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IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

THE PHILADELPHIA COMMUNITY BAIL FUND, by and through its Trustees, Candace McKinley and Lauren Taylor,

THE YOUTH ART & SELF-EMPOWERMENT PROJECT, by and through its Trustees, Sarah Morris and Joshua Glenn,

Gerald Thomas, an individual held on bail he could not afford,

Stephon Thomas, an individual held on bail he cannot afford,

Damier Moragne, an individual held on bail he cannot afford,

Kimberly Blackwell, an individual held on bail she could not afford,

No. 21 EM 2019

Jeremy Harris, an individual held on bail he could not afford,

Hasheen Jacobs, an individual held on bail he cannot afford,

Z.L., a minor held on bail he could not afford, by and through his mother **Alycia Brown**,

Nasir White, an individual held on bail he could not afford,

Evan Slater, an individual held on bail he could not afford,

Petitioners,

v.

ARRAIGNMENT COURT MAGISTRATES of the FIRST JUDICIAL DISTRICT of the COMMONWEALTH OF PENNSYLVANIA,

Respondents.

BRIEF OF AMICUS CURIAE
THE STERN COMMUNITY LAWYERING CLINIC
IN SUPPORT OF PETITIONERS

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STATEMENT OF INTEREST PURSUANT TO PA. R. APP. P. 531(B)(2)

Located in Drexel University's Dornsife Center for Neighborhood Partnerships, the Andy & Gwen Stern Community Lawyering Clinic ("Stern CLC") is staffed by Drexel law students and provides legal assistance to Drexel's neighbors in the West Philadelphia Promise Zone. Promise Zones are federally designated areas with historically high poverty and crime rates, which show great promise for the future. The Stern CLC regularly represents Promise Zone residents whose lives have been touched by the criminal legal system, including those who have been harmed by the imposition of money bail. Thus, the proper resolution of this case is of substantial interest to the Stern CLC and its clients.[1]

[1] This brief was prepared solely by the staff and law students in the Stern CLC and no one was paid in whole or in part for the preparation of this brief.

SUMMARY OF THE ARGUMENT

In Philadelphia, scores of individuals are detained in jail awaiting the resolution of their criminal cases. This practice comes at great cost to the detainees, their families, and the general public.[2] While pretrial detention is permissible when "no other condition or combination of conditions can reasonably assure the safety of any person and the community," the Pennsylvania Rules of Criminal Procedure make clear that no condition of release should ever be imposed for the sole purpose of ensuring that a defendant remains incarcerated until trial.[3] The failure of Magistrate Judges to meaningfully assess defendants' financial ability to post bail, as required by the Pennsylvania Rules of Criminal Procedure, and consider alternative conditions of release has meant that more people than ever contemplated are experiencing the varied harms of pretrial detention.

This amicus brief documents the significant toll that the overbroad use of money bail has on individuals, families, and communities in Philadelphia and establishes our support for Petitioner's position that money bail should only be imposed when absolutely necessary to ensure the safety of all persons and the community at large. Part I of this brief addresses the various harms pretrial

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[2] Malik Neal, *A Window Into a Future Without Cash Bail: A Snapshot Report on Resolved Cases of the Philadelphia Bail Fund* 9 (Philadelphia Bail Fund, 2019) ("From January 1, 2019 through November 2, 2019, cash bail was assigned in approximately 60% of all Philadelphia criminal cases (17,112 out of 27,888).")

[3] Pa. Const. Art. 1 § 14; Pa. R. Crim. P. 524(C).

detention causes to individuals and their families, including the increased likelihood of conviction, the perpetuation of mental health conditions and loss of medical treatment, and the disruption to secure housing, employment, and child-rearing. Part II of this brief addresses the harms that pretrial detention inflicts on society on the whole, including the threat it poses to public safety, the cost to taxpayers, and the disproportionately high impact on communities of color. This brief draws from empirical data from Philadelphia-based and nationwide studies as well as the personal stories of Philadelphians to illuminate the various harms caused by the reckless and excessive imposition of money bail.

