S265210

IN THE

SUPREME COURT

OF THE

STATE OF CALIFORNIA

CHELSEA BECKER,
Petitioner

v.

SUPERIOR COURT OF KINGS COUNTY,
Respondent;

THE PEOPLE
Real Party in Interest

REAL PARTY IN INTEREST, THE PEOPLE'S, ANSWER TO PETITION FOR REVIEW

Of the October 15, 2020 unpublished decision of the Court of Appeal, Fifth Appellate District
Denying Petitioner's Writ of Habeas Corpus

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THE PEOPLE OF THE STATE OF CALIFORNIA

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INTRODUCTION

TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE CALIFORNIA SUPREME COURT:

Real Party in Interest, the People of the State of California (the "People") hereby submit this Answer to Petitioner, Chelsea Becker's ("Petitioner") Petition for Review ("Petition").

Real Party in Interest, the People's Answer to Petitioner for Review, hereinafter, "Answer", challenge Petitioner's arguments that Penal Code 187(a) exempts the People from charging a woman for the death of her fetus. In California, only first or second degree murder applies to feticide given that the manslaughter statute does not specify fetal killings. Adding the phrase 'or a fetus' to the manslaughter and wrongful death statutes would provide alternatives, in certain circumstances such as the instant case, for holding people accountable for their deadly conduct towards a late term fetus. Absent this legislative reform, Penal Code section 187(a) provides the only legal authority for charging Petitioner with the murder of her drug abused and overdosed fetus and/or child, Zachariah.

Petitioner alleges the court set an excessive and unconstitutional bail amount of $2,000,000 but Petitioner never acknowledges that her release from Kings County Jail could subject a fifth fetus of hers to toxic amounts of methamphetamine or other controlled substances should she get pregnant again and use illicit drugs during her pregnancy.

The following discussion balances a woman's right to ingest toxic levels of illegal drugs versus the rights of a full-term viable fetus to live, and it supports the People's ability to hold Petitioner accountable for the death of her fetus and or child both legally and factually.

California Rules of Court rule 8.504(e)(3) proscribes Petitioner's attempt to adopt and incorporate by reference its Petition for Writ of Prohibition and Reply as set forth on page 9 of their Petition. Should this Court allow Petitioner to incorporate by reference Petitioner's "entire Petition for Writ of Prohibition (Fifth District Case No. F081341) and the Reply filed by Petitioner in that matter, including but not limited to all of the legal arguments, exhibits, authority, references and material contained within it," the People respectfully request that the Court extend the same courtesy to the People by allowing the People to incorporate by reference its entire Respondent's Informal Response to Renewed Petition for Writ of Habeas Corpus, including but not limited to all of the legal arguments, exhibits, authority, references and material contained within it.

FACTUAL BACKGROUND

Petitioner[1] inexcusably and deceptively omits crucial facts, which collectively and ultimately led the People to issue criminal charges against Petitioner for the death of her fetus/child. Petitioner, confines her entire factual background of what led to her fetus/child's death to one paragraph that is not supported by the truth. (Petition, p. 10.) Notably, Petitioner has improperly elected to sidestep and ignore critical factual truths in its arguments before this Court.

Petitioner is a 26-year-old person[2] who has given birth to four children. Each of her pregnancies were accompanied by consistent and admitted illicit drug use during the entire gestation period. (Hanford Police Department Reports.[3]) Petitioner's first three children were born while

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[1] Petitioner is alternately referred to as Defendant and The People are alternately referred to as Plaintiff, depending on the context.
[2] Petitioner was 25-years-old when she gave birth to Zachariah.
[3] In order to comply with California Rules of Court, Rules 8.504(e)(1)(B) and 8.504(e)(2), the People have referenced the pages of the Hanford Police Department reports which the People can provide the Court upon request.

Petitioner and the children had levels of methamphetamine in their blood. (HPD, pp. 7, 9, 10, 16, 17, 18, 19, 20, 24.) In 2015, Petitioner admitted using methamphetamine two days before the birth of her baby boy. (HPD, p. 24.)

In 2016, following the birth of her baby boy, Samuel Cruz, Petitioner told a Social Worker that she was aware that prenatal substance abuse can negatively impact a child, such as causing brain damage. (HPD, p. 20.) Petitioner and the baby, Seth Cruz, both tested positive for methamphetamine. (HPD, p. 19.)

Social Services and medical staff intervened to provide counseling and assistance to Petitioner, and then removed Petitioner's first three children from her custody. Petitioner's first three children have been in the care of other families since their births.

On September 10, 2019, Petitioner gave birth to a stillborn child whom she had named Zachariah Joseph Campos at Hanford Adventist Medical Center. Petitioner admitted using methamphetamine during her pregnancy with Zachariah resulting in his stillborn birth. (HPD, pp. 6-7.) Delivery Nurse, Ernestina Obeso, confirmed Petitioner delivered the stillborn baby at 36 weeks gestational, which, at that age, could have resulted in a viable living human being outside of the womb. (HPD, pp. 5-6.) During the labor process, a family member notified medical staff that Petitioner used methamphetamine and possibly heroin during the pregnancy. (HPD, p. 6.) Petitioner initially refused to provide blood or urine samples despite multiple requests, but ultimately provided a urine sample. (HPD, p. 6.) Medical staff contacted Kings County Deputy Coroner, Wayne Brabant, given the suspicious circumstances of methamphetamine use causing her stillborn birth.

All references to the Hanford Police Department reports are designated as "HPD" followed by the page number(s).

The Coroner's report revealed Zachariah Joseph Campos' cause of death was "Acute Methamphetamine Toxicity." The report also denoted a level of .02 grams % blood ethyl alcohol. Dr. Zhang, who performed the autopsy, noted that Zachariah weighed 5.12 pounds, was 19" long and "[w]as a 36 week [full term] gestational fetus who died in his mother's womb on 09/19/2019." Blood work conducted on the Defendant "showed positive for methamphetamine." Specifically, a toxicology report confirmed Zachariah had nearly *six times* the toxic levels for that of an adult male of methamphetamine in his blood. Dr. Zhang told Hanford Police Officers that Zachariah's methamphetamine levels were very high and toxic. (HPD, p. 13.) He further stated that toxic ranges are measured for an adult; and while he did not believe any published studies measured blood methamphetamine ranges for a fetus, toxicity levels for a fetus would be much lower than for an adult. (HPD, p. 13-14.)

