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Constitutional Rights in the Time of Covid-19: SF Public Defender Sues SF Superior Court, Alleging Violations of Detainees' Sixth Amendment Rights



Nicolas Cholula

“One of the most oppressive things a state can do is to take away your freedom and then deny you what’s necessary to win it back,” said Manojar Raju, San Francisco Public Defender, [during a rally held](#) on the front steps of San Francisco’s Hall of Justice.



Nicolas Cholula

On September 14, 2021, [Raju filed a lawsuit](#) against the Superior Court of California and the city of San Francisco. The lawsuit alleges that the San Francisco Superior Court has been routinely violating citizens' Sixth Amendment right to a speedy trial.

In fact, as of August 30, 2021, [there are about 429 people](#) whose pending criminal cases have gone past the statutory deadline for trial. Of those, approximately 178 people are being held in jail, typically locked in their cells for 23 hours a day. The majority of these detainees have been incarcerated for over a month, and some have been incarcerated for over a year. Despite the fact that each detainee is to be presumed innocent until proven guilty, these people are charged with a crime but denied their day in court.

The Backlog Crisis

The Court attributes this catastrophe to complications from the COVID-19 pandemic. The Public Defender's office refutes that this is the sole cause. Instead, it argues that the backlog became so severe because of the Court's conscious disregard of detainee's Sixth Amendment rights. Even upon becoming "fully open," the Court failed to live up to its promises to clear the backlog. When given the chance to send trials to the Civic Center which does not have a severe backlog, in most cases the Court refuses to do so. Additionally, the Court failed to find alternative venues for court proceedings, or to use its emergency authority and special funding to solve its chronic staffing problems.

There is no perceivable sense of urgency on behalf of the Court. While this violation of constitutional rights may not feel like an emergency to the Court, one might consider how this catastrophe feels for the detainees who have been sitting in jail for over a year, or how their loved ones feel awaiting

answers. One might ask how it's possible that the Court is failing these individuals so badly when they are presumably innocent at this point in their proceedings.



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This crisis stems back to a series of emergency actions taken at the beginning of the pandemic in 2020. When restaurants were closed to indoor diners and residents began lining up at grocery stores to stock up on toilet paper at the crack of dawn, the Courts needed to consider how they would continue legal proceedings while doing their part to flatten the COVID-19 curve. On March 27, 2020, Governor Gavin Newsom [signed an executive order](#) to enhance the authority of California's Judicial Branch to take "necessary action" to be able to operate amidst the pandemic. The following day, the [Judicial Council unanimously approved](#) "temporary" measures, in which the court may waive Sixth Amendment rights and indefinitely extend the time periods in which criminal proceedings must take place. Over 17 months later, these "temporary" measures still govern the rate at which criminal cases may be heard. One of Raju's main allegations is a violation of [Penal Code section 1050\(a\)](#). This statute requires courts and judges to "expedite [criminal] proceedings to the greatest degree that is consistent with the ends of justice." It provides that "criminal cases shall be given

precedence over, and set for trial and heard without regard to the pendency of, any civil matters or proceedings."

When asked to give a statement on Raju's complaint, San Francisco Superior Court spokesperson Ken Garcia [told US news](#) that the Court "continues to give criminal trials the highest priority." Despite the requirement of Penal Code 1050(a) and the court's massive backlog, the Superior Court has sent out only three in-custody trials in the twelve weeks between June 28, 2021 — the date the Court announced that it was "fully open" for jury trials without social distancing — and September 24, 2021.

During the period between August 21, 2021 to September 24, 2021, the Superior Court used fewer than 8% of their courtrooms for criminal trials. Meanwhile, twelve courtrooms are dedicated to civil

trials according to the [current judicial assignments list](#), published in October 2021. Recent civil jury trials at the Civic Center Courthouse include asbestos and medical malpractice actions, as well as court trials regarding contracts. There is no doubt that civil cases hold importance, and citizens deserve a venue to redress their civil injuries. However, it is a statutory violation to prioritize these cases over criminal proceedings, especially when the defendants of these proceedings are still in custody awaiting trial.



