaten said the courts, the Department of Justice and the police have yet to fully synchronize information. He said he is aware of at least two cases in which people were jailed and falsely accused of felonies because their marijuana convictions hadn't been updated at either the state or local level.

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This fall, Lacey's successor, George Gascón, announced that his office had unearthed an additional 58,000 cannabis convictions and would petition that they be sealed.

Los Angeles County Dist. Atty. George Gascón announced that he plans to petition that an additional 58,000 marijuana convictions be sealed. (Carolyn Cole / Los Angeles Times)

Alameda County, which includes Oakland, didn't send its first batch of cases to the Department of Justice until June 2021, court officials said. Only 4,718 court records have been updated and transmitted so far, with 3,438 cases remaining.

Alameda Court Executive Officer Chad Finke said the court has been short-staffed during the pandemic and hiring has been difficult. The remaining cases require manual review, as many of them are old or not in the court's electronic record system, Finke said.

"Meanwhile, those staff that we do have in our Criminal division have other work that they must perform every day to ensure that defendants' rights are protected, deadlines are met, etc.," Finke wrote in an email.

CALIFORNIA

L.A. County D.A. to dismiss 60,000 past marijuana convictions

Sept. 27, 2021

One of the languishing marijuana cases in Alameda belonged to Justin, who asked to be identified by his nickname to avoid questions from his employer.

He was arrested at 18 after he said cops caught him carrying just over an ounce of weed in a Mason jar. In 2007, he was convicted of felony marijuana possession and sentenced to three years of probation.

After probation, the court reduced Justin's felony to a misdemeanor. Until recently, he had no idea laws were on the books that should have wiped his record clean.

He worried his criminal record would get in the way of securing a visa to work abroad. Eventually, he connected with an attorney at Oakland-based Root & Rebound, who helped him petition the court. The process took about four months, and in mid-October his record was cleared.

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"There was a certain disservice being done," Justin, 33, said. "Not only was it not automatic, there was never any transparency about the process."

It took San Diego County Superior Court until the end of September — more than a year and a half — to finish reviewing 35,662 records. Nearly 26,000 of those convictions were felonies. During the pandemic, creating virtual courtrooms, electronic filing and livestreaming hearings "have taken priority and resources," court spokeswoman Julie Myres said in an email.

But by mid-November, none of the cases had been sent to the Department of Justice to update its criminal history database, officials said. Since then, the department said it assisted San Diego on its first successful transmission. (San Diego recently sent 25,550 cases to the Justice Department, officials said.)

San Diego received \$2.196 million from the state in anticipation of requiring extensive clerical resources for the marijuana records, but the court only spent about \$28,000, according to Judicial Council data. The court created computer programs

that nearly eliminated the need for clerks, Myres said, and the leftover money will be returned to the state.

In December, the state Department of Justice sent out a bulletin imploring prosecutors and courts to speed up.

"We urge prosecuting agencies and courts to prioritize implementation of the cannabis resentencing process ... so Californians can promptly obtain the relief to which they are entitled under the law," the bulletin said.

Bonta said his agency is reaching out to the courts to offer resources and support to "make sure there's clarity on the system."

"We're learning from this how better systems can lead ... to real on-the-ground impacts for real people," Bonta said. "It's an important lesson and we need to do better."

Rodriguez chats with friends at a recent Project Rebound event in Northridge. The program helps formerly incarcerated students. (Jason Armond / Los Angeles Times)

Meanwhile, Rodriguez recently contacted the public defender's office in San Bernardino County to begin filing a petition on her own. They warned her the process would take six to eight months.

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The social work licensing board application had an entire section asking her to explain her felony. Knowing the long-ago conviction will still show up in a mandatory background check, she drafted a long narrative about her marijuana arrest, her prison time, her rehabilitation and the many awards and achievements she's racked up since.

"It's a lot of work always having to explain myself," Rodriguez said. Eventually, she hoped, she wouldn't have to.

CALIFORNIA LATINO LIFE TIMES INVESTIGATIONS CANNABIS

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Kiera Feldman

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Kiera Feldman joined the Los Angeles Times as an investigative reporter in 2019. She came from ProPublica, where her reporting on New York City's private trash industry exposed labor abuses and corruption, leading to a federal investigation and new city

laws. She won a Gerald Loeb Award in 2021 for articles on toxic fumes on planes and a Livingston Award in 2015 for an investigation of college sexual assault mishandling. A longtime magazine journalist, before coming to The Times she reported for Harper's, New Republic and elsewhere.