Petitioner's mother told Hanford Police that Petitioner admitted using methamphetamine during her pregnancy with Zachariah as she had during her three previous pregnancies. (HPD, pp. 6-7.) She also heard from a friend that her daughter used heroin weeks before the stillborn birth. (HPD, p. 7.) Petitioner's mother further disclosed that two of Petitioner's other children tested positive for methamphetamine at birth and were adopted out of Petitioner's care as newborns. (HPD, p. 7.) Petitioner herself admitted to Hanford Police Detective, Jared Cotta, that she used methamphetamine during her pregnancy with Zachariah, but also claimed she had stopped because of the pregnancy, which demonstrates her awareness of the dangers of methamphetamine use during pregnancy. Ultimately, Petitioner gave conflicting stories to Detective Cotta about when she supposedly stopped using methamphetamine. (HPD, p. 9.) There is no evidence that Petitioner took any actions whatsoever to abort

Zachariah (her fetus), nor is there any evidence or allegations that Petitioner intended to abort Zachariah.

Petitioner's mother told the Hanford Police Officer, "I didn't even see a tear fall from her eye, not one." (HPD, p. 7.)

ARGUMENT

I. THE COURT DID NOT VIOLATE PETITIONER'S STATUTORY AND CONSTITUTIONAL RIGHTS WHEN IT IMPOSED THE BAIL AMOUNT OF $2,000,000 FOR THE CRIME OF PENAL CODE SECTION 187(a).

The People deny Petitioner's contention that the trial court's imposition of a $2,000,000 bail was excessive and violated her constitutional and statutory rights. Consequently, due to her incarceration, the Petitioner has only recently experienced her longest period of sobriety and mental clarity in her entire adult life.

The Bail Review Report filed February 19, 2020 denoted that, according to the Uniform Bail Schedule, Petitioner's bail for Count I was $5,000,000.[4] (Superior Court County of Kings 2020 Felony and Misdemeanor Bail Schedule, p. 5.) Accordingly, a Warrant of Arrest was issued for Petitioner in the amount of $5,000,000. The Probation Officer that submitted the Bail Review Report recommended "[b]ail remain set to the uniform bail schedule" given the "[n]ature of the alleged crime and her failure to appear to Court." (Bail Review Report, pp. 1- 3.) The People, however, cannot determine at this time whether Petitioner failed to appear in court for the instant case as denoted in the Bail Review Report. In reviewing Petitioner's documentation before appearing at Petitioner's Bail

[4] The People can provide the Court with a copy of the Superior Court County of Kings 2020 Felony and Misdemeanor Bail Schedule if requested.

Review Hearing on February 20, 2020, the People believed Petitioner suffered a felony Penal Code section 245(a)(1) strike conviction but upon further review, it appears that conviction was reduced to a misdemeanor as Petitioner alleges.

Nevertheless, Petitioner's bail was justified in light of the instant charge of Penal Code section 187(a) and her criminal history. It is especially noteworthy that, in accordance with *In re Humphrey* (2018) 19 Cal.App.5th 1006, the court did not rely solely on the Bail Schedule because the court reduced Petitioner's bail to $2,000,000, well below the Bail Schedule amount of $5,000,000 which provides further support that the court imposed a constitutional bail amount. (Bail Review Hearing, 5:3-28; Bail Schedule, p. 5.) Notably, the *Humphrey* court emphasized, "Nor do we condemn the trial court's consultation of the schedule: Such consultation is statutorily required, because for serious or violent felonies the court cannot depart from the amount prescribed by the schedule without finding unusual circumstances. (§ 1275, subd. (c) . . . . Once the trial court determines public and victim safety do not require pretrial detention and a defendant should be admitted to bail, the important financial inquiry is not the amount prescribed by the bail schedule but the amount necessary to secure the defendant's appearance at trial or a court-ordered hearing." (*Id.* at pp. 1043-1044.)

In determining Petitioner's bail amount for Penal Code section 187(a), the court followed the statutory guidance of Penal Code section 1275.

A. Penal Code section 1275 provides the statutory guidance for the court in setting, reducing or denying bail.

Penal Code section 1275 provides, in pertinent part:

> (a) (1) In setting, reducing, or denying bail, a judge or magistrate shall take into consideration the protection of the public, the seriousness of

the offense charged, the previous criminal record of the defendant, and the probability of his or her appearing at trial or at a hearing of the case. The public safety shall be the primary consideration. In setting bail, a judge or magistrate may consider factors such as the information included in a report prepared in accordance with Section 1318.1.

(2) In considering the seriousness of the offense charged, a judge or magistrate shall include consideration of the alleged injury to the victim, and alleged threats to the victim or a witness to the crime charged, the alleged use of a firearm or other deadly weapon in the commission of the crime charged, and the alleged use or possession of controlled substances by the defendant.

. . .

(c) Before a court reduces bail to below the amount established by the bail schedule approved for the county, in accordance with subdivisions (b) and (c) of Section 1269b, for a person charged with a serious felony, as defined in subdivision (c) of Section 1192.7, or a violent felony, as defined in subdivision (c) of Section 667.5, the court shall make a finding of unusual circumstances and shall set forth those facts on the record. For purposes of this subdivision, "unusual circumstances" does not include the fact that the defendant has made all prior court appearances or has not committed any new offenses.

B. The court recognized Petitioner poses an unreasonable risk to victims and the community should the court reduce bail and release Petitioner from the custody of the Kings County Sheriff.

Petitioner is in custody for the murder of a human fetus with malice aforethought. Few crimes are more serious or violent than the crime

of murder and such a crime unfortunately carries the ultimate penalty to the *victim* — death. While the victim, Zachariah, paid the ultimate price of a stillborn death, Petitioner's incarceration is necessary to protect the safety of potential victims as well as additional dangers to herself— especially the prospect of her becoming impregnated and carrying another fetus while ingesting controlled substances that would prove toxic to the fetus. This crime differs considerably from non-violent crimes, a sentence that may soon expire, or a crime with little risk of repetition. As discussed in greater detail below in section III, the state has a constitutional, legitimate interest in protecting the potential life of a fetus. Petitioner's history of giving birth to infants with methamphetamine in their systems creates a high risk of her repeated conduct of ingesting controlled substances during her pregnancy and harming her fetus.

Petitioner also makes the exceedingly unethical claim that "[h]er first three pregnancies continued to term and she gave birth to babies that are healthy and well." (Pet. for Review, at p. 10.) Notably, Petitioner has revised her allegation from what she initially claimed in her Renewed Habeas Petition, where Petitioner alleged, "Following three earlier live *and completely healthy births*, on September 10, 2019, Petitioner's last pregnancy ended in a stillbirth." (Emphasis added, Renewed Habeas Petition, p. 14.) Petitioner completely misstates the truth. (HPD, pp. 7, 9, 10, 16, 17, 18, 19, 20, 24 [Petitioner's first three children were born while Petitioner and her babies had levels of methamphetamine in their blood.].)

