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Superior Court of California

City and County of San Francisco

|  |  |
| --- | --- |
| **People of the State of California,**  Plaintiff,  vs.  **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,**  Defendant. | Court No: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Motion to Release Defendant on Own Recognizance or on Affordable Bail (*In re Humphrey*)  Date: \_\_\_\_\_\_\_  Time: \_\_\_\_\_\_\_  Dept: \_\_\_ |

Defendant, \_\_\_\_\_\_\_\_, moves the court for a bail hearing and an order granting release on his/her/their own recognizance or on appropriate financial or non-financial conditions. \_\_\_\_\_\_\_ has a solid release plan that will ensure his/her/their return to court.

The California Supreme Court in *Humphrey* held that making a pretrial detainee’s freedom dependent on ability to pay bail is unconstitutional.[[1]](#footnote-2) Money bail, as set, is beyond \_\_\_\_\_\_’s ability to pay, operating as a no-bail detention, despite no court having made the findings required under California Constitution, article I, section 12 for detention. Because \_\_\_\_\_\_ should not be detained before trial, this court must order his/her/their release on conditions narrowly tailored to the government’s interests in court appearance and public safety.

Release is also appropriate and urgent here. [IF APPLICABLE: \_\_\_\_\_\_\_ has a medical condition, \_\_\_\_\_\_, making him/her/them vulnerable to serious health complications should he/she/they contract COVID-19 in custody.] In light of a sharp increase in the jail population over the past several months, the San Francisco County Jail medical director has urged a reduction of more than 25% of the inmate population to prevent a COVID-19 outbreak. Failure to release \_\_\_\_\_\_ to reduce the jail population constitutes a constitutional violation through the state’s deliberate indifference to the health of \_\_\_\_\_\_ and other inmates.

[IF APPLICABLE:] The new California Racial Justice Act (AB 2542) requires that all forms of explicit and implicit racial bias be eliminated from the criminal justice system.[[2]](#footnote-3) \_\_\_\_\_\_ is Black/Latino. The money bail system disproportionately keeps Black and Brown people in custody. Thus, the court should not set bail, and instead heed the mandate of the Racial Justice Act to release \_\_\_\_\_\_\_ on least restrictive conditions to ensure public safety and his/her/their return to court.

\_\_\_\_\_\_\_ has made [choose one: no prior applications for own recognizance release or reduced bail / a prior application for release on own recognizance or bail, but renews this motion based on changed circumstances.]

**Statement of the Case**

\_\_\_\_\_\_\_\_ is charged with \_\_\_\_\_\_\_\_. The case is set for \_\_\_\_\_\_\_\_\_.

**Statement of Facts**

1. **\_\_\_\_\_\_\_’s circumstances and release plan.**

[Discuss facts about your client: age, family, educational and employment background, medical and mental health issues, COVID-19 vulnerabilities, criminal history, community ties. Lay out detailed release plan. Attach relevant records: social history, health records, letters of support, etc.]

1. **Alleged crimes.**

[Lay out your facts, favorable and unfavorable.]

1. **Unprecedented jail conditions during COVID-19 outbreak.**

As the court knows, we are in the midst of a global COVID-19 virus pandemic. Though vaccinations have begun to decrease virus transmission and deaths, ever-emerging new variants of the virus threaten recovery. Even as our city and state begin to reopen businesses and activities, the Centers for Disease Control urges everyone to continue taking precautions to prevent spreading the virus.[[3]](#footnote-4)

The virus has pervaded all sectors of society, including jails. Leading public health officials warned months ago that unless courts act immediately, the “epicenter of the pandemic will be jails and prisons.”[[4]](#footnote-5) As the CDC explained, correctional facilities “present[] unique challenges for control of COVID-19 transmission among incarcerated/detained persons, staff, and visitors.”[[5]](#footnote-6) “Prisons are epicenters for infectious diseases because of the higher background prevalence of infection, the higher levels of risk factors for infection, the unavoidable close contact in often overcrowded, poorly ventilated, and unsanitary facilities, and the poor access to healthcare services relative to that in community settings. Infections can be transmitted between prisoners, staff and visitors, between prisons through transfers and staff cross-deployment, and to and from the community. As such, prisons and other custodial settings are an integral part of the public health response to coronavirus disease.”[[6]](#footnote-7)

