

**FILED**  
Superior Court of California  
County of Los Angeles

**NOV 14 2022**

Sherri R. Carter, Executive Officer/Clerk of Court  
By C. Grijalva Deputy  
Cristina Grijalva

BRAD D. BRIAN (SBN 79001)  
brad.brian@mto.com  
ROHIT K. SINGLA (SBN 213057)  
rohit.singla@mto.com  
VICTORIA A. DEGTYAREVA (SBN #284199)  
Victoria.Degtyareva@mto.com  
MUNGER, TOLLES & OLSON LLP  
350 South Grand Avenue, Fiftieth Floor  
Los Angeles, California 90071-3426  
Telephone: (213) 683-9100  
Facsimile: (213) 687-3702

ALEC KARAKATSANIS\*  
alec@civilrightscorps.org  
SHIRLEY LAVARCO\*  
shirley@civilrightscorps.org  
CIVIL RIGHTS CORPS  
1601 Connecticut Avenue NW, Suite 800  
Washington, D.C. 20009

DAN STORMER (SBN 101967)  
dstormer@hadsellstormer.com  
BRIAN OLNEY (SBN 298089)  
bolney@hadsellstormer.com  
HADSELL STORMER RENICK & DAI LLP  
128 N. Fair Oaks Avenue  
Pasadena, California 91103  
Telephone: (626) 585-9600  
Facsimile: (626) 577-707

LESLIE A. BAILEY (SBN 232690)  
lbailey@publicjustice.net  
BRIAN HARDINGHAM (SBN 288773)  
bhardingham@publicjustice.net  
PUBLIC JUSTICE  
475 14<sup>th</sup> St., Ste. 610  
Oakland, CA 94612  
Telephone: (510) 622-8150

[Additional Counsel Listed on Last Page]

*Attorneys for Plaintiffs*

*\*Pro Hac Vice applications forthcoming*

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

Phillip Urquidi, Daniel Martinez, Susana  
Perez, Terilyn Goldson, Gerardo Campos, and  
Arthur Lopez, ~~on behalf of themselves and all  
other individuals~~, and Clergy and Laity  
United for Economic Justice ("CLUE"),  
Reverend Jennifer Gutierrez, Reverend Gary  
Williams, and Rabbi Aryeh Cohen,  
individually,

Plaintiffs,

vs.

Case No.

**22STCPO4044**

**EX PARTE APPLICATION FOR (1) A  
TEMPORARY RESTRAINING ORDER  
AND (2) AN ORDER TO SHOW CAUSE  
REGARDING PRELIMINARY  
INJUNCTION**

Hearing. Nov. 14

11/14/2022

1 City of Los Angeles, Los Angeles County, Los  
2 Angeles County Sheriff's Department, Sheriff  
3 Alex Villanueva, Los Angeles Police  
Department, and Chief Michel R. Moore,  
4 Defendants.

5 To Defendants City of Los Angeles, Los Angeles County, Los Angeles County Sheriff's  
6 Department, Sheriff Alex Villanueva, Los Angeles Police Department, and Chief Michel R.  
Moore (collectively, "Defendants"):

7 Please take notice that on November 14, 2022 at 8:30 a.m. or as soon thereafter as it can be  
8 heard by the Court, in Los Angeles Superior Court, located at 111 North Hill Street, Los Angeles,  
9 Plaintiffs Phillip Urquidi, Daniel Martinez, Susana Perez, Terilyn Goldson, Gerardo Campos,  
10 Arthur Lopez, (collectively the "Individual Plaintiffs"), Reverend Jennifer Gutierrez, Reverend  
11 Gary Williams, Rabbi Aryeh Cohen, and Clergy and Laity United for Economic Justice ("CLUE  
12 Justice") will and hereby do apply *ex parte* for the Court to (1) issue an order restraining  
13 Defendants from applying the Los Angeles County Bail Schedule for Infractions and  
14 Misdemeanors and/or the Los Angeles County Bail Schedule for Felonies to Plaintiffs and  
15 ordering Defendants to release the Individual Plaintiffs from custody on their own recognizance;  
16 (2) issue an OSC why a preliminary injunction should not issue enjoining Defendants from  
17 detaining any individuals who cannot afford to pay cash bail as a condition of pre-arraignment  
18 release; (3) issue an OSC why a preliminary injunction should not issue enjoining the use of  
19 taxpayer dollars to fund the enforcement of the bail schedule and the expenditure of forfeited bail  
20 funds collected pursuant to the unlawful bail schedule; and (4) set a hearing as soon as is  
21 convenient for the Court to hear the OSC.

22 Pursuant to Rules 3.1203 and 3.1204(a)(1) of the California Rules of Court, Plaintiffs gave  
23 Defendants notice of this *Ex Parte* Application on November 13, 2022, at 11:40 pm and requested  
24 that Defendants indicate whether they would oppose the requested relief. (Declaration of Tiana S.  
25 Baheri Regarding Notice to Defendants ("Baheri Notice Decl.") ¶ 2.) As of the time of this filing,  
26 Defendants have not responded to Plaintiffs' inquiry.

27 This Application is based upon the concurrently filed Verified Complaint; the Application  
28 itself; the attached Memorandum of Points and Authorities in support thereof; the Declaration of

1 Tiana S. Baheri Regarding Notice to Defendants; the Declaration of Tiana S. Baheri in Support of  
2 Ex Parte Application; the Declaration of Philip Urquidi; the Declaration of Daniel Martinez; the  
3 Declaration of Gerardo Campos; the Declaration of Arthur Lopez; the Declaration of Meredith  
4 Gallen; the Declaration of Garret Miller; the Declaration of Micah Clark Moody; the Declaration  
5 of Christine Scott-Hayward; all papers and pleadings on file herein; and such further evidence and  
6 argument as may be presented to the Court.