ARGUMENT

I. The Court's excessive imposition of money bail causes irreparable harm to individuals and families.

The premise of the money bail system is that the prospect of financial loss will deter pretrial flight. The amount of money bail required to create a compelling incentive for a defendant to appear for a hearing depends on the wealth of that defendant. For low-income individuals who are unable to pay even a small amount, the imposition of money bail guarantees pretrial detention and the serious harms that accompany it.

In addition to documenting the immediate costs to the detainee, such as the loss of liberty and possible loss of employment, housing or child custody, various studies have concluded that pretrial detention has significant implications for

criminal adjudication. Specifically, studies reveal that when courts impose money bail, Philadelphians fare worse in our criminal legal system.[4] Philadelphians who are unable to pay money bail are 12% more likely to be convicted.[5] Numerous national studies have corroborated these Philadelphia-specific studies, finding that pretrial detention increases the probability of being convicted,[6] even after controlling for criminal history, offense type, and defendant demographics.[7] The research indicates that released defendants are substantially more likely to be convicted of a lesser charge and usually convicted of fewer total offenses.[8]

The disparity in conviction rates is attributable to guilty pleas, rather than guilty verdicts at trial, which suggests that defendants who are detained pretrial have worse outcomes due to their weaker bargaining position.[9] Pretrial detainees might be more likely to plead guilty for a variety of reasons that have nothing to do

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[4] *See* Arpit Gupta et al., *The Heavy Costs of High Bail: Evidence from Judge Randomization* 3, (Colum. L. & Econ., Working Paper No. 531, 2016). *See also* Will Dobbie et al., *The Effects of Pretrial Detention on Conviction, Future Crime, and Employment: Evidence from Randomly Assigned Judges*, 108 Am. Econ. Rev. 201, 205 (2018).

[5] Gupta et al., *supra* note 4, at 3.

[6] *See* Dobbie et al., *supra* note 4, at 203 (estimating that pretrial release decreases the probability of conviction by 14 percentage points); Gupta et al., *supra*, at 3 (finding that money bail increases the probability of conviction by 12%); Megan T. Stevenson, *Distortion of Justice: How the Inability to Pay Bail Affects Case Outcomes*, 34 J. L., Econ., & Org. 511, 512 (2018) (finding that pretrial detention increases the probability of conviction on at least one charge by 13%.).

[7] *See* Gupta et al., *supra* note 4, at 10; Dobbie et al., *supra*, at 213-14; Paul Heaton et, al., *The Downstream Consequences of Misdemeanor Pretrial Detention*, 69 Stan. L. Rev. 711, 726 (2017) (stating that many recent studies correlating pretrial detention with unfavorable case outcomes control for a wide variety of defendant demographics); Stevenson, *supra*, at 524.

[8] *See* Dobbie et al., *supra* note 4, at 203.

[9] *Id.*

with guilt or innocence. For defendants charged with minor offenses, pleading guilty often results in immediate release, thereby allowing them to avoid many of the harsh consequences of pretrial detention.[10] For example, pretrial detention often means missing work and therefore forgoing income or even losing employment.[11] Pretrial detention also has dire consequences for individuals with children or other dependents, in some cases forcing children into the foster-care system.[12] This is particularly true for women, who are single parents more often than men.[13]

These very real possibilities create a strong incentive for individuals to accept disadvantageous plea deals to avoid pretrial detention. Indeed, research indicates that detained defendants plead guilty more often than released defendants, even when it does not lead to immediate release.[14] Pretrial detainees are often incentivized to plead guilty because plea deals often count the time spent awaiting adjudication toward their sentences.[15] This policy lowers the cost of pleading guilty.[16] In addition, defendants may perceive the conditions in jails where they are held awaiting adjudication to be worse than prisons where they may