The San Francisco jail population reached a low of 697 in late April, 2020. Since then, it has climbed steadily, in part due to termination of the Emergency Bail Schedule. The current jail population is \_\_ and \_\_ cases of COVID-19 have been diagnosed in the jail during the pandemic thus far.[[7]](#footnote-8)

Significantly, on October 13, 2020, San Francisco’s Jail Medical Director Lisa Pratt, M.D., D.P.H., issued a dire warning that, with the recent increasing jail population and the closure of one facility, County Jail 4, it is “virtually impossible” to prevent mixing of people in various stages of quarantine and isolation and urged further jail population reduction of more than 25%.[[8]](#footnote-9) “This is how an outbreak begins in a correctional setting,” she warned. Dr. Pratt advised all those in the criminal legal system that a serious reduction in the jail population is required, given the changed conditions.

1. **\_\_\_\_\_\_\_’s jail conditions.**

\_\_\_\_\_\_ has been housed in County Jail \_\_ since \_\_\_\_\_\_, [describe conditions, e.g., in a two-person cell measuring approximately four feet by nine feet, with a roommate.] He/she/they is allowed out of the cell for approximately one hour a day, during which he/she/they must shower and use the phone. He/she/they is never permitted outside and has not been outside for the whole of his/her/their incarceration but for a bus trip when he/she/they was transferred between jails and bus trips to court.

Not a single class or program has been available during \_\_\_\_\_\_’s incarceration, due to the pandemic. \_\_\_\_\_\_ has not had an in-person visit or any physical human contact for his/her/their entire term in custody.

\_\_\_\_\_\_ can only communicate with counsel in 30-minute videoconferences. It is not possible for counsel to consult with him/her/them in any meaningful way without in-person visits.

Memorandum of Points and Authorities

In our society, “liberty is the norm, and detention prior to trial or without trial is the carefully limited exception.”[[9]](#footnote-10) Under California law, “defendants charged with noncapital offenses are generally entitled to bail.”[[10]](#footnote-11) Historically, the California Constitution has conferred “an absolute right to bail except in a narrow class of cases.”[[11]](#footnote-12) Article I, section 12 of the California Constitution delineates certain exceptions under which a defendant may be denied bail.

The California Supreme Court in the recent *Humphrey* decision held that conditioning a person’s freedom on the ability to pay bail is unconstitutional,[[12]](#footnote-13) confirming long-standing precepts that due process and equal protection clauses of the Fourteenth Amendment require the court to make certain findings, including a defendant’s ability to pay and alternative, non-financial conditions of release with a heightened evidentiary standard before ordering release conditioned on payment of money bail to address flight risk concerns.[[13]](#footnote-14) Where the court’s concern is public safety, the court should either order the defendant detained after making the required findings under article I, section 12, or require appropriate, non-financial conditions of release.[[14]](#footnote-15)

Here, this court should find that the requirements for pretrial detention are not met and order \_\_\_\_\_\_\_ released either on his/her/their own recognizance or on appropriate, narrowly tailored conditions.

# When setting money bail, the court should make findings regarding \_\_\_\_\_\_’s ability to pay and non-financial alternative conditions of release that focus on court attendance.

The court should make certain findings to ensure that the financial condition of release does not result in detention solely based on wealth. The *Humphrey* court held that “pretrial detention…is impermissible unless no less restrictive conditions of release can adequately vindicate the state's compelling interests.”[[15]](#footnote-16)

## A. \_\_\_\_\_\_ does not have the ability to pay bail as now set.

The court should determine whether a financial condition of pretrial release will cause \_\_\_\_\_\_’s detention because of his/her/their inability to pay. Here, bail is set at $\_\_\_\_\_ which \_\_\_\_\_\_ cannot afford to pay.

\_\_\_\_\_\_\_ is indigent. He/she/they is homeless/unemployed/works a job that pays minimum wage/supports family members/etc. Even a relatively small secured financial condition of release will cause \_\_\_\_\_\_’s detention. The court should release \_\_\_\_\_\_\_ on non-financial conditions that will ensure return to court.

