ALAMEDA COUNTY
PUBLIC DEFENDERS

BRENDON WOODS
Public Defender
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February 6, 2025

Supreme Court of California
350 McAllister Street
San Francisco, CA 94102-4797

VIA TRUEFILING

**RE: Amicus Letter of ACLU of Northern California,
Alameda County Public Defender,
Contra Costa Public Defender Office,
Orange County Public Defender's Office,
Law Offices of the Public Defender of
San Bernardino County,
San Francisco Public Defender's Office,
County of Santa Clara Public Defender's Office,
Santa Cruz County Office of the Public Defender,
and
Stanislaus County Public Defender**

In Support of Petition for Review in *In re De'Jhaun Jones,* No. D085045; San Diego Superior Court No. CN458752

To the Honorable Chief Justice Guerrero and Honorable Associate Justices of the California Supreme Court:

The above-listed Amici submit this letter in support of the petition for review in this case pursuant to Rule of Court 8.500(g). The trial court's bail ruling in the case of De'Jhaun Jones exemplifies the confusion with—and unconstitutional application of—this Court's precedent on pretrial detention. Mr. Jones, a 20-year-old young man with no prior criminal history, was detained on intentionally unaffordable money bail of $300,000 without any findings required under article I, section 12 of the California Constitution.

Mr. Jones was charged in relation to a tragic car accident which killed Mr. Jones' only passenger—who was also his best friend and cousin. No other vehicle was involved in the accident. Mr. Jones asked the court to release him on conditions including GPS and SCRAM ankle monitoring[1], alcohol treatment, an order not to drive and a curfew. A dozen community and family members wrote letters in support of Mr. Jones' release, most of whom appeared in court at the bail hearing. This included Mr. Jones' father, a Marine veteran, and several members of the decedent's family. Additionally, in Mr. Jones' second petition to the superior court to release him, he provided a specific amount of cash bail that his family and friends would be able to afford—$50,000. Instead, at the District Attorney's request, the trial court entered and later reaffirmed a "de facto" detention order of unaffordable $300,000 money bail. Eventually, after the Court of Appeal ordered briefing in his habeas petition, the District Attorney consented to release.[2]

Despite the *Humphrey* decision's reaffirmation of the constitutional presumption of pretrial liberty, trial courts continue to disregard these protections. As illustrated in Jones's case, courts often impose unaffordable money bail to circumvent the specific findings required to detain a person pretrial. This practice undermines the core principles

1 A SCRAM a device tests alcohol through the skin every 30 minutes and sends alerts to a base station.

2 The reasons for this change in prosecutorial position are not clear from the record, but, in amici's experience, this is not uncommon. Relatedly, we often see prosecutors oppose pretrial release but simultaneously offer the defendant a "credit for time served" deal if he pleads guilty.

of article I, section 12, and perpetuates inequities that disproportionately harm indigent Black and Brown defendants. Mr. Jones is a Black man.[3]

Despite this Court's repeated efforts to ensure that Californians can vindicate their constitutional right to pretrial liberty, trial courts have not listened. Instead, while advocating for defendants around the state, Amici routinely witness courts detain defendants by circumventing this Court's instructions to safeguard the fundamental right of an accused to pretrial liberty.

This Court should grant the petition and hear this case alongside *In re Kowalczyk on Habeas Corpus,* No. S277910. While *Kowalczyk* raises questions about no-bail detention orders, *Jones* presents the complementary issue of whether trial courts can impose an *unaffordable money bail order.* This case squarely provides an opportunity for this Court to decide whether a superior court can impose financial conditions to prevent release where there is no valid basis to detain under section 12 of the California Constitution. *(In re Humphrey* (2021), 11 Cal. 5th 135, 154.) Together, these cases provide an opportunity for this Court to clarify the constitutional limits on pretrial detention and unaffordable money bail.

ISSUE PRESENTED

3 According to the Pretrial Detention Reform Workgroup's October 2017 report, available at https://courts.ca.gov/sites/default/files/courts/default/2024-08/pdrreport-20171023.pdf : "Research indicates that African American and Hispanic defendants are more likely to be detained pretrial than are white defendants and less likely to be able to post money bail as a condition of release."