[San Francisco Hall of Justice 2017](#) by [Dllu](#) is licensed under [CC BY-SA 4.0](#).

Alternative venues are another feasible way to attack the backlog issue. Neighboring counties have used alternatives to prioritize criminal trials amidst COVID-19 concerns. In an interview with SF Bayview, Raju recalled that San Mateo County holds jury selection for three trials at once [at their County Events Center](#). Additionally, when Sonoma County Superior Court reopened in March 2021, they held jury selections [at their County Fairgrounds](#). Likewise, Sacramento County used makeshift court venues specifically in response to the COVID-19 pandemic, to allow for increased social distancing. Joseph Deangelo, also known as the Golden State Killer who was accused of killing 13 people, raping 50 people, and committing more than 100 burglaries, was finally arraigned for his crimes amidst the pandemic. After eluding authorities for over four decades, he pleaded guilty to these allegations in June of 2020 – in a [college ballroom](#) at Sacramento State University.

In light of these efforts made by other counties, Raju questions why there isn't a single record showing that the San Francisco Superior Court made an attempt to find an alternative venue. Raju

notes that the city [has many public buildings](#) that could have been used as alternative venues, including the “Moscone Convention Center, Bill Graham Civic Auditorium, War Memorial Building, Cow Palace, high school and college auditoriums, all of which sat empty during shelter in place orders.”

The Court has also placed a limit on the criminal cases that can be heard in the Civic Center. According to Raju’s complaint, it [ruled out](#) trying felony, in-custody, or “serious” misdemeanor cases in the Civic Center Courthouse on unspecified “security” grounds, even though it has safely held many in-custody felony jury trials at the same location over the last fifteen years. The Court has not formally addressed the unspecified security issues, nor has it outlined the criteria that makes a case ineligible to move to the Civic Center Courthouse.



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Most importantly, this catastrophe has a human cost. Raju’s complaint shares [the story of Robert Brewer](#), who was detained in jail from August 19, 2020 to May 4, 2021, charged with murder. He never waived his right to a speedy trial. He was finally brought to trial in March 2021, three months after his trial deadline had passed. At trial, the jury acquitted him of all homicide offenses. Another example of injustice is the story of [Emonie Bailey](#), who likewise never waived his right to a speedy trial. He entered custody in May 14, 2020, and his original trial deadline was January 19, 2021. When his case was finally sent to trial on August 13, 2021, it was resolved immediately. These circumstances can cause irreparable mental and physical harm. Detainees who are already confined to their jail cells are placed under even more quarantine measures to comply with the strict COVID-19 jail policies. Mr. Bailey was confined to his cell for a minimum of 23 hours a day. In March 2020, [jail visitations were suspended](#), and they still have not resumed. Most detainees have no definite criteria to indicate when their case might be heard. This means detainees don’t know if they need to wait these conditions out for one more month, one more year, or longer. Meanwhile, capacity has increased at commercial venues. Restaurants in San Francisco County have been [welcoming indoor diners](#) since March. Barber shops are open again. While the rest of the country is moving onto

the new, post-pandemic normal, detainees awaiting legal proceedings are still being denied their day in court.

Raju's lawsuit [calls for the courts](#) to give precedence to criminal cases over civil matters, to make a plan targeting the backlog of pending criminal cases, and to require the court rooms at the Civic Center Courthouse to be opened up for criminal trials. As of today, the San Francisco Superior Court has not yet filed a responsive pleading to Raju's complaint, but the case was [moved to Contra Costa](#) county due to the obvious conflict of interest. Updates on this case will continue to be posted on the San Francisco Public Defender's Office [website](#), which also holds an online petition for those who want to support the cause.

In the [words of Manohar Raju](#), "No one is above the law. Especially not the San Francisco Superior Court."

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