7 DATED: November 14, 2022

Respectfully Submitted,

8 MUNGER, TOLLES & OLSON  
9 HADSELL STORMER RENICK & DAI LLP  
10 SCHONBRUN SEPLOW HARRIS HOFFMAN &  
11 ZELDES  
12 CIVIL RIGHTS CORPS  
13 PUBLIC JUSTICE

14 By: 

15 BRADD D. BRIAN  
16 Attorneys for Plaintiffs  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

11/14/2022

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**TABLE OF CONTENTS**

	<b><u>Page</u></b>
I. INTRODUCTION.....	8
II. STATEMENT OF FACTS.....	9
A. The Individual Plaintiffs’ Cash-Based Detention .....	9
B. Defendants’ Cash-Based System of Detention .....	10
C. The Harms of Defendants’ Bail Schedules .....	12
1. Harms to Plaintiffs and Those Similarly Situated .....	12
2. Defendants’ Secured Money Bail Schedules Are Ineffective .....	13
D. The Efficacy of Less Restrictive Means .....	14
III. ARGUMENT .....	16
A. Legal Standard.....	16
B. Plaintiffs are Likely to Succeed on the Merits .....	16
1. Pre-Arrest Detention Under the Bail Schedule Must Satisfy Strict Scrutiny.....	16
2. The Bail Schedule Fails Strict Scrutiny .....	18
C. Plaintiffs Will Suffer Irreparable Harm Without a Court Order .....	20
D. The Harm to Plaintiffs Outweighs Any Potential Harm to Defendants .....	21
E. The Court Should Exercise Its Discretion to Waive the Bond.....	21
F. The Court Should Enjoin the Expenditure of Funds .....	22
IV. CONCLUSION .....	22

## TABLE OF AUTHORITIES

Page(s)

### FEDERAL CASES

<i>Awad v. Ziriox</i> (10th Cir. 2012) 670 F.3d 1111 .....	21
<i>Barker v. Wingo</i> (1972) 407 U.S. 514 .....	21
<i>Bearden v. Georgia</i> (1983) 461 U.S. 660 .....	17
<i>Buffin v. City &amp; County of San Francisco</i> (N.D. Cal. Mar. 4, 2019, No. 15-CV-04959-YGR) [2019 WL 1017537] .....	8, passim
<i>MDb.com Inc. v. Beccera</i> (9th Cir. 2020) 962 F.3d 1111 .....	19
<i>Lopez-Valenzuela v. Arpaio</i> (9th Cir. 2014) 770 F.3d 772 (en banc) .....	18
<i>Melendres v. Arpaio</i> (9th Cir. 2012) 695 F.3d 990 .....	21
<i>People of Los Angeles County Who Are Being Penally Confined in Pre-Trial Detention Because of and Dependent Upon Their Inability to Pay Bail v. Villanueva</i> (C.D.Cal., May 27, 2022, No. CV 22-2538-DMG (JEMx)) 2022 WL 2189647 .....	16
<i>Reem v. Hennessy</i> (N.D.Cal., Dec. 21, 2017, No. 17-cv-6628-CRB) 2017 WL 6539760 .....	13, 20
<i>Reno v. Flores</i> (1993) 507 U.S. 292 .....	18
<i>Welchen v. Bonta</i> (E.D. Cal. Sept. 22, 2022, No. 2:16-cv-00185-TLN-DB __ F. Supp. 3d __ [2022 WL 4387794] .....	8, 18, 19

### STATE CASES

<i>In re Antazo</i> (1970) 3 Cal.3d 100 .....	18
<i>In re Brown</i> (2022) 76 Cal.App.5th 296 .....	17

1	<i>Brown v. Merlo</i>	
2	(1973) 8 Cal.3d 855.....	19
3	<i>California Dui Lawyers Association v. California Department of Motor Vehicles</i>	
4	(2018) 20 Cal.App.5th 1247.....	22
5	<i>Cerletti v. Newsom</i>	
6	(2021) 71 Cal.App.5th 760.....	22
7	<i>Chico Feminist Women's Health Center v. Scully</i>	
8	(1989) 208 Cal.App.3d 230.....	16
9	<i>Cohen v. Board of Supervisors</i>	
10	(1985) 40 Cal.3d 277.....	16
11	<i>Hillman v. Britton</i>	
12	(1980) 111 Cal.App.3d 810.....	21
13	<i>In re Humphrey</i>	
14	(2021) 11 Cal.5th 135.....	8, passim
15	<i>People v. Olivas</i>	
16	(1976) 17 Cal.3d 236.....	18
17	<i>Serrano v. Priest</i>	
18	(1976) 18 Cal.3d 728.....	18
19	<i>Taking Offense v. State</i>	
20	(2021) 66 Cal.App.5th 696.....	19
21	<i>Van Atta v. Scott</i>	
22	(1980) 27 Cal.3d 424.....	17
23	<i>In re Webb</i>	
24	(2019) 7 Cal.5th 270.....	9
25	<i>In re White</i>	
26	(2020) 9 Cal.5th 455.....	9
27	<i>White v. Davis</i>	
28	(2003) 30 Cal.4th 528.....	22
	<b>STATE STATUTES</b>	
	Code Civ. Proc. § 526a.....	22
	Code Civ. Proc. § 529(a).....	21
	Code. Civ. Proc. § 995.240 .....	22

11/14/2022

1	Pen. Code § 1269 .....	13, 20
2	Pen. Code § 1278(a) .....	13, 20
3	Pen. Code § 1305(a) .....	13, 20
4	Penal Code § 1269b.....	10
5	Penal Code § 1307.....	22
6	<b>RULES - OTHER</b>	
7	Local Rule 8.3 .....	10
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

11/14/2022

1 **I. INTRODUCTION**

2 The California Supreme Court has held that “wealth-based detention”—which conditions  
3 pretrial liberty on an arrested individual’s access to cash, rather than on the necessity of detaining  
4 them—violates state and federal constitutional guarantees. (*In re Humphrey* (2021) 11 Cal.5th  
5 135, 155-57.) But Defendants have made a policy of releasing individuals based solely on their  
6 access to cash in violation of this clear and controlling precedent. In Los Angeles County, whether  
7 individuals are kept in jail before arraignment depends in many cases, if not most cases, on their  
8 ability to pay secured money bail. A countywide bail schedule sets the cash bail amount based on  
9 the offense charged, with a handful of possible enhancements for prior convictions or aggravating  
10 circumstances. The bail schedule does not consider whether the detainee can pay the amount  
11 listed, whether they are a flight risk or a danger to the community, or whether there are other  
12 alternatives to detention. The result is that one person will sit in jail while a similarly situated  
13 person—arrested on the same night, for the same alleged crime, in the same city—is released  
14 based solely on their access to cash. Under *Humphrey*, that is unconstitutional, and this case seeks  
15 to end this practice.

16 Federal district courts in California have invalidated pre-arraignment bail schedules that  
17 are materially identical to the County’s bail schedule. (*Welchen v. Bonta* (E.D. Cal. Sept. 22, 2022,  
18 No. 2:16-cv-00185-TLN-DB \_\_ F. Supp. 3d \_\_ [2022 WL 4387794]; *Buffin v. City & Cnty. of San*  
19 *Francisco* (N.D. Cal. Mar. 4, 2019, No. 15-CV-04959-YGR) [2019 WL 1017537].) Both of these  
20 courts concluded that detaining individuals pre-arraignment solely because they cannot pay the  
21 amount required by a county bail schedule failed the constitutional requirement of strict scrutiny:  
22 the practice deprived detainees of their fundamental right to bodily liberty based solely on their  
23 poverty, and plausible alternatives existed that would be less restrictive and equally effective at  
24 furthering the government’s interests of promoting public safety and assuring future court  
25 appearances. (*Welchen*, 2022 WL 4387794, at \*9; *Buffin*, 2019 WL 1017537, at \*24.)