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[10] Gupta et al., *supra* note 4, at 3-4.
[11] *Id.* at 3.
[12] Emily Leslie & Nolan G. Pope, *The Unintended Impact of Pretrial Detention on Case Outcomes: Evidence from New York City Arraignments,* 60 J. L. & Econ 529, 554 (2017).
[13] *Id.*
[14] *Id.* at 552.
[15] *Id.*
[16] *Id.*

serve their post-conviction sentence.[17] Thus, pretrial detainees may opt to plead guilty with the hope of being moved to another facility with better confinement conditions.[18]

For Latyra Blake, a single mother of four who was forced to navigate the First Judicial District's bail process following her first and only criminal offense, these statistics were her reality.[19] After spending one year in pretrial detention, simply because she and her family could not afford to pay the $20,000 money bail, Latyra took a plea deal in hopes of avoiding more jail time.[20] Due to her prolonged incapacitation in pretrial detention, Latyra lost her home and all of her very valuable, irreplaceable belongings.[21] Latyra was separated from her four children, including one who was only seven months old at the time.[22] She ultimately pled guilty in order to prevent further separation from her small children.[23]

Detainees are also often punished more harshly than those who have been released pretrial. For example, one study found that pretrial detainees charged with felonies are 10% less likely to have their charge reduced than those who are

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[17] *See Id.* ("Prisons are reserved for convicts serving longer sentences and are designed with long-term residence in mind. Some jails have no yard, no employment for inmates, and more limited visiting opportunities.").
[18] *Id.*
[19] Latyra Blake, Declaration, at ¶ 1.
[20] *Id.* at ¶ 9.
[21] *Id.* at ¶ 8.
[22] *Id.* at ¶ 7.
[23] *Id.* at ¶ 9.

released pretrial.[24] These individuals will also receive harsher punishments in the future if they recidivate because of their more serious criminal history, meaning that they will suffer the effects of pretrial detention twice.[25] More serious criminal convictions also lead to a substantial loss of public and social service benefits such as the right to vote, educational benefits, public housing benefits, and lost employment opportunities.[26] Considering that a majority of cases in Philadelphia, in fact approximately sixty percent, settle at the plea negotiation phase, the distorted incentives system may be affecting outcomes and future opportunities for a vast population of individuals within the criminal legal system and their families.[27]

Critically, pretrial detention also harms families. Pretrial detention has been statistically shown to lead to job loss, which negatively impacts families.[28] Per a research study that spanned fourteen states, nearly two in three families with an incarcerated family member could not afford to pay for basic necessities such as food and housing.[29] Most of those families were caring for children under the age

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[24] Leslie et al., *supra* note 12, at 548.
[25] *Id.*
[26] Marc Mauer & Virginia McCalmont, *Lifetime of Punishment: The Impact of the Felony Drug Ban on Welfare Benefits* 7 (The Sentencing Project, 2013).
[27] Thomas B. Darr, *2018 Caseload Statistics of the Unified Judicial System of Pennsylvania* 15 (AOPC Research, 2019).
[28] Patrick Liu et al., *The Economics of Bail and Pretrial Detention* 12 (Hamilton Project, 2018).
[29] Saneta deVuono-powell et al., *Who Pays? The True Cost of Incarceration on Families* 7 (Ella Baker Center for Human Rights et al., 2015).

of eighteen.[30] This study combined statistics pertaining to families affected by jail and families affected by prison;[31] however, these numbers represent the reality of the families left behind nonetheless. When a valuable family member is taken away from a household, the individuals left behind are forced to suffer. Excessive money bail perpetuates the cycle of poverty by disregarding pretrial detention's harmful effects on families.