May courts use intentionally unaffordable bail to bypass the right to release on bail guaranteed by Article 1 Section 12 of the California Constitution?

INTERESTS OF AMICI

The ACLU of Northern California ("ACLU NorCal") is an affiliate of the national ACLU, a nationwide nonprofit, nonpartisan organization with approximately two million members dedicated to preserving and protecting the principles of liberty and equality embodied in the state and federal Constitutions and related statutes. ACLU NorCal has over 100,000 total members. As a legal organization and on behalf of its members, ACLU NorCal has an abiding interest and expertise in freedom from unnecessary confinement, the presumption of innocence, criminal due process, and the right to bail in particular. In the bail context, ACLU NorCal has appeared as amicus to uphold the rights enshrined in Article I, section 12 of the California Constitution, including *In re Humphrey* (2021) 11 Cal.5th 135. ACLU NorCal has also been active in shaping legislation on bail at the state level. More generally, ACLU NorCal frequently litigates matters of State and Federal due process in the courts of California in an effort to ensure robust protection of the fundamental liberty interest in freedom from confinement.

With a population of 1.67 million, Alameda County is the seventh most populous county in the state. The Alameda County Public Defender represents thousands of clients annually and provides representation in more than 90% of the criminal case filings in Alameda County. Most of those cases begin with a bail hearing. Decisions in these bail hearings, even post-*Humphrey*, are far from uniform. As a result, the kind of bail hearing

an individual gets depends largely upon the judge they draw. This creates unfair disparities and many clients languish in custody for offenses that are outside of article 1, section 12's strict limits on a court's ability to order pretrial detention. Many clients are de facto detained on unaffordable bail. As such, the Alameda County Public Defenders and their clients have a strong interest in seeing this Court resolve the issues in this matter.

The Contra Costa Public Defender Office represents thousands of indigent defendants each year, many of whom are similarly situated to Mr. Jones. The Public Defender is familiar with the briefing and issues in this case and seeks to participate in this matter to assist the Court in resolving the critical issues at stake.

The Orange County Public Defender's Office is a public agency charged with the legal representation of indigent criminal defendants in California's second most populous county. The Office consists of approximately 200 attorneys dedicated to the vigorous and competent representation of criminal defendants in the Superior Court, Court of Appeal, and California Supreme Court. The Orange County Public Defender's Office has an interest in this matter because the outcome will likely affect a large number of criminal cases in Orange County.

The Law Offices of the Public Defender of San Bernardino County is a county department that is appointed to represent criminal or civil commitment defendants who cannot afford to hire an attorney. We defend the rights and dignity of our clients to ensure equitable access to justice through holistic representation while reunifying families and communities. In representing our clients and in participating as Amicus in

the California courts, the Public Defender seeks to protect constitutional rights—like those enshrined in section 12—from overreaching and unlawful infringements.

The San Francisco Public Defender's Office represents over 20,000 indigent persons charged with crimes annually, many of whom are subject to pretrial custody and apply for release from detention on a daily basis. This Court's landmark *Humphrey* decision on pretrial detention originated in San Francisco, and the San Francisco Public Defender's Office, in conjunction with Humphrey's appellate counsel at the time, Civil Rights Corps, litigated the case up to this Court. As such, the San Francisco Public Defender's Office has a strong stake and interest in the Court clarifying the constitutional parameters of pretrial detention.

The County of Santa Clara Public Defender's Office represents clients charged with criminal offenses, Probate and LPS matters, as well as juveniles charged with criminal conduct in juvenile justice court. The Office is a public law firm of expert criminal lawyers who serve clients in a holistic and client-centered fashion. The Office's interest in this matter is in ensuring that its clients' fundamental constitutional rights are safeguarded in the pretrial bail process.

The Santa Cruz County Office of the Public Defender is established pursuant to Government Code sections 27700 to 27712 to provide legal representation to people charged with crimes or facing involuntary commitment in Santa Cruz County. Heather Rogers is the Public Defender of Santa Cruz County. Each year, the Public Defender represents people in over 6,000 cases including misdemeanors and felonies. The Public Defender is well-versed on all issues relating to California's criminal legal system.