Petitioner wants this Court to shield her from any criminal liability for causing harm, including death, to her fetus. Mindful of the condition of addiction, the People recognized the gravity of Petitioner's conduct and the effects of her methamphetamine and alcohol use during pregnancy on her fetuses —— born and stillborn. Given that each case turns on a totality of its facts and circumstances, the People did not approach this case cavalierly.

The People collaboratively scrutinized the facts before electing to file its complaint against Petitioner. For Petitioner to question the causality of methamphetamine use during pregnancy, especially late-term pregnancy insults this Court's intelligence and belies the science of the effects of methamphetamine during pregnancy. (Petition, p. 11 fn. 3.)

Petitioner states in her Petition for Review: "The suggestion that it is her ability to procreate that keeps Ms. Becker behind bars on an unaffordable bail is shocking, legally impermissible and distressing as explained in Section II, below. As such, it cannot be permitted to stand. The obvious corollary to the DA's position is that if Ms. Becker would simply agree to be sterilized, there would be no need for bail." (Petition at p. 12.) Although the above statement is far from the truth, what shocks the conscience is Petitioner's ability to continually ingest controlled substances and harm every fetus she has ever carried, causing the death of at least one. Petitioner knows no bounds by making a statement such as this. The obvious corollary is that Petitioner abstain from using drugs while pregnant. The People have never suggested that she cannot procreate — the People contend that under these facts, the law prohibits killing her fetus by using controlled substances while pregnant causing her fetus to have toxic amounts of methamphetamine and alcohol in his system.

Petitioner characterizes the People's position for seeking to keep Petitioner incarcerated and from continually harming fetuses given her self-centered drug use as a "noxious notion." The People contend the "noxious notion" is giving birth to three prior children born with methamphetamine in their little systems leading to a stillborn death — enough is enough.[5]

Petitioner's release would compromise public safety — the primary consideration at her bail review. With Penal Code section 1275 as

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[5] See Factual Background, *supra*.

its guide, the court recognized her risk to public safety by setting her bail at $2,000,000 after reducing it from its initial $5,000,000 statutory amount according to the bail schedule.

C. Releasing Petitioner under the guise of COVID-19 pandemic protections runs afoul of the protections enacted in the Kings County Jail.

The People deny that the Superior Court has denied her procedural and substantive due process rights by its decision-making in addressing the possible impact of COVID-19 at the Kings County Jail.

When any person is brought to the Kings County Jail for any reason they are screened for COVID-19 symptoms and automatically placed in isolation for a minimum of ten days, preferably fourteen days. (Exh. A, Declaration of Kings County Sheriff Detentions Lieutenant, Daniel Tolbert, hereinafter, "Tolbert Decl.", ¶ 3.) Only in a case of overcrowding would an inmate be released from isolation and only if asymptomatic and documented by medical staff. During the initial isolation period each inmate has their temperature taken twice a day and they are closely monitored for symptoms. After the initial fourteen-day isolation period the inmate is moved to general population housing provided they have no symptoms and have tested negative for COVID-19. (Exh. A, Tolbert Decl, ¶ 4.)

It is especially noteworthy that as of November 4, 2020, only two inmates have tested positive for COVID-19. (Exh. A, Tolbert Decl, ¶ 5.)

One of the inmates who tested positive for COVID-19 entered the jail after being remanded to custody in court. She was screened per the Kings County Jail medical protocol and found to have symptoms and was further tested while in isolation. This inmate remains in isolation. (Exh. A, Tolbert Decl, ¶ 6.) If an inmate were to test positive for COVID-19, the Kings County Jail personnel would immediately isolate the inmate in a

negative air flow cell pending results. The inmate is monitored twice daily and given temperature checks and symptom screening. (Exh. A, Tolbert Decl, ¶ 7.) The Kings County Jail implemented these protocols during the beginning stages of the COVID-19 outbreak with a different medical provider but changed to WellPath as the medical provider a few months ago. (Exh. A, Tolbert Decl, ¶ 8.) Petitioner was isolated upon being booked at the jail but her isolation was extended due to her recent pregnancy. The Kings County Jail granted her request on December 31, 2019 to be housed with another female inmate. The jail then granted her request on July 19, 2020 to be housed with a different female inmate. On July 16, 2020, the jail granted her request to be placed in general population housing. (Exh. A, Tolbert Decl, ¶ 9.)

Conversely, the Kings County Health Department has reported several thousand cases of COVID-19 and these numbers continue to climb each day. Therefore, Petitioner is safer from COVID-19 inside the facility that she is outside the facility. Further, the Presiding Judge of this Court, has set specific procedures in place to ensure that the inmate population of the Kings County Jail is significantly protected from any potential spread of COVID-19. These procedures include handing out facemasks in the jail, releasing non-violent or vulnerable inmates, and providing video conference appearances for the court, the attorneys and the inmates.

Consequently, the Kings County Jail is essentially the ultimate quarantine, and the Petitioner is likely safer in custody than elsewhere. Petitioner has presented no argument that releasing her would isolate her from COVID-19. Rather, her argument in favor of releasing her points to a position that would compromise her safety.

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D. Prosecution does not violate Petitioner's equal protection guarantees.

When considered rationally, Petitioner's quest to ingest controlled substances during her pregnancy with full knowledge of the deleterious consequences of her actions, does not violate the Equal Protection Clause[6] because a male, whether or not he is a drug user, who intentionally facilitates a pregnant female's ingestion of controlled substances which ultimately leads to a stillborn death is subject to Penal Code section 187(a). California law punishes those who assault a fetus by virtue of assaulting pregnant women. Petitioner's interpretation of this statute would allow a domestic violence victim to essentially grant immunity to a domestic violence abuser by simply claiming she "consented" to or was responsible for the abuser's actions. In this case, Petitioner, with full knowledge of the harmful effects on her fetus/baby assaulted her unborn child when she ingested lethal amounts of methamphetamine against the will of Zachariah, her fetus, with knowledge of the deleterious effects on her fetus.

Penal Code section 187 (a) defines murder as the unlawful killing of a human being *or a fetus* with malice aforethought. The law applies to cases in which a perpetrator causes the death of a fetus as long as the fetus is developed past the embryonic stage of seven to eight weeks, and is treated and tried the same as murder. Differentiating a third-party assailant from Petitioner's actions does not survive scrutiny — legal or otherwise.

Petitioner's argument that women are completely immune from the consequences of harming or causing the death of their fetus strains credulity when others, such as men who are fathers, who harm or cause the death of their fetus are not equally protected under the United States Constitution or California Constitution.