This is precisely what happened to Anthony Johnson and his family. A father of three daughters, Anthony was the sole wage earner in his family.[32] His ninety-day detention resulted in the loss of his job and his home.[33] Until he could find another job and secure stable housing, his family was separated.[34] He describes pretrial detention as having a "domino effect," affecting not just the incarcerated individual, but their loved ones too.[35]

Pre-trial detention can also deprive innocent individuals with mental health disorders and physical illnesses of proper medical treatment. Although jails are constitutionally required to provide healthcare to incarcerated individuals, the

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[30] *Id.* at 13.
[31] *Id.* at 7.
[32] *People's Hearing on Cash Bail and Pretrial Punishment* (Jan. 20, 2020), available at https://www.facebook.com/phillywerise/videos/2507744875991167/.
[33] *Id.*
[34] *Id.*
[35] *Id.*

necessary standard of care is rather low.[36] In *Estelle v. Gamble*, the United States Supreme Court discussed the limited extent of the government's obligation to provide healthcare services to incarcerated individuals.[37] The Court stated that "deliberate indifference to serious medical needs of prisoners" violates the United States Constitution's Eighth Amendment prohibition of unnecessary and wanton pain infliction; however, "an inadvertent failure to provide adequate medical care" would not violate the same standard.[38]

Since jail inmates have significantly higher rates of health issues than the general public, the harm to them is particularly acute.[39] According to a 2016 study by the Bureau of Justice Statistics, approximately 45% of individuals in jail nationwide reported having a chronic health condition, whereas the general population reported a chronic illness rate of only 27%.[40] The rates of mental illness are similarly elevated in carceral settings, with approximately 17% of pretrial

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[36] Jennifer Bronson & Carolyn Sufrin, *Pregnant Women in Prison and Jail Don't Count: Data Gaps on Maternal Health and Incarceration* 58S (Public Health Reports, 2019).
[37] 429 U.S. 97, 104-06 (1976).
[38] *Id.*
[39] Dora M. Dumont et al., Public Health and the Epidemic of Incarceration, 33 Ann. Rev. Pub. Health 325, 327 (2012).
[39] Dora M. Dumont et al., Public Health and the Epidemic of Incarceration, 33 Ann. Rev. Pub. Health 325, 327 (2012).
[40] Laura M. Maruschak & Marcus Berzofsky, *Medical Problems of State and Federal Prisoners and Jail Inmates 2011-12* 2-4 (Bureau of Justice Statistics, 2016).

detainees nationwide suffering from a serious mental illness, as compared to the general public's rate of around 5%.[41]

Moreover, the high turnover rates in jails means that pretrial detainees are especially vulnerable in the face of such low medical care standards.[42] High turnover creates difficulties in screening individuals for health issues and providing proper healthcare services; thus, pretrial detainees are likely forced to endure the negative consequences of these "inadvertent failures" at even higher rates than other incarcerated individuals.[43] Even Justice Marshall acknowledged in *Estelle* that "[a]n inmate must rely on . . . authorities to treat his medical needs; if the authorities fail to do so, those needs will not be met."[44] However, if a jail is unaware of incarcerated individuals' needs due to a high turnover rate or poor screening practices, then individuals being detained for months on end are forced to suffer serious consequences due to what is considered nothing but an "inadvertent failure."

William is an example of how pretrial detention can exacerbate existing medical conditions. At seventeen years old, he was arrested and automatically charged as an adult. The magistrate set bail at $520,000, and as a seventeen-year-

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[41] Hallie Fader-Towe & Fred C. Osher, *Improving Responses to People with Mental Illnesses at the Pretrial Stage* 10 (Council of State Governments Justice Center, 2015).
[42] *See* Dumont et al., *supra* note 39, at 327 (2012).
[43] *Id.*
[44] 429 U.S. at 103.