Setting bail in a sum beyond \_\_\_\_\_\_’s ability to pay functionally amounts to a no-bail detention.[[16]](#footnote-17) Doing so requires the court to make findings under the exceptions to a right to bail in article I, section 12 of the California Constitution. Because \_\_\_\_\_\_’s case does not come within any of those exceptions, \_\_\_\_\_\_\_ must be released on his/her/their own recognizance or on bail he/she/they can afford to pay.

## B. Less restrictive conditions of release are adequate to serve the government’s interests.

“If the court concludes that a bail amount of bail the defendant is unable to pay is required to ensure or her future court appearances, it may impose that amount only upon a determination *by clear and convincing evidence* that no less restrictive alternative will satisfy that purpose.”[[17]](#footnote-18)

A financial condition of release is not required. Based on \_\_\_\_\_\_\_’s history and community ties, this court should release \_\_\_\_\_\_\_ on his/her/their own recognizance and, if necessary, impose a non-financial condition of release. [\_\_\_\_\_\_ is not a flight risk, e.g. Public Safety Assessment (“PSA”) Report indicates that \_\_\_\_\_ has no prior failures to appear[[18]](#footnote-19)/PSA recommends “Release… [[19]](#footnote-20)/\_\_\_\_\_\_ has close ties to the community because of family/job/etc.] The facts favor own-recognizance release here.

The court can impose numerous non-financial conditions of release adequate to serve the government’s interests in court appearance, such as [reminders/stay away orders/check-ins/ankle monitoring/etc]. These less restrictive alternatives are effective and narrowly tailored to secure \_\_\_\_\_\_\_’s court appearance. Conditions of release “must be reasonable and there must be a sufficient nexus between the condition and protection of public safety.”[[20]](#footnote-21)

1. **Bail schedules are the antithesis of the individualized inquiry the court is required to make.**

The *Humphrey* court affirmed that pretrial detention must be based on factors related to the individual defendant's circumstances.[[21]](#footnote-22) In determining whether a financial condition of release is required, the court should not simply apply the bail schedule to the charges because bail schedules “represent the antithesis of the individualized inquiry required before a court can order pretrial detention.”[[22]](#footnote-23) Once this court determines that public safety and victim safety do not require pretrial detention and defendant should be released, “the important financial inquiry is … the amount necessary to secure the defendant’s appearance.”[[23]](#footnote-24)

With this in mind, the court should not use the statutory bail schedule as a guideline because pre-determined, one-amount-fits-all bail amounts based on the charged offense alone violate unconstitutional due process and equal protections without regard to individualized consideration, resulting in the detention of indigent people.[[24]](#footnote-25) If this court determines that a financial condition of release is necessary to ensure court appearance, the individualized circumstances require that money bail be set in an amount \_\_\_\_\_\_ can pay, in accordance with *Humphrey*.

1. **The presumption of innocence and of pretrial release apply when considering bail.**

The United States Supreme Court upheld the constitutionality of a bail act that specified that, unless reasons exist that the person will not return to court or will endanger others, the accused shall be released.[[25]](#footnote-26) In other words, “the presumption is release pending trial.”[[26]](#footnote-27)

An accused’s presumption of innocence is not abridged when applying for pretrial release. The High Court explained that “federal law has unequivocally provided that a person arrested for a non-capital offense shall be admitted to bail” because “[t]his traditional right to freedom before conviction permits the unhampered preparation of a defense, and serves to prevent the infliction of punishment prior to conviction. [Citation.] Unless this right to bail before trial is preserved, *the presumption of innocence, secured only after centuries of struggle, would lose its meaning*.”[[27]](#footnote-28)

In the same vein, the court should not give undue consideration to the potential sentence an accused faces in determining pretrial release. Focusing on the severity of the sentence is improper in adjudging likelihood of reappearance. Instead, the court should balance individualized factors, such as ties to the community, and prior court attendance record to decide.[[28]](#footnote-29) “Otherwise, denial of bail would be proper in any case in which a prison term is imposed, regardless of off-setting factors presented by defendant.”[[29]](#footnote-30) “The nature of the offense charged, not the punishment actually faced, controls the availability of bail.”[[30]](#footnote-31)