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[6] U.S. Const., 14th Amend.; Cal. Const., art. 1, § 7.

Each case turns on its facts, and in this case, numerous treatment provides and caregivers, including the courts and social workers and Petitioner's mother gave Petitioner ample notice of the consequences of continuing to ingest controlled substances during her pregnancy. Despite her knowledge of causing potential harm to her fetus, Zachariah died from Acute Methamphetamine Toxicity because of Petitioner's sole actions.

II. PETITIONER PROVIDES NO AUTHORITY THAT PROHIBITS CHARGING A FEMALE WITH MURDER BASED ON HER INHERENTLY DANGEROUS ACTS OR OMISSIONS TOWARDS HER FETUS WHILE PREGNANT.

The People deny Petitioner's contention that Penal Code section 187(a) does not provide the statutory authority to charge Petitioner for the murder of her stillborn child, Zachariah.

Petitioner conveniently omits the plain meaning of the language set forth in Penal Code section 187(b)(3) and provides no legal authority from the California Supreme Court or the Fifth District Court of Appeal that prohibits the People from filing murder charges against a person who used toxic amounts of methamphetamine during her pregnancy resulting in the death of her full-term viable fetus/child who had toxic amounts of methamphetamine in his blood.

The only statute available to the People to charge Petitioner for the death of her child is Penal Code section 187. Manslaughter and child abuse charges are not legally cognizable under these facts.

Penal Code section 187 reads as follows:

> (a) Murder is the unlawful killing of a human being, or a fetus, with malice aforethought.
>
> (b) This section shall not apply to any person who commits an act that results in the death of a fetus if any of the following apply:

(1) The act complied with the Therapeutic Abortion Act, Article 2 (commencing with Section 123400) of Chapter 2 of Part 2 of Division 106 of the Health and Safety Code.

(2) The act was committed by a holder of a physician's and surgeon's certificate, as defined in the Business and Professions Code, in a case where, to a medical certainty, the result of childbirth would be death of the mother of the fetus or where her death from childbirth, although not medically certain, would be substantially certain or more likely than not.

(3) The act was solicited, aided, abetted, or consented to by the mother of the fetus.

(c) Subdivision (b) shall not be construed to prohibit the prosecution of any person under any other provision of law.

Notably, Petitioner has not provided any authority that Penal Code section 187(b)(3) does not apply. Petitioner conveniently omits the fact that she failed to provide any California statute(s) or case law that supports her proposition that a female who carries a child full term while using toxic amounts of methamphetamine is immune from criminal prosecution for the murder of her stillborn child. Instead, as support for her position, Petitioner provides no appellate authority and instead cites an obscure superior court case. (See *People v. Jaurigue* No. 18988, slip. Op. (Cal. Sup. Ct. August 21, 1992) https://tinyurl.com/rsnyrl.)

In an attempt to veil Petitioner's wrongdoing, Petitioner has proffered numerous unsubstantiated arguments that frequently veer from the legal issues that this Court must address. Consequently, the People must refute Petitioner's falsehoods. For example, footnote 3 in the Petition reads as follows: "Petitioner contests causation as a matter of science in this case but this issue has no impact on the strictly legal issue raised in the Writ of Prohibition. Even if the District Attorney's causation allegations are accepted, there is no crime." As discussed at length herein, Petitioner's actions were criminal pursuant to Penal Code section 187(a). Petitioner's challenge to the causation of her methamphetamine use and Zachariah's

stillborn death as a result of acute methamphetamine toxicity is emblematic of her refusal and those who support her to accept *any responsibility* for the consequences of her conduct by contorting the plain language of Penal Code section 187(b)(3). Petitioner provides yet another unbounded, preposterous claim that ingesting toxic amounts of methamphetamine or alcohol has no harmful effects on a fetus.[7]

Petitioner repeatedly represents that Assemblyman Craig W. Biddle's sole affidavit speaks for the entire California Legislature regarding the import of Penal Code section 187(b)(3). The Honorable Superior Court Judge, Shane Burns, recognized the shortcoming in Petitioner's overbroad conclusion when he explained: "In terms of Mr. Biddle, his declaration in my mind tells me what he is thinking, but he is not the only vote that passed the law. And I don't know that it truly speaks for the entire legislature body. So while it is evidence of some thought process, it probably certainly was probably part of the debate. It is not the ending point of that particular analysis." (Reporter's Transcript of Demurrer, June 4, 2020, 19:4-11.)

A. Penal Code section 187(a) provides the People with the statutory authority to charge Petitioner with murder for her actions or omissions during pregnancy.

The California Legislature, the California Supreme Court, and the United States Supreme Court have each conferred statutory and Constitutional rights to a fetus by virtue of their respective enactments and

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[7] As noted in the Factual Background, *supra*, a toxicology report confirmed Zachariah had nearly six times the toxic levels for that of an adult male of methamphetamine in his blood. Dr. Zhang told Hanford Police Officers that Zachariah's methamphetamine levels were very high and toxic. (HPD, p. 13.) He further stated that toxic ranges are measured for an adult; and while he did not believe any published studies measured blood methamphetamine ranges for a fetus, toxicity levels for a fetus would be much lower than for an adult. (HPD, p. 13-14.)

rulings. California jurisprudence has experienced an evolution in how courts and the Legislature have treated the death of a fetus.

In *Keeler v. Superior Court* (1970) 2 Cal.3d 619, the court held the unlawful killing of a human being did not apply to the murder of a fetus. In *Keeler*, a pregnant woman's abuser caused the death of their fetus. The male defendant's conviction was overturned because the statute did not include the word "fetus." The California Legislature, in response and intending only to exempt conduct amounting to a therapeutic abortion, amended Penal Code section 187(a) to include the unlawful killing of a fetus with the exception of a fetal death resulting from a lawful abortion pursuant to Penal Code section 187(b). (Stats.1970, ch. 1311, § 1, p. 2440.)

In *People v. Dennis* (1994) 17 Cal.4th 468, 511, the court ruled the defendant was not entitled to a jury instruction on manslaughter as a lesser included offense of murder, since there is no crime of manslaughter of a fetus. The California Supreme court opined in *People v. Davis* (1994) 7 Cal. 4th 797, 803, 809-810, that the Legislature treated the fetus with the same protections as human life except where a mother's privacy interests are at stake as they are when a woman seeks to have an abortion. The court further ruled, "[V]iability is not an element of fetal homicide under section 187, subdivision (a)," but the state must demonstrate "that the fetus has progressed beyond the embryonic stage of seven to eight weeks." (*Id.* at pp. 814-815.); *People v. Valdez* (2005) 126 Cal.App.4th 575, 579 [the court held that terminally ill fetuses, like terminally ill born persons, do not provide a defense or leniency to a murder charge. The court reasoned that murder is applied when victims are terminally ill because murder is, at its simplest definition, the shortening of a life, and that this must be applied to fetuses since they are part of Penal Code section 187]. At no time during the Court's consideration of the above cases did the Court conclude the word "fetus" was merely a word to protect a pregnant woman, rather it is

clear and only logical that the word "fetus" in the statute imparts rights to and consideration of a fetus and no one else.