old child raised by a single mother, William had no way to pay.[45] What he experienced for nearly a year during his pretrial incarceration was nothing short of traumatizing and, as William characterizes it, "dehumanizing."[46] William suffered from depression and anxiety before his arrest.[47] During his incarceration, healthcare providers in the jail gave William the incorrect mental health medication.[48] This was a grave error, as it left William unable to move his arms due to rapid muscle deterioration, caused him difficulty breathing, and ultimately resulted in a two-week hospital stay to flush his system of the harmful, incorrect medication.[49] Since his release, William has become an advocate for incarcerated youth, founding the first Youth Participatory Defense Hub in the nation to help ensure the trauma he experienced does not continue to affect future youth.[50]

In addition to those with mental and physical illnesses, many pregnant women are also forced to spend months at a time in pretrial detention.[51] This prolonged detainment can severely disrupt women's access to prenatal care and cause overwhelming uncertainty surrounding the type of healthcare that they might receive. Pregnant pretrial detainees are forced to consider an increasingly

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[45] *People's Hearing on Cash Bail and Pretrial Punishment*, *supra* note 32.
[46] *Id.*
[47] *Id.*
[48] *Id.*
[49] *Id.*
[50] *Id.*
[51] Bronson & Sufrin, *supra* note 36, at 58S.

worrisome series of consequences, including whether they might be shackled during labor, whether they might be forced to give birth alone in their cell, and whether they will be able to see their child after birth.[52]

For example, Veronica was twenty-two years old and pregnant when she was detained for the first time.[53] During her ninety days of pretrial detention, Veronica faced significant harms to both her mental and physical health.[54] Although she was pregnant, the jail denied Veronica the hypertension medication she needed and they prevented her from sleeping and bathing in accordance with her needs.[55] Moreover, Veronica was so worried about the possibility of giving birth in jail that she chose to plead guilty in order to get out of the jail environment.[56] During her second pretrial detention, Veronica missed the birth of her grandchild.[57] This time, she was finally released after receiving assistance from the Philadelphia Bail Fund, but was free for only one day before her son was

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[52] *See* Chris Dinardo, *Pregnancy in Confinement, Anti-Shackling Laws and the "Extraordinary Circumstances" Loophole*, 25 Duke J. Gender L. & Pol'y 271, 277-78 (2018) (describing the shackling of pregnant inmates during labor); Rachel Roth, *Incarceration as a Threat to Reproductive Justice in Massachusetts and the United States*, 39 W. New Eng. L. Rev. 381, 389 (2017) ("A young woman in Pennsylvania gave birth in a jail cell (ironically called an observation cell) right by the nurse's station, but nobody paid any attention to her."); Megan McMillen, *I Need to Feel Your Touch: Allowing Newborns and Infants Contact Visitation with Jailed Parents*, 2012 U. Ill. L. Rev. 1811 (2012) ("Rarely does a new parent in a correctional facility get to spend more than a few hours (and certainly no more than a few days) with his or her newborn infant before the baby is sent to be cared for by someone else.").
[53] *People's Hearing on Cash Bail and Pretrial Punishment*, *supra* note 32.
[54] *Id.*
[55] *Id.*
[56] *Id.*
[57] *Id.*

murdered.[58] Veronica stated that her negative money bail experience left her feeling "lost and [like] less than a woman."[59]

This litany of concerns can cause a tremendous amount of stress on pregnant women, which can ultimately harm their future child. According to the majority of studies, mild, moderate, and severe stress can negatively affect pregnancy outcomes, including the future child's behavioral and physiological development.[60] Studies also indicate that severe stress experienced early in the pregnancy has the potential to result in a number of adverse consequences, such as increasing the risk of an infant being born with heart defects or neural tube defects, shortening gestational length, and potentially causing pregnancy loss.[61] The plethora of negative consequences faced by detained pregnant women and their future children further establish why it is critical that money bail not be imposed outside of the limited scope established by Pennsylvania law.