26 Here, as in *Humphrey*, *Welchen*, and *Buffin*, Plaintiffs Phillip Urquidi, Daniel Martinez,  
27 Susana Perez, Terilyn Goldson, Gerardo Campos, and Arthur Lopez (the “Individual Plaintiffs”)  
28 face a cash bail amount that they cannot afford and that has no relationship to any government



1 interest. All were arrested within the past five days, and are currently in the custody of the Los  
2 Angeles County Sheriff's Department ("LASD") or the Los Angeles Police Department ("LAPD")  
3 solely because they cannot pay the amount required by the bail schedule. They have not been  
4 appointed a lawyer, have not seen a judge, and have not had any meaningful opportunity to be  
5 heard. Taxpayer dollars, including those of Plaintiffs CLUE Justice, Reverend Jennifer Gutierrez,  
6 Reverend Gary Williams, and Rabbi Aryeh Cohen (the "Taxpayer Plaintiffs"), fund these wealth-  
7 based detentions.

8 Accordingly, Plaintiffs seek a temporary restraining order prohibiting the enforcement of  
9 the predetermined bail schedule against the Individual Plaintiffs and securing their immediate  
10 release. This Court should also issue an order to show cause (OSC) why a preliminary injunction  
11 should not issue enjoining Defendants from detaining all Plaintiff class members pre-arraignment  
12 because they cannot pay a predetermined cash bail. Finally, the Court should issue an OSC why a  
13 preliminary injunction should not issue enjoining the use of taxpayer dollars to fund the  
14 enforcement of the bail schedule and the expenditure of forfeited bail funds collected pursuant to  
15 the unlawful bail schedule.

## 16 **II. STATEMENT OF FACTS**

### 17 **A. The Individual Plaintiffs' Cash-Based Detention**

18 The Individual Plaintiffs are six individuals currently jailed by Defendants because they  
19 cannot pay the bail amounts that are pre-set in the County's bail schedule.<sup>1</sup> (See Declaration of  
20 Tiana S. Baheri ("Baheri Decl.") at Ex. A.)

21 All six Individual Plaintiffs have been detained for four or five days based solely on their  
22

23 <sup>1</sup> The Court should grant Plaintiffs' application even if, by the time the Court hears the  
24 application, some or all of the Plaintiffs have been released from custody. The California Supreme  
25 Court has repeatedly held that courts should consider issues related to the imposition of money  
26 bail even after the individual has been released because they "present[] important issues that are  
27 capable of repetition yet may evade review." (*Humphrey, supra*, 11 Cal.5th at p. 147, fn. 2  
28 [considering challenge to money bail even though petitioner "was no longer detained or subject to  
money bail"]; *In re White* (2020) 9 Cal.5th 455, 458, fn. 1 [considering plaintiff's claim  
challenging the imposition of money bail even after plaintiff left pretrial detention]; *In re Webb*  
(2019) 7 Cal.5th 270, 274 ["Questions involving release on bail especially tend to evade review.  
Accordingly, we will decide the issue presented even though it is moot as to defendant."].)

1 inability to post the money bail amounts set by the County's bail schedule. No individualized  
2 factors were considered in setting the Individual Plaintiffs' bail amounts. Nor were the Individual  
3 Plaintiffs appointed counsel or brought before judicial officers.<sup>2</sup>

4 The Individual Plaintiffs' lives have been seriously harmed by this detention. For days,  
5 they have been unable to work, or tend to their family obligations. They are at risk of losing their  
6 jobs and, in some cases, their housing. They have been exposed to dangerous jail conditions.  
7 (Urquidi Decl. ¶¶ 10, 12, 16; Martinez Decl. ¶¶ 9-11, 20-21; Perez Decl. ¶¶ 12-17; Goldson Decl.  
8 ¶¶ 7-9; Campos Decl. ¶¶ 15, 18; Lopez Decl. ¶¶ 5, 11-16.) Meanwhile, Defendants permit  
9 similarly situated individuals—accused of the same crimes as the Individual Plaintiffs—to return  
10 to their families and their lives solely because they can pay cash bail.

11 **B. Defendants' Cash-Based System of Detention**

12 In Los Angeles County, a person's liberty following arrest hinges on their access to  
13 money. The process works as follows: People arrested without a warrant by LASD and LAPD can  
14 either be released with a citation or booked into custody and confined pre-arraignment. (Baheri  
15 Decl. Ex. B at 1.) Of those individuals taken into custody, LASD and LAPD release those who  
16 access enough money to post a pre-determined sum of money listed on the "bail schedule."<sup>3</sup> The  
17 L.A. County Bail Schedule is promulgated by a subset of Los Angeles County Superior Court  
18 Judges pursuant to Penal Code section 1269b and Civil Local Rule 8.3. Ex. B (Local Rule 8.3).  
19 The amount of money required for release depends on the charge of arrest, and may be enhanced  
20 for certain prior convictions or aggravating circumstances. (Baheri Decl. Ex. A.) Cash bail is  
21 available for nearly all offenses—including murder and manslaughter.

22 Any arrested individual who pays the amount dictated by the bail schedule is promptly  
23

24  
25 <sup>2</sup> (Declaration of Phillip Urquidi ("Urquidi Decl.") ¶¶ 1-3, 5-6, 16; Declaration of Daniel Martinez  
26 (Martinez Decl.) ¶¶ 3, 5, 6, 19, 22; Declaration of Susana Perez (Perez Decl.) ¶¶ 1-7, 10-11;  
27 Declaration of Terilyn Goldson (Goldson Decl.) ¶¶ 2, 5-6, 10-11; Declaration of Gerardo Campos  
28 ("Campos Decl.") ¶¶ 2-4, 6-7, 19; Declaration of Arthur Lopez ("Lopez Decl.") ¶¶ 1-4, 6-7, 9-10,  
17.)

<sup>3</sup> There are separate bail schedules for felony and misdemeanor offenses. For ease of reference,  
this brief refers to both as the "bail schedule."