Finally, the California Supreme Court cautioned trial judges to be mindful that pretrial detention has a practical impact on even an innocent defendant's decision whether to negotiate a plea, citing research showing that a defendant in custody naturally has a greater incentive to plead guilty than does a defendant on pretrial release, especially if the time to trial roughly matches the defendant's potential sentence exposure.[[31]](#footnote-32)

# Article 1, section 12 exceptions aside, pretrial detainees cannot be held based on public safety concerns.

Where a court’s concern is public safety, it can order a defendant detained after making the required findings under California Constitution article I, section 12(b) or (c), or it can order appropriate non-financial conditions of release.

Money bail should not be imposed in response to concerns about public safety. “*Money bail…has no logical connection to protection of the public, as bail is not forfeited upon commission of additional crimes*… Accordingly, when the court’s concern is protection of the public rather than flight, imposition of money bail in an amount exceeding the defendant’s ability to pay unjustifiably relieves the court of the obligation to inquire whether less restrictive alternatives to detention could adequately protect public or victim safety and, if necessary, explain the reasons detention is required.”[[32]](#footnote-33) “The state constitution requires state courts to set bail in cases [where defendant is not eligible for detention under article I, section 12], yet it has no rational basis for doing so where the defendant only poses a threat to public safety—not a flight risk.”[[33]](#footnote-34)

Money bail can have no deterrent effect on new criminal activity as a matter of law, because committing a crime while out on money bail does not result in forfeiture of bail.[[34]](#footnote-35) The court’s only valid interest in imposing money bail is reasonably assuring appearance in court.

Because \_\_\_\_\_\_\_’s case does not fall into the categories of cases eligible for pretrial detention under an exception specified in California Constitution, article I, section 12(b) or (c),[[35]](#footnote-36) the court should address any public safety concerns through non-monetary conditions of release.

In addition, \_\_\_\_\_\_\_\_ poses no significant risk to public safety or the victim’s safety. \_\_\_\_\_\_\_ has [no prior convictions/no convictions for dangerous offenses/etc.].[[36]](#footnote-37)  In addition, the Public Safety Assessment (“PSA”) Report recommends [release with or without conditions…] [[37]](#footnote-38) [Other facts suggesting s/he is not dangerous, e.g. age/low score on PSA/character evidence]. So, any concerns this court has about public safety can be appropriately addressed by non-monetary conditions of release.

The court could impose [a stay-away order/a no-weapons condition/protective orders/alcohol monitors/substance abuse counseling and testing/anger management counseling/curfew/home confinement/GPS monitoring]. These alternatives are not only constitutional, but they are cheaper, more effective, and far less intrusive than pretrial detention.

# Failing to reduce the jail population to lessen the risks of COVID-19 amounts to “deliberate indifference” to the health of detainees.

The Eighth Amendment to the United States Constitution and article I, section 17 of the California Constitution forbid the state from acting with “deliberate indifference to serious medical needs” of incarcerated persons.[[38]](#footnote-39) The state “may not be “‘deliberately indifferent to the exposure of inmates to a serious communicable disease,’ and the placement of inmates in places to which infectious diseases could easily spread constitutes a constitutional violation.”[[39]](#footnote-40)

If government fails to fulfill this obligation, the courts have a responsibility to remedy the resulting Eighth Amendment violation.[[40]](#footnote-41) Courts must not shrink from their obligation to “enforce the constitutional rights of all ‘persons,’ including prisoners.”[[41]](#footnote-42)

Under the equal protection clause, these constitutional standards apply to pretrial detainees who are entitled to be treated no worse than a convicted prisoner unless there is some justification for the different treatment.[[42]](#footnote-43) The Ninth Circuit has held that, when a pretrial detainee alleges that a jail has failed to provide adequate medical care, the standard is “objective deliberate indifference”; unlike in the Eighth Amendment context, it need not be proved that the jail authorities were subjectively aware of the risk of harm.[[43]](#footnote-44)

Here, the state is acting with deliberate indifference to the risk of a COVID-19 outbreak by disregarding Dr. Pratt’s urgent recommendation to reduce jail capacity. Dr. Pratt concluded there are “not nearly enough” cells appropriate for COVID isolation or quarantine, since the “overwhelming majority” of the jail’s 448 quarantine-suitable cells are taken up by inmates who need celled housing for security reasons. She asks for “aggressive strategies to reduce the jail population,” and recommends a goal of 600 inmates.[[44]](#footnote-45)

# \_\_\_\_\_\_\_’s pretrial incarceration will exacerbate this County’s practice of disproportionately setting higher bails for African Americans and Latinos.