Pretrial detention also has the potential to cause severe overcrowding in jails. Philadelphia jails have a history of overcrowding, at one point exceeding 119% of capacity; therefore, it is critical that the First Judicial District take steps to

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[58] *Id.*
[59] *Id.*
[60] Mary E. Coussons-Read, *Effects of Prenatal Stress on Pregnancy and Human Development: Mechanisms and Pathways* 6 Obstetric Med. 52, 52 (2013).
[61] *Id.* at 53-54.

prevent the resurgence of this overcrowding issue.[62] Overcrowded jails and prisons often fail to provide enough space for detained individuals, resulting in security, ventilation, and hygiene issues.[63] Correctional facilities are built and staffed to house and monitor a specific number of individuals.[64] It is unsanitary when more than the intended number of people share spaces, toilets, and showers.[65] Improper money bail practices thus may continue to feed already crowded systems.[66]

For example, the police charged Thomas with four misdemeanors and the magistrate imposed money bail.[67] Thomas experienced twenty-four days of pretrial detention in a crowded facility.[68] He stated that his experience in jail felt like living with twenty-five men in a cage.[69] Thomas could not go to the bathroom without someone looking for a fight.[70]

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[62] Lynda Yamamoto, *Overcrowded Prisons and Filial Responsibility: Will States Utilize "Support of the Indigent" Statutes to Solve the Baby Boomer and Prison Crises?*, 41 Rutgers L. J. 435, 452 (2009) (describing Pennsylvania's plan to solve statewide prison overcrowding issues by sending inmates to county jails, but explaining how Philadelphia was already considered one of Pennsylvania's "overwhelmed county systems").
[63] Susan M. Campers, *A Failing Correctional System: State Prison Overcrowding in the United States* 13-14 (Pell Scholars and Senior Theses, 2012).
[64] *Id.* at 14 *(*"Hygiene becomes an issue when facilities are built to service a certain number of inmates and later used to service sometimes twice that intended amount.").
[65] *Id.*
[66] *Id. (*"Across the country, cash bail practices along with anti-drug user and anti-loitering laws continue to funnel people through an already overloaded system, increasing the cost demand on facilities to provide for the basic needs of the people housed inside.").
[67] *People's Hearing on Cash Bail and Pretrial Punishment, supra* note 32.
[68] *Id.*
[69] *Id.*
[70] *Id.*

II. The Court's excessive imposition of money bail directly harms society too.

Money bail not only harms individuals and their families, it also harms society. Collectively, society suffers from the negative effects of the increased recidivism associated with money bail, an increase in the need for taxpayer dollars to support the significant costs of pretrial detention, and money bail's disproportionate impact on communities of color. The negative consequences of money bail extend far beyond only those individuals who endure pretrial detention. The burdens of money bail are felt by society on the whole. Thus, to sufficiently protect the interests of the general public, the Arraignment Court Magistrates of the First Judicial District must follow proper procedure and impose money bail only when absolutely necessary under the current law.

The increased recidivism rate caused by the imposition of money bail threatens public safety. Studies indicate that individuals who are detained pretrial are more likely to be charged with a new offense following their detainment, with at least one study from Harris County Texas, the third-largest county in the United States, finding that pretrial detention correlates with a 32.2% increase in an individual's likelihood of receiving future felony charges.[71] Although pretrial detention arguably incapacitates individuals from committing crimes, this

[71] *See* Liu et al., *supra* note 28, at 12-13. *See also* Heaton et al., *supra* note 7, at 714.

reduction in crime is completely reversed within two years on average due to recidivism.[72] In order to effectively protect the safety interests of society as a whole, courts should follow proper procedure in order to ensure that the recidivism rate remains as low as possible. Under the current law, a court may only detain an individual pretrial where "no condition or combination of conditions other than imprisonment will reasonably assure the safety of any person and the community."[73] Thus, if a court properly utilizes the current system, only those individuals who pose a true public safety threat will be detained.