The Stanislaus County Public Defender is an integral part of the criminal justice system providing vigorous representation to indigents accused of crimes. The Public Defender's duties are mandated by the Constitution of the United States, the Constitution of the State of California, and by statutes enacted by the California Legislature. The services provided by the office help assure the orderly administration of justice within our community and protect the liberty of those accused of crime as well as those who might someday find themselves accused. The Stanislaus County Public Defender aims to ensure that the right to counsel is enforced on behalf of those who cannot afford to retain counsel and other necessary defense services. Our mission statement is to defend the rights and dignity of our clients and to ensure equitable access to justice. The Office represents thousands of defendants in the community every year. It is in defense of this population and their rights, and for the reasons set out in the following letter, that the Public Defender now urges the Court to provide relief to petitioner.

* * *

Amici expect that the presentation of this case would accurately capture the on-the-ground experience of bail adjudications in California, because Amici share that experience with Civil Rights Corps—who litigated *Humphrey* and last year obtained a landmark preliminary injunction concerning bail in Los Angeles County. *Urquidi v. City of Los Angeles*, No. 22STCP04044, 2023 WL 10677687 (Cal. Super. Ct. May 16, 2023). Together with several of the Amici, CRC has established a partnership of CRC attorneys, California public defenders, and private attorneys offering pro bono services to indigent defendants. CRC and these partners challenge bail rulings that violate section 12 one-by-

one, while waiting for and urging an answer from this Court on the question of unaffordable bail.

ARGUMENT

I. The State of Affairs Described by Petitioner Reflects the Unfortunate Reality Witnessed by Amici on the Ground.

By canvassing recent cases and studies, the petition demonstrates that California trial courts pervasively continue to detain criminal defendants in violation of their constitutional right to pretrial liberty. (Pet. 20-22). As Petitioner put it, "*Humphrey* has not put an end to this crisis." (Pet. 20, discussing *In re Humphrey* (2021) 11 Cal.5th 135.)

Based on Amici's experience advocating for defendants inside and outside the courtroom, Petitioner is correct. Day after day, criminal defendants are detained on unaffordable bail with little or no attempt to heed *Humphrey* and the defendants' section 12 rights. Even when trial courts go through the *Humphrey* paces, they almost never make the additional section 12 findings required to deny bail. Nor did they do so here. (Pet. 15-16.) Many justify this failure by using unaffordable bail to achieve the same result as a section 12 no-bail order. Or they just ignore section 12 altogether, detaining defendants who have not been charged with a qualifying offense and are therefore categorically ineligible for detention.

In fact, in Alameda county, we saw a very similar case, J.A., 17-CR-023932, a young man who had suffered a traumatic brain injury during a tragic accident in which he allegedly drove under the influence and fatally killed his friends. He suffered a traumatic

brain injury, and after undergoing extensive medical treatment, was unable to take care of himself. He posed no danger to the public and could barely comprehend the proceedings.

Proceedings were suspended several times during J.A.'s case due to his incompetence to stand trial. (17-MH-023932-2.) His case took approximately six years to wind through the system. Nearly each time J.A. returned from the hospital, the judge released him from custody to the care of his mother. However, ultimately one judge refused to release him. Habeas petitions were unsuccessful. (A166186, A166187, A169705.) Ultimately, he was released to a conservatorship, but his case demonstrates that his freedom turned on the caprice of individual judges, as opposed to a judicial finding, by clear and convincing evidence, that his release would result in great bodily harm to others.

Trial courts also frequently fail to comply with the guardrails established to make sure their bail rulings protect defendants' constitutional rights. As demonstrated in *Jones,* courts often conduct no express weighing of the evidence on the record and offer no explanation why the evidence points clearly and convincingly in favor of detention. (See Pet. 14-15.) The trial courts may cite the defendant's record or the charged conduct but with rushed attention, like the trial court's conclusions about Mr. Jones's alleged case, noting only the facts of the offense and that the charges carried a potential prison sentence. (Pet. 11.) They do not mention the virtually universal failure to state the trial court's reasoning in writing, despite this Court's admonition that this is "the court's obligation" to satisfy "traditional notions of due process." (*Humphrey*, *supra*, 11 Cal.5th at p. 155.)