Penal Code section 187(b)(3) states murder does not apply to "any person who commits an act that results in the death of a fetus" if "[t]he act was solicited, aided, abetted, or consented to by the mother of the fetus."

Petitioner attacks the People's thorough dissection of Penal Code section 187(b)(3)'s inclusion of the words, *aid*, *abet*, *solicit* and *consent*. Petitioner's tortured contention that one can *aid*, *abet*, *solicit* or *consent* to oneself butchers the context, the plain language definition, and the common sense usage of these four words in the history of the English language.

"If there is no ambiguity in a statute, we must presume the drafters mean what they wrote and the plain meaning of the words prevail. [*People v. Harris* (2006) 145 Cal.App.4th 1456, 1463] " ' "Where the statute is clear, courts will not 'interpret away clear language in favor of an ambiguity that does not exist.' " ' " (*People v. Raybon* (2019) 36 Cal.App.5th 111, 121 [Petition for review granted[8]], citing *People v. Harris*, *supra*, 145 Cal.App.4th at p. 1463 and *People v. Coronado* (1995) 12 Cal.4th 145, 151.) "When a word is not defined by statute, we normally construe it in accord with its ordinary or natural meaning." (See *Perrin v. United States* (1979) 444 U.S. 37, 42 [words not defined in statute should be given ordinary or common meaning]. Accord, post, at 242 ["In the search for statutory meaning, we give nontechnical words and phrases their ordinary meaning."] (*Smith v. U.S.* (1993) 508 U.S. 223, 228-229.)

In the U.S. Supreme Court decision, *Smith v. United States*, *supra*, the Court considered whether a defendant who offered to barter a gun for drugs had "used" the gun in the course of the drug purchase under a statutory penalty-enhancement provision. Writing for the majority, in

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[8] See Cal. Rules of Court 8.1105 and 8.1115.

applying rules of statutory construction, Justice O'Connor, used common sense and based her construction of "use" on definitions from two dictionaries. Justice O'Connor concluded that her reading of the statute was the most "reasonable" ordinary meaning because it fit the definition in her chosen dictionaries. This U.S. Supreme Court decision provides guidance for giving the statutory meaning to the words, *solicited*, *aided*, *abetted* or *consented* as used in Penal Code section 187(b)(3).

As noted above, Penal Code section 187(b)(3) reads as follows: "The act was solicited, aided, abetted, or consented to by the mother of the fetus." The statute's plain language connotes a female who solicits, aids or abets a *third person* to facilitate the death of her fetus. Petitioner, however, contorts Penal Code section 187(b)(3) by incorrectly interpreting that the pregnant female can solicit, aid, abet or consent to *herself* in facilitating the death of her fetus.

The operative words in Penal Code section (b)(3) are *solicited*, *aided*, *abetted* or *consented to*, which have always been words to grant approval to or obtain assistance from another person and NOT oneself. These words are modified by the phrase "by the mother of the fetus." Webster's defines "solicit" as "1a: to make petition to: ENTREAT b. to approach with a request or plea 2: to urge (as one's cause) strongly 3a: to entice or lure especially into evil b: to proposition (someone) especially as or in the character of a prostitute 4: to try to obtain by usually urgent requests or pleas solicited donations." (Webster's 10th Collegiate Dict. (1993) p. 1118, col. 2.) Each of the contextual definitions of "solicit" contemplates two or more people involved — the solicitant and recipient(s) of the solicitation. It strains credulity to adopt Petitioner's argument that the "mother of the fetus" solicited *herself*. Given that Penal Code section (b) (3) is disjunctive we must examine the definition of "aided."

Webster's defines "aid" as "2 a: the act of helping b: help given: ASSISTANCE : *specif* : tangible means of assistance (as money or supplies) 3 a: an assisting person or group — compare AIDE b: something by which assistance is given: an assisting device." (Webster's 10th Collegiate Dict. (1993) p. 24, col. 2.) The contexts set forth in Webster's definition do not contemplate a person "aiding" oneself without someone else providing assistance — tangible or otherwise. Nor can Petitioner find support in Webster's definition of "abet."

Webster's defines "abet" as "1: to actively second and encourage (as an activity or plan): FORWARD 2: to assist or support in the achievement of a purpose <*abetted* the thief in his getaway>." (Webster's 10th Collegiate Dict. (1993) p. 2, col. 2.) Here gain, Webster's does not define *abetting* oneself, in any context.

Finally, Petitioner can find no support in Webster's definition of "consent." Webster's defines "consent" as "1: compliance in or approval of what is done or proposed by another: ACQUIESCENCE <he shall have power, by and with the advice and ~ of the Senate to make treaties — *U.S. Constitution*> 2: agreement as to action or opinion." (Webster's 10th Collegiate Dict. (1993) p. 246, col. 1.) Consenting to oneself is illogical and contorts the meaning of the word "consent" as applied in Penal Code section 187(b)(3) and in the entire history of the English language.

Nevertheless, Petitioner contorts the ordinary or common meaning of the operative words in Penal Code section (b)(3) *solicited*, *aided*, *abetted* or *consented to* as defined by Webster's. Petitioner cannot rely on any context employed by Webster's as support for her argument that she *solicited*, *aided*, *abetted* or *consented to* herself. Additionally, Petitioner and any other amicus curiae cannot cite any legal authority to support their contorted and illogical definition of these words.

Consequently, Penal Code section 187(a) applies given that the Petitioner gave birth to a full-term viable fetus, Zachariah, in his thirty-sixth week.

B. Penal code section 187(a) applies to a person whose child dies as a result of her drug use during pregnancy.

Petitioner's arguments render Penal Code sections 187(a) and 187(b)(3) inapposite for all purposes. Under Petitioner's tortured interpretation, Penal Code section 187(a) can never apply, under any circumstance, to a pregnant female because the Petitioner believes a pregnant female can solicit, aid, abet or consent to *herself* and can do whatever she wants to her fetus even if her conduct does not comport with an exclusion listed in Penal Code section 187(b)(3). Applying Petitioner's arguments, there is no need for Penal Code section 187(b)(3) in its entirety or section 187(a). Petitioner's irrational logic completely undermines and eviscerates the Legislature's inclusion of Penal Code section 187(b)(3). Petitioner's arguments render Penal Code section 187(b)(3) superfluous.