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Jan. 18, 2022

HOUSING & HOMELESSNESS

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**Recommended Allocation for
Cannabis Conviction Resentencing Funding**

Attachment 4A

County	Total Eligible Convictions ¹	% of Total	2019-20 Allocation ²	2020-21 Allocation	Total Allocation
Alameda	8,493	3.90%	\$ 541,530	\$ 114,103	\$ 655,633
Alpine	38	0.02%	2,423	511	2,934
Amador	267	0.12%	17,024	3,587	20,611
Butte	1,397	0.64%	89,075	18,769	107,844
Calaveras	294	0.13%	18,746	3,950	22,696
Colusa	283	0.13%	18,045	3,802	21,847
Contra Costa	3,311	1.52%	211,116	44,483	255,599
Del Norte	333	0.15%	21,233	4,474	25,707
El Dorado	979	0.45%	62,423	13,153	75,576
Fresno	3,382	1.55%	215,643	45,437	261,080
Glenn	338	0.16%	21,552	4,541	26,093
Humboldt	1,299	0.60%	82,827	17,452	100,279
Imperial	1,686	0.77%	107,503	22,651	130,154
Inyo	200	0.09%	12,752	2,687	15,439
Kern	3,383	1.55%	215,707	45,450	261,157
Kings	687	0.32%	43,804	9,230	53,034
Lake	569	0.26%	36,281	7,644	43,925
Lassen	252	0.12%	16,068	3,386	19,454
Los Angeles	68,418	31.38%	4,362,465	919,190	5,281,655
Madera	962	0.44%	61,339	12,924	74,263
Marin	579	0.27%	36,918	7,779	44,697
Mariposa	275	0.13%	17,535	3,695	21,230
Mendocino	1,175	0.54%	74,920	15,786	90,706
Merced	921	0.42%	58,725	12,374	71,099
Modoc	127	0.06%	8,098	1,706	9,804
Mono	81	0.04%	5,165	1,088	6,253
Monterey	1,624	0.74%	103,549	21,818	125,367
Napa	761	0.35%	48,523	10,224	58,747
Nevada	667	0.31%	42,529	8,961	51,490
Orange	16,130	7.40%	1,028,479	216,705	1,245,184
Placer	1,269	0.58%	80,914	17,049	97,963
Plumas	174	0.08%	11,095	2,338	13,433
Riverside	8,270	3.79%	527,311	111,107	638,418
Sacramento	6,421	2.95%	409,416	86,266	495,682
San Benito	303	0.14%	19,320	4,071	23,391
San Bernardino	10,892	5.00%	694,495	146,333	840,828
San Diego	28,446	13.05%	1,813,772	382,170	2,195,942
San Francisco	6,211	2.85%	396,026	83,444	479,470
San Joaquin	3,266	1.50%	208,247	43,878	252,125
San Luis Obispo	1,156	0.53%	73,709	15,531	89,240
San Mateo	2,419	1.11%	154,240	32,499	186,739
Santa Barbara	1,736	0.80%	110,691	23,323	134,014
Santa Clara	10,003	4.59%	637,811	134,389	772,200
Santa Cruz	1,354	0.62%	86,334	18,191	104,525
Shasta	1,877	0.86%	119,681	25,217	144,898
Sierra	77	0.04%	4,910	1,034	5,944
Siskiyou	556	0.26%	35,452	7,470	42,922
Solano	1,923	0.88%	122,614	25,835	148,449
Sonoma	2,781	1.28%	177,322	37,363	214,685
Stanislaus	2,178	1.00%	138,874	29,261	168,135
Sutter	258	0.12%	16,451	3,466	19,917
Tehama	927	0.43%	59,107	12,454	71,561
Trinity	604	0.28%	38,512	8,115	46,627
Tulare	2,731	1.25%	174,134	36,691	210,825
Tuolumne	515	0.24%	32,837	6,919	39,756
Ventura	1,692	0.78%	107,885	22,732	130,617
Yolo	697	0.32%	44,442	9,364	53,806
Yuba	367	0.17%	23,401	4,930	28,331
Total	218,014	100.00%	\$ 13,901,000	\$ 2,929,000	\$ 16,830,000

¹ Based on data provided by the Department of Justice in May 2019.

² 50% of funds will be distributed following Judicial Council approval, with the remaining 50% to be distributed in either 2019-20 or 2020-21 depending on actual workload.