The fears that the Court expressed in *Humphrey* have come to pass: trial courts are systematically shirking their duty to make individualized findings, and just as this Court predicted, the result is often "careless or rote decisionmaking," frustration of appellate "review of the detention order" that yields frequent ping-ponging between the trial and appellate courts, and diminished "public confidence in the judicial process." (*Id.* at pp. 155-56.) Considering this inconsistency, researchers have proposed "codify[ing] a presumption of pretrial release in all cases."[4] But of course, such codification should be unnecessary; that presumption is already enshrined as a constitutional matter in section 12, and only the judicial process is to blame for the failure to achieve the Constitution's declaration of rights. This Court must intervene.

II. This Court Must Address the Constitutionality of Unaffordable Money Bail Used As A Workaround to Detention.

Humphrey did not address whether trial courts may intentionally use the arbitrary and blunt tool of unaffordable bail to effectuate detention without making the findings required by section 12. In the intervening years, it has become even clearer that this Court must now answer that issue, because it causes widespread, frequent constitutional deprivations, and because it simply does not achieve its purported goals.

Unaffordable bail is a much more widespread problem than outright detention, as Amici experience in daily efforts in California courtrooms to protect defendants' pretrial

4 "Editorial: California Still Violates the Constitution on Bail," *Los Angeles Times* (Nov. 29, 2022), https://perma.cc/WNG2-5Y6Y, citing Alicia Virani et al., *Coming up Short: The Unrealized Promise of In re Humphrey* (Oct. 2022), https://perma.cc/7SNS-9VDH.

liberty. (See Pet. 19 & n.5, citing Committee on Revision of the Penal Code, *Annual Report and Recommendations* 69 (2022), https://perma.cc/GK94-X3WZ.) Petitioner points out that in 2022, 85% of Los Angeles County detainees were held on unaffordable bail. (*Id.*) To make matters worse, according to the County's Chief Information Office, the 2020-2022 data also show that "[u]nsurprisingly, … high vulnerability groups are less likely to be granted pretrial release, and they are more likely to experience comparatively lengthy detention periods" even if ultimately released. (Fei Wu et al., *Los Angeles County Pretrial Data Center* (Jan. 29, 2024), https://perma.cc/4A9U-VRXQ.) Those include people experiencing severe mental illness or substance use disorder, as well as the chronically unhoused—groups that served mean detention lengths more than twice as long as the total pretrial population. (*Id.*; Fei Wu et al., *Reframing LA County Pretrial Data Analysis* (Apr. 24, 2024), https://perma.cc/2ZE3-8VCV.) In other words, the burdens of unconstitutional, unaffordable money bail fall disproportionately on the shoulders of the most vulnerable Californians.

This all takes place against the backdrop of an inescapable truth: money bail does not work. As multiple criminal-justice experts testified recently in a case about pretrial detention in Los Angeles County, numerous studies across the country demonstrate that money bail is not an effective tool for protecting public safety or ensuring future court appearances—indeed, it likely has the unfortunate effect of increasing recidivism. *Urquidi v. City of Los Angeles*, No. 22STCP04044, 2023 WL 10677687, at *12-20 (Cal. Super. Ct. May 16, 2023). One expert explained (1) that "[t]here is no empirical evidence that secured money bail is more effective than unsecured money bail or non-

monetary conditions at assuring public safety and law-abiding behavior" and (2) that "most empirical evidence shows that secured money bail is no more effective than unsecured money bail or non-monetary conditions of release at assuring court appearances." (*Id.* at *14.) Indeed, money bail "seems to be criminogenic" in that sustained pretrial detentions increase the likelihood that defendants will be charged with new crimes in the future. (*Id.* at *14.) The Superior Court in *Urquidi* adopted this view at the preliminary-injunction stage, finding that the plaintiffs were "likely to show" that money-bail orders "do not further" purported government interests like addressing public safety or risk of flight. (*Id.* at *23.)