On September 30, 2020, the Governor signed into law AB 2542, the California Racial Justice Act, to take effect on January 1, 2021.[[45]](#footnote-46) Among the legislative findings is the recognition that race discrimination has had a deleterious effect on our entire criminal justice system, and that current law has proven insufficient in addressing the systemic bias.[[46]](#footnote-47) Written into the law is the legislature’s explicit intent to provide remedies to “eliminate racial bias” in all forms, including implicit and unintentional bias.[[47]](#footnote-48) As shown below, our current bail system disproportionately keeps Black and Brown defendants in pretrial detention often because they cannot afford to pay bail.

Research studies have consistently found that African American defendants receive harsher bail outcomes than those imposed on white defendants.[[48]](#footnote-49) Nearly every study on the impact of race in bail determinations concludes that African Americans are detained pretrial at a higher rate with higher bail than are white arrestees with similar charges and criminal histories. Over twenty-five studies document racial disparities in bail determinations in state cases,[[49]](#footnote-50) federal cases,[[50]](#footnote-51) and juvenile delinquency proceedings.[[51]](#footnote-52) The adverse impact of race and ethnicity on bail determinations is not isolated to particular regions of the country, but is a pervasive and widely-acknowledged problem, documented in vast areas of the country,[[52]](#footnote-53) and similarly affecting Latino defendants.[[53]](#footnote-54)

Overall, the odds of similarly-situated African American and Latino defendants being held on bail because they could not pay the bond amounts imposed were *twice* that of white defendants.[[54]](#footnote-55)

This is a longstanding and pervasive inequity.[[55]](#footnote-56) The new Racial Justice Act mandates that the court remedy such blatant discrimination by releasing \_\_\_\_\_\_\_\_ with conditions to ensure public safety and return to court, or by setting bail in an amount he/she/they can afford to pay.

**Conclusion**

\_\_\_\_\_\_\_\_\_ should be granted own-recognizance release because he/she/they is neither a risk to public safety nor a flight risk. [Summarize your strongest factual argument]. [If applicable: He/she/they is at higher risk of getting very sick from the pandemic if kept detained in the county jail].

The court should address any concerns about public safety through non-monetary conditions of release and should address concerns about flight risk either with non-monetary conditions or with a financial condition of release \_\_\_\_\_\_\_\_ can attain.

Additionally, the court should release \_\_\_\_\_\_\_ with appropriate conditions to alleviate the potentially deadly situation in our jails.

Dated: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Respectfully submitted,

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Deputy Public Defender

Attorney for \_\_\_\_\_\_\_\_

Declaration of Counsel

I declare:

I am a deputy public defender for San Francisco County and, in that capacity, I represent the defendant.

All information in the Statement of the Case and Facts of the attached motion is taken from my review of discovery provided by the state.

All information in the Statement of Facts about \_\_\_\_\_\_\_\_ of the attached motion is taken from conversations with, letters by, emails by, and declarations of [IF RELEVANT]: defendant and family and friends [IF RELEVANT – add any other people as necessary].

I am informed and believe that:

• \_\_\_\_\_\_\_ has the following community ties;

• \_\_\_\_\_\_\_ cannot afford to pay any amount of money bail;

• \_\_\_\_\_\_\_ promises to return to court and abide by court-ordered release conditions;

• \_\_\_\_\_\_\_ suffers from the following medical conditions, \_\_\_\_\_\_\_\_\_, which put him at high risk of serious illness should he/she/they contract COVID-19.

The foregoing is true and correct of my own knowledge, except on those matters stated on information and belief, and as to those, I believe them to be true.