1 released, often the same day they are arrested—meaning that a person with money charged with  
2 murder can leave jail on cash bail while an indigent person charged with a misdemeanor remains  
3 incarcerated because they cannot pay. Those who cannot pay are usually kept in a jail cell and are  
4 not appointed counsel until arraignment, which sometimes does not take place until four to five  
5 days after arrest. For example, people arrested Thursday night are often not arraigned until  
6 Tuesday. (Declaration of Micah Clark Moody (“Clark Moody Decl.”) ¶ 8.) Indeed, data produced  
7 by Los Angeles County demonstrates that nearly *half* of all arrested individuals arraigned within  
8 the first five days after arrest are arraigned between three and five days after arrest—not on the  
9 first or second day.<sup>4</sup> (Clark Moody Decl. ¶¶ 4-5.)

10 Arraignment delays are often exacerbated by Defendants’ failure to timely transport people  
11 between jail and court. In recent months, approximately 40 percent of the Sheriff’s buses have  
12 been out of operation. (Baheri Decl. Ex. C.) Individuals are also routinely not brought to court for  
13 reasons attributed to the COVID pandemic, leading to further delays in arraignment. (Baheri Decl.  
14 Ex. C.) As a result, a person arrested on Friday evening may not be arraigned or appointed counsel  
15 until the following Wednesday—five days after arrest. (Clark Moody Decl. ¶¶ 7-10.)

16 Defendants have instituted two programs that nominally afford some indigent individuals  
17 the opportunity for earlier release, but neither program eliminates the harms at issue here. *First*, a  
18 small fraction of people booked into custody over the past year were released through the  
19 County’s pilot Pretrial Risk Evaluation Program (PREP). Under this program, eligible arrested  
20 individuals are evaluated for potential release using a standardized risk assessment tool; there is no  
21 interview or other opportunity for the individual to participate in the process and no adversarial  
22 hearing. Between July 2021 and July 2022, only *6.1 percent* of the total number of people  
23 screened for pre-arraignment release, including through the PREP program, were deemed eligible  
24 for release. (Baheri Decl. Ex. D at 16 n. 20.) As follows, for the vast majority of people jailed in  
25 Los Angeles County, PREP has not provided a path to pre-arraignment release. *Second*, another  
26 small fraction of individuals receive relief through a “bail deviation program,” which permits

27  
28 <sup>4</sup> In fact, according to that data set, some individuals are held significantly longer than five days.  
(Clark Moody Decl. ¶ 3.)

1 arrested individuals and others acting on their behalf to request a decrease in the cash bail amount  
2 before arraignment or an order releasing them on their own recognizance.<sup>5</sup> (Baheri Decl. Ex. F at  
3 13.) These requests are ostensibly reviewed by a magistrate who makes a final determination, but  
4 the latest report from the Department of Probation, which administers the program, shows that a  
5 full 87% of applicants were deemed to be ineligible even before magistrate review—and only 6%  
6 of applicants ultimately secured their release. (Baheri Decl. Ex. F at 13.) And even those eligible  
7 for the program do not have meaningful access to this form of relief while incarcerated before  
8 arraignment: their ability to advocate for release is limited by their lack of counsel and—as with  
9 PREP—there is no adversarial hearing or opportunity to be heard by a judicial officer. Thus,  
10 despite the existence of these programs, all six Individual Plaintiffs as well many other indigent  
11 individuals remain detained in Los Angeles jails pre-arraignment solely because they cannot  
12 afford to pay the amount required by the County's bail schedule.

13 **C. The Harms of Defendants' Bail Schedules**

14 **1. Harms to Plaintiffs and Those Similarly Situated**

15 Individual Plaintiffs and other detained individuals see their lives upended when they are  
16 jailed. Between 2009 and 2019, at least ten people who were in the Sheriff's custody because they  
17 could not afford bail died while incarcerated pre-arraignment. (Clark Moody Decl. ¶¶ 12-24.)  
18 Many also lose their jobs or housing; indeed, just three days of jail results in an average loss of  
19 \$29,000 in lifetime earnings. (Scott-Hayward Decl. ¶¶ 28, 33-37.) Their children endure traumatic  
20 family separation. In jail they are at heightened risk of extreme physical and sexual abuse, suicide,  
21 medical neglect, and death. (Scott-Hayward Decl. ¶¶ 30-32.) And individuals detained pretrial for  
22 even short periods have worse case outcomes than similarly situated people who are released, in  
23 part because detained individuals face pressure to plead guilty in exchange for release. (Scott-  
24 Hayward Decl. ¶¶ 17-22; Declarations of Meredith Gallen ("Gallen Decl.") and Garrett Miller  
25 ("Miller Decl."))

26  
27 <sup>5</sup> Bail deviation also provides an opportunity for LASD and LAPD to petition for an *increase* in  
28 the amount of bail needed for pre-arraignment release. Indeed, the LAPD manual requires officers  
to request bail increases in certain circumstances. (Baheri Decl. Ex. E § 680.45.)

1 Defendants' bail schedule also harms arrested individuals at every stage of the legal  
2 process. Arraignment is the first opportunity for detained individuals to have appointed counsel  
3 and an on-the-record, adversarial bail hearing before a court. At arraignment, indigent individuals  
4 are appointed counsel and see a judge, who typically determines bail. In theory, that judge's bail  
5 determination must comply with the robust substantive and procedural requirements from *In re*  
6 *Humphrey*. But often the primary factor considered by the judge in setting bail is the amount of  
7 money dictated by the bail schedule. (Scott-Hayward Decl. ¶ 50; Gallen Decl. ¶ 15; Miller Decl.  
8 ¶ 4.) In practice, then, the pre-arraignment application of the bail schedule often leads to cash-  
9 based detention lasting until the resolution of the case.<sup>6</sup> (Gallen Decl. ¶ 15.)

## 10 2. Defendants' Secured Money Bail Schedules Are Ineffective

11 Defendants' bail schedule neither promotes appearance in court nor public safety. In fact,  
12 the evidence indicates it *worsens* both. Rigorous empirical investigations into secured money bail  
13 have overwhelmingly concluded that it does not increase rates of appearance in court. (Scott-  
14 Hayward Decl. ¶¶ 44-49.) Almost everyone who pays for release pays a *non-refundable* fee to a  
15 commercial bonding company; because these fees are not returned under any circumstances, there  
16 is limited financial incentive to appear. (Baheri Decl. Ex. H at 1 & fn. 6.) As for public safety,  
17 there is no link to money bail even in theory: the money posted is not forfeited in the event of new  
18 criminal activity (only in the event of *nonappearance*). (*Reem v. Hennessy* (N.D. Cal., Dec. 21,  
19 2017, No. 17-cv-6628-CRB) 2017 WL 6539760, at \*3, citing Pen. Code, §§ 1269, 1278, subd. (a),  
20 1305, subd. (a).) The empirical research confirms that paying secured money bail does not reduce  
21 a person's risk of rearrest; in fact, secured money bail destabilizes individuals' lives, leading to  
22 increased crime and nonappearance rates. (Scott-Hayward Decl. ¶¶ 38-43.)