Penal Code section 187(b)(3) does not carve out an exception for a pregnant woman who stabs herself in the stomach and kills her viable fetus or, in this case, chooses to carry the child full term, and chooses to use toxic quantities of methamphetamine throughout her pregnancy and shortly before birth with full knowledge of the devastating effects of methamphetamine use during pregnancy given her past childbirths gives birth to a stillborn child. According to Petitioner, she may legally kill her fetus without the need for *any* of the exceptions set forth in (b)(3).

Consequently, if the father of a fetus injected lethal and toxic levels of drugs into a pregnant woman or drove while intoxicated and killed his fetus, he certainly is subject to prosecution pursuant to Penal Code section 187.

Under Petitioner's theory, Penal Code section 187(b)(3) exempts a pregnant person who stabs herself in the stomach or drives a vehicle while intoxicated and kills her full-term viable fetus. Petitioner's alleges she can choose to use toxic quantities of illegal methamphetamine throughout her pregnancy and shortly before birth with full knowledge of the deleterious consequences of harming or killing her fetus unencumbered by any California law, regardless of the rights conferred upon a viable full term fetus.

Petitioner never sought, intended, or desired to abort her child, which is precisely why she named the child, Zachariah. Consequently, she and she alone caused Zachariah Joseph Campos' death by ingesting toxic quantities of methamphetamine during her pregnancy with notice and knowledge of the deleterious consequences to her fetus and nearly newborn child, knowing two of her prior children were born with methamphetamine in their systems.

Petitioner alleges in footnote 4 of her Petition: "[c]ertainly, Ms. Becker acknowledges and continues to mourn the loss." Notably the Petition is completely bereft of a declaration by Petitioner attesting to this claim. Bear in mind her mother told Hanford Police Department Officer, "I didn't even see a tear fall from her eye, not one." (HPD, p. 7.) In a videotaped jail visit on August 1, 2020, Petitioner told her visitor, ""If I catch a break and I get out from this, fucking, I'm not gonna be, I mean, even if I do get high or whatever like I'm not going to have my kids with me like that you know what I mean." Apparently, this is how Petitioner chooses to mourn the loss of Zachariah. (HPD Supplement 10.)

Nevertheless, the People have faith Petitioner will manufacture facts to support their claim Petitioner mourns the loss of Zachariah in their Reply.

C. The trial court correctly interpreted that Penal Code subsections (b)(1), (b)(2) and (b)(3) are intended to be read in connection with each other and are limited to a woman seeking an abortion.

Petitioner argues subsections (b)(1), (b)(2) and (b)(3) *do not* limit a woman's behavior to obtain an abortion. In its ruling on Petitioner's Demurrer and Motion to Dismiss, the court interpreted subsection (b)(1) as protecting a woman from obtaining a lawful abortion under the Therapeutic Abortion Act. As for subsection (b)(2) the court concluded this subsection protects the doctors who perform the procedure if they have certification as a doctor or surgeon. With respect to subsection (b)(3), the court opined:

> "And (b)(3) appears to me to be there to protect the medical personnel who assist the doctor during the course of that procedure who themselves are not doctors, and do not hold surgeon certificates such as nurses and the such.
>
> So reading it it appears to me that the exception under the B section of Penal Code Section 187 is designed to protect the therapeutic abortion that is sought, which is a constitutional right under Roe v. Wade and Planned Parenthood versus Kacee [*sic*]. Nowhere in the statute does it say that the statute does not apply to the mother of a fetus. Which if that was the intent of the legislature, they could have easily done so." (Reporter's Transcript of Demurrer, June 4, 2020, 20:17-21:2.)

In her attempt to square her actions with subsection (b)(3), Petitioner poses the exceedingly strained argument that a woman can consent to *herself*, aid *herself*, abet *herself* or solicit *herself* to do whatever she wants to her fetus without any consequences. Fortunately, the court found her argument runs counter to the plain language of the statute and the context of how the three subsections compliment each other.

The court also found significant the fact that language completely prohibiting the prosecution of any woman with respect to her unborn child "is completely absent from the California statute." (Reporter's Transcript of Demurrer, June 4, 2020, 21:8-12.) Examining the statute's plain

language led the court to conclude: "[I] don't read it [the statute] that it excludes the mother in all circumstances. It looks to me like it excludes the mother if she sought and retained a therapeutic abortion." (Reporter's Transcript of Demurrer, June 4, 2020, 21:19-27.)

III. PETITIONER'S RIGHT TO PRIVACY IS NOT ABSOLUTE AND CALIFORNIA HAS A LEGITIMATE INTEREST IN PROTECTING THE POTENTIAL LIFE OF A FETUS.

The United States Supreme Court recognized a woman's qualified right of personal privacy is not unqualified when it ruled, "The privacy right involved, therefore, cannot be said to be absolute. In fact, it is not clear to us that the claim asserted by some amici that one has an unlimited right to do with one's body as one pleases bears a close relationship to the right of privacy previously articulated in the Court's decisions. The Court has refused to recognize an unlimited right of this kind in the past." *Jacobson v. Massachusetts*, 197 U.S. 11, 25 S.Ct. 358, 49 L.Ed. 643 (1905) (vaccination); *Buck v. Bell*, 274 U.S. 200, 47 S.Ct. 584, 71 L.Ed. 1000 (1927) (sterilization). We, therefore, conclude that the right of personal privacy includes the abortion decision, but that this right is not unqualified and must be considered against important state interests in regulation." (*Roe v. Wade* (1973) 410 U.S. 113, 153–54, 93 S. Ct. 705, 727, 35 L. Ed. 2d 147 (1973), holding modified by *Planned Parenthood of Se. Pennsylvania v. Casey* (1992) 505 U.S. 833, 112 S. Ct. 2791, 120 L. Ed. 2d 674.)

In *People v. Davis*, *supra*, 7 Cal. 4th at p. 807, the California Supreme Court recognized that "when the state's interest in protecting the life of a developing fetus is not counterbalanced against a mother's privacy right to an abortion, or other equivalent interest, the state's interest should prevail." Petitioner's argument that she has constitutional protections from

carrying her child full term while she ingested toxic amounts of methamphetamine after having had three prior pregnancies where she used methamphetamine during the gestational period runs afoul of the state's interest in protecting the life and health of her fetus. The court should not cloak Petitioner with a veil of constitutional protection under these facts. Petitioner never chose to have a lawful abortion but made the self-centered and reckless decision to ingest toxic and lethal amounts of methamphetamine among other harmful substances such as alcohol during her pregnancy as evidenced by her fetus/child dying from acute methamphetamine toxicity with full notice and knowledge of its potential consequences. Federal and California State law confers rights to a fetus and this Court should not allow Petitioner to trample those rights.