Executed on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, at San Francisco, California.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Deputy Public Defender

Attorney for \_\_\_\_\_\_\_\_\_\_

Proof of Service

I say:

I am over eighteen and not a party to this action. My business address is 555 Seventh Street, San Francisco, California 94l03.

I caused to be filed and served the attached document on:

Assistant District Attorney \_\_\_\_\_\_\_\_\_\_\_\_\_

San Francisco District Attorney

350 Rhode Island Street

North Building, Suite 400N  
San Francisco, CA 94103

I declare under penalty of perjury that the foregoing is true and correct. Executed on \_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2021, in San Francisco, California.

1. *In re Humphrey* (2021) 11 Cal.5th 135, 276 Cal.Rptr.3d 232, 237. [↑](#footnote-ref-2)
2. Assem. Bill No. 2542, (2019-2020 Reg. Sess.) § 2, subd. (a). [↑](#footnote-ref-3)
3. <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>. [↑](#footnote-ref-4)
4. Amanda Klonsky, *An Epicenter of the Pandemic Will Be Jails and Prisons, if Inaction Continues*, N.Y. Times (Mar. 16, 2020), <https://nyti.ms/3aycWX4>. [↑](#footnote-ref-5)
5. Centers for Disease Control & Prevention, *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities* (“*CDC Guidance*”) (Mar. 23, 2020), <https://bit.ly/2ygqU1k>. [↑](#footnote-ref-6)
6. Stuart A. Kinner, et al., *Prisons and custodial settings are part of a comprehensive response to COVID-19*, The Lancet, Vol. 5 April 2020, p. e188, [www.thelancet.com/public-health](http://www.thelancet.com/public-health). [↑](#footnote-ref-7)
7. <https://www.sfsheriff.com/covid-19-jail-community-programs-sfso-staff-data>, accessed \_\_\_\_\_\_\_\_, 2021. [↑](#footnote-ref-8)
8. **Exhibit A**, Letter from Lisa A. Pratt, MD, Jail Medical Director, San Francisco Dept. of Public Health, October 13, 2020. [↑](#footnote-ref-9)
9. *United States v. Salerno* (1987) 481 U.S. 739. [↑](#footnote-ref-10)
10. *In re White* (2020) 9 Cal.5th 455, 462 [↑](#footnote-ref-11)
11. Cal. Const., art. I, § 12; Pen. Code, § 1271 [bail before conviction is a matter of right]; *Ex parte Newbern* (1961) 55 Cal.2d 500. 503-504; *In re Law* (1973) 10 Cal.3d 21, 25. [↑](#footnote-ref-12)
12. *In re Humphrey* (2021) 276 Cal.Rptr.3d 232, 237. [↑](#footnote-ref-13)
13. *Id.,* at237-238. [↑](#footnote-ref-14)
14. *Humphrey*, *supra*, at 244-245. [↑](#footnote-ref-15)
15. *Id.* at 245. [↑](#footnote-ref-16)
16. *Id*., at 237; *In re Avignone* (2018) 26 Cal.App.5th 195, 210, citing *In re Christie* (2001) 92 Cal.App.4th 1105, 1109 [“the court may neither deny nor set bail in a sum that is the functional equivalent of no bail”]. [↑](#footnote-ref-17)
17. *Id.*, at 237-238, emphasis added. Reasonable bail conditions are allowed. *In re McSherry* (2003) 112 Cal.App.4th 856 (misdemeanor: stay-away order); *Gray v. Superior Court* (2005) 125 Cal.App.4th 629 (felony: no-medical-practice order). [↑](#footnote-ref-18)
18. **Exhibit B**, Public Safety Assessment (“PSA”) Report. [↑](#footnote-ref-19)
19. **Exhibit B**. [↑](#footnote-ref-20)
20. *In re Webb* (2019) 7 Cal.5th 270, 278. [↑](#footnote-ref-21)
21. *Humphrey*, *supra*, at 245. [↑](#footnote-ref-22)
22. *In re* *Humphrey* (2018) 19 Cal.App.5th 1006, 1042; *accord Humphrey*, *supra*, 276 Cal.Rptr.3d 232 at 245 [“superior court must undertake an individualized consideration of the relevant factors”]. This part of the Court of Appeal’s decision is precedential. See *In re Humphrey* (2020) 268 Cal.Rptr.3d 119 [restoring precedential effect in part]. [↑](#footnote-ref-23)