23 The current system is not only ineffective and harmful—it is also expensive. LA County  
24 spends \$89,580 annually per person jailed. (Baheri Decl. Ex. I.) Defendants' detention of the  
25

26 <sup>6</sup> Plaintiffs have asked Defendants to stop this practice to no avail. Nearly a month ago, Plaintiffs'  
27 counsel reached out to Defendants via letter, asking them to cease this unconstitutional conduct.  
28 Only one Defendant (the LAPD) responded at all—three weeks later and only then with a four-  
sentence letter. Rather than agree to remedy the ongoing constitutional violation, Defendant LAPD  
requested weeks of additional time merely to prepare a substantive response.

1 indigent and other arrestees costs the County an immense amount of money: In 2021-2022, the  
2 Sheriff's budget was \$3.61 billion, and is slated to remain at that level for fiscal year 2022-2023.  
3 (Baheri Decl. Ex. J.) The bail scheme also transfers money from County residents to commercial  
4 bond companies. In 2017, with respect to people arrested by LAPD *alone*, and not LASD,  
5 individuals paid almost \$40.8 million to the private bail industry. (Baheri Decl. Ex. X.)

6 **D. The Efficacy of Less Restrictive Means**

7 Secured money bail is not a narrowly tailored means of ensuring court appearance and  
8 public safety. Less restrictive alternatives include: unsecured bonds (which do not require payment  
9 up front for release, but instead allow immediate release upon a promise to pay the monetary  
10 amount if the person does not appear as required—providing the same financial incentive) (Baheri  
11 Decl. Ex. K at 11); sophisticated reminders for court dates via text or phone calls (Baheri Decl.  
12 Ex. L at 2); and increased use of pre-trial supervisory services. (Baheri Decl. Ex. M at 4-5.)  
13 Measures like court reminders are effective because “[s]tudies illustrate that the primary reasons  
14 individuals fail to appear for their court date are forgetfulness, employment obligations, childcare,  
15 or other logistical issues such as lack of transportation.” (Baheri Decl. Ex. N at 9.)

16 Other jurisdictions have virtually eliminated the use of secured money bail in their pretrial  
17 systems while maintaining low rates of failures to appear and arrests on bond. Many of these  
18 systems also cite and release a higher percentage of arrested individuals shortly after arrest and  
19 ensure that arraignment occurs promptly after filing. (Baheri Decl. Ex. U at 11.)

20 For example, for decades, Washington, D.C. has run its pretrial system without the use of  
21 money bail. Arraignments generally occur within 24 hours of arrest, including on weekends. The  
22 District also has higher rates of pretrial release than Los Angeles—and lower rates of failures to  
23 appear and arrest on bond. Washington, D.C. detains 15% of arrested individuals pretrial (Baheri  
24 Decl. Ex. O), compared to LA's pretrial detention rate of 27%. (Baheri Decl. Ex. B at 3.) In 2019,  
25 88% of defendants in D.C. made all scheduled court appearances (Baheri Decl. Ex. P), compared  
26 to only 55% in Los Angeles County for the 2018-2020 period. (Baheri Decl. Ex. B at 7.)

27 Similarly, in 2017, New Jersey overhauled its pretrial system, virtually eliminating the use  
28 of secured money bail and implementing evidence-based alternatives such as automated court

1 reminders that defendants can choose to receive by text message, email, or phone call. (Baheri  
2 Decl. Ex. V at 50-51.) Among those who are booked into jail upon arrest, 99 percent see a judge  
3 within 48 hours, with the vast majority (77%) of first appearances taking place within the first 24  
4 hours. (Baheri Decl. Ex. V at 27.) Ultimately, in New Jersey, fewer than seven percent (6.9 %) of  
5 all those arrested are detained pretrial (Baheri Decl. Ex. V at 33), in contrast to LA's detention rate  
6 of 27%. (Baheri Decl. Ex. B at 3.) Still, court appearance rates in New Jersey have remained high:  
7 More than 90 percent of all defendants show up for court appearances. (Baheri Decl. Ex. V at 43.)

8       Indeed, Defendants' own policies show that the existing secured bail schedule is not  
9 necessary. In March 2020, to increase pretrial release and stop the spread of COVID-19, the  
10 Executive Committee of the Los Angeles County Superior Court voted to adopt a new bail  
11 schedule that lowered the price of release to \$0 for many lower-level felony offenses. This was  
12 called the Emergency Bail Schedule ("EBS"). (Baheri Decl. Ex. Q.) When the EBS was first  
13 enacted, Los Angeles County reduced its jail population by almost 30 percent. (Baheri Decl. Ex. R  
14 at 2.) The Judicial Council of California soon passed a statewide EBS, which superseded the Los  
15 Angeles County one. (Baheri Decl. Ex. S.) Between June 15, 2020, and June 30, 2022, either a  
16 state or County EBS continued to mandate release on \$0 bail for many offenses.

17       Although the EBS still led to the unconstitutional detention of accused individuals whose  
18 bail amounts were not set to zero, it showed that pretrial release without secured bail is feasible in  
19 Los Angeles County. While EBS was in effect, the rate of court appearances remained the same,  
20 despite a significant reduction in the pretrial population. (Baheri Decl. Ex. W at 24.)

21       In June 2022, the Los Angeles Superior Court rescinded the EBS and reverted to a fully  
22 cash bail system. (Baheri Decl. Ex. T.) Now that EBS is no longer in effect and Los Angeles  
23 County has reverted to a fully cash-based system, the pretrial population has increased towards  
24 pre-pandemic levels, leading once again to the unconstitutional pre-arraignment detention of  
25 hundreds of people based solely on their inability to pay a cash bail. (Baheri Decl. Ex. R at 2.)

1 **III. ARGUMENT**

2 **A. Legal Standard**

3 On a motion for a preliminary injunction, the Court considers: (1) “the likelihood that the  
4 plaintiff will prevail on the merits at trial” and (2) “the interim harm that the plaintiff is likely to  
5 sustain if the injunction were denied as compared to the harm that the defendant is likely to suffer  
6 if is the preliminary injunction were issued.” (*Cohen v. Board. of Supervisors* (1985) 40 Cal.3d  
7 277, 286, citations omitted.) The Court may issue a temporary restraining order to stop the  
8 violation of a plaintiff’s rights pending a future hearing on an injunction. (*Chico Feminist  
9 Women’s Health Center v. Scully* (1989) 208 Cal.App.3d 230, 236-237.)