IV. OTHER JURISDICTIONS THAT PROSECUTE PREGNANT PEOPLE WHO KILL THEIR FETUSES RECOGNIZE THE NEED FOR CONSEQUENCES FOR USING DRUGS DURING ONE'S PREGNANCY.

Petitioner raises the same arguments as those in *Whitner v. South Carolina* (1977) 492 S.E.2d 777, 786, where the court upheld the conviction of a pregnant drug user. The court recognized that, "It strains belief for Whitner to argue that using crack cocaine during pregnancy is encompassed within the constitutionally recognized right of privacy. Use of crack cocaine is illegal, period. No one here argues that laws criminalizing the use of crack cocaine are themselves unconstitutional. If the State wishes to impose additional criminal penalties on pregnant women who engage in this already illegal conduct because of the effect the conduct has on the viable fetus, it may do so. We do not see how the fact of pregnancy elevates the use of crack cocaine to the lofty status of a fundamental right."

Similarly, in *State v. McKnight* (2003) 576 S.E.2d 173; 352 S.C. 635, a South Carolina jury convicted Regina McKnight of homicide by

child abuse for the stillborn birth of her child by using crack cocaine during her pregnancy and the South Carolina Supreme Court upheld the mother's homicide conviction. The Supreme Court of South Carolina held: The: (1) issue of whether cocaine caused the stillbirth of defendant's child was for the jury; (2) issue of whether defendant had the requisite criminal intent was for the jury; (3) defendant was on notice that her conduct in ingesting cocaine while pregnant was proscribed, and thus, prosecution did not violate due process; (4) prosecution did not violate defendant's right to privacy; (5) sentence of 20 years in prison was not cruel and unusual punishment; and (6) urine sample taken from defendant in the hospital did not violate her Fourth Amendment rights. (*Id.*) The United States Supreme Court declined to review the South Carolina Supreme Court's decision. (Certiorari Denied Oct. 6, 2003).

V. PROSECUTING PETITIONER FOR THE MURDER OF HER FETUS DOES NOT DENY PETITIONER ANY OF HER SUBSTANTIAL RIGHTS.

Petitioner argued in her nonstatutory motion to dismiss and in portions of her Renewed Habeas Petition that: (a) she did not receive fair notice the conduct was a crime; (b) prosecuting her for fetal murder infringes on her privacy right; and (c) prosecution would constitute ex post facto punishment. That is not the case.

A. Penal code section 187 gives petitioner fair notice that ingesting methamphetamine during pregnancy is proscribed.

The Due Process Clause prohibits the government from taking one's life, liberty or property under a criminal law so vague that it fails to give an ordinary person fair notice of the conduct that law punishes, "invite[ing] arbitrary enforcement." (*Johnson v. United States* (2015) 135 S. Ct. 2551, 2553.) Clearly, Petitioner had fair notice that she endangered the life and

health of her child as evidenced by the fact that she had prior children born with methamphetamine in their systems and her full-term fetus, Zachariah, died as a result of Acute Methamphetamine Toxicity. In this case, Petitioner used methamphetamine throughout her pregnancy and twenty-four hours prior to giving birth. (HPD, pp. 6-7, 9.) Petitioner gave birth to a child on October 8, 2015 where Petitioner tested positive for methamphetamine. The police report denotes the Registered Nurse told the Kings County Social Worker that Petitioner's child did not have good muscle tone and Petitioner received poor prenatal care given only three medical visits during the last three months of her pregnancy. Most importantly, there were concerns the child exhibited symptoms of withdrawal from drugs. (HPD, pp. 15-16.) This is yet another example of Petitioner's intentional, blatant misstatements concerning the harmful effects of Petitioner's methamphetamine use during her pregnancies, especially during the late stages, on her babies. To claim they were "healthy" and that "Petitioner contests causation [of Petitioner's methamphetamine use] as a matter of science in this case" insults the intelligence of the Court and completely misstates the facts and the science.

The murder statute expressly includes a fetus with the only exceptions relating to *medical abortions*. Thus, Petitioner cannot claim she lacked fair notice that her conduct constituted fetal murder.

B. Prosecution does not burden Petitioner's right to privacy.

The United States Constitution protects women from certain measures that penalize them for choosing to carry their pregnancies to term. (*Cleveland Bd. Of Educ. v. LaFleur* (1974) 414 U.S. 632, 639-640 [striking down a mandatory maternity leave policy].) However, Petitioner misapprehends the fundamentally different nature of her own interests and those of the government as compared to cases such as *LaFleur*, *supra*. The

United States Supreme Court has repeatedly held that states have a compelling interest in the life of a fetus. (See e.g. *Roe v. Wade*, *supra*, at pp. 150, 163-164.) [State regulation protective of fetal life after viability thus has both logical and biological justifications]; *Planned Parenthood v. Casey* (1992) 505 U.S. 833, 846 ["It must be stated at the outset and with clarity that *Roe*'s essential holding, the holding we reaffirm, has three parts. First is a recognition of the right of the woman to choose to have an abortion before viability and to obtain it without undue interference from the State. Before viability, the State's interests are not strong enough to support a prohibition of abortion or the imposition of a substantial obstacle to the woman's effective right to elect the procedure. Second is a confirmation of the State's power to restrict abortions after fetal viability, if the law contains exceptions for pregnancies, which endanger the woman's life or health. And third is the principle that the State has legitimate interests from the outset of the pregnancy in protecting the health of the woman and the life of the fetus that may become a child. These principles do not contradict one another; and we adhere to each."]

Prosecuting the Petitioner under Penal Code section 187 would not impede her right to carry her child to term. The burden placed on a pregnant drug user potentially facing a fetal murder charge is *not* the burden to get an abortion; but rather, it is a burden to stop using illegal drugs after she has *already* exercised her constitutional decision not to have an abortion. Once Petitioner made the choice to have the baby, Zachariah, she must accept the consequences of that choice, which include duties and obligations to that child. There is simply no reason to treat a child in utero any different than a child ex utero where the mother decided not to abort the fetus and the legal period allowed for an abortion has passed. (*Fetal Rights and the Prosecution of Women for Using Drugs During Pregnancy*, 48 Drake L. Rev. 741, 762-763.)