23. *Humphrey*, 19 Cal.App.5th at 1044. [↑](#footnote-ref-24)
24. *Ibid.* [“For poor persons arrested for felonies, reliance on bail schedules amounts to a virtual presumption of incarceration. According to a San Francisco study, last year 85 percent of the inmates of the county jail were awaiting trial and ‘[o]f these, 40-50% could be released if they could afford to pay their bail.’ (*The Financial Justice Project, Office of the Treasurer & Tax Collector of the City and County of San Francisco, Do the Math: Money Bail Doesn’t Add up for San Francisco* (June 2017) p. 4.)”]. [↑](#footnote-ref-25)
25. *Salerno*, *supra*, 481 U.S. at 739. [↑](#footnote-ref-26)
26. *Humphrey*, *supra*, 19 Cal.App.5th at 1031; see *Salerno*, *supra*, 481 U.S. at 739. [↑](#footnote-ref-27)
27. *Stack v. Boyle* (1951) 342 U.S. 1, 4, emphasis added. In dicta, the Court in *Humphrey* noted that courts must assume the truth of criminal charges, citing a 142-year-old case, *Ex parte Duncan*. *Humphrey*, *supra*, at p. 245 [citing *Ex parte Duncan* (1879) 53 Cal. 410 and *Ex parte Ruef* (1908) 7 Cal.App. 750]. *Duncan* in turn relies on a single-justice decision, *Ex parte Ryan* (1872) 44 Cal. 558, which cites no authority for a “presumption of guilt” at a bail hearing. The Court is presently considering a request to modify the opinion to remove this sentence, and the Attorney General has indicated that he does not oppose this modification. The Court should not rely on this non-binding dicta, which may soon be deleted from the opinion altogether. A presumption of guilt before conviction is inconsistent with the principles of our legal system, and with *Humphrey*’s requirement that the prosecution prove by clear and convincing evidence that there is no reasonable alternative to *de facto* pretrial detention. [↑](#footnote-ref-28)
28. *In re Pipinos* (1982) 33 Cal.3d 189, 199. [↑](#footnote-ref-29)
29. *In re Pipinos*, *supra*, 33 Cal.3d at 200. [↑](#footnote-ref-30)
30. *In re Christie*, *supra*, 92 Cal.App.4th at 1109, citing *In re Bright* (1993) 13 Cal.App.4th 1664, 1671. [↑](#footnote-ref-31)
31. *In re White* (2020) 9 Cal.5th 455, 471, see Pretrial Detention Reform Workgroup, Pretrial Detention Reform: Recommendations to the Chief Justice (Oct. 2017) p. 14; Bibas, *Plea Bargaining Outside the Shadow of Trial* (2004) 117 Harv. L.Rev. 2463, 2492-2493. [↑](#footnote-ref-32)
32. *Humphrey*, *supra*, 19 Cal.App.5th at 1029, emphasis added. [↑](#footnote-ref-33)
33. *Reem v. Hennessy* (N.D. Cal. Dec. 21, 2017) No. 17-CV-06628-CRB, 2017 WL 6539760, at \*4. [↑](#footnote-ref-34)
34. Pen. Code, §§ 1269, 1305(a); see also *People v. Nat’l Auto. & Cas. Ins. Co.* (2002) 98 Cal.App.4th 277, 285 [“‘forfeiture of bail’ can only occur in one circumstance—when a defendant fails to appear at a scheduled court appearance without sufficient excuse”]. [↑](#footnote-ref-35)
35. In addition to capital cases, no-bail detention is permitted only upon a substantial showing of clear and convincing evidence that release would cause great bodily harm or result in carrying out a threat to a specific person. (Cal. Const., art. 1, § 12(a), (b) and (c).) [↑](#footnote-ref-36)
36. **Exhibit B**. [↑](#footnote-ref-37)
37. **Exhibit B**. [↑](#footnote-ref-38)
38. *Estelle v. Gamble* (1976) 429 U.S. 97, 103. [↑](#footnote-ref-39)