10 **B. Plaintiffs are Likely to Succeed on the Merits**

11 Plaintiffs are highly likely to succeed on the merits: the California Supreme Court has  
12 already opined on the legal issues at the heart of this case, and two federal courts have enjoined  
13 materially identical bail schedules.<sup>7</sup>

14 **1. Pre-Arrest Detention Under the Bail Schedule Must Satisfy  
15 Strict Scrutiny**

16 LA County’s bail schedule threatens two fundamental constitutional rights. *First*, pre-  
17 arrest detention impairs an individual’s substantive due process right to bodily liberty. “[I]n  
18 our society liberty is the norm, and detention prior to trial . . . is the carefully limited exception.”  
19 [Citation.]” (*Humphrey, supra*, 11 Cal.5th at p. 155.) Hence, pretrial detention is “impermissible

20 <sup>7</sup> Plaintiffs’ situation is distinguishable from a recent federal case denying a request for an  
21 injunction releasing all pretrial detainees who cannot afford bail. (*People of Los Angeles County  
22 Who Are Being Penally Confined in Pre-Trial Detention Because of and Dependent Upon Their  
23 Inability to Pay Bail v. Villanueva* (C.D.Cal., May 27, 2022, No. CV 22-2538-DMG (JEMx))  
24 2022 WL 2189647 (*People*); Order, *People* (Aug. 30, 2022), ECF No. 87 (*People* Dkt. 87).) The  
25 evidence indicated that the plaintiffs in *People* had been arraigned and were thus not challenging  
26 pre-arrest detention based on the bail schedule. *People* Dkt. 87 at 7. They did not show that  
27 “the trial courts set their bail higher than [they] could afford” or “fail[ed] to consider less  
28 restrictive alternatives . . . in violation of *In re Humphrey*,” and thus did not demonstrate that  
“inability to pay was the only basis for their detention.” (*Id.* at pp. 7–8; *see also* 2022 WL  
2189647, at \*3.) By contrast, here the Individual Plaintiffs’ bail was set by the bail schedule and  
inability to pay is the sole reason for their ongoing pre-arrest detention. Moreover, at the  
time *People* was filed, the bail system in Los Angeles County was substantially different from the  
current system because the emergency bail schedule, which set the bail for many offenses at \$0,  
was still in effect. (*People*, 2022 WL 2189647, at \*3.)



1 unless no less restrictive conditions of release can adequately vindicate the state's compelling  
2 interest." (*Id.* at pp. 151-152; *Van Atta v. Scott* (1980) 27 Cal.3d 424, 435 [pretrial detention  
3 "affects the detainee's liberty, a fundamental interest second only to life itself in terms of  
4 constitutional importance"].) *Second*, LA County's reliance on a cash bail schedule for pre-  
5 arraignment detention violates an "arrestee's crucial state and federal equal protection rights  
6 against wealth-based detention." (*In re Humphrey* at p. 151 ["detaining arrestees solely because of  
7 their indigency is fundamentally unfair and irreconcilable with constitutional imperatives"]; *In re*  
8 *Brown* (2022) 76 Cal.App.5th 296, 307 ["[T]he *Humphrey* Court broadly held the common  
9 practice of conditioning an arrestee's release from custody pending trial solely on whether an  
10 arrestee can afford bail is unconstitutional"].) This right, which arises from a convergence of  
11 equal protection and due process principles, is rooted in Supreme Court precedent holding that,  
12 absent an individualized holding of necessity, the government may not jail a person solely because  
13 they are unable to pay. (*Bearden v. Georgia* (1983) 461 U.S. 660, 672-73.)

14 Here, the bail schedule has deprived Individual Plaintiffs of both the right to bodily liberty  
15 and the right against wealth-based detention. The Individual Plaintiffs were arrested on November  
16 9 or 10; as of filing, they have remained in custody without appointed counsel for four or five  
17 days. They could go free at any time if they paid the bail set by the bail schedule, but they lack the  
18 means to do so. The deprivation of their rights has been significant: "[T]he evidence reveals that  
19 individuals can also lose their housing, public benefits, and child custody, and be burdened by  
20 significant long-term debt due to a short period of detention." (*Buffin, supra*, 2019 WL 1017537,  
21 at \*18; see also *In re Humphrey, supra*, 11 Cal.5th at p. 147 ["pretrial detention heightens the risk  
22 of losing a job, a home, and custody of a child."]; Scott-Hayward Decl. ¶¶ 34-38.) Hence, the  
23 Individual Plaintiffs face both the deprivation of liberty from days in custody and the risk that  
24 their employment, housing, health, or family will suffer because of their detention.

25 Because of the fundamental importance of these rights, any policy—like the countywide,  
26 generally applicable secured bail schedule—that infringes on them must satisfy strict scrutiny.  
27 (See *In re Humphrey, supra* 11 Cal.5th at p. 152; *People v. Olivas* (1976) 17 Cal.3d 236, 243, 251;  
28 *In re Antazo* (1970) 3 Cal.3d 100, 112 ["Our inquiry then is whether imprisonment of an indigent

1 convicted defendant for nonpayment of a fine is necessary to promote a *compelling* governmental  
2 interest....”], *Lopez-Valenzuela v. Arpaio* (9th Cir. 2014) 770 F.3d 772, 780 (*en banc*) (under  
3 analogous federal law, applying strict scrutiny to Arizona pretrial detention law because it  
4 infringed on the “fundamental” right to pretrial liberty); see also *Serrano v. Priest* (1976) 18  
5 Cal.3d 728, 761 [holding that when a wealth-based distinction impinges on a “fundamental”  
6 interest, strict scrutiny applies].) Indeed, numerous federal courts have held that challenges to bail  
7 schedules and statutes are subject to—and fail—strict scrutiny. (See, e.g., *Lopez-Valenzuela*, 770  
8 F.3d at 780; *Welchen, supra*, 2022 WL 4387794, at \*3; *Buffin, supra*, 2018 WL 424362, at \*10.)

9 Under strict scrutiny, the government may not “infringe certain ‘fundamental’ liberty  
10 interests *at all*, no matter what process is provided, unless the infringement is narrowly tailored to  
11 serve a compelling state interest.” (*Lopez-Valenzuela, supra*, 770 F.3d at p. 780, quoting *Reno v.*  
12 *Flores* (1993) 507 U.S. 292, 302.) Defendants bear the burden here: as the California Supreme  
13 Court has explained, “the state bears the burden of establishing not only that it has a compelling  
14 interest which justifies the law but that the distinctions drawn by the law are necessary to further  
15 its purpose.” (*Antazo, supra*, 3 Cal.3d at 111.) In other words, if less restrictive policies would  
16 adequately serve the government’s interests without systemically infringing on detainees’ bodily  
17 liberty and right against wealth-based detention, then the bail schedule is unconstitutional.