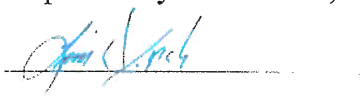
Methamphetamine use is illegal. The law simply imposes the criminal penalties on pregnant people who engage in this *already illegal conduct* because of the effect the conduct has on the viable fetus. No evidence exists that it had a chilling effect on her illegal conduct since the Petitioner enjoyed the exact same freedom to use methamphetamine during her pregnancy as she enjoyed before her pregnancy. Consequently, prosecuting the Petitioner for fetal murder does not restrict Petitioner's freedom in any way that was not already restricted (i.e. illegal drug use), and imposing the criminal statute when a pregnant woman with a viable fetus engages in the already proscribed behavior does not burden a woman's privacy rights. Rather, the statute simply recognizes that a third party (the viable fetus) is harmed by the behavior.

CONCLUSION

WHEREFORE, the People respectfully request that this Court deny the Petition and absent a resolution, this matter should proceed to trial before a jury of Petitioner's peers within the community.

DATED: November 10, 2020

Respectfully submitted,



Louis D. Torch
Assistant District Attorney

VERIFICATION

I, Louis D. Torch, am the Assistant District Attorney with the County of Kings and assigned to the above titled matter. I am duly authorized to practice law in all courts of the State of California. I am familiar with the pleadings, motions, and records of the proceedings in this case. All of the facts alleged in the above document are true based upon my reading of the official court records and transcripts.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge and recollection.

Dated November 10, 2020 at Hanford, CA

LOUIS D. TORCH
Assistant District Attorney

CERTIFICATE OF RULE 8.204(c)(1) COMPLIANCE

Case: In Re Chelsea Becker, Petitioner, On Habeas Corpus

Fifth Appellate District Case No.: F081362

Kings County Superior Court Case No.: 19CM-5304

I certify pursuant to California Rule of Court 8.204(c)(1), that I used Microsoft Word's word counting feature and the People's Informal Response to Renewed Petition for Writ of Habeas Corpus contains 8,397 words, excluding the tables, this certificate, and any attachment permitted under rule 8.486(b)(1).

Dated: November 10, 2020

LOUIS D. TORCH
Assistant District Attorney

CERTIFICATION OF SERVICE

031-0124901 / S265210

PROOF OF SERVICE - - 1013 C.C.P.

STATE OF CALIFORNIA, COUNTY OF KINGS

I am employed in the County of Kings; I am over the age of eighteen years and not a party to the within above-entitled action; my business address is: Office of the District Attorney, Kings County Government Center, 1400 W. Lacey Blvd., Hanford, California 93230; I am readily familiar with the County of Kings' practice for collection and processing of correspondence for mailing with the United States Postal Service.

On 11/10/2020 I served the within **Real Party in Interest, the People's Answer to Petition for Review** on the parties in said action by following the ordinary business practices of the County of Kings District Attorney's Office as follows:

JACQUELINE GOODMAN
ATTORNEY AT LAW
3712 N. Harbor Blvd.
Fullerton, CA92832

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SAMANTHA LEE
NATIONAL ADVOCATES FOR PREGNANT WOMEN
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New York, New York 10018

MICHAEL FERRELL
SENIOR ASSISTANT ATTORNEY GENERAL
P.O. Box 944255
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☒ **(BY MAIL)** I am "readily familiar" with the County of Kings' practice of collection and processing correspondence for mailing with the United States Postal Service.

☐ **(BY FEDERAL EXPRESS)** I caused such envelope, with overnight delivery fees paid, to be deposited in a box regularly maintained by Federal Express service carrier at Hanford, California.

☐ **(BY CERTIFIED MAIL)** I caused such envelope, with postage thereon fully prepaid, to be placed in the United States Mail at Hanford, California.

☐ **(BY PERSONAL SERVICE)** I caused such envelope to be delivered by hand to the offices of the addressee(s).

☐ **(BY DEFENSE ATTORNEY DISCOVERY BOX at the District Attorney's Office)** I am "readily familiar" with the District Attorney's practice of outgoing processing of correspondence.

☐ **(BY DEFENSE ATTORNEY PERSONAL EMAIL ADDRESS)** I caused such document to be sent, via email transmission, to the following email address: Enter Email Address (if applicable)

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 10, 2020 at Hanford, California.

Aria Hernandez
Legal Clerk

EXHIBIT A

KEITH L. FAGUNDES
District Attorney, County of Kings
Louis D. Torch, SBN 192506
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Attorney for Real Party in Interest

IN THE SUPREME COURT OF CALIFORNIA

CHELSEA BECKER, Petitioner v. SUPERIOR COURT OF KINGS COUNTY, Respondent; THE PEOPLE Real Party in Interest	Supreme Court No: Court of Appeal No: F081362 Kings County Super. Ct. No: 19CM-5304 DECLARATION OF DANIEL TOLBERT IN SUPPORT OF THE REAL PARTY OF INTEREST, THE PEOPLE'S ANSWER TO PETITION FOR REVIEW

I, Daniel Tolbert, declare and state as follows:

1. I am a Lieutenant with the Kings County Sheriff's Office, Detentions Division.
2. I have personal knowledge of the following facts and if called to testify as a witness at this hearing, I can and will competently testify thereto.
3. When any person is brought to the Kings County Jail for any reason they are screened for COVID-19 symptoms and automatically placed in isolation for a minimum of ten days, preferably fourteen days.
4. Only in a case of overcrowding would an inmate be released from isolation and only if asymptomatic and documented by medical staff. During the initial isolation period each inmate

has their temperature taken twice a day and they are closely monitored for symptoms. After the initial fourteen-day isolation period the inmate is moved to general population housing provided they have no symptoms and have tested negative for COVID-19.

5. As of November 4, 2020, only *two* inmates have tested positive for COVID-19. Both inmates developed symptoms during isolation.

6. One of the inmates who tested positive for COVID-19 entered the jail after being remanded to custody in court. She was screened per the Kings County Jail medical protocol and found to have symptoms and was further tested while in isolation. This inmate remains in isolation.

7. If an inmate were to test positive for COVID-19, the Kings County Jail personnel would immediately isolate the inmate in a negative air flow cell pending results. The inmate is monitored twice daily and given temperature checks and symptom screening.

8. The Kings County Jail implemented these protocols in the beginning stages of the COVID-19 outbreak with a different medical provider but changed to WellPath as the medical provider a few months ago.

9. Chelsea Becker was isolated upon being booked at the jail but her isolation was extended due to her recent pregnancy. The Kings County Jail granted her request on December 31, 2019 to be housed with another female inmate.

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We then granted her request on July 19, 2020 to be housed with a different female inmate. On July 16, 2020, the jail granted her request to be placed in general population housing.

Executed on November 6, 2020 at Hanford, California.

Respectfully submitted,

Daniel Tolbert
Lieutenant Kings County
Sheriff's Office, Detentions
Division