39. *Helling v. McKinney* (1993) 509 U.S. 25, 33. [↑](#footnote-ref-40)
40. See *Hutto v. Finney* (1978) 437 U.S. 678, 687, n. 9. [↑](#footnote-ref-41)
41. *Cruz v. Beto* (1972) 405 U.S. 319, 321 (per curiam). [↑](#footnote-ref-42)
42. *Inmates of the Riverside County Jail v. Clark* (1983) 144 Cal.App.3d 850, 858. [↑](#footnote-ref-43)
43. *Gordon v. County of Orange* (2018) 888 F.3d 1118, 1124–1125. [↑](#footnote-ref-44)
44. **Exhibit B**. [↑](#footnote-ref-45)
45. Assem. Bill No. 2542, (2019-2020 Reg. Sess.) (“AB 2542”). [↑](#footnote-ref-46)
46. AB 2542, § 2(a), (c)). [↑](#footnote-ref-47)
47. AB 2542, § 2(i). [↑](#footnote-ref-48)
48. *Give Us Free: Addressing Racial Disparities in Bail Determinations* by Cynthia E. Jones. [↑](#footnote-ref-49)
49. *Racial and Ethnic Disparity in Pretrial Criminal Processing*, 22 Just. Q. 170, 187 (2005) Traci Schlesinger; *Racial and Ethnic Differences in Pretrial Release and Decisions and Outcomes: A Comparison of Hispanic, Black and White Felony Arrestees*, 41 Criminology 873, 880-81 (2003) Stephen DeMuth. [↑](#footnote-ref-50)
50. *Race, Sex, and Pretrial Detention in Federal Court; Indirect Effects and Cumulative Disadvantage*, 57 U. Kan. L. Rev. 879 (2009) Cassia Spohn; *Criminal Justice Decision Making as a Stratification Process: The Role of Race and Stratification Resources in Pretrial Release*, 5 J. Quantitative Criminology 57 (1989), Celesta A. Albonetti et al. [↑](#footnote-ref-51)
51. *Reducing Racial Disparities in Juvenile Detention* (2001) Eleanor Hinton Hoytt. [↑](#footnote-ref-52)
52. *Race and Presentencing Decisions: The Cost of Being African American, Racial Issues in Criminal Justice: The Case of African Americans* 137, 140-41, (2003) Marvin D. Free (meta-analysis of bail studies in 2003 between 1979 and 2000, including 18 studies all showing African Americans receiving higher bail than white, including studies controlling for all varying factors. [↑](#footnote-ref-53)
53. *Pretrial Release of Latino Defendants Final Report* (2008) Pretrial Justice Institute; David Levin. [↑](#footnote-ref-54)
54. Demuth Study, *supra*, at p. 897; See also San Francisco Controller’s Report, County Jail Needs Assessment, August 15, 2013, at p. 11-12; See also Women’s Community Justice Reform Blueprint A Gender-Responsive, Family-Focused Approach to Integrating Criminal and Community Justice, April 2013, Adult Probation Department and Sheriff’s Department, City and County of San Francisco; See also Summary of Key Findings – San Francisco Justice Reinvestment Initiative: Racial & Ethnic Disparities Analysis for Reentry Council by W. Haywood Burns Institute (June 23, 2015) (<https://www.burnsinstitute.org/publications/san-francisco-justice-reinvestment-initiative-racial-and-ethnic-disparities-analysis-for-the-re-entry-council>. [↑](#footnote-ref-55)
55. See: *Report on Race & Incarceration In San Francisco: Two Years Later*, by Chet Hewitt, Andrea D. Shorter, and Michael Godfrey, Center on Juvenile and Criminal Justice, October 1994 (African-American were 11 % of SF’s general adult population, but made up 48% of the county’s inmates; Latinos comprised 15% of the general adult population, but accounted for 29% of the jail population); see also *Race & Incarceration in San Francisco: Localizing Apartheid*, October 1992, Center on Juvenile and Criminal Justice, by Chet Hewitt, Ken Kubota, and Vincent Schiraldi (earlier, similar data). [↑](#footnote-ref-56)