18 Here, Defendants might cite to two compelling interests: “assuring the arrestee’s  
19 appearance at trial and protecting the safety of the victim as well as the public.” (*In re Humphrey,*  
20 *supra*, 11 Cal.5th at p. 142.) “Yet just as neither money bail (nor any other condition of release)  
21 can guarantee that an arrestee will show up in court, no condition of release can entirely *eliminate*  
22 the risk that an arrestee may harm some member of the public.” (*Id.* at p. 154.) Perfection is not  
23 the standard; rather the question is whether the bail schedule’s deprivation of fundamental rights is  
24 necessary such that no other alternative can reasonably ensure court appearance and public safety.

## 25 2. The Bail Schedule Fails Strict Scrutiny

26 Defendants cannot show that the bail schedule is necessary or narrowly tailored to serve  
27 compelling state interests.

28

11/14/2022

1       ***The Bail Schedule Is Not Narrowly Tailored.*** The schedule sets bail at a fixed amount  
2 based solely on the charge of arrest and potential enhancements without any individualized  
3 analysis of whether cash bail, or the amount of cash bail, is appropriate to assure the individual's  
4 court appearance and to protect the public. The result is overinclusive because it confines many  
5 individuals who may pose no flight or safety risk yet remain in jail because they cannot pay, and  
6 underinclusive because it allows individuals who might pose a serious risk to go free because they  
7 can pay. A "statute is not narrowly tailored if it is either underinclusive or overinclusive in scope."  
8 (*Welchen, supra*, 2022 WL 4387794, at \*5, quoting *IMDb.com Inc. v. Beccera* (9th Cir. 2020) 962  
9 F.3d 1111, 1125 [finding bail schedule underinclusive and overinclusive]; see also *Brown v. Merlo*  
10 (1973) 8 Cal.3d 855, 876 [overinclusive and underinclusive statutes do "not treat similarly situated  
11 individuals in like manner"]; *Taking Offense v. State* (2021) 66 Cal.App.5th 696, 71 [to be  
12 narrowly tailored statutes must not be overinclusive and underinclusive].) The nominal existence  
13 of alternative release programs—PREP and the bail deviation program—do not cure this issue:  
14 individuals like the Individual Plaintiffs remain jailed solely because they cannot make a cash  
15 payment. Despite these programs, a significant number of indigent individuals remain incarcerated  
16 pre-arraignment and would be released if only they could pay. Indeed, if anything, these small,  
17 often ignored programs, which are not applied to large numbers of class members, show that, like  
18 other jurisdictions, LA County has alternatives to cash-based pretrial detention.

19       ***The Bail Schedule Does Not Further Any Government Interest.*** Secured bail does not  
20 promote either of the government's goals. Secured bail does not protect the public because even a  
21 likely reoffender may return to the public by posting bail. (*Humphrey, supra*, 11 Cal.5th at p. 142  
22 ["Whether an accused person is detained pending trial often does not depend on a careful,  
23 individualized determination of the need to protect public safety, but merely . . . on the accused's  
24 ability to post the sum provided in a county's uniform bail schedule."].) And, because defendants  
25 do not forfeit bail by reoffending, "the bail the person posts does nothing to incentivize him not to  
26 commit crimes." (*Reem, supra*, 2017 WL 6539760, at \*3.) Multiple studies also show that secured  
27 money bail does not increase public safety: individuals released without money bail are no more  
28 likely to be charged with a new crime than those released with money bail. (Scott-Hayward Decl.

1 ¶¶ 42-43.) Indeed, there is evidence that secured money bail *increases* a person's likelihood of  
2 being charged with new criminal offenses in the future. (Scott-Hayward Decl. ¶ 42 [Philadelphia  
3 study showed use of secured money bail led to an increase in recidivism].) Nor does secured bail  
4 ensure court appearances: empirical investigations into secured money bail have overwhelmingly  
5 concluded that it does not increase rates of appearance. (Scott-Hayward Decl. ¶¶ 44-49.)

6 ***Effective Alternatives Exist.*** Defendants cannot meet their burden to show that the bail  
7 schedule is the least restrictive alternative available for promoting the government's interests in  
8 assuring court appearances and protecting public safety. Evidence from jurisdictions across the  
9 country shows that numerous less restrictive alternatives to Defendant's bail schedule exist; these  
10 measures are equally—or more—effective at achieving the government's interests. (*Supra*, at  
11 Section II.D.) Other jurisdictions employ measures such as unsecured bonds, court reminders,  
12 pretrial supervision, and stay-away orders. (Scott-Hayward Decl. ¶¶ 43-44, 49.) For example, two  
13 recent studies in New York found that text and phone call reminders reduced failures to appear in  
14 court by 26% or 37%. (Scott-Hayward Decl. ¶ 49.) The evidence shows that these types of  
15 measures are equally or more effective at assuring court appearances and promoting public safety  
16 compared to secured money bail. (Scott-Hayward Decl. ¶¶ 44-49.)

17 In short, Defendants are free to choose among a variety of options without offending due  
18 process and equal protection, but cannot use a bail schedule that “merely associates an amount of  
19 money with a specific crime, without any connection to public safety or future court appearance.”  
20 (*Buffin, supra*, 2019 WL 1017537 at \*21.) Because the Individual Plaintiffs are jailed solely  
21 because of their inability to pay, they are highly likely to prevail on the merits of their  
22 constitutional claims.

### 23 **C. Plaintiffs Will Suffer Irreparable Harm Without a Court Order**

24 The deprivation of the Individual Plaintiffs' constitutional rights alone is sufficient to  
25 establish irreparable harm. (See, e.g., *Hillman v. Britton* (1980) 111 Cal.App.3d 810, 826.) And  
26 the Individual Plaintiffs' also face additional irreparable harm as a result of their confinement. As  
27 *Humphrey* explained, “[t]he disadvantages to remaining incarcerated pending resolution of  
28 criminal charges are immense and profound.” (*Supra*, 11 Cal.5th at p. 147.) Depriving a person of

1 their fundamental right to pretrial liberty may cause psychological and economic harm: “It often  
2 means loss of a job; it disrupts family life; and it enforces idleness.” (*Barker v. Wingo* (1972) 407  
3 U.S. 514, 532-33.) Just several days of pre-arraignment detention may cause a detainee to lose  
4 their job or impair their ability to care for children or family members. (Scott-Hayward Decl.  
5 ¶¶ 34; *Buffin, supra*, 2019 WL 1017537, at \*6.) For example, Mr. Urquidi and Mr. Lopez are at  
6 risk of losing their jobs because they have been unable to go to work while in custody, and Mr.  
7 Lopez is at risk of losing his car, which is also his home. (Urquidi Decl. ¶ 10; Lopez Decl. ¶¶ 13-  
8 16.) Because of his detainment, Mr. Martinez missed an interview for a job that could have helped  
9 him escape homelessness. (Martinez Decl. ¶¶ 9-11.) And many of the Individual Plaintiffs have  
10 been separated from their families, children, or significant others as a result of their detention.  
11 (Urquidi Decl. ¶¶ 9,13; Perez Decl. ¶ 12; Goldson Decl. ¶ 7.)