In addition to money bail's cost to public safety, money bail also imposes a high cost on taxpayers who are forced to bear the burden of the significant financial expenses associated with pretrial detention. In 2010, Philadelphia spent seven cents out of every tax dollar on detaining individuals in jail.[74] This was as much as the government spent on the streets and health departments combined and more than it spent on any function aside from police and human services.[75] More recently, in 2019, the Philadelphia Bail Fund reported that it prevented 15,000 days of pretrial detention and saved approximately $1.5 million in local tax dollars by

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[72] Leslie & Pope, *supra* note 12, at 555 ("The positive post-sentencing impact of detention on recidivism mostly offsets the pretrial reductions within 2 years, so lower crime rates should not be tallied as a benefit of pretrial detention.").
[73] Pa. Const. Art. 1 § 14.
[74] The Pew Charitable Trusts, *Philadelphia's Crowded, Costly Jails: The Search for Safe Solutions* 2 (2010).
[75] *Id.*

posting bail for 130 indigent individuals.[76] If the costs are this high for only 130 individuals, then the total cost to taxpayers over the years is likely staggering, as over 17,100 individuals were assigned money bail from January 1, 2019 through November 2, 2019 alone.[77] It should be the court's duty to ensure that taxpayers are only burdened with these expenses in situations where money bail is imposed in accordance with the proper procedure.

Finally, the whole of society is harmed by money bail's and pretrial detention's disproportionate impact on communities of color. Numerous sources point to the racial imbalance within the United States' criminal justice system.[78] In 2001, statistics indicated that one in three black men and one in six Latino men born in that year would be imprisoned during their lifetime, but only one in seventeen white men would be statistically destined to a similar fate.[79] These disproportionate statistics extend to the harms of pretrial detention. In one study,

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[76] Neal, *supra* note 2, at 20.
[77] *Id.*
[78] *See* The Sentencing Project, *Report of The Sentencing Project to the United Nations Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia, and Related Intolerance: Regarding Racial Disparities in the United States Criminal Justice System* 1 (2018) ("[T]he experiences of poor and minority defendants within the criminal justice system often differ substantially from that model due to a number of factors, each of which contributes to the overrepresentation of such individuals in the system."); Paige Joki et al., *The Cost of Buying Freedom: Strategies for Cash Bail Reform and Eliminating Systemic Injustice* 9 (2017) ("As a result, risk assessments can cast entire communities of color as more prone to crime, and imminent risks to public safety overall."); Color of Change & ACLU Campaign for Smart Justice, *Selling Off Our Freedom: How Insurance Corporations Have Taken Over Our Bail System* 1 (2017) ("The for-profit bail industry has reinforced and profited from the racially biased nature of our criminal justice system.").
[79] The Sentencing Project, *supra* note 78, at 1.

the Bureau of Justice Statistics found that African American defendants across the nation were 66 percent more likely to be detained pretrial than white defendants.[80] The rates for Hispanic defendants were even more stark, as Hispanic individuals were 91% more likely to be detained pretrial than white defendants.[81] Moreover, Hispanic defendants were 39% more likely to be charged a bail amount in exchange for pretrial release and were forced to pay higher amounts than non-Hispanic defendants.[82] By imposing bail only where necessary, the court can ensure that people of color are not unjustly forced to endure increased levels of money bail's adverse impacts.

Dante, a forty-five-year-old Philadelphian, fell victim to the money bail system after being targeted by police due to his homelessness and race.[83] One day, while Dante was residing in a tent community, the police searched multiple black men and arrested Dante.[84] They charged him with several nonviolent drug offenses, to which Dante still maintains his innocence.[85] Bail was set at $10,000. Dante had no possible way to pay his money bail and was detained pretrial for four days.[86] Through the "448 days [it took] for [his] case to end," Dante refused to take