III. This Case Presents Important Issues for the Court's Resolution.

Although the Court of Appeal in *Kowalczyk* discussed unaffordable bail, that mechanism was not used in that case or presented by the appeal. (*In re Kowalczyk* (2022) 85 Cal.App.5th 667, 688-89, *rev. granted*, 525 P.3d 263 (Cal. 2003).) Amici recognize that this Court's favored approach is to decide only the issues presented by the facts of the case before it. If this Court follows that approach—and decides only the first issue granted in *Kowalczyk*, the only issue actually presented by that record—the unaffordable bail split will persist. (See Pet. 22-23, citing *Kowalczyk*, *supra*, 85 Cal.App.5th at 686-92; *In re Brown* (2022) 76 Cal.App.5th 296.)

But this is not a circumstance in which the Court should make narrow incremental rulings or await further percolation of the existing split of authority in the trial and appellate courts. On a question concerning the most fundamental of constitutional rights, this Court should not condone a regime where Californians lose their liberty based on

their ability to pay and on the courthouse where they find themselves charged. It should instead squarely address the unaffordable bail issue here and now. In addition to *Kowalczyk*, the all too common facts of this case offer the Court that opportunity.

Mr. Jones' case demonstrates the confusion that pervades California trial courts, including the arbitrary, ineffective use of unaffordable bail to bypass section 12 and achieve unconstitutional detention. In setting bail at an unaffordable $300,000, the trial court here could just as well have imposed some other practically impossible condition, like detaining the defendant unless and until he could run a four-minute mile or memorize an encyclopedia. The unaffordable or unachievable condition is doing no independent work. Instead, in the end, it is violating the pretrial liberty right by effectuating a bail denial by circumvention. It is also an utterly irrational exercise in number-picking. What about the $300,000 bail amount in this case was formulated to ensure public safety or deter flight? Why not $500,000 or $750,000?

As for bail bonds, the for-profit bail-bond industry in California leaves families in sustained debt even after their cases are resolved, gouging them with interest and non-refundable fees.5 Indeed, "[m]ost people would not be able to pay even a low down-payment on the fee for a typical California bail bond without incurring significant debt. Subsequent payments ensure the debt endures." (Human Rights Watch, *supra*, at p. 70.)

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5 See Color of Change & American Civil Liberties Union, *$elling off Our Freedom: How Insurance Corporations Have Taken over Our Bail System* 34-43 (May 2017), https://perma.cc/YUR6-R39Q; Human Rights Watch, *"Not in It for Justice": How California's Pretrial Detention and Bail System Unfairly Punishes Poor People* 6, 29-31, 39-41, 70-86 (Apr. 11, 2017), https://perma.cc/9AER-RVWF.

At the very least, Mr. Jones was deprived of the meaningful, individualized consideration constitutionally mandated by section 12 before the Superior Court could deprive him of his liberty. The trial courts and California defendants need this Court to intervene and correct this faulty logic, and the *Jones* record provides the factual background and practical considerations necessary for that resolution.

CONCLUSION

Amici respectfully urge this Court to grant the petition, hear this case alongside *Kowalczyk*, and conclude that unaffordable money bail cannot be imposed without the findings required by article I, section 12 of the California Constitution.

February 6, 2025

Respectfully submitted,

/s/ Emi Young
Emi Young (SBN 311238)
Counsel for Amicus ACLU NorCal

/s/ Kathleen Guneratne
Kathleen Guneratne (SBN 250751)
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/s/ Heather Rogers
Heather Rogers (SBN 229519)
Public Defender of Santa Cruz County

/s/ Jennifer Jennison

Jennifer Jennison (SBN 192141)
Stanislaus County Public Defender

PROOF OF SERVICE

I am a citizen of the United States, over eighteen years old, and not a party to this action. My place of employment and business address is 1401 Lakeside Drive, Oakland, CA, 94612

On February 6, 2025, I caused to be served true copies of the within Amici Curiae Letter in Support of Petition for Review on the trial court and on the parties interested in this proceeding as follows:

Salil Duddani
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By Electronic service through TrueFiling: I caused this document to be e-filed through the Court of Appeal's TrueFiling service. I am designating that electronic copies be served through a link provided by email from TrueFiling to the attorneys who are registered with TrueFiling for this case.

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

Executed by me on February 6, 2025 at Oakland, California

/s/ Kathleen Guneratne
Kathleen Guneratne