12 **D. The Harm to Plaintiffs Outweighs Any Potential Harm to Defendants**

13 The balance of harm substantially favors Plaintiffs: the harms to the Individual Plaintiffs’  
14 constitutional rights are substantial, while all of the available evidence shows that the Defendants’  
15 interests would be better served if they immediately ended cash-based jailing pre-arraignment.  
16 Further, “it is always in the public interest to prevent the violation of a party’s constitutional  
17 rights.” (*Melendres v. Arpaio* (9th Cir. 2012) 695 F.3d 990, 1002 [citation omitted].)

18 **E. The Court Should Exercise Its Discretion to Waive the Bond**

19 In general, the party seeking an injunction must post a bond sufficient to pay to the party  
20 enjoined “such damages . . . as the party may sustain by reason of the injunction, if the court  
21 finally decides that the applicant was not entitled to the injunction.” (Code Civ. Proc., § 529, subd.  
22 (a).) Defendants will not be monetarily harmed by this injunction, and so no bond is needed.  
23 Further, even if the Court determines an undertaking would be required, the Court may “waive a  
24 provision for a bond in an action or proceeding . . . if the court determines that the principal is  
25 unable to give the bond because the principal is indigent and is unable to obtain sufficient sureties,  
26 whether personal or admitted surety insurers.” (Code Civ. Proc., § 995.240.) Here, the Plaintiffs  
27 are unable to obtain sufficient sureties and respectfully request that the Court waive any  
28 undertaking to secure this injunction. (See Urquidi Decl. ¶ 5; Martinez Decl. ¶¶ 7, 14-15; Perez

Decl. ¶ 13; Lopez Decl. ¶ 7; Campos Decl. ¶¶ 9-10; Goldson Decl. ¶¶ 6-9.)

**F. The Court Should Enjoin the Expenditure of Funds**

The Taxpayer Plaintiffs seek to prevent the expenditure of funds used to implement Defendants' unconstitutional practice of detaining any individuals who cannot afford to pay cash bail as a condition of pre-arraignment release. (See Code Civ. Proc., § 526a [taxpayers may sue to "prevent[] [the] illegal expenditure of, waste of, or injury to, the estate, funds, or other property of a local agency"]; *California Dui Lawyers Association v. California Department of Motor Vehicles* (2018) 20 Cal.App.5th 1247, 1261 ["Cases that challenge the legality or constitutionality of governmental actions fall squarely within the purview of section 526a."].)<sup>8</sup> Because any bail funds that are forfeited due to an individual's non-appearance in court are paid to the Los Angeles County treasurer, (Penal Code § 1307), the Taxpayer Plaintiffs also seek to enjoin the expenditure of any funds Defendants' collect from the unconstitutional system.

**IV. CONCLUSION**

For the foregoing reasons, the Court should (1) issue an order restraining Defendants from applying the unconstitutional bail schedule as to the Individual Plaintiffs, and ordering Defendants to release the Individual Plaintiffs from custody; (2) issue an OSC why a preliminary injunction should not issue enjoining Defendants from detaining any individuals who cannot afford to pay cash bail as a condition of pre-arraignment release; (3) issue an OSC why a preliminary injunction should not issue enjoining the use of taxpayer dollars to fund the enforcement of the bail schedule and the expenditure of forfeited bail funds collected pursuant to the unlawful bail schedule; and (4) set a hearing as soon as is convenient for the Court to hear the OSC.

<sup>8</sup> Because Defendants continue to use taxpayer dollars to unconstitutionally detain thousands of individuals pre-arraignment, this is an "extraordinary case . . . in which the taxpayer's interest is sufficient to justify injunctive relief." (*Cerletti v. Newsom* (2021) 71 Cal.App.5th 760, 767, fn. 8.) Indeed, in *White v. Davis*, when discussing circumstances in which granting a preliminary injunction might be warranted in a taxpayer action, the California Supreme Court noted the example of a Controller who "continues to approve expenditures that have been held unlawful by a controlling judicial precedent." (*White v. Davis* (2003) 30 Cal.4th 528, 556-557.) This is equivalent to the situation here: Defendants are continuing to expend funds to implement a system of pre-arraignment detention that is unconstitutional under controlling California Supreme Court precedent.

1 DATED: November 14, 2022

Respectfully Submitted,

2 MUNGER, TOLLES & OLSON  
3 HADSELL STORMER RENICK & DAI LLP  
4 SCHONBRUN SEPLOW HARRIS HOFFMAN &  
5 ZELDES  
6 CIVIL RIGHTS CORPS  
7 PUBLIC JUSTICE

8 By: 

BRAD D. BRIAN

Attorneys for Plaintiffs

9  
10  
11 Additional Plaintiffs' Counsel:

12 ROWLEY J. RICE (SBN 313737)  
13 Rowley.Rice@mto.com  
14 TIANA S. BAHERI (SBN 330835)  
15 Tia.Baheri@mto.com  
16 BRIANNE HOLLAND-STERGAR\*  
17 Brianne.Holland-Stergar@mto.com  
18 MUNGER, TOLLES & OLSON LLP  
19 350 South Grand Avenue, Fiftieth Floor  
20 Los Angeles, California 90071-3426  
21 Telephone: (213) 683-9100  
22 Facsimile: (213) 687-3702

SALIL H. DUDANI (SBN 330244)  
salil@civilrightscorps.org  
9861 Irvine Center Dr,  
Irvine, CA 92618  
CIVIL RIGHTS CORPS  
Telephone: (202) 844-4975  
Facsimile: (202) 609-8030

18 PAUL L. HOFFMAN (SBN 71244)  
19 hoffpaul@aol.com  
20 JOHN C. WASHINGTON (SBN 315991)  
21 jwashington@sshhlzlaw.com  
22 SCHONBRUN, SEPLOW, HARRIS,  
23 HOFFMAN & ZELDES, LLP  
24 200 Pier Ave., Suite 226  
25 Hermosa Beach, CA 90254  
26 Telephone: (424) 297-0114  
27 Facsimile: (310) 399-7040

28 *\*Pro Hac Vice applications forthcoming*