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[80] Jessica Eaglin & Danyelle Solomon, *Reducing Racial and Ethnic Disparities in Jails: Recommendations for Local Practice* 20 (Brennan Center for Justice, 2015).
[81] *Id.*
[82] *Id.*
[83] *People's Hearing on Cash Bail and Pretrial Punishment, supra* note 32.
[84] *Id.*
[85] *Id.*
[86] *Id.*

a plea deal because "very few things are worth [his] freedom."[87] Dante has since been fortunate enough to regain some normalcy in life, but not without experiencing real harms from the abusive imposition of money bail.[88] In his words, "It breaks you. It beats you down. It isolates you. It makes you feel hopeless. It makes you feel worthless."[89]

CONCLUSION

If money bail matters are properly conducted, these socioeconomic harms will be limited to cases where no other condition could assure the safety of any person or society as a whole. We stress again that we are not arguing for an abolition of money bail; instead, we are advocating for adherence to proper procedure per Pennsylvania law in line with this Court's July 8, 2019 Order.

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[87] *Id.*
[88] *Id.*
[89] *Id.*

CERTIFICATE OF COMPLIANCE WITH Pa. R.A.P. 127

I hereby certify, pursuant to Pa. R.A.P. 127, that this filing is complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

Dated: 1/29/20

Rachel E. Lopez

IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

THE PHILADELPHIA COMMUNITY BAIL FUND, by and through its Trustees, Candace McKinley and Lauren Taylor, **THE YOUTH ART & SELF-EMPOWERMENT PROJECT**, by and through its Trustees, Sarah Morris and Joshua Glenn, **Gerald Thomas**, an individual held on bail he could not afford, **Stephon Thomas**, an individual held on bail he cannot afford, **Damier Moragne**, an individual held on bail he cannot afford, **Kimberly Blackwell**, an individual held on bail she could not afford,	**No. 21 EM 2019**

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Petitioners,

v.

ARRAIGNMENT COURT MAGISTRATES of the FIRST JUDICIAL DISTRICT of the COMMONWEALTH OF PENNSYLVANIA,

Respondents.

DECLARATION

State of PENNSYLVANIA

County of PHILADELPHIA

I, Latyra Blake, state the following:

1. I reside in Philadelphia County.
2. I am an African- American woman.
3. I was arrested for a conspiracy charge in 2003.

4. It was my first and only criminal offense.
5. The judge set the bail at $20,000, and initially refused to decrease the required bail amount for release despite knowledge of my inability to pay such a high amount. Eventually the court approved 10% of the amount to be posted for me to be released.
6. My mother did not have the financial means to pay my bail immediately. So, I sat in jail for a year before I could post bail. After a year, my mother was able to collect the necessary funds through various financial sources, including my church, and I was released from jail.
7. I am a single mother with four young children. One of my children was only seven months at the time of my arrest. My mother had to care for my four young children.
8. While I was in jail, I lost my house and had to place my belongings in storage. I was unable to afford the high storage fee, so my belongings were removed from the storage unit, and I loss very valuable and irreplaceable possessions.
9. I took a plea deal for probation so that I could avoid the possibility of a lengthy jail sentence and prevent any more time away from my four young children. If I had the financial means to pay for both my bail and a private attorney, I wouldn't had taken the plea agreement. Instead, I would have hired a private attorney and fought to have the case dismissed or for a not guilty verdict.
10. After my conviction, I was unable to obtain housing for my children and me. I was denied by the Housing Authority due to my criminal record. I had to fight to obtain housing and ultimately was successful in gaining housing.

11. I was able to get on the right path after being released from jail because I met the right people. However, there are a lot of people with similar experiences who are unable to do so and end up back in the criminal justice system.
12. While in jail, there were a lot of women of color in similar cash bail situations as me, but I also witnessed poor white women with the same problem.
13. It seems to me that they were using cash bail to pressure me to take a plea deal. It felt like the options were pay the money or take the deal.

I hereby affirm that the facts set above are true, accurate and correct to the best of my knowledge. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification of authorities).

Latyra Blake

Signature of Declarant

Latyra Blake

Printed

01/29/2020

Date